

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

3 STRATEGIC DIRECTION



3.1 Purpose

This chapter sets out the over-arching strategic direction for the management of growth, land use and development in a manner that ensures sustainable management of the Queenstown Lakes District's special qualities:

- a. dramatic alpine landscapes free of inappropriate development;
- b. clean air and pristine water;
- c. vibrant and compact town centres;
- d. compact and connected settlements that encourage public transport, biking and walking;
- e. diverse, resilient, inclusive and connected communities;
- f. a district providing a variety of lifestyle choices;
- g. an innovative and diversifying economy based around a strong visitor industry;
- h. a unique and distinctive heritage;
- i. distinctive Ngāi Tahu values, rights and interests.

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

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

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

- 3.2.1 The development of a prosperous, resilient and equitable economy in the District. (addresses Issue 1)
- 3.2.1.1 The significant socioeconomic benefits of well designed and appropriately located visitor industry facilities and services are realised across the District.
 - 3.2.1.2 The Queenstown and Wanaka town centres¹ are the hubs of New Zealand's premier alpine visitor resorts and the District's economy.
 - 3.2.1.3 The Frankton urban area functions as a commercial and industrial service centre, and provides community facilities, for the people of the Wakatipu Basin.
 - 3.2.1.4 The key function of the commercial core of Three Parks is focused on large format retail development.
 - 3.2.1.5 Local service and employment functions served by commercial centres and industrial areas outside of the Queenstown and Wanaka town centres², Frankton and Three Parks, are sustained.
 - 3.2.1.6 Diversification of the District's economic base and creation of employment opportunities through the development of innovative and sustainable enterprises.
 - 3.2.1.7 Agricultural land uses consistent with the maintenance of the character of rural landscapes and significant nature conservation values are enabled. (also elaborates on SO 3.2.4 and 3.2.5 following)
 - 3.2.1.8 Diversification of land use in rural areas beyond traditional activities, including farming, provided that the character of rural landscapes, significant nature conservation values and Ngāi Tahu values, interests and customary resources, are maintained. (also elaborates on S.O.3.2.5 following)
 - 3.2.1.9 Infrastructure in the District that is operated, maintained, developed and upgraded efficiently and effectively to meet community needs and to maintain the quality of the environment. (also elaborates on S.O. 3.2.2 following)

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

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

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

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

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

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

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

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

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

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

3.2.4.2 The spread of wilding exotic vegetation is avoided.

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

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

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

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- 3.2.5 The retention of the District's distinctive landscapes. (addresses Issues 2 and 4)
- 3.2.5.1 The landscape and visual amenity values and the natural character of Outstanding Natural Landscapes and Outstanding Natural Features are protected from adverse effects of subdivision, use and development that are more than minor and/or not temporary in duration.
 - 3.2.5.2 The rural character and visual amenity values in identified Rural Character Landscapes are maintained or enhanced by directing new subdivision, use or development to occur in those areas that have the potential to absorb change without materially detracting from those values.
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- 3.2.6 The District's residents and communities are able to provide for their social, cultural and economic wellbeing and their health and safety. (addresses Issues 1 and 6)
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- 3.2.7 The partnership between Council and Ngāi Tahu is nurtured. (addresses Issue 6).
- 3.2.7.1 Ngāi Tahu values, interests and customary resources, including taonga species and habitats, and wahi tupuna, are protected.
 - 3.2.7.2 The expression of kaitiakitanga is enabled by providing for meaningful collaboration with Ngāi Tahu in resource management decision making and implementation.

3.3 Strategic Policies

Visitor Industry

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

Town Centres and other Commercial and Industrial Areas

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

- 3.3.3 Avoid commercial zoning that could undermine the role of the Queenstown and Wanaka town centres as the primary focus for the District's economic activity. (relevant to S.O. 3.2.1.2)
- 3.3.4 Provide a planning framework for the Frankton urban area that facilitates the integration of the various development nodes. (relevant to S.O. 3.2.1.3)
- 3.3.5 Recognise that Queenstown Airport makes an important contribution to the prosperity and resilience of the District. (relevant to S.O. 3.2.1.3)
- 3.3.6 Avoid additional commercial zoning that will undermine the function and viability of the Frankton commercial areas as the key service centre for the Wakatipu Basin, or which will undermine increasing integration between those areas and the industrial and residential areas of Frankton. (relevant to S.O. 3.2.1.3)
- 3.3.7 Provide a planning framework for the commercial core of Three Parks that enables large format retail development. (relevant to S.O. 3.2.1.4)
- 3.3.8 Avoid non-industrial activities not ancillary to industrial activities occurring within areas zoned for industrial activities. (relevant to S.O. 3.2.1.3 and 3.2.1.5)
- 3.3.9 Support the role township commercial precincts and local shopping centres fulfil in serving local needs by enabling commercial development that is appropriately sized for that purpose. (relevant to S.O. 3.2.1.5)
- 3.3.10 Avoid commercial rezoning that would undermine the key local service and employment function role that the centres outside of the Queenstown and Wanaka town centres, Frankton and Three Parks fulfil. (relevant to S.O. 3.2.1.5)
- 3.3.11 Provide for a wide variety of activities and sufficient capacity within commercially zoned land to accommodate business growth and diversification. (relevant to S.O. 3.2.1.1, 3.2.1.2, 3.2.1.5, 3.2.1.6 and 3.2.1.9)

Climate Change

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

Urban Development

- 3.3.13 Apply Urban Growth Boundaries (UGBs) around the urban areas in the Wakatipu Basin (including Jack's Point), Wanaka and Lake Hawea Township. (relevant to S.O. 3.2.2.1)
- 3.3.14 Apply provisions that enable urban development within the UGBs and avoid urban development outside of the UGBs. (relevant to S.O. 3.2.1.8, 3.2.2.1, 3.2.3.1, 3.2.5.1 and 3.2.5.2)
- 3.3.15 Locate urban development of the settlements where no UGB is provided within the land zoned for that purpose. (relevant to S.O. 3.2.1.8, 3.2.2.1, 3.2.3.1, 3.2.5.1 and 3.2.5.2)

Heritage

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

Natural Environment

- 3.3.17 Identify areas of significant indigenous vegetation and significant habitats of indigenous fauna, as Significant Natural Areas on the District Plan maps (SNAs). (relevant to S.O. 3.2.1.7, 3.2.1.8, 3.2.4.1, 3.2.4.3 and 3.2.4.4)
- 3.3.18 Protect SNAs from significant adverse effects and ensure enhanced indigenous biodiversity outcomes to the extent that other adverse effects on SNAs cannot be avoided or remedied. (relevant to S.O. 3.2.1.7, 3.2.1.8, 3.2.4.1, 3.2.1.2, 3.2.4.3 and 3.2.4.4)
- 3.3.19 Manage subdivision and / or development that may have adverse effects on the natural character and nature conservation values of the District's lakes, rivers, wetlands and their beds and margins so that their life-supporting capacity and natural character is maintained or enhanced. (relevant to S.O. 3.2.1.8, 3.2.4.1, 3.2.4.3, 3.2.4.4, 3.2.5.1 and 3.2.5.2)

Rural Activities

- 3.3.20 Enable continuation of existing farming activities and evolving forms of agricultural land use in rural areas except where those activities conflict with significant nature conservation values or degrade the existing character of rural landscapes. (relevant to S.O. 3.2.1.7, 3.2.5.1 and 3.2.5.2)
- 3.3.21 Recognise that commercial recreation and tourism related activities seeking to locate within the Rural Zone may be appropriate where these activities enhance the appreciation of landscapes, and on the basis they would protect, maintain or enhance landscape quality, character and visual amenity values. (relevant to S.O. 3.2.1.1, 3.2.1.8, 3.2.5.1 and 3.2.5.2)
- 3.3.22 Provide for rural living opportunities in areas identified on the District Plan maps as appropriate for rural living developments. (relevant to S.O. 3.2.1.7, 3.2.5.1 and 3.2.5.2)
- 3.3.23 Identify areas on the District Plan maps that are not within Outstanding Natural Landscapes or Outstanding Natural Features and that cannot absorb further change, and avoid residential development in those areas. (relevant to S.O. 3.2.1.8 and 3.2.5.2)
- 3.3.24 Ensure that cumulative effects of new subdivision and development for the purposes of rural living does not result in the alteration of the character of the rural environment to the point where the area is no longer rural in character. (relevant to S.O. 3.2.1.8, 3.2.5.1 and 3.2.5.2)
- 3.3.25 Provide for non-residential development with a functional need to locate in the rural environment, including regionally significant infrastructure where applicable, through a planning framework that recognises its locational constraints, while ensuring maintenance and enhancement of the rural environment. (relevant to S.O. 3.2.1.8, 3.2.1.9 3.2.5.1 and 3.2.5.2)
- 3.3.26 That subdivision and / or development be designed in accordance with best practice land use management so as to avoid or minimise adverse effects on the water quality of lakes, rivers and wetlands in the District. (relevant to S.O. 3.2.1.8, 3.2.4.1 and 3.2.4.3)
- 3.3.27 Prohibit the planting of identified exotic vegetation with the potential to spread and naturalise unless spread can be acceptably managed for the life of the planting. (relevant to S.O.3.2.4.2)
- 3.3.28 Seek opportunities to provide public access to the natural environment at the time of plan change, subdivision or development. (relevant to S.O.3.2.4.6)

Landscapes

- 3.3.29 Identify the District's Outstanding Natural Landscapes and Outstanding Natural Features on the District Plan maps. (relevant to S.O.3.2.5.1)
- 3.3.30 Avoid adverse effects on the landscape and visual amenity values and natural character of the District's Outstanding Natural Landscapes and Outstanding Natural Features that are more than minor and or not temporary in duration. (relevant to S.O.3.2.5.1)
- 3.3.31 Identify the District's Rural Character Landscapes on the District Plan maps. (relevant to S.O.3.2.5.2)
- 3.3.32 Only allow further land use change in areas of the Rural Character Landscapes able to absorb that change and limit the extent of any change so that landscape character and visual amenity values are not materially degraded. (relevant to S.O. 3.2.19 and 3.2.5.2)

Cultural Environment

- 3.3.33 Avoid significant adverse effects on wāhi tūpuna within the District. (relevant to S.O.3.2.7.1)
- 3.3.34 Avoid remedy or mitigate other adverse effects on wāhi tūpuna within the District. (relevant to S.O.3.2.7.1)
- 3.3.35 Manage wāhi tūpuna within the District, including taonga species and habitats, in a culturally appropriate manner through early consultation and involvement of relevant iwi or hapū. (relevant to S.O.3.2.7.1 and 3.2.7.2)

QUEENSTOWN LAKES DISTRICT COUNCIL

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

Commissioners

Denis Nugent (Chair)

Lyal Cocks

Cath Gilmour

Trevor Robinson

Mark St Clair

PART B - CHAPTER 3

2. OVERVIEW/HIGHER LEVEL PROVISIONS

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

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

67. The initial question which requires determination is whether there should be a strategic chapter at all. UCES¹²⁵ sought that some aspects be shifted out of Chapter 3 into other chapters, but otherwise that the entire chapter should be deleted. We note in passing that in terms of collective scope, this submission would put virtually all relief between Chapter 3 as notified and having no strategic chapter, within scope.

68. As Mr Haworth explained it to us, the UCES submission forms part of a more general position on the part of the Society that, with some specified changes, the format and context of the ODP should remain unchanged. At the core of his argument, Mr Haworth contended that the ODP was generally working well and should simply be rolled over, certainly as regards the management of the rural issues of interest to UCES. He appeared to put this in part on the basis of the character of the PDP process as a review of the ODP and in part on his own, and UCES’s, experience of the ODP in operation. He referred specifically, however, to a Council’s monitoring report¹²⁶, quoting it to the effect that “*Council should consider carefully before setting about any comprehensive overhaul*”.

69. We note that the quotations Mr Haworth extracted from the 2009 monitoring report were somewhat selective. He omitted mention of what was described¹²⁷ as the major qualification, a concern that the Plan may not be effective in avoiding cumulative adverse effects on the landscape and in preventing urban style expansion in some areas.

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

¹²⁵ Submission 145: Opposed in FS1162, FS1254, FS1313

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

¹²⁷ At page 3

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

71. In that regard, Mr Haworth also drew attention to the increased complexity of management of rural subdivision and development which, under the PDP as notified, is split between Chapter 3, Chapter 6 and Chapter 21. He also criticised the content of those provisions which provided, as he saw it, a weakening of the ability to protect landscape values in the rural environment, but we regard that as a different point, which needs to be addressed in relation to the provisions of the respective chapters.
72. While there is much that can be learned from the decisions that gave rise to the ODP, equally, it needs to be recognised that those decisions are now more than 15 years old. The evidence of the Council on the extent of growth in the District over that period is clear. While the Environment Court remarked on those trends in its 1999 decision, particularly in the Wakatipu Basin, the District is now significantly further along the continuum towards an optimal level of development (some might say it is already sub-optimal in some locations). Mr Haworth himself contended that there is more pressure on the ONLs of the District.
73. Case law has also advanced. The Supreme Court's decision in *King Salmon* in particular, provides us with guidance that was not available to the Environment Court in 1999.
74. Lastly, the jurisdiction of the Environment Court was constrained by the document that was the result of Council decisions, and the scope of the appeals before it. We do not know if the Environment Court would have entertained a strategic directions chapter in 1999. It does not appear to have had that option available to it, and the Court's decisions do not record any party as having sought that outcome.
75. We also accept Mr Paetz's evidence that there is a need for a greater level of strategic direction than the ODP provided to address the challenging issues faced by the District¹²⁸.
76. In summary, we do not recommend complete deletion of Chapter 3 as sought by UCES. While, as will be seen from the discussion following, there are a number of aspects of Chapter 3 that might be pared back, we think there is value in stating strategic objectives and policies that might be fleshed out by the balance of the PDP. Put in section 32 terms, we believe that this is the most appropriate way to achieve the purpose of the Act in this District at this time. Similarly, while we do not recommend complete substitution of the ODP for the existing strategic chapters, there are aspects of the ODP that can usefully be incorporated into the strategic chapters (including Chapter 3). We discuss which aspects in the body of our report.
77. If Chapter 3 is to be retained, as we would recommend, the next question is whether its structuring is appropriate. Queenstown Park Limited¹²⁹ sought that the strategic direction section be revised "*so that the objectives and policies are effects based, and provide a forward focussed, strategic management approach*". Those two elements might arguably be seen as mutually contradictory, but the second half of that relief supports a view that we would agree with, that there needs to be a focus on whether what is provided is indeed forward looking and genuinely '*strategic*'. Put another way, the guidance it provides needs to be pitched at a high level, and not focus on minutiae.

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

¹²⁹ Submission 806

78. In terms of general structuring, the submission of Real Journeys Limited¹³⁰ that provisions should be deleted where they duplicate or repeat other provisions might be noted. We agree that where provisions are duplicated, that duplication should generally be removed. The challenge is of course to identify where that has occurred.
79. The telecommunication companies¹³¹ sought that the relationship of the goals, objectives and policies with the other Chapters of the Plan be defined and that the goals be deleted but retained as titles. Another variation on the same theme was provided by Darby Planning LP¹³², which sought that the goals be deleted and incorporated into the relevant objective.
80. Remarkables Park Limited¹³³ and Queenstown Park Limited¹³⁴ also sought deletion of the goal statements *“to remove confusion as to their status and relationship to objectives and policies”*.
81. We think that the starting point when looking at the structuring of Chapter 3, both internally and with respect to the balance of the PDP, is to decide what the goals are, and what purpose they serve. When counsel for the Council opened the hearing on 7 March 2016, he suggested that the goals were a mixture of objectives and issues, or alternatively a mixture of issues and anticipated environmental results. Consistent with that view, in his reply evidence, Mr Paetz stated:
- “The goals are more than the description of an issue, having the aspirational nature of an objective.”*
82. He opposed, however, relabelling them as objectives as that would potentially create structural confusion with objectives sitting under objectives. In Mr Paetz’s view, the use of the term *“goal”* is commonly understood by lay people and he saw no particular problem with retaining them as is.
83. We do not concur.
84. As Mr Paetz noted, lay people have a reasonably clear understanding what a goal is. However, as counsel for Darby Planning LP pointed out to us, that understanding is that a goal is an objective (and vice versa)¹³⁵. It is inherently unsatisfactory to have quasi-objectives with no certainty as their role in the implementation of the PDP. Objectives have a particular role in a District Plan. Other provisions are tested under section 32 as to whether they are the most appropriate way to achieve the objectives. As Mr Chris Ferguson¹³⁶ noted, they also have a particular legal significance under section 104D of the Act. Accordingly, it is important to know what is an objective and what is not. We recommend that the goals not remain stated as *‘goals’*.

¹³⁰ Submission 621

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

¹³² Submission 608: Opposed in FS1034

¹³³ Submission 807

¹³⁴ Submission 806

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

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

85. There appear to be at least four alternative options. They could be deleted or alternatively converted to titles for the respective subsections, as the telecommunication submitters suggest. The problem with the goals framed as titles is that they would then add little value and would not reflect the process by which the objectives and policies were developed, which as we understand it from the evidence of Council, reflected those goals.
86. That would be still more the case if they were simply deleted, as Remarkables Park Ltd and Queenstown Park Ltd seek.
87. They could be incorporated into the objectives, as Darby Planning LP suggests. That would preserve the work that went into their formulation, but the submission does not identify how exactly the objectives should be revised to achieve that result¹³⁷.
88. Logically there are two ways in which the goals might be incorporated into the objectives. The first is if the wording of the goals were melded with that of the existing objectives. We see considerable difficulties with that course. On some topics, there are a number of objectives that relate back to a single goal. In other cases, a single objective is related to more than one goal. It is not clear to us how the exercise could be undertaken without considerable duplication, and possibly an unsatisfactory level of confusion.
89. The alternative is to reframe the ‘goals’ as higher-level objectives, each with one or more focused objectives explicitly stated to be expanding on the higher-level objective. This avoids the problem of excessive duplication noted above, and the fact that some of the existing objectives relate back to more than one ‘goal’ can be addressed by appropriate cross-referencing. It also addresses the problem Mr Paetz identified of potential confusion with objectives under objectives. We recommend this approach be adopted and Chapter 3 be restructured accordingly. We will discuss the wording of each goal/higher-level objective below.
90. One problem of expressing the goals as higher-level objectives is that they fail to express the issues the strategic objectives seek to address¹³⁸. The result is something of a leap in logic; the high-level objectives come ‘out of the blue’ with little connection back to the special qualities identified in section 3.1.
91. The reality is, as the section 32 report for this aspect of the Plan makes clear¹³⁹, that the ‘goals’ were themselves derived from a series of issues, worded as follows:
- “1. Economic prosperity and equity, including strong and robust town centres;
 2. Growth pressures impacting on the functionality and sustainability of urban areas, and risking detracting from rural landscapes;
 3. High growth rates can challenge the qualities that people value in their communities;
 4. Quality of the natural environment and ecosystems;
 5. The District’s outstanding landscapes offer both significant intrinsic and economic value for the District and are potentially at threat of degradation given the District’s high rates of growth;
 6. While median household incomes in the District are relatively high, there is significant variation in economic wellbeing. Many residents earn relatively low wages, and the cost of living in the district is high – housing costs, heating in winter, and transport. This affects the social and

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

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

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

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

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

92. These issues have their faults. There is an undesirable level of duplication between them. The fourth issue is not framed as an issue. The sixth issue is in fact two discrete points, the first of which, as well as being extremely discursive, is actually an aspect of the first issue.
93. Even given these various faults, however, we consider a modified version of the section 32 report issues would add value as part of the background information in Section 3.1, explaining the link between the special qualities it identifies and the objectives set out in Section 3.2. Unlike the objectives, the issues have no legal status or significance and we regard them as merely clarifying the revised higher-level objectives by capturing part of what was previously stated in the 'goals'.
94. We will revert to how the 'issues' might be expressed in the context of our more detailed discussion of Section 3.1.
95. More generally in relation to the structuring of Chapter 3, we have formed the view that the overlaps between goals, and the separation of each subsection of Chapter 3 into a goal, followed by one or more objectives, with many of those objectives in turn having policies specific to that objective, has created a significant level of duplication across the chapter. In our view, this duplication needs to be addressed.
96. We are also concerned that there has been a lack of rigour in what has been regarded as 'strategic', which has in turn invited suggestions from some submitters that Chapter 3 ought to be expanded still further ¹⁴⁰.
97. We recommend that the best way to approach the matter is to collect together the strategic objectives in one section and the strategic policies in a separate section of Chapter 3. Objectives and policies duplicating one another are then no longer required and can be deleted.
98. It is recognised that it is still important to retain the link between objectives and policies, but this can be done by insertion of internal cross referencing. As previously discussed, we consider it is helpful to set out the issues that have generated the higher-level objectives, and we suggest a similar cross referencing approach to the links between the issues and the higher-level objectives. The revised PDP Chapter 3 attached to this report shows how we suggest this might best be done.
99. We also concur with the suggestion in the telecommunication submissions that there is a need for clarification as to the relationship between Chapter 3 and the balance of the PDP initially, and then the relationship of Part Two¹⁴¹ with the balance of the Plan. The apparent intent (as set out in Mr Paetz's Section 42A Report) is that they should operate as a hierarchy with

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

¹⁴¹ Comprising Chapters 3-6 inclusive

Chapter 3 at the apex, but the PDP does not actually say that. The potential confusion is enhanced by the fact that the ODP was drafted with the opposite intent¹⁴².

100. The last paragraph of Section 3.1 is the logical place for such guidance. Mr Chris Ferguson¹⁴³ suggested we might utilise a similar paragraph to that which the independent Hearing Panel for the Replacement Christchurch District Plan approved – stating explicitly that Chapter 3 has primacy over all other objectives and policies in the PDP, which must be consistent with it. That wording, however, reflected the unique process involved there, with the Strategic Directions Chapter released before finalisation of the balance of the Plan, and we think a more tailored position is required for the PDP to recognise that we are recommending revisions to the whole of Stage 1 of the PDP to achieve an integrated end product. Combining this concept with the need to explain the structure of the revised chapter, we recommend that it be amended to read as follows:

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

2.1. Section 3.1 - Purpose

101. With the exception of clarification of the relationship between the different elements of Chapter 3 and the balance of the PDP, as above, the submissions seeking amendments to the Statement of Purpose in Section 3.1¹⁴⁴ appear to be seeking to incorporate their particular aspirations as to what might occur in future, rather than stating the special qualities the District currently has, which is what Section 3.1 sets out to do. Accordingly, we do not recommend any change to the balance of Section 3.1.
102. We note that the amendments sought in Submission 810 was withdrawn when the submitter appeared at the Stream 1A hearing.
103. To provide the link between the specified special qualities and the high-level objectives in Section 3.2, we recommend the issues set out in the section 32 report be amended.
104. As discussed above, the sixth issue is effectively two issues with the first part an overly discursive aspect of the first issue. Looking both at the first part of sixth issue and the explanation of it in the section 32 report, the key point being made is that not all residents are able to provide for their social economic wellbeing due to a low wage structure and a high cost of living. The concept of an equitable economy in the first issue captures some of those issues,

¹⁴² C180/99 at [126]

¹⁴³ Planning witness for Darby Planning LP

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

but it also suggests a need to highlight both the need for greater diversification of the economy¹⁴⁵ and for enhanced social and economic prosperity.

105. The second, fourth and fifth issues refer variously to rural landscapes, the natural environment and outstanding landscapes. There is significant overlap between these elements. The outstanding landscapes of the District are generally rural landscapes. They are also part of the natural environment. The fourth issue also separates ecosystems from the natural environment when in reality, ecosystems are part of the natural environment. It is also not framed as an issue. Clearly outstanding landscapes require emphasis, given the national importance placed on their protection, but we recommend these three issues be collapsed into two.
106. Lastly, the reference to the reasons why Tangata Whenua status and values require recognition is unnecessary in the statement of an issue and can be deleted without losing the essential point.
107. In summary, we recommend that the following text be inserted into Section 3.1 to provide the linkage to the objectives and clarification we consider is necessary:
- a. *“Issue 1: Economic prosperity and equity, including strong and robust town centres, requires economic diversification to enable the social and economic wellbeing of people and communities.*
 - b. *Issue 2: Growth pressure impacts on the functioning and sustainability of urban areas, and risks detracting from rural landscapes, particularly its outstanding landscapes.*
 - c. *Issue 3: High growth rates can challenge the qualities that people value in their communities.*
 - d. *Issue 4: The District’s natural environment, particularly its outstanding landscapes, has intrinsic qualities and values worthy of protection in their own right, as well as offering significant economic value to the District.*
 - e. *Issue 5: The design of developments and environments can either promote or weaken safety, health and social, economic and cultural wellbeing.*
 - f. *Issue 6: Tangata Whenua status and values require recognition in the District Plan.”*

2.2. Section 3.2.1 – Goal – Economic Development

108. The goal for this subsection is currently worded:

“Develop a prosperous, resilient and equitable economy”.

109. Submissions specifically on this first goal (apart from those supporting it in its current form) sought variously that it be amended by a specific reference to establishment of education and research facilities¹⁴⁶ and that the word *“equitable”* be deleted¹⁴⁷.
110. As part of UCES’s more general opposition to Chapter 3, Mr Haworth opposed Goal 1 on the basis that it was not required because the economy was already flourishing, and elevating recognition of the economy conflicted with the emphasis given to the importance of protecting the environment in a manner that is likely to threaten landscape protection.

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

¹⁴⁶ Submission 115

¹⁴⁷ Submission 806

111. Mr Paetz did not recommend any amendment to this goal.
112. The RPS contains no over-arching objective related to the economy that bears upon how this goal is expressed. We should note, however, Policy 1.1.2 of the Proposed RPS which reads:
- “Provide for the economic wellbeing of Otago’s people and communities by enabling the use and development of natural and physical resources only if the adverse effects of those activities on the environment can be managed to give effect to the objectives and policies of the Regional Policy Statement.”*
113. This is in the context of an objective¹⁴⁸ focussing on integrated management of resources to support the wellbeing of people and communities.
114. If the restructuring we have recommended is accepted, so that each goal is expressed as a high-level objective expanded by more focussed objectives, we believe that the concerns underlying the submissions on this goal would largely be addressed. Thus, if Goal 1 has what is currently Objective 3.2.1.3 under and expanding it, the Plan will recognise the diversification that Submission 115 seeks, albeit more generally than just with reference to education and research facilities.
115. Similarly, while we can understand the concern underlying Submission 806, that reference to equity could be read a number of different ways, provision of a series of more focused objectives to flesh out this goal assists in providing clarity.
116. We do not accept Mr Haworth’s contentions either that a high-level objective focussing on economic wellbeing is unnecessary or that it threatens environmental values, including landscape values. The evidence we heard, in particular from Mr Cole¹⁴⁹, indicates to us that economic prosperity (and social wellbeing) are not universally enjoyed in the District. We also intend to ensure that it is clear in the more detailed provisions expanding on this broad high-level objective that while important, economic objectives are not intended to be pursued without regard for the environment (reflecting the emphasis in the Proposed RPS quoted above).
117. In summary, therefore, the only amendments we recommend to the wording of Section 3.2.1 are to express it as an objective and to be clear that it is the economy of this district which is the focus, as follows:
- “The development of a prosperous, resilient and equitable economy in the District.”*
118. We consider a higher-level objective to this effect is the most appropriate way to achieve the purpose of the Act.

2.3. Section 3.2.1 – Objectives – Economic Development

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

¹⁴⁸ Proposed RPS Objective 1.1

¹⁴⁹ For Queenstown Lakes Community Housing Trust.

120. A common feature of each of the objectives in Section 3.2.1 is that they commence with a verb: recognise, develop and sustain; enable; recognise; maintain and promote.
121. Nor is Section 3.2.1 alone in this. This appears to be the drafting style employed throughout Chapters 3, 4 and 6 (and beyond). Moreover, submitters have sought to fit in with that drafting style, with the result that almost without exception, the amendments sought by submitters to objectives would be framed in a similar way¹⁵⁰.
122. We identified at the outset an issue with objectives drafted in this way. Put simply, they are not objectives because they do not identify “*an end state of affairs to which the drafters of the document aspire*”¹⁵¹.
123. Rather, by commencing with a verb, they read more like a policy – a course of action¹⁵² (to achieve an objective).
124. We discussed the proper formulation of objectives initially with Mr Paetz and then with virtually every other planning witness who appeared in front of us. All agreed that a properly framed objective needed to state an environmental end point or outcome (consistent with the *Ngati Kahungunu* case just noted). At our request, Mr Paetz and his colleague Mr Barr (responsible for Chapter 6) produced revised objectives for Chapters 3, 4 and 6, reframing the notified objectives to state an environmental end point or outcome. Counsel for the Council filed a memorandum dated 18 March 2016 producing the objectives of Chapters 3, 4 and 6 reframed along the lines above. As previously noted, the Chair directed that the Council’s memorandum be circulated to all parties who had appeared before us (and those who were yet to do so) to provide an opportunity for comment.
125. We note that because the task undertaken by Mr Paetz and Mr Barr was merely to reframe the existing objectives in a manner that explicitly stated an environmental end point or outcome, rather than (as previously) just implying it, we do not regard this is a scope issue¹⁵³, or as necessitating (to the extent we accepted those amendments) extensive evaluation under section 32.
126. Similarly, to the extent that submitters sought changes to objectives, applying the drafting style of the notified plan, we do not regard it as a scope issue to reframe the relief sought so as to express objectives so that they identify an environmental end point or outcome. We have read all submissions seeking amendments to objectives on that basis.
127. As notified, Objective 3.2.1.1 read:
- “Recognise, develop and sustain the Queenstown and Wanaka central business areas as the hubs of New Zealand’s premier alpine resorts and the Districts economy.”*
128. The version of this objective ultimately recommended by Mr Paetz and attached to counsel’s 18 March 2016 Memorandum read:

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

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

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

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

“The Queenstown and Wanaka town centres are the hubs of New Zealand’s premier alpine resorts and the District’s economy.”

129. We think that substituting reference to Queenstown and Wanaka town centres is preferable to referring to their “*central business areas*” because of the lack of clarity as to the limits of what the latter might actually refer to. Although the evidence of Dr McDermott for the Council suggested that he had a broader focus, the advantage of referring to town centres is because the PDP maps identify the Town Centre zones in each case. Mr Paetz agreed that a footnote might usefully confirm that link, and we recommend insertion of a suitably worded footnote.
130. NZIA suggested that rather than referring to central business areas, the appropriate reference would be to the Queenstown and Wanaka waterfront. While that may arguably be an apt description for the central area of Queenstown, we do not think that it fits so well for Wanaka, whose town centre extends well up the hill along Ardmore Street and thus we do not recommend that change.
131. The focus of other submissions was not so much on the wording of this particular objective but rather on the fact that the focus on the Queenstown and Wanaka town centres failed to address the increasingly important role played by commercial and industrial development on the Frankton Flats¹⁵⁴, the role that the Three Parks commercial development is projected to have in Wanaka¹⁵⁵, and the role of the visitor industry in the District’s economy, facilities for which are not confined to the Queenstown and Wanaka town centres¹⁵⁶. In his Section 42A Report, Mr Paetz recognised that the first and third of these points were valid criticisms of the notified PDP and recommended amended objectives to address them.
132. Turning to the RPS to see what direction we get from its objectives, the focus is on a generally expressed promotion of sustainable management of the built environment¹⁵⁷ and of infrastructure¹⁵⁸. The policies relevant to these objectives are framed in terms of promoting and encouraging specified desirable outcomes¹⁵⁹, minimising adverse effects of urban development and settlement¹⁶⁰, and maintaining and enhancing quality of life¹⁶¹. As such, none of these provisions appear to bear upon the objectives in this part of the PDP, other than in a very general way.
133. The Proposed RPS gets closer to the point at issue with Objective 4.5 seeking effective integration of urban growth and development with adjoining urban environments (among other things). The policies supporting that objective do not provide any relevant guidance as to how this might be achieved. Policy 5.5.3, however, directs management of the distribution of commercial activities in larger urban areas “*to maintain the vibrancy of the central business district and support local commercial needs*” among other things by “*avoiding unplanned*

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

¹⁵⁵ Submission 249: Supported in FS1117

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

¹⁵⁷ RPS Objective 9.4.1

¹⁵⁸ RPS Objective 9.4.2

¹⁵⁹ RPS Policies 9.5.2 and 9.5.3

¹⁶⁰ RPS Policy 9.5.4

¹⁶¹ RPS Policy 9.5.5

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

134. We read this policy as supporting the intent underlying this group of objectives, while leaving open how this might be planned.
135. Addressing each objective suggested by Mr Paetz in turn, the version of his recommended Frankton objective presented with his reply evidence reads:
- “The key mixed use function of the Frankton commercial area is enhanced, with better transport and urban design integration between Remarkables Park, Queenstown Airport, Five Mile and Frankton Corner”.*
136. This is an expansion from the version of the same objective recommended with Mr Paetz’s Section 42A Report reflecting a view (explained by Mr Paetz in this reply evidence¹⁶²) that the Frankton area should be viewed as one wider commercial locality, comprising a network of several nodes, with varying functions and scales.
137. Dr McDermott gave evidence for the Council, supporting separate identification of the Frankton area on the basis that its commercial facilities had quite a different role to the town centres of Wanaka and Queenstown and operated in a complimentary manner to those centres.
138. We also heard extensive evidence from QAC as to the importance of Queenstown Airport to the District’s economy¹⁶³.
139. We accept that Frankton plays too important a role in the economy of the District for its commercial areas to be classed in the ‘other’ category, as was effectively the case in the notified Chapter 3. We consider, however, that it is important to be clear on what that role is, and how it is different to that of the Queenstown and Wanaka town centres. That then determines whether a wider or narrower view of what parts of the Frankton area should be the focus of the objective.
140. The term Dr McDermott used to describe Frankton was “mixed use” and Mr Paetz recommended that that be how the Frankton area is described.
141. The problem we had with that recommendation was that it gives no sense of the extent of the ‘mix’ of uses. In particular, “mixed use” could easily be taken to overlap with the functions of the Queenstown town centre. Dr McDermott described the latter as being distinguished by the role it (and Wanaka town centre) plays in the visitor sector, both as destinations in their own right and then catering for visitors when they are there¹⁶⁴. By contrast, he described Frankton as largely catering for local needs although when he appeared at the hearing, he emphasised that local in this sense is relative, because of the role of the Frankton retail and industrial facilities in catering for a wider catchment than just the immediate Frankton area. While Dr McDermott took the view that that wider catchment might extend as far as Wanaka, his opinion in that regard did not appear to us to be based on any hard evidence. However, we accept that Frankton’s role is not limited to serving the immediate ‘local’ area.

¹⁶² At paragraph 5.7

¹⁶³ In particular, the evidence of Mr Mark Edghill

¹⁶⁴ Dr P McDermott, EIC at 2.1(c).

142. Mr Chris Ferguson suggested to us that because of the overlapping functions between commercial centres, referring to *“the wider Frankton commercial area”* confused the message¹⁶⁵.
143. Evidence we heard, in particular from the NZIA representatives, took the same point further, suggesting that Frankton’s importance to the community was not limited to its commercial and industrial facilities, and that it had an important role in the provision of educational, health and recreation facilities as well. We accept that point too. This evidence suggests a need to refer broadly to the wider Frankton area than just to specific nodes or elements, and to a broader range of community facilities.
144. The extent to which this objective should focus on integration was also a matter in contention. The representatives for QAC opposed reference to integration for reasons that were not entirely clear to us and when he reappeared on the final day of hearing, Mr Kyle giving evidence for QAC, said that he was ambivalent on the point.
145. For our part, we regard integration between the various commercial and industrial nodes of development on the Frankton Flats (including Queenstown Airport), and indeed its residential areas¹⁶⁶, as being important, but consider that this is better dealt with as a policy. We will come back to that.
146. In summary, we recommend that Mr Paetz’s suggested objective largely be accepted, but with the addition of specific reference to its focus on visitors, to provide a clearer distinction between the roles of Queenstown and Wanaka town centres and Frankton and Three Parks respectively.
147. Accordingly, we recommend that the wording of Objective 3.2.1.1 (renumbered 3.2.1.2 for reasons we will shortly explain) be amended so read:
- “The Queenstown and Wanaka town centres¹⁶⁷ are the hubs of New Zealand’s premier alpine visitor resorts and the District’s economy.”*
148. We further recommend that a new objective be added (numbered 3.2.1.3) as follows:
- “The Frankton urban area functions as a commercial and industrial service centre, and provides community facilities, for the people of the Wakatipu Basin.”*
149. The case for recognition of the Three Parks commercial area is less clear. While, when the development is further advanced, it will be a significant element of the economy of the Upper Clutha Basin, that is not the case at present.
150. Mr Dippie appeared before us and made representations on behalf of Orchard Road Holdings Limited¹⁶⁸ and Willowridge Developments Limited¹⁶⁹ advocating recognition of Three Parks in the same way that the Frankton commercial areas were proposed (by Council staff) to be

¹⁶⁵ C Ferguson, EIC at paragraph 103

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

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

¹⁶⁸ Submission 91/Further Submission 1013

¹⁶⁹ Submission 249/Further Submission 1012

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

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

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

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

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

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

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

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

156. The only submission seeking amendment to the notified Objective 3.2.1.3, sought that it be reworded as an aspirational outcome to be achieved, rather than as a policy¹⁷⁰. In his reply evidence, the version of this objective suggested by Mr Paetz (addressing this point) read:

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

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

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

¹⁷⁰ Submission 761

“Diversification of the District’s economic base and creation of employment opportunities through the development of innovative and sustainable enterprises.”

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

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

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

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

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

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

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

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

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

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

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

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

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

“Local service and employment functions served by commercial centres and industrial areas outside of the Queenstown and Wanaka town centres¹⁷¹, Frankton, and Three Parks are sustained.”

169. Objective 3.2.1.4 as notified read:

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

170. This objective attracted a large number of submissions querying the reference to farming having a “strong productive value”¹⁷² with many of those submissions seeking that the objective refer to “traditional” land uses. Some submissions¹⁷³ sought that the objective be more overtly ‘enabling’. One submission¹⁷⁴ sought to generalise the objective so that it does not mention the nature of current uses, but rather focuses on enabling “tourism, employment, recreational, and residential based activities” and imports a test of “functional need to be located in rural areas.” Mr Carey Vivian, giving evidence both for this submitter and a further submitter opposing the submission¹⁷⁵, suggested to us that a ‘functional need’ test would ensure inappropriate diversification does not occur. Mr Chris Ferguson supported another submission¹⁷⁶ that suggested a functional need test¹⁷⁷, but did not comment on how that test should be interpreted. We are not satisfied that Mr Vivian’s confidence is well founded. As we will discuss later in this report in relation to suggestions that activities relying on the use of rural resources should be provided for, these seem to us to be somewhat elastic concepts, potentially applying to a wide range of activities.

171. Many submissions also sought deletion of the reference to a “sensitive” approach¹⁷⁸.

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

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

¹⁷³ E.g. Submission 621

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

¹⁷⁵ Further Submission 1356

¹⁷⁶ Submission 608-Darby Planning LP

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

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

172. Suggestions varied as to how potential adverse effects resulting from diversification of land uses might be addressed. One submitter¹⁷⁹ suggested adverse effects on the matters referred to be taken into account, or alternatively that an ‘*appropriate*’ approach be taken to adverse effects. Mr Vivian, giving planning evidence on the point, suggested as a third alternative, an ‘*effects-based*’ approach. Another submitter¹⁸⁰ suggested that potential adverse effects be avoided, remedied or mitigated. Mr Jeff Brown supported the latter revision in his planning evidence¹⁸¹, on the basis that he preferred the language of the Act. Yet another submission¹⁸², supported by the planning evidence of Mr Chris Ferguson, suggested that reference to adverse effects be omitted (in the context of a reframed objective that would recognise the value of the natural and physical resources of rural areas to enable specified activities and to accommodate a diverse range of activities).
173. By Mr Paetz’s reply evidence, he had arrived at the following recommended wording:
- “Diversification of land use in rural areas providing adverse effects on rural amenity, landscape character, healthy ecosystems and Ngai Tahu values, rights and interests are avoided, remedied or mitigated.”*
174. Looking to the RPS for direction, we note that Objective 5.4.1 identifies maintenance and enhancement of the primary production capacity of land resources as an element of sustainable management of those resources. Policy 5.5.2 is also relevant, promoting retention of the primary productive capacity of high class soils. We did not hear any evidence as to whether any, and if so, which, soils would meet this test in the District, but Policy 5.5.4 promotes diversification and use of the land resource to achieve sustainable land use and management systems. While generally expressed, the latter would seem to support the outcome the PDP objective identifies, at least in part.
175. The Proposed RPS focuses on the sufficiency of land being managed and protected for economic production¹⁸³. This is supported by policies providing, inter alia, for enabling of primary production and other activities supporting the rural economy and minimising the loss of significant soils¹⁸⁴. This also supports recognition of the primary sector.
176. We accept that the many submissions taking issue with the reference to the strong productive value of farming have a point, particularly in a District where the visitor industry makes such a large contribution to the economy, both generally and relative to the contribution made by the farming industry¹⁸⁵. Nor is it obvious why, if the effects-based tests in the objective are met, diversification of non-farming land uses is not a worthwhile outcome.
177. The alternative formulation of the objective suggested by Darby Planning LP, and supported by Mr Ferguson, would side-step many of the other issues submissions have focussed on, but ultimately, we take the view that stating rural resources are valued for various specified purposes does not sufficiently advance achievement of the purpose of the Act. Put simply, it invites the query: so what?

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

¹⁸⁰ Submission 806

¹⁸¹ At paragraph 4.7

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

¹⁸³ Proposed RPS, Objective 5.3

¹⁸⁴ Proposed RPS, Policy 5.3.1

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

178. Reverting to Mr Paetz’s recommendation, in our view, it is desirable to be clear what the starting point is; diversification from what? Accordingly, we recommend the submissions seeking that reference be to traditional land uses in rural areas be accepted. Clearly farming is one such traditional land use and we see no issue with referring to that as an example. We do not accept that a ‘*functional need*’ test would add value, because of the lack of clarity as to what that might include.
179. We also agree that the reference in a notified objective to a sensitive approach requires amendment because it gives little clarity as to the effect of the sensitive approach on the nature and extent of adverse effects. We do not, however, recommend that reference be made to adverse effects being avoided, remedied or mitigated. For the reasons discussed above, this gives no guidance as to the desired level of adverse effects on the matters listed. The suggestions that the objective refer to adverse effects being taken into account, or that an appropriate approach be taken to them. would push it even further into the realm of meaninglessness¹⁸⁶. Those options are not recommended either.
180. Some submissions¹⁸⁷ sought to generalise the nature of the adverse effects required to be managed, deleting any reference to any particular category of effect.
181. In our view, part of the answer is to be clearer about the nature of adverse effects sought to be controlled, combined with being clear about the desired end result. We consider that rural amenity is better addressed through objectives related to activities in the rural environment more generally. Reference to healthy ecosystems in this context is, in our view, problematic. The health of the ecosystems does not necessarily equate with their significance. In addition, why are adverse effects on healthy ecosystems more worthy of protection from diversified land uses than unhealthy ecosystems? One would have thought it might be the reverse.
182. The PDP contains an existing definition of “nature conservation values”. When counsel for the Council opened the hearing, we queried the wording of this definition which incorporated policy elements and did not actually fit with the way the term had been used in the PDP. Counsel agreed that it needed amendment and in Mr Paetz’s reply evidence he suggested the following revised definition of nature conservation values:
- “The collective and interconnected intrinsic values of the indigenous flora and fauna, natural ecosystems and landscape.”*
183. We regard the inclusion of a generalised reference to landscape as expanding nature conservation values beyond their proper scope. Landscape is relevant to nature conservation values to the extent that it provides a habitat for indigenous flora and fauna and natural ecosystems, but not otherwise.
184. Objective 21.2.1 of the PDP refers to ecosystem services as a value deserving of some recognition. The term itself is defined in Chapter 2 as the resources and processes the environment provides. We regard it as helpful to make it clear that when natural ecosystems are referred to in the context of nature conservation values, the collective values of ecosystems include ecosystem services.

¹⁸⁶ As indeed would the further alternative suggested by Mr Vivian

¹⁸⁷ E.g. Submissions 806 and 807

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

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

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

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

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

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

189. While we agree with Mr Paetz’s recommendation that reference to the strong productive value of farming (in the context of notified Objective 3.2.1.4) be deleted, deletion of that reference, and amending the objectives to refer to realisation of the benefits from the visitor industry and diversification of current land uses leaves a gap, because it fails to recognise the economic value of those traditional farming activities. We accept that ongoing farming also provides a collateral benefit to the economy through its contribution to maintenance of existing rural landscape character, on which the visitor industry depends¹⁸⁸. Mr Ben Farrell gave evidence suggesting, by contrast, that farming has had adverse effects on natural landscapes and that those ‘*degraded*’ natural environments had significant potential to be restored¹⁸⁹. We accept that farming has extensively modified the natural (pre-European settlement) environment. However, the expert landscape evidence we heard (from Dr Read) is that large areas of farmed landscapes are outstanding natural landscapes and section 6(b) requires that those landscapes be preserved. Cessation of farming might result in landscapes becoming more natural, but we consider that any transition away from farming would have to be undertaken with great care.

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

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

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

¹⁸⁹ B Farrell, EiC at [111] and [116]

191. That objective attracted a large number of submissions, principally from tourist interests and parties with an interest in residential living in rural environments, seeking that it recognise the contribution that other activities make to the character of the District's landscapes¹⁹⁰. This prompted Mr Paetz to recommend that the focus of the objective be shifted to read:

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

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

193. However, we have a problem with that reformulation, because not all agricultural land use and land management will maintain landscape character¹⁹¹.

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

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

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

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

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

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

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

199. A number of submissions were lodged by infrastructure providers¹⁹² related to this objective, seeking that its scope be extended in various ways, discussed further below. We also heard a substantial body of evidence and legal argument regarding the adequacy of treatment for

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

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

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

infrastructure in this regard, and elsewhere. We were reminded by Transpower New Zealand Limited¹⁹³ that we were obliged to give effect to the NPSET 2008.

200. Other submissions¹⁹⁴ sought deletion of an inclusive list. Submission 807 argued that the *'three waters'* are essential and should be recognised. That submission also sought that the objective emphasise timely provision of infrastructure. Submission 806 sought that the objective recognise the need to minimise adverse effects by referring to the importance of maintaining the quality of the environment.
201. Another approach suggested was to clarify/expand the description of infrastructure¹⁹⁵
202. Mr Paetz recommended that we address these submissions by inserting a new goal, objective and policy into Chapter 3.
203. We do not agree with that recommendation. It seems to us that while important at least to the economic and social wellbeing of people and communities (to put it in section 5 terms), infrastructure needs (including provisions addressing reverse sensitivity issues) are ultimately an aspect of development in urban and rural environments so as to achieve a prosperous and resilient economy (and therefore squarely within the first goal/high-level objective), rather than representing a discrete topic that should be addressed with its own goal/high-level objective.
204. That does not mean, however, that this is not an appropriate subject for an objective at the next level down. Reverting then to the notified objective, we consider the submissions opposing the listing of some types of infrastructure have a point. Even though the list is expressed to be inclusive, it invites a *'me too'* approach from those infrastructure providers whose facilities have not been listed¹⁹⁶ and raises questions as to why some infrastructure types are specifically referenced, and not others. The definition of *'infrastructure'* in the Act is broad, and we do not think it needs extension or clarification.
205. The essential point is that the efficient operation of infrastructure is a desirable outcome in the broader context of seeking a prosperous and resilient District economy. Quite apart from any other considerations, Objective 9.4.2 of the RPS (promoting the sustainable management of Otago's infrastructure¹⁹⁷) along with Policy 9.5.2 (promoting and encouraging efficiency and use of Otago's infrastructure) would require its recognition. We regard that as an appropriate objective, provided that outcome is not pursued to the exclusion of all other considerations; in particular, without regard to any adverse effects on the natural environment that might result.
206. It follows that we accept in principle the point made in Submission 806, that adverse effects of the operation of infrastructure need to be minimised as part of the objective.
207. As regards the submissions seeking extension of the scope of the objective, we accept that this objective might appropriately be broadened to relate to the provision of infrastructure, as well

¹⁹³ Submission 805

¹⁹⁴ Submissions 806 and 807; Opposed in FS1077

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

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

¹⁹⁷ See Objective 4.3 of the Proposed RPS to similar effect

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

- a. Infrastructure 'development'¹⁹⁸
- b. 'Provision' of infrastructure¹⁹⁹
- c. 'Maintenance development and upgrading' of infrastructure²⁰⁰, wording that we note duplicates Policy 2 of the NPSET 2008.

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

209. Mr Paetz recommended the following wording:

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

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

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

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

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

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

¹⁹⁸ Submission 251; Supported in FS1092, FS1097, FS1115, FS1117; Opposed in FS1132

¹⁹⁹ Submissions 635, 806, 807; Supported in FS 1159, Opposed in FS1077

²⁰⁰ Submission 805

²⁰¹ Submissions 635, 805; Supported in FS1159

214. Having recommended an objective providing generically for infrastructure, we do not recommend acceptance of the New Zealand Fire Service Commission submission²⁰² that sought a new objective be inserted into Section 3.2.1 providing for emergency services. While important, this can appropriately be dealt with in the more detailed provisions of the PDP.
215. In summary, having considered all of the objectives in its proposed Section 3.2.1, we consider them individually and collectively to be the most appropriate way in which to achieve the purpose of the Act as it relates to the economy of the District.

2.4. Section 3.2.2 Goal – Urban Growth Management

216. The second specified ‘goal’ read:

“The strategic and integrated management of urban growth”.

217. A number of submissions supported this goal in its current form. One submission in support²⁰³ sought that it be expanded to cover all growth within the district, not just urban growth.
218. One submission²⁰⁴ sought its deletion, without any further explanation. Another submission²⁰⁵ sought in relation to this goal, an acknowledgement that some urban development might occur outside the UGB.
219. A number of other submissions sought relief nominally in respect of the Section 3.2.2 goal that in reality relate to the more detailed objectives and policies in that section. We consider them as such.
220. Mr Paetz did not recommend any amendment to this goal.
221. The focus of the RPS previously discussed (on sustainable management of the built environment) is too generally expressed to provide direction in this context. The Proposed RPS focuses more directly on urban growth under Objective 4.5 (*“Urban growth and development is well-designed, reflects local character and integrates effectively with adjoining urban and rural environments”*). Policy 4.5.1 in particular supports this goal – it refers specifically to managing urban growth in a strategic and coordinated way.
222. Reverting to the submissions on it, we do not regard it as appropriate that this particular goal/high-level objective be expanded to cover all growth within the District. Growth within rural areas raises quite different issues to that in urban areas.
223. Nor do we accept Submission 807. The goal is non-specific as to where urban growth might occur. The submitter’s point needs to be considered in the context of the more detailed objectives and policies fleshing out this goal.
224. Accordingly, the only amendment we would recommend is to reframe this goal more clearly as a higher-level objective, as follows:

“Urban growth managed in a strategic and integrated manner.”

²⁰² Submission 438; Supported in FS1160

²⁰³ Submission 471; Supported in FS1092

²⁰⁴ Submission 294

²⁰⁵ Submission 807

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

2.5. Section 3.2.2 Objectives – Urban Growth Management

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

“Ensure urban development occurs in a logical manner:

- a. To promote a compact, well designed and integrated urban form;*
- b. To manage the cost of Council infrastructure; and*
- c. To protect the District’s rural landscapes from sporadic and sprawling development.”*

227. Submissions on this objective sought variously:

- a. Its deletion²⁰⁶;
- b. Recognition of reverse sensitivity effects on significant infrastructure as another aspect of logical urban development²⁰⁷;
- c. Deletion of reference to logical development and to sporadic and sprawling development, substituting reference to “urban” development²⁰⁸;
- d. Removal of the implication that the only relevant infrastructure costs are Council costs²⁰⁹;
- e. Generalising the location of urban development (“*appropriately located*”) and emphasising the relevance of efficiency rather than the cost of servicing²¹⁰.

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

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

“3.2.2.2: Manage development in areas affected by natural hazards.”²¹¹

3.2.3.1 Achieve a built environment that ensures our urban areas are desirable and safe places to live, work and play;

3.2.6.1 Provide access to housing that is more affordable;

3.2.6.2 Ensure a mix of housing opportunities.

3.2.6.3 Provide a high quality network of open spaces and community facilities.”

230. Submissions on the above objectives sought variously:

- a. Deletion of Objective 3.2.2.2²¹²;

²⁰⁶ Submission 806

²⁰⁷ Submissions 271 and 805; Supported in FS1092, FS1121, FS1211, FS1340; Opposed in FS 1097 and FS1117

²⁰⁸ Submission 608; Opposed in FS1034

²⁰⁹ Submission 635

²¹⁰ Submissions 806 and 807

²¹¹ Although this could be read to apply to non-urban development in isolation, in the context of an urban development goal and a supporting policy focussed on managing higher density urban development, that is obviously not intended.

²¹² Submission 806

- b. Amendment of 3.2.6.1 so that it is more enduring and refers not just to housing, but also to land supply for housing²¹³;
 - c. Addition of reference in 3.2.6.1 to design quality²¹⁴;
 - d. Collapsing 3.2.6.1 and 3.2.6.2 together²¹⁵;
 - e. Amendment of 3.2.6.2 to refer to housing densities and typologies rather than opportunities²¹⁶;
 - f. Amendment to 3.2.6.3 to refer to community activities rather than community facilities if the latter term is not defined to include educational facilities²¹⁷.
231. Remarkably, for this part of the PDP at least, Objective 3.2.3.1 does not appear to have been the subject of any submissions, other than to the extent that it is caught by UCES's more general relief, seeking that Chapter 3 be deleted.
232. Mr Paetz did not recommend substantive changes to any of these objectives, other than to rephrase them as seeking an environmental outcome.
233. We have already noted some of the provisions of the RPS relevant to these matters. As in other respects, the RPS is generally expressed, so as to leave ample leeway in its implementation, but Policy 9.5.5 is worthy of mention here – it directs maintenance and where practicable enhancement of the quality of life within the build environment, which we regard as supporting Objective 3.2.3.1.
234. The Proposed RPS contains a number of provisions of direct relevance to this group of objectives. We have already noted Objective 4.5, which supports a focus on good design and integration, both within and without existing urban areas. Aspects of Policy 4.5.1 not already mentioned focus on minimising adverse effects on rural activities and significant soils, maintaining and enhancing significant landscape or natural character values, avoiding land with significant risk from natural hazards and ensuring efficient use of land. These provisions provide strong support for the intent underlying many of the notified objectives.
235. In our view, the matters covered by the group of PDP objectives we have quoted are so interrelated that they could and should be combined in one overall objective related to urban growth management.
236. In doing so, we recommend that greater direction be provided as to what outcome is sought in relation to natural hazards. Mr Paetz's recommended objective suggests that development in areas affected by natural hazards "*is appropriately managed*". This formulation provides no guidance to decision makers implementing the PDP. While the RPS might be considered equally opaque in this regard²¹⁸, the proposed RPS takes a more directive approach. Policy 4.5.1, as noted, directs avoidance of land with significant natural hazard risk. Objective 4.1 of the Proposed RPS states:

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

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

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

²¹⁵ Submission 806

²¹⁶ Submission 608: Opposed in FS1034

²¹⁷ Submission 524

²¹⁸ Refer Objective 11.4.2 and the policies thereunder

237. Having regard to these provisions (as we are bound to do), we recommend that the focus on natural hazard risk in relation to urban development similarly be on minimising that risk.
238. It is also relevant to note that the Proposed RPS also has an objective²¹⁹ seeking that Otago's communities "*are prepared for and are able to adapt to the effects of climate change*" and a policy²²⁰ directing that the effects of climate change be considered when identifying natural hazards. While the RPS restricts its focus on climate change to sea-level rise²²¹, which is obviously not an issue in this District, this is an area where we consider the Proposed RPS reflects a greater level of scientific understanding of the potential effects of climate change since the RPS was made operative²²².
239. As above, submissions focus on the reference to logical development. It is hard to contemplate that urban development should be illogical (or at least not intentionally so), but we recommend that greater guidance might be provided as to what is meant by a logical manner of urban development. Looking at Chapter 4, and the areas identified for urban development, one obvious common feature is that they build on historical urban settlement patterns (accepting that in some cases it is a relatively brief history), and we recommend that wording to this effect be inserted in this objective.
240. Lastly, consistent with our recommendation above, reference is required in this context to the interrelationship of urban development and infrastructure. Mr Paetz's suggested formulation (manages the cost of infrastructure) does not seem to us to adequately address the issue. First, the concept that costs would be managed provides no indication as to the end result – whether infrastructure costs will be high, low, or something in between. Secondly, while obviously not intended to do so (Mr Paetz suggests a separate objective and policy to deal with it), restricting the focus of the objective to the costs of infrastructure does not address all of the reverse sensitivity issues that both QAC and Transpower New Zealand Limited emphasised to us, the latter with reference to the requirements of the NPSET 2008.
241. The suggestion by Remarkables Park Ltd and Queenstown Park Ltd that the focus be on efficiency of servicing, while an improvement on '*managing*' costs, similarly does not get close to addressing reverse sensitivity issues.
242. We accordingly recommend that reference should be made to integration of urban development with existing and planned future infrastructure. While this is still reasonably general, the recommendations following will seek to put greater direction around what is meant.
243. We regard reference to community housing as being too detailed in this context and do not agree with the suggestion that sprawling and sporadic development is necessarily '*urban*' in character²²³. Mr Chris Ferguson²²⁴, suggested as an alternative to the relief sought, that the objective refer to "*urban sprawl development*", which from one perspective, would restrict the ambit of the protection the objective seeks for rural areas still further. Mr Ferguson relied on

²¹⁹ Objective 4.2.2

²²⁰ Policy 4.1.1(d)

²²¹ Policy 8.5.8

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

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

²²⁴ Giving planning evidence on the submission of Darby Planning LP

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

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

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

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

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

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

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

2.6. Section 3.2.3 – Goal – Urban Character

248. As notified, the third goal read:

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

249. A number of submissions supported this goal. One submission²²⁵ sought its deletion.

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

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

²²⁵ Submission 807

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

2.7. Section 3.2.3 – Objectives – Urban Character

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

254. Objective 3.2.3.2 as notified, read:

“Protect the District’s cultural heritage values and ensure development is sympathetic to them.”

255. The submissions on this objective either seek its deletion²²⁶, or that protection of cultural heritage values be “*from inappropriate activities*”²²⁷.

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

“Development is sympathetic to the District’s cultural heritage values.”

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

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

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

260. The Proposed RPS provides rather more direction with a policy²²⁸ that the values and places and areas of historic heritage be protected and enhanced, among other things by avoiding adverse effects on those values that contribute to the area or place being of regional or national significance, and avoiding significant adverse effects on other values of areas and places of historic heritage.

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

²²⁶ Submission 806

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

²²⁸ Policy 5.2.3

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

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

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

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

2.8. Section 3.2.4 – Goal – Natural Environment

264. As notified, this goal read:

"The protection of our natural environment and ecosystems".

265. A number of submissions supported this goal. Two submissions opposed it²²⁹. Of those, Submission 806 sought its deletion (along with the associated objectives and policies).

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

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

268. The Proposed RPS addresses the same issue in a different way, focussing on the "values" of natural resources (and seeking they be maintained and enhanced²³⁰).

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

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

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

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

²²⁹ Submissions 806 and 807

²³⁰ Proposed RPS, Objective 3.1

2.9. Section 3.2.4 – Objectives – Natural Environment

272. Objective 3.2.4.1 as notified, read as follows:

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

273. The RPS has a number of objectives seeking maintenance and enhancement, or alternatively safeguarding of life supporting capacity of land, water and biodiversity²³¹, reflecting the focus on safeguarding life supporting capacity in section 5 of the Act. In relation to fresh water and aquatic ecosystems, the NPSFM 2014 similarly has that emphasis. The Proposed RPS, by contrast, does not have the same focus on life supporting capacity, or at least not directly so. The combination of higher order provisions, however, clearly supports the form of this objective.

274. The only submissions on the objective either support the objective as notified²³², or seek that it be expanded to refer to maintenance of indigenous biodiversity²³³.

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

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

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

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

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

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

279. Objective 3.2.4.2 as notified read:

“Protect areas with significant Nature Conservation Values”.

280. Submissions on this objective included requests for:

- a. Expansion to apply to significant waterways²³⁴;
- a. Substitution of reference to the values of Significant Natural Areas²³⁵;
- b. Amendment to protect, maintain and enhance such areas²³⁶;

²³¹ RPS, Objectives 5.4.1, 6.4.3, 10.4.1..

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

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

²³⁴ Submission 117

²³⁵ Submission 378: Opposed in FS1049 and FS1095

²³⁶ Submission 598: Supported in FS1287; Opposed in FS1040

- c. Addition of reference to appropriate management as an alternative to protection²³⁷.
281. The version of this objective recommended by Mr Paetz in his reply evidence is altered only to express it as an environmental outcome.
282. Objective 10.4.3 of the RPS, previously noted, might be considered relevant to (and implemented by) this objective²³⁸.
283. As above, we recommend that the definition of ‘*Nature Conservation Values*’ be clarified to remove policy elements and our consideration of this objective reflects that revised definition. We do not consider it is necessary to specifically state that areas with significant nature conservation values might be waterways. We likewise do not recommend reference to ‘*appropriate management*’, since that provides no direction to decision-makers implementing the PDP.
284. However, we have previously recommended that maintenance of significant Nature Conservation Values be part of the objective relating both to agricultural land uses in rural areas and to diversification of existing activities. As such, we regard this objective as duplicating that earlier provision and unnecessary. For that reason²³⁹, we recommend that it be deleted.
285. Objective 3.2.4.3 as notified (and as recommended by Mr Paetz) read:
- “Maintain or enhance the survival chances for rare, endangered or vulnerable species of indigenous plant or animal communities”.*
286. Submissions specifically on this point included:
- a. Seeking that reference to be made to significant indigenous vegetation and significant habitats of indigenous fauna rather than as presently framed²⁴⁰;
 - b. Support for the objective in its current form²⁴¹;
 - c. Amendment to make the objective subject to preservation of the viability of farming in rural zones²⁴².
287. The reasons provided in Submission 378 are that the terminology used should be consistent with section 6 of the RMA.
288. While, as above, we do not regard the terminology of the Act²⁴³ as a panacea, on this occasion, the submitter may have a point. While significant areas of indigenous vegetation and significant habitats of indigenous fauna are matters the implementation of the PDP can affect (either positively or negatively), the survival chances of indigenous plant or animal communities will likely depend on a range of factors, some able to be affected by the PDP, and some not. Moreover, any area supporting rare, endangered, or vulnerable species will, in our view, necessarily have significant nature conservation values, as defined. Accordingly, for the same reasons as in relation to the previous objective, this objective duplicates provisions we

²³⁷ Submission 600: Supported in FS1097 and FS1209; Opposed in FS1034, FS1040 and FS1080

²³⁸ See also the Proposed RPS, Policy 3.1.9, which has a ‘maintain or enhance’ focus.

²³⁹ Consistent with the Real Journeys submission noted above

²⁴⁰ Submission 378: Supported in FS1097; Opposed in FS1049 and FS1095

²⁴¹ Submissions 339, 373, 600 and 706: Opposed in FS1034, FS1162, FS1209, FS1287 and FS1347

²⁴² Submission 701: Supported in FS1162

²⁴³ Or indeed of the RPS, which uses the same language at Objective 10.4.3

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

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

290. Objective 3.2.4.4 as notified, read:

“Avoid exotic vegetation with the potential to spread and naturalise.”

291. Submissions on it varied from:

- a. Support for the wording notified²⁴⁴;
- b. Amendment to refer to avoiding or managing the effects of such vegetation²⁴⁵;
- c. Amendment to *“reduce wilding tree spread”*²⁴⁶.

292. Submission 238²⁴⁷ approached it in a different way, seeking an objective focussing on promotion of native planting.

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

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

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

295. We have already noted the provisions of the RPS and the Proposed RPS which, in our view, support the intent underlying this objective. Policy 10.5.3 of the RPS (seeking to reduce and where practicable eliminate the adverse effects of plant pests) might also be noted²⁴⁸.

296. The section 32 report supporting Chapter 3²⁴⁹ records that the spread of wilding exotic vegetation, particularly wilding trees, is a significant problem in this District. In that context, an objective focusing on reduction of wilding tree spread or *‘managing’* its effects appears an inadequate objective to aspire to.

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

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

²⁴⁴ Submissions 289, 373: Opposed in FS1091 and FS1347

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

²⁴⁶ Submission 608; Opposed in FS1034

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

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

²⁴⁹ Section 32 Evaluation Report- Strategic Direction at page 9

“The spread of wilding exotic vegetation is avoided.”

299. Objective 3.2.4.5 as notified read:

“Preserve or enhance the natural character of the beds and margins of the District’s lakes, rivers and wetlands.”

300. A number of submissions sought that the effect of the objective be softened by substituting “maintain” for “preserve”²⁵⁰.

301. Some submissions sought that reference to biodiversity values be inserted²⁵¹.

302. Some submissions sought deletion of reference to enhancement and inclusion of protection from inappropriate subdivision, use and development²⁵².

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

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

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

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

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

308. The RPS (and section 6(a) of the Act) would also support (if not require) expansion of this objective to include the water above lake and riverbeds²⁵³, but we regard this as being addressed by Objective 3.2.4.6 (to the extent it is within the Council’s functions to address).

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

“The natural character of the beds and margins of the District’s lakes, rivers and wetlands is preserved or enhanced.”

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

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

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

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

310. Objective 3.2.4.6 as notified read:

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

311. A number of submissions supported the objective as notified. The only submission seeking a substantive amendment, sought to delete reference to water quality²⁵⁴.

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

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

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

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

“The water quality and functions of the District’s lakes, rivers and wetlands is maintained or enhanced.”

316. Objective 3.2.4.7 as notified read:

“Facilitate public access to the natural environment.”

317. Submissions on this objective included:

- a. Support for the objective as is²⁵⁶;
- b. Seeking that *“maintain and enhance”* be substituted for *“facilitate”* and emphasising public access *‘along’* rivers and lakes²⁵⁷;
- c. Inserting a link to restrictions on public access created by a subdivision or development²⁵⁸;
- d. Substituting *“recognise and provide for”* for *“facilitate”*²⁵⁹.

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

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

²⁵⁴ Submission 600: Supported in FS1209; Opposed in FS1034 and FS1040.

²⁵⁵ [2015] NZEnvC50

²⁵⁶ Submissions 378, 625, 640: Opposed in FS1049, FS1095 and FS1347

²⁵⁷ Submissions 339, 706: Supported in FS1097, Opposed in FS1254 and FS1287

²⁵⁸ Submission 600: Supported in FS1209, Opposed in FS1034

²⁵⁹ Submission 806

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

320. We reject the suggestion that the objective should “*recognise and provide for*” public access, essentially for the reasons set out above²⁶⁰.
321. In addition, while in practice, applications for subdivision and development are likely to provide the opportunity to enhance public access to the natural environment, we do not think that the objective should be restricted to situations where subdivision or development will impede existing public access. Any consent applicant can rely on the legal requirement that consent conditions fairly and reasonably relate to the consented activity²⁶¹ to ensure that public access is not sought in circumstances where access has no relationship to the subject-matter of the application.
322. Lastly, the objective requires amendment in order that it identifies an environmental outcome sought.
323. In summary, we recommend that this objective (renumbered 3.2.4.5) be amended to read:
- “Public access to the natural environment is maintained or enhanced.”*
324. Objective 3.2.4.8 as notified read:
- “Respond positively to Climate Change”.*
325. Submissions on it included:
- a. General support²⁶²;
 - b. Seeking its deletion²⁶³;
 - c. Seeking amendment to focus more on the effects of climate change²⁶⁴.
326. Mr Paetz recommended in his reply evidence that the objective remain as notified.
327. As already noted, the RPS contains a relatively limited focus on climate change, and might in that regard be considered deficient given the terms of section 7(i) of the Act (added to the Act after the RPS was made operative). The Proposed RPS contains a much more comprehensive suite of provisions on climate change and might, we believe, be regarded as providing rather more reliable guidance. The focus of the Proposed RPS, consistently with section 7(i), is clearly on responding to the effects of climate change. As the explanation to Objective 4.2 records, “*the effects of climate change will result in social, environmental and economic costs, and in some circumstances benefits*”. The Regional Council’s view, as expressed in the Proposed RPS, is that that change needs to be planned for.

²⁶⁰ Paragraph 58ff above

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

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

²⁶³ Submission 807

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

328. Against that background, we had difficulty understanding exactly what the outcome is that this objective is seeking to achieve. The sole suggested policy relates to the interrelationship of urban development policies with greenhouse gas emission levels, and their contribution to global climate change. As such, this objective appears to be about responding positively to the causes of global climate change, rather than responding to its potential effects.
329. At least since the enactment of the Resource Management (Energy and Climate Change) Amendment Act 2004, the focus of planning under the Act has been on the effects of climate change rather than on its causes.
330. It also appeared to us that to the extent that the PDP could influence factors contributing to global climate change, other objectives (and policies) already address the issue.
331. Accordingly, as suggested by some of the submissions noted above, and consistently with both the Proposed RPS and section 7(i) of the Act, the focus of District Plan provisions related to climate change issues should properly be on the effects of climate change. The most obvious area²⁶⁵ where the effects of climate change are relevant to the final form of the District Plan is in relation to management of natural hazards. We have already discussed how that might be incorporated into the high level objectives of Chapter 3. While there are other ways in which the community might respond to the effects of climate change, these arise in the context of notified Policy 3.2.1.3.2. We consider Objective 3.2.4.8 is unclear and adds no value. While it could be amended as some submitters suggest, to focus on the effects of climate change, we consider that this would duplicate other provisions addressing the issues more directly. In our view, the better course is to delete it.
332. In summary, we consider that the objectives recommended for inclusion in Section 3.2.4 are individually and collectively the most appropriate way to achieve the purpose of the Act as it relates to the natural environment and ecosystems.

2.10. Section 3.2.5 Goal – Landscape Protection

333. As notified, this goal read:

“Our distinctive landscapes are protected from inappropriate development.”

334. A number of submissions supported this goal.
335. Submissions seeking amendment to it sought variously:
 - a. Amendment to recognise the operational and locational constraints of infrastructure²⁶⁶.
 - a. Substitution of reference to the values of distinctive landscapes²⁶⁷.
 - b. Substitution of reference to the values of ‘outstanding’ landscapes and insertion of reference to the adverse effects of inappropriate development on such values²⁶⁸.
336. A number of submissions also sought deletion of the whole of Section 3.2.5.
337. Mr Paetz did not recommend any amendment to this goal.

²⁶⁵ See Submission 117 in this regard

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

²⁶⁷ Submission 807

²⁶⁸ Submission 806

338. The RPS focuses on outstanding landscapes²⁶⁹, reflecting in turn the focus of section 6(b) of the Act. The Proposed RPS, however, has policies related to both outstanding and highly valued landscapes, with differing policy responses depending on the classification, within the umbrella of Objective 3.2 seeking that significant and highly-valued natural resources be identified, and protected or enhanced.
339. Like the Proposed RPS, the subject matter of Section 3.2.5 is broader than just the outstanding natural landscapes of the District. Accordingly, it would be inconsistent to limit the higher-level objective to those landscapes.
340. For the same reason, a higher-level objective seeking the protection of both outstanding natural landscapes and lesser quality, but still distinctive, landscapes goes too far, even with the qualification of reference to inappropriate development. As discussed earlier in this report, given the guidance of the Supreme Court in *King Salmon* as to the correct interpretation of qualifications based on reference to inappropriate subdivision use and development, it is questionable whether reference to inappropriate development in this context adds much. To that extent, we accept the point made in legal submissions for Trojan Helmet Ltd that section 6 and 7 matters should not be conflated by seeking to protect all landscapes.
341. The suggestion in Submissions 806 and 807 that reference might be made to the values of the landscapes in question is one way in which the effect of the goal/higher-level objective could be watered down. But again, this would be inconsistent with objectives related to outstanding natural landscapes, which form part of Section 3.2.5.
342. We recommend that these various considerations might appropriately be addressed if the goal/higher order objective were amended to read:
- “The retention of the District’s distinctive landscapes.”*
343. We consider that this is the most appropriate way to achieve the purpose of the Act in the context of a high-level objective related to landscapes.

2.11. Section 3.2.5 Objectives - Landscapes

344. Objective 3.2.5.1 as notified read:

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

345. This objective and Objective 3.2.5.2 following it (related to non-outstanding rural landscapes) attracted a large number of submissions, and evidence and submissions on them occupied a substantial proportion of the Stream 1B hearing. The common theme from a large number of those submitters and their expert witnesses was that Objective 3.2.5.1 was too protective of ONLs in particular, too restrictive of developments in and affecting ONLs, and would frustrate appropriate development proposals that are important to the District’s growth²⁷⁰.
346. Some suggested that the objective as notified would require that all subdivision use and development in ONLs and ONFs be avoided.²⁷¹ If correct, that would have obvious costs to the

²⁶⁹ RPS, Objectives 5.4.3, 6.4.8

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

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

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

347. As already noted, a number of submissions sought the deletion of the entire Section 3.2.5²⁷². As regards Objective 3.2.5.1, many submitters sought reference be inserted to “*inappropriate*” subdivision, use and development²⁷³.
348. One submitter combined that position with seeking that adverse effects on natural character of ONLs and ONFs be avoided, remedied or mitigated, as opposed to their being protected²⁷⁴.
349. Another suggestion was that the objective be broadened to refer to landscape values and provide for adverse effects on those values to be avoided, remedied or mitigated²⁷⁵.
350. The Council's corporate submission sought specific reference to indigenous flora and fauna be inserted into this objective²⁷⁶.
351. Submission 810²⁷⁷ sought a parallel objective (and policy) providing for protection and mapping of wāhi tupuna.
352. The more general submissions²⁷⁸ seeking provision for infrastructure also need to be kept in mind in this context.
353. In his Section 42A Report, Mr Paetz sought to identify the theme underlying the submissions on this objective by recommending that it be amended to read:
- “Protect the quality of the Outstanding Natural Landscapes and Outstanding Natural Features from subdivision, use and development.”*
354. His reasoning was that a focus solely on the natural character of ONLs and ONFs was unduly narrow and not consistent with “*RMA terminology*”. He did not, however, recommend acceptance of the many submissions seeking insertion of the word ‘*inappropriate*’ essentially because it was unnecessary – “*in saying ‘Protect the quality of the outstanding natural landscapes and outstanding natural features from subdivision, use and development’, the ‘inappropriate’ test is implicit i.e. Development that does not protect the quality will be inappropriate.*”²⁷⁹
355. By his reply evidence, Mr Paetz had come round to the view that the submitters on the point (and indeed many of the planning witnesses who had given evidence) were correct and that the word ‘*inappropriate*’ ought to be added. He explained his shift of view on the basis that

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

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

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

²⁷⁵ Submissions 806 and 807

²⁷⁶ Submission 809: Opposed in FS1097

²⁷⁷ Supported in FS1098; Opposed in FS1132

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

²⁷⁹ Section 42A Report at 12,103

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

356. Mr Paetz’s Section 42A Report reflects the decision of the Supreme Court in the *King Salmon* litigation previously noted. His revised stance in his reply evidence implies that the scope of appropriate subdivision, use and development in the context of an objective seeking protection of ONLs and ONFs from inappropriate subdivision, use and development is broader than that indicated by the Supreme Court.
357. The legal basis for Mr Paetz’s shift in position is discussed in the reply submissions of counsel for the Council. Counsel’s reply submissions²⁸¹ emphasize the finding of the Supreme Court that section 6 does not give primacy to preservation or protection and draws on the legal submissions of counsel for the Matukituki Trust to argue that a protection against ‘*inappropriate*’ development is not necessarily a protection against any development, but that including reference to it allows a case to be made that development is appropriate.
358. This in turn was argued to be appropriate in the light of the extent to which the district has been identified as located within an ONL or ONF (96.97% based on the notified PDP maps).
359. Although not explicitly saying so, we read counsel for the Council’s reply submissions as supporting counsel for a number of submitters who urged us to take a ‘*pragmatic*’ approach to activities within or affecting ONLs or ONFs²⁸².
360. Counsel for Peninsula Bay Joint Venture²⁸³ argued also ²⁸⁴ that Objective 3.2.5.1 failed to implement the RPS because the relevant objective in that document²⁸⁵ refers to protection of ONLs and ONFs “*from inappropriate subdivision, use and development*”.
361. We agree that the objectives and policies governing ONFs and ONLs are of critical importance to the implementation of the PDP. While as at the date of the Stream 1B hearing, submissions on the demarcation of the ONLs and ONFs had yet to be heard, it was clear to us that a very substantial area of the district would likely qualify as either an ONL or an ONF. Dr Marion Read told us that this District was almost unique because the focus was on identifying what landscapes are not outstanding, rather than the reverse. As above, Council staff quantified the extent of ONLs and ONFs mapped in the notified PDP as 96.97%²⁸⁶.
362. Given our recommendation that there should be a strategic chapter giving guidance to the implementation of the PDP as a whole, the objective in the strategic chapter related to activities affecting ONLs and ONFs is arguably the most important single provision in the PDP.
363. For precisely this reason, we consider that this objective needs to be robust, in light of the case law and the evidence we heard, and clear as to what outcome is being sought to be achieved.

²⁸⁰ M Paetz, Reply Evidence at 5.23.

²⁸¹ At 6.6

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

²⁸³ Submission 378

²⁸⁴ Written submissions at paragraph 32

²⁸⁵ Objective 5.4.3

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

364. The starting point is that, as already noted, the Supreme Court in *King Salmon* found that:
- “We consider that where the term ‘inappropriate’ is used in the context of protecting areas from inappropriate subdivision, use or development, the natural meaning is that ‘inappropriateness’ should be assessed by reference to what it is that is sought to be protected.”²⁸⁷*
365. When we discussed the matter with Mr Gardner-Hopkins, at that point acting as counsel for Kawarau Jet Services, he agreed that we were duty bound to apply that interpretation, but having said that, in his submission, the point at which effects tip into being inappropriate takes colour from the wider policy framework and factual analysis.
366. That response aligns with the Environment Court’s decision in *Calveley v Kaipara DC*²⁸⁸ that Ms Hill²⁸⁹ referred us to. That case concerned both a resource consent appeal and an appeal on a plan variation. In the context of the resource consent appeal, the Environment Court emphasised that when interpreting the meaning of *“inappropriate subdivision, use and development”* in a particular plan objective, it was necessary to consider the objective in context (in particular in the context of the associated policy seeking to implement it). In that case, the policy supported an interpretation of the objective that was consistent with the natural and ordinary meaning identified by the Supreme Court in *King Salmon*, as above. However, as the Environment Court noted, neither the objective nor the policy suggested that subdivision development inevitably must be inappropriate. The Court found²⁹⁰ that both the objective and policy recognised the potential for sensitively designed and managed developments to effectively protect ONL values and characteristics.
367. In that regard, it is worth noting that the Supreme Court in *King Salmon* likewise noted that a protection against *‘inappropriate’* development is not necessarily protection against *‘any’* development, but rather it allows for the possibility that there may be some forms of *‘appropriate’* development²⁹¹. That comment was made in the context of the Supreme Court’s earlier finding as to what inappropriate subdivision, use and development was, as above.
368. Ultimately, though, we think that the *Calveley* decision is of peripheral assistance because the issue we have to confront is whether this particular objective should refer to protection of ONLs and ONFs from inappropriate subdivision, use and development. The wording of the policy seeking to implement the objective is necessarily consequential on that initial recommendation. Accordingly, while we of course accept the Environment Court’s guidance that a supporting policy might assist in the interpretation of the objective, the end result is somewhat circular given that we also have to recommend what form the supporting policy(ies) should take.
369. We should note that Ms Hill also referred us to the Board of Inquiry decision on the Basin Bridge Notice of Requirement, but we think that the Board of Inquiry’s decision does not particularly assist in our inquiry other than to the extent that the Board recorded its view that

²⁸⁷ [2016] NZSC38 at [101]

²⁸⁸ [2014] NZEnvC 182

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

²⁹⁰ At [132]

²⁹¹ *King Salmon* at [98]

it was obliged by the Supreme Court's decision to approach and apply Part 2 of the Act having regard to the natural meaning of "inappropriate" as above²⁹².

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

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

371. Objective 5.4.3 is expressed in almost exactly the same terms as section 6(b) of the Act. There is accordingly no question (in our view) that the RPS is completely consistent with Part 2 of the Act in this regard. It also means that cases commenting on the interpretation of section 6(b), and indeed the other subsections using the same phraseology, are of assistance in interpreting the RPS. In that regard, while, as the Environment Court in *Calveley* has noted, the term "inappropriate" might take its meaning in plans from other provisions that provide the broader context, in the context of both RPS Objective 5.4.3 and section 6, 'inappropriate' should clearly be interpreted in the manner that the Supreme Court has identified²⁹³.

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

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

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

374. The point that has troubled us is how in practice one could make provision for the protection, in this case of ONLs and ONFs, whether as part of the concept of sustainable management (or as implementing Objective 5.4.3), without actually having an objective seeking that ONLs and ONFs be protected. We discussed this point with Mr Gardner-Hopkins²⁹⁵ who submitted that while there has to be an element of protection and preservation of ONLs in the PDP, we had some discretion as to where to set the level of protection. Mr Gardner-Hopkins noted that the Supreme Court had implied that there were environmental bottom lines in Part 2, but that they were somewhat "saggy" in application.

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

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

²⁹³ As the Basin Bridge Board of Inquiry found

²⁹⁴ *King Salmon* at [149]

²⁹⁵ At this point appearing for the Matukituki Trust

376. We think, therefore, that we would be on strong ground to provide in Objective 3.2.5.1, that ONLs and ONFs should be protected from adverse effects that are more than minor and/or not temporary in duration²⁹⁶. This approach would also meet the concern of a number of parties that the objective should not indicate or imply that all development in ONLs and ONFs is precluded²⁹⁷.
377. Based on our reading of the Supreme Court's decision in *King Salmon* however, if the adverse effects on ONLs and ONFs are more than minor and/or not temporary, it is difficult to say that the ONL or ONF, as the case may be, is being protected. Similarly, if the relevant ONL or ONF is not being protected, it is also difficult to see how any subdivision, use or development could be said to be 'appropriate'.
378. Even if we are wrong, and *King Salmon* is not determinative on the ambit of 'inappropriate subdivision use and development', we also bear in mind the general point we made above, based on the guidance of the Environment Court in its ODP decision C74/2000 at paragraph [10] that it was not appropriate to leave these policy matters for Council to decide on a case by case basis.
379. We do not accept the argument summarised above that was made for Peninsula Bay Joint Venture that because the RPS objective refers to inappropriate subdivision, use and development, so too must Objective 3.2.5.1. The legal obligation on us is to give effect to the RPS²⁹⁸. The Supreme Court decision in *King Salmon* confirms that that instruction means what it says. The Supreme Court has also told us, however, that saying that ONL's must be protected from inappropriate subdivision, use and development does not create an open-ended discretion to determine whether subdivision, use and development is 'appropriate' on a case-by-case basis. By contrast, it has held that any discretion is tightly controlled and must be referenced back to protection of the ONL or ONF concerned. Accordingly, omitting reference to inappropriate subdivision, use and development does not in our view fail to give effect to the RPS, because it makes no substantive difference to the outcome sought.
380. The Proposed RPS approaches ONLs and ONFs in a slightly different way. Policy 3.2.4 states that outstanding natural features and landscapes should be protected by, among other things, avoiding adverse effects on those values that contribute to the significance of the natural feature or landscape.
381. The Proposed RPS would certainly not support an open-ended reference to inappropriate subdivision, use and development. It does, however, support Mr Paetz's recommendation that the focus not be solely on the natural character of ONLs and ONFs. While we had some concerns as to the ambiguity that might result if Mr Paetz's initial recommendation (in his Section 42A Report) were accepted, and reference be made to the quality of ONLs and ONFs, we think he was on strong ground identifying that natural character is not the only quality of ONLs and ONFs. We note that the planning witness for Allenby Farms Limited and Crosshill Farms Limited, Mr Duncan White, supported the reference in the notified objective to natural character as being "*the significant feature of ONLs and ONFs*"²⁹⁹.

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

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

²⁹⁸ Section 75(3)(c) of the Act

²⁹⁹ D White, EiC at 3.2

382. Mr White, however, accepted that the so-called *Pigeon Bay* criteria for landscapes encompassed a wide variety of matters, not just natural character.
383. Mr Carey Vivian suggested to us that the objective might refer to “*the qualities*” of ONLs and ONFs, rather than “*the quality*” as Mr Paetz had recommended. It seems to us, however, that broadening the objective in that manner would push it too far in the opposite direction.
384. In our view, some aspects of ONLs and ONFs are more important than others, as the Proposed RPS recognises. Desirably, one would focus on the important attributes of the particular ONL and ONF in question³⁰⁰. The PDP does not, however, identify the particular attributes of each ONL or ONF. The ODP, however, focuses on the landscape values, visual amenity values and natural character of ONLs in the Wakatipu Basin, and we recommend that this be the focus of the PDP objective addressing ONLs and ONFs more generally – accepting in part a submission of UCES that, at least in this regard, there is value in rolling over the ODP approach.
385. Identifying the particular values of ONLs and ONFs of most importance also responds to submissions made by counsel for Skyline Enterprises Ltd and others that the restrictive provisions in the notified plan had not been justified with reference to the factors being protected.
386. An objective seeking no more than minor effects on ONLs and ONFs would effectively roll over the ODP in another respect. That is the policy approach in the ODP for ONLs in the Wakatipu Basin and for ONFs.
387. The structure of the ODP in relation to ONLs and ONFs is to have a very general objective governing landscape and visual amenity values, supported by separate policies for ONLs in the Wakatipu Basin, ONLs outside the Wakatipu Basin and ONFs. Many of the policies for the Wakatipu Basin ONLs and ONFs are identical. At least in appearance, the policies of the ODP are more protective of ONLs in the Wakatipu Basin than outside that area. The key policies governing subdivision and development outside the Wakatipu Basin focus on the capacity of the ONLs to absorb change, avoiding subdivision and development in those parts of the ONLs with little or no capacity to absorb change and allowing limited subdivision and development in those areas with a higher potential to absorb change. We note though that capacity to absorb change will be closely related to the degree of adverse effects when landscape and visual amenity values are an issue and so the difference between the two may be more apparent than real.
388. Submitters picked up on the different approach of the PDP from the ODP in this regard. UCES supported having a common objective and set of policies for ONLs across the district, utilising the objectives, and policies (and assessment matters and rules) in the ODP that apply to the ONLs of the Wakatipu Basin. When he appeared before us in Wanaka, counsel for Allenby Farms Limited, Crosshill Farms Limited and Mt Cardrona Station Limited, Mr Goldsmith, argued that when the Environment Court identified in its Decision C180/99 the desirability of a separate and more restricted policy regime for the Wakatipu Basin ONLs, it had good reason for doing so (based on the greater development pressures in the Wakatipu Basin, the extent of existing development activity and the visibility of the ONLs from the Basin floor). Mr Goldsmith submitted that there is no evidence that those factors do not still apply, and that accordingly the different policy approaches for Wakatipu Basin ONLs, compared to the ONL’s in the balance of the District should be retained.

³⁰⁰ Refer the recommendations of Report 16

389. This relief was not sought by Mr Goldsmith’s clients in their submissions and so we have regarded it as an example of a submitter (or in this case three submitters) seeking to rely on the collective scope provided by other unspecified submissions (i.e. the point discussed earlier in this report). In this particular case, the argument Mr Goldsmith pursued arguably falls within the jurisdiction created by the submissions already noted seeking deletion of the whole of Section 3.2.5 and we have accordingly considered it on its merits.
390. Discussing the point with us, Mr Goldsmith agreed that the Environment Court’s key findings were based on evidence indicating a need for stringent controls on the Wakatipu Basin and a lack of evidence beyond that. While he agreed that the lack of evidence before the Environment Court in 1999 should not determine the result in 2016 (when we heard his submissions), Mr Goldsmith submitted that there was no evidence before us that the position has changed materially. We note, however, that Mr Haworth suggested to us that the contrary was the case, and that development pressure had increased significantly throughout the District since the ODI was written³⁰¹. Mr Haworth provided a number of examples of residential development having been consented in the ONLs of the Upper Clutha and also drew our attention to the tenure review process having resulted in significant areas of freehold land becoming available for subdivision and development within ONLs.
391. In addition, the Environment Court’s decision in 1999 reflected the then understanding of the role of section 6(b) of the Act in the context of Part 2 as a whole³⁰². That position has now been overtaken by the Supreme Court’s decision in *King Salmon*, that we have discussed extensively already. The Supreme Court’s decision means that we must find a means to protect ONLs and ONFs as part of the implementation of the RPS and, in consequence, the sustainable management of the District’s natural and physical resources. In that context, we think that a different policy regime between ONLs in different parts of the district might be justified if they varied in quality (if all of them are outstanding, but some are more outstanding than others). But no party sought to advance an argument (or more relevantly, called expert evidence) along these lines.
392. We accordingly do not accept Mr Goldsmith’s argument. We find that it is appropriate to have one objective for the ONLs and ONFs of the District and that that objective should be based upon protecting the landscape and visual amenity values and the natural character of landscapes and features from more than minor adverse effects that are not temporary in nature.
393. We do not consider that reference is required to wāhi tupuna given that this is addressed in section 3.2.7.
394. We record that we have considered the submission of Remarkables Park Limited³⁰³ and Queenstown Park Limited³⁰⁴ that, in effect, a similar approach to that in the ODP should be taken, with a very general objective supported by more specific policies. The structure of the PDP is, at this strategic level, one objective for ONLs and ONFs, and another objective for other rural landscapes. We regard that general approach as appropriate. Once one gets to the point of determining that there should be an objective that is specific to ONLs and ONFs, it is not

³⁰¹ J Haworth, Submissions and Evidence at page 16

³⁰² Refer C180/99 at paragraph [69]

³⁰³ Submission 806

³⁰⁴ Submission 807

appropriate, for the reasons already canvassed, that the outcome aspired to is one which provides for avoiding, remedying or mitigating adverse effects³⁰⁵.

395. The last point that we need to examine before concluding our recommendation is whether an objective that does not provide for protection of ONLs and ONFs from inappropriate subdivision, use and development fails to provide for critical infrastructure and/or fails to give effect to the NPSET 2008.
396. QAC expressed concern that an overly protective planning regime for ONLs and ONFs would constrain its ability to locate and maintain critical meteorological monitoring equipment that must necessarily be located at elevated locations around Queenstown Airport which are currently classified as ONLs or ONFs. QAC also noted that Airways Corporation operates navigational aids on similar locations which are critical to the Airport's operations³⁰⁶. QAC did not provide evidence though that suggested that the kind of equipment they were talking about would have anything other than a minor effect on the ONLs or ONFs concerned.
397. Transpower New Zealand also expressed concern about the potential effect of an overly protective regime for ONLs on the National Grid. The evidence for Transpower was that, there is an existing National Grid line into Frankton through the Kawarau Gorge and while the projected population increases would suggest a need to upgrade that line within the planning period of the PDP, the nature of the changes that would be required would be barely visible from the ground. The Transpower representatives who appeared before us accepted that that would be in the category of "minor" adverse effects. They nevertheless emphasised the need to provide for currently unanticipated line requirements that would necessarily have to be placed in ONLs given that the Wakatipu Basin is ringed with ONLs (assuming the notified plan provisions in this regard remain substantially unchanged). Counsel for Transpower, Ms Garvan, and Ms Craw, the planning witness for Transpower, drew our attention to Policy 2 of the NPSET 2008, which reads:

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

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

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

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

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

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

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

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

...

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

400. We tested the ambit of the relief Transpower was contending might be required to give effect to the NPSET 2008, by suggesting an unlikely hypothetical example of a potential new national grid route³⁰⁸ and inviting comment from Transpower’s representatives as to whether the NPSET 2008 required that provision be made for it. Counsel for Transpower accepted that the PDP was not required to enable the National Grid in every potential location, but rejected any suggestion that the PDP need only provide for Transpower’s existing assets and any known future development plans³⁰⁹.
401. We enquired of counsel whether, if the NPSET 2008 requires the PDP to enable the National Grid in circumstances where that would have significant adverse effects on ONLs or ONFs, the NPSET 2008 might itself be considered to be contrary to Part 2 and therefore within one of the exceptions that the Supreme Court noted in *King Salmon* to the general principle that a Council is not able to circumvent its obligation to give effect to a relevant National Policy Statement by a reference to an overall broad judgement under section 5.
402. We invited Counsel for Transpower New Zealand Limited to file further submissions on this point.
403. Unfortunately, the submissions provided by Counsel for Transpower did not address the fundamental point, which is that the Supreme Court expressly stated that:
- “... If there was an allegation going to the lawfulness of the NZCPS, that would have to be resolved before it could be determined whether a decision-maker who gave effect to the NZCPS as it stood was necessarily acting in accordance with pt 2.”³¹⁰*
404. To the extent that counsel for Transpower relied on a recent High Court decision addressing the relevance of the NPSFM 2011 to a Board of Inquiry decision³¹¹, we note that the consistency or otherwise of the NPSFM 2011 with Part 2 of the Act was not an issue in that appeal. Rather, the point of issue was whether the Board of Inquiry had correctly given effect to the NPSFM 2011.
405. More recently, the High Court in *Transpower New Zealand Ltd v Auckland Council*³¹² has held that national policy statements promulgated under section 45 of the Act (like the NPSET) are not an exclusive list of relevant matters and do not necessarily encompass the statutory purpose. The High Court found specifically³¹³ that the NPSET is not as all-embracing of the Act’s purpose set out in section 5 as is the New Zealand Coastal Policy Statement and that a decision-maker can properly consider the Act’s statutory purpose, and other Part 2 matters,

³⁰⁸ From Frankton to Hollyford, via the Routeburn Valley

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

³¹⁰ *King Salmon* at [88]

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

³¹² [2017] NZHC 281

³¹³ *Ibid* at [84]

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

406. Ultimately, we do not think we need to reach a conclusion as to whether the NPSET 2008 is consistent with Part 2 of the Act for the purposes of this report, because the NPSET 2008 does not expressly say that Transpower's development and expansion of the national grid may have significant adverse effects on ONLs or ONFs. Policy 8 says that Transpower must seek to avoid adverse effects, but gives no guidance as to how rigorously that policy must be pursued. Similarly, Policy 2 gives no indication as to the extent to which development of the National Grid must be provided for. It might also be considered that a contention that Transpower should be able to undertake developments with significant adverse effects on ONLs would be contrary to the Proposed RPS policy Ms Craw relied on (given that a significant adverse effect on ONLs will almost certainly be a significant adverse effect on the values that make the landscape outstanding).
407. In circumstances where Transpower did not present evidence suggesting any compelling need to provide for significant adverse effects of the National Grid on ONLs and ONFs, we do not think that the primary objective of the PDP should be qualified to make such provision.
408. We accept Mr Renton, giving evidence for Transpower, did suggest that there might be cause to route a National Grid line up the Cardrona Valley and over the Crown Range Saddle. However, he did not present this as anything more than a hypothetical possibility.
409. We note that the Environment Court came to a similar conclusion when considering the relevance of the NPSET 2008 to objectives and policies governing protection of indigenous biodiversity in the Manawatu-Wanganui Region, commenting³¹⁴:
- "As with the NPSREG, we do not find that the NPSET gives electricity transmission activities so special a place in the order of things that it should override the regime that applies to indigenous biodiversity. In any case, we were not persuaded that this regime would present insurmountable obstacles to continuing to operate and expand the electricity transmission network to meet the needs of present and future generations."*
410. In summary, while we think that there does need to be additional provision for infrastructure, including, but not limited to, the National Grid, in the more specific policies in Chapter 6 implementing this objective, we recommend that Objective 3.2.5.1 be amended to read as follows:
- "The landscape and visual amenity values and the natural character of Outstanding Natural Landscapes and Outstanding Natural Features are protected from adverse effects of subdivision, use and development that are more than minor and/or not temporary in duration."*
411. Turning to non-outstanding landscapes, Objective 3.2.5.2 as notified read:
- "Minimise the adverse landscape effects of subdivision, use or development in specified Rural Landscapes."*
412. A large number of submissions sought to amend this objective so as to create a greater range of acceptable adverse effects. Suggestions included:

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

- a. Substituting recognition of rural landscape values in conjunction with making provision for management of adverse effects³¹⁵;
 - b. Providing for recognition of those values with no reference to adverse effects³¹⁶;
 - c. Providing for management, or alternatively avoiding, remedying or mitigating of adverse effects³¹⁷;
 - d. Inserting reference to inappropriate subdivision use and development³¹⁸;
 - e. Shifting the focus from adverse landscape effects to adverse effects on natural landscapes³¹⁹;
 - f. Incorporating reference to the potential to absorb change, among other things by incorporating current Objective 3.2.5.3 as a policy under this objective³²⁰.
413. In his Section 42A Report, Mr Paetz expressed the view that while the word ‘*minimise*’ was utilised in this objective to provide greater direction, that level of direction might not be appropriate in rural areas not recognised as possessing outstanding landscape attributes. He recommended alternative wording that sought to maintain and enhance the landscape character of the Rural Landscape Classification, while acknowledging the potential “*for managed and low impact change*”. When Mr Paetz appeared to give evidence, we discussed with him whether the two elements of his suggested amended objective (‘*maintain and enhance*’ v ‘*managed and low impact change*’) were internally contradictory³²¹.
414. In his reply evidence, Mr Paetz returned to the point³²². He acknowledged that there is at least probably, some tension or ambiguity introduced by the combination of terms and revised his recommendation so that if accepted, the objective would read:
- “The quality and visual amenity values of the Rural Landscapes [the amended term for the balance of rural areas that Mr Paetz recommended] are maintained and enhanced.”*
415. The common feature of the relief sought by a large number of the submissions summarised above is that, if accepted, they would have the result that the objective for non-outstanding rural landscapes would not identify any particular outcome against which one could test the success or otherwise of the policies seeking to achieve the objective.
416. We have discussed earlier the need for the PDP objectives to be meaningful and to identify a desired environmental outcome. Many of the submissions on this objective, if accepted, would not do that.
417. Accordingly, we do not recommend that those submissions be accepted, other than that they might be considered to be ‘accepted in part’ by our recommendation below.
418. The starting point for determining the appropriate objective for non-outstanding rural landscapes is to identify the provisions in the superior documents governing this issue. As

³¹⁵ Submissions 437, 456, 513, 522, 532, 534, 537, 608; Supported in FS1071, FS1097, FS1256, FS1286, FS1292, FS1322 and FS1349; Opposed in FS1034 and FS1120

³¹⁶ Submission 515, 531

³¹⁷ Submissions 502, 519, 598, 607, 615, 621, 624, 696, 716, 805: Supported in FS1012, FS1015, FS10976, FS1105 and FS1137; Opposed in FS 1282 and FS1356

³¹⁸ Submissions 502, 519, 696: Supported in FS1012, FS1015 and FS1097; Opposed in FS1282 and FS1356

³¹⁹ Submissions 502, 519: Supported in FS1012, FS1015 and FS1097; Opposed in FS1282 and FS1356

³²⁰ Submission 806

³²¹ As Ms Taylor, giving planning evidence for Matukituki Trust, suggested to us was the case.

³²² M Paetz, Reply Evidence at 5.25

already discussed, the RPS focuses principally on protection of ONLs and ONFs. The only objectives applying to the balance of landscapes and features are expressed much more generally, with non-outstanding landscapes considered as natural resources (degradation of which is sought to be avoided, remedied or mitigated³²³) or land resources (the sustainable management of which is sought to be promoted³²⁴). In terms of the spectrum between more directive and less directive higher other provisions identified by the Supreme Court in *King Salmon*³²⁵, these objectives provide little clear direction, and consequently considerable flexibility in their implementation.

419. The national policy statements likewise do not determine the general objective for non-outstanding landscapes, although both the NPSET 2008 and the NPSREG 2011, in particular need to be borne in mind.
420. The Proposed RPS is of rather more assistance. As previously noted, the Proposed RPS has policies both for ONLs and ONFs, and for highly valued (but not outstanding) natural features and landscapes, under the umbrella of an objective³²⁶ seeking that significant and highly-valued natural resources be “*identified, and protected or enhanced*”.
421. Policy 3.2.5 clarifies that “*highly-valued*” natural features and landscapes are valued for their contribution to the amenity or quality of the environment.
422. Policy 3.2.6 states that highly-valued features and landscapes are protected or enhanced by “*avoiding significant adverse effects on those values which contribute to the high value of the natural feature [or] landscape*” and avoiding, remedying or mitigating other adverse effects.”.
423. The approach of the Proposed RPS to identification of “*highly-valued*” natural features and landscapes appears consistent with the relevant provisions in Part 2 of the Act. The first of these is section 7(c) pursuant to which we are required to have particular regard to “*the maintenance and enhancement of amenity values*”.
424. The second is section 7(f) of the Act, pursuant to which, we are required to have particular regard to “*maintenance and enhancement of the quality of the environment*”.
425. These provisions were the basis on which the Environment Court determined the need to identify “*visual amenity landscapes*”, which were separate from and managed differently to “*other rural landscapes*” in 1999. The Environment Court did not, however, identify which landscapes were in which category. In fact, it found that it had no jurisdiction to make a binding determination (for example, which might be captured on the planning maps³²⁷). In an earlier decision³²⁸, however, the Court observed that an area had to be of sufficient size to qualify as a ‘*landscape*’ before it could be classed as an ORL. It pointed to the Hawea Flats area as the obvious area most likely to qualify as an other rural landscape (ORL) and indicated that the area now known as the Hawthorn Triangle in the Wakatipu Basin might do so³²⁹.

³²³ RPS Objective 5.4.2

³²⁴ RPS Objective 5.4.1

³²⁵ *King Salmon* at [127]

³²⁶ Proposed RPS, Objective 3.2

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

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

³²⁹ Refer paragraph [27]

426. We should address here an argument put to us by counsel for GW Stalker Family Trust and others that section 7(b) operates, in effect, as a counterweight to section 7(c).
427. Section 7(b) requires that we have particular regard, among other things, to “*the efficient use and development of natural and physical resources*”. Mr Goldsmith characterised section 7(b) as encouraging an enabling regime allowing landowners to develop their land in order to generate social and economic benefits, and section 7(c) as acting as a brake on such development.
428. We do not accept that to be a correct interpretation either of section 7(b), or of its inter-relationship with section 7(c), or indeed with the other subsections of section 7.
429. Our understanding of efficiency and of efficient use and development of natural and physical resources is that it involves weighing of costs and benefits of a particular proposal within an analytical framework. The Environment Court has stated that consideration of efficiency needs to take account of all relevant resources and desirably quantify the costs and benefits of their use, development and protection³³⁰. Quantification of effects on non-monetary resources like landscape values may not be possible³³¹ and the High Court has held that it is not necessary to quantify all benefits and costs to determine a resource consent application³³². We do not understand, however, the Court to have suggested that non-monetary costs are thereby irrelevant to the assessment of the most efficient outcome.
430. In a Proposed Plan context, we have the added direction provided by section 32 that quantification of costs and benefits is required if practicable. Irrespective of whether the relevant costs and benefits are quantified, though, we think it is overly simplistic to think that it is always more efficient to enable development of land to proceed. One of the purposes of the inquiry we are engaged upon is to test whether or not this is so.
431. It follows that the weighting given to maintenance and enhancement of amenity values in section 7(c) forms part of the weighing of costs and benefits, not a subsequent step to be considered once one has an initial answer based on a selective weighing of costs and benefits, so as potentially to produce a different conclusion.
432. In its earlier decision³³³, the Court emphasised the need to identify what landscapes fall within particular categories, as an essential first step to stating objectives and policies (and methods) for them³³⁴. We adopt that approach. While we acknowledge that the submissions on mapping issues are being resolved by a differently constituted Panel, we take the approach of the notified PDP as the appropriate starting point. In the Upper Clutha Basin, rural areas south of Lakes Hawea and Wanaka were generally (the Cardrona Valley is an exception) identified as RLC. Within the Wakatipu Basin (including the Crown Terrace), there are ONF’s identified, but the bulk of the rural areas of the Basin are identified as Rural Land Classification (or RLC) on the PDP maps as notified.
433. The evidence of Dr Marion Read was that farming is the dominant land management mechanism in the rural areas of the District, but that there is an observable difference between the Wakatipu Basin and the Upper Clutha Basin; the latter is much more extensive farming

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

³³¹ Or not with any certainty

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

³³³ C180/99

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

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

434. For this reason, she did not believe that her evidence was materially different from that of Mr Baxter, who was the only other landscape expert that we heard from. Mr Baxter’s concern was to emphasise the extent to which rural living now forms part of the character of the Wakatipu Basin, but when we asked whether the Basin was still rural in character, he confirmed that his opinion was that it retained its pastoral character notwithstanding the extent of rural living developments. He also agreed that the balance of open space in the Basin was essential, drawing our attention in particular to the need to protect the uninterrupted depth of view from roads.
435. The evidence we heard from Dr Read and Mr Baxter also needs to be read in the light of the findings of the Environment Court in the chain of cases leading to finalisation of the ODP.
436. Even in 1999, the Environment Court clearly regarded rural living developments as having gone too far in some areas of the Wakatipu Basin. It referred to “*inappropriate urban sprawl*” on Centennial Road in the vicinity of Arrow Junction and along parts of Malaghan Road on its south side³³⁵. It concluded in relation to the non-outstanding landscapes of the Basin:
- “In the visual amenity landscape (inside the outstanding natural landscape) structures can be built, with appropriate remedial work or mitigation down to some kind of density limit that avoids inappropriate domestication”* [emphasis added]
437. We should note that a footnote linked to remedial work in the passage quoted states as an example of appropriate remedial work, removal of inappropriate houses in the adjoining natural landscape.
438. Elsewhere³³⁶ the Court described ‘*urban sprawl*’ as a term referring to undesirable domestication of a landscape. The Court referred to domestication as being evidenced, among other things, by the chattels or fixtures (e.g. clothes lines/trampolines) that accumulate around dwelling houses.
439. The Court returned to this point in a subsequent decision³³⁷, agreeing with one of the expert witnesses who had given evidence before it that a stretch of the south side of Malaghan Road some 900 metres long containing 11 residential units within a rectangular area containing 22 hectares constituted “*inappropriate over-domestication*”. The Court stated that future development on this and other rural scenic roads, that form a ring around the Basin needed to be “*tightly controlled*”.
440. Dr Read gave evidence that since then, a substantial number of building platforms have been consented in the Wakatipu Basin, and to a lesser extent in the Upper Clutha Basin, suggesting to us an even greater need for clear direction as to the environmental outcomes being sought by the PDP³³⁸.

³³⁵ See 180/99 at [136]

³³⁶ C180/99 at Paragraph [155]

³³⁷ C186/2000 at [38]

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

441. Picking up on the Court’s identification of over-domestication as the outcome that is not desired in rural areas, we think that the emphasis of the objective needs to be on rural character and amenity values, rather than as Mr Paetz suggested, the quality and visual amenity values so that it is directed at the aspects of environmental quality that are highly valued (employing the Proposed RPS test) and which are potentially threatened by further development.
442. Turning to the desired outcome, we have some concern that Policy 3.2.5 is both internally contradictory (combining a ‘*protect and enhance*’ focus with avoidance only of significant adverse effects) and inconsistent with sections 7(e) and 7(f) of the Act that support retention of a maintenance and enhancement outcome, notwithstanding the evidence we heard suggesting that this would pose too high a test.³³⁹
443. Put more simply, we think that the objective needs to be that rural areas remain rural in character. We note that rural character is mainly an issue of appearance, but not solely so³⁴⁰.
444. Policy 5.3.1 of the Proposed RPS supports that approach with its focus on enabling farming, minimising the loss of productive soils and minimising subdivision of productive rural land into smaller lots.
445. The need to provide greater direction suggests to us that there is merit in Queenstown Park Ltd’s submission that Objective 3.2.5.3 might be incorporated as a component of Objective 3.2.5.2. The precise relief sought is that it be a policy but for reasons that will be apparent, we think that it might provide more value as an element of the Objective itself. As notified, Objective 3.2.5.3 read:
- “Direct new subdivision, use or development to occur in those areas which have potential to absorb change without detracting from landscape and visual amenity values.”*
446. Most of the submissions on this objective were focussed on the word ‘*direct*’, seeking that it be softened to ‘*encourage*’³⁴¹. Mr Chris Ferguson suggested in his planning evidence that should be “*encourage and enable*”, but we could not identify any submission that would support that extension to the relief sought in submissions³⁴² and so we have not considered that possibility further.
447. One submitter³⁴³ sought that the ambit of this objective be limited to urban use or development.

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

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

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

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

³⁴³ Submission 600: Supported in FS1209, Opposed in FS1034

448. Another submitter³⁴⁴ sought that the extent to which adverse effects were controlled be qualified by inserting reference to ‘*significant*’ detractor from landscape and visual amenity values.
449. Some submissions³⁴⁵ suggested deleting reference to detractor from the identified values, substituting the words “*while recognising the importance of*”.
450. Another suggestion³⁴⁶ was to explicitly exempt development of location-specific resources.
451. Mr Paetz recommended acceptance of the submission that would limit the focus of the objective to urban activities. In his Section 42A Report Mr Paetz expressed the view that rural subdivision and development could be contemplated on more of a case by case, effects-based perspective, whereas it was more appropriate for urban development to be directed to particular locations “*with a firmer policy approach taken on spatial grounds*’.
452. For the reasons already expressed, we do not agree that subdivision, use and development should be the subject of a case by case merits assessment with little direction from the PDP. As Dr Read noted in her evidence before us, there is a problem with cumulative effects from rural living developments, particularly in the Wakatipu Basin. We consider that it is past time for the PDP to pick up on the Environment Court’s finding in 1999 that there were areas of the Wakatipu Basin that required careful management, because they were already at or very close to the limit at which over domestication would occur.
453. Dr Read’s report dated June 2014³⁴⁷ referenced in the section 32 analysis supporting Chapter 6 identifies the rural areas within the Wakatipu Basin where, in her view, further development should be avoided, as well as where increased development might be enabled, on a controlled basis.
454. The Hearing Panel considering submissions on the Rural Chapters (21-23) requested that the Council consider undertaking a structure planning exercise to consider how these issues might be addressed in greater detail. The Council agreed with that suggestion and the end result is a package of provisions forming part of the Stage 2 Variations providing greater direction on subdivision, use and development in the non-outstanding rural areas of the Wakatipu Basin. As at the date of our finalising this report, submissions had only just been lodged on those provisions and so it is inappropriate that we venture any comment on the substance of those provisions. However, we note that hearing and determination of those submissions will provide a mechanism for management of the adverse cumulative effects we have noted, even if the shape the provisions take is not currently resolved.
455. One side-effect of the rezoning of rural Wakatipu Basin land is that there now appears to be no non-outstanding Rural Zoned land in the Basin. Although some provisions of Chapter 6 (as notified) have been deleted or amended, our reading of key policies that remain (as discussed in Part D of this report) is that the landscape categories still only apply in the Rural Zone. We have not identified any submission clearly seeking that this position be changed so that the categorisations would apply more broadly.

³⁴⁴ Submission 643

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

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

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

456. It follows that this particular objective, together with other strategic objectives and policies referring to (as we recommend below they be described) Rural Character Landscapes, does not apply in practice in the Wakatipu Basin. If this is not what the Council intends, we recommend it be addressed in a further variation to the PDP.
457. Lastly, we agree with Submission 643 (and the planning evidence of Mr Wells) that some qualification is required to ensure that this is not a ‘*no development*’ objective. That would not be appropriate in a non-outstanding rural environment.
458. Providing a complete exemption for location-specific resources would, however, go too far in the opposite direction. A provision of this kind could perhaps be justified with respect to use and development of renewable energy resources, relying on the NPSREG 2011, but we heard no evidence of any demand for such development in the non-outstanding rural areas of the District. In any event, the submission that such provision be made was advanced on behalf of mining interests who were clearly pursuing a different agenda.
459. Because the focus of this objective is on rural character and the landscapes in question are only a relatively small subset of the rural landscapes of the district, we recommend that the term utilised on the planning maps and in the PDP generally for these landscapes is ‘*Rural Character Landscapes*’.
460. In summary, for all of these reasons, we recommend that Objectives 3.2.5.2 and 3.2.5.3 be combined in an amended Objective 3.2.5.2 reading as follows:

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

461. Objective 3.2.5.4 as notified read as follows:

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

462. Most of the focus of submissions on this objective was on the word “*finite*”. The issue, as it was put by Mr Tim Williams³⁴⁸ to us, is that without an identification of what that finite capacity is, and where current development is in relation to that capacity, the objective serves little purpose. Mr Williams supported greater direction as to which areas have capacity to absorb further development, and which areas do not³⁴⁹. Many of the submissions also sought that the objective provide for an appropriate future capacity for residential activity.
463. In his reply evidence, Mr Paetz recommended that this objective be revised to read:

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

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

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

- 464. As restated, we do not consider the objective adds any value that is not already captured by our recommended revised Objective 3.2.5.2/3.
- 465. We recommend that it be deleted.
- 466. In summary, we consider that the objectives recommended are individually and collectively the most appropriate way to achieve the purpose of the Act as it relates to landscapes in the District.

2.12. Section 3.2.6 – Community Health and Safety

- 467. As notified, this goal read:

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

- 468. A number of submissions supported this goal.
- 469. Submission 197 opposed it on the basis that large employers in the District should be responsible for providing affordable accommodation for their employees.
- 470. Submission 806 sought removal of unnecessary repetition. The reasons provided for the submission suggest that the area of repetition referred to is in relation to urban development.
- 471. Submission 807 sought that the whole of Section 3.2.6 should be deleted, or in the alternative the number of objectives and policies should be significantly reduced.
- 472. Mr Paetz did not recommend any change to this goal.
- 473. The focus of the RPS (Objective 9.4.1) is on sustainable management of built environment as a means, among other things, to meet people’s needs. This is both extremely general and more narrowly directed than the PDP goal. Policy 9.5.5 gets closer, with a focus on maintaining, and where practicable enhancing, quality of life, albeit that the means identified for doing so are generally expressed.
- 474. The Proposed RPS has a chapter entitled *“Communities in Otago are resilient, safe and healthy”*³⁵⁰. The focus of objectives in the chapter is on natural hazards, climate change, provision of infrastructure and the supply of energy, management of urban growth and development, and of hazardous substances. The following chapter is entitled *“People are able to use and enjoy Otago’s natural and built environment”*, with objectives focussing on public access to the environment, historic heritage resources, use of land for economic production and management of adverse effects.
- 475. Policy 1.1.3 of the Proposed RPS focuses more directly on provision for social and cultural wellbeing and health and safety, albeit in terms providing flexibility as to how this is achieved, except in relation to human health (significant adverse effects on which must be avoided).
- 476. We regard the higher level focus of these chapters as supporting the intent of this goal, and Policy 1.1.3 as providing guidance as to how it might be framed.

³⁵⁰ Proposed RPS, Chapter 4

477. At present, this goal is framed as a policy, commencing with a verb.
478. Looking at what outcome is being sought here and the capacity of the District Plan to achieve that outcome, we take the view that this particular higher-level objective is better framed in section 5 terms; emphasis is therefore required on people in communities providing for their social, cultural and economic well being and their health and safety. As above, this is also the direction Policy 1.1.3 of the Proposed RPS suggests.
479. So stated, there is an area of overlap with Goal/Objective 3.2.2 (as Submission 806 observes), but we nevertheless regard this as a valuable high-level objective, particularly for the non-urban areas of the District.

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

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

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

2.13. Section 3.2.6 – Additional Objectives

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

483. Objective 3.2.6.4 as notified read:

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

484. While the submissions on all of these objectives were almost universally in support, we view these matters, to the extent that they are within the ability of the PDP to implement³⁵¹, as being more appropriately addressed in the context of Chapter 4. We therefore accept the point made in Submission 807 summarised above, that the objectives in this section might be significantly pared back.

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

2.14. Section 3.2.7 – Goal and Objectives

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

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

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

2.15. Potential Additional Goals and Objectives

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

488. A number of submitters³⁵² sought insertion of a 'goal' specifically related to tourism, generally in conjunction with a new strategic objective and policy. We have already addressed the submissions related to objectives and policies for tourism. While important to the District, ultimately we consider tourism is an aspect of economic development and therefore covered by (now) higher order objective 3.2.1. We therefore recommend rejection of these submissions.

489. The Upper Clutha Tracks Trust³⁵³ sought insertion of a new goal worded as follows:

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

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

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

492. NZIA³⁵⁴ likewise sought insertion of a new goal, worded as follows:

"Demand good design in all development."

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

494. Slopehill Properties Limited³⁵⁵ sought a new objective (or policy) to enable residential units to be constructed outside and in addition to approved residential building platforms with a primary use of the increased density is to accommodate family. Mr Farrell gave planning evidence on this submission, supported by members of the Columb family who own property between Queenstown and Arthurs Point. Clearly, a case can be made to address situations like that of the Columb family where different generations of the same family seek to live in close proximity. The difficulty we see with an objective in the District Plan (or indeed a policy) providing for this situation is that there appears to be no safeguard against it being used on a large scale to defeat the objective seeking to retain the rural character of land outside existing

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

³⁵³ Submission 625: Supported in FS1097; Opposed in FS1347

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

³⁵⁵ Submission 854: Supported in FS1286; Opposed in FS1349

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

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

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

3. POLICIES

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

3.1. Policy 3.2.1.1.3 – Visitor Industry

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

499. As notified, that policy read:

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

500. The submissions on this policy all sought to expand its scope beyond the Queenstown and Wanaka central areas. Many submissions have sought that the focus be district-wide. One submission³⁵⁶ sought to link the promotion of visitor industry growth to maintenance of the quality of the environment.

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

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

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

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

³⁵⁶ Submission 806

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

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

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

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

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

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

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

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

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

510. As notified these two policies read:

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

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

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

Queenstown, and Three Parks in relation to Wanaka. Willowridge Developments Ltd³⁵⁷ sought to confine both policies to a focus on the business and commercial areas of Queenstown and Wanaka. Queenstown Park Limited³⁵⁸ also sought to soften Policy 3.2.1.1.2 so that it was less directive. NZIA³⁵⁹ sought recognition that the Queenstown and Wanaka town centres play a broader role than just as commercial hubs.

512. In his reply evidence, Mr Paetz recommended:
- a. Consequential changes in the wording based on his recommended objective, to refer to Queenstown and Wanaka town centres;
 - b. Amending Policy 3.2.1.1.1 to refer to the civic and cultural roles of the two town centres;
 - c. Deletion of the word '*fundamentally*' from Policy 3.2.1.1.2;
 - d. Addition of four new policies recognising the role of Frankton commercial areas and the importance of Queenstown Airport, and a further policy focused on Three Parks.
513. Addressing first the suggested amendments to Policies 3.2.1.1.1 and 3.2.1.1.2, we agree with Mr Paetz's recommendations with only a minor drafting change. NZIA make a good point regarding the broader role of the town centres. Similarly, the word '*fundamentally*' is unnecessary. Testing whether additional zoning could '*undermine*' the role of the existing town centres already conveys a requirement for a substantial adverse effect.
514. We also agree that, provided the separate roles of the Frankton and Three Parks are addressed, a strong policy direction is appropriate.
515. As a result, we recommend that Policies 3.2.1.1.1. and 3.2.1.1.2 be renumbered and amended to read as follows:
- “3.3.2 *Provide a planning framework for the Queenstown and Wanaka town centres that enables quality development and enhancement of the centres as the key commercial, civic and cultural hubs of the District, building on their existing functions and strengths.*
- 3.3.3 *Avoid commercial rezoning that could undermine the role of the Queenstown and Wanaka town centres as the primary focus for the District's economic activity.*”
516. We note that the provisions of the RPS related to management of the built environment³⁶⁰ are too high level and generally expressed to provide direction on these matters. Policy 5.3.3 of the Proposed RPS, however, supports provisions which avoid “*unplanned extension of commercial activities that has significant adverse effects on the central business district and town centres, including on the efficient use of infrastructure, employment and services.*”
517. As regards the new policies suggested by Mr Paetz for Frankton and Three Parks, we agree with the recommendations of Mr Paetz with five exceptions.
518. We recommend that reference to Frankton not be limited to the commercial areas of that centre because existing industrial areas play an important local servicing role (as recognised by the revised recommended objective above) and Queenstown Airport has a much broader role than solely “*commercial*”. We also consider that reference to “*mixed-use*’ development

³⁵⁷ Submission 249: Opposed in FS1097

³⁵⁸ Submission 806: Supported in FS1012

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

³⁶⁰ RPS, Section 9.4

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

519. Secondly, Mr Paetz recommended that recognition of Queenstown Airport refer to its “essential” contribution to the prosperity and “economic” resilience of the District.
520. While Queenstown Airport plays an extremely important role, we take the view that categorising it as “essential” would imply that it prevailed over all other considerations. Given the competing matters that higher order documents require be recognised and provided for (reflecting in turn Part 2 of the Act), we do not regard that as appropriate.
521. We have also taken the view that the nature of the contribution Queenstown Airport makes is not limited to its economic contribution. The evidence for QAC emphasised to us that Queenstown Airport is a lifeline utility under the Civil Defence Emergency Management Act 2002 with a key role in planning and preparing for emergencies, and for response and recovery in the event of an emergency. We accordingly recommend that the word “economic” be deleted from Mr Paetz’s suggested policy.
522. In addition, we have determined that greater direction is required (consistent with the objective we have recommended) regarding the function of the Frankton commercial area in the context of Mr Paetz’s suggested policy that additional commercial rezoning that would undermine that function be avoided.
523. It follows that we do not accept the suggestion of Mr Chris Ferguson in his evidence that the new Frankton policy should only constrain additional zoning within Frankton. Mr Paetz confirmed in response to our question that his intention was that the policy should extend to apply to areas outside Frankton – most obviously Queenstown itself – and we agree that this is appropriate.
524. Lastly, we do not think it necessary to refer to “future” additional commercial rezoning given that any additional rezoning will necessarily be in the future.
525. In summary, we recommend four new policies numbered 3.3.4-3.3.7 and worded as follows:

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

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

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

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

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

3.3. Policies 3.2.1.2.1 – 3 – Commercial and Industrial Services

527. Policy 3.2.1.2.3 as notified read:

“Avoid non-industrial activities occurring within areas zoned for industrial activities.”

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

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

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

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

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

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

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

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

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

534. Submissions on Policy 3.2.1.2.1 sought either its deletion³⁶¹ or significant amendment to focus it on when additional commercial rezoning might be enabled³⁶². Submissions on Policy 3.2.1.2.2 sought recognition of the role of industrial precincts in townships and broadening the focus beyond townships to commercial, mixed use and industrial zones generally, and to their role in meeting visitor needs³⁶³.

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

³⁶¹ Submission 608: Opposed in FS1034

³⁶² Submission 806

³⁶³ Submissions 726 and 806

536. Policy 5.3.3. of the Proposed RPS, already referred to in the previous section of our report, needs to be noted in this context also.
537. Logically, these policies should be considered in reverse order, addressing the positive role of township commercial precincts and local shopping centres first. We do not consider that it is necessary to both “reinforce and support” that role. These terms are virtually synonyms. We take the view, however, that greater direction is required in how such precincts and centres might be supported. We recommend reference to enabling commercial development that is appropriately sized for the role of those precincts and centres.
538. That is not to say that those areas do not have other roles, such as in meeting resident and visitor needs, and providing industrial services, but in our view, those are points of detail that can be addressed in the more detailed provisions of the PDP.
539. Mr Paetz suggested revision to Policy 3.2.1.2.1, to remove reference to the Queenstown and Wanaka town centres, would mean that there is an undesirable policy gap for centres within the Queenstown and Wanaka urban areas, but outside the respective town centres (apart from Frankton and Three Parks).
540. In summary, we recommend that these policies be renumbered 3.3.9 and 3.3.10, and amended to read:
- “Support the role township commercial precincts and local shopping centres fulfil in serving local needs by enabling commercial development that is appropriately sized for that purpose.*
- Avoid commercial rezoning that would undermine the key local service and employment function role that the centres outside of the Queenstown and Wanaka town centres, Frankton and Three Parks fulfil.”*
541. We consider that these policies are the most appropriate way, in the context of high-level policies, to achieve objective 3.2.1.5.

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

542. As notified, these policies read:

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

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

543. Submissions on Policy 3.2.1.3.1 either supported the policy as is³⁶⁴ or sought that it be more overtly enabling³⁶⁵. One submission³⁶⁶ sought amendment to remove reference to capacity and to insert reference to avoiding, remedying or mitigating adverse effects.

³⁶⁴ Submissions 608: Opposed in FS1034

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

³⁶⁶ Submission 806

544. Submissions on 3.2.1.3.2 either supported the policy as is³⁶⁷ or sought to delete reference to opportunities, and to energy and fuel pressures³⁶⁸.
545. Mr Paetz recommended that the policies remain as notified.
546. We regard the current form of Policy 3.2.1.3.1 as appropriate. If it were amended to be more enabling, then reference would have to be made to management of adverse effects. Simply providing for avoiding, remedying or mitigating adverse effects on the environment, as suggested by Queenstown Park Limited, would provide insufficient direction for the reasons discussed already. The existing wording provides room for the nature of the provision referred to be fleshed out in more detailed provisions. We therefore recommend that Policy 3.2.1.3.1 be retained as notified other than to renumber it 3.3.11.
547. Turning to notified Policy 3.2.1.3.2, we have already discussed the provisions of both the RPS and the Proposed RPS related to climate change. While the former provides no relevant guidance, the Proposed RPS clearly supports the first part of the policy. While Policy 4.2.2(c) talks of encouraging activities that reduce or mitigate the effects of climate change, the reasons and explanation for the objective and group of policies addressing climate change as an issue note that it also provides opportunities. We therefore recommend rejection of the submission seeking deletion of reference to opportunities in this context.
548. We heard no evidence, however, of energy and fuel pressures such as would suggest that they need to be viewed in the same light as the effects of climate change.
549. Accordingly, we recommend renumbering Policy 3.2.1.3.2 as 3.3.12 and amending it to read:
- “Encourage economic activity to adapt to and recognise opportunities and risks associated with climate change.”*
550. We consider that recommended Policies 3.3.11 and 3.3.12 are the most appropriate way, in the context of a package of high level policies, to achieve objectives 3.2.1.1, 3.2.1.2, 3.2.1.5, 3.2.1.6 and 3.2.1.9.

3.5. Policies 3.2.2.1.1 – 7 – Urban Growth

551. As notified, these policies provided for fixing of Urban Growth Boundaries (UGBs) around identified urban areas and detailed provisions as to the implications of UGBs both within those boundaries and outside them. In his Section 42A Report, Mr Paetz recommended that all of these policies be deleted from Chapter 3 because of the duplication they created with the more detailed provisions of Chapter 4. By his reply evidence, Mr Paetz had reconsidered that position and recommended that the former Policy 3.2.2.1.1 be reinserted, reading as follows:
- “Apply Urban Growth Boundaries (UGBs) around the urban areas in the Wakatipu Basin (including Jacks Point), Arrowtown and Wanaka”.*
552. This policy also needs to be read with Mr Paetz’s recommended amended Policy 3.2.5.3.1 reading:
- “Urban development will be enabled within Urban Growth Boundaries and discouraged outside them.”*

³⁶⁷ Submission 806

³⁶⁸ Submission 598: Supported in FS1287

553. The effect of the suggested Policy 3.2.5.3.1 is to materially amend the notified Policy 3.2.2.1.2 which sought avoidance of urban development outside of the UGBs.
554. We agree with Mr Paetz’s underlying recommendation that most of the policies formerly in Section 3.2.2 should be shifted and amalgamated with the more detailed provisions in Chapter 4, both to avoid duplication and to better focus Chapter 3 on genuinely ‘*strategic*’ matters.
555. We also agree with Mr Paetz’s recommendation that the decision as to whether there should be UGBs and the significance of fixing UGBs for urban development outside the boundaries that are identified, are strategic matters that should be the subject of policies in Chapter 3.
556. Submissions on Policies 3.2.2.1.1 and 3.2.2.1.2 covered the range from support³⁶⁹ to seeking their deletion³⁷⁰.
557. One outlier is the submission from Hawea Community Association³⁷¹ seeking specific reference to a UGB for Lake Hawea Township. Putting aside Lake Hawea Township for the moment, within the extremes of retention or deletion, submissions sought softening of the effect of UGBs³⁷² or seeking to manage urban growth more generally, without boundaries on the maps³⁷³.
558. The starting point, but by no means the finishing point, is that the ODP already contains a policy provision enabling the fixing of UGBs and the UGB has been fixed for Arrowtown after a comprehensive analysis of the site-specific issues by the Environment Court³⁷⁴. It is also relevant that Policy 4.5.1 of the Proposed RPS provides for consideration of the need for UGBs to control urban expansion, but does not require them.
559. The evidence for Council supported application of UGBs on urban design grounds (from Mr Bird) and in terms of protection of landscape and rural character values (Dr Read). The Council also rested its case on UGBs on infrastructure grounds and Mr Glasner’s evidence set out the reasons why infrastructure constraints and the efficient delivery of infrastructure might require UGBs. However, his answers to the written questions that we posed did not suggest that infrastructure constraints (or costs) were actually an issue either in the Wakatipu Basin or the Upper Clutha Basin, where the principal demand for urban expansion exists. Specifically, Mr Glasner’s evidence was that the only areas where existing or already planned upgrades to water supply and sewerage systems would not provide sufficient capacity for projected urban growth would be in Gibbston Valley and at Makarora. To that extent, Mr Glasner’s responses tended to support the submissions we heard from Mr Goldsmith³⁷⁵. Mr Glasner did say, however, that the UGBs would be a key tool for long term planning, in terms of providing certainty around location, timing, and cost of infrastructure investments. We heard no expert evidence that caused us to doubt Mr Glasner’s evidence in this regard.

³⁶⁹ Submission 719

³⁷⁰ Submission 806

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

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

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

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

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

560. Mr Paetz also sought to reassure us that the areas within the currently defined UGBs are more than sufficient to provide for projected population increases³⁷⁶. Ultimately, however, that evidence goes more to the location of any UGBs (and to satisfying us that the NPSUDC 2016 is appropriately implemented) rather than the principle of whether there should be any at all (and is therefore a matter for the mapping hearings).
561. The evidence from submitters we heard largely either supported or accepted the principle of UGBs. Mr Dan Wells³⁷⁷ was a clear exception. He emphasised that unlike the historic situation in Auckland where the metropolitan limits have previously been “locked in” by being in the Regional Policy Statement, UGBs in a District Plan do not have the same significance, because they can be altered by future plan changes (including privately initiated plan changes). Mr Wells also expressed the view that a resource consent process was just as rigorous as a plan change and there was no reason why the PDP should preclude urban expansion by resource consent. Mr Wells noted, however, that both processes had to be addressing development at a similar scale for this to be the case. In other words, a resource consent application for a one or two section development would involve must less rigorous analysis than a Plan Change facilitating development of one hundred sections.
562. To us, the most pressing reason for applying UGBs is that without them, the existing urban areas within the District can be incrementally expanded by a series of resource consent applications at a small scale, each of which can be said to have minimal identifiable effects relative to the existing environment.
563. This is of course the classic problem of cumulative environmental effects and while a line on a map may be somewhat arbitrary, sometimes lines have to be drawn to prevent cumulative effects even when they cannot be justified on an “effects basis” at the margin³⁷⁸.
564. The other thing about a line on a map is that it is clear. While, in theory, a policy regime might have the same objective, it is difficult to achieve the necessary direction when trying to describe the scope of acceptable urban expansion beyond land which is already utilised for that purpose. It is much clearer and more certain if the policy is that there be no further development, which is why we regard it as appropriate in relation to urban creep in the smaller townships and settlements of the District, as discussed further below.
565. In summary, we conclude that UGBs do serve a useful purpose (in section 32 terms they are the most appropriate way in the context of a package of high-level policies to implement the relevant objective, (3.2.2.1), as we have recommended it be framed.
566. Accordingly, we recommend that with one substantive exception, and one drafting change discussed shortly, Policy 3.2.2.1.1 be retained.
567. The substantive exception arises from our belief that it is appropriate to prescribe a UGB around Lake Hawea Township. The Hawea Community Association³⁷⁹ sought that outcome and the representatives of the Association described the extent of consultation and community consensus to us on both imposition of a UGB and its location when they appeared

³⁷⁶ M Paetz, Reply Evidence at section 7

³⁷⁷ Giving evidence for Millbrook Country Club, Bridesdale Farm Developments and Winton Partners Fund
³⁷⁸ Compare *Contact Energy Limited v Waikato Regional Council* CIV2006-404-007655 (High Court – Woodhouse J) at [69]-[83] in the context of setting rules around water quality limits

³⁷⁹ Submission 771

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

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

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

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

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

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

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

“That further urban development of the District’s small rural settlements be located within and immediately adjoining those settlements.”

573. NZIA³⁸⁰ sought that urban development be confined to within the UGBs. Queenstown Park Limited³⁸¹ sought amendment of the policy to ensure its consistency with other policies related to UGBs.

574. Mr Paetz recommended that the policy provision in this regard sit inside Chapter 4 and be worded:

“Urban development is contained within existing settlements.”

575. As notified, Policy 4.2.1.5 was almost identical to Policy 3.2.1.7. In that context, NZIA was the only submitter seeking amendment to the Policy; that it simply state:

“Urban development is contained.”³⁸²

576. Clearly Mr Paetz is correct and the duplication between these two policies needs to be addressed³⁸³. We consider, however, that the correct location for this policy is in Chapter 3 because it needs to sit alongside the primary policy on UGBs. Secondly, it needs to be clear that this is a complementary policy. As recommended by Mr Paetz, the policy is in fact

³⁸⁰ Submission 238: Opposed in FS1097, FS1107, FS1157, FS1226, FS1234, FS1239, FS1241, FS1242, FS1248 and FS1249

³⁸¹ Submission 806

³⁸² Opposed in FS1107, FS1226, FS1234, FS1239, FS1241, FS1242, FS1248 and FS1249

³⁸³ Refer the Real Journeys Submission noted on the more general point of duplication

inconsistent with 3.2.2.1 because in the urban areas with UGBs, provision is made to varying degrees for further urban development outside the existing settled areas.

577. In summary, we recommend that the policy be renumbered (as 3.3.15) and read:

“Locate urban development of the settlements where no UGB is provided within the land zoned for that purpose.”

578. We accept that there is an element of circularity in referring to the existing zone provisions in this regard, but we regard this as the most appropriate way to achieve Objectives 3.2.1.8, 3.2.2.1, 3.2.3.1, 3.2.5.1 and 3.2.5.2 (as those objectives bear upon the point) given that the Township Zone provisions are a matter assigned to a subsequent stage of the District Plan review.

579. The last substantive issue that needs to be addressed under this heading is the extent to which urban development is provided for outside UGBs (and outside the other existing settlements).

580. The starting point is to be clear what it is the PDP is referring to when policies focus on *“urban development”*.

581. The definition of urban development in the PDP as notified reads:

“Means any development/activity within any zone other than the rural zones, including any development/activity which in terms of its characteristics (such as density) and its effects (apart from bulk and location) could be established as of right in any zone; or any activity within an urban boundary as shown on the District Planning maps.”

582. At first blush, this definition would suggest that any development within any of the many special zones of the PDP constitute *“urban development”* since they are not rural zones and the qualifying words in the second part of the definition do not purport to apply to all urban development. Similarly, no development of any kind within the rural zones is defined to be urban development. Given that one of the principal purposes of defining urban growth boundaries is to constrain urban development in the rural zones, the definition would gut these policies of any meaning.

583. This definition is largely in the same terms as that introduced to the Operative Plan by Plan Change 50. The Environment Court has described it, and the related definition of *“Urban Growth Boundary”* in the following terms³⁸⁴:

“A more ambivalent and circular set of definitions would be hard to find.”

584. The Court found that urban development as defined means:

“... any development/activity which:

- a. Is of an urban type, that is any activity of a type listed as permitted or controlled in a residential, commercial, industrial or other non-rural zone; or*
- b. Takes place within an “Urban Growth Boundary” as shown on the District’s Planning Maps.”*

³⁸⁴ *Monk v Queenstown-Lakes District Council* [2013] NZEnvC12 at [20]

585. The Court also commented that a definition is not satisfactory if it relies on an exercise of statutory interpretation³⁸⁵.

586. We entirely agree.

587. When counsel for the Council opened the Stream 1A and 1B hearing, we asked Mr Winchester to clarify for us what the definition really meant. He accepted that it was unsatisfactory and undertook to revert on the subject. As part of the Council's reply, both counsel and Mr Paetz addressed the issue. Mr Paetz suggested, supported by counsel, that a revised definition adapted from the definition used in the Proposed Auckland Unitary Plan (as notified) should be used, reading as follows:

"Means development that by its scale, intensity, visual character, trip generation and/or design and appearance of structures, is of an urban character typically associated with urban areas. Development in particular special zones (namely Millbrook and Waterfall Park) is excluded from the definition."

588. This recommendation is against a background of a submission from Millbrook Country Club³⁸⁶ seeking that the definition be revised to:

"Means develop and/or activities which:

- a. Creates or takes place on a site of 1500m² or smaller; and*
- b. Is connected to reticulated Council or community water and wastewater infrastructure; and*
- c. Forms part of ten or more contiguous sites which achieve both (a) and (b) above; but*
- d. Does not includes resort style development such as that within the Millbrook Zone."*

589. We also note MacTodd's submission³⁸⁷ seeking that the definition be amended in accordance with the Environment Court's interpretation of the existing definition, as above.

590. Although counsel for Millbrook referred to the Proposed Auckland Unitary Plan definition of urban activities (as notified³⁸⁸) as part of his submissions³⁸⁹, it appears that Millbrook's formal submission had been drafted with an eye to the definition in the then Operative Auckland Regional Policy Statement that reads:

"Urban development – means development which is not of a rural nature. Urban development is differentiated from rural development by its scale, density, visual character, and the dominance of built structures. Urban development may also be characterised by a reliance on reticulated services (such as water supply and drainage), by its generation of traffic and includes activities (such as manufacturing), which are usually provided for in urban areas."

591. We also had the benefit of an extensive discussion with counsel for Millbrook, Mr Gordon, assisted by Mr Wells who provided planning evidence in support of the Millbrook submission, but not on this specific point.

³⁸⁵ See paragraph [24]

³⁸⁶ Submission 696

³⁸⁷ Submission 192

³⁸⁸ Noting that the Independent Hearing Panel recommended deletion of that definition, apparently on the basis that it did no more than express the ordinary and natural meaning of the term, and Auckland Council accepted that recommendation in its decisions on the Proposed Plan

³⁸⁹ As did counsel for Ayrburn Farm Estate Ltd and Others

592. A large part of that discussion was taken up in trying to identify whether the Millbrook development is in fact urban development, and if not, why not. Mr Gordon argued that Millbrook was something of a special case because it provides for activities that are neither strictly urban nor rural. He distinguished Jacks Point, which is contained within an existing UGB because it has provision in its structure planning for facilities like childcare, kindergartens, schools, convenience stores and churches, as well as being of a much larger scale than Millbrook.
593. We also had input from counsel for Darby Planning LP, Ms Baker-Galloway, on the point. She submitted that the definition should not be a quantitative approach, e.g. based on density, but should rather be qualitative in nature. Beyond that, however, she could not assist further.
594. We agree that quantitative tests such as those suggested by Millbrook are not desirable. Among other things, they invite developments that are designed around the quantitative tests (in this case, multiple 9 section developments or developments on sites marginally over 1500m²). We also note the example discussed in the hearing of houses on 2000-3000m² sites in Albert Town that are assuredly urban in every other respect.
595. We also have some difficulties with the definition suggested by Mr Paetz because some types of development are typically associated with urban areas, but also commonly occur in rural areas, such as golf courses and some industries. We think that there is value in the suggestion from Millbrook (paralleled in the referenced Operative Auckland Regional Policy Statement definition in this regard) that reference might be made to connections to water and wastewater infrastructure, but we do not think they should be limited to Council or community services. It is the reticulation that matters, rather than the identity of its provider. Jacks Point, for instance, has its own water and wastewater services, whereas Millbrook is connected to Council water supply and wastewater services.
596. Insofar as Millbrook sought an exclusion for “*resort style development*”, that rather begs the question; what is a resort?
597. Having regard to the submissions we heard from Millbrook, we think that the key characteristics of a resort are that it provides temporary accommodation (while admitting of some permanent residents) with a lower average density of residential development than is typical of urban environments, in a context of an overall development focused on on-site visitor activities. Millbrook fits that categorisation, but Jacks Point does not, given a much higher number of permanent residents, the geographical separation of the golf course from the balance of the development and the fact that the overall development is not focussed on on-site visitor activities. It is in every sense a small (and growing) township with a high-quality golf course.
598. The last point we have to form a view on is whether, as Mr Paetz recommends, the Waterfall Park Zone should similarly be excluded from the definition of urban development. Mr Paetz’s reply evidence accepted that the density of a permitted development within the Waterfall Park Zone would be closer to urban development and made it clear that the entire Waterfall Park Zone is an anomaly; in his words:

“The sort of sporadic and ad hoc urban intensity zoning in the middle of the countryside that Council is looking to discourage through the PDP”³⁹⁰.

³⁹⁰ M Paetz, Reply Evidence at 6.16

599. The Waterfall Park Zone has not been implemented. We have no evidence as to the likelihood that it will be implemented and form part of the 'existing' environment in future. Certainly, given Mr Paetz's evidence, we see no reason why a clearly anomalous position should drive the wording of the PDP policies on urban development going forward.

600. For these reasons, we do not consider special recognition of Waterfall Park is required.

601. A separate Hearing Panel (Stream 10) will consider Chapter 2 (Definitions) of the PDP. That Hearing Panel will need to form a view on the matters set out above and form a final view in the light of the submissions and evidence heard in that stream, what the recommendation to Council should be.

602. For our part, however, we recommend to the Stream 10 Hearing Panel that the definition of urban development be retained to provide clarity on the appropriate interpretation of the PDP³⁹¹ and amended to read:

"Means development that is not of a rural character and is differentiated from rural development by its scale, intensity, visual character and the dominance of built structures. Urban development may also be characterised by a reliance on reticulated services such as water supply, wastewater and stormwater and by its cumulative generation of traffic. For the avoidance of doubt, a resort development in an otherwise rural area does not constitute urban development".

We further recommend that a new definition be inserted as a consequence of our recommendation as above:

"Resort" – means an integrated and planned development involving low average density of residential development (as a proportion of the developed area) principally providing visitor accommodation and forming part of an overall development focussed on on-site visitor activities."

603. We have proceeded on the basis that when the objectives and policies we have to consider use the term 'urban development', it should be understood as above.

604. Turning then to the more substantive issue, whether urban development, as defined, should be avoided or merely discouraged outside the UGBs and other existing settlements, Mr Paetz's recommendation that Policy 3.2.5.3.1 be amended to provide the latter appears inconsistent with his support for Policy 4.2.2.1 which reads:

"Urban Growth Boundaries define the limits of urban growth, ensuring that urban development is contained within those identified boundaries, and urban development is avoided outside of those identified boundaries."

605. Mr Paetz did not explain the apparent inconsistency, or indeed, why he had recommended that Policy 3.2.5.3.1 should be amended in this way.

³⁹¹ The need for clarity as to the classification of Millbrook and other similar resorts that might be established in future causes us to take a different view on the need for a definition than that which the Auckland Independent Hearings Panel came to.

606. Ultimately, we view this as quite a simple and straightforward question. Mr Clinton Bird, giving urban design evidence for the Council, aptly captured our view when he told us that you have either got an urban boundary or not. If you weaken the boundary, you just perpetuate urban sprawl.
607. This is the same approach that is taken in the Proposed RPS, which provides³⁹² that where UGBs are identified in a District Plan, urban development should be avoided beyond the UGB.
608. It follows that we favour a policy of avoidance of urban development outside of the UGB's, as provided for in the notified Policy 3.2.2.1.2. Our view is that any urban development in rural areas should be the subject of the rigorous consideration that would occur during a Plan Change process involving extension of existing, or creation of new, UGBs.
609. The revised definition we have recommended to the Stream 10 Panel provides for resort-style developments as being something that is neither urban nor rural and therefore sitting outside the intent of this policy.
610. In summary, and having regard to the amendments recommended to relevant definitions, we recommend retention of Policy 3.2.2.1.2 as notified (but renumbered 3.3.14) as being the most appropriate way, in the context of a package of high-level policies, in which to achieve Objectives 3.2.1.8, 3.2.2.1, 3.2.3.1, 3.2.5.1 and 3.2.5.2.

3.6. Section 3.2.2.2. Policies – Natural Hazards

611. As notified, policy 3.2.2.2.1 read:

“Ensure a balanced approach between enabling higher density development within the District’s scarce urban land resource and addressing the risks posed by natural hazards to life and property.”

612. The sole submission specifically on it³⁹³ sought its deletion or in the alternative, amendment “for consistency with the RMA”. The word “addressing” was the subject of specific comment – the submitter sought that it be replaced by “mitigated”.
613. Although Mr Paetz recommended that this Policy be retained in Chapter 3 as notified, for the same reasons we have identified that the relevant objective should be amalgamated with other objectives relating to urban development, we think that this policy should be deleted from Chapter 3, and the substance of the issue addressed as an aspect of urban development in Chapter 4. We think this is the most appropriate way in the context of a package of high-level policies to achieve the objectives of the plan related to urban development.

3.7. Section 3.2.3.1 Policies – Urban Development

614. The policies all relate to a quality and safe urban development. As such, while Mr Paetz recommends that they remain in Chapter 3, for the same reasons as the more detailed urban development policies have been deleted and their subject matter addressed as part of Chapter 4, we recommend that the three policies in Section 3.2.3.1 all be deleted, and their subject matter be addressed as part of Chapter 4, that being the most appropriate way to achieve the objectives of the plan related to urban development.

3.8. Section 3.2.3.2 Policy – Heritage Items

³⁹² Proposed RPS, Policy 4.5.2

³⁹³ Submission 806

615. Policy 3.2.3.2.1 as notified read:
- “Identify heritage items and ensure they are protected from inappropriate development.”*
616. Three submitters on this policy³⁹⁴ sought that the policy should be amended to state that protection of identified heritage items should occur in consultation with landowners and tenants.
617. Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Ōtākou, Te Rūnanga o Moeraki, Hokonui Rūnanga³⁹⁵ sought that the policy be expanded to refer to wāhi Tūpuna as well as heritage items.
618. Mr Paetz did not recommend any amendment to this policy.
619. The RPS has an objective identifying recognition and protection of heritage values as part of the sustainable management of the built environment³⁹⁶. The policy supporting this objective, however, focuses on identification and protection of *“regionally significant heritage sites”* from inappropriate subdivision, use and development. The RPS predates addition of section 6(f) of the Act³⁹⁷. The upgrading of historic heritage as an issue under Part 2 means, we believe, that the RPS cannot be regarded as authoritative on this point.
620. The Proposed RPS has a suite of policies supporting Objective 5.2, which seeks an outcome whereby historic heritage resources are recognised and contribute to the region’s character and sense of identity. Policy 5.2.3, in particular, seeks that places and areas of historic heritage be protected and enhanced by a comprehensive and sequential set of actions. Those provisions include recognition of archaeological sites, wāhi tapu and wāhi taoka (taonga), avoidance of adverse effects, remedying other adverse effects when they cannot be avoided, and mitigating as a further fallback.
621. Unlike the previous policies, heritage items are not solely found in urban environments and therefore it is not appropriate to shift this policy into Chapter 4.
622. We do not recommend any amendments to it (other than to renumber it 3.3.16) for the following reasons:
- a. While consultation with landowners is desirable, this is a matter of detail that should be addressed in the specific chapter governing heritage;
 - b. Addition to refer to wāhi tupuna is not necessary as identification and protection of wāhi tupuna is already governed by Section 3.2.7 (generally) and the more specific provisions in Chapter 5.
 - c. While the reference to inappropriate development provides limited guidance, the submissions on this policy do not provide a basis for greater direction as to the criteria that should be applied to determine appropriateness, for instance to bring it into line with the Proposed RPS approach.
623. In summary, given the limited scope for amendment provided by the submissions on this policy, we consider its current form is the most appropriate way to achieve Objectives 3.2.2.1 and 3.2.3.1 in the context of a package of high-level policies.

³⁹⁴ Submissions 607, 615 and 621: Supported in FS1105, FS1137 and FS1345

³⁹⁵ Submission 810: Supported in FS1098

³⁹⁶ RPS Objective 9.4.1(c)

³⁹⁷ And corresponding deletion of reference to historic heritage from section 7.

3.9. Section 3.2.4.2 Policies – Significant Nature Conservation Values

624. As notified, the two policies under this heading read:

“3.2.4.2.1 Identify areas of significant indigenous vegetation and significant habitats of indigenous fauna, referred to as Significant Natural Areas on the District Plan maps and ensure their protection.

3.2.4.2.2 Where adverse effects on nature conservation values cannot be avoided, remedied or mitigated, consider environmental compensation.”

625. Submissions on 3.2.4.2.1 either sought acknowledgement that significant natural areas might be identified in the course of resource consent application processes³⁹⁸ or sought to qualify the extent of their protection³⁹⁹.

626. Submissions on Policy 3.2.4.2.2 sought variously:

- a. A clear commitment to avoidance of significant adverse effects and an hierarchical approach ensuring offsets are the last alternative considered⁴⁰⁰;
- b. Amendment to make it clear that offsets are only considered as a last alternative to achieve no net loss of indigenous biodiversity and preferably a net gain⁴⁰¹;
- c. To draw a distinction between on-site measures to avoid, remedy or mitigate adverse effects and environmental compensation *“as a mechanism for managing residual effects”*⁴⁰²;

627. Mr Paetz recommended no change to Policy 3.2.4.2.1, but that Policy 3.2.4.2.2. be deleted. His reasoning for the latter recommendation was partly because he accepted the points for submitters that Policy 3.2.4.2.2 was inconsistent with the more detailed Policy 33.2.1.8, but also because, in his view, the policy was too detailed for the Strategic Chapter⁴⁰³.

628. Mr Paetz cited a similar concern (that the relief sought is too detailed) as the basis to reject the suggestion that identification of significant natural areas might occur through resource consent processes.

629. The Department of Conservation tabled evidence noting agreement with Mr Paetz’s recommendations.

630. Ms Maturin appeared to make representations on behalf of Royal Forest and Bird Protection Society. She maintained the Society’s submission on Policy 3.2.4.2.1, arguing that the Policy was in fact inconsistent with more detailed policy provisions indicating that such areas would be identified through resource consent applications, and that the failure to note that would promote confusion, if not mislead readers of the PDP. She supported, however, Mr Paetz’s recommendation that the following policy be deleted.

³⁹⁸ Submissions 339, 373, 706: Supported in FS1040; Opposed in FS1097, FS1162, FS1254, FS1287, FS1313, FS1342 and FS1347

³⁹⁹ Submissions 600 and 805: Supported in FS1209; Opposed in FS1034 and FS1040

⁴⁰⁰ Submission 339, 706: Supported in FS1313; Opposed in FS1015, FS1097, FS1162, FS1254 and FS1287

⁴⁰¹ Submission 373: Supported in FS1040; Opposed in FS1015, FS1097, FS1254, FS1287, FS1342 and FS1347

⁴⁰² Submission 598: Supported in FS1287; Opposed in FS1040

⁴⁰³ Section 42A Report at 12.89-12.90

631. In response to a question from us, Ms Maturin advised that the Society viewed any reference to environmental compensation or offsets as problematic and expressed the view that an applicant should provide a nationally significant benefit before offsets should even be considered.
632. Consideration of the submissions and evidence is against a background of the RPS having three objectives bearing on biodiversity issues:
- a. Objective 10.4.1:
“To maintain and enhance the life-supporting capacity of Otago’s biota.”
 - b. Objective 10.4.2:
“To protect Otago’s natural ecosystems and primary production from significant biological and natural threats.”
 - c. Objective 10.4.3:
“To maintain and enhance areas with significant habitats of indigenous fauna.”
633. Policy 10.5.2 should also be noted, providing for maintenance and where practicable enhancement of the diversity of Otago’s significant indigenous vegetation and significant habitats of indigenous fauna meeting one of a number of tests (effectively criteria for determining what is significant).
634. Policy 3.2.2 of the Proposed RPS takes a more nuanced approach than does the RPS, following the same sequential approach as for landscapes (in Policy 3.2.4, discussed above). Policy 5.4.6, providing for consideration of offsetting of indigenous biological diversity meeting a number of specified criteria, also needs to be noted.
635. We agree with Mr Paetz’s recommendation on Policy 3.2.4.2.1. The reality is if the Strategic Chapters have to set out every nuance of the more detailed provisions, there is no point having the more detailed provisions. We do not regard the fact that the more detailed provisions identify that significant natural areas may be identified through resource consent processes as inconsistent with Policy 3.2.4.2.1. Similarly, given the terms of the RPS and the Proposed RPS (and section 6(c) of the Act, sitting in behind them) we consider the policy is correctly framed, looking first and primarily to protection.
636. We are concerned, however, that the effect of Mr Paetz’s recommendation that Policy 3.2.4.2.2 be deleted is that it leaves the protection of Significant Natural Areas as a bald statement that the more detailed provisions in Chapter 33 might be considered to conflict with.
637. In addition, none of the submissions on this specific point sought deletion of Policy 3.2.4.2.2. While the much more general UCES submission referred to already provides scope to delete any provision of Chapter 3 (since it seeks deletion of the entire chapter) we prefer that the policies state more clearly the extent of the protection provided, and the circumstances when something less than complete protection might be acceptable, in line with the approach of the Proposed RPS.
638. Having said that, we take on board Ms Maturin’s caution that this particular area is a veritable minefield for the unwary and that any policy has to be framed quite carefully.

639. The first point to make is that given the terms of the higher order documents, we think the submitters seeking a policy direction that significant adverse effects on Significant Natural Areas are not acceptable are on strong ground.
640. Secondly, submitters are likewise on strong ground seeking that it be clear that the first preference for non-significant adverse effects is that they be avoided or remedied. We are not so sure about referring to mitigation in the same light⁴⁰⁴.
641. While the High Court has provided guidance as to the distinction between mitigation and environmental offsets/environmental compensation⁴⁰⁵, we recommend that the policy sidestep any potential debate on the distinction to be drawn between the two.
642. Thirdly, the submission seeking a requirement for no net loss in indigenous biodiversity and preferably a net gain is consistent with the Proposed RPS (Policy 5.4.6(b)) and this also needs to be borne in mind.
643. Lastly, we recommend that the division between the two policies be shifted so that Policy 3.2.4.2.1 relates to the identification of Significant Natural Areas and Policy 3.2.4.2.2 outlines how those areas will be managed.

644. In summary, we recommend that the policies as notified be renumbered 3.3.17 and 3.3.18 and amended to read:

“Identify areas of significant indigenous vegetation and significant habitats of indigenous fauna as Significant Natural Areas on the District Plan maps (SNAs);

Protect SNAs from significant adverse effects and ensure enhanced indigenous biodiversity outcomes to the extent that other adverse effects on SNAs cannot be avoided or remedied.”

3.10. Section 3.2.4.3 – Rare Endangered and Vulnerable Species

645. Policy 3.2.4.3.1 suggests a general requirement that development not adversely affect survival chances of rare, endangered or vulnerable species. Submissions sought variously:
- a. Expansion of the policy to cover development *“and use”*⁴⁰⁶;
 - b. Qualifying the policy to limit *“significant”* adverse effects⁴⁰⁷;
 - c. Qualifying the policy to make it subject to the viability of farming activities not being impacted⁴⁰⁸; and
 - d. Retaining the policy as notified.
646. Given that we see these policies as the means to achieve recommended Objective 3.2.4.1, we do not consider it necessary or appropriate to insert an additional policy on maintenance of biodiversity as sought in submission 339 and 706⁴⁰⁹.

⁴⁰⁴ Although accepting that the Proposed RPS does so at Policy 5.4.6(a)

⁴⁰⁵ Refer *Royal Forest & Bird Protection Society of New Zealand Inc v Buller District Council* [2013] NZHC 1346

⁴⁰⁶ Submissions 339 and 706: Opposed in FS1162

⁴⁰⁷ Submission 600: Supported in FS1209; Opposed in FS1034 and FS1040

⁴⁰⁸ Submission 701: Supported in FS1162

⁴⁰⁹ Opposed in FS1132, FS1162, FS1254 and FS1287

647. We have recommended the objective that this policy seeks to implement be deleted on the basis that it duplicates protection of areas with significant nature conservation values and the emphasis given elsewhere to maintenance of indigenous biodiversity.
648. Similar reasoning suggests that this policy is unnecessary. Any area which is relevant in any material way to the survival chances of rare, endangered or vulnerable species will necessarily be a significant natural area, as that term is defined. Consistently with that position, in the RPS policy discussed above (10.5.2), the fact that a habitat supports rare, vulnerable or endangered species is one of the specified criteria of significance. If any area falling within that description is not mapped as a SNA, then it should be so mapped so as to provide greater certainty both that the relevant objective will be achieved and for landowners, as to their ability to use land that is not mapped as a SNA. Accordingly, on the same basis as for the objective, we recommend that this policy be deleted, as being the most appropriate way, in combination with Policies 3.3.17 and 3.3.18, to achieve Objectives 3.2.1.7, 3.2.18, 3.2.4.1 and 3.2.4.3-4 inclusive as those objectives relate to indigenous biodiversity.

3.11. Section 3.2.4.4 Policies – Wilding Vegetation

649. As notified, policy 3.2.4.4.1 read:

“That the planting of exotic vegetation with the potential to spread and naturalise is banned.”

650. A number of submissions sought retention or minor drafting changes to this policy. Federated Farmers⁴¹⁰ however sought that the effect of the policy be softened to refer to appropriate management and reduction of risks.

651. In his Section 42A Report, Mr Paetz recognised that the policy might be considered too absolute. He recommended that it be revised to read:

“Prohibit the planting of identified exotic vegetation with the potential to spread and naturalise.”

652. As discussed in relation to Objective 3.2.4.4, wilding vegetation is a significant issue in the District. It is also quite a discrete point, lending itself to strategic direction⁴¹¹. We recommended that the objective aspired to is avoidance of wilding exotic vegetation spread. Management and reduction of risk would not achieve that objective, without a clear statement as to the outcome of management and/or the extent of risk reduction.

653. On the other hand, a prohibition of planting of exotic vegetation described only by the characteristic that it has potential to spread and naturalise would go too far. The public are unlikely to be able to identify all the relevant species within this very general description. Mr Paetz suggested limiting the prohibition to identified species⁴¹², but we think there also needs to be greater guidance as to what the extent of the ‘potential’ for spread needs to be to prompt identification, to ensure that the costs of a prohibition are not excessive, relative to the benefits and to make the suggested prohibition practicable, in terms of RPS Policy 10.5.3. We note in this regard the submissions on behalf of Federated Farmers by Mr Cooper that some wilding species are important to farming in the District at higher altitudes. For the same

⁴¹⁰ Submission 600: Supported in FS1091 and FS1209; Opposed in FS1034 and FS1040

⁴¹¹ A combination of circumstances which leads us to reject the suggestion of Mr Farrell that this issue does not justify having a high-level policy addressing it.

⁴¹² Identified in this case meaning identified in the District Plan

reason, we consider there is room for a limited qualification of the policy prohibition, but only if wilding species can be acceptably managed for the life of the planting.

654. Accordingly, we recommend that Policy 3.2.4.4.1 be renumbered 3.3.27 and worded:

“Prohibit the planting of identified exotic vegetation with the potential to spread and naturalise unless spread can be acceptably managed for the life of the planting.”

655. We consider that this policy wording is the most appropriate way to achieve Objective 3.2.4.2 in the context of a high-level policy,

3.12. Section 3.2.4.5 Policies – Natural Character of Waterways

656. Policy 3.2.4.5.1 as notified read:

“That subdivision and/or development which may have adverse effects on the natural character and nature conservation values of the District’s lakes, rivers, wetlands and their beds and margins be carefully managed so that life-supporting capacity and natural character is maintained or enhanced.”

657. The only amendments sought to this policy sought that reference be added to indigenous biodiversity⁴¹³.

658. Mr Paetz did not recommend any change to the policy as notified.

659. Objectives 6.4.3 and 6.4.8 of the RPS require consideration in this context. Objective 6.4.3 seeks to safeguard life supporting capacity through protecting water quality and quantity. Objective 6.4.8 seeks to protect areas of natural character and the associated values of wetlands, lakes, rivers and their margins. While these objectives are strongly protective of natural character and life-supporting capacity values, the accompanying policies are rather more qualified. Policy 6.5.5 promotes a reduction in the adverse effects of contaminant discharges through, in effect, a ‘maintain and enhance’, approach but with the rider “while considering financial and technical constraints”. Policy 6.5.6 takes a similarly qualified approach to wetlands with an effective acceptance of adverse effects that are not significant or where environmental ‘compensation’ (what we would now call off-setting) is provided. Lastly Policy 6.5.6 takes an avoid, remedy or mitigate approach to use and development of beds and banks of waterways, but poses maintenance (and where practicable enhancement) of life-supporting capacity as a further test.

660. As previously noted, the RPS predates the NPSFM 2014 and therefore, its provisions related to freshwater bodies must therefore be treated with some care. While the NPSFM 2014 is principally directed at the exercise of powers by regional councils⁴¹⁴, its general water quality objectives⁴¹⁵, seeking among other things, safeguarding of life supporting capacity and maintenance or improvement of overall water quality need to be noted. Objective C1 is also relevant, seeking improved integrated management of fresh water and use and development of land. From that perspective, we do not regard there being any fundamental inconsistency between the RPS and the subsequent NPSFM 2014, such as would require implementation of a different approach to that stated in the RPS.

⁴¹³ Submissions 339 and 706: Opposed in FS1015, FS1162, FS1254 and FS1287

⁴¹⁴ The policies are almost all framed in terms of actions regional councils are required to take

⁴¹⁵ Seeking among other things, safeguarding of the life supporting capacity and maintenance or improvement of overall water quality

661. The Kawarau WCO has a different focus to either RPS (operative or proposed) or the NPSFM 2014. It identifies the varying characteristics that make different parts of the catchment outstanding and for some parts of the catchment, directs their preservation as far as possible in their natural state, and for the balance of the catchment⁴¹⁶, directs protection of the characteristics identified as being present. The Kawarau WCO is principally targeted at the exercise of the regional council's powers. To the extent it is relevant to finalisation of the PDP, its division of the catchment, with different provisions applying to different areas, does not lend itself to being captured in a general policy applying across the District.
662. Lastly Policies 3.1.1 and 3.1.2 of the Proposed RPS take a '*maintain and enhance*' position for the different characteristics of water and the beds of waterways, respectively, in the context of an objective⁴¹⁷ seeking that the values of natural resources are "*recognised, maintained or enhanced*".
663. Against this background, we regard the adoption of the '*maintain or enhance*' test in the PDP policy as being both consistent with and giving effect to the relevant higher order documents.
664. An amendment to refer to indigenous biodiversity in this context would not reflect the form of the objective recommended, and so we do not support that change.
665. We do, however, recommend minor drafting amendments so that the policy be put more positively. We also do not consider that the word "*carefully*" adds anything to the policy since one would hope that all of the policies in the PDP will be implemented carefully.
666. Accordingly, we recommend that Policy 3.2.4.5.1 be renumbered 3.3.19 and amended to read:
- "Manage subdivision and/or development that may have adverse effects on the natural character and nature conservation values of the District's lakes, rivers, wetlands and their beds and margins so that their life-supporting capacity and natural character is maintained or enhanced."*
667. We consider that this policy is the most appropriate way in the context of a high-level policy to achieve the objectives of this chapter related to natural character and life supporting capacity of waterways and their margins (3.2.1.7, 3.2.4.1-4 inclusive, 3.2.5.1 and 3.2.5.2).

3.13. Section 3.2.4.6 Policies – Water Quality

668. As notified, policy 3.2.4.6.1 read:

"That subdivision and/or development be designed so as to avoid adverse effects on the water quality of lakes, rivers and wetlands in the District."

669. Submissions on the policy sought variously:
- a. Provision for remediation or mitigation of adverse effects on water quality⁴¹⁸;
 - a. Restriction to urban development⁴¹⁹;

⁴¹⁶ Excluding the lower Dart River, the lower Rees River, and the lower Shotover River that have provisions permitting road works and flood protection works.

⁴¹⁷ Proposed RPS, Objective 3.1

⁴¹⁸ Submission 598: Supported in FS1287; Opposed in FS1040

⁴¹⁹ Submission 600: Supported in FS1209; Opposed in FS1034

- b. Avoidance of significant adverse effects⁴²⁰;
- c. Provision for remediation or mitigation where avoidance is not possible⁴²¹;
- d. Avoidance of significant adverse effects on water quality where practicable and avoidance, remediation or mitigation of other adverse effects⁴²²;
- e. Insert reference to adoption of best practice in combination with designing subdivision development and/or to avoid, remedy or mitigate adverse effects⁴²³.

670. Mr Paetz did not recommend any amendment to the policy as notified.

671. The same provisions of the RPS, the NPSFM 2014 and the Proposed RPS as were noted in relation to the previous policy are relevant in this context. We note in particular the qualifications inserted on the management of contaminant discharges in Policy 6.5.5 of the RPS.

672. The RPS also states⁴²⁴ a policy of minimising the adverse effects of land use activities on the quality and quantity of water resources.

673. We accept the general theme of the submissions seeking some qualification of the otherwise absolute obligation to avoid all adverse effects on water quality, irrespective of scale or duration, given that the practical mechanisms to manage such effects (riparian management and setbacks, esplanade reserves, stormwater management systems and the like) are unlikely to meet such a high hurdle, even if that could be justified on an application of section 32 of the Act.

674. We think there is value in the minimisation requirement the RPS directs in combination with a best land use management approach (accepting the thrust of Submission 807 in this regard) so as to still provide clear direction. We do not accept, however, that the policy should be limited to urban development given that the adverse effects of development of land on water quality are not limited to urban environments.

675. While a minimisation policy incorporates avoidance, if avoidance is practically possible, we consider there is value in emphasising that avoidance is the preferred position.

676. In summary therefore, we recommend that Policy 3.2.4.6 be renumbered 3.3.26 and amended to read:

“That subdivision and/or development be designed in accordance with best practice land use management so as to avoid or minimise adverse effects on the water quality of lakes, rivers and wetlands in the District.”

677. We consider that this policy is the most appropriate way in the context of a high-level policy to achieve the objectives of this chapter related to water quality (3.2.1.8, 3.2.4.1 and 3.2.4.4).

3.14. Section 3.2.4.7 Policies – Public Access

678. Policy 3.2.4.7.1 as notified read:

⁴²⁰ Submission 768
⁴²¹ Submission 805
⁴²² Submission 635: Supported in FS1301
⁴²³ Submission 807
⁴²⁴ RPS, Policy 5.5.5

“Opportunities to provide public access to the natural environment are sought at the time of plan change, subdivision or development.”

679. One submission seeking amendment to this policy⁴²⁵ sought to emphasise that any public access needs to be ‘safe’ and would substitute the word “considered” for “sought”.
680. Another submission⁴²⁶ sought that specific reference be made to recreation opportunities.
681. Mr Paetz does not recommend any amendment to this policy.
682. Policy 6.5.10 of the RPS targets maintenance and enhancement of public access to and along the margins of water bodies. This is achieved through “encouraging” retention and setting aside of esplanade strips and reserves and access strips and identifying and providing for other opportunities to improve access. There are a number of exceptions specified in the latter case⁴²⁷, but the thrust of the policy is that exceptional reasons are required to justify restriction of public access.
683. Objective 5.1 of the Proposed RPS seeks maintenance and enhancement of public access of all areas of value to the community. Policy 5.1.1, supporting that objective, takes a similar approach to the RPS, directing maintenance and enhancement of public access to the natural environment unless one of a number of specified criteria apply.
684. Neither of the higher order documents require that all opportunities for enhancing public access be seized.
685. While reference to public safety would be consistent with both the RPS and the Proposed RPS, we do not consider that the amendments sought in Submission 519⁴²⁸ are necessary. The policy as it stands does not require public access, it suggests that public access be sought. Whether this occurs will be a matter for decision on a case by case basis, having regard as appropriate, to the regional policy statement operative at the time. The provisions of both the RPS and the Proposed RPS would bring a range of matters into play at that time, not just health and safety.
686. Similarly, we do not consider specific reference to recreational opportunities is required. Public access to the natural environment necessarily includes the opportunity to recreate, once in that environment (or that part of the natural environment that is publicly owned at least). If the motive underlying the submission is to enable commercial recreation activities then in our view, it needs to be addressed more directly, as an adjunct to provision for visitor industry activities, as was sought by Kawarau Jet Services Ltd⁴²⁹ in the form of a new policy worded:

“Provide for a range of appropriate Recreational and Commercial Recreational activities in the rural areas and on the lakes and rivers of the District.”

687. The suggested policy does not identify what might be an appropriate range of activities, or how issues of conflict between commercial operators over access to the waterways of the

⁴²⁵ Submission 519: Supported in FS1015; Opposed in FS1356

⁴²⁶ Submission 836: Supported in FS1097, FS1341 and FS1342

⁴²⁷ Including health and safety

⁴²⁸ Supported by the evidence of Mr Vivian

⁴²⁹ Submission 307: Supported in FS1097, FS1235, FS1341

District (previously an issue in a number of Environment Court cases) might be addressed. For all that, the suggested policy has merit. We will discuss shortly the appropriate policy response to commercial recreation activities in rural areas generally. We think the more specific issue of commercial recreation activities on the District's waterways is more appropriately addressed in Chapter 6 and we will return to it there.

688. We therefore recommend only a minor drafting change to put the policy (renumbered 3.3.28) more positively as follows:

“Seek opportunities to provide public access to the natural environment at the time of plan change, subdivision or development.”

689. We consider that this wording in the context of a high-level policy is the most appropriate way to achieve objective 3.2.4.5.

3.15. Section 3.2.4.8 – Policies – Climate Change

690. The sole policy under this heading read as notified:

“Concentrate development within existing urban areas, promoting higher density development that is more energy efficient and supports public transport, to limit increases in greenhouse gas emissions in the District”.

691. Submissions seeking changes to this policy sought variously:
- To be less directive, seeking encouragement where possible and deletion of reference to greenhouse gas emissions⁴³⁰;
 - Retaining the existing wording, but deleting the connection to greenhouse gas emissions⁴³¹;
 - Opposed it generally on the basis that suggested policy does not implement the objective⁴³².
692. Mr Paetz did not recommend any amendment to the policy.
693. We see a number of problems with this policy. As Submission 519 identified, not all development is going to be within existing urban areas. Quite apart from the fact that the UGBs provide for controlled growth of the existing urban areas, non-urban development will clearly take place (and is intended to take place) outside the UGBs.
694. If the policy were amended to be restricted to urban development, as we suspect is the intention, it would merely duplicate the UGB policies and be unnecessary.
695. In summary, we recommend that the most appropriate way to achieve the objectives of this chapter is if Policy 3.2.4.8.1 is deleted.
696. That is not to say that the PDP has no role to play in relation to climate change. We have already discussed where and how it might be taken into account in the context of Objective 3.2.4.8.

⁴³⁰ Submission 519: Supported in FS1015; Opposed in FS1356

⁴³¹ Submissions 519 and 598: Supported in FS1015 and FS1287; Opposed in FS1356

⁴³² Submission 798

697. Submission 117 sought a new policy to be applied to key infrastructure and new developments, relating to adaption to the effects of climate change. The submission specifically identified hazard management as the relevant adaptation.
698. We have already recommended specific reference to the need to take climate change into account when addressing natural hazard issues in the context of Objective 3.2.2.1.
699. We view further policy provision for adaption to any increase in natural hazard risk associated with climate change better dealt with as an aspect of management of development in both urban and rural environments rather than more generally. Accordingly, we will return to it in the context of our Chapter 4 and 6 reports.
700. We note that notified Policy 3.2.1.3.2 related to adaptation to climate change in other respects. We discuss that policy below.

3.16. Section 3.2.5 Policies - Landscape

701. As notified, Policy 3.2.5.1.1 related both to identification of ONLs and ONFs on the District Plan maps and to their protection.
702. In his Section 42A Report, Mr Paetz recommended that the policy be deleted on the basis that it duplicated matters that were better addressed in Chapter 6.
703. By his reply evidence, Mr Paetz had reconsidered that view and recommended that the first part of the policy, providing for identification of ONLs and ONFs on the plan maps, be reinstated.
704. Submissions on the policy as notified sought variously:
- a. Either deletion of the ONL and ONF lines from the planning maps or alteration of their status so that they were indicative only⁴³³;
 - b. Qualifying the extent of protection to refer to inappropriate subdivision, use and development⁴³⁴;
 - c. Qualifying the reference to protection, substituting reference to avoiding, remedying or mitigating adverse effects, or alternatively management of adverse effects⁴³⁵.
705. The argument that ONLs and ONFs should not be identified on the planning maps rested on the contention (by Mr Haworth for UCES) that the lines as fixed are not credible. The exact location of any ONL and ONF lines on the planning maps is a matter for another hearing. However, we should address at a policy level the contention that there is an inadequate basis for fixing such lines and that establishing them will be fraught and expensive.
706. Dr Marion Read gave evidence on the work she and her peer reviewers undertook to fix the ONL and ONF lines. While Dr Read properly drew our attention to the fact that the exercise she had undertaken was not a landscape assessment from first principles, she clarified that qualification when she appeared before us. In Dr Read's view, the impact of not having worked from first principles was very minor in terms of the robustness of the outcome.

⁴³³ Submission 145: Supported in FS1097; Opposed in FS1162 and FS1254

⁴³⁴ Submissions 355, 519, 598, 600, 805: Supported in FS1015, FS1117, FS1209 and FS1287; Opposed in FS1034, FS1097, FS1282, FS1320 and FS1356

⁴³⁵ Submissions 519, 607, 615, 621, 624, 716: Supported in FS1015, FS1097, FS1105 and FS1137; Opposed by FS1282 and FS1356

707. That may well be considered something of an understatement given that Dr Read explained that she had gone back to first principles for all of the new ONL and ONF lines she had fixed. The areas where there might be considered a technical deficiency for failure to go back to first principles were where she had relied on previous determinations of the Environment Court.
708. We think it was both pragmatic and sensible on Dr Read's part that where the Environment Court had determined the location of an ONL or ONF line she took that as a given rather than reinventing that particular wheel. We asked a number of the parties who appeared before us if it was appropriate to rely on Environment Court decisions in this regard, and there was general agreement that it was⁴³⁶.
709. In summary, we do not accept the submission that the ONL and ONF lines are not credible. That is not to say that we accept that they are correct in every case and at every location. As above, that is a matter for differently constituted hearing panels to consider, but we are satisfied that the process that has been undertaken for fixing them is robust and can be relied upon unless and until credible expert evidence calls the location of those lines into question.
710. So far as the question of costs and benefits is concerned, Dr Read accepted in evidence before us that the process for confirming the lines set out in the planning maps will likely be fraught and expensive but as she observed, the current process where the status of every landscape (as an ONL, ONF, VAL or ORL) has to be determined as part of the landscape assessment for the purposes of a resource consent application is fraught and expensive. She did not know how one would go about trying to quantify and compare the relative costs of the two and neither do we.
711. What we do know is that the Environment Court found in 1999 that one could not properly state objectives and policies for areas of outstanding natural landscape unless they had been identified⁴³⁷. In that same decision, it is apparent that the Court approached the appeals on what ultimately became the ODP with considerable frustration that with certain notable exceptions, the parties appearing before it (including the Council) had not identified what they contended to be the boundaries of ONLs or ONFs. It appears⁴³⁸ that the only reason that the Court did not fix lines at that point was the amount of effort and time that it would take to undertake a comprehensive assessment of the District. We are not in that position. The assessment has been undertaken by Dr Read and her peer reviewers to arrive at the lines currently on the maps. All the parties who have made submissions on the point will have the opportunity to call expert evidence to put forward a competing viewpoint in the later hearings on mapping issues.
712. Most importantly, at the end of the process, the Council will have recommendations as to where those lines should be based on the best available evidence.
713. We accept that even after they are fixed, it will still be open to parties to contend that a landscape or feature not currently classified in the plan as an ONL or ONF is nevertheless outstanding and should be treated as such for the purposes of determination of a future

⁴³⁶ Mr Goldsmith for instance expressed that view (for Allenby Farms Ltd, Crosshill Farms Ltd and Mt Cardrona Station Ltd). We note however that some parties sought to draw a distinction between lines that had been drawn by the Court after a contested hearing of landscape experts and those that were the result of consent orders and/or where the issue was not contested.

⁴³⁷ C180/99 at [97]

⁴³⁸ From paragraph [99]

resource consent process⁴³⁹. Nevertheless, we think there is value in the PDP providing direction in this regard.

714. We also note that Policy 3.2.3 of the Proposed RPS directs that areas and values, among other things, of ONLs and ONFs be identified. We are required to have regard to that policy and that is exactly what the PDP does. It defines areas of ONLs and ONFs. We note the submission of Otago Regional Council in this regard⁴⁴⁰, supporting the identification of ONLs and ONFs, reflecting in turn the policies of the Proposed RPS directing identification of outstanding and highly-valued features and landscapes we have previously discussed⁴⁴¹.
715. In summary, we do not accept the UCES submission that the ONL/ONF lines should be deleted, or alternatively tagged as being indicative only.
716. The secondary question is whether if, as we would recommend, Policy 3.2.5.1.1 is retained, it, or a subsequent strategic policy in this part of Chapter 3, should specify what course of action is taken consequential on that identification or whether, as Mr Paetz recommends, those matters should be dealt with in Chapter 6.
717. In summary, we recommend that a separate policy be inserted following what was Policy 3.2.5.1.1 stating in broad terms that the policy is for management of activities affecting ONLs and ONFs. Quite simply, we see this as part of the strategic direction of the Plan. While Chapter 6 contains more detailed provisions, Chapter 3 should state the overall policy.
718. We have already discussed at some length the appropriate objective for ONLs and ONFs, considering as part of that analysis, the relevant higher order provisions, and concluding that the desired outcome should be that the landscape and visual amenity values and natural character of ONLs and ONFs are protected against the adverse effects of subdivision use and development that are more than minor and/or not temporary in duration.
719. To achieve that objective, we think it is necessary to have a high-level policy addressing the need to avoid more than minor adverse effects on those values and on the natural character of ONLs and ONFs that are not temporary in duration.
720. We have had regard to the many submissions we received at the hearing emphasising the meaning given to the term “avoid” by the Supreme Court in *King Salmon* (not allow or prevent the occurrence of⁴⁴²).
721. It was argued for a number of parties that an avoidance policy in relation to ONLs and ONFs would create a ‘dead hand’ on all productive economic activities in a huge area of the District.
722. A similar ‘*in terrorem*’ argument was put to the Supreme Court in *King Salmon* which rejected the contention that the interpretation they had given to the relevant policies of the NZCPS would be unworkable in practice⁴⁴³. The Court also drew attention to the fact that use and development might have beneficial effects rather than adverse effects.

⁴³⁹ Refer Unison Networks Limited v Hastings District Council CIV2007-485-896

⁴⁴⁰ Submission 798

⁴⁴¹ Proposed RPS, Policies 3.2.3 and 3.2.5

⁴⁴² [2014] NZSC38 at [93]

⁴⁴³ See [2014] NZSC38 at [144]-[145]

723. The evidence we heard was that many of the outstanding landscapes in the District are working landscapes. Dr Read’s evidence is that the landscape character reflects the uses currently being made of it and in some cases, the character of the landscapes is dependent on it. Clearly continuation of those uses is not inconsistent with the values that lead to the landscape (or feature) in question being categorised as outstanding.
724. Our recommendation makes it clear that minor and temporary effects are not caught by this policy. That will permit changes to current uses that are largely consistent with those same values. If a proposal would have significant adverse effects on an ONL or an ONF, in our view and having regard to the obligation on us to recognise and provide for the preservation of ONLs and ONFs, that proposal probably should not gain consent.
725. In summary therefore, we recommend that there be two policies in relation to ONLs and ONFs in Chapter 3 (numbered 3.3.29 and 3.3.30) reading as follows:
- “Identify the District’s Outstanding Natural Landscapes and Outstanding Natural Features on the District Plan maps.”*
- “Avoid adverse effects on the landscape and visual amenity values and natural character of the District’s Outstanding Natural Landscapes and Outstanding Natural Features that are more than minor in extent and or not temporary in duration.”*
726. We consider that these policies are the most appropriate way to achieve Objective 3.2.5.1, in the context of the package of high-level policies recommended in this report.
727. Turning to non-outstanding landscapes, Policy 3.2.5.2.1 as notified read:
- “Identify the district’s Rural Landscape Classification on the District Plan maps, and minimise the effects of subdivision, use and development on these landscapes.”*
728. With the exception of UCES⁴⁴⁴, who submitted (consistently with its submission on Policy 3.2.5.1.1) that there should be no determinative landscape classifications on planning maps, most submitters accepted the first half of the policy (identifying the Rural Landscape Classification on the maps) and focussed on the consequences of that identification. Many submitters sought that adverse effects on these landscapes be avoided, remedied or mitigated either by amending the policy or by adding a stand-alone policy to that effect⁴⁴⁵. Some of those submitters also sought reference to inappropriate subdivision, use and development.
729. Another option suggested was to substitute ‘manage’ for ‘minimise’⁴⁴⁶.
730. Mr Paetz recommended that the policy be deleted on the basis that both aspects of the policy were better addressed in Chapter 6.
731. We do not concur. Consequential on the recommendation as above, that the policies for ONLs and ONFs should state both the intention to identify those landscapes and features on the planning maps and separately and in broad terms, the course of action proposed, we consider

⁴⁴⁴ Submission 145: Supported in FS1097; Opposed in FS1162

⁴⁴⁵ Submissions 437, 456, 513, 515, 522, 531, 532, 534, 535, 537, 608, 643, 696, 805: Supported in FS1097, FS1256, FS1286, FS1292, and FS1322; Opposed in FS1034, FS1068, FS1071 and FS1120

⁴⁴⁶ Submission 519, 598: Supported in FS1015, FS1117 and FS1292; Opposed in FS1282 and FS1356

that it follows that Chapter 3 should also follow the same format for non-outstanding landscapes.

732. It is also consequential on the recommendations related to the ONL and ONF policies that that we do not recommend that the UCES submission be accepted. Having identified ONLs and ONFs on the planning maps, there seems to be little point in not identifying the balance of the rural landscape.

733. Accordingly, the only suggested changes are minor drafting issues and a change of terminology, consequential on the recommendation as above that these balance rural landscapes be termed Rural Character Landscapes so that the renumbered Policy 3.3.31 would read:

“Identify the District’s Rural Character Landscapes on the District Plan Maps.”

734. Turning to the consequences of identification, a number of the submitters on this policy noted the need for it to reflect the terminology and purpose of the Act. This is an example of the general point made at an earlier part of this report, where utilising the terminology of the Act provides no direction or guidance as to the nature of the course of action to be undertaken.

735. This is still more the case with those submissions seeking that adverse effects be managed.

736. For these reasons, we do not recommend acceptance of the relief sought in these submissions.

737. We do, however, accept that the focus on minimising adverse effects is not entirely satisfactory.

738. While we do not accept the opinion of Mr Ben Farrell (that a policy of minimising adverse effects is ambiguous), the relevant objective we have recommended seeks that rural character and amenity values in these landscapes be maintained and enhanced by directing new subdivision, use and development to occur in appropriate areas – areas that have the potential to absorb change without materially detracting from those values.

739. We also have regard to notified Policy 6.3.5.1 which states that subdivision and development should only be allowed *“where it will not degrade landscape quality or character, or diminish identified visual amenity values.”*

740. We think that particular policy goes too far, seeking no degradation of landscape quality and character and diminution of visual amenity values and needs to have some qualitative test inserted⁴⁴⁷, but the consequential effect of aligning the policy with the objective together with incorporating elements from Policy 6.3.5.1 is that the policy addressing activities in Rural Character Landscapes should be renumbered 3.3.32 and read:

“Only allow further land use change in areas of the Rural Character Landscape able to absorb that change and limit the extent of any change so that landscape character and visual amenity values are not materially degraded.”

741. We consider that the recommended Policies 3.3.31 and 3.3.32 are the most appropriate way to achieve Objectives 3.2 1.9 and 3.2.5.2, in the context of the package of high-level policies recommended in this report.

⁴⁴⁷ To that extent we accept the substance of Submissions 456, 598 and 806 on Policy 6.3.5.1.

3.17. Section 3.2.5.3 – Policies – Urban Development

742. As notified, this policy read:

“Direct urban development to be within urban growth boundaries (UGBs) where these apply, or within the existing rural townships.”

743. Mr Paetz recommended that this policy be amended to provide both for urban development within and outside UGBs.

744. Either in its notified form or as Mr Paetz has recommended it be amended, this policy entirely duplicates the policies discussed above related to urban development (the recommended revised versions of Policies 3.2.2.1.2 and 3.2.2.1.6).

745. Accordingly, we recommend that the most appropriate way to achieve the objectives of this chapter related to urban development is that it be deleted, consistent with the Real Journeys’ submission that duplication generally be avoided.

3.18. Section 3.2.5.4 Policies – Rural Living

746. As notified, these two policies addressed provision for rural living as follows:

“3.2.5.4.1 Give careful consideration to cumulative effects in terms of character and environmental impact when considering residential activity in rural areas.

3.2.5.4.2 Provide for rural living opportunities in appropriate locations.”

747. There were two submissions on Policy 3.2.5.4.1, one seeking its deletion on the basis that it may conflict with case law related to weighting of cumulative effects, the permitted baseline and the future environment⁴⁴⁸ and the other seeking more effective guidance on how much development is too much⁴⁴⁹.

748. Most of the submissions on Policy 3.2.5.4.2 supported the policy in its current form. One submitter⁴⁵⁰ sought that the Council should continue with its plans to rezone land west of Dalefield Road to Rural Lifestyle or Rural Residential, but did not seek any specific amendment to the policy. Mr Paetz did not recommend any change to the wording of these policies.

749. While we do not support the submission seeking that Policy 3.2.5.4.1 be deleted, the submitter has a point in that the policy is expressed so generally that it may have consequences that cannot currently be foreseen. Notwithstanding that, clearly cumulative effects of residential activity is an issue requiring careful management, as we heard from Dr Read. The problem is that a policy indicating that cumulative effects will be given *“careful consideration”* is too non-specific as to what that careful consideration might entail. As Submission 806 suggests, greater clarity is required as to how it will operate in practice.

750. The policies of Section 6.3.2 (as notified) give some sense of what is required (acknowledging the finite capacity of rural areas to accommodate residential development, not degrading landscape character and visual amenity, taking into account existing and consenting

⁴⁴⁸ Submission 519: Supported in FS1015; Opposed in FS1356

⁴⁴⁹ Submission 806: Supported in FS1313

⁴⁵⁰ Submission 633

subdivision or development). We recommend that some of these considerations be imported into policy 3.2.5.4.1 to confine its ambit, and thereby address the submitter's concern.

751. One issue in contention was whether the description in the ODP of rural non-outstanding landscapes as being "*pastoral (in the poetic and picturesque sense rather than the functional sense) or Arcadian landscapes*"⁴⁵¹ should be retained. Mr Goldsmith⁴⁵² argued that this description, which was coined by the Environment Court⁴⁵³, should be retained if circumstances have not changed.
752. The evidence of Dr Read was that this description has proven confusing, and has been interpreted as a goal, rather than as a description. Her June 2014 Report⁴⁵⁴ fleshed this out, suggesting that neither lay people nor professionals have had a clear understanding of what an arcadian landscape is, and that a focus on replicating arcadia has produced an English parkland character in some areas of the Wakatipu Basin that, if continued, would diminish the local indigenous character.
753. Dr Read also emphasised the need to acknowledge the differences between the character of the Upper Clutha Basin and the Wakatipu Basin.
754. Mr Goldsmith acknowledged those differences but suggested to us that the PDP treated the Wakatipu Basin as if it were the Hawea Flats, whereas his description of the ODP was that it did the reverse (i.e. treated the Hawea Flats as they were the Wakatipu Basin)⁴⁵⁵.
755. We take his point and have accordingly looked for a broader description that might exclude ONL's and ONF's (where the focus is necessarily on protection rather than enabling development), but capture both areas, while allowing their differences (and indeed the differences in landscape character within the Wakatipu Basin that Mr Goldsmith sought recognition for) to be taken into account.
756. Mr Jeff Brown⁴⁵⁶ suggested to us that the ultimate goal is met if the character of an area remains '*rural*'⁴⁵⁷, and therefore the test should be if the area retains a rural '*feel*'. While this comes perilously close to a test based on the '*vibe*'⁴⁵⁸, we found Mr Brown's evidence helpful and have adapted his suggested approach to provide a more objective test.
757. The interrelationship with Policy 3.2.5.4.2 also needs to be noted. Better direction as to what a careful consideration of cumulative effects means, requires, among other things, identification of where rural living opportunities might be appropriate. As Submission 633 notes, one obvious way in which the PDP can and does identify such appropriate locations is through specific zones. Another is by providing greater direction of areas within the Rural Zone

451 ODP 4.2.4(3)

452 Addressing us on this occasion on behalf of GW Stalker Family Trust and others

453 In C180/99

454 '*Wakatipu Basin Residential Subdivision and Development: Landscape Character Assessment*'

455 Legal Submissions for GW Stalker and others at 6.3(c)

456 Giving evidence on behalf of Ayrburn Farms Ltd, Bridesdale Farms Developments Ltd, Shotover Park Ltd and Trojan Helmet Ltd

457 NZIA's Submission 238 makes a similar point

458 Refer the film, 'The Castle' (1997)

where rural living developments are not appropriate⁴⁵⁹. We agree that a greater level of direction would assist plan users in this regard.

758. In summary, we recommend the following amendments to Policies 3.2.5.4.1 and 3.2.5.4.2 (renumbered 3.3.22 and 3.3.24), together with addition of a new Policy 3.3.23 as follows:

“Provide for rural living opportunities in areas identified on the District Plan maps as appropriate for rural living developments.

Identify areas on the District Plan maps that are not within Outstanding Natural Landscapes or Outstanding Natural Features and that cannot absorb further change, and avoid residential development in those areas.

Ensure that cumulative effects of new subdivision and development for the purposes of rural living does not result in the alteration of the character of the rural environment to the point where the area is no longer rural in character.”

759. We consider that the combination of these policies operating in conjunction with recommended Policies 3.3.29-3.3.32, are the best way in the context of high-level policies to achieve Objectives 3.2.1.8, 3.2.5.1 and 3.2.5.2, as those objectives relate to rural living developments.
760. It is appropriate at this point that we address the many submissions we had before us from infrastructure providers seeking greater recognition of the needs of infrastructure.
761. Objective 3.2.1.9 discussed above is the reference point for any additional policies on infrastructure issues.
762. In the rural environment, the principal issue for determination is whether infrastructure might be permitted to have greater adverse effects on landscape values than other development, and if so, in what circumstances and to what extent. Consideration also has to be given as to whether recognition needs to be given at a strategic level to reverse sensitivity effects on infrastructure in the rural environment.
763. Among the suggestions from submitters, new policies were sought to enable the continued operation, maintenance, and upgrading of regionally and nationally significant infrastructure and to provide that such infrastructure should where practicable, mitigate its impacts on ONLs and ONFs ⁴⁶⁰.

⁴⁵⁹ Mr Goldsmith (on this occasion when appearing for GW Stalker Family Trust and Others) suggested to us that specific areas might be identified and nominated the north side of Malaghans Road and a portion of Speargrass Flat Road as potential areas that could be specifically identified as being unable to absorb further development, rather than relying on generic policies. Mr Ben Farrell similarly supported what he termed a finer grained approach to management of the Wakatipu Basin. We note that PDP Chapter 24 notified as part of the Stage 2 Variations seeks to provide greater guidance to development within the Wakatipu Basin

⁴⁶⁰ Submissions 251, 433: Supported in FS1077, FS1092, FS1097, FS1115, FS1121 and FS1211; Opposed in FS1040 and FS1132

764. Transpower New Zealand Limited⁴⁶¹ sought the inclusion of a new definition for regionally significant infrastructure which would include:
- a. *“Renewable electricity generation facilities, where they supplied the National Electricity Grid and local distribution network; and*
 - b. *The National Grid; and*
 - c. *The Electricity Distribution Network; and*
 - d. *Telecommunication and Radio Community facilities; and*
 - e. *Road classified as being of national or regional importance; and*
 - f. *Marinas and airports; and*
 - g. *Structures for transport by rail”.*
765. Transpower’s focus on nationally and regionally significant infrastructure is consistent with Policy 4.3.2 of the Proposed RPS, which now reads:
- a. *“Recognise the national and regional significance of all of the following infrastructure:*
 - b. *Renewable electricity generation activities, where they supply the national electricity grid and local distribution network;*
 - c. *Electricity transmission infrastructure;*
 - d. *Telecommunication and radiocommunication facilities;*
 - e. *Roads classified as being of national or regional importance;*
 - f. *Ports and airports and associated navigation infrastructure;*
 - g. *Defence facilities;*
 - h. *Structures for transport by rail.”*
766. This policy wording differs from the corresponding policy (3.5.1) in the notified version of the Proposed RPS that was the relevant document at the date of hearing⁴⁶² in the following material respects:
- a. (a) now applies to renewable electricity generation “activities”, rather than facilities;
 - b. Reference to associated navigation infrastructure has been added to (e);
 - c. Recognition of defence facilities is new.

In addition, the term ‘*electricity transmission infrastructure*’ is now defined to mean the National Grid (adopting the definition in the NPSET 2008).

767. The submission of Aurora Energy Limited⁴⁶³ suggested a different definition of regionally significant infrastructure that varied from both that suggested by Transpower and the Proposed RPS, but included among other things, electricity distribution networks, community water supply systems, land drainage infrastructure and irrigation and stock water infrastructure. Aurora also sought the inclusion of an additional definition for ‘*critical electricity lines*’⁴⁶⁴.
768. Mr Paetz’s Section 42A Report largely adopted the ‘*definition*’ of regionally significant infrastructure in the notified version of the Proposed RPS with the following changes:

⁴⁶¹ Submission 805: Supported in whole or in part in FS1077, FS1106, FS1121, FS1159, FS1208, FS1211, FS1253 and FS1340

⁴⁶² And that obviously formed the basis of the relief sought in the Transpower submission

⁴⁶³ Submission 635: Supported in whole or in part in FS1077, FS1097 and FS1211; Opposed in FS1132

⁴⁶⁴ Opposed in FS1301 and FS1322

- a. Mr Paetz recommended that renewable electricity generation facilities qualify where they are operated by an electricity operator (a defined term under the Electricity Act 1992) so as to exclude small and community-scale electricity generators;
 - b. He suggested reference to '*designated*' airports;
 - c. He deleted reference to ports, there being none in a landlocked District;
 - d. He deleted reference to rail structures, there being no significant rail lines within the District.
769. This recommendation produced considerable discussion and debate during the course of the hearing.
770. QAC pointed out that Glenorchy is a designated airport, but one would struggle to regard it as regionally significant. QAC agreed that reference might appropriately be limited to Queenstown and Wanaka airports.
771. Transpower New Zealand Limited expressed considerable concern that the National Grid was not specifically mentioned. We found this a little puzzling since the NPSET uses the term '*electricity transmission infrastructure*' and the National Grid clearly comes within that term (the NPSET 2008 in fact defines them to be one and the same thing). Also, quite apart from the NPSET 2008, no one could seriously contend that the National Grid was not regionally and nationally significant.
772. The discussion we had with representatives of Transpower did however, highlight an issue at the other end of the spectrum. While the Decisions Version of the Proposed RPS now puts it beyond doubt (by adopting the NPSET 2008 definition), the general term '*electricity transmission infrastructure*' could be argued to include every part of the electricity transmission network, down to individual house connections, which while extremely important to the individuals concerned, could not be considered regionally significant.
773. We invited the representative of Aurora Energy, Ms Dowd, to come back to us with further information on those parts of Aurora's electricity distribution network that might properly be included within the term regionally significant infrastructure. She identified those parts of the Aurora Network operating at 33kV and 66kV and four specific 11kV lines servicing specific communities. Ms Dowd also drew our attention to the fact that a number of other Regional Policy Statements and District Plans have a focus on "*critical infrastructure*".
774. In Mr Paetz's reply evidence, he suggested a further iteration of this definition to limit electricity transmission infrastructure to the National Grid (necessarily excluding any electricity transmission lines in the Aurora network), add reference to key centralised Council infrastructure, and refer only to Queenstown and Wanaka airports.
775. Having regard to the Proposed RPS, as we are bound to do, we take the view that the focus should primarily be on regionally significant infrastructure (not some more broad ranging description such as '*critical*' infrastructure).
776. Secondly, identification of '*regionally*' significant infrastructure is primarily a matter for the Regional Council, except where the Proposed RPS might be considered ambiguous or inapplicable.
777. We therefore agree with Mr Paetz that reference to ports and rail structures might be deleted.

778. We cannot recommend acceptance of Mr Paetz’s suggestion that key Council infrastructure should be included. While it would satisfy the Aurora test of critical infrastructure, the Regional Council has not chosen to identify it as regionally significant and while critical to the District, it is difficult to contend that it has significance beyond the District boundaries.
779. For similar reasons, we do not recommend identifying particular aspects of the Aurora distribution network. Again, while they would meet a test of critical infrastructure from the District’s perspective, the Regional Council has not identified them as *‘regionally significant’* – in the Decisions Version of the Proposed RPS, the Regional Council has explicitly excluded electricity transmission infrastructure that does not form part of the National Grid. Mr Farrell’s contention that tourism infrastructure should be included within *‘regionally significant infrastructure’* fails for the same reasons.
780. We also think that the reference to roads of national or regional significance can be simplified. These are the state highways.
781. Reference to Airports can, as QAC suggested, be limited to Queenstown and Wanaka Airports, but as a result of the amendment in the Proposed RPS to the relevant policy, reference should be made to associated navigation infrastructure.
782. We do not consider, however, that reference needs to be made to defence facilities. NZ Defence Force did not seek that relief in its submission⁴⁶⁵ which is limited to relief related to temporary activities (in Chapter 35), from which we infer the Defence Force has no permanent facilities in the District. Certainly, we were not advised of any.
783. Lastly, the representatives of Transpower New Zealand Limited advised us that there are no electricity generation facilities supplying the National Grid in the District. The Roaring Meg and Wye Creek hydro generation stations are embedded in the Aurora line network and the Hawea Control Structure stores water for the use of the large hydro generation plants at Clyde and Roxburgh (outside the District) but does not generate any electricity of its own. We think that having regard to Policy A of the NPSREG 2011, this aspect of the definition needs to be amended to recognise the national significance of those activities.
784. In summary, we recommend that the Stream 10 Hearing Panel consider a definition of regionally significant infrastructure for insertion into the PDP as follows:
- “Regionally significant infrastructure – means:*
- a. Renewable electricity generation activities undertaken by an electricity operator; and*
 - b. The National Grid; and*
 - c. Telecommunication and radiocommunication facilities; and*
 - d. State highways; and*
 - e. Queenstown and Wanaka Airports and associated navigation infrastructure.”*

785. This then leaves the question of the extent to which recognition of regionally significant infrastructure is required in the PDP.

786. Mr Paetz did not recommend an enabling approach to new infrastructure given the potential conflicts with section 6(a) and (b) of the Act.

⁴⁶⁵ Submission 1365

787. We appreciate his point. The Proposed RPS would not require that and in the extensive discussion earlier regarding the inter-relationship between significant infrastructure, in particular the National Grid, and the objective related to ONLs and ONFs, we concluded that the NPSET 2008 did not require provisions that would permit development of the National Grid in ways that would have significant adverse effects on ONLs and ONFs.
788. We do think, however, that it would be appropriate to provide some recognition to the locational constraints that infrastructure can be under.
789. Nor are locational constraints solely limited to infrastructure. The District has a number of examples of unique facilities developed for the visitor industry in the rural environment that by their nature, are only appropriate in selected locations. We have also already discussed submissions on behalf of the mining industry seeking to provide for the location-specific nature of mining⁴⁶⁶.
790. As with infrastructure, provisions providing for such developments cannot be too enabling, otherwise they could conflict with the Plan's objectives (and the relevant higher order provisions) related to the natural character of waterways, ONLs and ONFs and areas of indigenous vegetation and significant habitats of indigenous fauna. However, we consider that it is appropriate to make provision for such facilities.
791. Accordingly, we recommend that the following policy (numbered 3.3.25) be inserted:
- “Provide for non-residential development with a functional need to locate in the rural environment, including regionally significant infrastructure where applicable, through a planning framework that recognises its locational constraints, while ensuring maintenance and enhancement of the quality of the rural environment.”*
792. So far as regionally significant (and other) infrastructure in rural areas is concerned, this general recognition will need to be augmented by more specific policies. We will return to the point in the context of Chapter 6.
793. We have also considered the separate question, as to whether specific provision needs to be made for reverse sensitivity effects on infrastructure (regionally significant or otherwise) at a strategic level, in the rural environment. Clearly the Proposed RPS (Policy 4.3.4) supports some policy provision being made and we accept that this is an issue that needs to be addressed. The only issue is where it is best covered. We have concluded that this is a matter that can properly be left for the Utilities and Subdivision Chapters of the PDP.
794. This leaves open the question of provision for infrastructure in urban environments. We have taken the view that with limited exceptions, the high-level policy framework for urban development should be addressed in an integrated manner in Chapter 4. Consistent with that position, we will return to the question of infrastructure in that context.
795. It follows that we consider that recommended Policy 3.3.25 is the most appropriate way to achieve Objectives 3.2.1.8, 3.2.1.9, 3.2.5.1 and 3.2.5.2 as they relate to locationally-constrained developments, supplemented by more detailed policies in Chapters 4, 27 and 30.

3.19. Section 3.2.5.5 Policies – Ongoing Agricultural Activities

796. As notified there are two related policies on this subject that read as follows:

⁴⁶⁶ Policy 5.3.5 of the Proposed RPS also supports recognition of mining in this context

- “3.2.5.5.1 Give preference to farming activity in rural areas except where it conflicts with significant nature conservation values;
 3.2.5.5.2 Recognise that the retention of the character of rural areas is often dependent on the ongoing viability of farming and that evolving forms of agricultural land use which may change the landscape are anticipated.”

797. These policies attracted a number of submissions.
798. Some submissions sought deletion of Policy 3.2.5.5.1⁴⁶⁷.
799. Many other submissions sought that Policy 3.2.5.5.1 be broadened to refer to “*other activities that rely on rural resources*.”⁴⁶⁸
800. Some submissions sought deletion of the qualification referring to significant nature conservation values⁴⁶⁹.
801. Many of the same submitters sought that Policy 3.2.5.5.2 be broadened, again to refer to activities that rely on rural resources, and to expand the reference to agricultural land use to include “*other land uses*”⁴⁷⁰.
802. Other more minor changes of emphasis were also sought.
803. Consideration of these policies takes place against a background of evidence we heard from Mr Philip Bunn of the challenges farmers have in continuing to operate in the District, particularly in the Wakatipu Basin.
804. The theme of many of the submitters who appeared before us was to challenge the preference given to farming over other land uses. As such, this formed part of the more general case seeking recognition of non-farming activities in the rural environment, particularly visitor industry related activities and rural living, but also including recreational use⁴⁷¹.
805. We discussed with the counsel and expert planners appearing for those submitters the potential ambit of a reference to activities “*relying on rural resources*”. From the answers we received, this is a somewhat elastic concept, depending on definition. Some counsel contended, for instance, that rural living (aka houses) would satisfy the test of being reliant on rural resources⁴⁷².

⁴⁶⁷ Submissions 598, 608, 696: Supported in FS1097 and FS1287; Opposed in FS1034, FS1091, and FS1132

⁴⁶⁸ Submissions 345, 375, 437, 456, 513, 515, 522, 531, 532, 534, 535, 537: Supported in FS1097, FS1256, FS1286 and FS1322; Opposed in FS1068, FS1071, FS1120 and FS1282

⁴⁶⁹ Submissions 701 and 784: Supported in FS1162

⁴⁷⁰ Submissions 343, 345, 375, 437, 456, 515, 522, 531, 532, 534, 535: Supported in FS1097, FS1292 and FS1322; Opposed in FS1068, FS1071 and FS1282. See also Submissions 607, 615, 643; Supported in FS1097, FS1105 and FS1077 to like effect

⁴⁷¹ See e.g. submission 836

⁴⁷² For example, Ms Wolt advanced that position, appearing for Trojan Helmet Ltd, and supported by Mr Jeff Brown’s evidence. Mr Tim Williams, giving planning evidence for Skyline Enterprises Ltd, Totally Tourism Ltd, Barnhill Corporate Trustee Ltd & DE, ME Bunn & LA Green, AK & RB Robins & Robins Farm Ltd, Slopehill JV, expressed the same opinion from a planning perspective. By contrast Chris Ferguson, the planning witness for Darby Planning LP and Hansen Family Partnership, suggested that a slightly different test (functional need) would be met by rural contracting depots but not by ‘*rural living*’.

806. We have made recommendations above as to how use of rural land for rural living should be addressed at a strategic policy level. We therefore do not consider that changes are necessary to these policies to accommodate that point, particularly given the potential ambiguities and definitional issues which might arise.
807. Turning to use of rural land by the visitor industry, Policy 6.3.8.2 provides wording that in our view is a useful starting point. As notified, this policy read:
- “Recognise that commercial recreation and tourism related activities locating within the rural zones may be appropriate where these activities enhance the appreciation of landscapes, and on the basis that they would protect, maintain or enhance landscape quality, character and visual amenity values.”*
808. This wording would respond to the evidence of Mr Jeff Brown on behalf of Kawarau Jet Services Limited supporting specific reference to commercial recreational activities in recreational areas and on lakes and rivers in the district⁴⁷³. We do not think that specific reference needs to be made to lakes and rivers in this context, as, with the exception of Queenstown Bay, they are all within the Rural Zone. As discussed above, any unique issues arising in relation to waterways can more appropriately be addressed in Chapter 6.
809. Policy 6.3.8.2 was supported by Darby Planning LP⁴⁷⁴, but a number of other submissions with interests in the visitor industry sector sought amendments to it. Some submissions⁴⁷⁵ sought that the policy refer only to managing adverse effects of landscape quality, character and visual amenity values. Others sought that the policy be more positive towards such activities. Real Journeys Limited⁴⁷⁶ for instance sought that the policy be reframed to encourage commercial recreation and tourism related activities that enhanced the appreciation of landscapes. Submissions 677⁴⁷⁷ and 696⁴⁷⁸ suggested a *“recognise and provide for”* type approach, combined with reference only to appreciation of the District’s landscapes. Lastly, Submission 806 sought to remove any doubt that recreational and tourism related activities are appropriate where they enhance the appreciation of landscapes and have a positive influence on landscape quality, character and visual amenity values, as well as provision of access to the alpine environment.
810. Mr Barr did not recommend any change to this policy in the context of Chapter 6 and we were left unconvinced as to the merits of the other amendments sought in submissions. In particular, converting the policy merely to one which states the need to manage adverse effects does not take matters very far.
811. Similarly, appreciation of the District’s landscapes is a relevant consideration, but too limited a test, in our view, for the purposes of a policy providing favourably for the visitor industry.
812. We have already discussed the defects of a *“recognise and provide for”* type approach in the context of the District Plan policies.

⁴⁷³ J Brown, EIC at 4.11

⁴⁷⁴ Submission 608: Opposed in FS1034

⁴⁷⁵ Submissions 610, 613: Supported in FS1097.

⁴⁷⁶ Submission 621: Supported in FS1097

⁴⁷⁷ Supported in FS1097; Opposed in FS1312

⁴⁷⁸ Supported in FS1097

813. Lastly, incorporation of provision of access to the alpine environment as being a precondition for appropriateness would push the policy to far in the opposite direction, excluding visitor industry activities that enable passive enjoyment of the District’s distinctive landscapes.

814. In summary, we recommend that Policy 6.3.8.2 be shifted into Chapter 3, renumbered 3.3.21 but otherwise not be amended.

815. Reverting to farming activities in rural areas, we accept that the policy of giving preference to farming might go too far, particularly where it is not apparent what the implications are of that preference. Mr Paetz recommended that these two policies be amended to read:

“3.2.5.5.1 Enable farming activity in rural areas except where it conflicts with significant nature conservation values;

3.2.5.5.2 Provide for evolving forms of agricultural land use.”

816. We agree that an enabling focus better expresses the underlying intent of the first policy (as well as being consistent with Policy 5.3.1 of the Proposed RPS), but we also think that some reference is required to landscape character, since as already discussed, not all farming activities are consistent with maintenance of existing landscape character.

817. We also think that while it is appropriate to enable changing agricultural land uses (to address the underlying issue of lack of farming viability), reference to landscape character has been lost, and that should be reinserted, along with reference to protection of significant nature conservation values.

818. We also see the opportunity for these two policies to be combined. We recommend one policy replace Policies 3.2.5.5.1 and 2, numbered 3.3.20 and worded as follows:

“Enable continuation of existing farming activities and evolving forms of agricultural land use in rural areas except where those activities conflict with significant nature conservation values or degrade the existing character of rural landscapes.”

819. We are satisfied that recommended Policy 3.3.20 is the most appropriate way to achieve Objectives 3.2.1.1, 3.2.1.7, 3.2.1.8, 3.2.4.1, 3.2.5.1 and 3.2.5.2 in the context of a package of high-level policies and taking account of the additional policies we recommend for Chapter 6.

3.20. Section 3.2.6.3 Policies – Urban Development

820. Policies 3.2.6.3.1 and 3.2.6.3.2 related to the location and design of open spaces and community facilities. While Mr Paetz recommended that these policies remain as is, for similar reasons as above, we recommend that these are more appropriately deleted from Chapter 3 and their subject matter addressed in the context of Chapter 4.

3.21. Overall Conclusion on Chapter 3 Policies

821. We have considered all the of the policies we have recommended for this chapter. We are satisfied that individually and collectively, they are the most appropriate way to achieve the Chapter 3 policies at this high level, taking account of the additional policies we recommend for Chapters 4 and 6. We note that the revised version of Chapter 3 annexed as Appendix 1 contains three additional policies we have not discussed (3.3.33-35 inclusive). These policies are discussed in the Stream 1A Report and included in our revised Chapter 3 for convenience,

in order that the chapter can be read as a whole. Lastly, we consider that understanding of the layout of the policies would be assisted by insertion of headings to break up what would otherwise be a list of 35 policies on diverse subjects. We have therefore inserted headings intended to capture the various groupings of policies.

4. PART B RECOMMENDATIONS

822. Attached as Appendix 1 is our recommended Chapter 3.

823. In addition, as discussed in our report, we recommend to the Stream 10 Hearing Panel that the following new and amended definitions be included in Chapter 2:

***“Nature Conservation Values** – means the collective and interconnected intrinsic values of indigenous flora and fauna, natural ecosystems (including ecosystem services), and their habitats.*

***Regionally significant infrastructure** - means:*

- a. Renewable electricity generation activities undertaken by an electricity operator; and*
- b. The National Grid; and*
- c. Telecommunication and radio communication facilities; and*
- d. State Highways; and*
- e. Queenstown and Wanaka airports and associated navigation infrastructure.*

***Urban Development** – means development which is not of a rural character and is differentiated from rural development by its scale, intensity, visual character and the dominance of built structures. Urban development may also be characterised by a reliance on reticulated services such as water supply, wastewater and stormwater and by its cumulative generation of traffic. For the avoidance of doubt, a resort development in an otherwise rural area does not constitute urban development.*

***Resort-** means an integrated and planned development involving low average density of residential development (as a proportion of the developed area) principally providing temporary visitor accommodation and forming part of an overall development focused on on-site visitor activities.”*

824. Lastly, as discussed in the context of our consideration of Objective 3.2.5.2, if the Council intends that provisions related to the Rural Character Landscape apply in the Wakatipu Basin, and more generally, outside the Rural Zone, we recommend Council notify a variation to the PDP to make that clear.

6 LANDSCAPES AND RURAL CHARACTER

6.1 Purpose

The purpose of this chapter is to provide greater detail as to how the landscape, particularly outside urban settlements, will be managed in order to implement the strategic objectives and policies in Chapter 3. This chapter needs to be read with particular reference to the objectives in Chapter 3, which identify the outcomes the policies in this chapter are seeking to achieve. The relevant Chapter 3 objectives and policies are identified in brackets following each policy.

Landscapes have been categorised to provide greater certainty of their importance to the District, and to respond to regional policy and national legislation. Categorisations of landscapes will provide decision makers with a basis to consider the appropriateness of activities that have adverse effects on those landscapes.

6.2 Values

The District's landscapes are of significant value to the people who live in, work in or visit the District. The District relies in a large part for its social and economic wellbeing on the quality of the landscape, open spaces and the natural and built environment. Those landscapes also have inherent values, particularly to tangata whenua.

The landscapes consist of a variety of landforms created by uplift and glaciations, which include mountains, ice-sculpted rock, scree slopes, moraine, fans, a variety of confined and braided river systems, valley floors and lake basins. These distinct landforms remain easily legible and strong features of the present landscape.

Indigenous vegetation also contributes to the quality of the District's landscapes. While much of the original vegetation has been modified, the colour and texture of indigenous vegetation within these landforms contribute to the distinctive identity of the District's landscapes.

The open character of rural land is a key element of the landscape character that can be vulnerable to degradation from subdivision, development and non-farming activities. The prevalence of large farms and landholdings contributes to the open space and rural working character of the landscape. The predominance of open space over housing and related domestic elements is a strong determinant of the character of the District's rural landscapes.

Some rural areas, particularly those closer to the Queenstown and Wanaka urban areas and within parts of the Wakatipu Basin, have an established pattern of housing on smaller landholdings. The landscape character of these areas has been modified by vehicle accesses, earthworks and vegetation planting for amenity, screening and shelter, which have reduced the open character exhibited by larger scale farming activities.

While acknowledging these rural areas have established rural living and development, and a substantial amount of further subdivision and development has already been approved in these areas, the landscape values of these areas are vulnerable to degradation from further subdivision and development. Areas where rural living development is at or is approaching the finite capacity of the landscape need to be identified if the District's distinctive rural landscape values are to be sustained. Areas where the landscape can accommodate sensitive and sympathetic rural living developments similarly need to be identified.

The lakes and rivers both on their own and, when viewed as part of the distinctive landscape, are a significant element of the national and international identity of the District and provide for a wide range of amenity and recreational opportunities. They are nationally and internationally recognised as part of the reason for the District's importance as a visitor destination, as well as one of the reasons for residents to belong to the area. Managing the landscape and recreational values on the surface of lakes and rivers is an important District Plan function.

Landscapes have been categorised into three classifications within the Rural Zone. These are Outstanding Natural Landscapes (ONL) and Outstanding Natural Features (ONF), where their use, development and protection are a matter of national importance under Section 6 of the RMA. The Rural Landscapes (RLC) makes up the remaining Rural Zoned land and has varying types of landscape character and amenity values. Specific policy and assessment matters are provided to manage the potential effects of subdivision and development in these locations ¹.

6.3 Policies

Rural Landscape Categorisation

- 6.3.1 Classify the Rural Zoned landscapes in the District as:
- Outstanding Natural Feature (ONF);
 - Outstanding Natural Landscape (ONL);
 - Rural Character Landscape (RCL) (3.2.5.1, 3.2.5.2, 3.3.29, 3.3.31).
- 6.3.2 Exclude identified Ski Area Sub-Zones and the area of the Frankton Arm located to the east of the Outstanding Natural Landscape line as shown on the District Plan maps from the Outstanding Natural Feature, Outstanding Natural Landscape and Rural Character Landscape categories applied to the balance of the Rural Zone and from the policies of this chapter related to those categories. (3.2.1.1, 3.4.4.4, 3.3.21).
- 6.3.3 Provide a separate regulatory regime for the Gibbston Valley (identified as the Gibbston Character Zone), Rural Residential Zone, Rural Lifestyle Zone and the Special Zones within which the Outstanding Natural Feature, Outstanding Natural Landscape and Rural Character Landscape categories and the policies of this chapter related to those categories do not apply unless otherwise stated. (3.2.1.1, 3.2.1.7, 3.2.1.8, 3.2.5.2, 3.3.20-24, 3.3.32).

Managing Activities in the Rural Zone, the Gibbston Character Zone, the Rural Residential Zone and the Rural Lifestyle Zone

- 6.3.4 Avoid urban development and subdivision to urban densities in the rural zones. (3.2.2.1, 3.2.5.1, 3.2.5.2, 3.3.13-15, 3.3.23, 3.3.30, 3.3.32).
- 6.3.5 Ensure that the location and direction of lights does not cause excessive glare and avoids unnecessary degradation of views of the night sky and of landscape character, including of the sense of remoteness where it is an important part of that character. (3.2.5.1, 3.2.5.2, 3.3.19, 3.3.20, 3.3.30, 3.3.32).
- 6.3.6 Ensure the District's distinctive landscapes are not degraded by production forestry planting and harvesting activities. (3.2.1.8, 3.2.5.1, 3.2.5.2, 3.3.19, 3.3.29, 3.3.31).
- 6.3.7 Enable continuation of the contribution low-intensity pastoral farming on large landholdings makes to the District's landscape character. (3.2.1.7, 3.2.5.1, 3.2.5.2, 3.3.20).

¹. Greyed out text indicated the provision is subject to variation and is therefore not part of the Hearing Panel's recommendation.

- 6.3.8 Avoid indigenous vegetation clearance where it would significantly degrade the visual character and qualities of the District's distinctive landscapes. (3.2.1.8, 3.2.5.1, 3.2.5.2, 3.3.19, 3.3.30, 3.3.32).
- 6.3.9 Encourage subdivision and development proposals to promote indigenous biodiversity protection and regeneration where the landscape and nature conservation values would be maintained or enhanced, particularly where the subdivision or development constitutes a change in the intensity in the land use or the retirement of productive farm land. (3.2.1.7, 3.2.4.1, 3.2.5.1, 3.2.5.2, 3.3.19, 3.3.20, 3.3.30, 3.3.32).
- 6.3.10 Ensure that subdivision and development in the Outstanding Natural Landscapes and Rural Character Landscapes adjacent to Outstanding Natural Features does not have more than minor adverse effects on the landscape quality, character and visual amenity of the relevant Outstanding Natural Feature(s). (3.2.5.1, 3.3.30).
- 6.3.11 Encourage any landscaping to be ecologically viable and consistent with the established character of the area. (3.2.1.8, 3.2.5.1, 3.2.5.2, 3.3.30, 3.3.32).

Managing Activities in Outstanding Natural Landscapes and on Outstanding Natural Features

- 6.3.12 Recognise that subdivision and development is inappropriate in almost all locations in Outstanding Natural Landscapes and on Outstanding Natural Features, meaning successful applications will be exceptional cases where the landscape or feature can absorb the change and where the buildings and structures and associated roading and boundary changes will be reasonably difficult to see from beyond the boundary of the site the subject of application. (3.2.1.1, 3.2.5.1, 3.3.21, 3.3.30).
- 6.3.13 Ensure that the protection of Outstanding Natural Features and Outstanding Natural Landscapes includes recognition of any values relating to cultural and historic elements, geological features and matters of cultural and spiritual value to tangata whenua, including tōpuni and wahi tūpuna. (3.2.3.1, 3.2.5.1, 3.2.7.1, 3.3.16, 3.3.30, 3.3.33 - 35, Chapter 5).
- 6.3.14 Recognise that large parts of the District's Outstanding Natural Landscapes include working farms and accept that viable farming involves activities that may modify the landscape, providing the quality and character of the Outstanding Natural Landscape is not adversely affected. (3.2.1.7, 3.2.1.8, 3.2.4.1, 3.2.5.1, 3.3.20, 3.3.30).
- 6.3.15 The landscape character and amenity values of Outstanding Natural Landscapes are a significant intrinsic, economic and recreational resource, such that new large scale renewable electricity generation or new large scale mineral extraction development proposals are not likely to be compatible with them. (3.2.5.1, 3.3.25, 3.3.30).
- 6.3.16 Maintain the open landscape character of Outstanding Natural Features and Outstanding Natural Landscapes where it is open at present. (3.2.1.7, 3.2.1.8, 3.2.4.1, 3.2.5.1, 3.3.20-21, 3.3.30).
- 6.3.17 Locate, design, operate and maintain regionally significant infrastructure so as to seek to avoid adverse effects on Outstanding Natural Landscapes and Outstanding Natural Features, while acknowledging that location constraints and/or the nature of the infrastructure may mean that this is not possible in all cases. (3.2.1.9, 3.2.5.1, 3.3.25, 3.3.30).
- 6.3.18 In cases where it is demonstrated that regionally significant infrastructure cannot avoid adverse effects on Outstanding Natural Landscapes and Outstanding Natural Features, avoid significant adverse effects and minimise other adverse effects on those landscapes and features. (3.2.1.9, 3.2.5.1, 3.3.25, 3.3.30).

Managing Activities in Rural Character Landscapes

- 6.3.19 Recognise that subdivision and development is unsuitable in many locations in Rural Character Landscapes and successful applications will need to be, on balance, consistent with the objectives and policies of the Plan. (3.2.1.1, 3.2.1.7, 3.2.5.2, 3.3.20-24, 3.3.32).
- 6.3.20 Encourage plan changes applying Rural Lifestyle and Rural Residential Zones to land as the appropriate planning mechanism to provide for any new rural lifestyle and rural residential developments in preference to ad-hoc subdivision and development and ensure these zones are located in areas where the landscape can accommodate the change. (3.2.1.8, 3.2.5.2, 3.3.22, 3.3.24, 3.3.32).
- 6.3.21 Require that proposals for subdivision or development for rural living in the Rural Zone take into account existing and consented subdivision or development in assessing the potential for adverse cumulative effects. (3.2.1.8, 3.2.5.2, 3.3.23, 3.3.32).
- 6.3.22 Have particular regard to the potential adverse effects on landscape character and visual amenity values where further subdivision and development would constitute sprawl along roads. (3.2.1.1, 3.2.1.7, 3.2.5.2, 3.3.21, 3.3.24-25, 3.3.32).
- 6.3.23 Ensure incremental changes from subdivision and development do not degrade landscape quality or character, or important views as a result of activities associated with mitigation of the visual effects of proposed development such as screen planting, mounding and earthworks. (3.2.1.1, 3.2.1.8, 3.2.5.2, 3.3.21, 3.3.24, 3.3.32).
- 6.3.24 Locate, design, operate and maintain regionally significant infrastructure so as to seek to avoid significant adverse effects on the character of the landscape, while acknowledging that location constraints and/or the nature of the infrastructure may mean that this is not possible in all cases. (3.2.1.9, 3.2.5.2, 3.3.25, 3.3.32).
- 6.3.25 In cases where it is demonstrated that regionally significant infrastructure cannot avoid significant adverse effects on the character of the landscape, such adverse effects shall be minimised. (3.2.1.9, 3.2.5.2, 3.3.25, 3.3.32).
- 6.3.26 Avoid adverse effects on visual amenity from subdivision, use and development that:
- a. is highly visible from public places and other places which are frequented by members of the public generally (except any trail as defined in this Plan); or
 - b. forms the foreground for an Outstanding Natural Landscape or Outstanding Natural Feature when viewed from public roads. (3.2.1.1, 3.2.1.8, 3.2.5.1, 3.2.5.2, 3.3.20-21, 3.3.24-25, 3.3.30, 3.3.32).
- 6.3.27 In the Wakatipu Basin, avoid planting and screening, particularly along roads and boundaries that would degrade openness where such openness is an important part of its landscape quality or character. (3.2.1.1, 3.2.1.8, 3.2.5.2, 3.3.20-21, 3.3.24-25, 3.3.32).
- 6.3.28 In the Upper Clutha Basin, have regard to the adverse effects from subdivision and development on the open landscape character where it is open at present. (3.2.1.1, 3.2.1.8, 3.2.5.2, 3.3.20-21, 3.3.24-26, 3.3.32).
- 6.3.29 Encourage development to utilise shared accesses and infrastructure, and to locate within the parts of the site where it will minimise disruption to natural landforms and to rural character. (3.2.1.1, 3.2.1.8, 3.3.21, 3.3.24, 3.3.32).

Managing Activities on Lakes and Rivers

- 6.3.30 Control the location, intensity and scale of buildings, jetties, moorings and infrastructure on the surface and margins of water bodies and ensure these structures maintain or enhance landscape quality and character, and amenity values. (3.2.1.1, 3.2.4.1, 3.2.4.3, 3.2.5.1, 3.2.5.2, 3.3.19, 3.3.21, 3.3.26, 3.3.30, 3.3.32).
- 6.3.31 Recognise the character of the Frankton Arm including the established jetties and provide for these on the basis that the visual qualities of the District's distinctive landscapes are maintained and enhanced. (3.2.4.3, 3.2.5.1, 3.3.30).
- 6.3.32 Recognise the urban character of Queenstown Bay and provide for structures and facilities providing they protect, maintain or enhance the appreciation of the District's distinctive landscapes. (3.2.1.1, 3.2.4.1, 3.2.4.4, 3.2.5.1, 3.2.5.2, 3.3.19, 3.3.21, 3.3.30, 3.3.32).
- 6.3.33 Provide for appropriate commercial and recreational activities on the surface of water bodies that do not involve construction of new structures. (3.2.1.1, 3.2.4.4, 3.2.5.1, 3.2.5.2, 3.3.21, 3.3.30, 3.3.32).

6.4

Rules

- 6.4.1 The Landscape Chapter and Strategic Direction Chapter's objectives and policies are relevant and applicable in all zones where landscape values are at issue.
- 6.4.2 The landscape assessment matters do not apply to the following within the Rural Zone:
- ski Area Activities within the Ski Area Sub Zones;
 - the area of the Frankton Arm located to the east of the Outstanding Natural Landscape line as shown on the District Plan maps;
 - the Gibbston Character Zone;
 - the Rural Lifestyle Zone;
 - the Rural Residential Zone ¹.

¹. Greyed out text indicates the provision is subject to variation and is therefore is not part of the Hearing Panel's recommendations.

QUEENSTOWN LAKES DISTRICT COUNCIL

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

Commissioners

Denis Nugent (Chair)

Lyal Cocks

Cath Gilmour

Trevor Robinson

Mark St Clair

PART D - CHAPTER 6

8. OVERVIEW

1107. The purpose of this chapter is to recognise the landscape as a significant resource to the District which requires protection from inappropriate activities that could degrade its qualities, character and values. General submissions on Chapter 6 included requests that the entire chapter, or alternatively the objectives and policies in the chapter, be deleted and either replaced with the provisions already in section 4.2 of the ODP or unspecified elements thereof⁶¹¹.
1108. Some of these submissions made quite specific suggestions as to desired amendments to the existing section 4.2 of the ODP. Others were more generalised. A variation was in submissions such as submissions 693⁶¹² and 702 asking that Chapter 6 be deleted, and parts amalgamated with the Rural Chapter Section.
1109. Collectively, these submissions provide a broad jurisdiction to amend Chapter 6.
1110. We have addressed at some length in the context of our discussion of submissions on Chapter 3 whether it is appropriate to revert to the approach taken in the ODP to landscape management and have concluded that while a number of aspects of the ODP remain both relevant and of considerable assistance, the changed circumstances some 17 years after the initial key decision of the Environment Court on the form of the ODP⁶¹³ mean that a more strategic, directive approach is required. The commentary provided by Mr Barr in his Section 42A Report on Chapter 6 provides additional support for this view.
1111. Accordingly, we do not recommend wholesale changes to Chapter 6 to bring it into line with the ODP. Nor do we recommend it be amalgamated into the rural chapters. We consider it provides valuable strategic direction, consistent with the general structure of the PDP, with separate 'strategic' chapters. At an overview level, though, we recommend that the title of the chapter be amended to "*Landscapes and Rural Character*" to more correctly describe its subject matter. We regard this as a minor non-substantive change.
1112. Another theme of submissions on landscape issues was that the PDP's provisions were too protective of landscape values and existing activities that contribute to those values⁶¹⁴. In his evidence, Mr Jeff Brown put to us the proposition that growth will inevitably affect landscape values, that this needed to be accepted and that the focus of PDP needed to be on appropriate management of those effects⁶¹⁵. Counsel for Skyline Enterprises Ltd and others, Ms Robb, put a similar proposition to us, submitting⁶¹⁶:

⁶¹¹ Submissions 145, 632, 636, 643, 669, 688, 693, 702: Opposed in FS1097, FS1162, FS1254 and FS1313

⁶¹² Supported in FS1097

⁶¹³ C180/99

⁶¹⁴ See e.g. Submission 806

⁶¹⁵ J Brown, EIC at [2.2]

⁶¹⁶ Summary of legal submissions for Skyline Enterprises Ltd, Totally Tourism Ltd, Barnhill Corporate Trustee Ltd, DE, ME Burn and LA Green, AK and RB Robins and Robins Farm Ltd and Slopehill JV at 6.1.-6.3

“The regime does not recognise the fundamental need for development to accommodate inevitable growth (both in the tourism and living sectors) or that certain development will contribute to people and communities’ appreciation of the District.

The assumption to be gained from the PDP is that Council is trying to protect rural areas from any development (other than productive rural activity) when in fact that is not what the PDP should be striving to achieve, at all.

Overall the PDP does not strike an appropriate balance between the protection, use and development of all resources. Accordingly, it is not the most appropriate regime to achieve the purpose of the Act.”

1113. Such submissions raise questions of the extent to which the PDP can and should provide for growth.
1114. We posed the question to Ms Black, who gave evidence on behalf of Real Journeys Ltd, whether it might be time to put out the “full up” sign at the entrance to Queenstown, rather than seek to cater for an ever-expanding influx of visitors to the District. Her initial reaction was one of surprise that one could contemplate such a position. Having reflected on the point, she suggested that it was very difficult to stop development. She drew our attention to the economic benefits to other districts from the number of visitors drawn to Queenstown and Wanaka, and also to the national objectives of the tourism industry.
1115. All of these matters are worthy of note, but Ms Black accepted also that there is a risk of too much development in the District ‘killing the golden goose’. Ms Black’s opinion might also be contrasted with the view expressed by Mr Goldsmith⁶¹⁷ that Queenstown can’t just keep growing.
1116. Overlaid on these considerations is now the NPSUDC 2016 which aims “to ensure that planning decisions enable the supply of housing needed to meet demand” while not anticipating “development occurring with disregard to its effect”⁶¹⁸.
1117. Ultimately, it is about arriving at the best balance we can between the use, development and protection of the District’s natural and physical resources⁶¹⁹, while complying with the legal obligations the Act imposes.
1118. We have not considered submissions⁶²⁰ that although nominally on Chapter 6, in fact raise issues outside the Council’s jurisdiction.
1119. Lastly, we note that our consideration of submissions on Chapter 6 needs to take into account the variation of some of its provisions notified on 23 November 2017. At a purely practical level, to the extent that the Stage 2 Variations delete or amend parts of Chapter 6, we do not need to make recommendations on those parts and existing submissions on them have been automatically transferred to the variation hearing process, by virtue of Clause 16B(1) of the First Schedule to the Act.

⁶¹⁷ When giving submissions for Ayrburn Farms Ltd, Bridesdale Farm Ltd, Shotover Country Ltd and Mt Cardrona Station Ltd

⁶¹⁸ NPSUDC 2016 Forward at pages 3 and 4

⁶¹⁹ Noting that that was how Ms Robb concluded her submissions – putting her position in terms of how the PDP had struck that balance.

⁶²⁰ See Submission 380

1120. Our recommended version of Chapter 6 in Appendix 1 therefore shows the provisions of the notified Chapter the subject of the Stage 2 Variation greyed out, to differentiate them from the provisions we recommend.

8.1. Section 6.1 - Purpose

1121. This section provides a general outline of the Purpose of the chapter as whole.

1122. The only submission seeking specific amendments to it was that of NZIA⁶²¹ seeking that it also refer to urban landscapes.

1123. Mr Barr recommended only drafting changes in his Section 42A Report.

1124. The primary focus of Chapter 6 is on rural landscapes, and the visual amenity issues in urban areas are dealt with in Chapter 4, and the more detailed provisions of Part Three of the PDP. However, Chapter 6 is not solely on rural landscapes and we accept that some amendment to the Statement of Purpose in Section 6.1 is appropriate to recognise that.

1125. In addition, submissions on Chapter 3 discussed above⁶²² sought greater guidance on the relationship between Chapter 3 and the balance of the PDP. We have recommended an amendment to Section 3.1 to provide such guidance. As a consequential measure, we recommend that parallel changes should be made to Section 6.1.

1126. Lastly, the second paragraph of Section 6.1 requires amendment in various respects:

- a. It is something of an overstatement to say categorisation of landscapes will provide certainty of their importance to the District. We recommend inserting the word “*greater*” to make it clear that this is an issue of degree;
- b. The reference to regional legislation needs to be corrected. The relevant instruments are Regional Policy Statements;
- c. Saying that categorisation of landscapes has been undertaken “*to align with*” regional [policy] and national legislation is somewhat misleading. Certainly, categorisation of landscapes aligns with the Proposed RPS, but it would be more correct to say that categorisation of landscapes “*responds to*” regional policy and national legislation;
- d. The reference to the RMA at the end of the second paragraph appears an unnecessary duplication, as well as lacking clarity. Given the specific reference to ONLs and ONFs, this is shorthand for consideration of adverse effects.

1127. In summary, we recommend that the Statement of Purpose be amended to read as:

“The purpose of this chapter is to provide greater detail as to how the landscape, particularly outside urban settlements, will be managed in order to implement the strategic objectives and policies in Chapter 3. It needs to be read with particular reference to the objectives in Chapter 3, which identify the outcomes the policies in this chapter are seeking to achieve.

Landscapes have been categorised to provide greater certainty of their importance to the District, and to respond to regional policy and national legislation. Categorisations of landscapes will provide decision makers with a basis to consider the appropriateness of activities that have adverse effects on those landscapes.”

⁶²¹ Submission 238: Opposed in FS1107, FS1226, FS1234, FS1239, FS1241, FS1242, FS1248 and FS1249

⁶²² Submissions 179, 191, 781: Supported in FS1121; Opposed in FS1132

8.2. Section 6.2 - Values

1128. Section 6.2 contains a general discussion of landscape values that provide the background to the objectives and policies that follow in the balance of the chapter.
1129. Submissions on Section 6.2 include:
- a. Requesting that it be more descriptive and acknowledge the inherent values of the District's rural landscapes, especially ONLs and ONFs⁶²³;
 - b. Requesting it acknowledge urban landscapes and their values, and that references to farmland, farms and farming activities be amended⁶²⁴;
 - c. Requesting it acknowledge the role of infrastructure and the locational constraints that activity has⁶²⁵;
 - d. Requesting that it note the form of landscape Council wishes to retain and plan for a variety of future housing in both urban and rural areas⁶²⁶;
 - e. Requesting it acknowledge the appropriateness of rural living, subject to specified preconditions⁶²⁷;
 - f. Requesting insertion of a broader acknowledgement of activities that might be enabled in rural locations⁶²⁸;
 - g. Support for its current text⁶²⁹ or its intent⁶³⁰.
1130. Mr Barr recommended an amendment to the text to acknowledge that there is some, albeit limited, capacity for rural living in appropriate locations in rural areas, but otherwise recommends only minor drafting changes.
1131. We also record that the Stage 2 Variations delete the final (eighth) paragraph of the notified Section 6.2. Our recommended version of Chapter 6 accordingly shows that paragraph as greyed out, and we have not addressed submissions on it.
1132. We accept NZIA's request that reference in the fourth paragraph to productive farmland be amended to "*rural land*". While Dr Marion Read noted in her evidence the relationship of farming to rural character, its open character is not related to the productivity of the land. Otherwise, we do not recommend acceptance of the NZIA submissions, reflecting the fact that the primary focus of the chapter is on rural landscapes.
1133. We agree with Mr Barr that some acknowledgement of rural living is required. We take the view, however, that the amendments to the sixth paragraph of Section 6.2 need to be a little more extensive than Mr Barr suggests. If the discussion is going to acknowledge that rural living is appropriate in some locations, it needs to provide greater guidance as to where those locations might be (and equally where the locations are where such development would not be appropriate). We do not consider that the broader acknowledgement requested in submission 608 is required in an introductory discussion.

⁶²³ Submission 110: Opposed in FS1097

⁶²⁴ Submission 238: Opposed in FS1107, FS1226, FS1234, FS1238, FS1241, FS1242, FS1248, FS1249 and FS1255

⁶²⁵ Submissions 251, 433, 805: Supported in FS1077, FS1092, FS1097, FS1115 and FS1117

⁶²⁶ Submission 442

⁶²⁷ Submissions 375, 430, 437, 456: Supported in FS1097; Opposed in FS1084, FS1087, FS1160 and FS1282

⁶²⁸ Submission 608: Supported in FS1097, FS1154 and FS1158; Opposed in FS1034

⁶²⁹ Submission 600: Opposed in FS1034

⁶³⁰ Submission 755

1134. Similarly, we do not recommend that specific reference be made to infrastructure requirements in this context. While these issues are important and need to be addressed in the policies of Chapter 6, this introductory discussion does not purport to discuss every matter addressed in the substantive provisions that follow, nor need it to do so.
1135. We acknowledge that landscapes have inherent values, and agree that such values might be acknowledged.
1136. Other submissions are expressed too generally for us to base substantive amendments on.
1137. The first paragraph of Section 6.2 uses the term ‘*environmental image*’. The same term was used in Section 4.1 and we have recommended that “*the natural and built environment*” be substituted in that context. For consistency, the same amendment should be made in this context.
1138. The fifth paragraph refers to rural areas closer to Queenstown and Wanaka town centres as having particular characteristics. It would be more accurate to refer to rural areas closer to Queenstown and Wanaka urban areas.
1139. In summary, we recommend the following changes to Section 6.2:
- a. Substitute “*the natural and built environment*” for “*environmental image*” at the end of the first paragraph and add a further sentence:

“Those landscapes also have inherent values, particularly to tangata whenua.”

- b. Substitute “*rural land*” for “*productive farmland*” in the first line of the fourth paragraph;
- c. Substitute reference to “*urban areas*” for “*town centres*” in the fifth paragraph;
- d. Amend the sixth paragraph to read as follows:

“While acknowledging these areas have established rural living and development, and a substantial amount of further subdivision and development has already been approved in these areas, the landscape values of these areas are vulnerable to degradation from further subdivision and development. Areas where rural living development is at or approaching the finite capacity of the landscape need to be identified if the District’s distinctive rural landscape values are to be sustained. Areas where the landscape can accommodate sensitive and sympathetic rural living developments similarly need to be identified.”

8.3. Section 6 Objectives

1140. A number of submissions have been made on the objectives of Chapter 6. Mr Barr recommended one objective be deleted and that amendments be made to the balance. We have taken a broader view of the matter.
1141. The objectives all overlap with the objectives of Chapter 3, insofar as the latter address landscape values and rural character. The submissions on the objectives, if accepted, would not materially alter this position⁶³¹. The Chapter 3 objectives already specify the desired end result and our view is that Chapter 6 need only specify additional policies to assist achievement of those broad objectives.

⁶³¹ Many submissions, if accepted, would make the objectives inconsistent with the direction provided in Chapter 3, or alternatively would make them generalised to the point where they provide no meaningful assistance in achieving the purpose of the Act.

1142. In summary, therefore, to avoid duplication⁶³² we recommend deletion of all of the objectives in Chapter 6 as being the most appropriate way to achieve the purpose of the Act, as it relates to landscape and rural character.

1143. We have generally classified the many submissions seeking to soften the effects of the objectives as notified in a multitude of different ways as 'Accepted in Part'.

1144. Some submitters have sought additional objectives be inserted into Chapter 6. In particular, NZIA⁶³³ requests addition of a new objective framed:

"Recognise the importance of high quality town centre landscapes within the District's natural landscape."

1145. We do not recommend that this objective be inserted for the following reasons:

- a. It is not framed as an objective (an environmental end point) and it is difficult to discern how it could be redrafted in order to do so.
- b. The urban areas of the District are too small to constitute a landscape in their own right⁶³⁴.
- c. As above, the principal focus of Chapter 6 is on rural landscapes.

1146. None of the other objectives suggested appeared to us to add value against the background of the provisions recommended in Chapter 3.

8.4. Policies – Categorising Rural Landscapes

1147. As notified, Policies 6.3.1.1 and 6.3.1.2 provided for identification of ONLs and ONFs on the planning maps and classification of Rural Zoned landscapes as ONL, ONF and Rural Landscape Classification.

1148. The only submissions specifically seeking changes to them, sought their deletion⁶³⁵, identification of the balance of rural landscapes on the planning maps⁶³⁶ and a change in the label for those rural landscapes⁶³⁷.

1149. Policy 6.3.1.1 duplicated recommended Policy 3.3.29 and accordingly, we recommend that it be deleted.

1150. As regards Policy 6.3.1.2, the notified version of Chapter 6 has a number of other provisions relating to the landscape classifications: Policy 6.3.8.3 and 6.3.8.4 together with Rules 6.4.1.2-4. It is appropriate that those provisions be considered here, subject to the effect of the Stage 2 Variations.

1151. As notified, Policy 6.3.8.3 read:

⁶³² Consistent with Real Journeys Limited's submission (Submission 621)

⁶³³ Submission 238: Supported in FS1097; Opposed in FS1107, FS1226, FS1234, FS1239, FS1241, FS1242, FS1248 and FS1249

⁶³⁴ See the discussion for example in *Lakes District Rural Landowners Society Inc and Ors v Queenstown Lakes District Council C75/2001* at paragraph 7 on the need for a 'landscape' to meet a minimum areal requirement.

⁶³⁵ Submission 806

⁶³⁶ Submission 761

⁶³⁷ Submissions 375 and 456: Opposed in FS1282

“Exclude identified Ski Area Sub-Zones from the landscape categories and full assessment of the landscape provisions while controlling the impact of the ski field structures and activities on the wider environment.”

1152. Policy 6.3.8.4 read:

“Provide a separate regulatory regime for the Gibbston Valley, identified as the Gibbston Character Zone, in recognition of its contribution to tourism and viticulture while controlling the impact of buildings, earthworks and non-viticulture related activities on the wider environment.”

1153. Lastly, Rules 6.4.1.2-4 read:

“6.4.1.2 The landscape categories apply only to the Rural Zone. The Landscape Chapter and Strategic Directions Chapter’s objectives and policies are relevant and applicable in all zones where landscape values are in issue.

6.4.1.3 The landscape categories do not apply to the following within the Rural Zones:

- a. Ski Area Activities within the Ski Area Sub-Zones;*
- b. The area of the Frankton Arm located to the east of the Outstanding Natural Landscape Line as shown on the District Plan maps;*
- c. The Gibbston Character Zone;*
- d. The Rural Lifestyle Zone;*
- e. The Rural Residential Zone.*

6.4.1.4 The landscape categories apply to lakes and rivers. Except where otherwise stated or shown on the Planning Maps, lakes and rivers are categorised as Outstanding Natural Landscapes.”

1154. The Stage 2 Variations have made amendments to both Rules 6.4.1.2 and 6.4.1.3, which will need to be considered as part of the hearing process for these variations. Specifically:

- a. The first sentence of Rule 6.4.1.2 has been deleted;
- b. The first line of Rule 6.4.1.3 has been amended to refer to landscape “assessment matters” rather than landscape “categories”;
- c. Rules 6.4.1.3 c., d. and e. have been deleted.

1155. The submissions on the provisions quoted included:

- a. Support for exclusion of the ski areas from landscape categories⁶³⁸;
- b. A request to extend the ski area exclusion to include access corridors, delete reference to environmental controls and add recognition of the importance of these areas⁶³⁹;
- c. A request to extend the ambit of Rule 6.4.1.2 to exclude Chapter 6 from having any application outside the Rural Zone⁶⁴⁰;
- d. A request for clarification as to whether landscape classification objectives and policies apply to special zones like Millbrook⁶⁴¹;
- e. A request for clarification that landscape classification objectives and policies do not apply to the Rural Lifestyle Zone and the Rural Residential Zone⁶⁴²;

⁶³⁸ Submissions 608, 610, 613: Opposed in FS1034

⁶³⁹ Submission 806: Supported in FS1229

⁶⁴⁰ Submissions 443 and 452

⁶⁴¹ Submission 696

⁶⁴² Submissions 669 and 694

- f. A request to revise the drafting of Rule 6.4.1.2 and 6.4.1.3 to more clearly express what is included or excluded⁶⁴³;
 - g. A request to add the Hydro Generation Zone as a further zone excluded from the landscape classifications⁶⁴⁴;
 - h. A request to add reference to trails undertaken by the Queenstown Trail or Upper Clutha Tracks Trusts⁶⁴⁵;
 - i. A request to delete Rule 6.4.1.4 or clarify the reference to ONLs⁶⁴⁶.
1156. Mr Barr recommended deletion of Rules 6.4.1.2 and 6.4.1.4 and amendment of Rule 6.4.1.3 to refer to landscape assessment matters (rather than landscape categories) and to delete reference in the Rule to the Gibbston Character Zone, the Rural Lifestyle Zone and the Rural Residential Zone. Some of those recommendations have been overtaken by the Stage 2 Variations and do not need to be considered further. Mr Barr did not recommend amendment to the two policies noted above (which are not the subject of the Stage 2 Variations).
1157. We found these provisions collectively exceedingly confusing, overlapping, and, in part, contradictory. It is not surprising there were so many submissions seeking clarification of them.
1158. Mr Barr’s recommendations did not materially assist and, in one view, confused the matter still further by implying that while the landscape assessment criteria apply only in the Rural Zone, the landscape categorisations as ONL, ONF and Rural Character Landscape (as relabelled) apply as shown on the planning maps, with the sole exceptions of the Ski Area Sub-Zones and the Gibbston Valley Character Zone (by virtue of Policies 6.3.8.3 and 6.3.8.4). That would mean all of the special zones, the Rural Lifestyle Zone and the Rural Residential zone are subject to the landscape categorisations. Inclusion of the special zones would in turn be inconsistent with Mr Barr’s recommended revised Policy 6.3.1.1. (that like notified Policy 6.3.1.2) indicates that the intention is to classify the “*Rural Zoned Landscapes*”. On the face of the matter, land in the Rural Lifestyle Zone and the Rural Residential Zone would not qualify as “*Rural Zoned landscapes*” either (given it refers to “*Rural Zoned*” rather than “*rural zoned*” landscapes).
1159. The effect of the Stage 2 Variations is to remove the explicit statements in Section 6.2 and Rule 6.4.1.2 that the landscape categories apply only in the Rural Zone, but does not change notified Policy 6.3.1.2.
1160. Last, but not least, as some submitters pointed out at the hearing, the planning maps identify ONFs within special zones in Arrowtown and at Jacks Point. The Stage 2 Variations do not change that position either.
1161. Stepping back from the explicit and implicit statements in the PDP regarding application of the landscape categories, we make the following observations:
- a. The Planning Maps do not clearly or consistently identify the boundaries of the areas denoted ONL, ONF and (particularly) RLC (now RCL) in all locations.
 - b. Land in the Rural Residential and Rural Lifestyle Zones has been identified as such either because it is already developed or because it has the capacity (in landscape terms) to absorb a greater density of development than the balance of rurally zoned areas. If more

⁶⁴³ Submission 836: Supported in FS1085

⁶⁴⁴ Submission 580: Opposed in FS1040

⁶⁴⁵ Submission 671

⁶⁴⁶ Submission 836

land is identified as appropriately having one or other of these zones applied to it following the mapping hearings, it will be for the same reasons. While the objectives and policies of Chapter 22 refer to the potential for such zones to be located in sensitive landscapes, and have provisions to address that situation, those provisions are not framed with reference to the landscape categories.

- c. The Gibbston Character Zone has its own specific provisions to manage landscape character and there might similarly be considered to be a case for it to sit outside the categorisation process as a result;
- d. The special zones are just that, "*special*". They vary in nature, but a common feature is that landscape provisions have already been taken into account in identifying the land as subject to a special zone. In addition, to the extent that Mr Barr's recommended relief would or might have the effect that special zones are subject to the landscape classifications, we consider there is no scope to make that change. Submission 836 (that Mr Barr has relied upon), seeks only non- substantive drafting changes. As regards the specific request by Contact Energy Ltd to add specific reference to the Hydro Generation Zone, this is neither necessary nor appropriate. The Hydro Generation Zone is a '*special*' zone under the ODP. Assuming it retains that status in subsequent stages of the District Plan process, it will be excluded automatically. More to the point, if we were to list that particular zone, we would presumably have to list all the special zones, to avoid the implication that they were not excluded;
- e. The Frankton Arm is not readily considered under a classification that seeks to retain its rural character. It is obviously not "*rural*". As such, it might appropriately be excluded from the classification process entirely, having been identified as not outstanding. That raises questions in our minds as to the apparent classification of a large section of the Hawea River, and the lower section of the Cardrona River, above its confluence with the Clutha, as Rural Character Landscapes, but those rivers might be considered small enough that the policies related to that classification are still applicable;
- f. The fact that the District Plan maps show parts of ONFs in Arrowtown and Jacks Point respectively as being within special zones is an anomaly if the intention is that all ONFs and ONLs be managed in accordance with the objectives and policies governing ONLs and ONFs. The special zone at Arrowtown will be considered as part of a subsequent stage of the District Plan review and we recommend the area occupied by the ONF be zoned Rural as part of that process. The Jacks Point Structure Plan already recognises the landscape values of the areas currently identified as ONF and ONL within the boundary of the zone, with provisions precluding development in those areas, reinforced by the recommended provisions of Chapter 41, and so there is not the same imperative to address it.
- g. The fact that the PDP maps shows ONL and ONF lines as extending into residential zones appears to be an error, given the provisions of the PDP already noted. We discussed the incursion of the Mt Iron ONF line into the residential zoned land on the west side of the mountain with Mr Barr and he advised it was a mapping error. We will treat that (and the other examples we noted) as being something to be addressed in the mapping hearings, assuming there is jurisdiction and evidence to do so.
- h. Although perpetuating the ODP in this regard, the exclusion for the Ski Area Sub-Zones is anomalous because it is contrary to case law⁶⁴⁷ holding that the inquiry as to whether a landscape is outstanding is a discrete issue that needs to be resolved on landscape grounds, and that the planning provisions are a consequence of its categorisation as outstanding, not the reverse. Counsel for Darby Planning LP argued that the ski areas were properly excluded from the ONL classification because they are not '*natural*'. That may be the case (Darby Planning did not adduce expert evidence to support that contention), but the ski areas appear too small to constitute a separate '*landscape*' based

⁶⁴⁷

Man O'War Station Limited v Auckland Council [2015] NZHC 767: Affirmed [2017] NZCA 24

on the tests previously applied by the Environment Court. In any event, we have no submission that would give us jurisdiction to delete the exclusion for the ski area subzones in Policy 6.3.8.3⁶⁴⁸ and thus we only note it as an anomaly. The Council should consider whether it is necessary to initiate a variation in this regard;

- i. Given the *Man O'War* decisions (referred to above) though, the submissions for Queenstown Park Limited⁶⁴⁹ and Queenstown Trails Trusts seeking additional exclusions from the consequences of classification as ONL (or ONF) cannot be accepted.

1162. We also note that it was not at all clear to us whether the contents of Section 6.4.1 are correctly described as “rules”.

1163. While section 76(4) of the Act is silent as to what a rule in a District Plan may do, normally rules govern activities having an adverse effect on the environment. Rules 6.4.1.2-4 quoted above are (as the heading for Section 6.4.1 suggests) essentially explanations as to how policies should be interpreted and applied. Rule 6.4.1.1. is a clarification of the term “*subdivision and development*”. Rule 6.4.1.5 is similarly a clarification as to the applicability of the objectives and policies of the landscape chapter to utilities. Mr Barr recommended, in any event, that it be deleted as it is not necessary.

1164. Mr Barr recommended in his reply evidence that Section 6.4 might more appropriately be headed Implementation Methods. That recommendation has now been overtaken by the Stage 2 Variations, meaning that Rules 6.4.1.2-3 must remain in Chapter 6, as amended, for future consideration. We consider, however, that the content of Rule 6.4.1.4 would more appropriately be addressed in policies in common with notified Policies 6.3.8.3 and 6.3.8.4. Rule 6.4.1.1 might appropriately be shifted to the definition section (Chapter 2). Currently that rule reads:

“The term ‘subdivision and development’ includes subdivision, identification of building platforms, any buildings and associated activities such as roading, earthworks, lighting, landscaping, planting and boundary fencing and access/gateway structures”.

1165. A submission was made on this ‘rule’ by PowerNet Limited⁶⁵⁰ seeking that “*subdivision and development*” should not include “*infrastructure structures and activities that are not associated with the subdivision and development*”.

1166. It is not clear whether the submitter seeks an exclusion from the policies in Chapter 6 for infrastructure that is associated with subdivision and development (read literally that would be the effect of the submission, if accepted). If that is the intention, we do not accept it. It is important that the effects of a subdivision be considered holistically. It would be unrealistic and undesirable if, for instance, the effects of a subdivision on landscape character were considered without taking into account the effects of the internal roading network necessitated by the subdivision. No amendment is necessary for infrastructure not associated with the subdivision and development because the existing rule only includes “*associated*” activities as it is.

1167. In summary, we recommend no change to the rule, but that it be shifted to Chapter 2. The end result will of course be the same.

⁶⁴⁸ The exclusion formerly in Rule 6.4.1.2(a) has been effectively removed by the Stage 2 Variations.

⁶⁴⁹ Submission 806

⁶⁵⁰ Submission 251: Supported in FS1092 and FS1097

1168. We agree with Mr Barr that Rule 6.4.1.5 is an unnecessary duplication and should be deleted.
1169. Turning then as to how Rule 6.4.1.4 might be amalgamated into the policies along with 6.3.8.3 and 6.3.8.4, we have no jurisdiction to expand notified Policy 6.3.1.2 to apply beyond the Rural Zone. Its deletion (as sought in Submission 806) would have the effect that the landscape categories would not have any policy support indicating where they apply. Given the deletions from the text of Chapter 6 accomplished by the Stage 2 Variations and the lack of consistency in the planning maps identifying their location, we do not regard that as a satisfactory outcome – the lack of clarity, legitimately the subject of a number of submissions, would be exacerbated.
1170. We do not regard retention of Policy 6.3.1.2 as inconsistent with the varied provisions notified in November 2017. While Rule 6.4.1.2, as revised by the Stage 2 Variations, states that the objectives and policies of Chapters 3 and 6 apply in all zones where landscape values are in issue, that application presumably must depend on the terms of the relevant objective or policy. Recommended Objective 3.2.5.1 for instance will not apply to landscapes that are not ONL's.
1171. In summary, therefore, we recommend that Policy 6.3.1.2 be renumbered 6.3.1, and refer to Rural Character Landscapes, but otherwise be retained unamended, and that two amended policies numbered 6.3.2 and 6.3.3 be inserted to follow it, building on existing policies as follows:
- “Exclude identified Ski Area Sub-Zones and the area of the Frankton Arm located to the east of the Outstanding Natural Landscape line as shown on the District Plan maps from the Outstanding Natural Feature, Outstanding Natural Landscape and Rural Character Landscape landscape categories applied to the balance of the Rural Zone.*
- Provide a separate regulatory regime for the Gibbston Character Zone, Rural Residential Zone, Rural Lifestyle Zone and the Special Zones within which the Outstanding Natural Feature, Outstanding Natural Landscape and Rural Character Landscape landscape categories, and the policies of this chapter related to those categories, do not apply unless otherwise stated.”*
1172. While the two policies have a similar end result and could potentially be collapsed together, we consider there is some value in differentiating the zones that have discrete chapters in the PDP outlining how they are to be managed, from the Ski Area Sub-Zones and the Frankton Arm that are part of the Rural Zone.
1173. We recommend that Rule 6.4.1.4 should be deleted, as a consequence.
1174. We consider that these policies, operating in conjunction with the policies of Chapter 3 related to categorisation of landscapes are the most appropriate way to achieve Objectives 3.2.1.1, 3.2.1.7, 3.2.1.8, 3.2.5.1 and 3.2.5.2 at a strategic level, having regard to the jurisdictional limitations on our consideration of these matters.
- 8.5. Policies – Managing Activities in the Rural Zones**
1175. Consequential on the suggested deletion of the objectives in this chapter, there is a need to organise the policies flowing from categorisation of rural landscapes into a logical order. We recommend that this be done first by grouping the policies managing activities throughout the

rural zones (that is, within the Rural, Rural Residential, Rural Lifestyle and Gibbston Character Zones); secondly by gathering the policies that are specific to managing activities in ONLs and ONFs; thirdly by grouping together policies related to managing activities in RCLs; and lastly by grouping together the policies related to managing activities related to lakes and rivers. We recommend that this division be made clear by including suitable headings as follows:

- a. *“Managing Activities in the Rural Zone, the Gibbston Character Zone, the Rural Residential Zone and the Rural Lifestyle Zone;*
- b. *Managing Activities in Outstanding Natural Landscapes and on Outstanding Natural Features;*
- c. *Managing Activities in Rural Character Landscapes;*
- d. *Managing Activities on Lakes and Rivers”.*

1176. Insertion of headings for the balance of the chapter requires a new heading for the three policies related to land categorisation that we have already recommended. We recommend the heading *“Rural Landscape Categorisation”* be inserted.

1177. Turning to the policies falling under the first bullet pointed heading above, the first that requires consideration is what was formerly numbered Policy 6.3.1.5, which read:

“Avoid urban subdivision and development in the rural zones.”

1178. Submissions on this policy sought a wide range of relief from its deletion to significant amendments. Mr Barr recommended its amendment to read:

“Discourage urban subdivision and urban development in the rural zones.”

1179. The substance of this policy has already been addressed in the context of our Chapter 3 report above and we have recommended that urban development outside the defined UGBs and existing settlements where UGBs have not been defined should be avoided. It follows that we recommend that all of the submissions on this policy (apart from the single submission seeking its retention) be rejected. The only amendment we recommend to the policy is to clarify what is meant by *“urban subdivision”*.

1180. Accordingly, we recommend that Policy 6.3.1.5 be renumbered 6.3.4 and amended to read:

“Avoid urban development and subdivision to urban densities in the rural zones”.

1181. The second policy common to all of the rural zones is Policy 6.3.1.8 which as notified, read:

“Ensure that the location and direction of lights does not cause glare to other properties, roads, and public places or the night sky.”

1182. Submissions on this policy sought variously its deletion⁶⁵¹, shifting provision for lighting into the rural chapter⁶⁵², carving out an exception for navigation and safety lighting⁶⁵³, and generally to give greater prominence to the significance of the night sky as a key aspect of the District’s natural environment⁶⁵⁴.

⁶⁵¹ Submission 761

⁶⁵² Submission 806

⁶⁵³ Submission 621: Supported in FS1097; Opposed in FS1282

⁶⁵⁴ Submission 340

1183. We also note a separate submission seeking recognition of the maintenance of the ability to view and appreciate the naturalness of the night sky and to avoid unnecessary light pollution in Chapter 3⁶⁵⁵. As discussed in Part C of our report, while we do not consider that this passes the rigorous requirement for inclusion in Chapter 3, we have taken this submission into account in this context.

1184. Mr Barr recommended the policy be amended to read:

“Ensure that the location and direction of lights avoids degradation of the night sky, landscape character and sense of remoteness where it is an important part of that character.”

1185. As Submission 568 (G Bisset) pointed out, the issue under this policy is views of the night sky (rather than degradation of the night sky per se). The night sky itself cannot be impacted by any actions taken on the ground.

1186. Second, we think that Real Journeys is correct, and provision needs to be made for navigation and safety lighting. We suggest that the policy refer to “unnecessary” degradation of views of the night sky. We also take on board a point made by Mr Ben Farrell in his evidence, that Mr Barr’s recommendation omitted reference to glare, the minimisation of which is important to night-time navigation on Lake Wakatipu.

1187. Mr Barr’s reasoning⁶⁵⁶ was that zone provisions control glare. However, in our view, some reference to glare is required at broader policy level. Again though, it is not all glare that needs to be avoided.

1188. We also think that Mr Barr’s suggested reformulation treats loss of remoteness as a discrete issue when (where applicable) it is an aspect of landscape character. It might also be seen to introduce some ambiguity as to what the qualifier (where it is an important part of that character) refers to. This can be avoided with a little redrafting.

1189. Accordingly, we recommend that Policy 6.3.1.8 be renumbered 6.3.5 and amended to read:

“Ensure that the location and direction of lights does not cause excessive glare and avoids unnecessary degradation of views of the night sky and landscape character, including of the sense of remoteness where it is an important part of that character.”

1190. Policy 6.3.1.9 as notified read:

“Ensure the District’s distinctive landscapes are not degraded by forestry and timber harvesting activities.”

1191. One submission on this policy sought clarification of linkages with provisions related to indigenous vegetation and biodiversity and as to the extent of any limitations on timber harvesting⁶⁵⁷. Another submission sought that the policy be deleted in this context and shifted to the rural chapter⁶⁵⁸.

⁶⁵⁵ Submission 568

⁶⁵⁶ In the Section 42A Report at page 22

⁶⁵⁷ Submission 117

⁶⁵⁸ Submission 806

1192. We do not recommend the latter as this is a landscape issue common to all rural zones. We do recommend minor changes responding to Submission 117, to make it clear that this policy has no connection to indigenous vegetation or biodiversity provisions and to limit the breadth of the reference to timber harvesting (which might otherwise be seen as inconsistent with the policy focus on controlling wilding species). Accordingly, we recommend that Policy 6.3.1.9 be renumbered 6.3.6 and amended to read:

“Ensure the District’s distinctive landscapes are not degraded by production forestry planting and harvesting activities.”

1193. Policy 6.3.1.10, as notified, read:

“Recognise that low-intensity pastoral farming on large land holdings contributes to the District’s landscape character.”

1194. Submissions on this policy sought variously deletion of specific reference to pastoral farming and to the size of land holdings⁶⁵⁹, deletion of the reference to the size of land holdings⁶⁶⁰, deletion of the policy entirely or its amendment to recognise that it is the maintenance of landscape values that contributes to landscape character⁶⁶¹.

1195. Mr Barr did not recommend any change to his policy. Consequent with our recommendations in relation to notified Policy 3.2.5.5.1, we recommend that the focus of this policy should be enabling low intensity pastoral farming to continue its contribution to landscape character. While it is understandable that submitters take the view that many activities contribute to rural landscape character, large pastoral land holdings in the District have a particular role in this regard and we consider it is appropriate that they be recognised. We also consider no specific reference is required to more intensive farming⁶⁶², since the policy does not purport to enable that.

1196. In summary, we recommend that Policy 6.3.1.10 be renumbered 6.3.7 and amended to read:

“Enable continuation of the contribution low-intensity pastoral farming on large land holdings makes to the District’s landscape character.”

1197. Policy 6.3.7.2, as notified, read:

“Avoid indigenous vegetation clearance where it would significantly degrade the visual character and qualities of the District’s distinctive landscapes.”

1198. Submissions on this policy sought variously its deletion⁶⁶³, its retention⁶⁶⁴ or softening the policy to refer to avoiding, remedying or mitigating indigenous vegetation clearance⁶⁶⁵ or

⁶⁵⁹ Submission 238: Supported in FS1097; Opposed in FS1107, FS1226, FS1234, FS1239, FS1241, FS1242, FS1248 and FS1249

⁶⁶⁰ Submission 600: Supported in FS1209; Opposed in FS1034 and FS1282

⁶⁶¹ Submission 806

⁶⁶² See e.g. Submission 110

⁶⁶³ Submission 806

⁶⁶⁴ Submission 600: Supported in FS1209; Opposed in FS1034

⁶⁶⁵ Submissions 519 and 598 (the latter in tandem with deletion of the word “significantly”): Supported in FS1015, FS1097 and FS1287; Opposed in FS1356

alternatively to significant ONFs and ONLs⁶⁶⁶. Mr Barr did not recommend any change to the policy as notified.

1199. Given that the focus of the policy is on significant degradation to visual character and landscape qualities, we take the view that an avoidance policy is appropriate. It could be amended to expand its focus (as Submission 598 suggests) but we see little value in an “*avoid, remedy or mitigate*” type policy in this context. We also consider that the policy has broader application than just indigenous vegetation in ONLs and on ONFs (that are significant by definition).

1200. Accordingly, we recommend no change to this policy, other than to renumber it 6.3.8.

1201. Policy 6.3.7.1, as notified, read:

“Encourage subdivision and development proposals to promote indigenous biodiversity protection and regeneration where the landscape and nature conservation values would be maintained or enhanced, particularly where the subdivision or development constitutes a change in the intensity in the land use or the retirement of productive farm land.”

1202. Two submissions⁶⁶⁷ sought amendment to this policy – that it refers to ‘biodiversity’ rather than ‘nature conservation’ values, and recognise that values might change over time. Mr Barr recommended that it remain as notified and, other than renumbering it 6.3.9, we concur. Given the revised definition of ‘nature conservation values’ we consider it an appropriate focus in this context. Similarly, we consider the policy already contemplates change.

1203. We also consider that this policy provides adequate support at a high level for offsetting, fleshed out by the provisions of Chapters 21 and 33. We therefore concur with Mr Barr’s view that no new policy on the subject⁶⁶⁸ is required.

1204. Policies 6.3.8.1 and 6.3.8.2 related to tourism infrastructure, commercial recreation and tourism related activities. Policy 6.3.8.1 provided for acknowledgement of tourism infrastructure. 6.3.8.2 involved recognition of the appropriateness of commercial recreation and tourism related activities. Most of the submissions on these policies were supportive, seeking amendments to extend their ambit.

1205. We have recommended that Policy 6.3.8.2 be shifted into the Strategic Chapter to better recognise the importance of these matters. We do not see Policy 6.3.8.1 as adding any value independently of 6.3.8.2 and accordingly both should be deleted from this chapter, as a consequential change.

1206. Policy 6.3.3.2 as notified read:

“Ensure that subdivision and development in the Outstanding Natural Landscapes and Rural Landscapes adjacent to Outstanding Natural Features would not degrade the landscape quality, character and visual amenity of Outstanding Natural Features.”

⁶⁶⁶ Submission 378: Opposed in FS1049 and FS1282

⁶⁶⁷ Submissions 378 and 806: Opposed in FS1049 and FS1282

⁶⁶⁸ As sought in Submission 608: Supported in FS1097 and FS1117; Opposed in FS1015 and FS1034

1207. Submissions on this policy sought variously minor drafting changes⁶⁶⁹, clarification that a significant degree of degradation is required⁶⁷⁰ and its deletion⁶⁷¹.
1208. Mr Barr did not recommend any change to this policy.
1209. We have considered whether this policy should properly extend to subdivision and development in the Rural Residential, Rural Lifestyle and Gibbston Character Zones. While Mr Carey Vivian suggested an amendment that would have this effect, given the limited scope of submissions on this policy, an extension of its ambit would in our view be outside scope and require a variation. Having considered that possibility on its merits, we do not recommend such a variation be advanced. Land is zoned Rural Lifestyle, or Rural Residential in the knowledge that that zoning involves acceptance of a greater density of development than the Rural Zone. If land is adjacent to an ONF, that proximity, and the potential for adverse effects on the ONF should be considered at the point the land is zoned. The Gibbston Character Zone is not adjacent to an ONF, and so the issue does not arise for land in the Gibbston Valley.
1210. Returning to the notified form of Policy 6.3.3.2, we regard degradation as importing a more than minor adverse effect, but for clarity, recommend that the policy be amended to say that. We have considered the evidence as to alternative ways in which a qualitative element might be introduced into this policy. Ms Louise Taylor⁶⁷² suggested adding “*as a whole*”, so as to give it a spatial dimension. Mr Carey Vivian suggested that the test be whether the landscape quality and visual amenity “*values*” of the ONF are adversely affected. Given the objective sought to be achieved (3.2.5.1), we consider a ‘*more than minor adverse effect*’ test is a more appropriate test. We also think that a more than minor adverse effect would, in all likelihood degrade an ONF ‘*as a whole*’ and adversely affect the values that make it significant⁶⁷³. The only other amendments we would recommend are consequential (to refer to Rural Character Landscapes and renumber it 6.3.10) and clarification (to make it clear that the focus is on the ONF to which subdivision and development is adjacent).
1211. Accordingly, we recommend that this Policy be amended to read:
- “Ensure that subdivision and development in the Outstanding Natural Landscapes and Rural Character Landscapes adjacent to Outstanding Natural Features does not have more than minor adverse effects on the landscape quality, character and visual amenity of the relevant Outstanding Natural Feature(s).”*
1212. Policy 6.3.5.4 as notified read:
- “Encourage any landscaping to be sustainable and consistent with the established character of the area.”*
1213. The only submissions specifically on this policy sought its retention. Mr Barr recommended one minor change, to clarify that the reference to sustainability in this context is not the broad concept in section 5 of the Act, but rather relates to whether landscaping is viable.

⁶⁶⁹ Submission 375: Opposed in FS1097 and FS1282

⁶⁷⁰ Submissions 519 and 598: Supported in FS1015, FS1097 and FS1287; Opposed in FS1282 and FS1356

⁶⁷¹ Submissions 355 and 598: Supported in FS1287; Opposed in FS1282 and FS1320

⁶⁷² Giving evidence for Matukituki Trust

⁶⁷³ The focus of Proposed RPS, Policy 3.2.4

1214. We agree with the thinking behind that suggested change, but consider it could be made clearer. Accordingly, we recommend that this Policy be renumbered 6.3.11 and amended to read:

“Encourage any landscaping to be ecologically viable and consistent with the established character of the area.”

1215. In summary, having reviewed the policies in this section, we consider that individually and collectively with the policies both in Chapter 3 and in the balance of this chapter, they are the most appropriate way to achieve the objectives in Chapter 3 relevant to use, development and protection of the rural areas of the District at a strategic level.

8.6. Policies – Managing Activities in ONLs and on ONFs

1216. As notified, Policy 6.3.1.3 read:

“That subdivision and development proposals located within the Outstanding Natural Landscape, or an Outstanding Natural Feature, be assessed against the assessment matters in provisions 21.7.1. and 21.7.3 because subdivision and development is inappropriate in almost all locations meaning successful applications will be exceptional cases.”

1217. Submissions on this policy included:

- a. Seeking that the Policy be restricted to a cross reference to the assessment matters⁶⁷⁴;
- b. Seeking to delete reference to the assessment matters, but retain the emphasis on subdivision and development being generally inappropriate⁶⁷⁵;
- c. Seeking to delete it entirely⁶⁷⁶;
- d. Seeking to amend the concluding words to soften the expectations as the number of locations where developments will be inappropriate⁶⁷⁷;
- e. Seeking to amend the policy to state the intention to protect ONLs or ONFs from inappropriate subdivision, use or development⁶⁷⁸;
- f. Seeking to qualify the policy to provide specifically for infrastructure with its own test, or alternatively add a new policy the same effect⁶⁷⁹.

1218. In his reply evidence, Mr Barr recommended this policy be amended to read:

“That subdivision and development proposals located within the Outstanding Natural Landscape, or an Outstanding Natural Feature, be assessed against the assessment matters in provisions 21.7.1 and 21.7.3 because subdivision development is inappropriate in almost all locations within the Wakatipu Basin, and inappropriate in many locations throughout the districtwide Outstanding Natural Landscapes.”

⁶⁷⁴ Submissions 249, 355, 502, 519, 621: Supported in FS1012, FS1015 and FS1097; Opposed in FS1282, FS1320 and FS1356

⁶⁷⁵ Submissions 375, 437, 456: Opposed in FS1015, FS1097, FS1160 and FS1282

⁶⁷⁶ Submissions 624, 806

⁶⁷⁷ Submissions 598: Supported in FS1097, FS1117 and FS1287; Opposed in FS1282

⁶⁷⁸ Submission 581: Supported in FS1097; Opposed in FS1282

⁶⁷⁹ Submissions 251, 805: Supported in FS1092, FS1097 and FS1115; Opposed in FS1282

1219. The recommended amendment recognises a distinction drawn in the initial Environment Court decision on the ODP⁶⁸⁰ between the reduced capacity of the Wakatipu Basin ONLs to absorb change, compared to the ONLs in the balance of the District⁶⁸¹.
1220. A number of the planning witnesses who appeared at the hearing criticised this policy as notified as inappropriately prejudicing applications yet to be made. Ms Louise Taylor suggested to us for instance that such predetermination was inconsistent with the caselaw applying a *'broad judgment'* to resource consent applications.
1221. Mr Tim Williams noted also that there were a number of examples where developments in ONLs had been found to be appropriate. While Mr Williams did not say so explicitly, the implication was that it is not factually correct that appropriate development in an ONL is an exceptional case.
1222. As against those views, Mr John May gave evidence suggesting that the notified policy was both realistic and reflected the sensitivity and value of the District's landscapes.
1223. The Environment Court thought it was necessary to make comment about the likelihood of applications being successful in the ODP to make it clear that the discretionary activity status afforded activities in ONLs and ONFs under the ODP did not carry the usual connotation that such activities are potentially suitable in most if not all locations in a zone⁶⁸². The Environment Court made it clear that, were this not able to be stated, a more restrictive, non-complying activity would be appropriate.
1224. Mr Goldsmith⁶⁸³ submitted to us that the existing reference to appropriate development in ONLs being an exceptional case originated from the Environment Court's identification of the ONLs in the Wakatipu Basin as requiring a greater level of protection. He also submitted that elevation of the existing provision into a policy required justification and evidence⁶⁸⁴.
1225. We do not think Mr Goldsmith's first point is factually correct. While the initial consideration in the Environment Court's mind might have been the vulnerability of the Wakatipu Basin ONLs, the ODP text the Court approved reads:
- "... in or on outstanding natural landscapes and features, the relevant activities are inappropriate in almost all locations within the zone, **particularly** within the Wakatipu Basin or in the Inner Upper Clutha area..."* [Emphasis added]
1226. On the second point, we do not think elevation from a provision explaining the rule status ascribed to a policy requires justification in the sense Mr Goldsmith was arguing. Clearly the Environment Court thought that was the position as a fact. Whether it should now be expressed as a policy turns on whether that is the most appropriate way to achieve the relevant objective (3.2.5.1) which we have already found to be the most appropriate way to achieve the purpose of the Act. This is the basis on which we have approached the matter.

⁶⁸⁰ C180/99 at [136]

⁶⁸¹ See ODP Section 1.5.3iii(iii)

⁶⁸² Refer the discussion in *Lakes District Rural Landowners Society Inc v Queenstown Lakes District Council* C75/2001 at 41-46

⁶⁸³ When appearing for Ayrburn Farm Estate Ltd, Bridesdale Farm Developments Ltd, Shotover Country Ltd and Mt Cardrona Station Ltd. Mr Brown gave planning evidence supporting that submission.

⁶⁸⁴ Mr Carey Vivian also drew our attention to the way in which the language had been changed from the ODP, and expressed the view that it made little sense as a policy.

1227. As regards Ms Taylor’s ‘*broad judgment*’ point, we rely on the confirmation provided by the Supreme Court in *King Salmon* that plan policies may emphasise protection rather than use and development consistently with the purpose of the Act, depending on the circumstances. We also note more recent authority⁶⁸⁵ holding that reference back to Part 2 of the Act⁶⁸⁶ is only required where plan provisions are invalid, incomplete or unclear.
1228. For our part, we had a problem with Policy 6.3.1.3 (and Policy 6.3.1.4 that follows it) because of the way they refer to assessment matters. As Ms Taylor observed⁶⁸⁷, the role of assessment matters is to assist implementation of policies in a plan. We do not consider that it is appropriate that assessment matters act as quasi-policies. If they are effectively policies, they should be stated as policies in the Plan.
1229. We also consider it would be more helpful to explain not just that successful applications will be exceptional, but also to give some guidance as to what characteristics will determine whether they will be successful. As Mr Vivian observed, merely stating the general point makes little sense as a policy. The capacity to absorb change is clearly one important factor – refer notified Policy 6.3.4.1. The ODP identifies as another important touchstone (in the context of the policies governing ONLs in the Wakatipu Basin and ONFs) whether buildings and structures and associated roading and boundary developments are reasonably difficult to see. Mr Haworth (arguing in support of the more general UCES submission seeking that the ODP provisions governing development in rural areas should be retained in preference to the PDP provisions) was particularly critical of the loss of this criterion, and we consider it to be an aspect of the ODP that could usefully be carried over into the PDP.
1230. There is, however, one issue with the ODP wording. The ODP provides no indication of the viewpoint from which changes to the landscape must be reasonably difficult to see. This is surprising given that in the initial Environment Court decision on the ODP, the Environment Court observed:
- “Further, even if one considers landscapes in the loose sense of ‘views of scenery’ the first question that arises is as to where the view is from. One cannot separate the view from the viewer and their viewpoint.”*⁶⁸⁸
1231. The specific question of how this particular criterion should be framed was considered in a later decision in the sequence finalising the ODP⁶⁸⁹.
1232. From that decision, it appears that the Council proffered a test of visibility based on what could be seen *“outside the property they are located on”*. Mr Goldsmith, then acting for a number of parties on the ODP appeals, is recorded as having argued that that qualification was otiose⁶⁹⁰. Counsel for the Council, Mr Marquet, is recorded as having argued that they protected landowners’ rights.

⁶⁸⁵ *RJ Davidson Family Trust v Marlborough District Council* [2017] NZHC 52

⁶⁸⁶ And therefore to a broad judgment on the application of section 5

⁶⁸⁷ As part of her evidence on behalf of X-Ray Trust Ltd.

⁶⁸⁸ C180/99 at [74]

⁶⁸⁹ C74/2000

⁶⁹⁰ That is, serving no useful purpose

1233. The Court took the position⁶⁹¹ that the views enjoyed by neighbours should not be determinative, and directed that the qualification be deleted.
1234. With respect to the reasoning of the Environment Court, the problem we see with the end result is that without definition of the viewpoint, reasonable visibility should presumably be determined from every relevant point. Moreover, virtually nothing will be “*reasonably difficult to see*” if one views it from sufficiently close range (unless a development takes place entirely underground). The point of having a visibility test depends on having a viewpoint that is far enough away to provide a developer with an opportunity to construct a development that meets the test. Clearly that will not be possible in all cases, nor, perhaps, in many cases.
1235. But the developer needs to have that opportunity, otherwise the policy becomes one which, as counsel and witnesses for a number of submitters contended was the case with the existing PDP policies in relation to development in ONLs, can never be met.
1236. In summary, we think that the test needs to be what is reasonably difficult to see “*from beyond the boundary of the site the subject of application*”. The location of the boundary of the site in relation to the development will of course vary according to the circumstances. The land beyond the boundary might be privately or publicly owned. We considered specifying visibility from a public viewpoint (i.e. a road). Given, however, that the purpose of this requirement is ultimately to provide better definition of more than minor adverse effects of subdivision, use and development on (among other things) visual amenity values of ONLs (refer recommended Objective 3.2.5.1), this would not be the most appropriate way to achieve the objective in section 32 terms.
1237. Any alternative viewpoint would necessarily be arbitrary (some specified minimum distance perhaps) and somewhat unsatisfactory for that reason.
1238. In summary, therefore, we recommend that Policy 6.3.1.3 be renumbered 6.3.12 and amended to read:
- “Recognise that subdivision and development is inappropriate in almost all locations in Outstanding Natural Landscapes and on Outstanding Natural Features, meaning successful applications will be exceptional cases where the landscape or feature can absorb the change and where the buildings and structures and associated roading and boundary changes are reasonably difficult to see from beyond the boundary of the site the subject of application.”*
1239. Policy 6.3.1.12, as notified read:
- “Recognise and provide for the protection of Outstanding Natural Features and Landscapes with particular regard to values relating to cultural and historic elements, geological features and matters of cultural and spiritual value to Tangata Whenua including Tōpuni.”*
1240. Submissions on this policy sought variously its deletion⁶⁹², introduction of reference to inappropriate subdivision, use and development both with and without reference to the

⁶⁹¹ C74/2000 at [15]

⁶⁹² Submissions 621 and 806: Opposed in FS1282

specific values currently identified⁶⁹³, reference to a method that would identify the values in question⁶⁹⁴, and expansion of the policy to include reference to Wāhi Tupuna⁶⁹⁵

1241. When Mr Barr appeared at the hearing, we asked why it was appropriate to refer to the specific values noted in this policy as a subset of all of the values that ONLs and ONFs might have. He explained that the intention was to capture the values that might not be obvious, and he recommended no change to the policy.
1242. Mr Barr makes a good point, that these particular values would not be obvious to the casual observer. As is discussed in the Hearing Panel’s Stream 1A report (Report 2), consultation with Tangata Whenua is an important mechanism by which one can identify cultural elements in a landscape that would not otherwise be obvious. On that basis, we think it appropriate in principle to identify the significance of these particular values.
1243. For the same reason, we do not think it necessary or appropriate to insert reference to a method whereby the Council will identify all the values in question. In the case of cultural values at least, while the mapping of Wāhi Tupuna planned as part of a later stage in the District Plan review process will assist, it is primarily the responsibility of applicants for resource consent to identify whether and what values are present in landscapes that might be affected by their proposals.
1244. Submitter 810 makes a valid point, seeking reference to wāhi tupuna. The representatives of the submitter who gave evidence as part of the Stream 1A hearing indicated that there was likely to be an overlap in practice between ONLs and wāhi tupuna. Chapter 5 addresses the protection of wāhi tupuna, but if this policy is going to make specific reference to tōpuni as a matter of cultural and spiritual value to tangata whenua, we think that reference should also be made to wāhi tupuna.
1245. We have already discussed at length the utility of a qualification of policies such as this by reference to inappropriate subdivision, use and development. In summary, given the interpretation of that term by Supreme Court in its *King Salmon* decision, we do not think that it would materially alter the effect of a policy such as this.
1246. Having said that, we do have a problem with the existing wording in that recommended Objective 3.2.5.1. and Policy 3.3.29 already “*recognise and provide for*” the protection of ONLs and ONFs. The role of this policy is to flesh out how Objective 3.2.5.1 is achieved beyond what Policy 3.3.29 already says. To avoid that duplication, we recommend that the policy be renumbered 6.3.13 and reframed slightly to read:

“Ensure that the protection of Outstanding Natural Features and Outstanding Natural Landscapes includes recognition of any values relating to cultural and historic elements, geological features and matters of cultural and spiritual value to tangata whenua, including tōpuni and wāhi tupuna.”

1247. Policy 6.3.4.2 as notified read:

⁶⁹³ Submissions 355 and 806: Supported in FS1097; Opposed in FS1282 and FS1320

⁶⁹⁴ Submission 355: Supported in FS1097; Opposed in FS1282 and FS1320

⁶⁹⁵ Submission 810 (noting that the other aspect of the relief sought by this submitter – referring to Manawhenua rather than Tangata Whenua – was withdrawn by the submitter by submitters representatives when they appeared in the Stream 1A Hearing)

“Recognise that large parts of the District’s Outstanding Natural Landscapes include working farms and accept that viable farming involves activities which may modify the landscape, providing the quality and character of the Outstanding Natural Landscapes is not adversely affected.”

1248. Only one submitter sought amendments specifically to this policy, seeking that it be broadened to enable any uses that might modify the landscape⁶⁹⁶.
1249. Mr Barr did not recommend any change to this policy. We concur.
1250. In the part of our report addressing Chapter 3, we recommended that the viability of farming be identified as a specific issue to be addressed by the strategy objectives and policies of that chapter. The same reasoning supports this policy.
1251. We do not consider it is appropriate to provide an open-ended recognition for any changes to ONLs. We do not think such recognition would be consistent with recommended Objective 3.2.5.1. We note also that Mr Jeff Brown, giving evidence on behalf of submitter 806 among others, did not support the relief sought in this submission.
1252. Mr Tim Williams suggested that reference might be made to other land uses, while retaining reference to the quality and character of the ONLs. While that approach is not open to the obvious objection above, we regard the extent to which non-farming activities in ONLs are accommodated as something generally best left for determination under the more general policies of Chapter 3. We discuss possible exceptions to that position below.
1253. Accordingly, we recommend that policy 6.3.4.2 be renumbered 6.3.14 but otherwise adopted with only a minor grammatical change to read:

“Recognise that large parts of the District’s Outstanding Natural Landscapes include working farms and accept that viable farming involves activities that may modify the landscape, providing the quality and character of the Outstanding Natural Landscapes is not adversely affected.”

1254. Policy 6.3.3.1 of the PDP as notified read:

“Avoid subdivision and development on Outstanding Natural Features that does not protect, maintain or enhance Outstanding Natural Features.”

1255. Submitters on this policy sought that it be deleted or alternatively qualified to refer to qualities of the relevant ONFs, to refer to inappropriate subdivision and development, or to have less of an avoidance focus. Although Mr Barr did not recommend any change to this policy, we view it as duplicating recommended Policy 3.3.30 and therefore recommend that it be deleted as adding no additional value.
1256. Policy 6.3.4.4. as notified read:

“The landscape character and amenity values of the Outstanding Natural Landscape are a significant intrinsic, economic and recreational resource, such that large scale renewable electricity generation or new large scale mineral extraction development proposals including

⁶⁹⁶ Submission 806

windfarm or hydro energy generation are not likely to be compatible with the Outstanding Natural Landscapes of the District”.

1257. Submissions on this policy largely opposed it. The view was expressed that the policy inappropriately predetermines the outcome of resource consent applications yet to be made.
1258. Mr Barr recommended one minor change to make it clear that the policy refers to ‘new’ large scale renewable electricity generation proposals.
1259. Mr Vivian suggested to us that there was a need to balance the landscape values affected against the positive benefits of renewable electricity generation.
1260. At least in the case of ONLs and ONFs, we do not think there is scope for the balancing process Mr Vivian had in mind.
1261. Mr Napp, appearing for Straterra⁶⁹⁷ sought to persuade us that the Waihi and Macraes mines provided examples of large scale proposals with well-developed restoration protocols. Mr Napp, however, accepted that the nature of the terrain any open cast mine would encounter in this District would make reinstatement a difficult proposition and that it was hard to imagine any large open cast mining proposal in an ONL would be consentable. While Mr Napp emphasised that modern mining techniques are much less destructive of the landscape than was formerly the case, we think that the existing policy wording still leaves room for an exceptional proposal. Mr Napp also did not seek to persuade us that there was any great likelihood of such a proposal being launched within the planning period.
1262. Mr Druce, appearing as the representative of Contact Energy⁶⁹⁸, likewise indicated that that company was not anticipating any new generation being installed in the Upper Clutha Catchment. Given the terms of the Water Conservation Order on the Kawarau River and its tributaries (as recently extended to include the Nevis River), there would thus appear to be no likelihood of any new large hydro generation facilities being constructed in the District within the planning period either.
1263. The policy refers specifically to wind farm or hydro energy developments. We do not think that specific reference is necessary given the definition of renewable electricity generation in the NPSREG 2011. We think that a new large scale solar electricity generation plant would be equally unlikely to be compatible with the values of ONLs and the resources to fuel any other renewable electricity generation project are not available within the District.
1264. We also find the duplicated reference to ONLs somewhat clumsy and consider it could be shortened without loss of meaning.
1265. Accordingly, we recommend that this policy be renumbered 6.3.15 and amended to read:

“The landscape, character and amenity values of the Outstanding Natural Landscapes are a significant intrinsic, economic, and recreational resource, such that new large scale renewable electricity generation or new large-scale mineral extraction development proposals are not likely to be compatible with them.”

⁶⁹⁷ Submission 598

⁶⁹⁸ Submission 580

1266. In relation to activities in ONLs and ONFs, Trojan Helmet Limited⁶⁹⁹ sought that the notified Policy 6.3.5.6 (which applied to non-outstanding landscapes and emphasised the relevance of open landscape character where it is open at present), be shifted so as to apply to ONLs. As the submitter noted, this is already a policy of the ODP. Mr Jeff Brown supported that position in his evidence.
1267. We will address the relevance of open landscape character in non-outstanding landscapes shortly, but in summary, we agree that open landscape character is an aspect both of ONLs and ONFs that should be emphasised.
1268. Accordingly, we recommend that this submission be accepted and that a new policy related to managing activities of ONLs and ONFs numbered 6.3.16 be inserted as follows:
- “Maintain the open landscape character of Outstanding Natural Landscapes and Outstanding Natural Features where it is open at present.”*
1269. Another area where submissions sought new policies was in relation to recognition of infrastructure. We heard extensive evidence and legal argument from both Transpower New Zealand Limited and QAC seeking greater recognition of the significance of infrastructure and the locational constraints it is under. Representatives for Transpower also emphasised the relevance of the NPSET 2008 to this issue.
1270. We have already discussed at some length the latter point, but in summary, we recognise that greater recognition for regionally significant infrastructure is desirable.
1271. Mr Barr recommended that a new Policy 6.3.1.12 be inserted reading:
- “Regionally significant infrastructure shall be located to avoid, remedy or mitigate degradation of the landscape, while acknowledging location constraints, technical or operational requirements.”*
1272. We agree that the correct focus, consistent with Policy 4.3.2 and 4.3.3 of the Proposed RPS, is on regionally significant infrastructure. We have already commented on the appropriate definition of that term⁷⁰⁰.
1273. When we discussed this policy wording with Mr Barr, he explained that reference to *“acknowledging”* locational constraints was intended to mean something between just noting them and enabling infrastructure to proceed as a result of such constraints. He was reluctant, however, to recommend qualifiers that, in his view, would require a significant amplification of the text.
1274. We also bear in mind the reply evidence of Mr Paetz who, after initially been supportive of an alternative policy wording (in the context of Chapter 3) providing for mitigation of the impacts of regionally significant infrastructure on ONLs and ONFs where practicable, came to the view that this would not be likely to allow the Council to fulfil its functions in terms of sections 6(a) and 6(b) of the Act.

⁶⁹⁹ Submission 437: Supported (in part) in FS1097

⁷⁰⁰ Refer our discussion of this issue at Section 3.18 above.

1275. We note the comments of the Environment Court in its initial ODP decision⁷⁰¹ rejecting a “where practicable” exclusion for infrastructure effects on ONLs. The Court stated:

“That is not a correct approach. The policy should be one that gives the Council the final say on location within Outstanding Natural Features.”

1276. We record that counsel for Transpower Limited appeared reluctant to accept that even a “where practicable” type approach would be consistent with the NPSET 2008 formulation, “seek to avoid”. For the reasons stated in our Chapter 3 report, we do not agree with that interpretation of the NPSET 2008.

1277. Having regard to the fact that we are considering what policies would most appropriately give effect to our recommended Objectives 3.2.1.9 and 3.2.5.1, we think it follows that the policy cannot permit significant adverse effects on ONLs and ONFs.

1278. Similarly, and consistently with the NPSET 2008, we think the initial approach should be to seek to avoid all adverse effects. Where adverse effects cannot be avoided, we think that they should be reduced to the smallest extent practically possible; i.e. minimised.

1279. In summary, therefore, we recommend insertion of two new policies numbered 6.3.17 and 6.3.18, worded as follows:

“Locate, design, operate and maintain regionally significant infrastructure so as to seek to avoid adverse effects on Outstanding Natural Landscapes and Outstanding Natural Features, while acknowledging that location constraints and/or the nature of the infrastructure may mean that this is not possible in all cases.

“In cases where it is demonstrated that regionally significant infrastructure cannot avoid adverse effects on Outstanding Natural Landscapes and Outstanding Natural Features, avoid significant adverse effects and minimise other adverse effects on those landscapes and features.”

1280. We recognise that this leaves a potential policy gap for infrastructure that does not fall within the definition of regionally significant infrastructure. We consider the issues posed by such infrastructure are appropriately addressed in the more detailed provisions of Chapters 21 and 30. This is also consistent with our recommendation above that the former Rule 6.4.1.1 be converted to a new definition. As a result, the provision of infrastructure associated with subdivision and development will be considered at the same time as the development to which it relates.

1281. Submission 608⁷⁰² also sought a new policy providing for offsetting for wilding tree control within ONLs and ONFs. The submitter did not provide evidence supporting the suggested policy, relying on the reasons in its submission which, while advocating for the policy, did not explain how it would work in practice. Mr Barr recommended against its acceptance. As he put it, it seemed “the submitter wishes to trade the removal of a pest for accepting degradation of the landscape resource”. We agree. In the context of ONLs and ONFs, whose protection we are required to recognise and provide for, we would require considerable convincing that this is an appropriate policy response, including but not limited to a cogent section 32AA analysis, which the submitter did not provide.

⁷⁰¹ C180/99 at [72]

⁷⁰² Supported in FS1097 and FS1117; Opposed in FS1015 and FS1034

1282. Lastly under this heading, we note that Policy 6.3.1.7 as notified read:

“When locating urban growth boundaries or extending urban settlements through plan changes, avoid impinging on Outstanding Natural Landscapes or Outstanding Natural Features and minimise disruption to the values derived from open rural landscapes.”

1283. Mr Barr recommended a minor drafting change to this policy. For our part, and for the reasons discussed in our Chapter 4 report, we view this as a matter that is more appropriately dealt with in Chapter 4. We recommend that it be deleted from Chapter 6 and the submissions on it addressed in the context of Chapter 4.

1284. In summary, having reviewed the policies in this section, we consider that individually and collectively with the policies of Chapter 3 and those in the balance of this chapter, these policies are the most appropriate way, at a strategic level, to achieve the objectives in Chapter 3 relevant to use, development and protection of ONLs and ONFs – principally Objective 3.2.5.1, but also including Objectives 3.2.1.1, 3.2.1.7, 3.2.1.9, 3.2.3.1, 3.2.4.1 and 3.2.7.1.

8.7. Policies – Managing Activities in Rural Character Landscapes

1285. Policy 6.3.1.4, as notified, read:

“That subdivision and development proposals located within the Rural Landscape be assessed against the assessment matters in provisions 21.7.2 and 21.7.3 because subdivision and development is inappropriate in many locations in these landscapes, meaning successful applications will be, on balance, consistent with the assessment matters.”

1286. This policy attracted a large number of submissions. Submissions included:

- a. Seeking deletion of the policy⁷⁰³;
- b. That it refer only to assessment against the assessment matters⁷⁰⁴;
- c. Deleting reference to the assessment matters and providing for adverse effects to be avoided, remedied or mitigated⁷⁰⁵;
- d. Qualifying the application of the policy by reference to the requirements of regionally significant infrastructure⁷⁰⁶.

1287. Mr Barr recommended that the word *“inappropriate”* be substituted by *“unsuitable”* but otherwise did not recommend any changes to this policy.

1288. For the reasons set out above in relation to Policy 6.3.1.3, we do not support a policy cross referencing the assessment criteria. The reference point should be the objectives and policies of the PDP. We also do not support a policy that refers simply to avoidance, remediation or mitigation of adverse effects. For the reasons set out at the outset of this report, such a policy would provide no guidance, and would not be satisfactory.

1289. We accept that regionally significant infrastructure raises particular issues. We recommend that those issues be dealt with in new and separate policies, which will be discussed shortly.

⁷⁰³ Submission 806

⁷⁰⁴ Submissions 355, 761: Supported in FS1097; Opposed in FS1282 and FS1320

⁷⁰⁵ Submissions 437, 456, 513, 515, 522, 531, 532, 534, 535, 537, 608: Supported in FS1097, FS1256, FS1286, FS1292 and FS1322; Opposed in FS1034, FS1120 and FS1160

⁷⁰⁶ Submissions 635, 805: Opposed in FS1282

1290. We accept Mr Barr’s suggested minor drafting change.
1291. In summary, we recommend that Policy 6.3.1.4 be renumbered 6.3.19 and reworded as follows:
- “Recognise that subdivision and development is unsuitable in many locations in these landscapes and successful applications will need to be, on balance, consistent with the objectives and policies of the Plan.”*
1292. Policy 6.3.1.6, as notified, read:
- “Enable rural lifestyle living through applying Rural Lifestyle Zone and Rural Residential Zone plan changes in areas where the landscape can accommodate change”.*
1293. A number of submissions on this policy sought amendments so it would refer to *“rural living”* rather than *“rural lifestyle living”*, deleting specific reference to the Rural Residential and Rural Lifestyle Zones, and adding reference to *“carefully considered applications for subdivision and development for rural living”*, or similar descriptions.
1294. Millbrook Country Club⁷⁰⁷ sought to broaden the focus of the policy to include resort activities and development.
1295. Queenstown Park Ltd⁷⁰⁸ sought that reference be added to the positive effects derived from rural living.
1296. Mr Barr initially recommended some recognition for resort zone plan changes in his Section 42A Report, but when we discussed the matter with him, accepted that given there is no *“Resort Zone”* as such, the matter needed further consideration⁷⁰⁹.
1297. In his reply evidence, Mr Barr discussed the issue more generally. He characterised some of the planning evidence for submitters seeking to rely on the extent to which the landscape character of the Wakatipu Basin has been and will continue to be affected by consented development as reading like *‘the horse has bolted’* and that this position should be accepted. Mr Barr did not agree. He relied on Dr Read’s evidence where she had stated that the ODP had not succeeded in appropriately managing adverse cumulative effects. We asked Dr Read that specific question: whether the horse had bolted? She did not think so, or that management of the cumulative effects of rural living in the Wakatipu Basin was a lost cause, and neither do we⁷¹⁰. However, it is clearly an issue that requires careful management.
1298. Mr Barr recommended in his reply evidence that this policy be reframed as follows:
- “Encourage rural lifestyle and rural residential zone plan changes in preference to ad-hoc subdivision and development and ensure these occur in areas where the landscape can accommodate change.”*

⁷⁰⁷ Submission 696

⁷⁰⁸ Submission 806

⁷⁰⁹ Mr Chris Ferguson suggested in his evidence that the reference be to Special Zones for this reason

⁷¹⁰ That conclusion also accords with Mr Baxter’s evidence that while the Wakatipu Basin is not composed of working farms any more, lots of properties in the Basin still look like farms, from which we infer they still have an identifiably *‘rural’* character.

1299. We largely accept the thinking underpinning Mr Barr’s recommendation. It follows that we do not accept the many submissions insofar as they sought that reference be made to rural living being enabled through resource consent applications (the epitome of ad-hoc development). Indeed, this policy is focussing on plan changes as an appropriate planning mechanism, in preference to development by a resource consent application. If anything, we think that needs to be made clearer.
1300. We do not think that specific reference needs to be made to plan reviews as an alternative planning mechanism to plan changes (as suggested by Mr Ferguson). On any plan review including management of residential development in rural areas, all of these issues will be considered afresh.
1301. Ideally also, this policy would refer to the new zone (the Wakatipu Basin Lifestyle Precinct) proposed in the Stage 2 Variations, but we cannot presume that zoning will be confirmed after the hearing of submissions on the variations, and we lack jurisdiction to do so in any event.
1302. In summary, therefore, we recommend that Policy 6.3.1.6 be renumbered 6.3.20 and reworded as follows:
- “Encourage Rural Lifestyle and Rural Residential Zone Plan Changes as the planning mechanism to provide for any new rural lifestyle and rural residential developments in preference to ad-hoc subdivision and development and ensure these zones are located in areas where the landscape can accommodate the change.”*
1303. Policy 6.3.2.3 as notified read:
- “Recognise that proposals for residential subdivision or development in the Rural Zone that seek support from existing and consented subdivision or development have potential for adverse cumulative effects. Particularly where the subdivision and development would constitute sprawl along roads.”*
1304. Submissions on this policy included:
- Seeking deletion of the final sentence referring to sprawl along roads⁷¹¹;
 - Seeking to insert reference to inappropriate development in the Rural Zone⁷¹²;
 - Seeking to delete this policy and the one following it, and substitute a policy that would ensure incremental subdivision and development does not degrade landscape character or visual amenity values including as a result of ‘mitigation’ of adverse effects⁷¹³.
1305. When Mr Barr appeared, we asked him what the words “seeking support” were intended to refer to, and he explained that this was intended to be a reference to the “existing environment” principle recognised in the case law⁷¹⁴. In his reply evidence, Mr Barr sought to make this clearer. He also recommended acceptance of a submission seeking deletion of the last sentence of the Policy, given that it duplicates matters covered in Policy 6.3.2.4.

⁷¹¹ Submission 456

⁷¹² Submission 600: Supported in FS1209; Opposed in FS1034

⁷¹³ Submission 761: Opposed in FS1015

⁷¹⁴ Acknowledging the observations of the High Court in *Royal Forest and Bird Protection Society v Buller District Council* [2013] NZHC1324 at [13] and following regarding the inappropriateness of it as a description of the relevant legal principles.

1306. We largely accept Mr Barr’s recommendation. The exception is that we think that the reference to “*residential subdivision or development*” would benefit from clarification. The term ‘rural living’ was used extensively in the planning evidence we heard and we suggest that as an appropriate descriptor. We do not accept the suggestion in Submission 761 – for the reasons set out in our discussion of the appropriate strategic policy in Chapter 3 governing rural character landscapes, a general policy of ‘*no degradation*’ would in our view go too far.

1307. However, we think there is room for a more restrictive approach to ‘*mitigation*’ of proposed developments, which is also suggested in this submission, but which more properly relates to Policy 6.3.2.5. This is addressed shortly.

1308. In summary, we recommend Policy 6.3.2.3 be renumbered 6.3.21 and amended to read:

“Require that proposals for subdivision or development for rural living in the Rural Zone take into account existing and consented subdivision or development in assessing the potential for adverse cumulative effects.”

1309. Policy 6.3.2.4 as notified read:

“Have particular regard to the potential adverse effects on landscape character and visual amenity values from infill within areas with existing rural lifestyle development or where further subdivision and development would constitute sprawl along roads.”

1310. Apart from Submission 761 already noted, submissions included a suggestion that reference to infill be deleted⁷¹⁵.

1311. Mr Barr recommended that that submission be accepted. We agree. To the extent the policy seeks to manage the adverse effects of infill development, this is caught by Policy 6.3.2.3 (now 6.3.21) and as Mr Jeff Brown noted in his evidence, the assessment should be the same for ‘*infill*’ as for ‘*outfill*’. Accordingly, we recommend that the policy be renumbered 6.3.22 and worded:

“Have particular regard to the potential adverse effects on landscape, character and visual amenity values where further subdivision and development would constitute sprawl along roads.”

1312. Policy 6.3.2.5 as notified read:

“Ensure incremental changes from subdivision and development do not degrade landscape quality, character or openness as a result of activities associated with mitigation of the visual effects of a proposed development such as a screening planting, mounding and earthworks.”

1313. Submissions included:

- a. Seeking deletion of the policy⁷¹⁶;
- a. Seeking to delete or amend reference to “*openness*”⁷¹⁷;
- b. Amending the policy to require a significant effect or to focus on significant values⁷¹⁸;

⁷¹⁵ Submission 456

⁷¹⁶ Submission 378: Opposed in FS1049 and FS1282

⁷¹⁷ Submissions 437, 456: Supported in FS1097; Opposed in FS1160

⁷¹⁸ Submissions 598 and 621: Supported in FS1287; Opposed in FS1282

- c. Seeking that specific reference to mitigation be deleted⁷¹⁹
- d. Softening the policy to be less directive⁷²⁰.

1314. Mr Barr did not recommend any changes to the policy as notified.

1315. As noted above in the discussion of the relief sought in Submission 761, we take the view that ‘mitigation’ of adverse effects from subdivision and development should not be permitted itself to degrade important values. Clearly landscape quality and character qualify.

1316. The submissions challenging reference to openness in this context, however, make a reasonable point. The policy overlaps with others referring to openness and this duplication is undesirable. The submission of Hogans Gully Farming Ltd⁷²¹ suggested that “important views” be substituted. We regard this suggestion as having merit, since it captures an additional consideration.

1317. We also find the term “screening planting” difficult to understand. We think the intention is to refer to “screen planting”.

1318. In summary, therefore, we recommend that this policy be renumbered 6.3.23 and read:

“Ensure incremental changes from subdivision and development do not degrade the landscape quality or character, or important views, as a result of activities associated with mitigation of the visual effects of proposed development such as screen planting, mounding and earthworks.”

1319. As above, we recognise that provision also needs to be made for regionally significant infrastructure in the management of activities in RCLs. Many of the considerations discussed above in relation to recognising the role of infrastructure in relation to the ONL policies also apply although clearly, given the lesser statutory protection for RCLs, a more enabling policy is appropriate in this context.

1320. Having said that, we still regard it as appropriate that infrastructure providers should seek to avoid significant adverse effects on the character of RCLs.

1321. In summary, we recommend that two new policies be inserted in this part of the PDP numbered 6.3.24 and 25, reading:

“Locate, design, operate and maintain regionally significant infrastructure so as to seek to avoid significant adverse effects on the character of the landscape, while acknowledging that location constraints and/or the nature of the infrastructure may mean that this is not possible in all cases.

In cases where it is demonstrated that regionally significant infrastructure cannot avoid significant adverse effects on the character of the landscape, such adverse effects shall be minimised.”

1322. Policy 6.3.5.2 as notified read:

⁷¹⁹ Submission 621: Opposed in FS1282

⁷²⁰ Submission 696

⁷²¹ Submission 456

“Avoid adverse effects from subdivision and development that are:

- *Highly visible from public places and other places which are frequented by members of the public generally (except any trail as defined in this Plan); and*
- *Visible from public roads.”*

1323. Again, a large number of submissions were made on this policy. Most of those submissions sought that the policy provide for avoiding, remedying or mitigating adverse effects (paralleling the ODP in this regard). Some submissions⁷²² sought deletion of visibility from public roads as a test.

1324. One submitter⁷²³ sought greater clarity that this policy relates to subdivision and development on RCLs. Another submitter⁷²⁴ sought reference be inserted to *“inappropriate subdivision, use and development”*.

1325. Lastly, Transpower New Zealand Limited⁷²⁵ sought an explicit exclusion for regionally significant infrastructure.

1326. Having initially (in his Section 42A Report) recommended against any change to the notified policy, Mr Barr recommended in his reply evidence that this policy be qualified in two ways – first to provide for avoiding, remedying or mitigating adverse effects, and secondly to limit the policy to focussing on visibility from public *‘formed’* roads.

1327. We accept the point underlying the many submissions on this policy that avoiding adverse effects (given the clarification the Supreme Court has provided as to the meaning of *“avoid”* in *King Salmon*) poses too high a test when the precondition is whether a subdivision and development is visible from any public road. On the other hand, if the precondition is that the subdivision and development is *“highly visible”* from public places, we take the view that an avoidance approach is appropriate, because of the greater level of effect.

1328. The first bullet in Policy 6.3.5.2 also needs to be read in the light of the definition of trails, given that trails are excluded from the list of relevant public places.

1329. The current definition of trail reads:

“Means any public access route (excluding (a) roads and (b) public access easements created by the process of tenure review under The Crown Pastoral Land Act) legally created by way of grant of easement registered after 11 December 2007 for the purpose of providing public access in favour of the Queenstown Lakes District Council, the Crown or any of its entities.”

1330. There are no submissions on this definition. However, we consider clarification is desirable as to the exclusions noted (which are places, the visibility from which will be relevant to the application of notified Policy 6.3.4.2). Among other things, we recommend that the status of public access routes over reserves be clarified. Such access routes will not be the subject of a grant of easement and so this is not a substantive change.

⁷²² E.g. Submissions 513, 515, 531, 537, 608: Supported in FS1097, FS1256, FS1286 and FS1292; Opposed in FS1034

⁷²³ Submission 761: Opposed in FS1015

⁷²⁴ Submission 806

⁷²⁵ Submission 805

1331. In summary, we recommend to the Stream 10 Hearing Panel that the definition of trail be amended to read:

“Means any public access route legally created by way of a grant of easement registered after 11 December 2007 for the purpose of providing public access in favour of the Queenstown Lakes District Council, the Crown or any of its entities, and specifically excludes:

- a. Roads, including road reserves;*
- b. Public access easements created by the process of a tenure review under the Crown Pastoral Land Act; and*
- c. Public access routes over any reserve administered by Queenstown Lakes District Council, the Crown or any of its entities.”*

1332. Returning to Policy 6.3.4.2, Mr Goldsmith⁷²⁶ sought to justify constraining the policy to refer to public formed roads on the basis that the policy should not apply to roads that were not actually used. He accepted, however, that paper roads were used in the District as cycle routes and agreed that visibility from such routes was something the policy might focus on.

1333. For the same reason, we do not accept Mr Barr’s recommendation that the policy refer to public formed roads.

1334. Rather than insert an ‘avoid, remedy or mitigate’ type policy or some variation thereof (Mr Jeff Brown suggested “avoid or appropriately mitigate”), we prefer to provide greater direction by limiting the scope of the policy in other ways.

1335. Given that public roads are public places (and as such, would be used when testing whether a proposal would be highly visible), we recommend greater focus on narrowing the description of roads that are relevant for this aspect of the policy. To us, the key roads where visibility is important are those where the land adjoining the road forms the foreground for ONLs or ONFs. Effects on visual amenity from such roads are important because they diminish the visual amenity of the ONL or ONF.

1336. The second way in which we suggest the restrictiveness of the policy might be lessened is to make it clear that what is in issue are adverse effects on visual amenity, rather than any other adverse effects subdivision and development might have.

1337. Lastly, we recommend that the focus of the policy should be on subdivision, use and development as suggested in Submission 806. For the reasons set out above, we do not consider adding the word “inappropriate” would materially change the meaning of the policy.

1338. In summary, we recommend that Policy 6.3.5.2 be renumbered 6.3.26 and amended to read:

“Avoid adverse effects on visual amenity from subdivision, use and development that:

- a. is highly visible from public places and other places which are frequented by members of the public generally (except any trail as defined in this Plan); or*
- b. forms the foreground for an Outstanding Natural Landscape or Outstanding Natural Feature when viewed from public roads.”*

1339. Policies 6.3.5.3 and 6.3.5.6 both deal with the concept of openness. As notified, they read:

⁷²⁶ Then appearing for GW Stalker Family Trust (Submission 535) and others.

“6.3.5.3 Avoiding planting and screening, particularly along roads and boundaries, which would degrade openness where such openness is an important part of the landscape, quality or character;

6.3.5.6 Have regard to the adverse effects from subdivision and development on the open landscape character where it is open at present.”

1340. Submissions on Policy 6.3.5.3 included:
- a. Seeking amendment to refer to significant adverse effects on existing open landscape character⁷²⁷;
 - b. Seeking to substitute reference to views rather than openness, combined with emphasising that it is the appreciation of landscape quality or character which is important⁷²⁸;
 - c. Seeking to reframe the policy to be enabling of planting and screening where it contributes to landscape quality or character⁷²⁹.
1341. Many submitters sought deletion of the policy in the alternative. One submitter⁷³⁰ sought that reference be made to inappropriate subdivision use and development.
1342. A similar range of submissions were made on Policy 6.3.5.6.
1343. A number of parties appearing before us on these policies emphasised to us the finding of the Environment Court in its 1999 ODP decision that protection of the open character of landscape should be limited to ONLs and ONFs and that non-outstanding landscapes might be improved both aesthetically and ecologically by appropriate planting⁷³¹.
1344. We note that the Court also mentioned views from scenic roads as an exception which might justify constraints on planting, so clearly in the Court’s mind, it was not a legal principle that admitted of no exceptions.
1345. More generally, we think that open landscape character is not just an issue of views as many submitters suggest, although clearly views are important to visual amenity, and that a differentiation needs to be made between the floor of the Wakatipu Basin, on the one hand, and the Upper Clutha Basin on the other. It appears to us that the Environment Court’s comments were made in the context of evidence (and argument) regarding the Wakatipu Basin. In that context, and on the evidence we heard, the focus should be on openness where it is important to landscape character (i.e. applying notified policy 6.3.5.3). We note that the Stage 2 Variations provide detailed guidance of the particular landscape values of different parts of the Wakatipu Basin.
1346. Dr Read identified the different landscape character of the Wakatipu Basin compared to the Upper Clutha Basin in her evidence, with the former being marked by much more intensive use and development, as well as being more enclosed, whereas the Upper Clutha Basin is marked by more extensive farming activities and is much bigger. She noted though that on

⁷²⁷ Submission 356: Supported in FS1097

⁷²⁸ Submissions 437, 456, 513, 515, 522, 531, 537, 608: Supported in FS1097, FS1256, FS1286 and FS1292; Opposed in FS1034

⁷²⁹ Submission 806

⁷³⁰ Submission 513

⁷³¹ C180/99 at [154]

the Hawea Flat, existing shelter belts mean that while more open, the Upper Clutha Basin is not as open as one might think.

1347. In summary, we recommend that Policies 6.3.5.3 and 6.3.5.6 be renumbered 6.3.27 and 6.3.28 and amended to read as follows:

“In the Wakatipu Basin, avoid planting and screening, particularly along roads and boundaries, that would degrade openness where such openness is an important part of its landscape quality or character.

In the Upper Clutha Basin, have regard to the adverse effects from subdivision and development on the open landscape character where it is open at present.”

1348. Policy 6.3.5.5 as notified read:

“Encourage development to utilise shared accesses and infrastructure, to locate within the parts of the site where they will be least visible, and have the least disruption of the landform and rural character.”

1349. Submissions on this policy sought variously, qualification to reflect what is operationally and technical feasible⁷³² and to delete reference to visibility substituting reference to minimising or mitigating disruption to natural landforms and rural character⁷³³.

1350. Mr Barr recommended acceptance of the substance of the latter submission. We agree. Visibility is dealt with by other policies and should not be duplicated in this context. However, saying both minimise or mitigate would make the policy unclear. Consistent with the existing wording, minimisation is the correct focus.

1351. We do not consider that qualification is necessary to refer to operational and technical feasibility given that the policy only seeks to encourage the desired outcomes.

1352. We do accept, however, that the focus should be on ‘natural’ landforms, as opposed to any landforms that might have been created artificially.

1353. In summary, we recommend that Policy 6.3.5.5 be renumbered 6.3.29 and amended to read:

“Encourage development to utilise shared accesses and infrastructure, and to locate within the parts of the site where it will minimise disruption to the natural landform and to rural character.”

1354. Policy 6.3.4.1 as notified read:

“Avoid subdivision and development that would degrade the important qualities of the landscape, character and amenity, particularly where there is little or no capacity to absorb change. “

1355. While Mr Barr recommended that this policy be retained as is, the amendments we have recommended to notified Policy 6.3.1.3 (in relation to ONLs and ONFs) means that Policy

⁷³² Submission 635

⁷³³ Submission 836: Supported in FS1097

- 6.3.4.1 no longer serves a useful purpose. Accordingly, it should be deleted as a consequential change.
1356. The same reasoning prompts us to recommend deletion of Policy 6.3.1.11 which as notified, read:
- “Recognise the importance of protecting the landscape character and visual amenity values particularly as viewed from public places.”*
1357. This policy has effectively been overtaken by the package of policies we have recommended and should be deleted as a consequential change.
1358. Policy 6.3.1.11 was almost identical to notified Policy 6.3.4.3 which read:
- “Have regard to adverse effects on landscape character and visual amenity values as viewed from public places, with emphasis on views from formed roads.”*
1359. It too should be deleted as a consequential change.
1360. Policy 6.3.5.1 as notified read:
- “Allow subdivision and development only where it will not degrade landscape quality or character, or diminish the visual amenity values identified for any Rural Landscape.”*
1361. While Mr Barr recommended that this policy remain as is, it overlaps (and conflicts) with Policy 3.3.32 that we have recommended.
1362. Accordingly, we recommend that this policy be deleted as a consequential change.
1363. Lastly, under this heading, we should discuss Policies 6.3.2.1 and 6.3.2.2, which relate to residential development in the rural zones. As notified, these policies read respectively:
- “Acknowledge that subdivision and development in the rural zones, specifically residential development, has a finite capacity if the District’s landscape quality, character and amenity values are to be sustained.*
- Allow residential subdivision only in locations where the District’s landscape character and visual amenity would not be degraded.”*
1364. While Mr Barr recommended that these policies be retained, we have a number of issues with them. As discussed in the context of Objective 3.2.5.2, a Plan provision referring to finite capacity for development is of little use without a statement as to where the line is drawn, and where existing development is in relation to the line. More materially, the two policies purport to govern development across the rural zones and therefore encompasses ONLs, ONFs and Rural Character Landscapes. We have endeavoured to emphasise the different tests that need to be applied, depending on whether a landscape is an ONL (or ONF) or not.
1365. Last but not least, these policies overlap (and in some respects conflict) with other policies we have recommended in Chapter 3 (specifically 3.3.21-23, 3.3.30 and 3.3.32) and in Chapter 6 (specifically 6.3.12). Therefore, we recommend they be deleted.

1366. In summary, having reviewed the policies in this section, we consider that individually and collectively with the policies of Chapter 3 and the balance of this chapter, these policies are the most appropriate way, at a strategic level, to achieve the objectives in Chapter 3 relevant to use, development and protection of landscapes that are not ONLs or ONFs – principally Objective 3.2.5.2 but also including Objectives 3.2.1.1, 3.2.1.7, 3.2.1.8, 3.2.1.9, 3.2.3.1, 3.2.4.1 and 3.2.7.1.

8.8. Policies – Managing Activities on Lakes and Rivers

1367. Policy 6.3.6.1 as notified read:

“Control the location, intensity and scale of buildings, jetties, moorings and utility structures on the surface and margins of water bodies and ensure these structures maintain or enhance the landscape quality, character and amenity values.”

1368. Submissions on this policy sought variously:

- a. Qualification of amenity values to refer to *“visual amenity values”*⁷³⁴;
- a. Deletion of the latter part of the policy identifying the nature of the controls intended⁷³⁵;
- b. Qualifying the reference to enhancement so that it occurs *“where appropriate”*⁷³⁶;
- c. Qualifying the policy so it refers to management rather than controlling, identifies the importance of lakes and rivers as a resource and refers to avoiding, remedying or mitigating effects⁷³⁷.

1369. Mr Barr recommended that the word *“infrastructure”* be substituted for utility structures as the only suggested change to this policy. This is more consistent with the terminology of the PDP and we do not regard it as a substantive change.

1370. Against the background of recommended Objective 3.2.4.3, which seeks that the natural character of the beds and margins of lakes, rivers and wetlands is preserved or enhanced, it is appropriate that buildings on the surface and margins of water bodies are controlled so as to assist achievement of the objective. For the same reason, a generalised *“avoid, remedy or mitigate”* policy is not adequate.

1371. We also do not consider that adding the words *“where appropriate”* will provide any additional guidance to the application of the policy.

1372. Further, we do not agree that reference to amenity values should be qualified and restricted to just visual amenity. To make that point clear requires a minor drafting change.

1373. We also recommend that the word *“the”* before landscape be deleted to avoid any ambiguity as to which values are in issue. Again, we consider that this is a minor non-substantive change.

1374. In summary, we recommend that these, together with the drafting change suggested by Mr Barr be the only substantive amendments, with the result that the policy, now renumbered 6.3.30, would read as follows:

⁷³⁴ Submission 110

⁷³⁵ Submission 621

⁷³⁶ Submission 635

⁷³⁷ Submission 766 and 806: Supported in FS1341

“Control the location, intensity and scale of buildings, jetties, moorings and infrastructure on the surface and margins of water bodies and ensure these structures maintain or enhance landscape quality and character, and amenity values.”

1375. Policy 6.3.6.2 as notified read:

“Recognise the character of the Frankton Arm including the established jetties and provide for these on the basis that the visual qualities of the District’s distinctive landscapes are maintained and enhanced.”

1376. Submissions on this policy included:

- a. A request to refer to the *“modified”* character of the Arm and to delete reference to how the Arm should be managed⁷³⁸.
- b. A request to provide greater guidance as to how this policy will be applied to applications for new structures and activities and to support the importance of providing a water based public transport system⁷³⁹

1377. Mr Barr did not recommend any change to this policy.

1378. We consider that, as with Policy 6.3.6.1, the relief suggested in Submission 621 would not be consistent with Objective 3.2.4.5. Having said that, to the extent that the existing character of the Frankton Arm is modified, the policy already provides for that. To the extent that other submissions seek greater guidance on how this policy might be applied, it is supplemented by more detailed provisions in the Rural Zone Chapter.

1379. Accordingly, we do not recommend any changes to this policy other than to renumber it 6.3.31.

1380. Policy 6.3.6.3 as notified read:

“Recognise the urban character of Queenstown Bay and provide for structures and facilities providing they protect, maintain or enhance the appreciation of the District’s distinct landscapes.”

1381. Submissions on this policy sought to delete the proviso⁷⁴⁰ and to seek additional guidance along the same lines as sought for the previous policy⁷⁴¹

1382. Mr Barr did not recommend any change.

1383. With one minor exception, we agree. A policy that recognises and provides for something with no indication of the extent of that provision is not satisfactory, as it provides no guidance to the implementation of the PDP. However, as with the previous policy, more detailed guidance is provided in the relevant zone chapter⁷⁴².

⁷³⁸ Submission 621

⁷³⁹ Submissions 766 and 806: Supported in FS1341

⁷⁴⁰ Submission 621

⁷⁴¹ Submissions 766, 608 and 806: Supported in FS1341

⁷⁴² Chapter 12: Queenstown Town Centre Zone

1384. The exception noted above relates to the reference to “*distinct*” landscapes in the policy. This appears to be a typographical error. The term should be “*distinctive*”. Correcting that error, the policy we recommend, renumbered 6.3.31, is:

“Recognise the urban character of Queenstown Bay and provide for structures and facilities providing they protect, maintain or enhance the appreciation of the District’s distinctive landscapes.”

1385. It is notable that the three policies we have just reviewed under the heading Lakes and Rivers all relate to structures and other facilities on the surface and margins of the District’s water bodies. There is no policy specifically relating to the use of the surface of the District’s water bodies. That omission was the subject of comment in the evidence. We have already discussed the submission of Kawarau Jet Services Limited⁷⁴³ seeking a new policy worded:

“Provide for a range of appropriate Recreational and Commercial Recreational activities in the rural areas and on the lakes and rivers of the District.”

1386. In the part of this report discussing Chapter 3⁷⁴⁴, we said that we thought it appropriate that commercial recreation activities in rural areas be addressed there and that the specific issue of commercial recreation activities on the District’s waterways be addressed in Chapter 6. We also note the submission of Real Journeys Limited⁷⁴⁵ seeking, as part of greater recognition for tourism activities at a policy level, protection for “*existing transport routes and access to key visitor attractions from incompatible uses and development of land and water*”.

1387. Mr Ben Farrell provided evidence on this submission. Mr Farrell supported the concept proposed in the Real Journeys’ submission that there be a separate chapter for water, as he described it, “*to more appropriately recognise and provide for the significance of fresh water*”.

1388. When Mr Farrell appeared at the hearing in person, he clarified that what he was suggesting was greater emphasis on water issues and that this might be achieved either by a separate chapter, or at least a separate suite of provisions. He summarised his position as being one where he was not seeking substantive change in the provisions, but rather to focus attention on it as an issue. He noted specifically that the landscape provisions seemed silent on water.

1389. We concur that there appears insufficient emphasis on water issues in Chapter 6. We have endeavoured to address that by appropriate headings, but we think that the Kawarau Jet submission points the way to a need to address both recreational and commercial use of the District’s waterways in policy terms.

1390. Having said that, we think that there are flaws with the relief Kawarau Jet has sought. As the Real Journeys’ submission indicates, one of the issues that has to be confronted in the implementation of the PDP is competition for access to the District’s waterways. A policy providing for a range of activities on lakes and rivers could be read as implying that every waterway needs to accommodate a range of activities, whereas the reality is that in many situations, access is constrained because the waterways in question are not of sufficient breadth or depth to accommodate all potential users.

⁷⁴³ Submission 307

⁷⁴⁴ Refer Section 3.14 above

⁷⁴⁵ Submission 621

1391. The Kawarau Jet submission does not provide a sufficient jurisdictional basis for us to recommend direction on how these issues should be resolved. The Real Journeys' submission gets closer to the point, but only addresses some of the issues. One point that can be made is that any general policy is not intended to cut across the more detailed policies already governing structures. Other than that however, while we would prefer a more directive policy, we have concluded that the best that can be done in the context of Chapter 6 is a policy that provides a framework for more detailed provisions in Chapters 12 and 21.
1392. We also do not consider that commercial use should be limited to commercial recreation – that would exclude water taxis and ferry services, and we do not consider there is a case for doing that.
1393. Accordingly, we recommend a new policy numbered 6.3.33, worded as follows:
- “Provide for appropriate commercial, and recreational activities on the surface of water bodies that do not involve construction of new structures.”*
1394. Contact Energy⁷⁴⁶ sought a new policy, seeking to recognise changes to landscape values on a seasonal basis resulting from electricity generation facilities. The submitter's focus is obviously on changes to levels and flows in Lake Hawea and the Hawea River resulting from operation of the Hawea Control Structure. Those activities are regional council matters and we do not consider the proposed policy is required in this context.
1395. In summary, within the jurisdictional limits we are working within, we consider that the policies we have recommended in relation to lakes and rivers are the most appropriate way, at a strategic level, to achieve the objectives of Chapter 3 applying to waterways – specifically Objectives 3.2.1.1, 3.2.1.7, 3.2.4.1, 3.2.4.3, 3.2.4.4, 3.2.5.1 and 3.2.5.2.
1396. We have also stood back and reflected on the policies and other provisions of Chapter 6 as a whole. For the reasons set out above, we consider that individually and collectively the policies are the provisions recommended represent the most appropriate way to achieve the objectives of Chapter 3 relevant to landscape and rural character.

9. PART D RECOMMENDATIONS

1397. As with Chapters 3 and 4, Appendix 1 contains our recommended Chapter 6.
1398. In addition, we recommend⁷⁴⁷ that the Stream 10 Hearing Panel consider addition of a new definition of 'subdivision and development' be inserted in Chapter 2, worded as follows:
- “Subdivision and Development - includes subdivision, identification of building platforms, any buildings and associated activities such as roading, earthworks, lighting, landscaping, planting and boundary fencing and access/gateway structures”.*
1399. We also recommend⁷⁴⁸ the Stream 10 Hearing Panel consider amendment of the existing definition of 'trail' as follows:

⁷⁴⁶ Submission 580: Opposed in FS1040

⁷⁴⁷ Refer the discussion of this point at Section 8.4 above.

⁷⁴⁸ Refer in this instance to Section 8.7above.

Trail – means any public access route legally created by way of a grant of easement registered after 11 December 2007 for the purpose of providing public access in favour of the Queenstown Lakes District Council, the Crown or any of its entities, and specifically excludes:

- a. roads, including road reserves;
- d. public access easements created by the process of tenure review under the Crown Pastoral Land Act; and
- e. public access routes over any reserve administered by Queenstown Lakes District Council, the Crown or any of its entities

21 RURAL



21.1 Zone Purpose

There are four rural zones in the District. The Rural Zone is the most extensive of these. The Gibbston Valley is recognised as a special character area for viticulture production and the management of this area is provided for in Chapter 23: Gibbston Character Zone. Opportunities for rural living activities are provided for in the Rural-Residential and Rural Lifestyle Zones (Chapter 22).

The purpose of the Rural Zone is to enable farming activities and provide for appropriate other activities that rely on rural resources while protecting, maintaining and enhancing landscape values, ecosystem services, nature conservation values, the soil and water resource and rural amenity.

A wide range of productive activities occur in the Rural Zone and because the majority of the District’s distinctive landscapes comprising open spaces, lakes and rivers with high visual quality and cultural value are located in the Rural Zone, there also exists a wide range of living, recreation, commercial and tourism activities and the desire for further opportunities for these activities.

Ski Area Sub-Zones are located within the Rural Zone. These Sub-Zones recognise the contribution tourism infrastructure makes to the economic and recreational values of the District. The purpose of the Ski Area Sub-Zones is to enable the continued development of Ski Areas as year round destinations for ski area, tourism and recreational activities within the identified Sub-Zones where the effects of the development are cumulatively minor.

In addition, the Rural Industrial Sub-Zone includes established industrial activities that are based on rural resources or support farming and rural productive activities.

A substantial proportion of the Outstanding Natural Landscapes of the district comprises private land managed in traditional pastoral farming systems. Rural land values tend to be driven by the high landscape and amenity values in the district. The long term sustainability of pastoral farming will depend upon farmers being able to achieve economic returns from utilising the natural and physical resources of their properties. For this reason, it is important to acknowledge the potential for a range of alternative uses of rural properties that utilise the qualities that make them so valuable.

The Rural Zone is divided into two areas. The first being the area for Outstanding Natural Landscapes and Outstanding Natural Features. The second area being the Rural Character Landscape. These areas give effect to Chapter 3 – Strategic Direction: Objectives 3.2.5.1 and 3.2.5.2, and the policies in Chapters 3 and 6 that implement those objectives.

21.2 Objectives and Policies

21.2.1 Objective - A range of land uses, including farming and established activities, are enabled while protecting, maintaining and enhancing landscape, ecosystem services, nature conservation and rural amenity values.

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| Policies | 21.2.1.1 | Enable farming activities while protecting, maintaining and enhancing the values of indigenous biodiversity, ecosystem services, recreational values, the landscape and surface of lakes and rivers and their margins. |
| | 21.2.1.2 | Allow Farm Buildings associated with landholdings of 100 hectares or more in area while managing effects of the location, scale and colour of the buildings on landscape values. |

- 21.2.1.3 Require buildings to be set back a minimum distance from internal boundaries and road boundaries in order to mitigate potential adverse effects on landscape character, visual amenity, outlook from neighbouring properties and to avoid adverse effects on established and anticipated activities.
- 21.2.1.4 Minimise the dust, visual, noise and odour effects of activities by requiring them to locate a greater distance from formed roads, neighbouring properties, waterbodies and zones that are likely to contain residential and commercial activity.
- 21.2.1.5 Have regard to the location and direction of lights so they do not cause glare to other properties, roads, public places or views of the night sky.
- 21.2.1.6 Avoid adverse cumulative impacts on ecosystem services and nature conservation values.
- 21.2.1.7 Have regard to the spiritual beliefs, cultural traditions and practices of Tangata whenua.
- 21.2.1.8 Have regard to fire risk from vegetation and the potential risk to people and buildings, when assessing subdivision and development in the Rural Zone.
- 21.2.1.9 Provide adequate firefighting water and fire service vehicle access to ensure an efficient and effective emergency response.
- 21.2.1.10 Commercial activities in the Rural Zone should have a genuine link with the rural land or water resource, farming, horticulture or viticulture activities, or recreation activities associated with resources located within the Rural Zone.
- 21.2.1.11 Provide for the establishment of commercial, retail and industrial activities only where these would protect, maintain or enhance rural character, amenity values and landscape values.
- 21.2.1.12 Encourage production forestry to be consistent with topography and vegetation patterns, to locate outside of the Outstanding Natural Features and Landscapes and outside of significant natural areas, and ensure production forestry does not degrade the landscape character or visual amenity values of the Rural Character Landscape.
- 21.2.1.13 Ensure forestry harvesting avoids adverse effects with regards to siltation and erosion and sites are rehabilitated to minimise runoff, erosion and effects on landscape values.
- 21.2.1.14 Limit exotic forestry to species that do not have potential to spread and naturalise.
- 21.2.1.15 Ensure traffic from new commercial activities does not diminish rural amenity or affect the safe and efficient operation of the roading and trail network, or access to public places.
- 21.2.1.16 Provide for a range of activities that support the vitality, use and enjoyment of the Queenstown Trail and Upper Clutha Tracks networks on the basis that landscape and rural amenity is protected, maintained or enhanced and established activities are not compromised.

21.2.2 Objective - The life supporting capacity of soils is sustained.

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| Policies | 21.2.2.1 | Allow for the establishment of a range of activities that utilise the soil resource in a sustainable manner. |
| | 21.2.2.2 | Maintain the productive potential and soil resource of Rural Zoned land and encourage land management practices and activities that benefit soil and vegetation cover. |
| | 21.2.2.3 | Protect the soil resource by controlling activities including earthworks, indigenous vegetation clearance and prohibit the planting and establishment of identified wilding exotic trees with the potential to spread and naturalise. |

21.2.3 Objective - The life supporting capacity of water is safeguarded through the integrated management of the effects of activities.

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| | 21.2.3.1 | In conjunction with the Otago Regional Council, regional plans and strategies: <ol style="list-style-type: none"> a. encourage activities that use water efficiently, thereby conserving water quality and quantity; b. discourage activities that adversely affect the potable quality and life supporting capacity of water and associated ecosystems. |
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21.2.4 Objective - Situations where sensitive activities conflict with existing and anticipated activities are managed to minimise conflict between incompatible land uses.

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| Policies | 21.2.4.1 | New activities must recognise that permitted and established activities in the Rural Zone may result in effects such as odour, noise, dust and traffic generation that are reasonably expected to occur and will be noticeable to residents and visitors in rural areas. |
| | 21.2.4.2 | Control the location and type of non-farming activities in the Rural Zone, so as to minimise conflict between permitted and established activities and those that may not be compatible with such activities. |

21.2.5 Objective - Mineral extraction opportunities are provided for on the basis the location, scale and effects would not degrade amenity, water, wetlands, landscape and indigenous biodiversity values.

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| Policies | 21.2.5.1 | Have regard to the importance and economic value of locally mined high-quality gravel, rock and other minerals including gold and tungsten. |
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- 21.2.5.2 Provide for prospecting and small scale mineral exploration and recreational gold mining as activities with limited environmental impact.
- 21.2.5.3 Ensure that during and following the conclusion of mineral extractive activities, sites are progressively rehabilitated in a planned and co-ordinated manner, to enable the establishment of a land use appropriate to the area.
- 21.2.5.4 Ensure potentially significant adverse effects of extractive activities (including mineral exploration) are avoided, or remedied particularly where those activities have potential to degrade landscape quality, character and visual amenity, indigenous biodiversity, lakes and rivers, potable water quality and the life supporting capacity of water.
- 21.2.5.5 Avoid or mitigate the potential for other land uses, including development of other resources above, or in close proximity to mineral deposits, to adversely affect the extraction of known mineral deposits.
- 21.2.5.6 Encourage use of environmental compensation as a means to address unavoidable residual adverse effects from mineral extraction.

21.2.6 Objective - The future growth, development and consolidation of Ski Areas Activities within identified Ski Area Sub-Zones, is provided for, while adverse effects on the environment are avoided, remedied or mitigated.

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| Policies | 21.2.6.1 Identify Ski Area Sub-Zones and encourage Ski Area Activities and complementary tourism activities to locate and consolidate within the Sub-Zones. |
| | 21.2.6.2 Control the visual impact of roads, buildings and infrastructure associated with Ski Area Activities. |
| | 21.2.6.3 Provide for the continuation of existing vehicle testing facilities within the Waiorau Snow Farm Ski Area Sub-Zone on the basis that the landscape and indigenous biodiversity values are not further degraded. |
| | 21.2.6.4 Provide for appropriate alternative (non-road) means of transport to and within Ski Area Sub-Zones, by way of passenger lift systems and ancillary structures and facilities. |
| | 21.2.6.5 Provide for Ski Area Sub-Zone Accommodation activities within Ski Area Sub-Zones, which are complementary to outdoor recreation activities within the Ski Area Sub-Zone, that can realise landscape and conservation benefits and that avoid, remedy or mitigate adverse effects on the environment. |

21.2.7 Objective - An area that excludes activities which are sensitive to aircraft noise, is retained within an airport's Outer Control Boundary, to act as a buffer between airports and Activities Sensitive to Aircraft Noise.

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| Policies | 21.2.7.1 | Prohibit all new activities sensitive to aircraft noise on Rural Zoned land within the Outer Control Boundary at Queenstown Airport and Wanaka Airport to avoid adverse effects arising from aircraft operations on future activities sensitive to aircraft noise. |
| | 21.2.7.2 | Identify and maintain areas containing activities that are not sensitive to aircraft noise, within an airport's outer control boundary, to act as a buffer between the airport and activities sensitive to aircraft noise. |
| | 21.2.7.3 | Retain open space within the outer control boundary of airports in order to provide a buffer, particularly for safety and noise purposes, between the airport and other activities. |
| | 21.2.7.4 | Require as necessary mechanical ventilation for any alterations or additions to Critical Listening Environment within any existing buildings containing an Activity Sensitive to Aircraft Noise within the Queenstown Airport Outer Control Boundary and require sound insulation and mechanical ventilation for any alterations or additions to Critical Listening Environment within any existing buildings containing an Activity Sensitive to Aircraft Noise within the Queenstown Airport Air Noise Boundary. |
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21.2.8 Objective - Subdivision, use and development in areas that are unsuitable due to identified constraints not addressed by other provisions of this Plan, is avoided, or the effects of those constraints are remedied or mitigated.

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| Policies | 21.2.8.1 | Prevent subdivision and development within the building restriction areas identified on the District Plan maps, in particular: <ul style="list-style-type: none"> a. in the Glenorchy area, protect the heritage value of the visually sensitive Bible Face landform from building and development and to maintain the rural backdrop that the Bible Face provides to the Glenorchy Township; b. in Ferry Hill, within the building line restriction identified on the planning maps. |
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21.2.9 Objective - Provision for diversification of farming and other rural activities that protect landscape and natural resource values and maintains the character of rural landscapes.

- 21.2.9.1 Encourage revenue producing activities that can support the long-term sustainability of the rural areas of the district and that maintain or enhance landscape values and rural amenity.
- 21.2.9.2 Ensure that revenue producing activities utilise natural and physical resources (including existing buildings) in a way that maintains and enhances landscape quality, character, rural amenity, and natural resources
- 21.2.9.3 Provide for the establishment of activities such as tourism, commercial recreation or visitor accommodation located within farms where these enable landscape values and indigenous biodiversity to be sustained in the longer term.

21.2.10 Objective – Commercial Recreation in the Rural Zone is of a nature and scale that is commensurate to the amenity values of the location.

- Policies
- 21.2.10.1 The group size of commercial recreation activities will be managed so as to be consistent with the level of amenity anticipated in the surrounding environment.
 - 21.2.10.2 To manage the adverse effects of commercial recreation activities so as not to degrade rural quality or character or visual amenities and landscape values.
 - 21.2.10.3 To avoid, remedy or mitigate any adverse effects commercial activities may have on the range of recreational activities available in the District and the quality of the experience of the people partaking of these opportunities.
 - 21.2.10.4 To ensure the scale and location of buildings, noise and lighting associated with commercial recreation activities are consistent with the level of amenity existing and anticipated in the surrounding environment.

21.2.11 Objective - The location, scale and intensity of informal airports is managed to maintain amenity values while protecting informal airports from incompatible land uses.

- Policies
- 21.2.11.1 Ensure informal airports are located, operated and managed so as to maintain the surrounding rural amenity.
 - 21.2.11.2 Protect rural amenity values, and amenity of other zones from the adverse effects that can arise from informal airports.
 - 21.2.11.3 Protect lawfully established and anticipated permitted informal airports from the establishment of incompatible activities in the immediate vicinity.

21.2.12 **Objective** - The natural character of lakes and rivers and their margins is protected, maintained or enhanced, while providing for appropriate activities on the surface of lakes and rivers, including recreation, commercial recreation and public transport.

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| Policies | <p>21.2.12.1 Have regard to statutory obligations, wāhi Tūpuna and the spiritual beliefs, and cultural traditions of tangata whenua where activities are undertaken on the surface of lakes and rivers and their margins.</p> <p>21.2.12.2 Enable people to have access to a wide range of recreational experiences on the lakes and rivers, based on the identified characteristics and environmental limits of the various parts of each lake and river.</p> <p>21.2.12.3 Avoid or mitigate the adverse effects of frequent, large-scale or intrusive commercial activities such as those with high levels of noise, vibration, speed and wash, in particular motorised craft, in areas of high passive recreational use, significant nature conservation values and wildlife habitat.</p> <p>21.2.12.4 Have regard to the whitewater values of the District's rivers and, in particular, the values of parts of the Kawarau, Nevis and Shotover Rivers as three of the few remaining major unmodified whitewater rivers in New Zealand, and to support measures to protect this characteristic of rivers.</p> <p>21.2.12.5 Protect, maintain or enhance the natural character and nature conservation values of lakes, rivers and their margins from inappropriate activities with particular regard to nesting and spawning areas, the intrinsic value of ecosystem services and areas of indigenous fauna habitat and recreational values.</p> <p>21.2.12.6 Recognise and provide for the maintenance and enhancement of public access to and enjoyment of the margins of the lakes and rivers.</p> <p>21.2.12.7 Ensure that the location, design and use of structures and facilities are such that any adverse effects on visual qualities, safety and conflicts with recreational and other activities on the lakes and rivers are avoided, remedied or mitigated.</p> <p>21.2.12.8 Encourage development and use of water based public ferry systems including necessary infrastructure and marinas, in a way that avoids adverse effects on the environment as far as possible, or where avoidance is not practicable, remedies and mitigates such adverse effects.</p> <p>21.2.12.9 Take into account the potential adverse effects on nature conservation values from the boat wake of commercial boating activities, having specific regard to the intensity and nature of commercial jet boat activities and the potential for turbidity and erosion.</p> <p>21.2.12.10 Ensure that the nature, scale and number of commercial boating operators and/or commercial boats on waterbodies do not exceed levels such that the safety of passengers and other users of the water body cannot be assured.</p> |
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21.2.13 Objective - Rural industrial activities and infrastructure within the Rural Industrial Sub-Zones will support farming and rural productive activities, while protecting, maintaining and enhancing rural character, amenity and landscape values.

- Policies
- 21.2.13.1 Provide for rural industrial activities and buildings within established nodes of industrial development while protecting, maintaining and enhancing landscape and amenity values.
 - 21.2.13.2 Provide for limited retail and administrative activities within the Rural Industrial Sub-Zone on the basis it is directly associated with and ancillary to the Rural Industrial Activity on the site.

21.3

Other Provisions and Rules

21.3.1 District Wide

Attention is drawn to the following District Wide chapters.

| | | | | | |
|----|----------------------|----|--|----|--------------------------------|
| 1 | Introduction | 2 | Definitions | 3 | Strategic Direction |
| 4 | Urban Development | 5 | Tangata Whenua | 6 | Landscapes and Rural Character |
| 25 | Earthworks | 26 | Historic Heritage | 27 | Subdivision |
| 28 | Natural Hazards | 29 | Transport | 30 | Energy and Utilities |
| 31 | Signs | 32 | Protected Trees | 33 | Indigenous Vegetation |
| 34 | Wilding Exotic Trees | 35 | Temporary Activities and Relocated Buildings | 36 | Noise |
| 37 | Designations | | Planning Maps | | |

21.3.2 Interpreting and Applying the Rules

- 21.3.2.1 A permitted activity must comply with all the rules listed in the Activity and Standards tables, and any relevant district wide rules.
- 21.3.2.2 Where an activity does not comply with a Standard listed in the Standards tables, the activity status identified by the 'Non-Compliance Status' column shall apply. Where an activity breaches more than one Standard, the most restrictive status shall apply to the Activity.
- 21.3.2.3 For controlled and restricted discretionary activities, the Council shall restrict the exercise of its control or discretion to the matters listed in the rule.

- 21.3.2.4 Development and building activities are undertaken in accordance with the conditions of resource subdivision consent and may be subject to monitoring by the Council.
- 21.3.3.5 The existence of a farm building either permitted or approved by resource consent under Rule 21.4.2 or Table 5 – Standards for Farm Buildings shall not be considered the permitted baseline for residential or other non-farming activity development within the Rural Zone.
- 21.3.3.6 The Ski Area and Rural Industrial Sub-Zones, being Sub-Zones of the Rural Zone, require that all rules applicable to the Rural Zone apply unless stated to the contrary.
- 21.3.2.7 Building platforms identified on a site’s computer freehold register shall have been registered as part of a resource consent approval by the Council.
- 21.3.2.8 The surface and bed of lakes and rivers are zoned Rural, unless otherwise stated.
- 21.3.2.9 Internal alterations to buildings including the replacement of joinery is permitted.
- 21.3.2.10 These abbreviations are used in the following tables. Any activity which is not permitted (P) or prohibited (PR) requires resource consent.

| | | | | | |
|---|---------------|----|---------------|----|--------------------------|
| P | Permitted | C | Controlled | RD | Restricted Discretionary |
| D | Discretionary | NC | Non-Complying | PR | Prohibited |

21.3.3 Advice Notes

- 21.3.3.1 Compliance with any of the following standards, in particular the permitted standards, does not absolve any commitment to the conditions of any relevant resource consent, consent notice or covenant registered on the computer freehold register of any property.
- 21.3.3.2 In addition to any rules for mining, the Otago Regional Plan: Water, also has rules related to suction dredge mining.
- 21.3.3.3 Applications for building consent for permitted activities shall include information to demonstrate compliance with the following standards, and any conditions of the applicable resource consent conditions.

All activities, including any listed permitted activities shall be subject to the rules and standards contained in Tables 1 to 15.

Table 1 – Activities Generally

Table 2 – Standards Applying Generally in the Zone

Table 3 – Standards for Farm Activities (additional to those in Table 2)

Table 4 – Standards for Structures and Buildings (other than Farm Buildings) (additional to those in Table 2)

Table 5 – Standards for Farm Buildings (additional to those in Table 2)

Table 6 – Standards for Commercial Activities (additional to those in Table 2)

Table 7– Standards for Informal Airports (additional to those in Table 2)

Table 8 – Standards for Mining and Extraction Activities (additional to those in Table 2)

Table 9 – Activities in the Ski Area Sub-Zone (additional to those listed in Table 1)

Table 10 - Activities in Rural Industrial Sub-Zone (additional to those listed in Table 1)

Table 11 – Standards for Rural Industrial Sub-Zone

Table 12– Activities on the Surface of Lakes and Rivers

Table 13 – Standards for Activities on the Surface of Lakes and Rivers

Table 14 – Closeburn Station Activities

Table 15 – Closeburn Station: Standards for Buildings and Structures

| | Table 1 - Activities - Rural Zone | Activity Status |
|--------|---|-----------------|
| | Farming Activities | |
| 21.4.1 | Farming Activity that complies with the standards in Table 2 and Table 3. | P |
| 21.4.2 | Construction of or addition to farm buildings that comply with the standards in Table 5. | P |
| 21.4.3 | Factory Farming limited to factory farming of pigs or poultry that complies with the standards in Table 2 and Table 3. | P |
| 21.4.4 | Factory Farming animals other than pigs or poultry. | NC |
| | Residential Activities | |
| 21.4.5 | One residential unit, which includes a single residential flat for each residential unit and any other accessory buildings, within any building platform approved by resource consent. | P |
| 21.4.6 | The construction and exterior alteration of buildings located within a building platform approved by resource consent, or registered on the applicable computer freehold register, subject to compliance with the standards in Table 2 and Table 4. | P |
| 21.4.7 | The exterior alteration of any lawfully established building where there is not an approved building platform on the site, subject to compliance with the standards in Table 2 and Table 4. | P |

| | Table 1 - Activities - Rural Zone | Activity Status |
|---------|---|-----------------|
| 21.4.8 | Domestic Livestock. | P |
| 21.4.9 | The use of land or buildings for residential activity except as provided for in any other rule. | D |
| 21.4.10 | The identification of a building platform not less than 70m ² and not greater than 1000m ² . | D |
| 21.4.11 | The construction of any building including the physical activity associated with buildings including roading, access, lighting, landscaping and earthworks, not provided for by any other rule. | D |
| | Commercial Activities | |
| 21.4.12 | Home Occupation that complies with the standards in Table 6. | P |
| 21.4.13 | Commercial recreational activities that comply with the standards in Table 6. | P |
| 21.4.14 | Roadside stalls that meet the standards in Table 6. | P |
| 21.4.15 | | |
| 21.4.16 | Retail sales of farm and garden produce and wine grown, reared or produced on-site or handicrafts produced on the site and that comply with the standards in Table 6, not undertaken through a roadside stall under Rule 21.4.14. Control is reserved to: a. the location of the activity and buildings; b. vehicle crossing location, car parking; c. rural amenity and landscape character. | C |
| 21.4.17 | Commercial activities ancillary to and located on the same site as commercial recreational or recreational activities. | D |
| 21.4.18 | Cafes and restaurants located in a winery complex within a vineyard. | D |
| 21.4.19 | Visitor Accommodation outside of a Ski Area Sub-Zone. | D |
| 21.4.20 | Forestry Activities within the Rural Character Landscapes. | D |
| 21.4.21 | Retail Sales Retail sales where the access is onto a State Highway, with the exception of the activities provided for by Rule 21.4.14 or Rule 21.4.16. | NC |
| | Other Activities | |
| 21.4.22 | Recreation and/or Recreational Activity. | P |
| 21.4.23 | Informal Airports that comply with Table 7. | P |

| Table 1 - Activities - Rural Zone | | Activity Status |
|-----------------------------------|--|-----------------|
| 21.4.24 | <p>Passenger Lift Systems not located within a Ski Area Sub-Zone</p> <p>Discretion is restricted to:</p> <ol style="list-style-type: none"> the impact on landscape values from any alignment, earthworks, design and surface treatment, including measures to mitigate landscape effects including visual quality and amenity values; the route alignment and the whether any system or access breaks the line and form of skylines, ridges, hills and prominent slopes; earthworks associated with construction of the Passenger Lift System; the materials used, colours, lighting and light reflectance; geotechnical matters; ecological values and any proposed ecological mitigation works.; balancing environmental considerations with operational requirements of Ski Area Activities; the positive effects arising from providing alternative non-vehicular access and linking Ski Area Sub-Zones to the roading network. | RD |
| 21.4.25 | <p>Ski Area Activities not located within a Ski Area Sub-Zone, with the exception of:</p> <ol style="list-style-type: none"> non-commercial skiing which is permitted as recreation activity under Rule 21.4.22; commercial heli skiing not located within a Ski Area Sub-Zone is a commercial recreation activity and Rule 21.4.13 applies; Passenger Lift Systems to which Rule 21.4.24 applies. | NC |
| 21.4.26 | <p>Any building within a Building Restriction Area identified on the Planning Maps.</p> <p>Activities within the Outer Control Boundary at Queenstown Airport and Wanaka Airport</p> | NC |
| 21.4.27 | <p>New Building Platforms and Activities Sensitive to Aircraft Noise within the Outer Control Boundary - Wanaka Airport</p> <p>On any site located within the Outer Control Boundary, any new activity sensitive to aircraft noise or new building platform to be used for an activity sensitive to aircraft noise (except an activity sensitive to aircraft noise located on a building platform approved before 20 October 2010).</p> | PR |
| 21.4.28 | <p>Activities Sensitive to Aircraft Noise within the Outer Control Boundary - Queenstown Airport</p> <p>On any site located within the Outer Control Boundary, which includes the Air Noise Boundary, as indicated on the District Plan Maps, any new Activity Sensitive to Aircraft Noise.</p> <p>Mining Activities</p> | PR |
| 21.4.29 | <p>The following mining and extraction activities that comply with the standards in Table 8 are permitted:</p> <ol style="list-style-type: none"> mineral prospecting; mining by means of hand-held, non-motorised equipment and suction dredging, where the total motive power of any dredge does not exceed 10 horsepower (7.5 kilowatt); and the mining of aggregate for farming activities provided the total volume does not exceed 1000m³ in any one year. | P |

| Table 1 - Activities - Rural Zone | | Activity Status |
|-----------------------------------|--|-----------------|
| 21.4.30 | Mineral exploration that does not involve more than 20m ³ in volume in any one hectare Control is reserved to: <ul style="list-style-type: none"> a. the adverse effects on landscape, nature conservation values and water quality; b. ensuring rehabilitation of the site is completed that ensures: <ul style="list-style-type: none"> i. the long-term stability of the site; ii. that the landforms or vegetation on finished areas are visually integrated into the landscape; iii. water quality is maintained; iv. that the land is returned to its original productive capacity; c. that the land is rehabilitated to indigenous vegetation where the pre-existing land cover immediately prior to the exploration, comprised indigenous vegetation as determined utilising Section 33.3.3 of Chapter 33. | C |
| 21.4.31 | Any mining activity or mineral prospecting other than provided for in Rules 21.4.29 and 21.4.30. | D |
| | Industrial Activities outside the Rural Industrial Sub-Zone | |
| 21.4.32 | Industrial Activities directly associated with wineries and underground cellars within a vineyard. | D |
| 21.4.33 | Industrial Activities outside the Rural Industrial Sub-Zone other than those provided for by Rule 21.4.32. | NC |
| | Default Activity Status When Not Listed | |
| 21.4.34 | Any activity not otherwise provided for in Tables 1, 9, 10, 12 or 14. | NC |

| Table 2 | Table 2 - Standards Applying Generally in the Zone. The following standards apply to any of the activities described in Tables 1, 9, 10, 12 and 14 in addition to the specific standards in Tables 3- 8, 11, 13 and 15 unless otherwise stated. | Non-compliance Status |
|---------|---|--|
| 21.5.1 | <p>Setback from Internal Boundaries</p> <p>The setback of any building from internal boundaries shall be 15m.</p> <p>Except this rule shall not apply within the Rural Industrial Sub-Zone. Refer to Table 11.</p> | <p>RD</p> <p>Discretion is restricted to:</p> <ul style="list-style-type: none"> a. rural amenity and landscape character; b. privacy, outlook and amenity from adjoining properties. |
| 21.5.2 | <p>Setback from Roads</p> <p>The setback of any building from a road boundary shall be 20m, except, the minimum setback of any building from State Highway 6 between Lake Hayes and the Shotover River shall be 50m. The minimum setback of any building for other sections of State Highway 6 where the speed limit is 70 km/hr or greater shall be 40m.</p> | <p>RD</p> <p>Discretion is restricted to:</p> <ul style="list-style-type: none"> a. rural Amenity and landscape character; b. open space; c. the adverse effects on the proposed activity from noise, glare and vibration from the established road. |
| 21.5.3 | <p>Setback from Neighbours of Buildings Housing Animals</p> <p>The setback from internal boundaries for any building housing animals shall be 30m.</p> | <p>RD</p> <p>Discretion is restricted to:</p> <ul style="list-style-type: none"> a. odour; b. noise; c. dust; d. vehicle movements. |
| 21.5.4 | <p>Setback of buildings from Water bodies</p> <p>The minimum setback of any building from the bed of a wetland, river or lake shall be 20m.</p> | <p>RD</p> <p>Discretion is restricted to:</p> <ul style="list-style-type: none"> a. indigenous biodiversity values; b. visual amenity values; c. landscape and natural character; d. open space; e. whether the waterbody is subject to flooding or natural hazards and any mitigation to manage the adverse effects of the location of the building. |

| Table 2 | Table 2 - Standards Applying Generally in the Zone. The following standards apply to any of the activities described in Tables 1, 9, 10, 12 and 14 in addition to the specific standards in Tables 3- 8, 11, 13 and 15 unless otherwise stated. | Non- compliance Status |
|---------|---|------------------------|
| 21.5.5 | <p>Airport Noise – Wanaka Airport</p> <p>Alterations or additions to existing buildings, or construction of a building on a building platform approved before 20 October 2010, that contain an Activity Sensitive to Aircraft Noise and are within the Outer Control Boundary, must be designed to achieve an internal design sound level of 40 dB Ldn, based on the 2036 noise contours, at the same time as meeting the ventilation requirements in Rule 36.6.2, Chapter 36. Compliance can either be demonstrated by submitting a certificate to Council from a person suitably qualified in acoustics stating that the proposed construction will achieve the internal design sound level, or by installation of mechanical ventilation to achieve the requirements in Rule 36.6.2, Chapter 36.</p> | NC |
| 21.5.6 | <p>Airport Noise – Alteration or Addition to Existing Buildings (excluding any alterations of additions to any non-critical listening environment) within the Queenstown Airport Noise Boundaries</p> <p>a. Within the Queenstown Airport Air Noise Boundary (ANB) - Alterations and additions to existing buildings containing an Activity Sensitive to Aircraft Noise must be designed to achieve an Indoor Design Sound Level of 40 dB Ldn, within any Critical Listening Environment, based on the 2037 Noise Contours. Compliance must be demonstrated by either adhering to the sound insulation requirements in Rule 36.6.1 of Chapter 36 and installation of mechanical ventilation to achieve the requirements in Rule 36.6.2 of Chapter 36, or by submitting a certificate to Council from a person suitably qualified in acoustics stating that the proposed construction will achieve the Indoor Design Sound Level with the windows open.</p> <p>b. Between the Queenstown Airport Outer Control Boundary and the ANB – Alterations and additions to existing buildings containing an Activity Sensitive to Aircraft Noise must be designed to achieve an Indoor Design Sound Level of 40 dB Ldn within any Critical Listening Environment, based on the 2037 Noise Contours. Compliance must be demonstrated by either installation of mechanical ventilation to achieve the requirements in Rule 36.6.2 of Chapter 36 or by submitting a certificate to Council from a person suitably qualified in acoustics stating that the proposed construction will achieve the Indoor Design Sound Level with the windows open.</p> <p>Standards (a) and (b) exclude any alterations or additions to any non-critical listening environment.</p> | NC |
| 21.5.7 | <p>Lighting and Glare</p> <p>21.5.7.1 All fixed exterior lighting must be directed away from adjoining sites and roads; and</p> <p>21.5.7.2 No activity on any site will result in greater than a 3.0 lux spill (horizontal and vertical) of light onto any other site measured at any point inside the boundary of the other site, provided that this rule shall not apply where it can be demonstrated that the design of adjacent buildings adequately mitigates such effects.</p> <p>21.5.7.3 There must be no upward light spill.</p> | NC |

21.6

Rule - Standards for Farm Activities

| Table 3 – Standards for Farm Activities. | | Non-Compliance Status |
|---|--|--|
| The following standards apply to Farm Activities. | | |
| 21.6.1 | <p>Dairy Farming (Milking Herds, Dry Grazing and Calf Rearing)</p> <p>All effluent holding tanks, effluent treatment and effluent storage ponds, must be located at least 300 metres from any formed road or adjoining property.</p> | <p>RD</p> <p>Discretion is restricted to:</p> <ol style="list-style-type: none"> odour; visual prominence; landscape character; effects on surrounding properties. |
| 21.6.2 | <p>Factory Farming (excluding the boarding of animals)</p> <p>Factory farming (excluding the boarding of animals) must be located at least 2 kilometres from a Residential, Rural Residential, Rural Lifestyle, Town Centre, Local Shopping Centre Zone, Millbrook Resort Zone, Waterfall Park Zone or Jacks Point Zone.</p> | D |
| 21.6.3 | <p>Factory Farming of Pigs</p> <p>21.6.3.1 The number of housed pigs must not exceed 50 sows or 500 pigs of mixed ages;</p> <p>21.6.3.2 Housed pigs must not be located closer than 500m from a property boundary;</p> <p>21.6.3.4 The number of outdoor pigs must not exceed 100 pigs and their progeny up to weaner stage;</p> <p>21.6.3.5 Outdoor sows must be ringed at all times; and/or</p> <p>21.6.3.6 The stocking rate of outdoor pigs must not exceed 15 pigs per hectare, excluding progeny up to weaner stage.</p> | NC |
| 21.6.4 | <p>Factory farming of poultry</p> <p>21.6.4.1 The number of birds must not exceed 10,000 birds.</p> <p>21.6.4.2 Birds must be housed at least 300m from a site boundary.</p> | NC |

21.7

Rules - Standards for Buildings

| Table 4 – Standards for Structures and Buildings | | Non-Compliance Status |
|---|---|--|
| The following standards apply to structures and buildings, other than Farm Buildings. | | |
| 21.7.1 | <p>Structures</p> <p>Any structure which is greater than 5 metres in length, and between 1 metre and 2 metres in height must be located a minimum distance of 10 metres from a road boundary, except for:</p> <p>21.7.1.1 Post and rail, post and wire and post and mesh fences, including deer fences;</p> <p>21.7.1.2 Any structure associated with farming activities as defined in this plan.</p> | <p>RD</p> <p>Discretion is restricted to:</p> <ul style="list-style-type: none"> a. effects on landscape character, views and amenity, particularly from public roads; b. the materials used, including their colour, reflectivity and permeability; c. whether the structure will be consistent with traditional rural elements. |
| 21.7.2 | <p>Buildings</p> <p>Any building, including any structure larger than 5m², that is new, relocated, altered, reclad or repainted, including containers intended to, or that remain on site for more than six months, and the alteration to any lawfully established building, are subject to the following:</p> <p>All exterior surfaces* must be coloured in the range of browns, greens or greys, including;</p> <p>21.7.2.1 Pre-painted steel and all roofs must have a light reflectance value not greater than 20%; and</p> <p>21.7.2.2 All other surface ** finishes except for schist, must have a light reflectance value of not greater than 30%.</p> <p>21.7.2.3 In the case of alterations to an existing building not located within a building platform, it does not increase the ground floor area by more than 30% in any ten year period.</p> <p>Except this rule does not apply within the Ski Area Sub-Zones.</p> <p>* Excludes soffits, windows and skylights (but not glass balustrades).</p> <p>** Includes cladding and built landscaping that cannot be measured by way of light reflectance value but is deemed by the Council to be suitably recessive and have the same effect as achieving a light reflectance value of 30%.</p> | <p>RD</p> <p>Discretion is restricted to:</p> <ul style="list-style-type: none"> a. external appearance; b. visual prominence from both public places and private locations; c. landscape character; d. visual amenity. |

| Table 4 – Standards for Structures and Buildings The following standards apply to structures and buildings, other than Farm Buildings. | | Non-Compliance Status |
|---|---|--|
| 21.7.3 | <p>Building size</p> <p>The ground floor area of any building must not exceed 500m².</p> <p>Except this rule does not apply to buildings specifically provided for within the Ski Area Sub-Zones.</p> | <p>RD</p> <p>Discretion is restricted to:</p> <ol style="list-style-type: none"> external appearance; visual prominence from both public places and private locations; landscape character; visual amenity; privacy, outlook and amenity from adjoining properties. |
| 21.7.4 | <p>Building Height</p> <p>The maximum height shall be 8m.</p> | <p>RD</p> <p>Discretion is restricted to:</p> <ol style="list-style-type: none"> rural amenity and landscape character; privacy, outlook and amenity from adjoining properties; visual prominence from both public places and private locations. |
| 21.7.5 | <p>Fire Fighting water and access</p> <p>All new buildings, where there is no reticulated water supply or any reticulated water supply is not sufficient for fire-fighting water supply, must make the following provision for fire-fighting:</p> <p>21.7.5.1 A water supply of 45,000 litres and any necessary couplings.</p> <p>21.7.5.2 A hardstand area adjacent to the firefighting water supply capable of supporting fire service vehicles.</p> <p>21.7.5.3 Firefighting water connection point within 6m of the hardstand, and 90m of the dwelling.</p> <p>21.7.5.4 Access from the property boundary to the firefighting water connection capable of accommodating and supporting fire service vehicles.</p> | <p>RD</p> <p>Discretion is restricted to:</p> <ol style="list-style-type: none"> the extent to which SNZ PAS 4509: 2008 can be met including the adequacy of the water supply; the accessibility of the firefighting water connection point for fire service vehicles; whether and the extent to which the building is assessed as a low fire risk. |

21.8

Rules - Standards for Farm Buildings

| Table 5 - Standards for Farm Buildings The following standards apply to Farm Buildings. | | Non-compliance Status |
|--|--|---|
| 21.8.1 | <p>Construction, Extension or Replacement of a Farm Building</p> <p>The construction, replacement or extension of a farm building is a permitted activity subject to the following standards:</p> <p>21.8.1.1 The landholding the farm building is located within must be greater than 100ha; and</p> <p>21.8.1.2 The density of all buildings on the landholding, inclusive of the proposed building(s) must not exceed one farm building per 50 hectares; and</p> <p>21.8.1.3 The farm building must not be located within or on an Outstanding Natural Feature (ONF); and</p> <p>21.8.1.4 If located within the Outstanding Natural Landscape (ONL) the farm building must not exceed 4 metres in height and the ground floor area must not exceed 100m²; and</p> <p>21.8.1.5 The farm building must not be located at an elevation exceeding 600 masl; and</p> <p>21.8.1.6 If located within the Rural Character Landscape (RCL), the farm building must not exceed 5m in height and the ground floor area must not exceed 300m²; and</p> <p>21.8.1.7 Farm buildings must not protrude onto a skyline or above a terrace edge when viewed from adjoining sites, or formed roads within 2km of the location of the proposed building.</p> | <p>RD</p> <p>Discretion is restricted to:</p> <p>a. the extent to which the scale and location of the Farm Building is appropriate in terms of:</p> <ul style="list-style-type: none"> i. rural amenity values; ii. landscape character; iii. privacy, outlook and rural amenity from adjoining properties; iv. visibility, including lighting. |
| 21.8.2 | <p>Exterior colours of farm buildings</p> <p>21.8.2.1 All exterior surfaces, except for schist, must be coloured in the range of browns, greens or greys (except soffits).</p> <p>21.8.2.2 Pre-painted steel, and all roofs must have a reflectance value not greater than 20%.</p> <p>21.8.2.3 Surface finishes, except for schist, must have a reflectance value of not greater than 30%.</p> | <p>RD</p> <p>Discretion is restricted to:</p> <ul style="list-style-type: none"> a. external appearance; b. visual prominence from both public places and private locations; c. landscape character.; d. visual amenity. |

| Table 5 - Standards for Farm Buildings The following standards apply to Farm Buildings. | | Non-compliance Status |
|--|---|---|
| 21.8.3 | <p>Building Height</p> <p>The height of any farm building must not exceed 10m.</p> | <p>RD</p> <p>Discretion is restricted to:</p> <ul style="list-style-type: none"> a. rural amenity values; b. landscape character; c. privacy, outlook and amenity from adjoining properties. |
| 21.8.4 | <p>Dairy Farming (Milking Herds, Dry Grazing and Calf Rearing)</p> <p>All milking sheds or buildings used to house, or feed milking stock must be located at least 300 metres from any adjoining property, lake, river or formed road.</p> | D |

21.9 Rules - Standards for Commercial Activities

| Table 6 - Standards for Commercial Activities | | Non-compliance Status |
|---|--|--|
| 21.9.1 | Commercial recreational activities must be undertaken on land, outdoors and must not involve more than 12 persons in any one group. | D |
| 21.9.2 | <p>Home Occupation</p> <p>21.9.2.1 The maximum net floor area of home occupation activities must not exceed 150m².</p> <p>21.9.2.2 Goods materials or equipment must not be stored outside a building.</p> <p>21.9.2.3 All manufacturing, altering, repairing, dismantling or processing of any goods or articles must be carried out within a building.</p> | <p>RD</p> <p>Discretion is restricted to:</p> <ul style="list-style-type: none"> a. the nature, scale and intensity of the activity in the context of the surrounding rural area; b. visual amenity from neighbouring properties and public places; c. noise, odour and dust; d. the extent to which the activity requires a rural location because of its link to any rural resource in the Rural Zone; e. access safety and transportation effects. |

| Table 6 - Standards for Commercial Activities | | Non-compliance Status |
|---|--|---|
| 21.9.3 | <p>Roadside Stalls</p> <p>21.9.3.1 The ground floor area of the roadside stall must not exceed 5m²;</p> <p>21.9.3.2 The height must not exceed 2m²;</p> <p>21.9.3.3 The minimum sight distance from the roadside stall access must be at least 200m;</p> <p>21.9.3.4 The roadside stall must not be located on legal road reserve.</p> | D |
| 21.9.4 | <p>Retail Sales</p> <p>Buildings that have a gross floor area that is greater than 25m² to be used for retail sales identified in Table 1 must be setback from road boundaries by at least 30m.</p> | <p>RD</p> <p>Discretion is restricted to:</p> <ol style="list-style-type: none"> a. landscape character and visual amenity; b. access safety and transportation effects; c. on-site parking. |

21.10 Rules - Standards for Informal Airports

| Table 7 - Standards for Informal Airports | | Non-compliance Status |
|---|---|-----------------------|
| 21.10.1 | <p>Informal Airports Located on Public Conservation and Crown Pastoral Land</p> <p>Informal airports that comply with the following standards shall be permitted activities:</p> <p>21.10.1.1 Informal airports located on Public Conservation Land where the operator of the aircraft is operating in accordance with a Concession issued pursuant to Section 17 of the Conservation Act 1987.</p> <p>21.10.1.2 Informal airports located on Crown Pastoral Land where the operator of the aircraft is operating in accordance with a Recreation Permit issued pursuant to Section 66A of the Land Act 1948.</p> <p>21.10.1.3 Informal airports for emergency landings, rescues, fire-fighting and activities ancillary to farming activities, or the Department of Conservation or its agents.</p> <p>21.10.1.4 In relation to Rules 21.10.1.1 and 21.10.1.2, the informal airport shall be located a minimum distance of 500 metres from any other zone or the notional boundary of any residential unit or approved building platform not located on the same site.</p> | D |

| Table 7 - Standards for Informal Airports | | Non-compliance Status |
|---|--|-----------------------|
| 21.10.2 | <p>Informal Airports Located on other Rural Zoned Land</p> <p>Informal Airports that comply with the following standards shall be permitted activities:</p> <p>21.10.2.1 Informal airports on any site that do not exceed a frequency of use of 2 flights* per day;</p> <p>21.10.2.2 Informal airports for emergency landings, rescues, fire-fighting and activities ancillary to farming activities;</p> <p>21.10.2.3 In relation to point Rule 21.10.2.1, the informal airport shall be located a minimum distance of 500 metres from any other zone or the notional boundary of any residential unit of building platform not located on the same site.</p> <p>* note for the purposes of this Rule a flight includes two aircraft movements i.e. an arrival and departure.</p> | D |

21.11 Rules - Standards for Mining

| Table 8 – Standards for Mining and Extraction Activities | | non-compliance Status |
|--|---|-----------------------|
| 21.11.1 | <p>21.11.1.1 The activity will not be undertaken on an Outstanding Natural Feature.</p> <p>21.11.1.2 The activity will not be undertaken in the bed of a lake or river.</p> | NC |

21.12 Rules - Ski Area and Sub-Zone

| Table 9 - Activities in the Ski Area Sub-Zone | | Activity Status |
|---|--|-----------------|
| Additional to those activities listed in Table 1. | | |
| 21.12.1 | Ski Area Activities | P |
| 21.12.2 | <p>Construction, relocation, addition or alteration of a building</p> <p>Control is reserved to:</p> <ol style="list-style-type: none"> location, external appearance and size, colour, visual dominance; associated earthworks, access and landscaping; provision of water supply, sewage treatment and disposal, electricity and communication services (where necessary); lighting. | C |

| | Table 9 - Activities in the Ski Area Sub-Zone Additional to those activities listed in Table 1. | Activity Status |
|---------|--|-----------------|
| 21.12.3 | <p>Passenger Lift Systems</p> <p>Control is reserved to:</p> <ol style="list-style-type: none"> a. the extent to which the passenger lift system breaks the line and form of the landscape with special regard to skylines, ridges, hills and prominent slopes; b. whether the materials and colour to be used are consistent with the rural landscape of which passenger lift system will form a part; c. the extent of any earthworks required to construct the passenger lift system, in terms of the limitations set out in Chapter 25 Earthworks; d. balancing environmental considerations with operational characteristics. | C |
| 21.12.4 | <p>Night lighting</p> <p>Control is reserved to:</p> <ol style="list-style-type: none"> a. hours of operation; b. duration and intensity; c. impact on surrounding properties. | C |
| 21.12.5 | <p>Vehicle Testing</p> <p>In the Waiorau Snow Farm Ski Area Activity Sub-Zone; the construction of access ways and tracks associated with the testing of vehicles, their parts and accessories.</p> <p>Control is reserved to:</p> <ol style="list-style-type: none"> a. gravel and silt run off; b. stormwater, erosion and siltation; c. the sprawl of tracks and the extent to which earthworks modify the landform; d. stability of over-steepened embankments. | C |
| 21.12.6 | <p>Retail activities ancillary to Ski Area Activities</p> <p>Control is reserved to:</p> <ol style="list-style-type: none"> a. location; b. hours of operation with regard to consistency with ski-area activities; c. amenity effects, including loss of remoteness or isolation; d. traffic congestion, access and safety; e. waste disposal; f. cumulative effects. | C |

| Table 9 - Activities in the Ski Area Sub-Zone Additional to those activities listed in Table 1. | | Activity Status |
|--|---|-----------------|
| 21.12.7 | <p>Ski Area Sub-Zone Accommodation</p> <p>Comprising a duration of stay of up to 6 months in any 12-month period and including worker accommodation.</p> <p>Discretion is restricted to:</p> <ul style="list-style-type: none"> a. scale and intensity and whether these would have adverse effects on amenity, including loss of remoteness or isolation; b. location, including whether that because of the scale and intensity the visitor accommodation should be located near the base building area (if any); c. parking; d. provision of water supply, sewage treatment and disposal; e. cumulative effects; f. natural hazards. | RD |
| 21.12.8 | Earthworks, buildings and infrastructure within the No Building and Earthworks Line in the Remarkables Ski Area Sub-Zone | PR |

21.13 Rules - Activities in Rural Industrial Sub-Zone

| Table 10 – Activities in Rural Industrial Sub-Zone Additional to those activities listed in Table 1. | | Activity Status |
|---|--|-----------------|
| 21.13.1 | Retail activities within the Rural Industrial Sub-Zone that involve the sale of goods produced, processed or manufactured on site or ancillary to Rural Industrial activities that comply with Table 11. | P |
| 21.13.2 | Administrative offices ancillary to and located on the same site as Rural Industrial activities being undertaken within the Rural Industrial Sub-Zone that comply with Table 11. | P |
| 21.13.3 | Rural Industrial Activities within a Rural Industrial Sub-Zone that comply with Table 11. | P |
| 21.13.4 | Buildings for Rural Industrial Activities within the Rural Industrial Sub-Zone that comply with Table 11. | P |

21.14

Rules - Standards for Activities within Rural Industrial Sub-Zone

| Table 11 – Standards for activities within the Rural Industrial Sub Zone These Standards apply to activities listed in Table 1 and Table 10. | | Non-Compliance Status |
|---|--|--|
| 21.14.1 | <p>Buildings</p> <p>Any building, including any structure larger than 5m², that is new, relocated, altered, reclad or repainted, including containers intended to, or that remain on site for more than six months, and the alteration to any lawfully established building are subject to the following:</p> <p>All exterior surface must be coloured in the range of browns, greens or greys (except soffits), including;</p> <p>21.15.1.1 Pre-painted steel and all roofs must have a reflectance value not greater than 20%; and,</p> <p>21.15.1.2 All other surface finishes must have a reflectance value of not greater than 30%.</p> | <p>RD</p> <p>Discretion is restricted to:</p> <ul style="list-style-type: none"> a. external appearance; b. visual prominence from both public places and private locations; c. landscape character. |
| 21.14.2 | <p>Building size</p> <p>The ground floor area of any building must not exceed 500m².</p> | <p>RD</p> <p>Discretion is restricted to:</p> <ul style="list-style-type: none"> a. external appearance; b. visual prominence from both public places and private locations; c. visual amenity; d. privacy, outlook and amenity from adjoining properties. |
| 21.14.3 | <p>Building Height</p> <p>The height for of any industrial building must not exceed 10m.</p> | <p>RD</p> <p>Discretion is restricted to:</p> <ul style="list-style-type: none"> a. rural amenity and landscape character; b. privacy, outlook and amenity from adjoining properties. |

| Table 11 – Standards for activities within the Rural Industrial Sub Zone These Standards apply to activities listed in Table 1 and Table 10. | | Non-Compliance Status |
|---|--|---|
| 21.14.4 | <p>Setback from Sub-Zone Boundaries</p> <p>The minimum setback of any building within the Rural Industrial Sub-Zone shall be 10m from the Sub-Zone boundaries.</p> | <p>RD</p> <p>Discretion is restricted to:</p> <ul style="list-style-type: none"> a. the requirement for landscaping to act as a buffer between the Rural Industrial Sub-Zone and neighbouring properties and whether there is adequate room for landscaping within the reduced setback; b. rural amenity and landscape character; c. Privacy, outlook and amenity from adjoining properties. |
| 21.14.5 | <p>Retail Activities</p> <p>Retail activities including the display of items for sale must be undertaken within a building and must not exceed 10% of the building's total floor area.</p> | NC |

21.15 Rules - Activities on the Surface of Lakes and Rivers

| Table 12 - Activities on the Surface of Lakes and Rivers | | Activity Status |
|--|--|-----------------|
| 21.15.1 | Activities on the surface of lakes and river not otherwise controlled or restricted by rules in Table 14. | P |
| 21.15.2 | <p>Motorised Recreational and Commercial Boating Activities</p> <p>The use of motorised craft for the purpose of emergency search and rescue, hydrological survey, public scientific research, resource management monitoring or water weed control, or for access to adjoining land for farming activities.</p> | P |

| Table 12 - Activities on the Surface of Lakes and Rivers | | Activity Status |
|--|---|-----------------|
| 21.15.3 | <p>Motorised Recreational Boating Activities</p> <p>Hawea River, motorised recreational boating activities on no more than six (6) days in each year subject to the following conditions:</p> <ol style="list-style-type: none"> a. at least four (4) days of such activity are to be in the months January to April, November and December; b. the Jet Boat Association of New Zealand ("JBANZ") (JBANZ or one of the Otago and Southland Branches as its delegate) administers the activity on each day; c. the prior written approval of Central Otago Whitewater Inc is obtained if that organisation is satisfied that none of its member user groups are organising activities on the relevant days; and d. JBANZ gives two (2) calendar months written notice to the Council's Harbour-Master of both the proposed dates and the proposed operating schedule; e. the Council's Harbour-Master satisfies himself that none of the regular kayaking, rafting or other whitewater (non-motorised) river user groups or institutions (not members of Central Otago Whitewater Inc) were intending to use the Hawea River on that day, and issues an approved operating schedule; f. JBANZ carries out, as its expense, public notification on two occasions 14 and 7 days before the proposed jet boating; g. public notification for the purposes of (f) means a public notice with double-size font heading in both the Otago Daily Times and the Southland Times, and written notices posted at the regular entry points to the Hawea River. | P |
| 21.15.4 | <p>Jetboat Race Events</p> <p>Jetboat Race Events on the Clutha River, between the Lake Outlet boat ramp and the Albert Town road bridge not exceeding 6 race days in any calendar year.</p> <p>Control is reserved to:</p> <ol style="list-style-type: none"> a. the date, time, duration and scale of the jetboat race event, including its proximity to other such events, such as to avoid or mitigate adverse effects on residential and recreational activities in the vicinity; b. the adequacy of public notice of the event; c. public safety. | C |
| 21.15.5 | | |

| | Table 12 - Activities on the Surface of Lakes and Rivers | Activity Status |
|---------|---|-----------------|
| 21.15.6 | <p>Jetties and Moorings in the Frankton Arm</p> <p>Jetties and moorings in the Frankton Arm, identified as the area located to the east of the Outstanding Natural Landscape line as shown on the District Plan Maps.</p> <p>Discretion is restricted to:</p> <ol style="list-style-type: none"> whether they are dominant or obtrusive elements in the shore scape or lake view, particularly when viewed from any public place, including whether they are situated in natural bays and not headlands; whether the structure causes an impediment to craft manoeuvring and using shore waters. the degree to which the structure will diminish the recreational experience of people using public areas around the shoreline; the effects associated with congestion and clutter around the shoreline. Including whether the structure contributes to an adverse cumulative effect; whether the structure will be used by a number and range of people and craft, including the general public; the degree to which the structure would be compatible with landscape and amenity values, including colour, materials, design. | RD |
| 21.15.7 | <p>Structures and Moorings</p> <p>Subject to Rule 21.15.8 any structure or mooring that passes across or through the surface of any lake or river or is attached to the bank of any lake and river, other than where fences cross lakes and rivers.</p> | D |
| 21.15.8 | <p>Structures and Moorings</p> <p>Any structures or mooring that passes across or through the surface of any lake or river or attached to the bank or any lake or river in those locations on the District Plan Maps where such structures or moorings are shown as being non-complying.</p> | NC |
| 21.15.9 | <p>Motorised and non-motorised Commercial Boating Activities</p> <p>Except where otherwise limited by a rule in Table 12.</p> <p>Note: Any person wishing to commence commercial boating activities could require a concession under the QLDC Navigation Safety Bylaw. There is an exclusive concession currently granted to a commercial boating operator on the Shotover River between Edith Cavell Bridge and Tucker Beach until 1 April 2009 with four rights of renewal of five years each.</p> | D |

| Table 12 - Activities on the Surface of Lakes and Rivers | | Activity Status |
|--|--|-----------------|
| 21.15.10 | <p>Motorised Recreational and Commercial Boating Activities</p> <p>The use of motorised craft on the following lakes and rivers is prohibited except as provided for under Rules 21.15.2 or 21.15.3.</p> <p>21.15.10.1 Hawea River.</p> <p>21.15.10.2 Lake Hayes - Commercial boating activities only.</p> <p>21.15.10.3 Any tributary of the Dart and Rees rivers (except the Beansburn and Rockburn tributaries of the Dart River) or upstream of Muddy Creek on the Rees River.</p> <p>21.15.10.4 Young River or any tributary of the Young or Wilkin Rivers and any other tributaries of the Makarora River.</p> <p>21.15.10.5 Dingle Burn and Timaru Creek.</p> <p>21.15.10.6 The tributaries of the Hunter River.</p> <p>21.15.10.7 Hunter River during the months of May to October inclusive.</p> <p>21.15.10.8 Motatapu River.</p> <p>21.15.10.9 Any tributary of the Matukituki River.</p> <p>21.15.10.10 Clutha River - More than six jet boat race days per year as allowed by Rule 21.15.4.</p> | PR |

21.16 Rules - Standards for Surface of Lakes and Rivers

| Table 13 - Standards for Surface of Lakes and Rivers | | Non-Compliance Status |
|---|--|-----------------------|
| These Standards apply to the Activities listed in Table 12. | | |
| 21.16.1 | <p>Boating craft used for Accommodation</p> <p>Boating craft on the surface of the lakes and rivers may be used for accommodation, providing that:</p> <p>21.16.1.1 The craft must only be used for overnight recreational accommodation; and</p> <p>21.16.1.2 The craft must not be used as part of any commercial activity; and</p> <p>21.16.1.3 All effluent must be contained on board the craft and removed ensuring that no effluent is discharged into the lake or river.</p> | NC |

| | Table 13 - Standards for Surface of Lakes and Rivers These Standards apply to the Activities listed in Table 12. | Non-Compliance Status |
|---------|---|-----------------------|
| 21.16.2 | <p>Jetties and Moorings in the Frankton Arm</p> <p>Jetties and moorings in the Frankton Arm, identified as the area located to the east of the Outstanding Natural Landscape line as shown on the District Plan Maps.</p> <p>No new jetty within the Frankton Arm identified as the area east of the Outstanding Natural Landscape Line shall:</p> <p>21.16.2.1 Be closer than 200 metres to any existing jetty;</p> <p>21.16.2.2 Exceed 20 metres in length;</p> <p>21.16.2.3 Exceed four berths per jetty, of which at least one berth is available to the public at all times;</p> <p>21.16.2.4 Be constructed further than 200 metres from a property in which at least one of the registered owners of the jetty resides.</p> | NC |
| 21.16.3 | <p>The following activities are subject to compliance with the following standards:</p> <p>21.16.3.1 Kawarau River, Lower Shotover River downstream of Tucker Beach and Lake Wakatipu within Frankton Arm - Commercial motorised craft, other than public transport ferry activities, may only operate between the hours of 0800 to 2000.</p> <p>21.16.3.2 Lake Wanaka, Lake Hawea and Lake Wakatipu - Commercial jetski operations must only be undertaken between the hours of 0800 to 2100 on Lakes Wanaka and Hawea and 0800 and 2000 on Lake Wakatipu.</p> <p>21.16.3.3 Dart and Rees Rivers - Commercial motorised craft must only operate between the hours of 0800 to 1800, except that above the confluence with the Beansburn on the Dart River commercial motorised craft must only operate between the hours of 1000 to 1700.</p> <p>21.16.3.4 Dart River – The total number of commercial motorised boating activities must not exceed 26 trips in any one day. No more than two commercial jet boat operators may operate upstream of the confluence of the Beansburn, other than for tramper and angler access only.</p> | NC |

21.17

Rules - Closeburn Station Activities

| Table 14 - Closeburn Station: Activities | | Activity |
|--|--|----------|
| 21.17.1 | <p>The construction of a single residential unit and any accessory building(s) within lots 1 to 6, 8 to 21 DP 26634 located at Closeburn Station.</p> <p>Control is reserved to:</p> <ul style="list-style-type: none"> a. external appearances and landscaping, with regard to conditions 2.2(a), (b), (e) and (f) of resource consent RM950829; b. associated earthworks, lighting, access and landscaping; c. provision of water supply, sewage treatment and disposal, electricity and telecommunications services. | C |

21.18

Rules - Closeburn Station Standards

| Table 15 - Closeburn Station: Standards for Buildings and Structures | | Non-compliance Status |
|--|--|-----------------------|
| 21.18.1 | <p>Setback from Internal Boundaries</p> <p>21.18.1.1 The minimum setback from internal boundaries for buildings within lots 1 to 6 and 8 to 21 DP 26634 at Closeburn Station shall be 2 metres.</p> <p>21.18.1.2 There shall be no minimum setback from internal boundaries within lots 7 and 22 to 27 DP300573 at Closeburn Station.</p> | D |
| 21.18.2 | <p>Building Height</p> <p>21.18.2.1 The maximum height of any building, other than accessory buildings, within Lots 1 and 6 and 8 to 21 DP 26634 at Closeburn Station shall be 7m.</p> <p>21.18.2.2 The maximum height of any accessory building within Lots 1 to 6 and 8 to 21 DP 26634 at Closeburn Station shall be 5m.</p> <p>21.18.2.4 The maximum height of any building within Lot 23 DP 300573 at Closeburn Station shall be 5.5m.</p> <p>21.18.2.5 The maximum height of any building within Lot 24 DP 300573 at Closeburn Station shall be 5m.</p> | NC |

| | Table 15 - Closeburn Station: Standards for Buildings and Structures | Non-compliance Status |
|---------|---|-----------------------|
| 21.18.3 | Residential Density In the Rural Zone at Closeburn Station, there shall be no more than one residential unit per allotment (being lots 1-27 DP 26634); excluding the large rural lots (being lots 100 and 101 DP 26634) held in common ownership. | NC |
| 21.18.4 | Building Coverage In lots 1-27 at Closeburn Station, the maximum residential building coverage of all activities on any site shall be 35%. | NC |

21.19

21.20

Rules Non-Notification of Applications

Any application for resource consent for the following matters shall not require the written approval of other persons and shall not be notified or limited-notified:

- 21.20.1 Controlled activity retail sales of farm and garden produce and handicrafts grown or produced on site (Rule 21.4.16), except where the access is onto a State highway.
- 21.20.2 Controlled activity mineral exploration (Rule 21.4.30).
- 21.20.3 Controlled activity buildings at Closeburn Station (Rule 21.17.1).

21.21

Assessment Matters (Landscape)

21.21.1 Outstanding Natural Features and Outstanding Natural Landscapes (ONF and ONL).

The assessment matters set out below are derived from Policies 3.3.30, 6.3.10 and 6.3.12 to 6.3.18 inclusive. Applications shall be considered with regard to the following assessment matters:

- 21.21.1.1 In applying the assessment matters, the Council will work from the presumption that in or on Outstanding Natural Features and Landscapes, the applicable activities are inappropriate in almost all locations and that successful applications will be exceptional cases where the landscape or feature can absorb the change and where the buildings and structures and associated roading and boundary changes are reasonably difficult to see from beyond the boundary of the site the subject of application.
- 21.21.1.2 Existing vegetation that:
 - a. was either planted after, or, self-seeded and less than 1 metre in height at 28 September 2002; and,
 - b. obstructs or substantially interferes with views of the proposed development from roads or other public places, shall not be considered:
 - i. as beneficial under any of the following assessment matters unless the Council considers the vegetation (or some of it) is appropriate for the location in the context of the proposed development; and
 - ii. as part of the permitted baseline.
- 21.21.1.3 Effects on landscape quality and character

In considering whether the proposed development will maintain or enhance the quality and character of Outstanding Natural Features and Landscapes, the Council shall be satisfied of the extent to which the proposed development will affect landscape quality and character, taking into account the following elements:

 - a. physical attributes:
 - i. geological, topographical, geographic elements in the context of whether these formative processes have a profound influence on landscape character;
 - ii. vegetation (exotic and indigenous);
 - iii. the presence of waterbodies including lakes, rivers, streams, wetlands.

- b. visual attributes:
 - i. legibility or expressiveness – how obviously the feature or landscape demonstrates its formative processes;
 - ii. aesthetic values including memorability and naturalness;
 - iii. transient values including values at certain times of the day or year;
 - iv. human influence and management – settlements, land management patterns, buildings, roads.
- c. Appreciation and cultural attributes:
 - i. Whether the elements identified in (a) and (b) are shared and recognised;
 - ii. Cultural and spiritual values for tangata whenua;
 - iii. Historical and heritage associations.

The Council acknowledges that Tangata Whenua beliefs and values for a specific location may not be known without input from iwi.
- d. In the context of (a) to (c) above, the degree to which the proposed development will affect the existing landscape quality and character, including whether the proposed development accords with or degrades landscape quality and character, and to what degree.
- e. any proposed new boundaries will not give rise to artificial or unnatural lines (such as planting and fence lines) or otherwise degrade the landscape character.

21.21.1.4 Effects on visual amenity

In considering whether the potential visibility of the proposed development will maintain and enhance visual amenity, values the Council shall be satisfied that:

- a. the extent to which the proposed development will not be visible or will be reasonably difficult to see when viewed from public roads and other public places. In the case of proposed development in the vicinity of unformed legal roads, the Council shall also consider present use and the practicalities and likelihood of potential use of unformed legal roads for vehicular and/or pedestrian, cycling, equestrian and other means of access;
- b. the proposed development will not be visually prominent such that it detracts from public or private views of and within Outstanding Natural Features and Landscapes;
- c. the proposal will be appropriately screened or hidden from view by elements that are in keeping with the character of the landscape;
- d. the proposed development will not reduce the visual amenity values of the wider landscape (not just the immediate landscape);
- e. structures will not be located where they will break the line and form of any ridges, hills and slopes;
- f. any roads, access, lighting, earthworks and landscaping will not reduce the visual amenity of the landscape.

21.21.1.5 Design and density of Development

In considering the appropriateness of the design and density of the proposed development, whether and to what extent:

- a. opportunity has been taken to aggregate built development to utilise common access ways including roads, pedestrian linkages, services and open space (i.e. open space held in one title whether jointly or otherwise);
- b. there is merit in clustering the proposed building(s) or building platform(s) within areas that are least sensitive to change;
- c. development, including access, is located within the parts of the site where it would be least visible from public and private locations;
- d. development, including access, is located in the parts of the site where it has the least impact on landscape character.

21.21.1.6 Cumulative effects of subdivision and development on the landscape

Taking into account whether and to what extent existing, consented or permitted development (including unimplemented but existing resource consent or zoning) may already have degraded:

- a. the landscape quality or character; or,
- b. the visual amenity values of the landscape.

The Council shall be satisfied the proposed development, in combination with these factors will not further adversely affect the landscape quality, character, or visual amenity values.

21.21.2 Rural Character Landscape (RCL)

The assessment matters below have been derived from Policies 3.3.32, 6.3.10 and 6.3.19 to 6.3.29 inclusive. Applications shall be considered with regard to the following assessment matters because in the Rural Character Landscapes the applicable activities are unsuitable in many locations.

21.21.2.1 Existing vegetation that:

- a. was either planted after, or, self seeded and less than 1 metre in height at 28 September 2002; and,
- b. obstructs or substantially interferes with views of the proposed development from roads or other public places, shall not be considered:
 - i. as beneficial under any of the following assessment matters unless the Council considers the vegetation (or some of it) is appropriate for the location in the context of the proposed development; and
 - ii. as part of the permitted baseline.

21.21.2.2 Effects on landscape quality and character:

The following shall be taken into account:

- a. where the site is adjacent to an Outstanding Natural Feature or Landscape, whether and the extent to which the proposed development will adversely affect the quality and character of the adjacent Outstanding Natural Feature or Landscape;
- b. whether and the extent to which the scale and nature of the proposed development will degrade the quality and character of the surrounding Rural Character Landscape;
- c. whether the design and any landscaping would be compatible with or would enhance the quality and character of the Rural Character Landscape.

21.21.2.3 Effects on visual amenity:

Whether the development will result in a loss of the visual amenity of the Rural Character Landscape, having regard to whether and the extent to which:

- a. the visual prominence of the proposed development from any public places will reduce the visual amenity of the Rural Character Landscape. In the case of proposed development which is visible from unformed legal roads, regard shall be had to the frequency and intensity of the present use and, the practicalities and likelihood of potential use of these unformed legal roads as access;
- b. the proposed development is likely to be visually prominent such that it detracts from private views;
- c. any screening or other mitigation by any proposed method such as earthworks and/or new planting will detract from or obstruct views of the Rural Character Landscape from both public and private locations;
- d. the proposed development is enclosed by any confining elements of topography and/or vegetation and the ability of these elements to reduce visibility from public and private locations;
- e. any proposed roads, boundaries and associated planting, lighting, earthworks and landscaping will reduce visual amenity, with particular regard to elements which are inconsistent with the existing natural topography and patterns;
- f. boundaries follow, wherever reasonably possible and practicable, the natural lines of the landscape or landscape units.

21.21.2.4 Design and density of development:

In considering the appropriateness of the design and density of the proposed development, whether and to what extent:

- a. opportunity has been taken to aggregate built development to utilise common access ways including roads, pedestrian linkages, services and open space (i.e. open space held in one title whether jointly or otherwise);
- b. there is merit in clustering the proposed building(s) or building platform(s) having regard to the overall density and intensity of the proposed development and whether this would exceed the ability of the landscape to absorb change;

- c. development, including access, is located within the parts of the site where they will be least visible from public and private locations;
- d. development, including access, is located in the parts of the site where they will have the least impact on landscape character.

21.21.2.5 Tangata Whenua, biodiversity and geological values:

- a. whether and to what extent the proposed development will degrade Tangata Whenua values including Tōpuni or nohoanga, indigenous biodiversity, geological or geomorphological values or features and, the positive effects any proposed or existing protection or regeneration of these values or features will have.

The Council acknowledges that Tangata Whenua beliefs and values for a specific location may not be known without input from iwi.

21.21.2.6 Cumulative effects of development on the landscape:

Taking into account whether and to what extent any existing, consented or permitted development (including unimplemented but existing resource consent or zoning) has degraded landscape quality, character, and visual amenity values. The Council shall be satisfied;

- a. the proposed development will not further degrade landscape quality, character and visual amenity values, with particular regard to situations that would result in a loss of valued quality, character and openness due to the prevalence of residential or non-farming activity within the Rural Landscape.
- b. where in the case resource consent may be granted to the proposed development but it represents a threshold to which the landscape could absorb any further development, whether any further cumulative adverse effects would be avoided by way of imposing a covenant, consent notice or other legal instrument that maintains open space.

21.21.3 Other factors and positive effects, applicable in all the landscape categories (ONF, ONL and RCL)

- 21.21.3.1 In the case of a proposed residential activity or specific development, whether a specific building design, rather than nominating a building platform, helps demonstrate whether the proposed development is appropriate.
- 21.21.3.2 Other than where the proposed development is a subdivision and/or residential activity, whether the proposed development, including any buildings and the activity itself, are consistent with rural activities or the rural resource and would maintain or enhance the quality and character of the landscape.
- 21.21.3.3 In considering whether there are any positive effects in relation to the proposed development, or remedying or mitigating the continuing adverse effects of past subdivision or development, the Council shall take the following matters into account:

- a. whether the proposed subdivision or development provides an opportunity to protect the landscape from further development and may include open space covenants or esplanade reserves;
- b. whether the proposed subdivision or development would enhance the character of the landscape, or protects and enhances indigenous biodiversity values, in particular the habitat of any threatened species, or land environment identified as chronically or acutely threatened on the Land Environments New Zealand (LENZ) threatened environment status;
- c. any positive effects including environmental compensation, easements for public access such as walking, cycling or bridleways or access to lakes, rivers or conservation areas;
- d. any opportunities to retire marginal farming land and revert it to indigenous vegetation;
- e. where adverse effects cannot be avoided, mitigated or remedied, the merits of any compensation;
- f. whether the proposed development assists in retaining the land use in low intensity farming where that activity maintains the valued landscape character.

QUEENSTOWN LAKES DISTRICT COUNCIL

Hearing of Submissions on Proposed District Plan

Report 4A

Report and Recommendations of Independent Commissioners Regarding
Chapter 21, Chapter 22, Chapter 23, Chapter 33 and Chapter 34

Commissioners

Denis Nugent (Chair)

Brad Coombs

Mark St Clair

PART B: CHAPTER 21 – RURAL

2 PRELIMINARY

2.1 Over-arching Submissions and Structure of the Chapter

53. At a high level there were a number of submissions that addressed the approach and structure of Chapter 21. We deal with those submissions first.

2.2 Farming and other Activities relying on the Rural Resource

54. Submissions in relation to the structure of the chapter focussed on the inclusion of other activities that rely on the rural resource¹¹⁰. Addressing the Purpose of Chapter 21, Mr Brown in evidence considered that there was an over-emphasis on the importance of farming, noting that there was an inconsistency between Chapters 3 and 21 in this regard¹¹¹. In addition, Mr Brown recommended changing the 'batting order' of the objectives and policies as set out in Chapter 21 to put other activities in the Rural Zone on an equal footing with that of farming¹¹².

55. Mr Barr in reply, supported a change to the purpose so that it would "*provide for appropriate other activities that rely on rural resources*" (our emphasis), but noted that there was no hierarchy or preference in terms of the layout of the objectives and therefore he did not support the change in their order proposed by Mr Brown.¹¹³

56. This theme of a considered preference within the chapter of farming over non-farming activities and, more specifically a failure to provide for tourism, was also raised by a number of other submitters¹¹⁴. In evidence and presentations to us, Ms Black and Mr Farrell for R/L questioned the contribution of farming¹¹⁵ to maintain the rural landscape and highlighted issues with the proposed objectives and policies making it difficult to obtain consent for tourism proposals¹¹⁶.

57. Similarly, the submission from UCES¹¹⁷ sought that the provisions of the ODP relating to subdivision and development in the rural area be rolled over to the PDP. The reasons expressed in the submission for this relief, were in summary because the PDP in its notified form:

- did not protect natural landscape values, in particular ONLs;
- was too permissive;
- was contrary to section 6 of the Act and does not have particular regard to section 7 matters; and
- was biased towards farming over other activities, resulting in a weakening of the protection of landscape values.

58. Mr Haworth addressed these matters in his presentation to us and considered, "Farming as a mechanism for protecting landscape values in these areas has been a spectacular failure."¹¹⁸ He called evidence in support from Ms Lucas, a landscape architect, who critiqued the provisions in Chapter 6 of the PDP and, noting its deficiencies, considered that those

¹¹⁰ E.g. Submissions 122, 343, 345, 375, 407, 430, 437, 456, 610, 613, 615, 806, FS 1229

¹¹¹ J Brown, Evidence, Pages 3- 4, Para 2.3

¹¹² J Brown, Evidence, Pages 5 - 6, Paras 2.8-2.9

¹¹³ C Barr, Reply, Page 2, Para 2.2

¹¹⁴ E.g. Submissions 607, 621, 806

¹¹⁵ F Black, Evidence, Page 3 - 5, Paras 3.8 – 3.16

¹¹⁶ F Black, Evidence, Page 5 , Para 3.17

¹¹⁷ Submission 145

¹¹⁸ J Haworth, Evidence, Page 5, Para 1

deficiencies had been carried through to Chapter 21. Ms Lucas noted that much of Rural Zone was not appropriate for farming and that the objectives and policies did not protected natural character¹¹⁹.

59. In evidence on behalf of Federated Farmers¹²⁰, Mr Cooper noted the permitted activity status for farming, but considered that this came at a significant opportunity cost for farmers. That said, Mr Cooper, on balance, agreed that those costs needed to be assessed against the benefits of providing for farming as a permitted activity in the Rural Zone, including the impacts on landscape amenity.¹²¹
60. Mr Barr, in his Section 42A Report, accepted that farming had been singled out as a permitted land use, but he also considered that the framework of the PDP was suitable for managing the impacts of farming on natural and physical resources.¹²² In relation to other activities that rely on the rural resource, Mr Barr in reply, considered that those activities were appropriately contemplated, given the importance of protecting the Rural Zone's landscape resource.¹²³ In reaching this conclusion, Mr Barr relied on the landscape evidence of Dr Read and the economic evidence of Mr Osborne presented as part of the Council's opening for this Hearing Stream.
61. Responding to these conflicting positions, we record that in Chapter 3 the Stream 1B Hearing Panel has already found that as an objective farming should be encouraged¹²⁴ and in Chapter 6, that policies should recognise farming and its contribution to the existing rural landscape¹²⁵. Similarly, in relation to landscape, the Stream 1B Hearing Panel found that a suggested policy providing favourably for the visitor industry was too permissive¹²⁶ and instead recommended policy recognition for these types of activities on the basis they would protect, maintain or enhance the qualities of rural landscapes.¹²⁷
62. Bearing this in mind, we concur that it is appropriate to provide for other activities that rely on the rural resource, but that such provision needs to be tempered by the equally important recognition of maintaining the qualities that the rural landscape provides. In reaching this conclusion, we found the presentation by Mr Hadley¹²⁸ useful in describing the known and predictable quality of the landscape under farming, while noting the reduced predictability resulting from other activities. In our view, tourism may not necessarily maintain the qualities that are important to maintenance of rural character (including openness, where it is an important characteristic) and amenity, and it is this latter point that needs to be addressed.
63. In order to achieve this we recommend:
 - a. Amending the Purpose of the chapter to provide for 'appropriate other activities' that rely on rural resources;
 - b. Objective 21.2.9 (as notified) be deleted and incorporated in Objective 21.2.1; and
 - c. Policies under 21.2.9 (as notified) be added to policies under Objective 21.2.1.

¹¹⁹ D Lucas, Evidence, Pages 5-11

¹²⁰ Submission 600

¹²¹ D Cooper, Evidence, Paras 31-33

¹²² C Barr, Section 42A Report, Page 17, Para 8.16

¹²³ C Barr, Reply, Page 9, Para 4.3

¹²⁴ Recommendation Report 3, Section 2.3

¹²⁵ Recommendation Report 3, Section 8.5

¹²⁶ Recommendation Report 3, Section 3.19

¹²⁷ Recommended Strategic Policy 3.3.20

¹²⁸ J Hadley, Evidence, Pages 2 -3

2.3 Rural Zone to Provide for Rural Living

64. Mr Goldsmith, appearing as counsel for a number of submitters¹²⁹, put to us that Chapter 21 failed to provide for rural living, in particular in the Wakatipu Basin¹³⁰. Mr J Brown¹³¹ and Mr B Farrell¹³² presented evidence in support of that position. Mr Brown recommended a new policy:

*Recognise the existing rural living character of the Wakatipu Basin Rural Landscape, and the benefits which flow from rural living development in the Wakatipu Basin, and enable further rural living development where it is consistent with the landscape character and amenity values of the locality.*¹³³

65. Mr Barr, in his Reply Statement, considered that the policy framework for rural living was already provided for in Chapter 22 Rural Lifestyle and Rural Residential Zones. However, Mr Barr also opined, *“that there is merit associated with providing policies associated with rural living in the Rural Zone on the basis they do not duplicate or confuse the direction of the Landscape Chapter and assessment matters in part 21.7 that assist with implementing these policies.”*¹³⁴ Mr Barr emphasised the need to avoid conflict with the Strategic Directions and Landscape Chapters and noted that he did not support singling out the Wakatipu Basin or consider that benefits that follow from rural development had been established in evidence.¹³⁵

66. Mr Barr did recommend a policy that recognised rural living within the limits of a locality and its capacity to absorb change, but nothing further.¹³⁶ Mr Barr’s recommendation for the policy was as follows;

*“Ensure that rural living is located where rural character, amenity and landscape values can be managed to ensure that over domestication of the rural landscape is avoided.”*¹³⁷

67. We consider that there are three aspects to this issue that need to be addressed. The first is, and we agree with Mr Barr in this regard, that the policy framework for rural living is already provided for in Chapter 22 Rural Lifestyle and Rural Residential Zones. That said we recommend that a description be added to the purpose of each of the Rural Chapters setting out how the chapters are linked.

68. The second aspect is that in its Recommendation Report, the Stream 1B Hearing Panel addressed the matter of rural living as follows:

“785. In summary, we recommend the following amendments to policies 3.2.5.4.1 and 3.2.5.4.2 (renumbered 3.3.22 and 3.3.24), together with addition of a new policy 3.3.23 as follows:

“Provide for rural living opportunities in areas identified on the District Plan maps as appropriate for Rural Residential and Rural Lifestyle development.

¹²⁹ Submissions 502, 1256, 430, 532, 530, 531, 535, 534, 751, 523, 537, 515,

¹³⁰ W Goldsmith, Legal Submissions, Pages 3 - 4

¹³¹ J Brown, Evidence, Dated 21 April 2016

¹³² B Farrell, Evidence, Dated 21 April 2016

¹³³ J Brown, Summary Statement to Primary Evidence, Pages 1 -2, Para 4

¹³⁴ C Barr, Reply Statement, Page 19, para 6.8

¹³⁵ C Barr, Reply Statement, Page 20, paras 6.10-6.11

¹³⁶ C Barr, Reply Statement, Page 21, paras 6.14

¹³⁷ C Barr, Reply Statement, Page 21, paras 6.15

Identify areas on the District Plan maps that are not within Outstanding Natural Landscapes or Outstanding Natural Features and that cannot absorb further change, and avoid residential development in those areas.

Ensure that cumulative effects of new subdivision and development for the purposes of rural living does not result in the alteration of the character of the rural environment to the point where the area is no longer rural in character.”

759. We consider that the combination of these policies operating in conjunction with recommended policies 3.3.29-3.3.32, are the best way in the context of high-level policies to achieve objectives 3.2.1.8, 3.2.5.1 and 3.2.5.2, as those objectives relate to rural living developments.”

69. We similarly adopt that position in recommending rural living be specifically addressed in Chapter 22.
70. Finally, with reference to the Wakatipu Basin, we record that the Council has, as noted above, already notified the Stage 2 Variations which contains specific rural living opportunities for the Wakatipu Basin.
71. Considering all these matters, we are not convinced that rural living requires specific recognition within the Rural Chapter. We agree with the reasoning of Mr Barr in relation to the potential conflict with the Strategic and Landscape chapters and that benefits that follow from rural development have not been established. We therefore recommend that the submissions seeking the inclusion of policies providing for and enabling rural living in the Rural Zone be rejected.

2.4 A Separate Water Chapter

72. Submissions from RJL¹³⁸ and Te Anau Developments¹³⁹ sought to “Extract provisions relating to the protection, use and development of the surface of lakes and rivers and their margins and insert them into specific chapter...”. Mr Farrell addressed this matter in his evidence¹⁴⁰.
73. We note that the Stream 1B Hearing Panel has already considered this matter in Report 3 at Section 8.8, and agreed that there was insufficient emphasis on water issues in Chapter 6. This was addressed in that context by way of appropriate headings. That report noted Mr Farrell’s summary of his position that he sought to focus attention on water as an issue, rather than seek substantive changes to the existing provisions.
74. Mr Barr, in reply, was of the view that water issues were adequately addressed in a specific objective with associated policies and the activities and associated with lakes and rivers are contained in one table¹⁴¹. We partly agree with each of Mr Farrell and Mr Barr.
75. In terms of the structure of the activities and standards tables, we recommend that tables deal with first the general activities in the Rural Zone and then second with location-specific activities such as those on the surface of lakes and rivers. In addition, we recommend a reordering and

¹³⁸ Submission 621

¹³⁹ Submission 607

¹⁴⁰ B Farrell, Evidence, Pages 10-11

¹⁴¹ C Barr, Reply, Page 4

clarification of the activities and standards in relation to the surface of lakes and river table to better identify the activity status and relevant standards.

2.5 New Provisions – Wanaka Airport

76. QAC¹⁴² sought the inclusion of new objectives and policies to recognise and provide for Wanaka Airport. The airport is zoned Rural and is subject to a Council designation but we were told that the designation does not serve the private operators with landside facilities at the airport. At the hearing, QAC explained the difficulties that this regime caused for the private operators.
77. Ms Sullivan, in evidence-in-chief, proposed provisions by way of amendments to the Rural Chapter, but following our questions of Mr Barr during Council's opening, provided supplementary evidence with a bespoke set of provisions for Wanaka as a subset of the Queenstown Airport Mixed Use Zone.
78. Having reached a preliminary conclusion that specific provisions for Wanaka Airport were appropriate, we requested that Council address this matter in reply. Mr Winchester, in reply for Council, advised that there was scope for a separate zone for the Wanaka Airport and that it could be completely separate or a component of the Queenstown Airport Mixed Use Zone in Chapter 17 of the PDP. Agreeing that further work on the particular provisions was required, we directed that the zone provisions for Wanaka Airport be transferred to Hearing Stream 7 Business Zones.
79. The Minute of the Chair, dated 16 June 2016, set out the directions detailed above. Those directions did not apply to the submissions of QAC seeking Runway End Protection Areas at Wanaka Airport. We deal with those submissions now.
80. QAC¹⁴³ sought two new policies to provide for Runway End Protection Areas (REPAs) at Wanaka Airport, worded as follows:

Policy 21.2.X.3 Retain a buffer around Wanaka Airport to provide for the runway end protection areas at the Airport to maintain and enhance the safety of the public and those using aircraft at Wanaka Airport.

Policy 21.2.X.1 Avoid activities which may generate effects that compromise the safety of the operation of aircraft arriving at or departing from Wanaka Airport.

81. The QAC submission also sought a new rule derived from these policies, being prohibited activity status for REPAs as follows:

Within the Runway End Protection Areas, as indicated on the District Plan Maps,

- a. Buildings except those required for aviation purposes*
- b. Activities which generate or have the potential to generate any of the following effects:*
 - i. mass assembly of people*
 - ii. release of any substance which would impair visibility or otherwise interfere with the operation of aircraft including the creation of smoke, dust and steam*

¹⁴² Submission 433

¹⁴³ Submission 433

- iii. *storage of hazardous substances*
- iv. *production of direct light beams or reflective glare which could interfere with the vision of a pilot*
- v. *production of radio or electrical interference which could affect aircraft communications or navigational equipment*
- vi. *attraction of birds*

82. We think it is appropriate to deal with the requested new policies and new rule together, as the rule relies on the policies.
83. In opening legal submissions for Council, Mr Winchester raised jurisdictional concerns regarding the applicability of the rule as related to creation of smoke and dust; those are matters within the jurisdiction of ORC. Mr Winchester also raised a fairness issue for affected landowners arising from imposition of prohibited activity status by way of submission, noting that many permitted farming activities would be negated by the new rule. He submitted that insufficient evidence had been provided to justify the prohibited activity status¹⁴⁴.
84. Ms Wolt, in legal submissions for QAC¹⁴⁵, submitted in summary that there was no requirement under the Act for submitters to consult, that the further submission process was the opportunity for affected land owners to raise any concerns, and that they had not done so. Ms Wolt drew our attention to the fact that one potentially affected land owner had submissions on the PDP prepared by consultants and that those submissions did not raise any concerns. In conclusion, Ms Wolt submitted that the concerns about fairness were unwarranted.
85. At this point, we record that we had initial concerns about the figure (Figure 3.1) showing the extent of the REPA included in the QAC Submission¹⁴⁶ as that figure was not superimposed over the cadastral or planning maps to show the extent the suggested REPA extended onto private land. Rather, the figure illustrated the dimensions of the REPA from the runway. The summary of submissions referred to the Appendix, but even if Figure 3.1 had been reproduced, in our view, it would not have been apparent to the airport neighbours that the REPA covered their land. Against this background, the failure of airport neighbours to lodge further submissions on this matter does not, in our view, indicate their acquiescence.
86. In supplementary evidence for QAC, Ms O’Sullivan provided some details from the Airbiz Report dated March 2013 from which Figure 3.1 was derived¹⁴⁷. Ms O’Sullivan also included a Plan prepared by AirBiz dated 17 May 2016, showing the spatial extent of the REPA on an aerial photograph with the cadastral boundaries also superimposed¹⁴⁸. We also received a further memorandum from Ms Wolt dated 3 June 2016, with the relevant extracts from the AirBiz March 2013 report and which included additional Figures 3.2 and 3.3 showing the REPA superimposed on the cadastral map.
87. Given that it was only at that stage that the extent of the REPA in a spatial context was identified, we do not see how any adjoining land owner could know how this might affect them. We do

¹⁴⁴ J Winchester, Opening legal Submissions, Page 11, Paras 4.21 – 4.22

¹⁴⁵ R Wolt, Legal Submissions, Pages 22-24, Paras 111 - 122

¹⁴⁶ Submission 433, Annexure 3

¹⁴⁷ K O’Sullivan, Supplementary evidence, Pages 5 – 6, Paras 3.3 - 3.5

¹⁴⁸ K O’Sullivan, Supplementary evidence, Appendix C

not consider QAC's submission to be valid for this reason. If the suggested prohibited activity rule fails for this reason, so must the accompanying policies that support it. Even if this were not the case, we agree with Mr Winchester's submission that QAC has supplied insufficient evidence to justify the relief that it seeks. The suggested prohibited activity rule is extraordinarily wide (on the face of it, the rule would preclude the neighbouring farmers from ploughing their land if they had not done so within the previous 12 months because of the potential for it to attract birds). To support it, we would have expected a comprehensive and detailed section 32 analysis to be provided. Ms O'Sullivan expressed the opinion that there was adequate justification in terms of section 32 of the Act for a prohibited activity rule¹⁴⁹. Ms O'Sullivan, however, focused on the development of ASANs, which are controlled by other rules, rather than the incremental effect of the suggested new rule, and thus in our view, significantly understated the implications of the suggested rule for neighbouring land owners. We do not therefore accept her view that the rule has been adequately justified in terms of section 32.

88. For completeness we note that the establishment of ASANs in the Rural Zone, over which these REPA would apply, would, in the main, be prohibited activities (notified Rule 21.4.28). For the small area affected by the proposed REPA outside the OCB, ASANs would require a discretionary activity consent. Thus, the regulatory regime we are recommending would enable consideration of the type of reverse sensitivity effects raised by QAC.
89. Accordingly, we recommend that submission from QAC for two new policies and an associated rule for the REPA at Wanaka Airport be rejected.

3 SECTION 21.1 – ZONE PURPOSE

90. We have already addressed a number of the submissions regarding this part of Chapter 21 in Sections 3.2 and 3.3 above, as they applied to the wider planning framework for the Rural Zone Chapter. We also record that the Zone Purpose is explanatory in nature and does not contain any objectives, policies or regulatory provisions.
91. Submissions from QAC¹⁵⁰ and Transpower¹⁵¹ sought that infrastructure in the Rural Zone needed specific recognition. Mr Barr addressed this matter in the Section 42A Report noting;
- “Infrastructure and utilities are also contemplated in the Rural Zone and while not specifically identified in the Rural Zone policy framework they are sufficiently provided for in higher order provisions in the Strategic Direction Chapter and Landscape Chapter and the Energy and Utilities Chapter.”¹⁵²*
92. Ms Craw, in evidence¹⁵³ for Transpower, agreed with that statement, provided that the Panel adopted changes to Chapter 3 Strategic Directions regarding recognition and provision of regionally significant infrastructure.
93. Ms O'Sullivan, in evidence for QAC, noted that Wanaka Airport was recognised in the ODP and suggested that it was appropriate to continue that recognition in the PDP. Her evidence was

¹⁴⁹ K O'Sullivan, Supplementary evidence, Pages 7 - 8, Paras 3.8 – 3.10

¹⁵⁰ Submission 433

¹⁵¹ Submission 805

¹⁵² C Barr, Section 42A Report, Chapter 21, Para 8.3

¹⁵³ A Craw, Evidence, dated 21 April 2016, Paras 21-22

that it was also appropriate to incorporate PC35 provisions into the PDP in order to provide guidance to plan users.¹⁵⁴

94. Forest & Bird¹⁵⁵ also sought the recognition of the loss of biodiversity on basin floors and NZTM¹⁵⁶ similarly sought recognition of mining. In evidence on behalf of NZTM, Mr Vivian was of the opinion that the combination of traditional rural activities, which include mining, are expected elements in a rural landscape and hence would not offend landscape character.¹⁵⁷
95. In our view infrastructure and biodiversity are district wide issues that are appropriately addressed in the separate chapters, Energy and Utilities and Indigenous Vegetation and Biodiversity respectively, as well as at a higher level in the strategic chapters. Provision for Wanaka Airport has been deferred to the business hearings for the reasons set out above. We agree with Ms O’Sullivan’s additional point regarding the desirability of assisting plan users as a general principle, but find that incorporating individual matters from the chapter into the Purpose section would be repetitive. We think that Mr Vivian’s reasoning regarding the combination of traditional rural activities not offending rural landscape goes too far. Nonetheless, we note that mining is the subject of objectives and associated policies in this chapter. These matters do not need to be specified in the purpose statement of every chapter in which they occur. We therefore recommend that these submissions be rejected.
96. The changes we do recommend to this section are those that address the wider matters discussed in the previous section. We recommend that the opening paragraph read:

There are four rural zones in the District. The Rural Zone is the most extensive of these. The Gibbston Valley is recognised as a special character area for viticulture production and the management of this area is provided for in Chapter 23: Gibbston Character Zone. Opportunities for rural living activities are provided for in the Rural-Residential and Rural Lifestyle Zones (Chapter 22).

97. In the five paragraphs following, we recommend accepting the amendments recommended by Mr Barr¹⁵⁸. Finally, we recommend deletion of the notified paragraph relating to the Gibbston Character Zone and the addition of the following paragraph to clarify how the landscape classifications are applied in the zone:

The Rural Zone is divided into two ~~overlay~~ areas. The first being the ~~overlay~~ area for Outstanding Natural Landscapes and Outstanding Natural Features. The second ~~overlay~~ area being the Rural Character Landscape. These ~~overlay~~ areas give effect to Chapter 3 – Strategic Direction: Objectives 3.2.5.1 and 3.2.5.2, and the policies in Chapters 3 and 6 that implement those objectives.

98. With those amendments, we recommend Section 21.1 be adopted as set out in Appendix 1.

4 SECTION 21.2 – OBJECTIVES AND POLICIES

4.1 Objective 21.2.1

99. Objective 21.2.1 as notified read as follows:

¹⁵⁴ K O’Sullivan, Evidence, dated 22 April 2016, Page 9-10, Paras 4.8 – 4.13

¹⁵⁵ Submission 706

¹⁵⁶ Submission 519

¹⁵⁷ C Vivian, Evidence, Page 11, Para 4.28

¹⁵⁸ C Barr, Reply Statement, Appendix 1

“Enable farming, permitted and established activities while protecting, maintaining and enhancing landscape, ecosystem services, nature conservation and rural amenity values.”

100. The submissions on this objective primarily sought inclusion of activities that relied on the rural resource¹⁵⁹, the addition of wording from the RMA such as “avoid, remedy or mitigate” or “from inappropriate use and development”¹⁶⁰ and removal of the word “protecting”¹⁶¹. Transpower sought the inclusion of ‘regionally significant infrastructure’.

101. As noted in Section 2.1 above, the Council lodged amended objectives and policies, reflecting our request for outcome orientated objectives. The amended version of Objective 21.2.1 read as follows:

“A range of land uses including farming, permitted and established activities are enabled, while protecting, maintaining and enhancing landscape, ecosystem services, nature conservation and rural amenity values.”

102. We record that this amended objective is broader than the objective as notified, by suggesting the range of enabled activities extends beyond farming and established activities, and circular by referring to permitted activities (which should only be permitted if giving effect to the objective). We have addressed the activities relying on the rural resource in Section 3.2 above. In addition, as we noted in Section 4, we consider infrastructure is more appropriately dealt with in Chapter 30 Energy and Utilities..

103. In his evidence for Darby Planning LP *et al*¹⁶², which sought to remove the word “protecting”, Mr Ferguson was of the view that the Section 42A Report wording of Objective 21.2.1 was not sufficiently clear in, “providing the balance between enabling appropriate rural based activities and recognising the important values in the rural environment.”¹⁶³ Mr Ferguson was also of the view that this balance needed to be continued into the associated policies. Similarly, in evidence tabled for X-Ray Trust, Ms Taylor was of the view that “protecting” was an inappropriately high management threshold and that it could prevent future development¹⁶⁴.

104. We do not agree. Consistent with the findings in the report on the Strategic Chapters, we consider that removal of the word “protecting” would have exactly the opposite result from that sought by Mr Ferguson and Ms Taylor by creating an imbalance in favour of other activities to the detriment of landscape values. This would be inconsistent with the Strategic Objectives 3.2.5.1 and 3.2.5.2 which seek to protect ONLs and ONFs from the adverse effects of subdivision, use and development, and maintain and enhance rural character and visual amenity values in Rural Character Landscapes.

105. We are satisfied that the objective as recommended by Mr Barr reflects both the range of landscapes in the Rural Zone, and, with minor amendment, the range of activities that are appropriate within some or all of those landscapes. The policies to implement this objective should appropriately apply the terms “protecting, maintaining and enhancing” so as to

¹⁵⁹ Submissions 343, 345, 375, 407, 430, 437, 456, 513, 515, 522, 531, 537, 546, 608, 621, 624, 806

¹⁶⁰ Submissions 513, 515, 522, 531, 537, 621, 624, 805

¹⁶¹ Submissions 356, 608 – we record that these submissions similarly sought the removal of the word protect from Policy 21.2.1.1

¹⁶² Submission 608

¹⁶³ C Fergusson, EIC, dated 21 April 2016, Para 54

¹⁶⁴ L Taylor, Evidence, Appendix A, Page 1

implement the higher order objectives and policies. Consequently, we recommend that the wording for Objective 21.2.1 be as follows:

A range of land uses, including farming and established activities, are enabled while protecting, maintaining and enhancing landscape, ecosystem services, nature conservation and rural amenity values.

106. In relation to wording from the RMA such as “avoid, remedy or mitigate” or “from inappropriate use and development”, Mr Brown in his evidence for Chapter 21 reiterated the view he put forward at the Strategic Chapters hearings that the, “RMA language should be the “default” language of the PDP and any non-RMA language should be used sparingly, ...”¹⁶⁵, in order to avoid uncertainty and potentially litigation.
107. The Stream 1B Hearings Panel addressed this matter in detail¹⁶⁶ and concluded that, “we take the view that use of the language of the Act is not a panacea, and alternative wording should be used where the wording of the Act gives little or no guidance to decision makers as to how the PDP should be implemented.” We agree with that finding for the same reasons as are set out in Recommendation Report 3 and therefore recommend rejecting those submissions seeking inclusion of such wording in the objective.

4.2 Policy 21.2.1.1

108. Policy 21.2.1.1 as notified read as follows:

“Enable farming activities while protecting, maintaining and enhancing the values of indigenous biodiversity, ecosystem services, recreational values, the landscape and surface of lakes and rivers and their margins.”

109. The majority of submissions on this policy sought, in the same manner as for Objective 21.2.1, to include reference to activities that variously rely on rural resources, as well as inclusion of addition of wording from the RMA such as “avoid, remedy or mitigate”¹⁶⁷, or softening of the policy through removal of the word “protecting”¹⁶⁸, or inserting the words “significant” before the words indigenous biodiversity¹⁶⁹, or amending the reference to landscape to “outstanding natural landscape values”¹⁷⁰.
110. In evidence for RJJ *et al* Mr Farrell recommended that the policy be amended as follows:
- “Enable a range of activities that rely on the rural resource while, maintaining and enhancing indigenous biodiversity, ecosystem services, recreational values, landscape character and the surface of lakes and rivers and their margins.”*¹⁷¹
111. Mr Barr did not recommend any additional amendments to this policy in his Section 42A Report or in reply. We have already addressed the majority of these matters in Section 3.2 above. The additional amendments recommended by Mr Farrell in our view do not align the policy so that

¹⁶⁵ J Brown, Evidence , Page 2, Para 1.9

¹⁶⁶ Recommendation Report 3, Section 1.9

¹⁶⁷ Submissions 343, 345, 375, 456, 515, 522, 531

¹⁶⁸ Submissions 356, 608

¹⁶⁹ Submissions 701, 784

¹⁷⁰ Submissions 621, 624

¹⁷¹ B Farrell, Evidence, Page 15, Para 48

it implements Objective 21.1.1, and are also inconsistent with the Hearing Panel’s findings in regard to the Strategic Chapters.

112. We therefore recommend that Policy 21.2.1.1 remain as notified.

4.3 Policy 21.2.1.2

113. Policy 21.2.1.2 as notified read as follows:

“Provide for Farm Buildings associated with larger landholdings where the location, scale and colour of the buildings will not adversely affect landscape values.”

114. Submissions to this policy variously sought;

- a. To remove the reference to “large landholdings”¹⁷²;
- b. To delete reference to farm buildings and replace with reference to buildings that support rural and tourism based land uses¹⁷³;
- c. To change the policy to not “significantly adversely affect landscape values”¹⁷⁴;
- d. To roll-over provisions of the ODP so that farming activities are not permitted activities.¹⁷⁵

115. The Section 42A Report recommended that the policy be amended as follows;

“Provide for Farm Buildings associated with larger landholdings over 100 hectares in area where the location, scale and colour of the buildings will not adversely affect landscape values.”

116. In his evidence, Mr Brown for Trojan Helmet *et al* considered that the policy should apply to all properties, not just larger holdings and that the purpose of what is proposed to be managed, the effect on landscape values, should be clearer¹⁷⁶. Mr Farrell in evidence for RJL *et al* was of a similar view, considering that 100 hectares was too high a threshold for the provision of farm buildings and that a range of farm buildings should be provided for and were appropriate¹⁷⁷. Mr Farrell did not support the amendment sought by RJL in relation to changing the policy to not “significantly adversely affect landscape values”, but rather recommended that policy be narrowed to adverse effects on the district’s significant landscape values. There was no direct evidence supporting the request to widen the reference to buildings that support rural and tourism based land uses. The argument of Mr Haworth for UCES, seeking that the provisions of the ODP be rolled over so that farming activities are not permitted activities have already been addressed in Section 3.2 above. However, later in the report we address the density of farm buildings in response to UCES’s submission.

117. In the Section 42A Report, Mr Barr considered that provision for farm buildings of a modest size and height, subject to standards controlling colour, density and location, is an efficient management regime that would lower transition costs for modest size buildings without compromising the landscape¹⁷⁸. In evidence for Federated Farmers¹⁷⁹, Mr Cooper emphasised the need to ensure that the associated costs were reasonable in terms of the policy

¹⁷² Submission 356, 437, 621, 624

¹⁷³ Submission 806

¹⁷⁴ Submission 356, 621

¹⁷⁵ Submission 145

¹⁷⁶ J Brown, Evidence, Para 2.11 – 2.12

¹⁷⁷ B Farrell, Evidence, Para 51

¹⁷⁸ C Barr, Summary of S42A Report, Para 4, Page 2

¹⁷⁹ D Cooper, Evidence, Paras 25-26

implementation. We note that while we heard from several farmers, none of them raised an issue with this policy.

118. In reply, Mr Barr did not agree with Mr Brown and Mr Farrell’s view that the policy should apply to all properties. Mr Barr’s opinion was that the policy needed to both recognise the permitted activity status for buildings on 100 hectares plus sites and require resource consents for buildings on smaller properties on the basis that their scale and location are appropriate¹⁸⁰.
119. Mr Barr also addressed in his Reply Statement, evidence presented by Mr P Bunn¹⁸¹ and Ms D MacColl¹⁸² as to the policy and rules relating to farm buildings¹⁸³. On a review of these submissions, we note that the submissions do not seek amendments to the farm building policy and rules and consequently, we have not considered that part of the submitters’ evidence any further.
120. We concur with Mr Barr and find that the policy will provide for efficient provision of genuine farm buildings without a reduction in landscape and rural amenity values. While a 100 hectare cut-off is necessarily somewhat arbitrary, it both characterises ‘genuine’ farming operations and identifies properties that are of a sufficiently large scale that they can absorb additional buildings meeting the specified standards. We agree, however, with Mr Brown that the purpose of the policy needs to be made clear, that being the management of the potential adverse effects on the landscape values.
121. We therefore recommend that Policy 21.2.1.2 be worded as follows:

“Allow Farm Buildings associated with landholdings of 100 hectares or more in area while managing the effects of the location, scale and colour of the buildings on landscape values.”

4.4 Policies 21.2.1.3 – 21.2.1.8

122. Policies 21.2.3 to 21.2.8 as notified read as follows:

21.2.1.3 Require buildings to be set back a minimum distance from internal boundaries and road boundaries in order to mitigate potential adverse effects on landscape character, visual amenity, outlook from neighbouring properties and to avoid adverse effects on established and anticipated activities.

21.2.1.4 Minimise the dust, visual, noise and odour effects of activities by requiring facilities to locate a greater distance from formed roads, neighbouring properties, waterbodies and zones that are likely to contain residential and commercial activity.

21.2.1.5 Have regard to the location and direction of lights so they do not cause glare to other properties, roads, public places or the night sky.

21.2.1.6 Avoid adverse cumulative impacts on ecosystem services and nature conservation values.

21.2.1.7 Have regard to the spiritual beliefs, cultural traditions and practices of Tangata Whenua.

¹⁸⁰ C Barr, Reply, Page 17, Para 5.12

¹⁸¹ Submission 265

¹⁸² Submission 285 and 626

¹⁸³ C Barr, Reply, Pages 15 - 16, Paras 5.7 – 5.9

21.2.1.8 *Have regard to fire risk from vegetation and the potential risk to people and buildings, when assessing subdivision and development in the Rural Zone.*

123. Submissions to these policies variously sought;

Policies

21.2.1.3 remove the reference to “avoid adverse effects on established and anticipated activities”¹⁸⁴ or retain the policy as notified¹⁸⁵;

21.2.1.4 remove reference to “requiring facilities to locate a greater distance from”¹⁸⁶, retain the policy¹⁸⁷ and delete the policy entirely¹⁸⁸;

21.2.1.5 retain the policy¹⁸⁹;

21.2.1.6 insert “mitigate, remedy or offset” after the word avoid¹⁹⁰, reword to address significant adverse impacts¹⁹¹ or support as notified¹⁹²;

21.2.1.7 delete the policy¹⁹³ and amend the policy to address impacts on Manawhenua¹⁹⁴;

21.2.1.8 include provision for public transport¹⁹⁵.

124. Specific evidence presented to us by Mr MacColl supporting the NZTA submission which supported the retention of Policy 21.2.1.3¹⁹⁶. In evidence tabled for X-Ray Trust, Ms Taylor considered that Policy 21.2.1.3 sought to manage aesthetic effects as well as reverse sensitivity and that Objective 21.2.4 and the associated policies sufficiently dealt with the management of reverse sensitivity effects. Hence it was her view that reference to that matter in Policy 21.2.3.1 was not required¹⁹⁷.

125. Mr Barr generally addressed these matters in the Section 42A Report¹⁹⁸ and again in his Reply Statement¹⁹⁹. In the latter Mr Barr considered that the only amendment required to this suite of policies was to Policy 21.2.1.4 which he suggested be amended as follows:

184 Submissions 356, 806

185 Submissions 600, 719

186 Submissions 356, 437

187 Submission 600

188 Submission 806

189 Submission 600

190 Submissions 356, 437

191 Submissions 356, 600, 719

192 Submissions 339, 706

193 Submission 806

194 Submission 810: Noting that this aspect of this submission was withdrawn by the representatives of the submitter when they appeared at the Stream1A Hearing. Refer to the discussion in Section 3.6 of Report 2. We have not referred to the point again in the balance of our report for that reason.

195 Submission 798

196 A MacColl, Evidence for NZTA, Page 5, Para 17

197 L Taylor, Evidence, Page 4, Para 5.4

198 Issue 1 – Farming Activity and non-farming activities.

199 Section 4

“Minimise the dust, visual, noise and odour effects of activities by requiring them to locate a greater distance from formed roads, neighbouring properties, waterbodies and zones that are likely to contain residential and commercial activity.”

126. We agree with Mr Barr, that this rewording provides greater clarity as to the purpose of this policy. We have already addressed in our previous findings the use of RMA language such as *“avoid, remedy, mitigate”*. In relation to Ms Taylor’s suggestion of deleting Policy 21.2.1.3, we consider that policy provides greater clarity as to the types of effects that it seeks to control. We received no evidence in relation to the other deletions and amendments sought in the submissions. We therefore recommend that Policies 21.2.1.3 and 2.2.1.5- 21.2.1.8 remain as notified and Policy 21.2.1.4 be amended as set out in the previous paragraph.

127. At this point we note that in Stream 1B Recommendation Report, the Hearing Panel did not recommend acceptance of the NZFSC submission seeking a specific objective for emergency services, but instead recommended that it be addressed in the detail of the PDP²⁰⁰. We address that matter now. In the first instance we note that Mr Barr, recommended a new policy to be inserted into Chapter 22 as follows:

22.2.1.8 Provide adequate firefighting water and fire service vehicle access to ensure an efficient and effective emergency response.²⁰¹

128. Mr Barr considered this separate policy was required rather than amending Policy 22.2.1.7 which addressed separate matters and that the policy should sit under Objective 22.2.1 which addressed rural living opportunities²⁰².

129. Mr Barr did not consider that such a policy and any subsequent rules were required in Chapter 21 as there were no development rights for rural living provided within that Chapter²⁰³. In response to our questions, Mr Barr stated that his recommended rules relating to fire fighting and water supply in Chapter 22 could be applied to Chapters 21 and 23²⁰⁴. We agree and also consider an appropriate policy framework is necessary. This is particularly so in this zone with its limited range of permitted activities. We agree with Ms McLeod²⁰⁵ that fire safety is an issue outside of the Rural-Residential and Rural Lifestyle Zones.

130. Accordingly, we recommend that a new policy be inserted, numbered 21.2.1.9, worded as follows:

Provide adequate firefighting water and fire service vehicle access to ensure an efficient and effective emergency response.

131. We address the specific rules for firefighting water and fire service vehicle access later in this report.

4.5 Objective 21.2.2

132. As notified, Objective 21.2.2 read as follows:

²⁰⁰ Recommendation Report 3, Section 2.3

²⁰¹ C Barr, Chapter 22 Section 42A Report, Page 35, Para 16.13

²⁰² C Barr, Chapter 22 Section 42A Report, Page 35, Para 16.9 – 16.14

²⁰³ C Barr, Section 42A Report, Pages 99 -100, Paras 20.1 – 20.5

²⁰⁴ C Barr, Reply – Chapter 22, Page 13, Para 13.1

²⁰⁵ Ms A McLeod, EIC, Page 13, Par 5.25

“Sustain the life supporting capacity of soils”

133. Submissions on the objective sought that it be retained or approved.²⁰⁶ Mr Barr recommended amending the objective under the Council’s memoranda on revising the objectives to be more outcome focused.²⁰⁷ Mr Barr’s recommended wording was as follows;

“The life supporting capacity of soils is sustained.”

134. We agree with that wording and that the amendment is a minor change under Clause 16(2) of the First Schedule which does not alter the intent.
135. As such, we recommend that Objective 21.2.2 be reworded as Mr Barr recommended.

4.6 Policies 21.2.2.1 – 21.2.2.3

136. As notified policies 21.2.2.1 – 21.2.2.3 read as follows:

21.2.2.1 Allow for the establishment of a range of activities that utilise the soil resource in a sustainable manner.

21.2.2.2 Maintain the productive potential and soil resource of Rural Zoned land and encourage land management practices and activities that benefit soil and vegetation cover.

21.2.2.3 Protect the soil resource by controlling activities including earthworks, indigenous vegetation clearance and prohibit the planting and establishment of recognised wilding exotic trees with the potential to spread and naturalise.

137. Submissions to these policies variously sought the deletion²⁰⁸ or retention²⁰⁹ of particular policies, although in the main, the requests were to soften the intent of the policies through rewording so the that policies applied to “significant soils”,²¹⁰ and Policy 21.2.2.3 be amended to “Protect, enhance or maintain the soil resource ...”²¹¹ or “Protect, the soil resource by controlling earthworks, and appropriately managing the effects of ... the planting and establishment of recognised wilding exotic trees with the potential to spread and naturalise.”²¹²
138. We heard no evidence in regard to these submission requests. Mr Barr recommended in the Section 42A Report that Policy 21.2.2.3 be amended as follows “...and establishment of identified wilding exotic trees ...” for consistency with recommendations made to Chapter 34 on Wilding Exotic Trees.²¹³
139. These policies are part of the permitted activity framework for the Chapter in relation to appropriateness of farming within the context of landscape values to be protected, maintained or enhanced. Removal of the policies or softening their wording would not provide the direction required to assist achievement of the objective. We accept, however, the need for the

²⁰⁶ Submissions 289, 325, 356

²⁰⁷ Council Memoranda dated 13 April 2016

²⁰⁸ Submission 806

²⁰⁹ Submissions 600, 806

²¹⁰ Submissions 643, 693, 702

²¹¹ Submission 356

²¹² Submission 600

²¹³ C Barr, Section 42A Report, Appendix 1

consequential amendment suggested by Mr Barr. We therefore recommend that the Policies 21.2.2.1 and 21.2.2.2 remain as notified and that 21.2.2.3 read as follows:

“Protect the soil resource by controlling activities including earthworks, indigenous vegetation clearance and prohibit the planting and establishment of identified wilding exotic trees with the potential to spread and naturalise.”

4.7 Objective 21.2.3

140. As notified, Objective 21.2.3 read as follows:

“Safeguard the life supporting capacity of water through the integrated management of the effects of activities.”

141. Submissions on the objective were generally supportive²¹⁴ with a specific request for inclusion of “...capacity of water and water bodies through ...”.²¹⁵ This submission was not directly addressed in the Section 42A Report or in evidence. We note that the definitions of water and water body in the RMA means that water bodies are included within ‘water’, and therefore consider that there is no advantage in expanding the objective.

142. Mr Barr recommended amending the objective under the Council’s memoranda on revising the objectives to be more outcome focused.²¹⁶ The suggested rewording was:

“The life supporting capacity of water is safeguarded through the integrated management of the effects of activities.”

143. We agree that this rewording captures the original intention in an appropriate outcome orientated manner and recommend that the objective be amended as such.

4.8 Policy 21.2.3.1

144. As notified, Policy 21.2.3.1 read as follows:

“In conjunction with the Otago Regional Council, regional plans and strategies:

- a. Encourage activities that use water efficiently, thereby conserving water quality and quantity*
- b. Discourage activities that adversely affect the potable quality and life supporting capacity of water and associated ecosystems.”*

145. Submissions to this policy variously sought its deletion²¹⁷ or retention²¹⁸, its rewording so as to delete reference to “water quality and quantity” and/or reference to “potable quality, life-supporting capacity and ecosystems”.²¹⁹

146. There was no direct reference to these submissions in the Section 42A Report or in evidence.

147. Given that the objective under which this policy sits refers to safeguarding life-supporting capacity, then it seems to us incongruous to remove reference to “water quality and quantity”

²¹⁴ Submissions 289, 356, 600

²¹⁵ Submissions 339, 706

²¹⁶ Council Memoranda dated 13 April 2016

²¹⁷ Submission 590

²¹⁸ Submission 339, 706, 755,

²¹⁹ Submissions 600, 791, 794

or “potable quality, life-supporting capacity and ecosystems”, which are all relevant to achievement of that objective. We therefore, recommend that the policy as notified remains unchanged.

4.9 New Policy on Wetlands

148. The Forest & Bird²²⁰ and E Atly²²¹ sought an additional policy to avoid the degradation of natural wetlands. The reasons set out in the submissions included that it is a national priority project to protect wetlands and that rules other than those related to vegetation clearance were needed.

149. We could not identify where this matter was addressed in the Section 42A Report. In evidence for the Forest & Bird, Ms Maturin advised that the Society would be satisfied if this matter was added to Policy 21.2.12.5.²²² We therefore address the point later in this report in the context of Policy 21.2.12.5.

4.10 Objective 21.2.4

150. As notified, Objective 21.2.4 read as follows:

Manage situations where sensitive activities conflict with existing and anticipated activities in the Rural Zone.

151. Submissions on this objective were generally in support of the wording as notified.²²³ Transpower²²⁴ sought that the Objective be amended to read as follows;

Avoid situations where sensitive activities conflict with existing and anticipated activities and regional significant infrastructure in the Rural Zone, protecting the activities and regionally significant infrastructure from adverse effects, including reverse sensitivity effects.

152. One other submission did not seek a specific change to the wording of the objective but wanted to “encourage a movement away from annual scrub burning in the Wakatipu Basin”.²²⁵ We heard no evidence on this particular matter as to the link between the objective and the issue identified. We are both unsure of the linkage between the request and the objective, and whether the issue is within the Council’s jurisdiction. We therefore recommend that the submission be rejected.

153. Mr Barr recommended amending the objective under the Council’s memoranda on revising the objectives to be more outcome focused.²²⁶ His suggested rewording was:

Situations where sensitive activities conflict with existing and anticipated activities are managed.

154. In evidence for Transpower, Ms Craw²²⁷

²²⁰ Submission 706

²²¹ Submission 336

²²² S Maturin, Evidence, Page 10, Para 62

²²³ Submissions 134, 433, 600, 719, 723, 730, 732, 734, 736, 738, 739, 760, 843

²²⁴ Submission 805

²²⁵ Submission 380

²²⁶ Council Memoranda dated 13 April 2016

²²⁷ A Craw, Evidence, Page 6, Para 30-33

- a. Considered that Policy 3.2.8.1.1 in Council’s reply addressed Policies 10 and 11 of the NPSET 2008 to safeguard the National Grid from incompatible development
- b. Agreed with the Section 42A Report, that infrastructure did not need to be specifically identified within the objective
- c. Considered that “avoid” provided stronger protection than “manage”
- d. Suggested that if the Panel adopted Policy 3.2.8.1.1. (Council’s reply version), then the wording in the previous paragraph would be appropriate.

155. In his evidence, Mr Brown ²²⁸ recommended the following wording for the objective;

Reverse sensitivity effects are managed.

156. This was on the basis that the reworded objective had the same intent, but was simpler. We agree that the intent might be the same (which, if correct, would also overcome potential jurisdictional hurdles given that the submission Mr Brown was addressing ²²⁹ sought amendments to the policies under this objective, rather than to the objective itself), but this also means that it does not solve the problem we see with the original objective – that it did not specify a clear outcome in respect of which any policies might be applied in order to achieve the objective. Transpower’s suggested wording would solve that problem, but in our view, a position of avoiding all conflict is unrealistic and unachievable without significant restrictions on new development that we do not believe can be justified. As is discussed in greater detail in the report on the strategic chapters, the NPSET 2008 does not require that outcome (as regards reverse sensitivity effects on the National Grid).

157. In reply, Mr Barr further revised his view on the wording of the objective as follows;

Situations where sensitive activities conflict with existing and anticipated activities are managed to minimise conflict between incompatible land uses.

158. Mr Barr’s reasons for the further amendments included clarification as to what was being managed and to what end result, and that use of the term ‘reverse sensitivity’ was not desirable as it applied to new activities coming to an existing nuisance.²³⁰ We consider this wording is the most appropriate way to achieve the purpose of the Act given the alternatives offered.

159. We therefore recommend that Objective 2.4.1 be worded as follows;

“Situations where sensitive activities conflict with existing and anticipated activities are managed to minimise conflict between incompatible land uses.”

4.11 Policies 21.2.4.1 – 21.2.4.2

160. As notified, policies 21.2.4.1 – 21.2.4.2 read as follows:

21.2.4.1 Recognise that permitted and established activities in the Rural Zone may result in effects such as odour, noise, dust and traffic generation that are reasonably expected to occur and will be noticeable to residents and visitors in rural areas.

²²⁸ J Brown, Evidence, Page 12, Para 2.17

²²⁹ Submission 806 (Queenstown Park Ltd)

²³⁰ C Barr, Reply, Appendix 2, Page 2

21.2.4.2 *Control the location and type of non-farming activities in the Rural Zone, to minimise or avoid conflict with activities that may not be compatible with permitted or established activities.*

161. Submissions to these policies variously sought their retention²³¹ or deletion²³². Queenstown Park Limited²³³ sought that the two policies be replaced with effects-based policies that would enable diversification and would be forward focused. However, the submission did not specify any particular wording. RJL and D & M Columb sought that Policy 21.2.4.2 be narrowed to apply to only new non-farming and tourism activities²³⁴, while TML and Straterra sought that the policy be amended to “manage” rather than “control” the location and type of non-farming activities and to “manage” conflict with activities “that may or may not be compatible with permitted or established activities.”²³⁵
162. In the Section 42A Report, Mr Barr suggested an amendment to Policy 21.4.2.1 as follows;
- New activities must recognise that permitted and established activities in the Rural Zone may result in effects such as odour, noise, dust and traffic generation that are reasonably expected to occur and will be noticeable to residents and visitors in rural areas.*²³⁶
163. We were unable to find any reasons detailed in the Section 42A Report for this recommended amendment or a submission that sought this specific wording. That said, we do find that it clarifies the intent of the policy (as notified, it leaves open who is expected to recognise the specified matters) and consider that as such, that it is within scope.
164. In his evidence on behalf of TML, Mr Vivian²³⁷ recommended a refinement of the policy from that sought in TML’s submission, such that it read:
- To manage the location and type of non-farming activities in the Rural Zone, in order to minimise or avoid conflict with activities that may not be compatible with permitted or established activities.*
165. In his evidence, Mr Farrell on behalf of RJL Ltd, expressed the view that Policy 21.2.4.2 as notified did not give satisfactory recognition to the benefits of tourism. He supported inserting specific reference to tourism activities and to limiting the policy to new activities.²³⁸
166. Mr Barr, did not provide any additional comment on these matters in reply.
167. There was no evidence presented as to why these policies should be deleted and in our view their deletion would not be the most appropriate way to achieve the objective.
168. While the amendments suggested by Mr Vivian provide some clarification of the intent and purpose of Policy 21.2.4.2, we find that this is already appropriately achieved with the current wording – we do not think there is a meaningful difference between management and control

²³¹ Submissions 433, 600, 719, 723, 730, 732, 734, 736, 738, 739, 760, 843

²³² Submissions 693, 702, 806,

²³³ Submission 806

²³⁴ Submissions 621, 624

²³⁵ Submissions 519, 598

²³⁶ C Barr, Section 42A Report, Appendix 1

²³⁷ C Vivian, EiC, paragraphs 4.30 – 4.37

²³⁸ B Farrell, Evidence, Page 16, Paras 52 - 54

in this context. In relation to the benefits of tourism, we find that the potential effects of such activities should not be at the expense of unnecessary adverse effects on existing lawfully established activities. We consider that a policy focus on minimising conflict strikes an appropriate balance between the two given the objective it seeks to achieve. However, we consider this can be better expressed.

169. In relation to the specific wording changes recommended by Mr Farrell, we do not think it necessary to identify tourism as a non-farming type activity, but we agree that, consistently with the suggested change to Policy 21.2.4.1, that the focus of Policy 21.2.4.2 should be on new non-farming activities.

170. Lastly, we consider that the policy could be simplified to delete reference to avoiding conflict as an alternative given that minimisation includes avoidance where avoidance is possible.

171. Hence we recommend that policies 21.2.4.1 and 21.2.4.2 be worded as follows;

21.2.4.1 New activities must recognise that permitted and established activities in the Rural Zone may result in effects such as odour, noise, dust and traffic generation that are reasonably expected to occur and will be noticeable to residents and visitors in rural areas.

21.2.4.2 Control the location and type of new non-farming activities in the Rural Zone, so as to minimise conflict between permitted and established activities and those that may not be compatible such activities.

4.12 Definitions Relevant to Mining Objective and Policies

172. Before addressing Objective 21.2.5 and associated policies, we consider it logical to address the definitions associated with mining activities in order that the meaning of the words within the objective and associated policies is clear.

173. NZTM²³⁹ sought replacement of the PDP definitions for “mining activity” and “prospecting”, and new definitions for “exploration”, “mining” and “mine building” (this latter definition we address in Section 5.15 below).

174. Stage 2 Variations have proposed a new definition of mining activity. We have been advised that the submission and further submissions relating to that definition have been transferred to the Stage 2 Variations hearings. Thus we make no recommendation on those.

175. Mr Vivian in evidence for NZTM drew attention to the need also to include separate definitions of exploration and prospecting. In reply Mr Barr agreed with Mr Vivian.²⁴⁰

176. The wording for the new definition of “Exploration” sought by NZTM²⁴¹ was as follows;

Means any activity undertaken for the purpose of identifying mineral deposits or occurrences and evaluating the feasibility of mining particular deposits or occurrences of 1 or more minerals; and includes any drilling, dredging, or excavations (whether surface or subsurface) that are reasonably necessary to determine the nature and size of a mineral deposit or occurrence; and to explore has a corresponding meaning.

²³⁹ Submission 519

²⁴⁰ C Barr, Reply, Page 37, Para 13.2

²⁴¹ Submission 519, opposed by FS1040 and FS1356

177. Mr Barr did not directly address this definition except as it related to the permitted activity rules, but he did recommend the inclusion of the new definition.²⁴² We address the matter of permitted activity status later in the decision. Mr Vivian in evidence for NZTM was of the view that the definition was necessary to show the difference between prospecting, mining and exploration and to align the definition with the CMA.²⁴³
178. We do not have any issue in principle with the suggested definition, but it needs to be recognised that as defined, mineral exploration has potentially significant adverse environmental effects. Our consideration of policy and rules below reflect that possibility.
179. The wording for the definition of “Prospecting” sought by NZTM²⁴⁴ (showing the revisions from the notified definition) was as follows;
- “Mineral Prospecting Means any activity undertaken for the purpose of identifying land likely to contain ~~exploitable~~ mineral deposits or occurrences; and includes the following activities:*
- a. Geological, geochemical, and geophysical surveys*
 - b. The taking of samples by hand or hand held methods*
 - c. Aerial surveys*
 - d. Taking small samples by low impact mechanical methods.”*
180. Mr Barr and Mr Vivian agreed that inclusion of reference to “*low impact mechanical methods*” was not necessary given the context in which the term is used. We disagree. Reference to prospecting in policies and rules that we discuss below, proceeds on the basis that prospecting is a low impact activity. We think that it is important that reference to mechanical sampling in the definition should reflect that position. We are also concerned that the definition is inclusive of the activities listed as bullet points. The consequence could be that activities not contemplated occur under the guise of Mineral Prospecting. We doubt that there is scope to replace the word “includes” and recommend, via the Stream 10 Hearing Panel, that the Council consider a variation to amend this definition.
181. In considering these amendments, we conclude that they are appropriate in terms of consistency and the clarity of the application of these terms within the provisions of the Plan.
182. NZTM also requested a new definition be included in the PDP for “*mining*” as it has a different range of effects compared to exploration and prospecting, and that it should align with the CMA. The wording sought by NZTM was as follows:

Mining

- a. means to take, win or extract , by whatever means, -
 - i. a mineral existing in its natural state in land, or
 - ii. a chemical substance from a mineral existing in its natural state in land and
- b. includes –
 - i. the injection of petroleum into an underground gas storage facility but

²⁴² C Barr, Section 42A Report, Page 108, Para 21.21

²⁴³ C Vivian, Evidence, Page 10, Para 4.21

²⁴⁴ Submission 519, opposed by FS1040 and FS1356

- c. does not include prospecting or exploration for a mineral or chemical substance referred in in paragraph (a).

183. Mr Barr did not address this submission point directly in the Section 42A Report or in reply. Mr Vivian, again for NZTM, considered it important to include such a definition for reasons of consistency with the CMA, and that while all the aspects of the definition were not necessarily applicable to the District (he acknowledged gas storage as being in this category), it was not unusual to have definitions describing an industry/use as well as an activity in a District Plan.²⁴⁵

184. While we do not see any value in referring to underground gas storage facilities when there is no evidence of that being a potential activity undertaken in the district we think that there is value in having a separate definition of mining as otherwise suggested. Among other things, that assists distinction being drawn between mining, exploration and prospecting.

185. In conclusion, we recommend to the Stream 10 Hearing Panel that the definitions pertaining to mining read as follows;

Mining

Means to take, win or extract, by whatever means, -

- a. *a mineral existing in its natural state in land, or*
- b. *a chemical substance from a mineral existing in its natural state in land*

but does not include prospecting or exploration for a mineral or chemical substance.

Mineral Exploration

Means any activity undertaken for the purpose of identifying mineral deposits or occurrences and evaluating the feasibility of mining particular deposits or occurrences of 1 or more minerals; and includes any drilling, dredging, or excavations (whether surface or subsurface) that are reasonably necessary to determine the nature and size of a mineral deposit or occurrence; and to explore has a corresponding meaning.

Mineral Prospecting

Means any activity undertaken for the purpose of identifying land likely to contain mineral deposits or occurrences; and includes the following activities:

- a. *Geological, geochemical, and geophysical surveys*
- b. *The taking of samples by hand or hand held methods*
- c. *Aerial surveys*
- d. *Taking small samples by low impact mechanical methods.*

4.13 Objective 21.2.5

186. As notified Objective 21.2.5 read as follows:

²⁴⁵ C Vivian, Evidence, Page 10, Para 4.17

“Recognise and provide for opportunities for mineral extraction providing location, scale and effects would not degrade amenity, water, landscape and indigenous biodiversity values.”

187. Submissions on this objective variously sought the inclusion of “wetlands” as something not to be degraded²⁴⁶, replacement of the words “*providing location, scale and effects would not degrade*” with “*while avoiding, remedying, or mitigating*”²⁴⁷, narrowing the objective to refer to “*significant*” amenity, water, landscape and indigenous biodiversity values²⁴⁸ or amendment so it should apply in circumstances where the degradation would be “*significant*”.²⁴⁹
188. The submission from the Forest & Bird²⁵⁰ stated that wetlands should be included within the objective as it a national priority to protect them and Mr Barr agreed with that view.²⁵¹
189. Apart from some minor amendments, Mr Barr was otherwise of the view the objective (and associated policies which we address below) were balanced so as to recognise the economic benefits of mining operations while ensuring the PDP provisions appropriately addressed the relevant s6 and s7 RMA matters.²⁵² Mr Barr’s recommended amendments in the Council’s memoranda on revising the objectives to be more outcome focused²⁵³ also addressed the submission points. The suggested wording was:

Mineral extraction opportunities are provided for on the basis the location, scale and effects would not degrade amenity, water, wetlands, landscape and indigenous biodiversity values.

190. In evidence, Mr Vivian for NZTM considered that the objective as notified did not make sense and the wording sought by NZTM (seeking that it refer to significant values) was more effects based.²⁵⁴
191. We concur with Mr Barr that his reworded objective is both balanced and appropriate in achieving the purpose of the Act. Given that most mineral extraction opportunities are likely to occur within ONL’s, a high standard of environmental protection is an appropriate outcome to aspire to. We also find that inclusion of wetlands is appropriate²⁵⁵ and the amended version addresses the ‘sense’ issues raised by Mr Vivian. We have already addressed the insertion of RMA language “avoid, remedy, mitigate” in Section 5.1 above.
192. In conclusion, we recommend that the objective be worded as follows;
- 21.2.5 *Mineral extraction opportunities are provided for on the basis the location, scale and effects would not degrade amenity, water, wetlands, landscape and indigenous biodiversity values.*

4.14 Policies 21.2.5.1 – 21.2.5.4

193. As notified Policies 21.2.5.1 – 21.2.5.4 read as follows:

²⁴⁶ Submissions 339, 706
²⁴⁷ Submissions 519, 806
²⁴⁸ Submission 519
²⁴⁹ Submission 598
²⁵⁰ Submission 706
²⁵¹ C Barr, Section 42A Report, Page 108, Para 21.21
²⁵² Section 42A Report, Page 105, Para 21.4
²⁵³ Council Memoranda dated 13 April 2016
²⁵⁴ C Vivian, Evidence, Page 13, Paras 4.42- 4.43
²⁵⁵ C Barr, Section 42A Report, Appendix 4, Page 1

- 21.2.5.1 *Recognise the importance and economic value of locally sourced high-quality gravel, rock and other minerals for road making and construction activities.*
- 21.2.5.2 *Recognise prospecting and small scale recreational gold mining as activities with limited environmental impact.*
- 21.2.5.3 *Ensure that during and following the conclusion of mineral extractive activities, sites are progressively rehabilitated in a planned and co-ordinated manner, to enable the establishment of a land use appropriate to the area.*
- 21.2.5.4 *Ensure potential adverse effects of large-scale extractive activities (including mineral exploration) are avoided or remedied, particularly where those activities have potential to degrade landscape quality, character and visual amenity, indigenous biodiversity, lakes and rivers, potable water quality and the life supporting capacity of water.*

194. The submissions to these policies variously sought:

Policies

- 21.2.5.1 replace the word “sourced” with mined, broaden the policy by recognising that the contribution of minerals is wider than just road making and construction, and insert additional wording to further emphasise the economic and export contribution of minerals.²⁵⁶
- 21.2.5.2 insert the word “*exploration*” after “*prospecting*”²⁵⁷
- 21.2.5.3 replace the word “*Ensure*” with the word “*Encourage*”²⁵⁸, and provide provisions so that rehabilitation does not cause ongoing adverse effects from discharges to air and water²⁵⁹
- 21.2.5.4 remove reference to “*large scale*” extractive activities²⁶⁰, amend the policy to relate to mineral exploration “*where applicable*”, and following “*avoided or remedied*” add “*mitigated*”.²⁶¹

195. As noted above, Mr Barr considered the policies were balanced, recognising the economic benefits while ensuring the PDP provisions addressed the relevant section 6 and section 7 RMA matters.²⁶² Mr Barr considered that it was appropriate to broaden Policy 21.2.5.1 rather than restrict it to road making and construction activities.²⁶³ Mr Vivian in evidence for NZTM agreed and suggested that the policy should also reflect minerals present in the district.²⁶⁴ We concur with Mr Barr and Mr Vivian that these amendments better align the policy with the objective. Therefore we recommend Policy 21.2.5.1 read:

²⁵⁶ Submissions 519, 598

²⁵⁷ Submission 598

²⁵⁸ Submission 519

²⁵⁹ Submission 798

²⁶⁰ Submissions 339, 706

²⁶¹ Submissions 519, 598

²⁶² Section 42A Report, Page 105, Para 21.4

²⁶³ Section 42A Report, Page 105, Para 21.5 and Pages 1-2, Appendix 4

²⁶⁴ C Vivian, Evidence, Page 14, Para 4.48

Have regard to the importance and economic value of locally mined high-quality gravel, rock and other minerals including gold and tungsten.

196. Mr Barr agreed with the inclusion of “*exploration*” into Policy 21.2.5.2.²⁶⁵ We were unable to find any specific reasons for this addition other than a comment that this was in response to the submission from Straterra.²⁶⁶ Consideration of this issue needs to take into account our earlier discussion on the definition of “*mineral exploration*”. While the evidence we heard indicated that exploration would typically have a low environmental impact and therefore might appropriately be referred to in this policy, the defined term would permit much more invasive activities. Accordingly while we agree that exploration should be referred to in this context, it needs to be qualified to ensure that is indeed an activity with limited environmental impact.

197. Therefore, we recommend Policy 21.2.5.2 be worded as follows;

Provide for prospecting and small scale mineral exploration and recreational gold mining as activities with limited environmental impact.

198. Mr Barr did not recommend any amendments to Policy 21.2.5.3. Mr Vivian did not agree with NZTM’s submission seeking the replacement of the word “*Ensure*” with the word “*Encourage*”. Mr Vivian’s view was that “*encourage*” implied that rehabilitation was optional, whereas “*ensured*” implied it was not. We agree with Mr Vivian in this regard.

199. Mr Vivian also suggested that:

‘...the word “progressively” is deleted and [sic] rehabilitation is already ensures [sic] in a “planned and coordinated manner”.’²⁶⁷

200. On this point, we do not agree with Mr Vivian. A reference to planned and co-ordinated rehabilitation may mean that the rehabilitation is all planned to occur at the closure of a mine. That is not the same as progressive rehabilitation, and has potentially much greater and more long-lasting effects.

201. We did not receive any evidence on the ORC submission seeking the addition of provisions so that rehabilitation does not cause ongoing adverse effects from discharges to air and water. In any case, we think this is already addressed under Objective 21.2.3 and the associated policies as far the jurisdiction of a TLA extends to these matters under the Act.

202. Therefore, we recommend Policy 21.2.5.3 be adopted as notified.

203. In relation to Policy 21.2.5.4, Mr Barr took the view in the Section 42A Report that the widening of the policy (i.e. amending the policy so that it applied to all mining activities rather than just larger scale activities) would ensure that those activities would be appropriately managed, irrespective of the scale of the activity. In addition, Mr Barr considered that the inclusion of mitigation would provide an additional option to avoidance or remediation.²⁶⁸ Mr Vivian agreed with Mr Barr as regards the inclusion of the word mitigation. However, Mr Vivian was also of the view that the policy as worded, without the qualification of “*where applicable*” for mineral

²⁶⁵ Section 42A Report, Appendix 1, Page 21-3, Policy 21.2.5.2

²⁶⁶ Submission 5

²⁶⁷ C Vivian, Evidence, Page 18, Para 4.75

²⁶⁸ Section 42A Report, Page 2, Appendix 4

exploration would foreclose small scale mining activities and exploration activities that are permitted activities.²⁶⁹

204. On Mr Barr’s point regarding the widening of the policy to apply to all activities regardless of scale, we find that this would be in direct contradiction to Policy 21.2.5.2 which recognises that some small-scale mining operations will have a limited environmental impact, that is to say, an impact which is not avoided or (implicitly) remedied.
205. We consider that rather than focussing on the scale of the extractive activity, the better approach is to focus on the scale of effects. If the policy refers to potentially significant effects, that is consistent with Policy 21.2.5.2 and an avoidance or remediation policy response is appropriate in that instance. The alternative suggested by Mr Barr (adding reference to mitigation) removes the direction provided by the policy and leaves the end result unsatisfactorily vague and uncertain when applied to mining and exploration operations with significant effects. We also do not consider that adding the words “*where applicable*” has the beneficial effect Mr Vivian suggests. Read in context, it merely means that the policy only applies to exploration where exploration is proposed – something that we would have thought was obvious anyway.
206. Accordingly, we recommend that Policy 21.2.5.4 be worded as follows;

Ensure potentially significant adverse effects of extractive activities (including mineral exploration) are avoided or remedied, particularly where those activities have potential to degrade landscape quality, character and visual amenity, indigenous biodiversity, lakes and rivers, potable water quality and the life supporting capacity of water.

4.15 New Mining Objectives and Policies

207. NZTM sought additional objectives and policies to recognise the importance of mining²⁷⁰. The wording of those requested additions was as follows;

Objective

Recognise that the Queenstown Lakes District contains mineral deposits that may be of considerable social and economic importance to the district and the nation generally, and that mining activity and associated land restoration can provide an opportunity to enhance the land resource, landscape, heritage and vegetation values.

Policies

- a. *Provide for Mining Buildings where the location, scale and colour of the buildings will not adversely affect landscape values*
- b. *Identify the location and extent of existing or pre-existing mineral resources in the region and encourage future mining activity to be carried out in these locations*
- c. *Enable mining activity, including prospecting and exploration, where they are carried out in a manner which avoids, remedies or mitigates adverse effects on the environment*
- d. *Encourage the use of off-setting or environmental compensation for mining activity by considering the extent to which adverse effects can be directly offset or otherwise compensated, and consequently reducing the significance of the adverse effects*

²⁶⁹ C Vivian, evidence, Pages 18-19, Paras 4.78-4.79

²⁷⁰ Submission 519, opposed by FS1040 and FS1356

- e. *Manage any waste heaps or long term stockpiles to ensure that they are compatible with the forms in the landscape*
- f. *Encourage restoration to be finished to a contour sympathetic to the surrounding topography and revegetated with a cover appropriate for the site and setting*
- g. *Recognise that the ability to extract mineral resources can be adversely affected by other land use, including development of other resources above or in close proximity to mineral deposits*
- h. *Recognise that exploration, prospecting and small-scale recreational gold mining are activities with low environmental impact.*

208. Mr Barr, in the Section 42A Report, set out his reasons for recommending rejection of these amendments²⁷¹. As noted in Section 5.14 above, Mr Barr was of the view that the existing objectives and policies were balanced, recognising the economic benefits while ensuring the PDP provisions addressed the relevant section 6 and section 7 RMA matters.²⁷²

209. Mr Vivian, for NZTM, noted that Objective 21.2.5 addressed the adverse effects of mining but considered there was no objective to recognise the importance of mineral deposits in the District. He was of the view that that result was inconsistent with the RPS.²⁷³ Mr Vivian recommended the rewording of the new objective sought by NZTM as follows:

Acknowledge the District contains mineral deposits that may be of considerable social and economic importance to the district and the nation generally.

210. We also heard evidence from Mr G Gray, a director of NZTM, as to the social and economic benefits of mining²⁷⁴.

211. Having considered the evidence in regard to the suggested new objective, we find that the matters raised are already included in the first part of objective 21.2.5 (“*Mineral extraction opportunities are provided for ...*”) and that this gives effect to both the RPS and proposed RPS.²⁷⁵ That said, Mr Barr and Mr Vivian considered that it was necessary to include a policy to recognise that the ability to extract mineral resources can be adversely affected by other land uses in order to achieve the objective, as well as to be consistent with the RPS.²⁷⁶ We agree with Mr Barr and Mr Vivian for the reasons set out in their evidence that a new policy on this matter needs to be added. We consider that the proposed course of action might be addressed more simply and so we recommend a new policy numbered 21.2.5.5, to read as follows:

Avoid or mitigate the potential for other land uses, including development of other resources above, or in close proximity to mineral deposits, to adversely affect the extraction of known mineral deposits.

²⁷¹ C Barr, Section 42A Report, Pages 105-106, Paras 21.6 – 21-10

²⁷² Section 42A Report, Page 105, Para 21.4

²⁷³ C Vivian, Evidence Page 15, Para 4.53

²⁷⁴ G Gary, Evidence, Page 6-9

²⁷⁵ proposed RPS, Objective 5.3, Policy 5.3.5

²⁷⁶ C Barr, Reply, Page 37, Para 13.3, Mr C Vivian, Evidence, Page 16, Para 4.58

212. Mr Barr and Mr Vivian agreed also that the policies sought by NZTM listed as (b) and (c) above were respectively inappropriate and unnecessary and already addressed under Objective 21.2.5. We agree. We also agree with Mr Vivian that policy (f) above (in relation to restoration) is already addressed under Policy 21.2.5.3 and is therefore unnecessary. Similarly, policy (h) above duplicates Policy 21.2.5.2 and is again unnecessary. We therefore recommend that those parts of the submission be rejected.

213. In the Section 42A Report, Mr Barr was of the view that a policy specifically on mining buildings (policy (a) above) was not appropriate and overstated the importance of mining buildings in the context of the resources that require management. Mr Barr went on to opine that the mining buildings should have the same controls as other non-farming buildings.²⁷⁷ In addition to this policy, NZTM also sought the inclusion of a definition for mining building apparently to avoid the need to meet the height requirements applying to other buildings. Mr Barr also recommended that this submission be rejected. Mr Barr's explained his position as follows:

*It is my preference that this request is rejected because mining is a discretionary activity, therefore creating a disjunction between removing standards for all buildings and mining buildings. In addition, the locational constraints emphasised by NZTM are likely to mean that these buildings are located in within the ONL or ONF. Therefore, I recommend that mining buildings are not provided any exemptions.*²⁷⁸

214. Mr Vivian had a contrary view, that traditional rural activities including mining were expected elements of the rural landscape and did not offend landscape character. Mr Vivian went on;

*This proposition is supported by the inclusion of Rule 21.4.30(d) which permits the mining of aggregate for farming activities provide [sic] the total volume does not exceed 1000 m³ in any one year. As such, mining buildings necessary for the undertaking of mining activities do not have the same issues associated with them as other buildings, such as residential, visitor accommodation or commercial activities.*²⁷⁹

215. We do not follow Mr Vivian's reasoning. Mr Vivian sought to leverage off the limited provision for aggregate extraction in the permitted activity rules, but provided no evidence as to the nature and extent of mining buildings that would accompany such an aggregate extraction operation (if any) compared to the range of buildings that might accompany a large scale mining operation. Nor is it apparent to us that the historic evidence of mining is necessarily representative of the structures that would be required for a new mine. Mr Gray gave evidence that an underground tungsten mining operation would have minimal above ground impact, but it was not clear to us that this would be the case for all mining operations, and if it were, that it would remove the need for special recognition of "mining buildings".

216. We share the concerns of Mr Barr that NZTM's proposal could lead to large mining related buildings being potentially located in ONLs/ONFs and that it is more effective to manage the effects of mining buildings within the framework for mining activities as discretionary activities. Hence, we recommend that the request for a definition and policy on mining buildings be rejected.

217. In relation to the proposed policy (e) above (*Manage any waste heaps or long term stockpiles to ensure that they are compatible with the forms in the landscape*), Mr Vivian considered this

²⁷⁷ C Barr, Section 42A Report, Page 105, Para 21.6

²⁷⁸ C Barr, Section 42A Report, Page 108, Para 21.19

²⁷⁹ C Vivian, Evidence, Page 11, Para 4.24

an important policy to be included under Objective 21.2.5.²⁸⁰ We consider that this does not take the matter very far. Mr Barr did not directly address this proposed policy. We think that this policy is unnecessary, as the issue of waste heaps and stockpiles and their form in the landscape is only an aspect of more general issues raised by the effects of mining on natural forms and landscapes that have already been addressed by the Stream 1B Hearing Panel in the context of Chapter 6.²⁸¹

218. On the final matter of a new policy regarding environmental compensation (policy (d) above), Mr Vivian in evidence²⁸² and Mr Barr in reply, agreed that such a policy was appropriate, with Mr Barr noting that it required separation from the “biodiversity offsetting” policy in Chapter 33 so as to avoid confusion.²⁸³ Mr Barr recommending the following wording for the new policy to be numbered 21.2.5.6;

Encourage environmental compensation where mineral extraction would have significant adverse effects.

219. We agree with Mr Barr and Mr Vivian in part. However, we think that compensation for significant adverse effects goes too far (among other things, it implies that mineral extraction may have significant adverse effects, which would not be consistent with Objective 21.2.5) and that it should be residual effects which cannot be avoided that are addressed by compensation. We also consider that it would assist if greater direction were provided as to why environmental compensation is being encouraged.

220. Accordingly, we recommend that Policy 21.2.5.6 be worded as follows:

Encourage use of environmental compensation as a means to address unavoidable residual adverse effects from mineral extraction.

4.16 Definitions Relevant to Ski Activity Objectives and Policies

221. As with the objective and policies relating to mining addressed above; we consider it logical to address the definitions associated with ski activities in order that the meaning of the words within the objective and associated policies is clear.

222. As notified the definition of Ski Area Activities read as follows;

Means the use of natural and physical resources for the purpose of providing for:

- a. recreational activities either commercial or non-commercial*
- b. chairlifts, t-bars and rope tows to facilitate commercial recreational activities.*
- c. use of snow groomers, snowmobiles and 4WD vehicles for support or operational activities*
- d. activities ancillary to commercial recreational activities*
- e. in the Waiorau Snow Farm Ski Area Sub Zone vehicle and product testing activities, being activities designed to test the safety, efficiency and durability of vehicles, their parts and accessories.*

²⁸⁰ C Vivian, Evidence, Page 16, Para 4.67

²⁸¹ Recommendation Report 3, Section 8.6

²⁸² C Vivian, Evidence, Pages 16-17, Paras 4.62 – 4.66

²⁸³ C Barr, Reply, Page 37, Para 13.4

223. The submissions from Soho Ski Area Ltd and Blackmans Creek No.1 LP²⁸⁴, and Treble Cone Investments Ltd²⁸⁵ sought more clarity in the preamble, the expansion of the definition at “(b)” to include “*passenger lift or other systems*” and the addition of the following;
- a. Visitor and residential accommodation associated with ski area activities
 - b. Commercial activities associated with ski area activities or recreation activities
 - c. Guest facilities including ticketing, offices, restaurants, cafes, ski hire and retailing associated with any commercial recreation activity
 - d. Ski area operations, including avalanche control and ski patrol
 - e. Installation and operation of snow making infrastructure, including reservoirs, pumps, snow makers and associated elements
 - f. The formation of trails and other terrain modification necessary to operate the ski area.
 - g. The provision of vehicle and passenger lift or other system access and parking
 - h. The provisions of servicing infrastructure, including water supply, wastewater disposal, telecommunications and electricity.
224. Similarly, the submission from Mt Cardrona Station Ltd²⁸⁶ sought that “(b)” be replaced with the term “*passenger lift systems*” and that buildings ancillary to ski activities be included within the definition. The Mt Cardrona Station Ltd submission also sought a new definition for “*passenger lift systems*” as follows;
- Means any mechanical system used to convey or transport passengers within or to a Ski Area Sub-Zone, including chairlifts, gondolas, T-bars and rope tows, and including all moving, fixed and ancillary components of such systems such as towers, pylons, cross arms, pulleys, cables, chairs, cabins, and structures to enable the embarking and disembarking of passengers.*
225. Also in relation to the Ski Area Activities definition, the submission from CARL²⁸⁷ sought that “earthworks and vegetation clearance” be added to the ancillary activities under “(d)” in the definition as notified.
226. Mr Barr considered that amendment to the definition of Ski Area Activities for the inclusion of passenger lift systems and the new definition for passenger lift systems sought by Mt Cardrona Station Ltd were appropriate in that they captured a broad range of transport systems as well as enabling reference to the definition in the rules without having to repeat the specific type of transport system.²⁸⁸ Mr Brown’s evidence for Mt Cardrona Station Ltd also supported the amendment noting that the provision of such systems would significantly reduce vehicle traffic to the ski area subzone facilities, as well as the land required for car parking.²⁸⁹ We agree in part with Mr Barr and Mr Brown for the reasons set out in their evidence. However, we note that there are things other than passengers that are transported on lifts, such as goods and materials, that should also be encompassed with the definition. We recommend that the definition be worded to provide for “*other goods*” to avoid such a limitation.
227. In relation to the amendment to the preamble and the matters to be added to the definition sought by Soho Ski Area Ltd and Blackmans Creek No.1 LP, and Treble Cone Investments Ltd, in general Mr Barr was of the view that those matters were addressed in other parts of the PDP.

²⁸⁴ Submission 610

²⁸⁵ Submission 613

²⁸⁶ Submission 407

²⁸⁷ Submission 615

²⁸⁸ C Barr, Section 42A Report, Page 57, Para 14.18

²⁸⁹ J Brown, Evidence, Page 22, Para 2.37

However, Mr Barr also accepted that some of the changes were valid.²⁹⁰ Mr Ferguson²⁹¹, held a different view, particularly in relation to the inclusion of residential and visitor accommodation within the definition. Relying on Mr McCrostie’s evidence²⁹², he stated that the *“Inclusion of visitor accommodation within this definition is one of the ways by which the finite capacity of the resource can be sustained while balancing the financial viability and the diversity of experience necessary to remain internationally competitive.”*²⁹³ We address the policy issues regarding provision for residential and visitor accommodation in Ski Area Sub Zones later in the report, but for the present, we find that the additions to the definition sought by Soho Ski Area Ltd and Blackmans Creek No.1 LP, and Treble Cone Investments Ltd, beyond those recommended by Mr Barr, would have implications for the range of effects encompassed within the term and hence we recommend that those further additions be rejected.

228. We record in particular that Mr Barr in reply, noted that the potential effects of inclusion of a range of buildings (e.g. ticketing offices, base or terminal buildings) were wider than the matters of discretion put forward by Mr Brown in his summary statement²⁹⁴ and hence, in his view, the definition should not be expanded to include them. We agree. We also consider that to include such buildings would be inconsistent with the overall policy approach of the Rural Zone to buildings.
229. Mr Barr, also recommended rejection of the submission regarding the inclusion of earthworks and vegetation clearance sought by CARL as earthworks were not part of this District Plan Review and vegetation was addressed in Chapter 33: Indigenous Vegetation.²⁹⁵ We heard no evidence in relation to this submission on the definition itself and hence do not recommend the change sought. However, we record that we address the policy issues regarding earthworks and vegetation clearance in relation to Ski Area Activities later in this report.
230. The submissions from Soho Ski Area Ltd and Blackmans Creek No.1 LP²⁹⁶, and Treble Cone Investments Ltd²⁹⁷ also sought amendment to the definition of *“building”* to clarify that facilities, services and infrastructure associated with ski lifts systems were excluded from the definition. This matter is related to the submission sought by Mt Cardrona Station Ltd²⁹⁸ that buildings ancillary to ski activities be included within the definition of Ski Area Activities.
231. In relation to the definition of building, Mr Barr in his Section 42A Report, was of the view that this matter was more appropriately dealt with under the definitions hearing as the submission related to gondolas generally and not specifically to Ski Area Activities or Ski Sub Zones.²⁹⁹ Mr Ferguson’s understanding was that section 9 of the Building Act specifically excluded ski tows and stand-alone machinery, so therefore specifically excluding that equipment would add clarity without substantively altering the position.³⁰⁰

²⁹⁰ C Barr, Section 42A Report, Pages 61-62, Para 14.40

²⁹¹ EIC for Soho Ski Area Ltd and Blackmans Creek No.1 LP, and Treble Cone Investments Ltd

²⁹² EIC for Soho Ski Area Ltd and Blackmans Creek No.1 LP, and Treble Cone Investments Ltd

²⁹³ C Ferguson, Evidence, Page 26, Para 104

²⁹⁴ C Barr, Reply, Page 39, Paras 14.6 – 14.7

²⁹⁵ C Barr, Section 42A Report, Page 63, Paras 14.45 – 14.47

²⁹⁶ Submission 610

²⁹⁷ Submission 613

²⁹⁸ Submission 407

²⁹⁹ C Barr, Section 42A Report, Page 61, Paras 14.38

³⁰⁰ C Ferguson, Evidence, Page 28, Para 109

232. In this case, we concur with Mr Barr and find that the definition of building is a wider matter that should appropriately be considered in the definitions hearing. Our findings above with respect to the effect of including buildings within the definition of “passenger lift systems” and “ski area activities” have addressed the potential issues around base and terminal buildings.
233. In conclusion, we recommend to the Stream 10 Hearing Panel that the definitions pertaining to Ski Area Activities and Passenger Lift Systems read as follows;

Passenger Lift Systems

Means any mechanical system used to convey or transport passengers and other goods within or to a Ski Area Sub-Zone, including chairlifts, gondolas, T-bars and rope tows, and including all moving, fixed and ancillary components of such systems such as towers, pylons, cross arms, pulleys, cables, chairs, cabins, and structures to enable the embarking and disembarking of passengers. Excludes base and terminal buildings.

Ski Area Activities

Means the use of natural and physical resources for the purpose of establishing, operating and maintaining the following activities and structures:

- a. *recreational activities either commercial or non-commercial;*
- b. *passenger lift systems;*
- c. *use of snow groomers, snowmobiles and 4WD vehicles for support or operational activities;*
- d. *activities ancillary to commercial recreational activities including, avalanche safety, ski patrol, formation of snow trails and terrain;*
- e. *Installation and operation of snow making infrastructure including reservoirs, pumps and snow makers;*
- f. *in the Waiorau Snow Farm Ski Area Sub-Zone vehicle and product testing activities, being activities designed to test the safety, efficiency and durability of vehicles, their parts and accessories.*

4.17 Objective 21.2.6

234. As notified, Objective 21.2.6 read as follows:

“Encourage the future growth, development and consolidation of existing Ski Areas within identified Sub Zones, while avoiding, remedying or mitigating adverse effects on the environment.”

235. The submissions on this objective variously sought that it be retained³⁰¹, the objective be revised to reflect that Council should not be encouraging growth in ski areas and should control lighting effects³⁰², that the objective be broadened to apply to not just existing ski areas and be amended to provide for integration with urban zones³⁰³, and that it provide for better

³⁰¹ Submissions 610, 613

³⁰² Submission 243

³⁰³ Submission 407

sustainable management for the Remarkables Ski Area, provide for summer and winter activities and provide for sustainable gondola access and growth.³⁰⁴

236. In the Council’s memorandum on revising the objectives to be more outcome focused³⁰⁵, Mr Barr’s recommended rewording was as follows:

The future growth, development and consolidation of Ski Area Activities is encouraged within identified Ski Area Sub Zones, while avoiding remedying or mitigating adverse effects on the environment.

237. Mr Barr did not support the submission from QPL in regard to the Remarkables Ski Area as the submission provided no justification.³⁰⁶ In relation to the submission from Mt Cardrona Station Ltd seeking the inclusion of the connection to urban areas, Mr Barr did not support this, opining that it would create an, “*expectation that urban zones are expected to establish where they could easily integrate and connect to the Ski Area Sub Zones.*”³⁰⁷ Mr Barr also considered that the submission on the objective appeared to advance the rezoning sought by Mt Cardrona Station Ltd rather than applying broadly to all Ski Area Sub-Zones.

238. In evidence for various submitters, Mr Brown supported the objective (and related policies) because of the contribution of the ski industry to the district³⁰⁸, but recommended that it be reworded as follows:

21.2.6 Objective

The future growth, development and consolidation of Ski Area Activities is encouraged within identified Ski Area Sub Zones, and where appropriate Ski Area Sub Zones are connected with other areas, including urban zones, while adverse effects on the environment are avoided, remedied or mitigated.

239. Mr Brown explained the reasons for his recommended changes as including,
- a. Replacement of “*Skiing*” with “*Ski Area*” so that the terminology is internally consistent and aligns with the definitions in PDP³⁰⁹
 - b. There are opportunities for better connection between ski areas and urban zones via passenger lift systems and to reduce reliance on vehicle access and effects of vehicle use, and road construction and maintenance³¹⁰

240. In reply Mr Barr, reiterated his concerns regarding the reference to urban areas.³¹¹

241. We find that an objective encouraging growth in ski areas is appropriate and we agree with Mr Brown that consolidation in existing ski areas is an efficient way to minimise adverse effects.³¹² However, we consider that some clarification is required as to what form that “*encouragement*” takes. In addition, and in general, we also find that connections to ski areas for access purposes is also appropriate, but agree with Mr Barr that the specific reference to urban areas goes too

³⁰⁴ Submission 806

³⁰⁵ Council Memorandum dated 13 April 2016

³⁰⁶ C Barr, Section 42A Report, Page 54, Para 14.6

³⁰⁷ C Barr, Section 42A Report, Page 58, Para 14.22

³⁰⁸ J Brown, Evidence, Page 19, Para 2.30

³⁰⁹ J Brown, Evidence, Page 21, Para 2.31 (a)

³¹⁰ J Brown, Evidence, Page 21, Para 2.31 (c) – 2.33

³¹¹ C Barr, Reply, Page 38, Para 14.2

³¹² J Brown, Evidence, Page 22, Para 2.30

far. However, we also find that it more appropriate to address access as a policy rather than as part of the objective.

242. We therefore recommend that Objective 21.2.6 be reworded as follows;

The future growth, development and consolidation of Ski Area Activities within identified Ski Area Sub-Zones, is provided for, while adverse effects on the environment are avoided, remedied or mitigated.

4.18 Policies 21.2.6.1 – 21.2.6.3

243. As notified, policies 21.2.6.1 – 21.2.6.3 read as follows:

21.2.6.1 *Identify Ski Field Sub Zones and encourage Ski Area Activities to locate and consolidate within the sub zones.*

21.2.6.2 *Control the visual impact of roads, buildings and infrastructure associated with Ski Area Activities.*

21.2.6.3 *Provide for the continuation of existing vehicle testing facilities within the Waiorau Snow Farm Ski Area Sub Zone on the basis the landscape and indigenous biodiversity values are not further degraded.*

244. The submissions to these policies variously sought:

Policies

21.2.6.1 Retain the policy³¹³ and widen the policy to encourage tourism activities³¹⁴.

21.2.6.2 Retain the policy³¹⁵, or amend to replace the word “Control” with “Enable and mitigate”³¹⁶ (We note that the submission from CARL³¹⁷ merely repeated the wording of the policy and provided no indication of support/opposition or relief sought).

21.2.6.3 amend the policy to “encourage” continuation and “future development” of existing vehicle testing “only” within the Waiorau Snow Farm³¹⁸

245. Mr Barr did not directly refer to Policy 21.2.6.1 in his Section 42A Report. In general Mr Barr did not support the relief sought by CARL as it did not provide substantial benefit to the Cardrona Ski Area Sub-Zone, when compared to other zones.³¹⁹ Mr Farrell, the planner giving evidence for CARL, stated that the “*the resort lends itself to the provision of four season tourism activities such as mountain biking, tramping, sightseeing, and mountain adventure activities*”, and as such the policy should be amended to insert reference to “*tourism*”³²⁰.

³¹³ Submissions 610, 613

³¹⁴ Submission 615

³¹⁵ Submission 610, 613

³¹⁶ Submission 621

³¹⁷ Submission 615

³¹⁸ Submission 376

³¹⁹ C Barr, Section 42A Report, Page 63, Para 14.44

³²⁰ B Farrell, Evidence, Page 17, Para 56

246. This notion of Ski Areas being year-round destinations rather than just ski season destinations, was also raised by CARL and by other submitters seeking the addition of new policies to provide for such activities. We address the detail of those submissions later in this report. However, for present purposes, we find that recognising ski areas as year-round destinations and that activities outside ski seasons contribute to the viability and consolidation of activities in those areas is a valid policy position that implements Objective 21.2.6. We consider, however, that some amendment is required to the relief supported by Mr Farrell as there are many tourism activities that are not suited to location in Ski Areas and it is not realistic to seek consolidation of all tourism activities within those areas.
247. In relation to the amendments sought to Policy 21.2.6.2, Mr Brown in evidence, sought that the word control be replaced with the word manage, for the reason that manage is more consistent with “avoid, remedy or mitigate” as set out in the objective and is more effective.³²¹ On the same matter, Mr Farrell, in his evidence for CARL, did not support the replacement of the word “Control”, with “Enable and mitigate”, agreeing with the reasons of Mr Barr in the Section 42A Report.³²² We were unable to find any direct reference in the Section 42A Report to Mr Barr’s reasons for recommending that the wording of the policy remain as notified. We find that the policy as notified set out what was to be controlled, but did not indicate to what end or extent. We were not able to find any submissions that would provide scope for the inclusion of a greater degree of direction. The same situation would apply if the term manage (or for that matter, “enable and mitigate”) was used and we do not regard the change in terminology suggested by Mr Brown as a material change that might be considered to more appropriately achieve the objective than the notified wording. We therefore recommend that the policy remain as notified.
248. In the Section 42A Report, Mr Barr did not address the submission from Southern Hemisphere Proving Grounds Limited in regard to Policy 21.2.6.3. The submission itself stated the reason for the relief sought was to align the policy more precisely with the objective. We did not receive any evidence in support of the submission. We find that the encouragement of future growth and development in the policy goes beyond the intent of the policy which is balanced by reference to there being no further degradation of landscape and biodiversity values and that the other changes sought do not materially alter its effect. We therefore recommend that the submission be rejected.
249. Hence we recommend the wording of Policies 21.2.6.1 – 21.2.6.3 as follows:
- 21.2.6.1 *Identify Ski Area Sub-Zones and encourage Ski Area Activities and complementary tourism activities to locate and consolidate within the Sub-Zones.*
- 21.2.6.2 *Control the visual impact of roads, buildings and infrastructure associated with Ski Area Activities.*
- 21.2.6.3 *Provide for the continuation of existing vehicle testing facilities within the Waiorau Snow Farm Ski Area Sub-Zone on the basis that the landscape and indigenous biodiversity values are not further degraded.*

³²¹ J Brown, Evidence, Page 19, Para 2.31(b), Page 21, Para 2.34

³²² B Farrell, Evidence, Page 17, Paras 57 - 58

4.19 New Ski Area Objectives and Policies

250. QPL³²³ sought additional objectives and policies specific to the Remarkables Ski Area to follow Objective 21.2.6 and Policies 21.2.6.1 – 21.2.6.3. The wording of those requested additions was as follows;

Objective

Encourage the future growth and development of the Remarkables alpine recreation area and recognise the importance of providing sustainable gondola access to the alpine area while avoiding, remedying or mitigating adverse effects on the environment.

Policies

- a. *Recognise the importance of the Remarkables alpine recreation area to the economic wellbeing of the District, and support its growth and development.*
- b. *Recognise the importance of providing efficient and sustainable gondola access to the Remarkables alpine recreation area while managing potential adverse effects on the landscape quality.*
- c. *Support the construction and operation of a gondola that provides access between the Remarkables Park zone and the Remarkables alpine recreation area, recognising the benefits to the local, regional and national community.*

251. Mr Barr considered that the new objective and policies applied to the extension of the Ski Area Sub-Zone at Remarkables Park and therefore should be deferred to the mapping hearings.³²⁴ We heard no evidence or submissions to the contrary and hence have not reached a recommendation on those submissions. However, we do address the second new policy sought in a more general sense of ‘gondola access’ as it applies to Ski Area Sub-Zones below.

252. CARL³²⁵ sought an additional policy as follows;

Provide for expansion of four season tourism and accommodation activities at the Cardrona Alpine Resort.

253. Mr Barr did not consider that requested policy provided any additional benefit to the Cardrona Ski Area Sub-Zone over that provided by the recommended amendments to the objectives and policies included in his Section 42A Report.³²⁶ Having heard no evidence to the contrary (Mr Farrell did not address it in his evidence for CARL), we agree with Mr Barr and recommend that the submission be rejected.

254. Mt Cardrona Station Limited sought an additional policy to be worded as follows:

Provide for appropriate alternative (non-road) means of transport to Ski Area Sub Zones from nearby urban resort zones and facilities including by way of gondolas and associated structures and facilities.

³²³ Submission 608

³²⁴ C Barr, Section 42A Report, Page 55, Para 14.9

³²⁵ Submission 615

³²⁶ C Barr, Section 42A Report, Page 63, Para 14.44

255. Related to the above request, Soho Ski Area Limited & Blackmans Creek No.1 LP³²⁷ and Treble Cone Investments Limited³²⁸ sought an additional policy as follows;

To recognise and provide for the functional dependency of ski area activities to transportation infrastructure, such as vehicle access and passenger lift based or other systems, linking on-mountain facilities to the District's road and transportation network.

256. Mr Barr, in the Section 42A Report, considered that there was merit in the policy generally, as sought in these submissions. We agree in part with the likely potential benefits set out in Mr Brown's evidence.³²⁹ However, we agree also with the point made by Mr Barr when he clarified in reply that he did not support the link to urban zones sought by Mt Cardrona Station Limited³³⁰. We do not consider that the planning merit of recognising the value of non-road transport systems to ski areas depends on their inter-relationship with urban resort zones (or any other sort of urban zone for that matter).

257. Accordingly, we recommend the wording and numbering of an additional policy, as follows:

21.2.6.4 Provide for appropriate alternative (non-road) means of transport to and within Ski Area Sub-Zones, by way of passenger lift systems and ancillary structures and facilities.

258. Soho Ski Area Limited & Blackmans Creek No.1 LP³³¹ and Treble Cone Investments Limited³³² sought an additional policy as follows;

Enable commercial, visitor and residential accommodation activities within Ski Area Sub Zones, which are complementary to outdoor recreation activities, can realise landscape and conservation benefits and that avoid, remedy or mitigate adverse effects on the environment.

259. Mr Barr was generally supportive of visitor accommodation, but expressed concern as to impacts on amenity of residential activity and subdivision.³³³ Mr McCrostie³³⁴ set out details of the nature of visitor and worker accommodation sought, which included seasonal use of such accommodation.³³⁵

260. Mr Ferguson³³⁶ opined that the short stay accommodation for Ski Areas did not sit well with the PDP definitions of residential activity or visitor accommodation due to the length of stay component,³³⁷ but suggested that this could be corrected by amendment to the rules.³³⁸ Mr Barr in reply concurred that a policy to guide visitor accommodation in Ski Area Sub-Zones would assist decision making as it is a distinct activity type from visitor accommodation in the

³²⁷ Submission 610

³²⁸ Submission 613

³²⁹ J Brown, Evidence, Page 20, Para 2.31 (c)

³³⁰ C Barr, Reply, Page 38, Para 14.2

³³¹ Submission 610

³³² Submission 613

³³³ C Barr, Section 42A Report, Page 59, Para 14.30

³³⁴ EiC for Soho Ski Area Limited & Blackmans Creek No.1 LP and Treble Cone Investments Limited

³³⁵ H McCrostie, Evidence Pages 5 – 7, Para 5.8 and Page 10, Para 6.7

³³⁶ EiC for Soho Ski Area Limited & Blackmans Creek No.1 LP and Treble Cone Investments Limited

³³⁷ C Ferguson, Evidence, Page 30 -33, Paras 117 - 125

³³⁸ C Ferguson, Evidence, Page 29, Pars 114 - 115

Rural Zone. He preferred the wording “*provided for on the basis*”, with qualifiers, rather than “*enabled*” as the requested activity status was not permitted.³³⁹

261. We consider that an appropriate policy needs to be established first, and then for the rules to follow from that. We agree in part with Mr Ferguson and Mr Barr as to the need for the policy, but agree that an enabling approach goes too far given the potential for adverse environmental effects. We also consider that clarification by way of a definition for Ski Area accommodation for both visitors and workers, would assist development of a more effective and efficient policy. We put this question to Mr Ferguson, who in his written response provided the following suggested definition;

Ski Area Sub Zone Accommodation

Means the use of land or buildings within a Ski Area Sub Zone and associated with the operation of a Ski Area Activity for short-term living accommodation, including the payment of fees, for guests, staff, worker and custodial management accommodation where the length of stay is less than 6 months and includes:

- a. hotels, motels, apartments, backpackers accommodation, hostels, lodges and chalets; and*
- b. centralised services or facilities such as food preparation, dining and sanitary facilities, conference, bar and recreational facilities if such facilities are associated with the visitor accommodation activity.³⁴⁰*

262. Mr Barr in reply, considered that the generic visitor accommodation definition was adequate as sub clause c of that definition provides for specific zones to alter the applicability of the definition, in this case for Ski Area Sub-Zones. We find that both suggestions do not fully address the issue. As noted above the policy needs to be determined first and we also find that there would be less confusion for plan users if a separate definition is provided. Having said that, we take on board Mr Barr’s point that care needs to be taken with the drafting of rules (and policies for that matter) to ensure that accommodation provided for longer than 6 month stays does not fall into a regulatory ‘hole’ or create internal contradictions through references to visitor accommodation that is for longer than 6 months.

263. We are broadly comfortable with Mr Ferguson’s suggested wording with the exception of two matters. First, we consider greater clarity is required around the extent of associated services or facilities. The second matter is that including the 6 month stay presents the issue of what would be ‘the activity’ if the length of stay was longer? To avoid this situation we think that the length of stay is more appropriately contained within the rule, rather than the definition.

264. We therefore recommend to the Stream 10 Hearing Panel that a new definition be included in Chapter 2 which reads as follows:

Ski Area Sub Zone Accommodation

Means the use of land or buildings for short-term living accommodation for visitor, guest, worker, and

- a. Includes such accommodation as hotels, motels, guest houses, bunkhouses, lodges and the commercial letting of a residential unit: and*

³³⁹ C Barr, Reply, Page 40 , Para 14.11

³⁴⁰ C Ferguson, Written Response To Commissioners Questions, 27 May 2016, Page 10, Para 6

b. *May include some centralised services or facilities such as food preparation, dining and sanitary facilities, conference, bar and recreational facilities if such facilities are ancillary to the accommodation facilities: and*

c. *Is limited to visitors, guests or workers, visiting and or working in the respective Ski Area Sub Zone.*

265. Taking all of the above into account, we recommend a new policy and numbering as follows;

21.2.6.5 *Provide for Ski Area Sub Zone Accommodation activities within Ski Area Sub Zones, which are complementary to outdoor recreation activities within the Ski Area Sub Zone, that can realise landscape and conservation benefits and that avoid, remedy or mitigate adverse effects on the environment.*

4.20 Objective 21.2.7

266. As notified Objective 21.2.7 read as follows:

Objective

Separate activities sensitive to aircraft noise from existing airports through:

a. *The retention of an undeveloped open area; or*

b. *at Queenstown Airport an area for Airport related activities; or*

c. *where appropriate an area for activities not sensitive to aircraft noise*

d. *within an airport's Outer Control Boundary to act as a buffer between airports and other land use activities.*

267. Two submissions supported this objective³⁴¹ and one submission from QAC sought that the objective be deleted and replaced with the following:

*Retention of an area containing activities that are not sensitive to aircraft noise, within an airport's Outer Control Boundary, to act as a buffer between airports and Activities sensitive to Aircraft Noise.*³⁴²

268. In the Council's memorandum on revising the objectives to be more outcome focused³⁴³, Mr Barr's recommended rewording was as follows:

An area to contain activities that are not sensitive to aircraft noise is retained within an airport's Outer Control Boundary, to act as a buffer between airports and Activities Sensitive to Aircraft Noise.

269. Ms O'Sullivan in evidence for QAC, suggested "further refinement to remove repetition and ensure the objective is more in in keeping with PC26 and PC35"³⁴⁴ and Mr Barr in reply agreed.³⁴⁵ That wording being:

³⁴¹ Submissions 271, 649

³⁴² Submission 433

³⁴³ Council Memorandum dated 13 April 2016

³⁴⁴ K O'Sullivan, Evidence, Page 8, Para 4.5

³⁴⁵ C Barr, Reply, Page 24, Para 8.3

An area that excludes activities which are sensitive to aircraft noise, is retained within an airport's Outer Control Boundary, to act as a buffer between airports and Activities Sensitive to Aircraft Noise.

270. We accept the recommendation of Ms O'Sullivan and Mr Barr, and recommend that Objective 21.2.7 be worded as set out in the previous paragraph.

4.21 Policies 21.2.7.1 – 21.2.7.4

271. As notified Policy 21.2.7.1 read as follows:

21.2.7.1 Prohibit all new activity sensitive to aircraft noise on any Rural Zoned land within the Outer Control Boundary at Wanaka Airport and Queenstown Airport to avoid adverse effects arising from aircraft operations on future activities sensitive to aircraft noise.

272. Submissions on this policy sought that it be retained³⁴⁶, deleted³⁴⁷, or reworded³⁴⁸ as follows:

Prohibit any new [non-existing] activity sensitive to aircraft noise on any rural zoned land within the outer Control Boundaries of Queenstown airport and Wanaka airport, Glenorchy, Makarora area and all other existing informal airports including private airstrips with the QLDC, used for fixed wing aircraft.

273. Mr Barr did not address this policy directly in the Section 42A Report apart from in Appendix 1, where Mr Barr recommended that the notified policy be retained. The only additional evidence we received was from Ms O'Sullivan, supporting Mr Barr's recommendation.³⁴⁹

274. In relation to the submission by Mr Wright (Submission 385) suggesting rewording, we note that this would require mapping of an outer control boundary for all airports/ informal airports identified. We do not have the evidence before us to undertake that task (Mr Wright did not include that information with his submission and did not appear at the hearing). As a result, we do not know what areas the Outer Control Boundaries of airports other than Wanaka and Queenstown could encompass or the existing and potential future uses of those areas. Nor do we have any evidence of the extent of aircraft use of those other airports. Consequently, we have no means to assess the costs and benefits (either qualitatively or quantitatively) if the relief sought were granted as required by section 32.

275. We do not consider that deletion of the policy would be the most appropriate means to achieve the relevant objective either – it would largely deprive the Council of the means to achieve that outcome. Accordingly, we recommend the policy be retained as notified subject to minor amendments to make "activity" plural.

276. As notified, Policy 21.2.7.2 read as follows:

21.2.7.2 Identify and maintain areas containing activities that are not sensitive to aircraft noise, within an airport's outer control boundary, to act as a buffer between the airport and activities sensitive to aircraft noise.

³⁴⁶ Submission 443

³⁴⁷ Submission 806

³⁴⁸ Submission 385

³⁴⁹ K O'Sullivan, Evidence , Page 7, Para 4.3

277. The submission from QAC sought that this policy be deleted³⁵⁰ as it was redundant in light of Policies 21.2.7.1 and 21.2.7.3.
278. Mr Barr did not address this policy directly in the Section 42A Report apart from in Appendix 1, where Mr Barr recommended that the policy be retained. The only additional evidence we received was from Ms O’Sullivan supporting Mr Barr’s recommendation.³⁵¹ We consider that Policy 21.2.7.2 serves a useful purpose, distinct from Policies 21.1.7.1 and 21.2.7.3, by providing for activities that are neither ASANs nor open space. Accordingly, we recommend the policy be retained as notified.
279. Policies 21.2.7.3 and 21.2.7.4 as notified read as follows:
- 21.2.7.3 *Retain open space within the outer control boundary of airports in order to provide a buffer, particularly for safety and noise purposes, between the airport and other activities.*
- 21.2.7.4 *Require as necessary mechanical ventilation for any alterations or additions to Critical Listening Environment within any existing buildings containing an Activity Sensitive to Aircraft Noise within the Queenstown Airport Outer Control Boundary and require sound insulation and mechanical ventilation for any alterations or additions to Critical Listening Environment within any existing buildings containing an Activity Sensitive to Aircraft Noise within the Queenstown Airport Air Noise Boundary.*
280. The submission from QAC sought that these policies be retained³⁵². There were no submissions seeking amendments to these policies³⁵³ Again Mr Barr and Ms O’Sullivan were in agreement that they should be retained as notified.
281. In conclusion, we recommend that Policies 21.2.7.1 – 21.2.7.4 be retained as notified.

4.22 Objective 21.2.8

282. As notified, Objective 21.2.8 read as follows:

Avoid subdivision and development in areas that are identified as being unsuitable for development.

283. Submissions on this objective ranged from support³⁵⁴, seeking its deletion³⁵⁵, to its amendment³⁵⁶ as follows:

Avoid, remedy or mitigate subdivision and development in areas specified on planning maps identified as being unsuitable for development.

³⁵⁰ Submission 806

³⁵¹ K O’Sullivan, Evidence , Page 7, Para 4.3

³⁵² Submission 806

³⁵³ Although there were further submissions opposing QAC’s submissions, those further submissions do not provide jurisdiction to amend the policies – refer discussion of this point in the context of the Strategic Chapters – Report 3 at Section 1.7.

³⁵⁴ Submission 339, 380, 706

³⁵⁵ Submissions 356, 806

³⁵⁶ Submissions 636, 643, 688, 693, 702

284. In the Section 42A Report, Mr Barr described the intention of the objective as being to manage development (usually rural living or commercial developments) from constraints such as hazards, noxious land uses, or identified landscape or rural amenity reasons. He noted that the ODP contained a number of building line restrictions or similar constraints. Taking account of the submissions, he reached the view that the objective could be rephrased so as not to be so absolute and better framed³⁵⁷. Responding to the submission from X Ray Trust³⁵⁸ that the purpose of the objective was unclear as to what was trying to be protected, Mr Barr's view was that the policies would better define the areas in question. Mr Barr recommended rewording as follows;

Subdivision, use and development is avoided, remedied or mitigated in areas that are unsuitable due to identified constraints for development.

285. In the Council's memorandum on revising the objectives to be more outcome focused³⁵⁹, Mr Barr recommended further rewording as follows;

Subdivision, use and development in areas that are unsuitable due to identified constraints is avoided, remedied or mitigated.

286. Ms Taylor's evidence for X Ray Trust agreed with this suggested rewording³⁶⁰. We agree that the absolute nature of the objective as notified could be problematic in regard to development proposals in the rural area. We also consider that the overlap between this objectives and the objectives in other parts of the plan dealing with constraints such as natural hazards and landscape needs to be addressed. We do not think that limiting the objective to areas identified on the planning maps is appropriate. That would still include notations such as ONL lines, the significance of which is addressed in Chapters 3 and 6. We regard the purpose of this objective as being to provide for constraints not addressed in other parts of the plan and we think the objective needs to say that. In effect it is operating as a catch all and in that context an avoid remedy or mitigate position is appropriate to preserve flexibility. However, we consider that a minor wording change is necessary to clarify that it is the effects of the constraints that are remedied or mitigated.

287. In summary, therefore, we recommend that Objective 21.2.8 be reworded to read;

Subdivision, use and development in areas that are unsuitable due to identified constraints not addressed by other provisions of this Plan, is avoided, or the effects of those constraints are remedied or mitigated.

4.23 Policies 21.2.8.1 – 21.2.8.2

288. As notified Policy 21.2.8.1 read as follows:

Assess subdivision and development proposals against the applicable District Wide chapters, in particular, the objectives and policies of the Natural Hazards and Landscape chapters.

³⁵⁷ C Barr, Section 42A Report, Page 102, Para 20.13

³⁵⁸ Submission 356

³⁵⁹ Council Memorandum dated 13 April 2016

³⁶⁰ L Taylor, Evidence, Appendix A, Page 5

289. Submissions on this policy ranged from support³⁶¹; its deletion as superfluous or repetitive³⁶², amendment to include “indigenous vegetation, wilding and exotic trees”³⁶³, amendment to include the Historic Heritage Chapter³⁶⁴ or amendment to remove the “in particular” references entirely³⁶⁵.

290. In the Section 42A Report, Mr Barr accepted that proposals were required to be assessed anyway against the District Wide chapters, but considered that a separate policy was needed to provide direction for proposals where the suitability of land had not been predetermined.³⁶⁶ Mr Barr recommended further amendment to the policy such that it read as follows;

To ensure that any subdivision, use and development is undertaken on land that is appropriate in terms of the anticipated use, having regard to potential constraints including hazards and landscape.

291. Mr Farrell, in evidence for various submitters agreed with Mr Barr’s reasons and resulting amendment to the policy³⁶⁷.

292. We agree that as notified this policy is unnecessary. Mr Barr’s suggested amendment addresses that issue, but we are concerned that there is no submission we could identify that would provide jurisdiction to make the suggested amendment. In addition, the issue of overlap with more detailed provisions elsewhere in the plan would need to be addressed. We think that the best course is to delete this policy and leave the objective supported by the second much more detailed policy that we are about to discuss.

293. Accordingly, we recommend that Policy 21.2.8.1 be deleted.

294. As notified Policy 21.2.8.2 read as follows;

Prevent subdivision and development within the building restriction areas identified on the District Plan maps, in particular:

a. In the Glenorchy area, protect the heritage value of the visually sensitive Bible Face landform from building and development and to maintain the rural backdrop that the Bible Face provides to the Glenorchy Township

b. In Ferry Hill, within the building line restriction identified on the planning maps.

295. The only submission related to this policy was by QPL³⁶⁸ which sought its deletion along with the relevant objective and associated policy. This matter was not addressed in the Section 42A Report or in evidence. It appears to us that QPL’s objection is linked to its opposition to particular building line restrictions affecting its property. Removal of the policy would leave no policy support for the identified building line restrictions. As such, we recommend that they be retained. If there are objections (like QPL’s) to particular restrictions, they should be addressed

³⁶¹ Submission 335

³⁶² Submissions 433, 806

³⁶³ Submissions 339, 706

³⁶⁴ Submission 810

³⁶⁵ Submissions 513, 515, 522, 531, 537

³⁶⁶ C Barr, Section 42A Report, Page 102, Para 20.14

³⁶⁷ B Farrell, Evidence, Page 17, Para 61

³⁶⁸ Submission 806

in the Plan Map hearings. As it is, the Stream 13 Hearing Panel is recommending deletion of the building restriction area affecting QPL's property.

296. In summary, we recommend that Policy 21.2.8.2, be renumbered 21.2.8.1 but otherwise be retained as notified. We do note, however, that this policy has been amended by the Stage 2 Variations by the deletion of clause b. Our recommendation, therefore, only relates to the introductory words and clause a.

4.24 Objective 21.2.9

297. As notified, Objective 21.2.9 read as follows;

Ensure commercial activities do not degrade landscape values, rural amenity, or impinge on farming activities.

298. Submissions on the objective ranged from support³⁶⁹, its deletion³⁷⁰, amendment to include nature conservation values³⁷¹ or Manawhenua values³⁷², amendment to soften the policy by replacing "Ensure" with "Encourage" and inserting "significant" before the word landscape³⁷³, and also amendment to provide for a range of activities so as to make it effects based in accordance with the RMA and for consistency.³⁷⁴

299. In considering these submissions, first in the Section 42A Report, and then further in reply, Mr Barr's recommended wording for the objective was as follows:

A range of activities are undertaken that rely on a rural location on the basis they do not degrade landscape values, rural amenity, or impinge on permitted and established activities.

300. We have already addressed our reasoning for combining this Objective 21.2.9 into Objective 21.2.1 (see Section 3.2 above). However, one aspect not directly addressed in the Section 42A Report was the submission opposed to an objective and policy approach that seeks to avoid or limit commercial activities in the Rural Zone³⁷⁵. We received no evidence in support of the submission. The reason for opposition, as set out in the submission was that there was no section 32 evidence that quantified the costs and benefits of the policy approach. We refer back to the introductory report (Report 1) discussing the requirements of section 32. Consideration of costs and benefits is required at the second stage of the evaluation, as part of the examination under section 32(1)(b) as to whether the provisions are the most appropriate way to achieve the objectives. The test for objectives (under s32(1)(a)) is whether they are the most appropriate way to achieve the purpose of the Act. Accordingly, we consider the submission misdirected and we recommend that it be rejected. We note that the submission from Shotover Trust³⁷⁶ also sought the deletion of Policies 21.2.9.1 and 21.2.9.2 for the same reasons. We return to that point below.

301. The combining of Objective 21.2.9 into Objective 21.2.1 is, we consider, the most appropriate way to achieve the purpose of Act. While it follows that the individual policies under Objective

³⁶⁹ Submissions 217, 600

³⁷⁰ Submissions 248, 621, 624

³⁷¹ Submissions 339, 706

³⁷² Submission 810

³⁷³ Submission 624

³⁷⁴ Submission 608

³⁷⁵ Submission 248

³⁷⁶ Submission 248

21.2.9 as notified also move to be relocated under the new objective 21.2.1, we address those individual policies 21.2.9.1 – 21.2.9.6 below.

4.25 Policy 21.2.9.1

302. Policy 21.2.9.1 as notified read as follows:

21.2.9.1 Commercial activities in the Rural Zone should have a genuine link with the rural land resource, farming, horticulture or viticulture activities, or recreation activities associated with resources located within the Rural Zone.

303. A submission on this policy sought specific reference to tourism activities.³⁷⁷

304. In Mr Barr's view, tourism activities were encompassed within the policy as it referred to commercial activities. Mr Barr was also of the view that for clarity that 'water' should be added to matters to be managed as activities on the surface of water are deemed to be a use of land.³⁷⁸

305. Mr Brown in evidence for QPL, noted the equivalent of this policy in its suggested reordered policies required a genuine link to the rural area, and stated that, "*This was important in that activities that could otherwise happen in an urban area, without a need for locating rurally, are discouraged.*"³⁷⁹ Mr Brown did not recommend any amendment to the wording of the policy.

306. We agree with Mr Brown as to the importance of the policy and with Mr Barr in that the reference to commercial activities already encompasses tourism. The amendment suggested by Mr Barr as to the inclusion of the word water we find does provide clarity as to the applicability of the policy, and we think is within scope, even though there is no submission directly seeking that wording.

307. As regards Submission 248 (noted above) opposing this and the following policy on the basis that the Council has not quantified the costs and benefits, we note the discussion of the Hearing Panel on the Strategic Chapters³⁸⁰ (Report 3 in relation to Chapters 3-6). If the submitter seeks to convince us these policies should be amended or deleted, it was incumbent on it to produce its own assessment of costs and benefits to enable us to be satisfied that course was appropriate. As it is, we are left with Mr Barr's uncontradicted, but admittedly qualitative evaluation³⁸¹, supported by Mr Brown's evidence, as above. We recommend the submission be rejected.

308. We therefore recommend that Policy 21.2.9.1 be relocated to be Policy 21.1.1.10 and worded as follows:

Commercial activities in the Rural Zone should have a genuine link with the rural land or water resource, farming, horticulture or viticulture activities, or recreation activities associated with resources located within the Rural Zone.

4.26 Policy 21.2.9.2

309. Policy 21.2.9.2 as notified read as follows;

³⁷⁷ Submission 806

³⁷⁸ C Barr, Section 42A Report, Page 46, Paras 13.24-13.25 and Appendix 4 – S32AA evaluation

³⁷⁹ J Brown, Evidence, Page 9, Para 2.14(d)

³⁸⁰ Report 3, Section 1.6

³⁸¹ C Barr, Section 42A Report, pages 79-83

21.2.9.2 *Avoid the establishment of commercial, retail and industrial activities where they would degrade rural quality or character, amenity values and landscape values.*

310. The submissions on this policy;
- a. Sought deletion of the policy³⁸²
 - b. Sought avoidance of forestry activities and addition of nature conservation values as a matter that could be degraded³⁸³
 - c. Sought rewording so as to remove the word avoid and replace with enabling a range of activities while avoiding, remedying or mitigating adverse effects in order to ensure the maintenance of rural quality or character, amenity values and landscape values³⁸⁴

311. Mr Barr's view was that the use of the term avoid was appropriate but he also considered that the policy could be more positively phased. Mr Barr was also of the view that "avoid, remedy or mitigate" was better replaced with "protect, maintain and enhance". The latter was derived from the overall goal of achieving sustainable management and in Mr Barr's opinion, reference to maintenance and enhancement can be used to take account of the positive merits of a proposal.³⁸⁵ Mr Barr's revised wording of the policy was as follows;

Provide for the establishment of commercial, retail and industrial activities only where these would protect, maintain or enhance rural character, amenity values and landscape values.

312. Mr Farrell in evidence for RJL, considered the addition of the word "only" to be inappropriate, as it would mean that protection, maintenance or enhancement was required for the establish of a commercial activity.³⁸⁶ Mr Farrell also considered the policy could be improved by reference to the quality of the environment rather than "character" and "landscape values".

313. Mr Brown in evidence for QPL (in the context of his revised policy ordering of the notified Objectives and Policies for 21.2.9 and 21.2.10) considered that 'protect, maintain and enhance' would be too high a hurdle for even the simplest of applications, particularly if considered at the scale of a single site.³⁸⁷ Mr Brown recommend revised wording of his equivalent policy (21.2.2.4 in his evidence) to 21.2.9.2, by addition of the words "wherever practical".

314. We note that Policy 21.2.9.2 is worded similarly to Policy 21.2.1.1, but in this case applies to commercial activities. In keeping with our findings on Policy 21.2.1.1 and taking account of our recommended shifting of Policies 21.2.9.1 – 21.2.9.6 to sit under Objective 21.2.1, the amendments suggested by Mr Farrell and Mr Brown do not align the policy in implementing the associated objective and are also inconsistent with the Stream 1B Hearing Panel's findings in relation to the Strategic Chapters.

315. Accordingly, we recommend that Policy 21.2.9.2 be relocated to be Policy 21.2.1.11 and worded as follows:

Provide for the establishment of commercial, retail and industrial activities only where these would protect, maintain or enhance rural character, amenity values and landscape values.

³⁸² Submissions 621, 624

³⁸³ Submission 706

³⁸⁴ Submission 806

³⁸⁵ C Barr, Section 42A Report, Page 46 - 47, Paras 13.27 – 13.28

³⁸⁶ B Farrell, Evidence, Page 18, Para 68

³⁸⁷ J Brown, Evidence, Page 8 Para 2.14 (b) – (c)

316. We address the submission of Mr Atly and the Forest & Bird as to nature conservation values in consideration of Policy 21.2.9.3 where similar amendments were sought.

4.27 Policy 21.2.9.3

317. Policy 21.2.9.3 as notified read as follows;

21.2.9.3 Encourage forestry to be consistent with topography and vegetation patterns, to locate outside of the Outstanding Natural Features and Landscapes, and ensure forestry does not degrade the landscape character or visual amenity values of the Rural Landscape.

318. Submissions on this policy sought to make it more directive, exclude forestry from significant natural areas and add nature conservation values to matters not to be degraded.³⁸⁸

319. Mr Barr did not support making the policy more directive through replacing ‘Encourage’ with the term ‘Avoid’, as this would imply prohibited activity status. Mr Barr also considered that the inclusion of significant natural areas was a useful cross reference to the rules restricting the planting of exotic species in SNAs. Finally on this policy, Mr Barr did not support the inclusion of nature conservation values as elements of the definition of nature conservation values are set out in the policy.³⁸⁹ We heard no other evidence on this matter.

320. The Stream 1B Hearing Panel has recommended that the policy referring to forestry refer to “production forestry” to make it clear that the policy focus has no connection to indigenous vegetation or biodiversity provisions and to limit the breadth of the reference to timber harvesting (which might otherwise be seen as inconsistent with the policy focus on controlling wilding species)³⁹⁰. We recommend the same change to this policy for the same reasons, and for consistency.

321. We agree with and adopt the reasoning set out by Mr Barr and recommend that the policy be relocated to be Policy 21.2.1.12 and worded as follows:

Encourage production forestry to be consistent with topography and vegetation patterns, to locate outside of the Outstanding Natural Features and Landscapes and outside of significant natural areas, and ensure production forestry does not degrade the landscape character or visual amenity values of the Rural Character Landscape.

4.28 Policy 21.2.9.4

322. There were no submissions on Policy 21.2.9.4 and thus we do not need to consider it further, other than relocate it to become Policy 21.1.1.13.

4.29 Policy 21.2.9.5

323. Policy 21.2.9.5 as notified read as follows:

21.2.9.5 Limit forestry to species that do not have potential to spread and naturalise.

³⁸⁸ Submissions 339, 706

³⁸⁹ C Barr, Section 42A Report, Page 47, Para 13.22

³⁹⁰ See the discussion regarding recommended Policy 6.3.6 in Report 3, Section 8.5

324. Submissions on this policy sought that it be deleted³⁹¹ or be amended to apply only to exotic forestry.³⁹²
325. These submissions were not directly addressed in the Section 42A Report, although an amendment to the policy to limit it to exotic species only was incorporated in the recommended revised Chapter in Appendix 1. Mr Brown in evidence for QLP adopted Mr Barr's recommended amendment.³⁹³
326. We agree that the policy is appropriately clarified by its specific reference to exotic forestry and recommend that it be relocated to be Policy 21.2.1.14 and worded as follows:

Limit exotic forestry to species that do not have potential to spread and naturalise.

4.30 Policy 21.2.9.6

327. Policy 21.2.9.6 as notified read as follows;

21.2.9.6 Ensure traffic from commercial activities does not diminish rural amenity or affect the safe and efficient operation of the roading and trail network, or access to public places.

328. Submissions on this policy variously sought that it be retained³⁹⁴, that it be deleted³⁹⁵, or that it be amended to apply to only new commercial activities.³⁹⁶
329. Mr Barr did not recommend an amendment to this policy in the Section 42A Report.
330. Mr Farrell in evidence for RJL and D & M Columb, was of the view that this policy was not necessary as traffic effects were already addressed in the transport chapter of the ODP; that the policy should apply to all activities not just commercial activities and should be amended from "*does not diminish*" to "*maintain*".³⁹⁷ Mr Brown, in evidence for QPL did not recommend any amendment to the policy.³⁹⁸
331. We disagree with Mr Farrell that the transport chapter of the ODP removes the necessity for the policy. The policy has wider applicability than just transport issues through its inclusion of reference to rural amenity. We also consider that the policy is efficient and effective in its specific reference to the traffic effect of commercial operations not diminishing amenity, as it is precisely this issue that makes the policy consistent with objective.
332. However, we agree with the suggestion in the RJL and Columb submissions that the focus of the policy should be on "*new*" commercial activities.
333. Accordingly, we recommend that the wording policy be amended to insert the word "*new*" before "*commercial*" but otherwise be retained as notified and relocated to become Policy 21.2.1.15.

³⁹¹ Submission 806

³⁹² Submission 600

³⁹³ J Brown, Evidence, Page8, Para 2.13

³⁹⁴ Submission 719

³⁹⁵ Submissions 621, 624

³⁹⁶ Submission 806

³⁹⁷ B Farrell, Evidence, Page 19, Para 72

³⁹⁸ J Brown, Evidence, Page8, Para 2.13

4.31 Objective 21.2.10

334. As notified, Objective 21.2.10 read as follows;

Recognise the potential for diversification of farms that utilises the natural or physical resources of farms and supports the sustainability of farming activities.

335. Submissions on this policy sought that it be retained³⁹⁹, or sought various wording amendments so that the objective applied to wider range of rural activities than just farms⁴⁰⁰.

336. In the Section 42A Report, Mr Barr set out his view that the objective and associated policies had been included for the purpose of providing for the ongoing viability of farming and maintaining rural character and not to apply to activities on rural land that were not farming.⁴⁰¹ Notwithstanding this, Mr Barr considered that there was merit in the submission of Trojan Helmet, seeking that the range of land uses to which the objective was applicable be broadened, so long as it supported sustainability for natural resources in a productive and efficiency use context, as well as protecting landscape and natural resource values. He also considered it to be more effects based.⁴⁰² Mr Barr recommended rewording of the objective as follows;

Diversification of farming and other rural activities that supports the sustainability natural and physical resources.

337. In the Council's memorandum on revising the objectives to be more outcome focused⁴⁰³, Mr Barr recommended further rewording as follows;

The potential for diversification of farming and other rural activities that supports the sustainability of natural and physical resources.

338. Mr Brown in evidence for Trojan Helmet *et al*; suggested deleting Objective 21.2.10 (along with Objective 21.2.9 and the associated policies for both objectives). We have addressed this batting order and aggregation suggestion in Section 3.2 above. We think that this objective is sufficiently different to 21.2.9 in the matters it addresses to be retained as a discrete outcome separate from the amalgamation of Objectives 21.2.9 and 21.2.1 (as discussed above). However, we consider that Mr Barr's revised wording needs further amendment so that it captures his reasoning as set out above and is consistent with recommended Policy 3.2.1.8. The suggested reference to sustainability in our view leaves the potential range of outcomes too open and fails to ensure the protection of the range of values referred to in Policy 3.2.1.8. It also needs amendment so that it is more correctly framed as an objective, and is then the most appropriate way to achieve the purpose of the Act.

339. As a consequence of amalgamating Objective 21.2.9 (and its policies) into Objective 21.2.1, this objective (and its policies) have been renumbered in Appendix 1.

340. We therefore recommend Objective 21.2.10, renumbered as 21.2.9, be worded as follows:

³⁹⁹ Submission 217,325, 335, 356, 598, 600, 660, 662, 791, 794

⁴⁰⁰ Submissions 343,345, 375, 407, 430, 437, 456, 636, 643, 693, 702, 806

⁴⁰¹ C Barr, Section 42A Report, Page 49, Para 13.39

⁴⁰² C Barr, Section 42A Report, Page 50, Para 13.42 – 13.43

⁴⁰³ Council Memorandum dated 13 April 2016

Provision for the diversification of farming and other rural activities that protect landscape and natural resource values and maintains the character of rural landscapes.

4.32 Policy 21.2.10.1

341. Policy 21.2.10.1 as notified read as follows;

Encourage revenue producing activities that can support the long term sustainability of farms in the district.

342. Submissions on this policy variously sought that it be retained⁴⁰⁴, be amended to apply to ‘rural areas’ rather than just ‘farms’⁴⁰⁵, or be amended to the following wording;

*Enable revenue producing activities, including complementary commercial recreation, residential, tourism, and visitor accommodation that diversifies and supports the long term sustainability of farms in the district, particularly where landowners take a comprehensive approach to maintaining and enhancing the natural and physical resources and amenity or other values of the rural area.*⁴⁰⁶

343. For similar reasons to those expressed in relation to Objective 21.2.10 (see Section 5.31 above), Mr Barr concurred with the submitters that the policy should be amended to apply to rural areas, and not just farms.

344. The Section 42A Report did not directly address the submission of Darby Planning⁴⁰⁷ to widen the policy. In evidence for Darby Planning, Mr Ferguson considered that the amended policy suggested in the submission recognised the importance of the commercial recreation, residential and tourism activities that flows from the Strategic Directions Chapters. He was of the opinion that this more ‘comprehensive approach’ could lead to more sustainable outcomes.⁴⁰⁸

345. We agree with Mr Barr that Policy 21.2.10.1 should be amended to apply to rural areas, and not just farms, for similar reasons as we have discussed in relation to Objective 21.2.10. Again, for similar reasons as in relation to Objective 21.2.10, the consequence of broadening the policy to apply to rural areas is that some test of environmental performance is then required. Mr Ferguson suggested a test of maintaining and enhancing specified aspects of the rural environment. We consider that this is a good starting point. However, we do not think that the itemisation of commercial recreation, residential and tourism activities is necessary or desirable in this policy. Accordingly, we recommend that the submission of Darby Planning LP be only accepted in part.

346. In summary, we consider the following wording to be the most efficient and effective method to achieve the objective, namely:

Encourage revenue producing activities that can support the long term sustainability of the rural areas of the district and that maintain or enhance landscape values and rural amenity.

⁴⁰⁴ Submissions 598, 600

⁴⁰⁵ Submissions 343, 345, 375, 430, 437, 456

⁴⁰⁶ Submission 608

⁴⁰⁷ Submission 608

⁴⁰⁸ C Ferguson, Evidence, Page 73

4.33 Policy 21.2.10.2

347. Policy 21.2.10.2 as notified read as follows;

Ensure that revenue producing activities utilise natural and physical resources (including buildings) in a way that maintains and enhances landscape quality, character, rural amenity, and natural values.

348. Submissions on this policy ranged from support⁴⁰⁹, amendment to include “*nature conservation values*”⁴¹⁰ or “*manawhenua values*”⁴¹¹ as matters to be maintained or enhanced, amendment to specifically identify “*commercial recreation, residential, tourism, and visitor accommodation*” as revenue producing activities⁴¹², amendment to “*maintain and / or enhance landscape values*” and “*and / or natural values*”⁴¹³, and finally amend to apply “*generally*” only to “*significant*” landscape values.⁴¹⁴

349. In considering the submissions, for the overall reasons set out in relation to Objective 21.2.10, Mr Barr recommended that Policy 21.2.10.2 be reworded as follows;

*Ensure that revenue producing activities utilise natural and physical resources (including buildings) in a way that maintains and enhances landscape quality, character, rural amenity, and natural resources.*⁴¹⁵

350. In evidence for RJL, Mr Farrell considered that the policy set a high bar for revenue producing activities that he considered other high order provisions in Plan were seeking to enable.⁴¹⁶ Mr Farrell recommended that the policy be reworded as follows;

Promote revenue producing activities that utilise natural and physical resources (including buildings) in a way that maintains and enhances the landscape quality of the environment.

351. In evidence for Darby Planning, Mr Ferguson considered that the amended policy sought by the submitter was, for similar reasons as for 21.2.10.2, a more effective and efficient means of achieving the objectives of the PDP.⁴¹⁷

352. We have already addressed the submissions on the inclusion of reference to “*nature conservation values*” or “*manawhenua values*” as matters to be maintained or enhanced, and we reach a similar conclusion: that it is not necessary to include reference to these matters in every policy.

353. The recommended wording by Mr Farrell to “*promote*” rather than “*ensure*” we find goes beyond the scope of the original submission and we therefore recommend that that amendment be rejected. Consistent with our finding on Policy 21.2.10.1, we are not convinced by Mr Ferguson’s view that the suggested wording in the Darby Planning LP submission is a more effective and efficient means of achieving the objective.

⁴⁰⁹ Submissions 430, 598

⁴¹⁰ Submissions 339, 706

⁴¹¹ Submission 810

⁴¹² Submission 608

⁴¹³ Submission 356

⁴¹⁴ Submissions 621, 624

⁴¹⁵ C Barr, Section 42A Report, Page 51, Para 13.44

⁴¹⁶ B Farrell, Evidence, Page 19, Para 76

⁴¹⁷ C Ferguson, Evidence, Page 13, Para 58

354. We consider however, that Mr Barr’s suggestion fails to provide for consumptive activities (like mining) that by definition do not maintain or enhance natural resources.
355. Finally we accept the point made in Submission 356 that where the policy refers to “*natural and physical resources*”, and “*maintain and enhance*”, these need to be put as alternatives. We also consider the policy should be clear that it is existing buildings that it refers to.
356. Accordingly, we recommend that Policy 21.2.10.2 (renumbered 21.1.9.2) be worded as follows;
- Ensure that revenue producing activities utilise natural or physical resources (including existing buildings) in a way that maintains and enhances landscape quality, character, rural amenity, and natural resources.*

4.34 Policy 21.2.10.3

357. Policy 21.2.10.3 as notified read as follows:

Recognise that the establishment of complementary activities such as commercial recreation or visitor accommodation located within farms may enable landscape values to be sustained in the longer term. Such positive effects should be taken into account in the assessment of any resource consent applications.

358. Submissions on this policy ranged from support⁴¹⁸; amendment to include “*nature conservation values*” as matters to be sustained in the future⁴¹⁹; amendment to specifically identify “*recreation*”, and/or “*tourism*” as complementary activities⁴²⁰; and amendment to substitute reference to people’s wellbeing and sustainable management of the rural resource (instead of landscape values) as matters provided for by complementary activities, and to require consideration of such positive benefits in the assessment of resource consent applications.⁴²¹
359. In the Section 42A Report, Mr Barr addressed the submissions on this policy in the general discussion on Objective 21.2.10 and Policies 21.2.10.1 and 21.2.10.2 we have noted above. As a result of that consideration, Mr Barr recommended that Policy 21.2.10.3 be reworded as follows;
- Have regard to the establishment of activities such as tourism, commercial recreation or visitor accommodation located within farms where these enable landscape values and indigenous biodiversity to be sustained in the longer term.*⁴²²
360. Mr Ferguson considered that the suggested changes did not go far enough. He did, however, identify that the Section 42A Report included some of the specific activities sought in the Darby Planning LP submission in this policy, but not in the preceding Policies 21.2.10.1 and 21.2.10.2.⁴²³ Mr Farrell, in evidence for RJL *et al* supported the amendments in the Section 42A Report⁴²⁴, but did not specify any reasons for reaching that conclusion.

⁴¹⁸ Submissions 430, 600

⁴¹⁹ Submissions 339, 706

⁴²⁰ Submission 608, 621, 624

⁴²¹ Submission 624

⁴²² C Barr, Section 42A Report, Page 51, Para 13.44

⁴²³ C Ferguson, Evidence, Page 12, Paras 54 and 56

⁴²⁴ B Farrell, Evidence, Page 20, Para 80

361. When considered alongside the other policies under Objective 21.2.10, we agree that identification of tourism, commercial recreation and visitor accommodation located within farms is appropriate. We also think that reference to indigenous biodiversity rather than “*nature conservation values*” is appropriate as it avoids any confusion with the use of the defined term for the latter.
362. We do not, however, accept Mr Ferguson’s rationale for seeking reference to residential activities. We do not regard expansion of permanent residential activities as being complementary to farming where it is not providing accommodation for on-site farm workers.
363. We do not consider the formula “have regard to” gives any direction as to how the policy will achieve the objective. Given that the objective is about how the provision of certain activities can have beneficial outcomes, we consider this policy would be better expressed as “providing for”.
364. Accordingly, we recommend that Policy 21.2.10.3 (renumbered 21.2.9.3) be reworded as follows:

Provide for the establishment of activities such as tourism, commercial recreation or visitor accommodation located within farms where these enable landscape values and indigenous biodiversity to be sustained in the longer term.

4.35 Objective 21.2.11

365. As notified, Objective 21.2.11 read as follows;

Manage the location, scale and intensity of informal airports.

366. Submissions on this objective provided conditional support subject to other relief sought to policies and rules, including location and frequency controls⁴²⁵, or sought amendments to provide for new informal airports and protect existing informal airports from incompatible land uses.⁴²⁶ One submission also sought clarification in relation to its application to commercial ballooning in the district.⁴²⁷
367. In the Section 42A Report, Mr Barr expressed the view that the definition of aircraft included hot air balloons and therefore a site on which a balloon lands or launches from is an informal airport.⁴²⁸
368. Mr Barr did not recommend any amendments to the objective and associated policies for informal airports in the Section 42A Report. Rather, Mr Barr addressed details of the permitted activity standards governing setbacks, frequency of flights, standards for Department of Conservation operational activities and other matters.⁴²⁹
369. In the Council’s memorandum on revising the objectives to be more outcome focused⁴³⁰, Mr Barr recommended rewording of the objective as follows;

⁴²⁵ Submissions 571, 723, 730, 732, 734, 736, 738, 739, 760, 843

⁴²⁶ Submission 607

⁴²⁷ Submission 217

⁴²⁸ C Barr, Section 42 Report, Page 76, Para 16.36

⁴²⁹ C Barr, Section 42 Report, Pages 69 - 78

⁴³⁰ Council Memoranda dated 13 April 2016

The location, scale and intensity of informal airports is managed.

370. Mr Dent, in evidence for Totally Tourism⁴³¹, considered that the objective was poorly worded and should be amended to indicate that informal airports are desired within the Rural Zone, but should be subject to their effects on amenity being managed.⁴³² Mr Dent recommended the objective be reworded as follows;

The operation of informal airports in the Rural Zone is enabled subject to the management of their location, scale and intensity.

371. Mr Farrell in evidence for Te Anau Developments⁴³³, supported the submitter's request for new informal airports to be "provided for" in the objective protection of existing informal airports from incompatible land uses. Mr Farrell expressed the view that existing "... informal airports face operational risks from potential reverse sensitivity effects associated with noise sensitive activities, which is an operational risk, and could result in unnecessary costs, to tourism operators."⁴³⁴

372. In reply, Mr Barr, agreed and accepted the intent of Mr Dent's recommended amendment to the objective⁴³⁵. Mr Barr also agreed with Mr Farrell that a policy protecting existing informal airports from incompatible land uses was warranted, but not at expense of a policy that protects amenity from airports⁴³⁶. Mr Barr recommended alternative wording for the objective and set out a brief section 32AA analysis⁴³⁷.

373. An objective that sets out that something is to be managed, but does not specify to what purpose or end result, does not take one very far. We agree with Mr Dent that it is the effects of informal airports that should be managed, but consider that his suggestion of 'enabling' goes too far. We found Mr Farrell's reasoning as to operational risks a little difficult to follow and the amended wording of the objective he supported unsatisfactory because it failed to address amenity effects. In conclusion, we prefer Mr Barr's reply version, which did address our concerns as to purpose, as being the most appropriate in terms of the alternatives available to us and in achieving the purposes of the Act.

374. Accordingly, we recommend that the wording of Objective 21.2.11 should be as follows:

The location, scale and intensity of informal airports is managed to maintain amenity values while protecting informal airports from incompatible land uses.

4.36 Policy 21.2.11.1

375. Policy 21.2.11.1 as notified read as follows:

Recognise that informal airports are an appropriate activity within the rural environment, provided the informal airport is located, operated and managed so as to minimise adverse effects on the surrounding rural amenity.

⁴³¹ Submission 571

⁴³² S Dent, Evidence, Page 4, Paras 17 - 18

⁴³³ Submission 607

⁴³⁴ C Barr, Evidence, Page 24, Para 110

⁴³⁵ C Barr, Reply, Page 28, Para 9.19

⁴³⁶ C Barr, Reply, Page 27, Para 9.14

⁴³⁷ C Barr, Reply, Page 5, Appendix 2

376. Submissions on this policy ranged from conditional support subject to other relief sought to policies and rules including location and frequency controls⁴³⁸; or sought amendment to the words after ‘managed’ to insert ‘in accordance with CAA regulations’⁴³⁹; amendment to replace ‘minimise’ with ‘avoid, remedy mitigate’ and limit to existing rural amenity values⁴⁴⁰; amendment to apply to existing informal airports and to protect them from surrounding rural amenity⁴⁴¹; and finally amendment to include reference to flight path locations of fixed wing aircraft and their protection from surrounding rural amenity.⁴⁴²
377. As noted above, Mr Barr did not recommend any amendments to the policies for informal airports in the Section 42A Report.
378. Ms Macdonald, counsel for Skydive Queenstown Limited⁴⁴³, suggested an amendment to the relief sought by the submitter, recognising that a function of a territorial authority was management of the effects of land use and that objectives, policies and rules could be prepared to that end. The amended relief was as follows:
- Recognise that informal airports are an appropriate activity within the rural environment, provided the informal airport is located, operated and managed so as to minimise adverse effects on the surrounding rural amenity, and in accordance with Civil Aviation Act requirements.*⁴⁴⁴
379. Mr Farrell’s evidence for Te Anau Developments supporting the submitter’s requested change was based on the same reasoning as we set out in relation to Objective 21.2.11 above.
380. Mr Dent in evidence for Totally Tourism considered that the policies (21.2.11.1 and 21.2.11.2) did not provide a credible course of action to implement the objective and set out recommended rewording.⁴⁴⁵
381. Mr Barr, in reply concurred with Mr Dent, and recommended similar changes to those proposed by Mr Dent.⁴⁴⁶
382. As noted in the reasons for the submission from Skydive Queenstown Limited, a territorial authority has no particular expertise in CAA matters. We therefore find that it is not effective and efficient for the policy to include requirements of CAA regulations that are for the CAA to administer.
383. On Mr Farrell’s evidence in support of the relief sought by Te Anau Developments we reach a similar finding as for Objective 21.2.11 above. We also find that the protection of informal airports from incompatible uses could potentially be a separate policy and we address that matter in detail below. For present purposes, we find that that that issue should not be

⁴³⁸ Submissions 723, 730, 732, 734, 736, 738, 739, 760, 843

⁴³⁹ Submission 122

⁴⁴⁰ Submission 607

⁴⁴¹ Submission 385

⁴⁴² Submissions 285, 288

⁴⁴³ Submission 122

⁴⁴⁴ J Macdonald, Legal Submissions, Page 3, Para 5

⁴⁴⁵ S Dent, Evidence, Pages 4-5, Paras 19 - 20

⁴⁴⁶ C Barr, Reply, Page 29, 9.20

referenced in this policy. Similarly we think that the wording recommend by Mr Barr is effective and efficient in its alignment with the objective.

384. Accordingly we recommend that Policy 21.2.11.1 be reworded as follows;

Ensure informal airports are located, operated and managed so as to maintain the surrounding rural amenity.

4.37 Policy 21.2.11.2

385. Policy 21.2.11.2 as notified read as follows:

Protect rural amenity values, and amenity of other zones from the adverse effects that can arise from informal airports.

386. Submissions on this policy ranged from conditional support subject to other relief sought to policies and rules including location and frequency controls⁴⁴⁷ or sought amendment to protect informal airports and flight path locations of fixed wing aircraft from surrounding rural amenity⁴⁴⁸.

387. As we have already noted, Mr Barr did not recommend any amendments to the policies for informal airports in the Section 42A Report.

388. Similarly we addressed the evidence of Mr Farrell and Mr Dent, as well as Mr Barr's response in reply, under Policy 21.2.11.1 above. Again, we think that protection of informal airports should be addressed separately. Taking account of our recommended amendment to Policy 21.2.11.1, we find that a policy to address the adverse effects in non-rural zones from informal airports is required. Otherwise a policy gap would be remain.

389. Accordingly, we find that Policy 21.2.11.2 should remain as notified.

4.38 Additional Policy – Informal Airports

390. We observed above that there appeared to be a case to protect informal airports from incompatible activities. Considering the issues identified to us by a number of recreational pilots at the hearing and the evidence of Mr Dent, Mr Farrell and Mr Barr, we agree that a policy addressing that matter is appropriate in achieving the stated objective. Mr Barr, in reply, proposed the following wording of such an additional policy as follows;

21.2.11.3 Protect legally established and permitted informal airports from the establishment of incompatible activities.⁴⁴⁹

391. In reaching this view, Mr Barr did not recommend that the new policy flow through to a new rule to the same effect, given the administrative difficulties in identifying existing informal airport locations and noting that Objective 21.2.4 and associated policies already sought to protect permitted and legally established activities.⁴⁵⁰ We tested the potential identification of informal airports with some of the recreational pilots at the hearings⁴⁵¹ and reached the conclusion that such a method would not be efficient. Mr Barr's proposed new policy refers to

⁴⁴⁷ Submissions 723, 730, 732, 734, 736, 738, 739, 760, 843

⁴⁴⁸ Submission 285, 288, 385, 607

⁴⁴⁹ C Barr, Reply, Appendix 1

⁴⁵⁰ C Barr, Reply, Pages 27-28, Paras 9.14 – 9.15

⁴⁵¹ Mr Tapper and Mr Carlton

"legally established" informal airports. To our mind, consistent with the wording in the Act, we think that *"lawfully established"* is more correct.

392. We also consider that some qualification of reference to permitted informal airports is required. While Mr Barr is correct that Objective 21.2.4 and the related policies provide for permitted activities these are "anticipated" permitted activities. It would not be efficient to constrain land uses on the basis that they are incompatible with informal airports at all locations where the airports would meet the permitted activity standards. We also consider that it should only be the establishment incompatible activities in the immediate vicinity that the policy addresses.

393. We therefore recommend the inclusion of a new policy (21.2.11.3) worded as follows;

Protect lawfully established and anticipated permitted informal airports from the establishment of incompatible activities in the immediate vicinity.

4.39 New Objective and Policies – Informal Airports

394. Two submissions sought objectives and policies to *"enable the assessment of proposals that exceed the occasional /infrequent limitations"*⁴⁵². The submission reasons identified that this relief was sought as the Plan is *"silent on how applications to exceed Standards 21.5.26.1 and 21.5.26.2 will be assessed and considered"*.

395. We did not receive specific evidence on this matter. No specific wording of the objectives or policies were put before us. In the absence of evidence providing and/or justifying such objectives and policies, we recommend that these submissions be rejected.

4.40 Objective 21.2.12

396. Before addressing this specific objective, we note that we have already addressed the submissions seeking that the surface of water and its margins be placed in a separate chapter, in Section 3.4 above, concluding that rather than a separate zone, re-ordering of the rules would enable a clearer understanding of the provisions affecting the surface of waterbodies subset of the rural provisions. This objective and the policies to give effect to it, assist in clarifying which provisions affect waterbodies. In this part of the report we address the other submissions on this suite of objectives and policies.

397. As notified, Objective 21.2.12 read as follows:

Protect, maintain or enhance the surface of lakes and rivers and their margins.

398. Submissions on this objective variously sought that it be retained⁴⁵³; be amended to change the word *"Protect"* to *"Preserve"*⁴⁵⁴; be amended to provide for appropriate recreational and commercial recreational activities⁴⁵⁵; be amended or deleted and replaced with an objective that provides for the benefits associated with a public transport system⁴⁵⁶; be amended to recognise the importance of water based transport⁴⁵⁷; be amended to delete *"protect, maintain and enhance"* and add after the word *"margins"* *"are safeguarded from inappropriate, use and*

⁴⁵² Submissions 660, 662

⁴⁵³ Submission 356, 600, 758

⁴⁵⁴ Submission 339, 706

⁴⁵⁵ Submission 307

⁴⁵⁶ Submission 621

⁴⁵⁷ Submission 766

*development*⁴⁵⁸; and finally be amended to delete "*protect, maintain and enhance*" and replace with "*avoid, remedy, mitigate*".⁴⁵⁹

399. In the Section 42A Report, Mr Barr considered that itemising the enabling opportunities within the objective would conflict with the "*protect, maintain and enhance*" wording.⁴⁶⁰ However, Mr Barr also considered the use of the word "*preserve*" inappropriate and that the objectives and policies must contemplate change, which is the reason for managing the resource.⁴⁶¹ Mr Barr recommended that the submissions to the objective be rejected and no changes made.

400. In the Council's memorandum on revising the objectives to be more outcome focused⁴⁶², Mr Barr recommended rewording of the objective as follows;

The surface of lakes and rivers and their margins are protected, maintained or enhanced.

401. In evidence for RJL and Te Anau Developments, Mr Farrell's view was that the objective did not satisfactorily recognise how the surface of lakes and the margins could be used or developed in order to achieve sustainable management and that the qualifier "*from inappropriate use and development*" was required so that the objective accorded with section 6 of the Act⁴⁶³.

402. Mr Brown in evidence for several submitters⁴⁶⁴ recommended the objective be reworded as follows;

*The surface of lakes and rivers and their margins are protected, maintained or enhanced while appropriate recreational, commercial recreational, and public transport activities that utilise those resources are recognised and provided for, and their effects managed.*⁴⁶⁵

403. Mr Brown considered the change necessary to ensure this objective was appropriately balanced and provided a better context for the associated policies, as well as recognising lake and river-based public transport.⁴⁶⁶

404. In reply, Mr Barr agreed with Mr Brown that the objective should be broader and more specific as to the outcomes sought.⁴⁶⁷ Mr Barr's recommended rewording of the objective was as follows;

The surface of lakes and rivers and their margins are protected, maintained or enhanced while providing for appropriate activities including recreational, commercial recreational, and public transport.

405. We agree with the witnesses that that it appropriate for the objective to be broadened. However, to our mind, the objective fails to capture the purpose for which the surface of lakes and rivers are being protected, maintained or enhanced. Turning to Mr Farrell's evidence in

⁴⁵⁸ Submission 621

⁴⁵⁹ Submissions 766, 806

⁴⁶⁰ C Barr, Section 42A Report, Page 80, Para 17.9

⁴⁶¹ C Barr, Section 42A Report, Page 80, Para 17.10

⁴⁶² Council Memoranda dated 13 April 2016

⁴⁶³ B Farrell, Evidence, Page 20, Para 84

⁴⁶⁴ Submissions 307, 766, 806,

⁴⁶⁵ J Brown, Evidence, Page 14, Para 2.24

⁴⁶⁶ J Brown, Evidence, Page 15, Para 2.26 (a) and (b)

⁴⁶⁷ C Barr, Reply, Page 30, Para 10.1

relation to section 6 of the Act, that purpose relates to “*natural character*”. Similarly, we find that the location where the “*appropriate activities*” occur also needs to be specified, namely, the “*surface of the lakes and rivers*”. In addition, we are mindful of the Stream 1B Hearing Panel’s recommendation that a policy in Chapter 6 provide for appropriate activities on the surface of water bodies⁴⁶⁸ and the need for alignment.

406. Accordingly, we recommend that the objective be reworded as follows:

The natural character of lakes and rivers and their margins is protected, maintained or enhanced while providing for appropriate activities on the surface of the lakes and rivers, including recreation, commercial recreation, and public transport.

407. In summary, we consider that the revised objective is the most appropriate way to achieve the purpose of the Act in this context and having regard to the Strategic Direction objectives and policies in Chapters 3 and 6, and the alternatives available to us.

4.41 Policy 21.2.12.1

408. Policy 21.2.12.1 as notified read as follows;

Have regard to statutory obligations, the spiritual beliefs, cultural traditions and practices of Tangata Whenua where activities are undertaken on the surface of lakes and rivers and their margins.

409. There was one submission⁴⁶⁹ from Te Rūnanga o Moeraki, Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Ōtākou and Hokonui Rūnanga (collectively Manawhenua)⁴⁷⁰ seeking the following amendments to the policy;

Have regard to wahi tupuna, access requirements, statutory obligations, the spiritual beliefs, cultural traditions and practices of Manawhenua where activities are undertaken on the surface of lakes and rivers and their margins.

410. We note that the representatives of Te Rūnanga o Moeraki, Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Ōtākou and Hokonui Rūnanga (collectively Manawhenua) advised that the part of their submission seeking the change from the words Tangata Whenua to Manawhenua was no longer pursued when they appeared at the Stream 1A Hearing.

411. The parts of this submission left in play were not addressed in the Section 42A Report, and Appendix 1 of the Section 42A Report showed no recommended changes to the policy. We heard no evidence in regard to the policy and it was not addressed in Reply.

412. We note that the Stream 1A and 1B Hearing Panels have recommended objectives and policies in both Chapter 3⁴⁷¹ and Chapter 5⁴⁷² related to protection of wahi tupuna. We therefore find that it is appropriate that reference be made in this policy to wahi tupuna as a relevant issue, which will then link back to those provisions.

⁴⁶⁸ Refer Recommended policy 6.3.33

⁴⁶⁹ We note that Queenstown Wharves GP Ltd, (Submission 766), withdrew its relief sought as to the deletion of all provisions referring to Tangata whenua.

⁴⁷⁰ Submission 810

⁴⁷¹ Refer Recommended objective 3.2.7.1 and the related policies

⁴⁷² Refer Recommended objective 5.4.5 and the related policies

413. The need or desirability of reference being made to ‘*access requirements*’ is less clear and we do not recommend that change in the absence of evidence to support it.

414. In summary therefore, we recommend that Policy 21.2.12.1 be amended to read:

Have regard to statutory obligations, wahi tupuna, and the spiritual beliefs and cultural traditions of tangata whenua where activities are undertaken on the surface of lakes and rivers and their margins.

4.42 Policy 21.2.12.2

415. Policy 21.2.12.2 as notified read as follows:

Enable people to have access to a wide range of recreational experiences on the lakes and rivers, based on the identified characteristics and environmental limits of the various parts of each lake and river.

416. One submission sought that policy be retained⁴⁷³. Another submission sought that the policy be amended to delete the word ‘identified’ and add to the end of the policy “*specifically in or referred to by this plan*”⁴⁷⁴. A third submission did not recommend any specific wording but sought that the policy be amended to identify the anticipated high level of activity on the Kawarau River and also to recognise the Kawarau River as a strategic link for water based public transport.⁴⁷⁵

417. These submissions were not directly addressed in the Section 42A Report, and Appendix 1 to that report included no recommended changes to the policy.

418. Mr Brown, in evidence for QPL and Queenstown Wharves GP Limited, did not recommend any changes to the policy⁴⁷⁶. Mr Farrell in evidence for RJL *et al*, observed that the environmental limits referred to in the policy were not identified in the policy or elsewhere in the Plan, nor was it explained how they might be applied. In Mr Farrell’s view, this would create uncertainty, and lead to unnecessary costs and frustration with plan administration.⁴⁷⁷ Mr Farrell suggested this could be addressed by amending the policy so that it referred to the environmental limits identified in the plan.

419. This matter was not addressed in Council’s reply and no amendments to the policy were recommended.

420. We note that the policy is to enable access to recreational experience on rivers. Some form of limit on an enabling policy is, in this case, appropriate, but we do not consider that those limits need specification in the plan. The limits may vary from environmental effects to safety issues and, as the policy states, will apply to various parts of each lake or river. For similar reasons, we do not agree that specific reference to the Kawarau River is required.

421. Accordingly, we recommend that the policy be retained as notified.

⁴⁷³ Submission 766

⁴⁷⁴ Submission 621

⁴⁷⁵ Submission 806

⁴⁷⁶ J Brown, Evidence, Page 14, Para 2.24

⁴⁷⁷ B Farrell, Evidence, Page 21 Para 88

4.43 Policy 21.2.12.3

422. Policy 21.2.12.3 as notified read as follows;

Avoid or mitigate the adverse effects of frequent, large-scale or intrusive commercial activities such as those with high levels of noise, vibration, speed and wash, in particular motorised craft in areas of high passive recreational use, significant nature conservation values and wildlife habitat.

423. Two submissions sought that policy be retained⁴⁷⁸. Two submissions sought that the policy be variously amended to clarify that it did not apply to the Frankton Arm and the Kawarau River between Kawarau Falls and Chard Farm as those areas could provide for water based public transport⁴⁷⁹. One submission sought the amendment to the policy to provide for frequent use, large scale and potentially intrusive commercial activities along the Kawarau River and Frankton Arm.⁴⁸⁰
424. In the Section 42A Report, Mr Barr considered the inclusion of provision for large scale intrusive commercial activities would mean the policy would not meet section 5 of the Act. Rather, Mr Barr considered that the wider benefits of such proposals should be considered in the context of a specific proposal. Mr Barr noted that Queenstown Wharves GP Ltd⁴⁸¹ had sought similar amendments excluding the Frankton Arm and the Kawarau River between Kawarau Falls and Chard Farm from other policies (Policies 21.2.12.4 – 21.2.12.7 (and we note policies 21.2.12.9 and 21.2.12.10)). Mr Barr considered that the policies were appropriately balanced and as worded, could be applied across the entire district. Again, Mr Barr considered that the specific transport link proposals should be considered on the merits of the specific proposal.⁴⁸²
425. Mr Brown, in evidence for QPL and Queenstown Wharves GP Limited, did not recommend any changes to this policy⁴⁸³, but he did recommend a specific new policy to be placed following 21.2.12.10 to recognise and provide for a water based public transport system on the Kawarau River and Frankton Arm⁴⁸⁴. Mr Farrell, in evidence for RJL *et al*⁴⁸⁵, opined that it was not appropriate for the plan to always avoid or mitigate the adverse effects of frequent, large scale or intrusive commercial activities. Mr Farrell considered that the policy should be amended to recognise existing commercial activities.
426. We agree that the policy needs to be considered in the context of its district-wide application and find that provision for frequent use, large scale or intrusive commercial activities at particular locations would not align with the objective to the extent that provision would allow for materially more mechanised boat traffic than at present.
427. Consideration of activities affecting the natural character of the Kawarau River below the Control Gates Bridge also needs to take account of the Water Conservation (Kawarau) Order 1997 (WCO) given that the PDP cannot be inconsistent with it⁴⁸⁶. The WCO states that identified characteristics (including wild and scenic, and natural characteristics) are protected. While the

478 Submissions 243, 649

479 Submissions 766, 806

480 Submission 621

481 Submission 766

482 C Barr, Section 42A Report, Page 82, Para s17.13 – 17.15

483 J Brown, Evidence, Page 14, Para 2.24

484 J Brown, Evidence, Page 15, Para 2.24

485 B Farrell, Evidence, Page 22, Paras 92-96

486 Section 74(4) of the Act

WCO also recognises recreational jet-boating as an outstanding characteristic of the river, we find the breadth of the policy amendment sought would be inconsistent with the WCO.

428. It also needs to be recognised that the policy as notified focuses on areas of high passive recreational use, significant nature conservation values and wildlife habitat. It does not purport to apply to all waterways.
429. We agree generally with Mr Barr that the other policies under this objective are likewise appropriately balanced. We also find that the new policy suggested by Mr Brown would not align with the objective and to the extent that it would allow for significant new non-recreational mechanised use of the Kawarau River below the Control Gates, potentially inconsistent with the WCO.
430. We therefore recommend that the submissions that sought the exclusion of the Frankton Arm and the Kawarau River between Kawarau Falls and Chard Farm from the policies and the specific recommendation (of Mr Brown) to provide for water based transport be rejected. We do not consider those submissions further, apart from recording the policies where they apply below. That said, we return to the issue of water based public transport later, as part of our consideration of Policy 21.2.12.8.
431. We do think that the policy would be improved with some minor punctuation changes.
432. Accordingly, we recommend that policy 21.2.12.3 be renumbered and worded as follows:

Avoid or mitigate the adverse effects of frequent, large-scale or intrusive commercial activities such as those with high levels of noise, vibration, speed and wash, in particular motorised craft, in areas of high passive recreational use, significant nature conservation values and wildlife habitat.

4.44 Policy 21.2.12.4

433. Policy 21.2.12.4 as notified read as follows;

Recognise the whitewater values of the District's rivers and, in particular, the values of the Kawarau and Shotover Rivers as two of the few remaining major unmodified whitewater rivers in New Zealand, and to support measures to protect this characteristic of rivers.

434. Two submissions sought that the policy be amended to clarify that it did not apply to the Frankton Arm and the Kawarau River between Kawarau Falls and Chard Farm as those areas could provide for water based public transport⁴⁸⁷. Two submissions sought amendment to the policy to include 'wild and scenic' values and to add the Nevis to the identified rivers.⁴⁸⁸
435. Mr Barr, identified that this policy was included to recognise the WCO on the Kawarau River and part of the Shotover River. Mr Barr agreed with Forest & Bird that the amendment to the WCO in 2013 to include the Nevis River meant that it was appropriate to include reference to that river in the policy⁴⁸⁹. The Section 42A Report did not reference the relief sought regarding the inclusion of "wild and scenic" values.

⁴⁸⁷ Submissions 766, 806

⁴⁸⁸ Submissions 339, 706

⁴⁸⁹ C Barr, Section 42A Report, Page 82 – 83, Para 17.16

436. Mr Brown in evidence for QPL and Queenstown Wharves GP Limited recommended amending the policy to only refer to ‘parts’ of the Kawarau River as not all of the river was whitewater⁴⁹⁰. Mr Barr, in reply, agreed with that amendment and also recommended a grammatical change to the beginning of the policy.⁴⁹¹
437. We note that the Frankton Arm is not part of the Kawarau River. Thus the policy would not apply to that part of the lake in any event.
438. We agree that the reference in the policy should be to ‘parts’ of the Kawarau and Shotover Rivers reflecting the fact that only sections of the rivers are ‘whitewater’. While the WCO identifies other outstanding characteristics (than whitewater) and it is clear that both rivers have large sections that could aptly be described as ‘scenic’, it is the whitewater sections that qualify as ‘wild’. Accordingly, we do not see addition of ‘wild **and** scenic’ as adding anything to the policy.
439. Accordingly, we recommend that the policy be reworded as follows:

Have regard to the whitewater values of the District’s rivers and, in particular, the values of parts of the Kawarau, Nevis and Shotover Rivers as three of the few remaining major unmodified whitewater rivers in New Zealand, and to support measures to protect this characteristic of rivers.

4.45 Policy 21.2.12.5

440. Policy 21.2.12.5 as notified read as follows;

Protect, maintain or enhance the natural character and nature conservation values of lakes, rivers and their margins, with particular regard to places with nesting and spawning areas, the intrinsic value of ecosystem services and areas of indigenous fauna habitat and recreational values.

441. Two submissions sought that the policy be retained⁴⁹². Two submissions sought that the policy be variously amended to clarify that it did not apply to the Frankton Arm and the Kawarau River between Kawarau Falls and Chard Farm as those areas could provide for water based public transport⁴⁹³. One submission sought the policy be amended as follows;

Protect, maintain or enhance the natural character and nature conservation values of lakes, rivers and their margins from inappropriate development, with particular regard to places with significant indigenous vegetation, nesting and spawning areas, the intrinsic values of ecosystems, and areas of significant indigenous fauna habitat and recreational values.⁴⁹⁴

442. We addressed the submissions seeking that the policy not apply to the Frankton Arm and the Kawarau River between Kawarau Falls and Chard Farm, above. Submissions on this policy were not directly addressed in the Section 42A Report and Appendix 1 of the Section 42A Report showed no recommended changes to the policy.

443. Mr Farrell in evidence for RJL *et al* supported retention of the policy as notified.

⁴⁹⁰ J Brown, Evidence, Page 16, Para 2.26 (d)

⁴⁹¹ C Barr, Reply, Appendix 1, Page 21-6, Policy 21.2.12.4, Para 10.1

⁴⁹² Submissions 339, 706

⁴⁹³ Submissions 766, 806

⁴⁹⁴ Submission 621

444. At the hearing, Ms Maturin representing Forest & Bird, noted that Forest & Bird should have sought the inclusion of wetlands into this policy, and indicated that Forest & Bird would be satisfied if that intention was added to the policy.⁴⁹⁵
445. Ms Lucas in evidence for UCES, considered that the policy only sought to protect, maintain or enhance natural character, whereas section 6(a) of the Act required that it be preserved.⁴⁹⁶
446. Mr Brown, in evidence for QPL and Queenstown Wharves GP Limited, recommended amending the policy to delete the words “... *natural character* ...”⁴⁹⁷. Mr Brown explained that that wording was more appropriate in Policy 21.2.12.7 as
- “... Policy 21.2.12.5 deals with nature conservation values and focusses on ecological values, and I consider that the intention to “protect, maintain and enhance” these is necessary and desirable. However, a jetty, for example, is likely to have some impact on natural character, and it is likely to be difficult to construct a jetty in a way that protects, maintains or enhances natural character. In this context, “natural character” is more aligned with “visual qualities” rather than with ecological values, and I therefore consider that “natural character” is better located in Policy 21.2.12.7 which deals with the effects of the location, design and use of structures and facilities, and for which the duty is to avoid, remedy or mitigate the effects.”*⁴⁹⁸
447. Mr Barr, in reply, recommended a change to replace “*Protect, maintain or enhance*” with “*Preserve*” at the beginning of the policy and to include the words “*from inappropriate activities*”, after the word “*margins*”. Mr Barr set out a brief section 32AA evaluation noting that in his view the amendments would better align with section 6 of the Act.⁴⁹⁹
448. The difficulty with this policy is that it is addressing two different considerations – natural character and nature conservation values. As Mr Brown notes, the principal focus is on the latter. Certainly, most of the examples noted relate to nature conservation values. Section 6(a) requires us to recognise and provide for preservation of the natural character of lakes and rivers (and protect them from inappropriate subdivision, use and development). On the face of the matter, ‘*preservation*’ would therefore be a more appropriate policy stance for natural character of lakes and rivers than protection, maintenance and enhancement⁵⁰⁰.
449. It does not necessarily follow that the same is true for nature conservation values. This is a similar, but arguably a broader concept than areas of significant indigenous fauna, the ‘*protection*’ of which is required by section 6(c), which would suggest that ‘*protection*’ rather than ‘*preservation*’ is required for nature conservation values.
450. Mr Brown’s suggested solution of shifting natural character into Policy 27.2.12.7 faces two hurdles. The first is that an “*avoid or mitigate*” instruction⁵⁰¹ is too weak a policy response for a matter whose preservation is required to be recognised and provided for, as well as being out

⁴⁹⁵ S Maturin, Evidence, Page 10, Para 62

⁴⁹⁶ D Lucas, Evidence Page 9, Para 38

⁴⁹⁷ J Brown, Evidence, Page 14, Para 2.24

⁴⁹⁸ J Brown, Evidence, Page 18, Para 2.26 (c)

⁴⁹⁹ C Barr, Reply, Appendix 2, Page 5

⁵⁰⁰ Although the WCO speaks in terms of protection of the identified outstanding characteristics of the Kawarau River, which include natural character and, of course, section 6(a) uses both terms.

⁵⁰¹ Mr Brown incorrectly described it as imposing a duty to “*avoid, remedy or mitigate*”.

of line with the objective. Secondly, Policy 21.2.12.17 deals with structures and facilities. The PDP also needs to address activities on the surface of lakes and rivers.

451. As already noted, we asked in-house counsel at the Council to provide us with legal advice as to whether there is a meaningful difference between ‘*preservation*’ and ‘*protection*’ and her advice, in summary, is that there is not.
452. This suggests to us that the simplest solution is to retain the notified formulation.
453. We agree, however, with Mr Brown that some qualification is necessary for examples such as those he identified, in order for some development in these areas to occur.
454. Given Mr Farrell’s support for the policy as notified (giving evidence for RJJ) we do not need to give further consideration to the other aspects of the relief in RJJ’s submission.
455. Lastly, we do not consider that the failure by Forest & Bird to seek relief in the terms it now regards as desirable can be addressed in the manner Ms Maturin suggests.
456. Accordingly, we recommend that Policy 21.2.12.5 be reworded as follows:

Protect, maintain and enhance the natural character and nature conservation values of lakes, rivers and their margins from inappropriate activities with particular regard to nesting and spawning areas, the intrinsic value of ecosystem services and areas of indigenous fauna habitat and recreational values.

4.46 Policy 21.2.12.6

457. Policy 21.2.12.6 as notified read as follows;

Recognise and provide for the maintenance and enhancement of public access to and enjoyment of the margins of the lakes and rivers.

458. Two submissions sought that the policy be amended to clarify that it did not apply to the Frankton Arm and the Kawarau River between Kawarau Falls and Chard Farm as those areas could provide for water based public transport⁵⁰². One submission sought the policy be amended to include private investment/donation⁵⁰³. One submission sought that the policy be amended to include the words “*including jetty’s [sic] and launching facilities*”⁵⁰⁴ ;
459. We addressed the submissions seeking that the policy not apply to the Frankton Arm and the Kawarau River between Kawarau Falls and Chard Farm, above. Submissions on this policy were not directly addressed in the Section 42A Report and Appendix 1 of the Section 42A Report showed no recommended changes to the policy. We heard no evidence in support of Submissions 194 and 301. The reasons for the relief sought in the submissions related to funding of marina upgrades and the upgrades to specific jetties and boat ramps. We consider these issues are outside the jurisdiction of the Act and therefore recommend those submissions be rejected.
460. Accordingly, we recommend that Policy 21.2.12.6 remain as notified.

⁵⁰² Submissions 766, 806

⁵⁰³ Submission 194

⁵⁰⁴ Submission 301

4.47 Policy 21.2.12.7

461. Policy 21.2.12.7 as notified read as follows;

Ensure that the location, design and use of structures and facilities are such that any adverse effects on visual qualities, safety and conflicts with recreational and other activities on the lakes and rivers are avoided or mitigated.

462. Two submissions sought that the policy be amended to recognise the importance of the Frankton Arm and the Kawarau River as a public transport link⁵⁰⁵. Three submissions sought the policy be amended to insert the word “remedied” after the word “avoid”⁵⁰⁶.

463. We address the submissions seeking that the policy recognise the Frankton Arm and the Kawarau River as important transport link, under Policy 21.2.12.8 below. We could not find these submissions directly addressed in the Section 42A Report. However, Appendix 1 of that report has a comment recommending that the word “remedied” be inserted as sought by TML.

464. Mr Vivian’s evidence for TML⁵⁰⁷ and Mr Brown’s evidence for QPL and Queenstown Wharves Ltd⁵⁰⁸ agreed with the Section 42A Report.

465. We agree. Although opportunities to remedy adverse effects may in practice be limited, the addition of the word “remedied” is appropriate within the context of the policy in being a legitimate method to address potential effects. We addressed the amendment suggested by Mr Brown, of the insertion of reference to natural character into this policy above.

466. Accordingly, we recommend that Policy 21.2.12.7 be reworded as follows:

Ensure that the location, design and use of structures and facilities are such that any adverse effects on visual qualities, safety and conflicts with recreational and other activities on the lakes and rivers are avoided, remedied or mitigated.

4.48 Policy 21.2.12.8

467. Policy 21.2.12.8 as notified read as follows;

Encourage the development and use of marinas in a way that avoids or, where necessary, remedies and mitigates adverse effects on the environment.

468. One submission sought that the words “jetty and other structures” be inserted following the word “marinas”⁵⁰⁹. Two submissions sought that the policy be amended to replace the words “marinas in a way that ” with “a water based public transport system including necessary infrastructure, in a way that as far as possible”⁵¹⁰. One submission sought to amend the policy by replacing the word “Encourage” with “Provide for” and to delete the words “where necessary”.⁵¹¹

⁵⁰⁵ Submissions 766, 806

⁵⁰⁶ Submission 519, 766, 806

⁵⁰⁷ C Vivian, Evidence, Page 19, Para 4.84

⁵⁰⁸ J Brown, Evidence, Page 4, Para 2.24 (by adopting the Section 42 A Report recommendation on the policy)

⁵⁰⁹ Submission 194

⁵¹⁰ Submissions 766, 806

⁵¹¹ Submission 621

469. In the Section 42A Report, Mr Barr agreed that clarification of the policy would be improved by also referring to jetties and moorings. Mr Barr also considered that the term “*Encourage*” was more in line with the Strategic Direction of the Plan which was not to provide for such facilities, but rather when they are being considered, to encourage their appropriate location, design and scale. Mr Barr also agreed that the words “*where necessary*” did not add value to the policy and recommended they be deleted.⁵¹² Mr Barr addressed the provision of public transport within the Frankton Arm and Kawarau River in a separate part of the Section 42A Report. However, this discussion was on the rules rather than the policy⁵¹³. That said, in discussing the rules, Mr Barr acknowledged the potential positive contribution to transport a public ferry system could provide. Mr Barr considered “*ferry*” a more appropriate term than “*commercial boating*” which in his view may include cruises and adventure tourism⁵¹⁴. Mr Barr did not, however, recommend the term “*ferry*” be included in the policy in his Section 42A Report.
470. In evidence for RJL, Mr Farrell supported the recommendation in the Section 42A Report⁵¹⁵.
471. Mr Brown, in evidence for QPL and Queenstown Wharves Ltd, supported the reference to lake and river public transport as an example of relieving road congestion and also facilitating access and enjoyment of rivers and their margins⁵¹⁶. Mr Brown’s recommended wording of the policy did not include the relief sought by QPL and Queenstown Wharves Ltd, to qualify the policy by adding the words, “*in a way that as far as possible*”.
472. In reply, Mr Barr incorporated part of Mr Brown’s recommended wording into the Appendix 1 of the Section 42A Report.⁵¹⁷ Mr Barr included the word “*ferry*” at this point to address the difference between water based public transport and other commercial boating we identified above.
473. The starting point for consideration of these issues is renumbered Policy 6.3.31 (Notified Policy 6.3.6.1) which seeks to control the location, intensity, and scale of buildings, jetties, moorings and infrastructure on the surface and margins of water bodies by ensuring these structures maintain or enhance landscape quality and character, and amenity values. We therefore have difficulty with Mr Barr’s suggested addition of reference to jetties and moorings in this context without a requirement that landscape quality and character, and amenity values all be protected. Certainly we do not agree that that would be consistent with the Strategic Chapters. We do, however agree that provision for water-based public transport “*ferry systems*” and related infrastructure, is appropriate within the context of this policy and that it needs to be distinguished from other types of commercial boating.
474. We agree with Mr Barr’s suggestion that the words “*where necessary*” are unnecessary but we consider that greater emphasis is required to note the need to avoid, remedy or mitigate adverse effects as much as possible and, therefore, we accept the submissions of QPL and Queenstown Wharves Ltd in this regard.
475. Accordingly, we recommend that Policy 21.2.12.8 be reworded as follows:

⁵¹² C Barr, Section 42A Report, Page 83, Paras 17.18 – 17.19

⁵¹³ C Barr, Section 42A Report, Page 85 - 88, Paras 17.29 – 17.42

⁵¹⁴ C Barr, , Section 42A Report, Page 87 - 88, Paras 17.41 – 17.42

⁵¹⁵ B Farrell, Evidence, Page 23, Para 101

⁵¹⁶ J Brown, Evidence, Page 15, Para 2.26(b)

⁵¹⁷ C Barr, Reply, Page 21-6, Appendix 1

Encourage development and use of water based public ferry systems including necessary infrastructure and marinas, in a way that avoids adverse effects on the environment as far as possible, or where avoidance is not practicable, remedies and mitigates such adverse effects.

4.49 Policy 21.2.12.9

476. Policy 21.2.12.9 as notified read as follows;

Take into account the potential adverse effects on nature conservation values from the boat wake of commercial boating activities, having specific regard to the intensity and nature of commercial jet boat activities and the potential for turbidity and erosion.

477. One submission sought that the policy be amended to apply only to jet boats and the removal of the words “*intensity and nature of commercial jet boat activities*”⁵¹⁸ and similarly, another submission sought that the policy be amended to enable the continued use of commercial jet boats while recognising that management techniques could be used to manage effects⁵¹⁹. One other submission sought the amendment of the policy to recognise the importance of the Kawarau River as a water based public transport link.⁵²⁰
478. Mr Barr, in his Section 42A Report, considered that jet boats were already specified in the policy and that there was a need to address the potential impacts from any propeller driven craft in relation to turbidity and wash⁵²¹. Mr Barr recommended that policy remain as notified.
479. Mr Farrell, in evidence for RJL *et al*, agreed with Mr Barr’s recommendation⁵²² and Mr Brown, for QPL, did not recommend any amendments to the policy⁵²³.
480. There being no evidence in support of the changes sought by the submitters, we adopt the reasoning of the witnesses and find that the amendments sought would not be the most appropriate way of achieving the objective.
481. Accordingly, we recommend that the submissions be rejected and that policy 21.2.12.9 remain as notified.

4.50 Policy 21.2.12.10

482. Policy 21.2.12.10 as notified read as follows:

Ensure that the nature, scale and number of commercial boating operators and/or commercial boats on waterbodies do not exceed levels where the safety of passengers and other users of the water body cannot be assured.

483. One submission sought that the policy be amended as follows;

*Protect historical and well established commercial boating operations from incompatible activities and manage new commercial operations to ensure that the nature, scale and number of new commercial boating operators and/or commercial boats on waterbodies do not exceed levels where the safety of passengers and other users of the water body cannot be assured.*⁵²⁴

⁵¹⁸ Submission 621

⁵¹⁹ Submissions 806

⁵²⁰ Submission 806

⁵²¹ C Barr, Section 42A Report, Page 84, Para 17.21

⁵²² B Farrell, Evidence, Page 23, Para 103

⁵²³ J Brown, Evidence, Page 15, Para 2.24

⁵²⁴ Submission 621

484. One other submission sought that the policy be amended to enable the continued use of commercial jet boats while recognising that management techniques could be used to manage effect and that the policy be amended to recognise the importance of the Kawarau River as a water based public transport link.⁵²⁵
485. In the Section 42A Report, Mr Barr considered the relief sought by RJL to be neither necessary nor appropriate, because consideration of the effects of new activities on established activities was inherently required by the wording of the policy as notified. Mr Barr noted that all established activities would have consent anyway, so ‘*well established*’ did not add anything to the policy. In addition, Mr Barr considered that the qualifiers in the policy were a guide as to incompatibility, so the introduction of the word “*incompatible*” was not appropriate in this context⁵²⁶. Mr Barr recommended that the policy remain as notified.
486. Mr Brown, for QPL, did not recommend any amendments to the policy⁵²⁷. Mr Farrell, in evidence for RJL, considered the policy did not satisfactorily recognise the benefits of historical and well established commercial boating operations which were important to the district’s special qualities and overall sense of place⁵²⁸. Mr Farrell recommended we adopt the relief sought by RJL.
487. We disagree with Mr Farrell. This policy would come into play when resource consent applications were being considered. At that point, safety considerations need to be addressed both for entirely new proposals and for expansion of existing operations. It would not affect operations that were already consented (and established) unless the conditions on that consent were being reviewed. In those circumstances, it could well be appropriate to consider safety issues.
488. In summary, in relation to the amendments sought by RJL, we agree with and adopt the reasoning the reasoning of Mr Barr. We recommend that the submission by RLJ be rejected.
489. In reviewing this policy we have identified that it contains a double negative that could create ambiguities in interpreting it: the policy requires that *the nature, scale and number* (of activities) *do not exceed levels where ... safety ... cannot be assured*. We consider a minor, non-substantive amendment under Clause 16(2) of the First Schedule to replace “where” with “such that” will address this problem.
490. Accordingly, we recommend that Policy 21.2.12.10 be reworded as follows:
- Ensure that the nature, scale and number of commercial boating operators and/or commercial boats on waterbodies do not exceed levels such that the safety of passengers and other users of the water body cannot be assured.*

4.51 Objective 21.2.13

491. As notified, Objective 21.2.13 read as follows;

⁵²⁵ Submission 806

⁵²⁶ C Barr, Section 42A Report, Page 84, Para 17.23

⁵²⁷ J Brown, Evidence, Page 15, Para 2.24

⁵²⁸ B Farrell, Evidence, Page 23, Para 106

Enable rural industrial activities within the Rural Industrial Sub Zones, that support farming and rural productive activities, while protecting, maintaining and enhancing rural character, amenity and landscape values.

492. One submission supported the objective⁵²⁹. One submission sought clarification as to the location of the Rural Industrial Sub-Zones⁵³⁰. One submission sought that the objective be amended as follows:

*Enable rural industrial activities and infrastructure within the Rural Industrial Sub Zones, that support farming and rural productive activities, while avoiding remedying or mitigating effects on rural character, amenity and landscape values.*⁵³¹

493. In the Section 42A Report, Mr Barr identified that the Rural Industrial Sub Zone was located in Luggate (Map 11a)⁵³². In Appendix 2 to that report, Mr Barr recommended that the submission from Transpower be rejected, noting that the Rural Industrial Sub Zone was distinct from the Rural Zone and would lend itself to infrastructure due its character and visual amenity.

494. In the Council's memorandum on revising the objectives to be more outcome focused⁵³³, Mr Barr recommended rewording of the objective as follows;

Rural industrial activities within the Rural Industrial Sub Zones will support farming and rural productive activities, while protecting, maintaining and enhancing rural character, amenity and landscape values.

495. Ms Craw, in evidence for Transpower, agreed with Mr Barr and noted that there were no Transpower assets with the Rural Industrial Sub Zone⁵³⁴.

496. We agree with Mr Barr's rewording of the objective as being more outcome orientated and find that it is the most appropriate way to achieve the purpose of the Act. We think that Mr Barr's reasoning supports the inclusion of the reference to infrastructure rather than the reverse. If the character and visual amenity (and the permitted activity rules) are consistent with infrastructure in this Sub Zone, the policy should provide for it.

497. Accordingly, we recommend that Objective 21.2.13 be reworded as follows;

Rural industrial activities and infrastructure within the Rural Industrial Sub-Zones will support farming and rural productive activities, while protecting, maintaining and enhancing rural character, amenity and landscape values.

4.52 Policies 21.2.13.1 – 21.2.13.2

498. We observe that there were no submissions on Policies 21.2.13.1 and 21.2.13.2. We therefore recommend they be renumbered but otherwise be retained as notified.

⁵²⁹ Submission 217

⁵³⁰ Submission 806

⁵³¹ Submission 805

⁵³² C Barr, Section 42A Report, Page 51, Para 13.48

⁵³³ Council Memoranda dated 13 April 2016

⁵³⁴ A Craw, Evidence, Page 5, Para 26

4.53 New Policy – Commercial Operations Close to Trails

499. A submission from Queenstown Trails Trust⁵³⁵ sought a new policy to enable commercial operations, associated with and close to trail networks.

500. In the Section 42A Report, Mr Barr considered that a policy recognising the potential benefits of the trail was generally appropriate, but that the policy should not extend to creating new rules or amending existing rules for the trails or related commercial activities, as it was important that the effects of such activities should be considered on a case by case basis.⁵³⁶ Mr Barr undertook a section 32AA of the Act evaluation as to the effectiveness and efficiency of the policy and recommended wording for a policy that supported activities complementary to the trails as follows:

Provide for a range of activities that support the vitality, use and enjoyment of the Queenstown Trail and Upper Clutha Tracks Trail network on the basis that landscape and rural amenity is protected, maintained or enhanced and established activities are not compromised.

501. In reply, Mr Barr recommended the removal of the word “Trail” after the words “Upper Clutha Tracks”⁵³⁷ which we understand was to correct an error.

502. We agree with and adopt Mr Barr’s reasoning as set out above. Noting our recommendation above to combine notified Objectives 21.2.1 and 21.2.9, we find the new policy is the most appropriate way in which to achieve our recommended revised Objective 21.2.1.

503. Accordingly, we recommend a new policy to be worded and numbered as follows;

21.2.1.16 Provide for a range of activities that support the vitality, use and enjoyment of the Queenstown Trail and Upper Clutha Tracks networks on the basis that landscape and rural amenity is protected, maintained or enhanced and established activities are not compromised.

4.54 New Objective and Policies – Commercial Recreation Activities

504. A submission from Skydive Queenstown Ltd⁵³⁸ sought insertion of the following new objective and policies;

Objective

Recognise and provide opportunities for recreation, including commercial recreation and tourism activities.

Policy

Recognise the importance and economic value of recreation including commercial recreation and tourist activities.

Policy

Ensure that recreation including commercial recreation and tourist activities do not degrade rural quality or character or visual amenities and landscape values

⁵³⁵ Submission 671

⁵³⁶ C Barr, Section 42A Report, Pages 45-46, Paras 13.18 – 13.22

⁵³⁷ C Barr, Reply, Appendix 1, Page 21-5

⁵³⁸ Submission 122

505. In the Section 42A Report, Mr Barr addressed this request only in a general sense as part of an overall consideration of commercial activities in the Rural Zone⁵³⁹, expressing the view that recreation, commercial recreation and tourism were adequately contemplated and managed. Mr Barr recommended that the submission be rejected.
506. The evidence of Mr Brown for Skydive Queenstown Ltd did not, as far as we could identify, directly address this relief sought.
507. In evidence for Totally Tourism Ltd⁵⁴⁰ and Skyline Enterprises Ltd⁵⁴¹, Mr Dent noted the objectives and policies under 21.2.9 (as notified) did not refer to “commercial recreation activity” and he also noted that there was a separate definition for “commercial recreation activity” as compared to the definition of “commercial activity”.⁵⁴² Mr Dent went on to recommend the following objective and policies to fill the identified policy gap as follows;

Objective

Commercial Recreation in the Rural Zone occurs at a scale that is commensurate to the amenity vales of the specified location.

Policy

The group size of commercial recreation activities will be managed so as to be consistent with the level of amenity anticipated in the surrounding environment.

Policy

To avoid, remedy or mitigate the adverse effects of commercial recreation activities on the natural character, peace and tranquillity of remote areas of the District.

Policy

To avoid, remedy or mitigate any adverse effects commercial recreation activities may have on the range of recreational activities available in the District and the quality of the experience of people partaking of these opportunities.

Policy

To ensure the scale and location of buildings, noise and lighting associated with commercial recreation activities are consistent with the level of amenity anticipated in the surrounding environment.

508. In summary, Mr Dent considered that such a suite of provisions was appropriate given the contribution of commercial recreation activities to the district, but accepted that it was important that those activities did not adversely affect amenity values by way of noise, overcrowding and use of remote areas.⁵⁴³ Mr Dent also noted that he had derived the policies from the ODP Section 4.4- Open Space and Recreation.
509. In reply, Mr Barr supported the intent of the Mr Dent’s recommendation, but noted legal submissions from Council on the Strategic Chapters that ODP Section 4.4- Open Space and Recreation was part of Stage 2 of the plan review and not part of this PDP under our consideration. Mr Barr recommended that the submitter resubmit under Stage 2, rather than

⁵³⁹ C Barr, Section 42A Report, Page 20, Para 8.32

⁵⁴⁰ Submission 571

⁵⁴¹ Submission 574

⁵⁴² S Dent, Evidence, Page 11, Paras 65 -66

⁵⁴³ S Dent, Evidence, Page 11-12, Paras 68 -73

have the provisions in two places. Mr Barr also noted the provisions sought by Mr Dent were not requested in the submission of Totally Tourism Ltd.⁵⁴⁴

510. We consider Mr Dent's suggested objective both narrows the relief sought in Skydive Queenstown's submission and tailors it to be specific to the Rural Zone, and is therefore properly the subject of this chapter (rather than necessarily needing to be dealt with in Stage 2 of the District Plan Review). As such, we consider it is within the scope provided by that submission, and generally appropriate, subject to some tightening to better meet the purpose of the Act.
511. The suggested policies likewise address relevant issues, but require amendment both to align with the objective and to fall within the scope provided by the Skydive Queenstown submission (i.e. ensure rural quality or character or visual amenities and landscape values are not degraded).
512. In addition, we find that the inclusion of these objectives and policies is consistent both with the Stream 1B Hearing Panel's findings on the Strategic Chapters, and with our findings on the inclusion of reference to activities that rely on rural resources. We also consider that given the importance of Commercial Recreation Activities to the district, that it is important that the matter be addressed now, rather than leaving it for consideration as part of a later stage of the District Plan review.
513. Accordingly, we recommend that a new objective and suite of policies to be worded and numbered as follows as follows;

2.2.10 Objective

Commercial Recreation in the Rural Zone is of a nature and scale that is commensurate to the amenity values of the location.

Policies

- 21.2.10.1 *The group size of commercial recreation activities will be managed so as to be consistent with the level of amenity anticipated in the surrounding environment.*
- 21.2.10.2 *To manage the adverse effects of commercial recreation activities so as not to degrade rural quality or character or visual amenities and landscape values.*
- 21.2.10.3 *To avoid, remedy or mitigate any adverse effects commercial recreation activities may have on the range of recreational activities available in the District and the quality of the experience of people partaking of these opportunities.*
- 21.2.10.4 *To ensure the scale and location of buildings, noise and lighting associated with commercial recreation activities are consistent with the level of amenity existing and anticipated in the surrounding environment.*

4.55 New Objective and Policies – Community Activities and Facilities

514. One submission sought the inclusion of objectives, policies and rules for community activities and facilities in the Rural Zone⁵⁴⁵. Appendix 2 of the Section 42A Report recommended the submission be rejected on the basis that the existing provisions in the PDP were appropriate in this regard.

⁵⁴⁴ C Barr, Reply, Page 34, Para 12.1

⁵⁴⁵ Submission 524

515. Ms McMinn, in tabled evidence for the Ministry of Education, noted that while the Ministry relies on designations under the Act for the establishment of schools, it also relies on policy support to enable ongoing education and community activities. Ms McMinn advised that the Ministry had similarly submitted on the proposed RPS and that for consistency with the proposed RPS, provisions such as sought in the Ministry's submission should be included⁵⁴⁶. Ms McMinn did not identify where in the Proposed RPS this matter was addressed.
516. We could not identify a response to this matter in the Council's reply.
517. On review of the decisions version of the proposed RPS we could not identify provisions providing for the enablement of education and community activities. The designation powers of a requiring authority are very wide and we are not convinced that additional policy support would make them any less effective.
518. Accordingly, we recommend that the submission of the Ministry of Education be rejected.

4.56 New Objective and Policies - Lighting

519. One submission sought a new objective and policies in relation to the maintenance of the ability to view the night sky, avoid light pollution and to promote the use of LED lighting in new subdivisions and developments⁵⁴⁷.
520. Specific wording of the objectives or policies were included in the submission. Mr Barr, in the Section 42A Report considered that Policy 21.2.1.5 and the landscape assessment matters 21.7.14(f) already addressed the matters raised⁵⁴⁸. We did not receive specific evidence in support of the requested objective and policies. We agree with Mr Barr and in the absence of evidence providing and/or justifying such objectives and policies, we recommend that this submission be rejected.

5 21.3 OTHER PROVISIONS AND RULES

521. We understand the purpose of notified Section 21.3 is to provide clarification as to the relationship between Chapter 21 and the balance of the PDP. Section 21.3.1 as notified outlined a number of district wide chapters of relevance to the application of Chapter 21.
522. There was one submission on Section 21.3.1⁵⁴⁹, which sought that specific emphasis be given to Chapter 30 as it relates to any use, development or subdivision near the National Grid. Mr Barr recommended acceptance in part of submission but we could find no reasons set out in the report for reaching that recommendation⁵⁵⁰. Ms Craw, in evidence for Transpower, stated incorrectly that the officer's report had recommended declining the relief sought and she considered that the planning maps and existing provisions were sufficient to guide plan users to the rules under Chapter 30 regarding the National Grid⁵⁵¹. We with agree with Ms Craw that sufficient guidance is already provided by way of the maps.
523. Accordingly, we recommend that the Transpower submission be rejected.

⁵⁴⁶ J McMinn, Tabled Evidence, Page 4, Paras 17 - 19

⁵⁴⁷ Submissions 568

⁵⁴⁸ C Barr, Sub

⁵⁴⁹ Submission 805

⁵⁵⁰ C Barr, Section 42A Report, Appendix 2, Page 80

⁵⁵¹ A Craw, Evidence, Page 6 -7, Paras 34 -36

524. Consistent with our approach in other chapters, we recommend the table in 21.3.1 only refer to PDP chapters, and that it distinguish between those notified in Stage 1 and those notified subsequently or yet to be notified (by showing the latter in italics). We recommend this change as a minor and non-substantive change under Clause 16(2) of the First Schedule.
525. Sections 21.3.2 and 21.3.3, as notified, contained a mixture of rules of interpretation and advice notes. We recommend these be re-arranged such that the rules be listed under Section 21.3.2 Interpreting and Applying the Rules, and the remainder under Section 21.3.3 Advice Notes.. The re-arrangement, incorporating the amendments discussed below, are included in Appendix 1.
526. There were no submissions on notified Section 21.3.2. We now address each of the submissions on notified section 21.3.3.
527. We questioned Mr Barr on the as notified Clarification 21.3.3.3 which used “site” to refer to the Certificate of Title, whereas the definition of site in the PDP is an area of land held in one Certificate of Title. Mr Barr agreed that this was an error. We recommend that this be corrected under Clause 16(2) of the First Schedule. Accordingly, we recommend 21.3.3.3. be renumbered 21.3.3.1 (we consider it an advice note) and be reworded as follows;
- Compliance with any of the following standards, in particular the permitted standards, does not absolve any commitment to the conditions of any relevant resource consent, consent notice or covenant registered on the computer freehold register of any property.*
528. As notified, 21.3.3.5 read as follows:
- Applications for building consent for permitted activities shall include information to demonstrate compliance with the following standards, and any conditions of the applicable resource consent conditions.*
529. One submission sought this be deleted. It argued that the requirement was ultra vires as the consents in question are under the Building Act⁵⁵². Mr Barr recommended the submission be rejected, but we could find no reasons set out in the report for reaching that recommendation⁵⁵³. We received no other evidence in regard to this matter.
530. We consider this provision is no more than an advice note and of no regulatory effect. We have left the wording unaltered and renumbered it 21.3.3.3.. Accordingly, we recommend that the submission of QPL be rejected.
531. Clarification point 21.3.3.7 as notified read as follows;
- The existence of a farm building either permitted or approved by resource consent under Table 4 – Farm Buildings shall not be considered the permitted baseline for residential or other non-farming activity development within the Rural Zone.*
532. One submission sought this be retained⁵⁵⁴, one that it be deleted⁵⁵⁵ as the Environment Court had called it into question, and one submission sought that the reference to “or other non-

⁵⁵² Submission 806

⁵⁵³ C Barr, Section 42A Report, Appendix 2, Page 80

⁵⁵⁴ Submission 45

⁵⁵⁵ Submission 806

farming” be removed⁵⁵⁶. Mr Barr recommended the submissions seeking deletion or amendment be rejected, but we could find no reasons set out in the report for reaching that recommendation⁵⁵⁷. We received no other evidence in regard to this matter.

533. Taking into account the specific policy provision made for farm buildings (Policy 21.2.1.2) as opposed to the regime applying to residential and other non-farming activities, we conclude there is justification in retaining this statement. We also conclude it is more in the nature of a rule explaining how the regulatory regime of the Chapter applies. Accordingly, we recommend that this clause retain the notified wording after altering the reference to “Table 4” to “Rule 21.4.2 and Table 5” and relocated so as to be provision 21.3.2.5.

534. As notified, clarification point 21.3.3.8 read as follows;

The Ski Area and Rural Industrial Sub Zones, being Sub Zones of the Rural Zone, require that all rules applicable to the Rural Zone apply unless stated to the contrary.

535. Two submissions sought that this clarification be amended to state that in the event of conflict between the Ski Area Sub Zone Rules in as notified Table 7 and the other rules in Chapter 21, the provisions in Table 7 would prevail⁵⁵⁸.

536. These submissions were not directly addressed in the Section 42A Report. Mr Fergusson in evidence for Soho Ski Area Ltd and Treble Cone Investments Ltd, addressed this clarification point as part of a wider consideration of the difference between Ski Area Sub Zone Accommodation and Visitor Accommodation in the Rural Area⁵⁵⁹. We addressed this difference between the types of accommodation in Section 5.19 above, and recommended a separate definition for Ski Area Sub Zone Accommodation. We think that this addresses the potential issue raised in the submission and accordingly recommend that the submission be rejected.

537. We find this to be an implementation rule and have relocated to be provision 21.3.2.6.

538. Clarification point 21.3.3.9 related to the calculation of “ground floor area” in the Rural Zone. One submission sought either that the clarification point be deleted, relying on the definition of “ground floor area”, or that the definition of “ground floor area” be amended so as to provide for the rural area⁵⁶⁰. Mr Barr recommended the submission be rejected⁵⁶¹ but we could find no reasons set out in the report for him reaching that recommendation. We received no direct evidence on this matter.

539. Although Submission 806 states that there is a definition of “Ground floor area” in Chapter 2, that definition, as notified, only applied to signs⁵⁶², not buildings.. We note that the definition of ground floor area included in Section 21.3.3 is also included in Chapters 22 and 23. In our view, rather than repeating this as an implementation rule, it should be included in Chapter 2 as a definition. Therefore, we recommend that Submission 806 is accepted to the extent that

⁵⁵⁶ Submission 519

⁵⁵⁷ C Barr, Section 42A Report, Appendix 2, Page 80

⁵⁵⁸ Submissions 610, 613

⁵⁵⁹ C Fergusson, Evidence, Pages 34-35, Para 129 - 133

⁵⁶⁰ Submission 806

⁵⁶¹ C Barr, Section 42A Report, Appendix 2, Page 81

⁵⁶² We note that the notified definition does not appear to define a ground area in any event and is the subject of the Stage 2 Variations.

21.3.3.9 is deleted and the definition is included in Chapter 2⁵⁶³. We also recommend that the equivalent amendments are made in Chapters 22 and 23.

540. Clarification Point 21.3.3.11 set out the meaning of the abbreviations used in the Rule Tables in 21.4 of the PDP. It also notes that any activity that is not permitted or prohibited requires a resource consent.
541. One submission from QPL sought that the clarification point be amended to ensure that the rules are applied on an effects basis⁵⁶⁴. Mr Barr recommended the submission be rejected⁵⁶⁵, but we could find no reasons set out in the report for him reaching that recommendation. We received no direct evidence on this matter.
542. On review of the submission itself, it sets out as the reason for the submission that “*the Council should not attempt to list all activities that may occur and should instead rely on the proposed standard to ensure that effects are appropriately managed.*”
543. To our mind, this has more to do with the content of rules than clarification of the meaning of the abbreviations, or the effect of activities being permitted or prohibited for that matter. We recommend that the submission as it relates to 21.3.3.11 be rejected. As a result of our re-arrangement of the clauses in 21.3.2 and 21.3.3, this is renumbered 21.3.2.9.
544. In his Reply Statement, Mr Barr recommended inclusion of the following three matters for clarification purposes:

21.3.3.11 The surface of lakes and rivers are zoned Rural, unless otherwise stated.

21.3.3.12 In this chapter the meaning of bed shall be the same as in section 2 of the RMA.

21.1.1.13 Internal alterations to buildings including the replacement of joinery is permitted.

545. We consider the first of these is a useful inclusion to avoid any ambiguity. We do not see the second as helpful as it may imply that when considering provisions in other chapters, the meaning of bed given in section 2 of the Act does not apply. We would have thought the defined term from the Act would apply unless the context required otherwise. Although we are not sure the third is necessary, there is no reason not to include it. We recommend these be included as 21.3.2.8 and 21.3.2.9.

6 SECTION 21.4 – RULES – ACTIVITIES

6.1 Structure of Rules and Tables

546. In considering the rules and their layout in the tables, we found these difficult to follow. For example, in some cases activities and standards were combined under ‘activities’. In these situations, we recommend that the activities and standards be separated and the tables be renumbered. We note that we have already addressed the table for the surface of lakes and rivers, activities and standards in Section 3.4 above. Another example is where the rules specify that activities are prohibited with exceptions detailing what is permitted, rather than setting out firstly what is permitted and secondly, if the activity is not permitted, what the appropriate activity status is.

⁵⁶³ As a recommendation to the Stream 10 Hearing Panel.

⁵⁶⁴ Submission 806

⁵⁶⁵ C Barr, Section 42A Report, Appendix 2, Page 81

547. Taking those matters into account, we recommend re-ordering the tables into the following sequence, which we consider more logical and easier for plan users to follow:

| | |
|----------|---|
| Table 1 | Activities Generally |
| Table 2 | Standards applying generally in zone |
| Table 3 | Standards applying to Farm Activities (additional to those in Table 2) |
| Table 4 | Standards for Structures and Buildings (other than Farm Buildings) (additional to those in Table 2) |
| Table 5 | Standards for Farm Buildings (additional to those in Table 2) |
| Table 6 | Standards for Commercial Activities (additional to those in Table 2) |
| Table 7 | Standards for Informal Airports (additional to those in Table 2) |
| Table 8 | Standards for Mining and Extraction Activities (additional to those in Table 2) |
| Table 9 | Activities in the Ski Area Sub Zone additional to those listed in Table 1 |
| Table 10 | Activities in Rural Industrial Subzone additional to those listed in Table 1 |
| Table 11 | Standards for Rural Industrial Subzone |
| Table 12 | Activities on the Surface of Lakes and Rivers |
| Table 13 | Standards for Activities on the Surface of Lakes and Rivers |
| Table 14 | Closeburn Station: Activities |
| Table 15 | Closeburn Station: Standards for Buildings and Structures |

548. We consider these to be minor correction matters that can be addressed under Clause 16(2) and we make recommendations accordingly.

549. In addition, the terminology of the rules themselves needs amendment; using the term “shall” could be read as providing a degree of discretion that is not appropriate in a rule context. We recommend that the term “must” replace the term “shall” except where the context requires the use of “shall” or another term. Again, we consider these to be minor correction matters that can be addressed under Clause 16(2) and we make recommendations accordingly.

6.2 Table 1 (As Notified) - Rule 21.4.1 - Activity Default Status

550. Rule 21.4.1 as notified identified that activities not listed in the rule tables were “*Non-complying*” Activities. A number of submissions⁵⁶⁶ sought that activities not listed in the tables should be made permitted.

551. We did not receive any direct evidence in regard to this matter, although Mr Barr addressed it in his Section 42A Report⁵⁶⁷. We agree with Mr Barr that it is not apparent that the effects of all non-listed activities can be appropriately avoided, remedied or mitigated in the Rural Zone across the District, such that a permitted activity status is the most appropriate way in which to achieve the objectives of Chapter 21. We therefore recommend that the default activity status for activities not listed in the rule table remain non-complying. Consistent with our approach

⁵⁶⁶ Submissions 624, 636, 643, 688, 693

⁵⁶⁷ C Barr, Section 42A Report, Paras 8.9 – 8.10

of listing activities from the least restricted to the most restricted, we recommend this rule be located at the end of Table 1. We also recommend that it only refer to those tables that list activities (as opposed to standards applying to activities). To remove any possible ambiguity we recommend it read:

Any activity not otherwise provided for in Tables 1, 9, 10, 12 or 14.

6.3 Rule 21.4.2 – Farming Activity

552. The only submissions on this rule supported it⁵⁶⁸. With the re-arrangement of the tables of standards discussed above, a consequential change is required to this rule to refer to Table 3 as well as Table 2. Other than that change and renumbering to 21.4.1, we recommend the rule be adopted as notified.

6.4 Rule 21.4.3 – Farm Buildings

553. As notified, Rule 21.4.3 provided for the “Construction or addition to farm buildings that comply with the standards in Table 4” as permitted activities.

554. Three submissions sought that the rule be retained⁵⁶⁹. One submission sought to roll-over provisions of the ODP so that farming buildings not be permitted activities.⁵⁷⁰ One submission supported permitted activity status for farm buildings, but sought that Council be firm where a landholder establishes farm buildings and then makes retrospective application for consent so that the buildings can be used for a non-farming purposes⁵⁷¹.

555. Mr Barr, in the Section 42A Report, recommended that the submission from UCES be rejected for the reasons set out in the Section 32 Report.⁵⁷² The Section 32 Report concluded that administrative efficiencies can be achieved while maintaining landscape protection, by requiring compliance with standards in conjunction with a permitted activity status for farm buildings.⁵⁷³

556. We have already addressed the permitted activity status for farming activities in Section 7.3 above. Similarly, we have also addressed farm buildings in Policy 21.2.1.2, as notified, above (Section 5.3) and recommended allowing farm buildings on landholdings over 100 ha subject to managing effects on landscape values.

557. Accordingly, we recommend that Rule 21.4.3 be renumbered 21.4.2 and refer to Table 5, but otherwise be retained as notified.

558. We think that the submission of M Holor⁵⁷⁴ raises a genuine issue regarding the conversion of farm buildings to a non-farming use, such as a dwelling. We are aware of situations in the district where applicants seeking consent for such conversions rely on existing environment arguments in order to obtain consent. This is sometimes referred to as ‘environmental creep’.

⁵⁶⁸ Submissions 325, 384, 600 (supported by FS1209, opposed by FS1034), 608

⁵⁶⁹ Submissions 325, 348, 608

⁵⁷⁰ Submission 145

⁵⁷¹ Submission 45

⁵⁷² C Barr, Section 42A Report, Page 29, Para 10.4

⁵⁷³ C Barr, Section 42A Report, Appendix 3, Section 32 Evaluation Report, Landscape, Rural Zone and Gibbston Character Zone, Pages 18 - 19

⁵⁷⁴ Submission 45

559. As notified, Rule 21.3.3.7 stated that farm building were not to be considered the permitted baseline for residential or other non-farming activities. We have recommended retaining this as implementation provision 21.3.2.5. We do not consider Submission 45 provides scope for any additional provision.

6.5 Rule 21.4.4 – Factory Farming

560. There were no submission on this rule. However, this is an instance where a “standard” in Table 2 (as notified) classified certain types of factory farming non-complying (notified Rule 21.5.11). In addition, notified Rules 21.5.9 and 21.5.10 set standards for pig and poultry factory farming respectively. There were no submissions to Rules 21.5.9, 21.5.10 or 21.5.11.

561. We recommend, as a minor amendment under Clause 16(2), that Rule 21.4.4 be renumbered 21.4.3, amended to be restricted to pigs and poultry, and to refer to Table 2 and 3. In addition, we recommend in the same way that notified Rule 21.5.11 be relocated to 21.4.4. The two rules would read:

| | | |
|--------|--|----|
| 21.4.3 | Factory Farming limited to factory farming of pigs or poultry that complies with the standards in Table 2 and Table 3. | P |
| 21.4.4 | Factory Farming animals other than pigs or poultry. | NC |

6.6 Rule 21.4.5 – Use of Land or Building for Residential Activity

562. As notified, Rule 21.4.5 provided for the “the use of land or buildings for residential activity except as provided for in any other rule” as a discretionary activity.

563. One submission sought that this rule be retained⁵⁷⁵ and one sought that it be deleted⁵⁷⁶.

564. The Section 42A Report did not address these submissions directly. Rather, Mr Barr addressed residential activity and residential/non-farming buildings in a general sense⁵⁷⁷, concluding that Rule 21.4.5 was appropriate as non-farming activities could have an impact on landscape⁵⁷⁸. Although not directed to the submissions on this rule, Mr Barr considered that discretionary activity status was more appropriate to that of non-complying.

565. Mr Barr’s discussion addressed submissions made by UCES. The UCES position was based on the potential for proposed legislative amendments to make the residential activity application non-notified if they are discretionary activities. This matter was also canvassed extensively in the Stream 4 Hearing (Subdivision). We adopt the reasoning of the Stream 4 Hearing Panel⁵⁷⁹ in recommending this submission be rejected.

566. We heard no evidence from QPL in support of its submission seeking deletion of the rule. In tabled evidence for Matukitiki Trust, Ms Taylor agreed with the recommendation in the Section 42A Report.⁵⁸⁰

⁵⁷⁵ Submission 355

⁵⁷⁶ Submission 806

⁵⁷⁷ C Barr, Section 42A Report, Pages 32-37, Paras 11.1 – 11.28

⁵⁷⁸ C Barr, Section 42A Report, Pages 36 – 37, Para 11.25

⁵⁷⁹ Report 7, Section 1.7

⁵⁸⁰ L Taylor, Evidence, Appendix A, Page 6

567. We accept Mr Barr’s recommendation, given the submissions before us and the evidence we heard. Thus, we recommend the rule be retained as notified but be relocated to be Rule 21.4.10.

6.7 Rule 21.4.6 – One Residential Unit per Building Platform

568. As notified, Rule 21.4.6 provided for “One residential unit within any building platform approved by resource consent” as a permitted activity.

569. Three submissions sought that this rule be retained⁵⁸¹, four submissions sought that it be deleted⁵⁸², one submission sought that the rule be replaced with the equivalent provisions of the ODP⁵⁸³ which would have had the effect of deleting the rule, and one submission sought that the rule be amended to clarify that it only applies to the activity itself, as there are other rules (21.4.7 and 21.4.8) that relate to the actual buildings⁵⁸⁴.

570. In the Section 42A Report, Mr Barr addressed some of these points directly, noting that it is generally contemplated that there is one residential unit per fee simple lot and that Rule 21.4.12 provides for one residential flat per residential unit. He was of the opinion that the proposed change to a permitted activity status from controlled in the ODP would significantly reduce the number of consents without compromising environmental outcomes.⁵⁸⁵

571. At this point we record that that a similar provision to notified Rule 21.4.6, is also contained in Chapter 22, Rural Residential & Rural Lifestyle (Rule 22.5.12.1) which also has a limit within the Rural Lifestyle Zone of one residential unit within each building platform. Therefore, we address the number of residential units and residential flats within a building platform for the Rural, and Rural Lifestyle zones at the same time.

572. As notified, Rule 22.5.12.1, (a standard) provided for “One residential unit located within each building platform”. Non-compliance with the standard results in classification as a non-complying activity.

573. Four submissions sought that this rule be deleted⁵⁸⁶ and seven submissions sought that it be amended to provide for two residential units per building platform⁵⁸⁷.

574. In the Section 42A Report for Chapter 22, Mr Barr considered that two dwellings within one building platform would alter the density of the Rural Lifestyle zone in such a way as to affect the rural character of the zone and also create an ill-conceived perception “that subdivision is contemplated based on the argument that the effect of the residential unit is already established”⁵⁸⁸.

575. Responding to the reasons provided in the submissions, Mr Barr also considered that the rule was not contrary to Objective 3.2.6.1 as notified, which sought to ensure a mix of housing opportunities. In Mr Barr’s view, that objective has a district wide focus and does not require

581 Submissions 355, 384, 806

582 Submissions 331, 348, 411, 414

583 Submission 145

584 Submission 608

585 C Barr, Section 42A Report, Page 34, Paras 11.11 - 11.14

586 Submissions 331, 348, 411, 414

587 Submissions 497, 513, 515, 530, 532, 534, 535

588 C Barr, Section 42A Report – Chapter 22, Pages 11 – 12, Paras 8.8 – 9.9

provision for intensification in all zones. Rather, the intention is that intensification be promoted within urban boundaries, but not in other zones.⁵⁸⁹

576. Mr N Geddes, in evidence for NT McDonald Family Trust *et al*⁵⁹⁰, was of the view that to require discretionary activity status for an additional residential unit under 21.4.6 while a residential flat was a permitted activity, was unnecessary and unbalanced, and not justified by a s32 analysis. In relation to Rule 22.5.1.2.1, Mr Geddes observed that there was no section 32 analysis supporting the rule and he disagreed with Mr Barr as to the perception that subdivision was contemplated. He noted that subdivision is managed as a discretionary activity under Chapter 27, and two units in one approved building platform would provide a wider range of opportunities⁵⁹¹.
577. Mr Goldsmith, in evidence for Arcadian Triangle, suggested that within the Rural Lifestyle Zone, amending the residential flat provision to a separate residential unit was a fairly minor variation but needed caveats, e.g. further subdivision prevented, to avoid abuse. Mr Goldsmith considered two residential units within a single 1000m² building platform would not create a perceptible difference to one residential unit and one residential flat, where the residential flat could be greater than 70m². Addressing the subdivision issue raised by Mr Barr, Mr Goldsmith suggested that to make it clear that subdivision was not allowed, the rule could make subdivision a prohibited activity.⁵⁹²
578. Mr Farrell, in evidence for Wakatipu Equities Ltd⁵⁹³ and G W Stalker Family Trust⁵⁹⁴ raised similar issues to that of Mr Geddes and Mr Goldsmith. He also expressed the view that the rule contradicted higher level provisions (Objective 3.2.6.1) and noted that two residential units within a building platform would be a more efficient and effective use of resources⁵⁹⁵. However, in his summary presentation to us, Mr Farrell advised that his evidence was particularly directed to issues in the Wakatipu Basin, rather than to the wider District.
579. In reply, Mr Barr noted that residential flat *"...sits within the definition of Residential Unit, therefore, if two Residential Units are allowed, there would be an expectation that a Residential Flat would be established with each Residential Unit. In addition, within a single building platform with two Residential Units there could be four separate living arrangements. From an effects based perspective this could be well beyond what was contemplated when the existing building platforms in the Rural General Zone were authorised."*⁵⁹⁶
580. Mr Barr also considered that in the Rural and Rural Lifestyle Zones, the size of a residential flat could be increased from 70m² to 150m² to address the concern raised by Mr Goldsmith that the 70m² size for a residential flat was arbitrary and related to an urban context. Mr Barr also considered that this solution would mean, among other things, that subdivision of residential flat from a residential unit should be a non-complying activity, and that the only amendment required is to the definition of residential flat which would therefore reduce the complexity

⁵⁸⁹ C Barr, Section 42A Report – Chapter 22, Page 12, Para 8.10

⁵⁹⁰ Submissions 411, 414

⁵⁹¹ N Geddes, Evidence, Page 6, Paras 34 - 35

⁵⁹² W Goldsmith, Evidence, Page 14, Paras 4.3 – 4.6 and Summary, Page 1, Para 2

⁵⁹³ Submission 515

⁵⁹⁴ Submission 535

⁵⁹⁵ B Farrell, Evidence, Page 36 Para 155

⁵⁹⁶ C Barr, Reply, Chapter 21, Page 18, Para 6.3

associated with controlling multiple residential units within a single building platform.⁵⁹⁷ We note that Mr Barr provided a similar response in reply regarding Chapter 22.

581. Mr Barr's recommended amendment to the definition of residential flat was as follows;

"Means a residential activity that comprises a self-contained flat that is ancillary to a residential unit and meets all of the following criteria:

- a. *Has a total floor area not exceeding 70m², and 150m² in the Rural Zone and Rural Lifestyle Zone, not including the floor area of any garage or carport;*
- b. *contains no more than one kitchen facility;*
- c. *is limited to one residential flat per residential unit; and*
- d. *is situated on the same site and held in the same ownership as the residential unit, but may be leased to another party.*

Notes:

- a. A proposal that fails to meet any of the above criteria will be considered as a residential unit.
- b. Development contributions and additional rates apply."

582. Mr Barr recommended that Rule 21.4.6 and 22.5.12 remain as notified.

583. Firstly, we note that as regards the application of this rule in the Wakatipu Basin, the notification of the Stage 2 Variations has overtaken this process. It has also involved, through the operation of Clause 16B of the First Schedule to the Act, transferring many of these submissions to be heard on the Stage 2 Variations.

584. While we agree with Mr Barr that the simplicity of the solution he recommended is desirable, we do note our unease about using a definition to set a standard for an activity⁵⁹⁸. In this instance, however, to remove the standard from the definition would require amendment to all zones in the PDP. We doubt there is scope in the submissions to allow the Council to make such a change. Subject to these concerns, Mr Barr's solution effectively addresses the issues around potential consequential subdivision effects from creating a density of dwellings within a building platform that would not be consistent with the objectives in the strategic chapters and in this chapter.

585. Accordingly, we recommend that aside from renumbering, Rules 21.4.6 and 22.5.12.1 remain as notified and that the definition of Residential Flat be worded as follows:

"Means a residential activity that comprises a self-contained flat that is ancillary to a residential unit and meets all of the following criteria:

- a. *the total floor area does not exceed:*
 - i. *150m² in the Rural Zone and Rural Lifestyle Zone;*

⁵⁹⁷ C Barr, Reply, Chapter 21, Pages 18 - 19, Para 6.5

⁵⁹⁸ We note that the Stream 6 Hearing Panel raised the same concerns.

ii. 70m² in any other zone;

not including in either case the floor area of any garage or carport;

b. it contains no more than one kitchen facility;

c. is limited to one residential flat per residential unit; and

d. is situated on the same site and held in the same ownership as the residential unit, but may be leased to another party.

Notes:

a. A proposal that fails to meet any of the above criteria will be considered as a residential unit.

b. Development contributions and additional rates apply.”

586. We return to the issue of density as it applies to other rules and the objectives in Chapter 22 later in this report.

6.8 Rules 21.4.7 & 21.4.8– Construction or Alteration of Buildings Within and Outside a Building Platform

587. As notified, Rule 21.4.7, provided for “The construction and exterior alteration of buildings located within a building platform approved by resource consent, or registered on the applicable computer freehold register, subject to compliance with the standards in Table 3.” as a permitted activity.

588. As notified, Rule 21.4.8, provided for “The exterior alteration of any lawfully established building located outside of a building platform, subject to compliance with the standards in Table 3.” as a permitted activity.

589. Two submissions sought that Rule 21.4.7 be retained⁵⁹⁹ and one submission sought that the rule be replaced with the equivalent provisions of the ODP⁶⁰⁰ which relate to Construction and Alteration of Residential Buildings located within an approved residential building platform or outside a residential building platform.

590. One submission sought that Rule 21.4.8 be retained⁶⁰¹, one submission sought that the activity status be changed to discretionary and one submission sought that the rule be replaced with the equivalent provisions of the ODP⁶⁰² which relate to Construction and Alteration of Residential Buildings located within an approved residential building platform or outside a residential building platform.

591. In the Section 42A Report, Mr Barr addressed these matters, noting that there was general support for the provisions, and that, as we noted above, he considered that permitted activity status would significantly reduce the number of consents without compromising environmental

⁵⁹⁹ Submissions 238, 608

⁶⁰⁰ Submission 145

⁶⁰¹ Submission 608

⁶⁰² Submission 145

outcomes.⁶⁰³ Mr Barr also considered that Rule 21.4.8 was necessary to provide for minor alterations of buildings that were lawfully established prior to the ODP regime which established the requirement for a building platform.⁶⁰⁴

592. Mr Haworth, in evidence for UCES on these rules, expressed the view that permitted activity status would engender an “anything goes” attitude and there would be less scrutiny given to proposals, which often results in greater adverse effects⁶⁰⁵. Mr Haworth considered that the controlled activity status in the same form as in the ODP should be retained so that adverse effects on landscape were adequately controlled.⁶⁰⁶

593. There was no evidence from UCES as to why, after 15 years of experience of the ODP regime, that a controlled activity was a more appropriate approach than a permitted activity with appropriate standards. In particular, no section 32 evaluation was presented to us which would have supported an alternative and more regulated approach. UCES sought this relief for a number of rules in Chapter 21 and in each case, the same position applies. We do not consider it necessary to address the UCES submission further.

594. In response to our questions, Mr Barr, in reply, recommended an amendment to Rule 21.4.8 as notified, to clarify that the rule applied to situations where there was no building platform in place. Mr Barr’s recommended wording was as follows;

“The exterior alteration of any lawfully established building located outside of a building platform where there is not an approved building platform in place, subject to compliance with the standards in Table 3.”

595. We consider that Mr Barr’s suggested rewording confuses rather than clarifies the position, because it refers both to a building outside a building platform and to there being no building platform; a situation which cannot in fact exist. The answer is to delete the words, “*located outside of a building platform*”. However, we also envisage a situation where there is a building platform in place and an extension is proposed that would extend the existing dwelling beyond the building platform. The NZIA⁶⁰⁷ submission sought to address that circumstance by seeking discretionary activity status. From our reading this is already addressed in Rule 21.4.10 (as notified) that applies to construction not provided for by the any other rule as a discretionary activity and therefore no additional amendment is required to address it.

596. We concur with Mr Barr as to the activity status, and accordingly recommend that Rules 21.4.7 be renumbered 21.4.6 and the wording and activity status remain unchanged other than referring to Tables 2 and 4 rather than Table 3. We further recommend that Rule 21.4.8 be renumbered 21.4.7, the activity status remain permitted and be worded as follows;

“The exterior alteration of any lawfully established building where there is no approved building platform on the site, subject to compliance with the standards in Table 2 and Table 4.”

6.9 Rule 21.4.9 – Identification of Building Platform.

597. As notified, Rule 21.4.9, provided for “The identification of a building platform not less than 70m² and not greater than 1000m².” as a discretionary activity.

⁶⁰³ C Barr, Section 42A Report, Page 34, Para 11.13

⁶⁰⁴ C Barr, Section 42A Report, Page 34, Para 11.14

⁶⁰⁵ J Haworth, Evidence, Page 21, Para 152

⁶⁰⁶ J Haworth, Evidence, Page 21, Para 156

⁶⁰⁷ Submission 328

598. Three submissions sought that the rule be deleted⁶⁰⁸.
599. Mr Barr, in the Section 42A Report, recorded the reasons for the requested deletion from two of the submitters as being that *“defaulting to a non-complying activity if outside these parameters is arbitrary because ‘if the effects of a rural building platform sized outside of this range can be shown to be appropriate, there is no reason it should not be considered on a discretionary basis.’”*⁶⁰⁹
600. Mr Barr, did not disagree with that reason but noted *“that it could create a potential for proposals to identify building platforms that are very large (while taking the risk of having the application declined) and this in itself would be arbitrary. Similarly, if the effects of a rural building platform are appropriate irrespective of the size it would more than likely accord with s104D of the RMA.”*⁶¹⁰ In tabled evidence⁶¹¹ for X-Ray Trust Limited, Ms Taylor agreed with Mr Barr’s recommendation⁶¹².
601. We agree with Mr Barr’s reasoning. We recommend that these submissions are rejected and that Rule 21.4.9 be remain as worded, but be renumbered 21.4.10.

6.10 Rule 21.4.10 – Construction not provided for by any other rule.

602. As notified, Rule 21.4.10, provided for “The construction of any building including the physical activity associated with buildings including roading, access, lighting, landscaping and earthworks, not provided for by any other rule.” as a discretionary activity.
603. Five submissions sought the provision be amended⁶¹³ as follows;
- “The construction of any building including the physical activity associated with buildings not provided for by any other rule.”*
604. Mr Barr considered the need to separate farming activities from non-farming activities in the Section 42A Report and noted that roading, access, lighting, landscaping and earthworks associated with non-farming activities can all impact on landscape.⁶¹⁴
605. While arguably, specific reference to the matters listed is unnecessary since all are ‘associated’ with construction (and ongoing use) of a building, we think it is helpful to provide clarification of the sort of activities covered, for the reason Mr Barr identifies. Accordingly, we recommend that 21.4.10 be renumbered 21.4.11 and that the wording and activity status remain as notified.

6.11 Rule 21.4.11 – Domestic Livestock

606. There were no submissions on this rule. We recommend it be adopted as notified but renumbered as 21.4.8.

⁶⁰⁸ Submissions 693, 702, 806

⁶⁰⁹ C Barr, Section 42A Report, Page 37, Para 11.26

⁶¹⁰ C Barr, Section 42A Report, Page 37, Para 11.27

⁶¹¹ FS1349

⁶¹² L Taylor, Evidence, Appendix A, Page 8

⁶¹³ Submissions 636, 643, 688, 693, 702

⁶¹⁴ C Barr, Section 42A Report, Pages 36-37, Para 11.25

6.12 Rule 21.4.12 – Residential Flat; Rule 21.4.13 - Home Occupations

607. As notified, Rule 21.4.12, provided for “Residential Flat (activity only, the specific rules for the construction of any buildings apply).” as a permitted activity.
608. As notified, Rule 21.4.13, provided for “Home Occupation that complies with the standards in Table 5.” as a permitted activity.
609. One submission sought that Rule 21.4.12 be retained⁶¹⁵. One submission sought that Rules 21.4.12 and 21.4.13 be deleted⁶¹⁶. The reason stated for this relief was that the submitter considered these consequential deletions were needed for clarity that any permitted activity not listed but meeting the associated standards is a permitted activity and as such negates the need for such rules.
610. Mr Barr did not address these submissions directly in the Section 42A Report and nor did we receive any direct evidence in support of the deletion of these particular rules.
611. We have already addressed this matter in Section 7.2 above, noting that it is not apparent that the effects of all non-listed activities can be appropriately avoided, remedied or mitigated in the Rural Zone across the District, such that a permitted activity status is the most appropriate way in which to achieve the objectives of Chapter 21. We note that in Stream 6, the council officers recommended that reference to “residential flat” be removed as it was part of a residential unit as defined. That Panel (differently constituted) concluded that, as the definition of “residential unit” included a residential flat, there was no need for a separate activity rule for residential flat, but it would assist plan users if the listing of residential unit identified that such activity included a residential flat and accessory buildings. For consistency, “residential flat” should be deleted from this chapter and recommended Rule 21.4.5 read:

One residential unit, including a single residential flat and any accessory buildings, within any building platform approved by resource consent.

612. We so recommend.
613. We recommend that Rule 21.4.13 be retained as notified and renumbered 21.4.12..

6.13 Rule 21.4.14 – Retail sales from farms

614. As notified, Rule 21.4.14, provided for, as a controlled activity:

“Retail sales of farm and garden produce and wine grown, reared or produced on-site or handicrafts produced on the site and that comply with the standards in Table 5.

Except roadside stalls that meet the following shall be a permitted activity:

- a. *the ground floor area is less than 5m²*
- b. *are not higher than 2.0m from ground level*
- c. *the minimum sight distance from the stall/access shall be 200m*
- d. *the minimum distance of the stall/access from an intersection shall be 100m and, the stall shall not be located on the legal road reserve.*

⁶¹⁵ Submission 608

⁶¹⁶ Submission 806

Control is reserved to all of the following:

- *The location of the activity and buildings*
- *Vehicle crossing location, car parking*
- *Rural amenity and landscape character..”*

as a controlled activity.

615. One submission sought that the rule be amended so as to provide for unrestricted retail⁶¹⁷ and one submission sought that it be amended to a permitted activity for the reason to encourage locally grown and made goods for a more sustainable future⁶¹⁸.
616. These submissions were not directly addressed in the Section 42A Report and nor did we receive any evidence directly in support of these submissions.
617. Given that lack of evidence we recommend that the submissions be rejected.
618. This rule, however, is an example of a situation as we identified in Section 7.5 above, where a permitted activity has been incorporated as an exception within a controlled activity rule. We recommend that the permitted activity be separated out as its own rule, and that the remainder of the rule be retained as notified.
619. Accordingly, we recommend that Rule 21.4.14 be renumbered as 21.4.16 and worded as follows;

Retail sales of farm and garden produce and wine grown, reared or produced on-site or handicrafts produced on the site and that comply with the standards in Table 6, not undertaken through a roadside stall under 21.4.14.

Control is reserved to:

- a. the location of the activity and buildings*
- b. vehicle crossing location, car parking*
- c. rural amenity and landscape character..”*

as a controlled activity.

620. In addition, we recommend a new permitted activity rule numbered 21.4.14 be inserted and worded as follows:

Roadside stalls that meet the standards in Table 6.

621. We further recommend that standards for roadside stalls be inserted into Table 6 worded as follows:

⁶¹⁷ Submission 806

⁶¹⁸ Submission 238

- 21.9.3.1 *The ground floor area of the roadside stall must not exceed 5m²*
- 21.9.3.2 *The height must not exceed 2m²*
- 21.9.3.3 *The minimum sight distance from the roadside stall access must be at least 200m*
- 21.9.3.4 *The roadside stall must not be located on legal road reserve.*

6.14 Rule 21.4.15 – Commercial Activities ancillary to recreational activities

622. As notified, Rule 21.4.15 provided for:

“Commercial activities ancillary to and located on the same site as recreational activities.”
as discretionary activities.

623. One submission sought that the rule be deleted so as to provide for commercial and recreational activities on the same site⁶¹⁹.

624. This submission was not directly addressed in the Section 42A Report, other than implicitly, through a recommendation that it should be rejected as set out in Appendix 2⁶²⁰.

625. Mr Brown in evidence for QPL, considered that the rule should be expanded to provide for *“commercial recreational activities”* as well as *“recreational activities”* so as to provide clarification between these two activities which have separate definitions.⁶²¹

626. Mr Barr, in reply considered that the amendment recommended by Mr Brown went some way to meeting the request of the submitter⁶²² and recommended that the Rule 21.4.15 be amended as follows;

“Commercial activities ancillary to and located on the same site as commercial recreational or recreational activities.”

627. We agree with Mr Brown that for the purposes of clarity, commercial recreational activities need to be incorporated into the rule. We heard no evidence in support of the rule being deleted.

628. Accordingly, we recommend that the activity status remain as discretionary, and that Rule 21.4.15 be renumbered as 21.4.17 and worded as follows;

“Commercial activities ancillary to and located on the same site as commercial recreational or recreational activities.”

6.15 Rule 21.4.16 – Commercial Activities that comply with standards and Rule 21.5.21 Standards for Commercial Activities

629. As notified, Rule 21.4.16, provided for:

⁶¹⁹ Submission 806
⁶²⁰ C Barr, Section 42A Report, Appendix 2, Page 93
⁶²¹ J Brown, Evidence, Page 14, Para 2.20 – 2.21
⁶²² C Barr, Reply, Page 10. Para 4.8

“Commercial recreation activities that comply with the standards in Table 5.”
as a permitted activity.

630. One submission sought that the rule be retained⁶²³ and one submission sought that the rule be amended to include Heli-Skiing as a permitted activity⁶²⁴.

631. Rule 21.5.21 (Table 5 Standards for Commercial Activities) needs to be read in conjunction with Rule 21.4.16. As notified it read as follows:

“Commercial recreation activity undertaken on land, outdoors and involving not more than 10 persons in any one group.”

632. Non-compliance with this standard required consent as a discretionary activity.

633. Two submissions sought that Rule 21.5.21 be retained⁶²⁵, three submissions sought the number of persons be increased to anywhere from 15 – 28⁶²⁶ and one submission sought that number of persons in the group be reduced to 5⁶²⁷.

634. The Section 42A Report did not address the issue of heli-skiing within the definition of commercial recreational activity.

635. Mr Dent in evidence for Totally Tourism, identified that heli-skiing fell with the definition of “commercial recreational activity”. We agree. Mr Dent described a typical heli-skiing activity and referenced the informal airport rules that applied and that heli-skiing activities undertaken on crown pastoral and public conservation land already required Recreation Permits and concessions. To avoid the additional regulation involved in requiring resource consents which would be costly and inefficient Mr Dent recommended that Rule 21.4.6 be reworded as follows;

*“Commercial recreation activities that comply with the standards in Table 5, and commercially guided heli-skiing.”*⁶²⁸

636. This would mean that commercially guided heli-skiing would be a permitted activity, but not be subject to the standards in Table 5. Having agreed with Mr Dent that heli-skiing activities fall within the definition of commercial recreational activity, we do not see how an exemption exempting commercially guided heli-skiing from the standard applied to any other commercial recreation activity for commercially guided heli-skiing can be justified. We address the issue of the numbers of person in a group below. We therefore recommend that the submission of Totally Tourism be rejected.

637. In relation to the permitted activity standard 21.5.21, Mr Barr expressed the opinion in the Section 42A Report that

“... that the limit of 10 people is balanced in that it provides for a group that is commensurate to the size of groups that could be contemplated for informal recreation activities. Ten persons

⁶²³ Submission 806

⁶²⁴ Submission 571

⁶²⁵ Submission 315

⁶²⁶ Submissions 122, 621, 624

⁶²⁷ Submission 489

⁶²⁸ S Dent, Evidence, Page 13, Para 83

*is also efficient in that it would fit a min-van or a single helicopter, which I would consider as one group.*⁶²⁹

638. Mr Brown in evidence for QPL supported the group size of 10 person, as it recognised the small scale, low impact outdoor commercial recreation activities that can be accommodated without the resulting adverse effects on the environment and hence no need to obtain resource consent, compared to large scale activities that do require scrutiny.⁶³⁰

639. Mr Vivian, in evidence for Bungy NZ Limited and Paul Henry Van Asch, was of the opinion that the threshold of 5 people in a group (in the ODP) worked well and changing it to 10 people “... would significantly change how those commercial guided groups are perceived and interact with other users in public recreation areas”⁶³¹. Mr Vivian, also noted potential safety issues as from his experience of applying for resource consents for such activities, safety was a key issue in consideration of any such application.

640. Ms Black, in evidence for RJL, was of the view that the number of persons should align with that of other legislation such as the Land Transport Act 2005, which provides for small passenger vehicles that carry 12 or less people and Park Management plans that provide concession parties of up to 15.⁶³² Mr Farrell, in evidence for RJL, concurred with Ms Black as to the benefit of alignment between the documents and recommended that the rule be reworded as follows:

*“Commercial recreation activity undertaken on land, outdoors and involving not more than ~~10~~ 15 persons in any one group (inclusive of guides).”*⁶³³

641. In reply Mr Barr, recommended increasing the number of persons from 10 to 12 to align with the minivan size, for the reasons set out in Ms Black’s evidence.⁶³⁴

642. Safety in regard to group size may be a factor, but we think that there is separate legislation to address such matters. The alignment between minivan size and other legislation as to the size of any group may be a practical consideration. However, we consider that the more important point is that there are no implications in terms of effects. We also recommend that in both Rules 21.4.16 and Rule 21.5.21, the defined term by used (i.e. commercial recreational activity) for clarity.

643. Accordingly we recommend that apart from that minor clarification and renumbering, Rule 21.4.16 be renumbered 21.4.13 with the Table reference amended, but otherwise remain as notified, and that Rule 21.5.21 be renumbered and worded as follows:

Commercial recreational activities must be undertaken on land, outdoors and must not involve more than 12 persons in any one group.

6.16 Rule 21.4.17 – Cafes and Restaurants

644. There were no submissions on this rule. We recommend it be retained as notified and renumbered as 21.4.18.

⁶²⁹ C Barr, Section 42A Report, Page 48, Para 13.35

⁶³⁰ J Brown, Evidence, Page 14, Para 2.19

⁶³¹ C Vivian, Evidence, Pages 26 – 27, Para 5.7

⁶³² F Black, Evidence, Pages 7 – 8, Para 3.24 – 3.25

⁶³³ B Farrell, Evidence, Page 27, Para 124

⁶³⁴ C Barr, Reply, Page 10, Para 4.8

6.17 Rule 21.4.18 – Ski Area Activities within a Ski Area Sub Zone

645. As notified, Rule 21.4.18, provided for:

“Ski Area Activities within the Ski Area Sub Zone.”

as a permitted activity.

646. One submission sought that the rule be amended to add *“subject to compliance with the standards in Table 7”*⁶³⁵, as Table 1 does not specify what standards apply for an activity to be permitted (Table 7 as notified being the standards for Ski Area Activities within the Ski Area Sub Zones). Two submissions sought that the rule be moved completely into Table 7⁶³⁶. One submission sought that the Rule be amended as follows;

*“Ski Area Activities within the Ski Area Sub Zone and Tourism Activities within the Cardrona Alpine Resort (including Ski Area Activities).”*⁶³⁷.

647. Mr Barr, in the part of the Section 42A Report addressing the submission of Soho Ski Area Ltd, noted that Table 1 generally set out activities and the individual tables set out the standards for those activities.⁶³⁸ Mr Barr identified issues with Table 7. However, we address those matters later in this report. In addressing submissions and evidence on Objective 21.2.6 and the associated policies above, we have already addressed the requested insertion of reference to tourism activities and the specific identification of the Cardrona Alpine Resort, concluding that recognition of tourism activities was appropriate but that the specific identification of the Cardrona Alpine Resort was not; so we do not repeat that here.

648. In Section 7.1 above, we set out our reasoning regarding the overall structural changes to the tables and activities. However, we did not address Ski Activities within Ski Area Sub-Zones in that section. We found the rules on this subject matter to be complicated and the matters listed as standards in Table 7 to actually be activities. In order to provide clarity, we recommend that a separate table be created and numbered to provide for *“Activities within the Ski Area Sub Zones”*.

649. None of the submissions on Rule 21.4.18 sought a change to the activity status for the ski area activities and accordingly, we do not recommend any substantive change to the rule. The end result is therefore that we recommend that the submissions seeking that Rule 21.4.18 be amended to refer to the Table 7 standards, and that it be shifted into a new Table 9, both be accepted in part.

6.18 Rule 21.4.19 – Ski Area Activities not located within a Ski Area Sub Zone

650. As notified, Rule 21.4.19, provided for:

“Ski Area Activities not located within a Ski Area Sub Zone, with the exception of heli-skiing and non-commercial skiing.”

as a non-complying activity.

⁶³⁵ Submission 407

⁶³⁶ Submissions 610, 613

⁶³⁷ Submission 615

⁶³⁸ C Barr, Section 42A Report, Page 57, Para 14.19

651. One submission sought that the rule be deleted⁶³⁹ and one submission sought that the rule be amended or replaced to change the activity status from non-complying to discretionary⁶⁴⁰.
652. In the Section 42A Report, Mr Barr considered that purpose of the rule was to encourage Ski Area Activities to locate within the Ski Area Sub Zones, in part to reduce the adverse effects of such activities on ONLs.⁶⁴¹ We agree. The objectives and policies we addressed above reinforce that position.
653. Mr Barr also noted that his recommended introduction of a policy to provide for non-road transportation systems such as a passenger lift system, which would cross land that is not within a Ski Area Sub Zone, would be in potential conflict with the rule. Accordingly, Mr Barr recommended an exception for passenger lift systems.⁶⁴²
654. Mr Brown, in evidence for Mt Cardrona Station Ltd, agreed with Mr Barr's recommended amendment, but noted that there was no rule identifying the status of passenger lift systems. Mr Brown considered that the status should be controlled or restricted discretionary, subject to appropriate assessment matters.⁶⁴³ In his summary presentation to us at the hearing, Mr Brown advised that having reflected on this matter further, he considered restricted discretionary activity status to be appropriate. He recommended a new rule as follows:

Passenger lift systems not located within a Ski Area Sub Zone.

Discretion is reserved to all of the following:

- a. The route of the passenger lift system and the extent to which the passenger lift system breaks the line and form of the landscape with special regard to skylines, ridges, hills and prominent slopes*
- b. Whether the materials and colours to be used are consistent with the rural landscape of which the passenger lift system will form a part*
- c. Whether the geotechnical conditions are suitable for the passenger lift system and the extent to which they are relevant to the route.*
- d. Lighting*
- e. The ecological values of the land affected by structures and activities*
- f. Balancing environmental considerations with operational requirements*
- g. The positive effects arising from directly linking settlements with ski area sub zones and providing alternative non-vehicular access.⁶⁴⁴*

⁶³⁹ Submission 806

⁶⁴⁰ Submission 615

⁶⁴¹ C Barr, Section 42A Report, Page 64, Para 14.53

⁶⁴² C Barr, Section 42A Report, Pages 64 - 65, Para 14.55

⁶⁴³ J Brown, Evidence, Page 25, Par 2.41

⁶⁴⁴ J Brown, Summary of Evidence, Pages 4-5, Para 17

655. In reply Mr Barr, noted that Mr Brown's recommended amendment would also be subject to the District Wide rules regarding earthworks and indigenous vegetation clearance and as such, Mr Barr considered the activity status and matters of discretion to be appropriate.⁶⁴⁵
656. Also in reply Mr Barr, while in accepting some of the changes suggested by Mr Brown, recommended that activity status for Ski Area Activities not located within a Ski Area Sub Zone remain as non-complying activities, with exceptions as follows;

Ski Area Activities not located within a Ski Area Sub Zone, with the exception of the following:

- a. *Commercial heli skiing not located within a Ski Area Sub Zone is a commercial recreation activity Rule 21.4.16 applies*
- b. *Passenger Lift Systems not located within a Ski Area Sub Zone shall be a restricted discretionary activity.*

Discretion is reserved to all of the following:

- a. *The route of the passenger lift system and the extent to which the passenger lift system breaks the line and form of the landscapes with special regard to skylines, ridges, hills and prominent slopes*
- b. *Whether the materials and colours to be used are consistent with the rural landscape of which the passenger lift system will form a part*
- c. *Whether the geotechnical conditions are suitable for the passenger lift system and the extent to which they are relevant to the route*
- d. *Lighting*
- e. *The ecological values of the land affected by structures and activities*
- f. *Balancing environmental considerations with operational requirements*
- g. *The positive effects arising from directly linking settlements with ski area sub zones and providing alternative non-vehicular access.*⁶⁴⁶

657. Mr Barr provided justification for these changes by way of a brief section 32AA evaluation, noting the effectiveness of the provision with respect to cross zoning regulatory differences.
658. As we have addressed above, we consider that the Ski Area Activities not located within a Ski Area Sub Zone should be non-complying activities as this aligns with the objectives and policies. We think a description of the exceptions is appropriate, but that should not effectively include another rule with different activity status. Rather, if an exception is to have a different activity status, that should be set out as a separate rule.
659. We now turn to the activity status of a passenger lift system outside a Ski Area Sub Zone. As well as the evidence we heard, the Hearing Panel for Stream 11 (Ski Area Sub Zones) heard further evidence on this issue, with specific reference to particular ski areas. That Panel has

⁶⁴⁵ C Barr, Reply, Page 38 – 39, Para 14.3 – 14.5

⁶⁴⁶ C Barr, Reply, Appendix 1, Page 21-11

recommended to us, for the reasons set out in Report 15, that passenger lift systems outside of a Ski Area Sub Zone should be a restricted discretionary activity.

660. We accept and adopt the recommendations of the Stream 11 Panel for the reasons given in Report 15.

661. We recommend that Rule 21.4.19 therefore be reworded, and that a new rule numbered and worded as follows be inserted to address passenger lift systems located outside of Ski Area Sub-Zones. We also recommend that these rules be relocated to under the heading “Other Activities” in Table 1.

| Table 1 | Activities Rural Zone | Activity Status |
|---------|---|-----------------|
| 21.4.25 | Ski Area Activities not located within a Ski Area Sub-Zone, with the exception of the following: <ul style="list-style-type: none"> a. non-commercial skiing which is permitted as recreation activity under Rule 21.4.22; b. commercial heli-skiing not located within a Ski Area Sub-Zone, which is a commercial recreational activity to which Rule 21.4.13 applies; b. Passenger Lift Systems to which Rule 21.4.24 applies. | NC |
| 21.4.24 | Passenger Lift Systems not located within a Ski Area Sub-Zone Discretion is restricted to: <ul style="list-style-type: none"> a. The Impact on landscape values from any alignment, design and surface treatment, including measures to mitigate landscape effects including visual quality and amenity values. b. The route alignment and the whether any system or access breaks the line and form of skylines, ridges, hills and prominent slopes. c. Earthworks associated with construction of the Passenger Lift System. d. The materials used, colours, lighting and light reflectance. e. Geotechnical matters. f. Ecological values and any proposed ecological mitigation works. g. Balancing environmental considerations with operational requirements of Ski Area Activities. h. The positive effects arising from providing alternative non-vehicular access and linking Ski Area Sub-Zones to the roading network. | RD |

6.19 Table 1 - Rule 21.4.20 – Visitor Accommodation

662. As notified, Rule 21.4.20, provided for:

“Visitor Accommodation.”

as a discretionary activity.

663. One submission sought a less restrictive activity status⁶⁴⁷ and one submission sought that visitor accommodation in rural areas be treated differently to that in urban areas due to their placing less demand on services⁶⁴⁸.
664. In the Section 42A Report, Mr Barr considered that comparison of urban area provisions with rural area provision should be treated with caution as those urban provisions were not part of the Stage 1 review of the District Plan. Mr Barr also considered that nature and scale of the visitor accommodation activity and the potential selectivity of the location would be the main factors considered in relation to any proposal. He therefore recommended that the activity status remain discretionary.⁶⁴⁹
665. We heard no evidence in support of the submissions.
666. For the reasons set out in Mr Barr’s Section 42A Report, we recommend that other than renumbering it, the rule remain as notified, subject to a consequential amendment arising from our consideration of visitor accommodation in Ski Area Sub Zones discussed below.

6.20 Table 1 - Rule 21.4.21 – Forestry Activities in Rural Landscapes

667. As notified, Rule 21.4.21, provided for:

“Forestry Activities in Rural Landscapes.”

as a discretionary activity.

668. Two submissions sought that the activity status be amended to discretionary⁶⁵⁰. Mr Barr, in the Section 42A Report, identified that forestry activities were discretionary in the Rural Landscape areas (Rule 21.4.21) and non-complying in ONLs/ONFs (Rule 21.4.1).⁶⁵¹ We heard no evidence in support of the submissions. In reply, Mr Barr included some revised wording to clarify that it is the Rural Landscape Classification areas that the provision applies to.⁶⁵²
669. In the report on Chapter 6 (Report 3), the Hearing Panel recommended that the term used to describe non-outstanding rural landscapes be Rural Character Landscapes. That term should as a consequence be used in this context.
670. The submissions appear to be seeking to retain what was in the Plan as notified. We agree with Mr Barr and recommend that forestry activities remain discretionary in “Rural Character Landscapes”.

6.21 Rule 21.4.22 – Retail Activities and Rule 21.4.23 – Administrative Offices

671. Both of these rules provide for activities within the Rural Industrial Sub-Zone. No submissions were received on these rules. We recommend they be retained as notified, but relocated into Table 10 which lists the activities specifically provided for in this Sub-Zone.

6.22 Rule 21.4.24 – Activities on the surface of lakes and rivers

672. As notified, Rule 21.4.24, provided for:

⁶⁴⁷ Submission 806
⁶⁴⁸ Submission 320
⁶⁴⁹ C Barr, Section 42A Report, Page 103, Para 201.19
⁶⁵⁰ Submissions 339, 706
⁶⁵¹ C Barr, Section 42 A Report, Page 43, Para 13.5
⁶⁵² C Barr, Reply, Appendix 1, Page 21-11

“Activities on the surface of lakes and rivers that comply with Table 9.”

as a permitted activity.

673. One submission generally supported this provision⁶⁵³. Other submissions that were assigned to this provision in Appendix 2 of the section 42A Report, actually sought specific amendments to Table 9 and we therefore deal with those requests later in this report.

674. We have already addressed requests for repositioning the provisions regarding the surface of water in Section 3.4 above, and concluding that reordering and clarification of the activities and standards in the surface of lakes and river table to better identify the activity status and standards was appropriate. Accordingly, we recommend that provision 21.2.24 be moved to Table 12 and renumbered, but that the activity status remain permitted, subject to the provisions within renumbered Table 13.

6.23 Rule 21.4.25 – Informal Airports

675. As notified, Rule 21.4.25, provided for:

“Informal airports that comply with Table 6.”

as a permitted activity.

676. The submissions on this rule are linked to the Rules 21.5.25 and 21.5.26, being the standards applying to informal airports. It is appropriate to deal with those two rules at the same time as considering Rule 21.4.25.

677. As notified, the standards for informal airport Rules 21.5.25 and 21.5.26 (Table 6) read as follows;

| | Table 6 - Standards for Informal Airports | Non-Compliance |
|---------|--|-----------------------|
| 21.5.25 | <p>Informal Airports Located on Public Conservation and Crown Pastoral Land</p> <p>Informal airports that comply with the following standards shall be permitted activities:</p> <p>21.5.25.1 Informal airports located on Public Conservation Land where the operator of the aircraft is operating in accordance with a Concession issued pursuant to Section 17 of the Conservation Act 1987;</p> <p>21.5.25.2 Informal airports located on Crown Pastoral Land where the operator of the aircraft is operating in accordance with a Recreation Permit issued pursuant to Section 66A of the Land Act 1948;</p> <p>21.5.25.3 Informal airports for emergency landings, rescues, fire-fighting and activities ancillary to farming activities;</p> <p>21.5.25.4 In relation to points (21.5.25.1) and (21.5.25.2), the informal airport shall be located a minimum</p> | D |

⁶⁵³ Submission 307

| | Table 6 - Standards for Informal Airports | Non-Compliance |
|---------|--|-----------------------|
| | distance of 500 metres from any formed legal road or the notional boundary of any residential unit or approved building platform not located on the same site. | |
| 21.5.26 | <p>Informal Airports Located on other Rural Zoned Land</p> <p>Informal Airports that comply with the following standards shall be permitted activities:</p> <p>21.5.26.1 Informal airports on any site that do not exceed a frequency of use of 3 flights* per week;</p> <p>21.5.26.2 Informal airports for emergency landings, rescues, fire-fighting and activities ancillary to farming activities;</p> <p>21.5.26.3 In relation to point (21.5.26.1), the informal airport shall be located a minimum distance of 500 metres from any formed legal road or the notional boundary of any residential unit of building platform not located on the same site.</p> <p>* note for the purposes of this Rule a flight includes two aircraft movements i.e. an arrival and departure.</p> | D |

678. There were eleven submissions that sought that Rule 21.4.25 be retained⁶⁵⁴, and six submissions that sought it be deleted⁶⁵⁵ for various reasons including seeking the retention of ODP rules.

679. For Rule 21.5.25, submissions variously ranged from:

- a. Retain as notified⁶⁵⁶
- b. Delete provision⁶⁵⁷
- c. Delete or amend (reduce) set back distances in 21.5.25.4
- d. Amend permitted activities list 21.5.25.3 to include operational requirements of Department of Conservation⁶⁵⁸

680. For Rule 21.5.26, submissions variously ranged from:

- a. Retain as notified⁶⁵⁹
- b. Delete provision⁶⁶⁰
- c. Delete or amend (increase) number of flights in 21.5.26.1⁶⁶¹
- d. Delete or amend (reduce) set back distances in 21.5.26.3⁶⁶²
- e. Amend permitted activities list 21.5.26.2 to only to emergency and farming⁶⁶³, or amend to include private fixed wing operations and flight currency requirements⁶⁶⁴

⁶⁵⁴ Submissions 563, 573, 608, 723, 730, 732, 734, 736, 738, 739, 760, 843

⁶⁵⁵ Submission 109, 143, 209, 213, 500, 833

⁶⁵⁶ Submissions 315, 571, 713

⁶⁵⁷ Submissions 105, 135, 162, 211, 500, 385

⁶⁵⁸ Submission 373

⁶⁵⁹ Submissions 571, 600

⁶⁶⁰ Submissions 93, 105, 162, 209, 211, 385, 883

⁶⁶¹ Submissions 122, 138, 221, 224, 265, 405, 423, 660, 662

⁶⁶² Submissions 106, 137, 138, 174, 221, 265, 382, 405, 423, 660, 723, 730, 732, 734, 736, 738, 739, 760, 784, 843

⁶⁶³ Submission 9

⁶⁶⁴ Submission 373

- f. Amend 21.5.26.1 to read as follows “Informal Airports where sound levels do not exceed limits prescribed in Rule 36.5.14”.
681. In the Section 42A Report, Mr Barr recorded that the change from the system under the ODP where all informal airports required resource consents, to permitted activity status under the PDP was motivated in part by a desire to reduce the duplication of authorisations that were already required from the Department of Conservation or Commissioner of Lands and that details were set out in the Section 32 Report.⁶⁶⁵ Mr Barr also recorded that noise standards were not part of this Chapter, but were rather considered under the Hearing Stream 5 (District Wide Provisions).⁶⁶⁶
682. Our understanding of the combined rules was assisted by the evidence of Dr Chiles. He explained the difficulty in comprehensively quantifying the noise effects from infrequently used airports. We understood that the two New Zealand Standards for airport noise (NZ6805 and NZS6807) required averaging of aircraft sound levels over periods of time that would not adequately represent noise effects from sporadic aircraft movements that are usually associated with informal airports.
683. Dr Chiles explained that the separation distance of 500m required by Rules 21.5.25.4 and 21.5.26.3 should result in compliance with a 50 DB L_{dn} criterion for common helicopter flights unless there were more than approximately 10 flights per day.⁶⁶⁷ Dr Chiles was also satisfied that for fixed wing aircraft, at 500m to the side of the runway there would be compliance with 55 dB L_{dn} and 95 dB L_{AE} for up to 10 flights per day. However, he noted, compliance off the end of the runway may not be achieved until approximately 1 kilometre away.⁶⁶⁸
684. For those occasions where compliance with the noise criteria referred to above could not be achieved, Dr Chiles concluded that the relevant rules in Chapter 36 (recommended Rules 36.5.10 and 36.5.11) would apply. As we understood his evidence, the purpose of the informal airport rules in this zone are to provide a level of usage as a permitted activity that could be expected to comply with the rules in Chapter 36, but compliance would be expected nonetheless.
685. Mr Barr reviewed all the evidence provided in his Reply Statement and recommended amendments to the rules:
- a. providing for Department of Conservation operations on Conservation or Crown Pastoral Land;
 - b. requiring 500m separation from zone boundaries, but not road boundaries; and
 - c. providing for informal airports on land other than Conservation or Crown Pastoral Land to have up to 2 flights per day (instead of 3 per week).
686. We agree that the provision of some level of permitted informal activity in the Rural Zone is appropriate, as opposed to the ODP regime where all informal airports require consent. While we heard from submitters who considered more activity should be allowed as of right, and others who considered no activity should be allowed, we consider Mr Barr and Dr Chiles have proposed a regime that will facilitate the use of rural land by aircraft while protecting rural amenity values. Consequently, we recommend that Rule 21.4.25 be renumbered and amended

⁶⁶⁵ C Barr, Section 42A Report, Page 71, Paras 16.6 – 16.7

⁶⁶⁶ C Barr, Section 42A Report, Pages 70 – 71, Paras 16.3 – 16.4

⁶⁶⁷ Dr S Chiles, EIC, paragraph 5.1

⁶⁶⁸ *ibid*, paragraph 5.2

to refer to the standards in Table 7, and that Rules 21.5.25 and 21.5.26 be renumbered and revised to read:

| | Table 7 - Standards for Informal Airports | Non-Compliance |
|---------|--|-----------------------|
| 21.10.1 | <p>Informal Airports Located on Public Conservation and Crown Pastoral Land</p> <p>Informal airports that comply with the following standards shall be permitted activities:</p> <p>21.10.1.1 Informal airports located on Public Conservation Land where the operator of the aircraft is operating in accordance with a Concession issued pursuant to Section 17 of the Conservation Act 1987;</p> <p>21.10.1.2 Informal airports located on Crown Pastoral Land where the operator of the aircraft is operating in accordance with a Recreation Permit issued pursuant to Section 66A of the Land Act 1948;</p> <p>21.10.1.3 Informal airports for emergency landings, rescues, fire-fighting and activities ancillary to farming activities, or the Department of Conservation or its agents;</p> <p>21.10.1.4 In relation to Rules 21.10.1.1 and 21.10.1.2, the informal airport shall be located a minimum distance of 500 metres from any other zone or the notional boundary of any residential unit or approved building platform not located on the same site.</p> | D |
| 21.10.2 | <p>Informal Airports Located on other Rural Zoned Land</p> <p>Informal Airports that comply with the following standards shall be permitted activities:</p> <p>21.10.2.1 Informal airports on any site that do not exceed a frequency of use of 2 flights* per day;</p> <p>21.10.2.2 Informal airports for emergency landings, rescues, fire-fighting and activities ancillary to farming activities;</p> <p>21.10.2.3 In relation to rule 21.10.2.1, the informal airport shall be located a minimum distance of 500 metres from any other zone or the notional boundary of any residential unit of building platform not located on the same site.</p> <p><small>* note for the purposes of this Rule a flight includes two aircraft movements i.e. an arrival and departure.</small></p> | D |

6.24 Rule 21.4.26 – Building Line Restrictions

687. As notified, Rule 21.4.26, provided for:

“Any building within a Building Restriction Area identified on the Planning Maps.”
as a noncomplying activity.

688. The only submission on this rule⁶⁶⁹ related to a specific building restriction area adjoining and over the Shotover River delta. That submission was deferred to be heard in Hearing Stream 13. We recommend the rule be retained as notified.

6.25 Rule 21.4.27 – Recreational Activities

689. This rule provided for recreation and/or recreational activities to be permitted. There were no submissions on this rule. We recommend it be retained as notified but relocated and renumbered to be the first activity listed under the heading “Other Activities”.

6.26 Rules 21.4.28 & 21.4.29 - Activities within the Outer Control Boundary at Queenstown and Wanaka Airports

690. As notified, Rule 21.4.28, provided for:

*“New Building Platforms and Activities within the Outer Control Boundary - Wanaka Airport
On any site located within the Outer Control Boundary, any new activity sensitive to aircraft noise or new building platform to be used for an activity sensitive to aircraft noise (except an activity sensitive to aircraft noise located on a building platform approved before 20 October 2010).”*

as a prohibited activity.

691. Two submissions sought that the provision be retained⁶⁷⁰. One submission sought that the provision be deleted or be amended so that the approach applied to ASANs located within the Outer Control Boundary, whether in the Airport Mixed Use Zone or the Rural Zone⁶⁷¹, was consistent.

692. The Section 42A Report did not directly address the relief sought by QPL as it applied to this provision. As with his approach to Objective 21.2.7 and the associated policies, Mr Barr did not address this provision directly in the Section 42A Report apart from in Appendix 1, where Mr Barr recommended that the provision be retained⁶⁷². The only additional evidence we received was from Ms O’Sullivan. She explained that Plan Changes 26 and 35 to the ODP had set up regimes in the rural area surrounding Wanaka and Queenstown Airports respectively prohibiting the establishment of any new Activities Sensitive to Aircraft Noise (ASANs) within the OCB of either airport⁶⁷³. She supported Mr Barr’s recommendation to continue this regime in the PDP.

693. We agree with Mr Barr and Ms O’Sullivan. These rules continue the existing resource management regime. We recommend that apart from renumbering, the provision remain worded as notified.

694. As notified, Rule 21.4.29, provided for:

*“Activities within the Outer Control Boundary - Queenstown Airport
On any site located within the Outer Control Boundary, which includes the Air Noise Boundary, as indicated on the District Plan Maps, any new Activity Sensitive to Aircraft Noise.”*
as a prohibited activity.

⁶⁶⁹ Submission 806, opposed by FS1340

⁶⁷⁰ Submissions 433, 649

⁶⁷¹ Submission 806

⁶⁷² C Barr, Section 42A Report, Appendix 1

⁶⁷³ K O’Sullivan, EiC, Section 2

695. Three submissions sought that the provision be retained⁶⁷⁴. Two submissions sought that the provision be deleted⁶⁷⁵. One submission sought the provision be amended to excluded tourism activities from being subject to the provision⁶⁷⁶.
696. The Section 42A Report did not directly address the relief sought by Te Anau Developments Limited (607) as it applied to this provision. Mr Barr, as we noted above, did not address this provision directly in the Section 42A Report apart from in Appendix 1, where he recommended that the provision be retained⁶⁷⁷. Ms O’Sullivan, as discussed above, supported Mr Barr’s recommendation.⁶⁷⁸
697. Mr Farrell, in evidence for Te Anau Developments Limited, considered that the provision prohibited visitor accommodation and community activities that could contribute to the benefits of tourism activities. He was of the view that there was a lack of policy and evidence to justify a prohibited classification of visitor accommodation and community activities.⁶⁷⁹
698. Mr Farrell went on to recommend that the rule or the definition of Activities Sensitive to Aircraft Noise be amended to:
- “a. Exclude tourism activities (as sought by Real Journeys⁶⁸⁰); or*
- b. Exclude visitor accommodation and community activities; or*
- c. Alter the activity status could be amended [sic] so that tourism, visitor accommodation, and community activities are classified as discretionary activities.”⁶⁸¹*
699. From a review of the Te Anau Developments Limited submission, there does not appear to be a reference to an amendment to the definition of ‘Activities Sensitive to Aircraft Noise’. Rather, it seeks to exclude “tourism activities” from the rule. As such, we think that Mr Farrell’s recommended amendments to the definition are beyond scope, because the submission is specific to this rule and the exclusion he recommended would apply also to Wanaka Airport. In addition, it is not axiomatic that “tourism activities” includes visitor accommodation.
700. As to Mr Farrell’s assertion that there is a lack of policy and evidence to justify the prohibited activity classification, we are aware that this provision was part of the PC 35 process which went through to thorough assessment in the Environment Court. While we are not bound to reach the same conclusion as the Environment Court, Mr Farrell did not in our view present any evidence other than claimed benefits from tourism to support his position. In particular, he did not address the extent to which those benefits would be reduced if the rule remained as notified, or the countervailing reverse sensitivity effects on the airport’s operations if it were to

⁶⁷⁴ Submission 271, 433, 649

⁶⁷⁵ Submissions 621, 658

⁶⁷⁶ Submission 607

⁶⁷⁷ C Barr, Section 42A Report, Appendix 1

⁶⁷⁸ K O’Sullivan, Evidence , Page 7, Para 4.3

⁶⁷⁹ B Farrell, Evidence, Page 25, Paras 112 - 115

⁶⁸⁰ On review of Submission 621 (submission point 81) RJL only sought that Rule 21.4.29 be deleted. The submission by Te Anau Developments Limited (607) sought the inclusion of “excluding tourism activities” within the rule.

⁶⁸¹ B Farrell, Evidence, Page 26, Para 116

be amended as suggested so as to call into question the appropriateness of the Environment Court's conclusion.

701. Accordingly, we recommend that apart from renumbering, that provision 21.4.29 remain worded as notified, but renumbered.

6.27 Mining Activities - Rule 21.4.30 and 21.4.31

702. As notified, Rule 21.4.30 stated:

The following mining and extraction activities are permitted:

- a. *Mineral prospecting*
- b. *Mining by means of hand-held, non-motorised equipment and suction dredging, where the total motive power of any dredge does not exceed 10 horsepower (7.5 kilowatt); and*
- c. *The mining of aggregate for farming activities provided the total volume does not exceed 1000m³ in any one year*
- d. *The activity will not be undertaken on an Outstanding Natural Feature.*

703. The submissions on Rule 21.4.30 variously sought:

- a. to add 'exploration' to the list of activities and include motorised mining devices⁶⁸²
- b. to add reference to landscape and significant natural areas as areas where the activity cannot be undertaken⁶⁸³
- c. to delete the restriction under (d) requiring the activity not to be undertaken on Outstanding Natural Features.⁶⁸⁴
- d. to delete the requirement under (c) restricting the mining of aggregate of 1000m³ in any one year to "farming activities"⁶⁸⁵
- e. amendments to ensure sensitive aquifers are not intercepted, and to address rehabilitation.⁶⁸⁶

704. It is also appropriate to consider Rule 21.4.31 at this time, as that rule as notified provided for 'exploration' as a controlled activity. As notified, 21.4.31 stated:

Mineral exploration that does not involve more than 20m³ in volume in any one hectare.

Control is reserved to all of the following:

- *The adverse effects on landscape, nature conservation values and water quality.*

Rehabilitation of the site is completed that ensures:

- *the long term stability of the site.*

⁶⁸² Submission 519

⁶⁸³ Submission 339, 706

⁶⁸⁴ Submission 519

⁶⁸⁵ Submission 806

⁶⁸⁶ Submission 798

- *that the landforms or vegetation on finished areas are visually integrated into the landscape.*
 - *water quality is maintained.*
 - *that the land is returned to its original productive capacity.*
705. Two submissions⁶⁸⁷ to this rule sought the addition of indigenous vegetation as an alternative state that a site should be rehabilitated to.
706. In the Section 42A Report⁶⁸⁸, Mr Barr noted that the NZTM submission seeking to add mineral exploration to Rule 21.4.30, was silent on the deletion of “*mineral exploration*” as a controlled activity in Rule 21.4.31. Mr Barr went on to explain that in his view, that while he accepted the submitter’s request to add a definition of mineral exploration, that activity should remain a controlled activity. Mr Vivian agreed with Mr Barr that while NZTM sought permitted activity for mineral exploration, it did not seek the deletion of Rule 21.4.31 and as such Mr Vivian saw no point in adding mineral exploration to Rule 21.4.30⁶⁸⁹. We agree and recommend that the request for mineral exploration as a permitted activity be rejected and that it remain a controlled activity.
707. We did not receive any evidence on the submission from Queenstown Park Ltd, seeking the expansion of the permitted activity status for mining aggregate (1000m³ in any one year), for activities not restricted to farming. The Section 32 Report records that the activities in Rules 21.4.30 and 21.4.31 were retained from the ODP with minor modifications to give effect to Objectives and Policies 6.3.5, 21.3.5, 21.2.7 and 21.2.8 (as notified).⁶⁹⁰ We do not find the analysis very helpful. On the face of the matter, if the activity is acceptable as a permitted activity for one purpose, it is difficult to understand why it should not be permitted if undertaken for a different purpose. However, in this case, the purpose of the aggregate extraction is linked to the scale of effects.
708. Extraction of 1000m³ of aggregate on a relatively small rural property in order that it might be utilised off-site has an obvious potential for adverse effects. Limiting use of aggregate to farming purposes serves a useful purpose in this regard as well as being consistent with policies seeking to enable farming activities.
709. We therefore recommend that the submission from Queenstown Park Limited be rejected.
710. Mr Barr, in the Section 42A Report, did not consider it necessary to add reference to landscape and significant natural areas as areas where the activity cannot be undertaken, given that standards regarding land disturbance and vegetation clearance are already provided for in in Chapter 33.⁶⁹¹ We heard no evidence in support of the submission. Relying on the evidence of Mr Barr, we recommend that the submission of Mr Atly and Forest & Bird New Zealand be rejected.
711. Mr Barr, in the Section 42A Report, agreed with the submission of Forest & Bird and Mr Atly that rehabilitation to ‘indigenous vegetation’ may be preferable to rehabilitating disturbed land

⁶⁸⁷ Submissions 339, 706

⁶⁸⁸ C Barr, Section 42A Report, Page 108, Para 21.21

⁶⁸⁹ C Vivian, Evidence, Page 25, Para 4.122

⁶⁹⁰ C Barr, Section 42A Report, Page 87

⁶⁹¹ C Barr, Section 42A Report, Page 108-109, Para 21.23

to its original capacity in some circumstances⁶⁹². We agree with Mr Barr that parameters should be included, so that where the land cover comprised indigenous vegetation coverage prior to exploration indigenous vegetation planted as part of rehabilitation must attain a certain standard. We also agree with Mr Barr that it would not be fair on persons responsible for rehabilitation to require indigenous vegetation rehabilitation if the indigenous vegetation didn't comprise a minimum coverage or the indigenous vegetation had been cleared previously for other land uses.

712. Accordingly, we recommend that that an additional bullet point to be added to the matters of control, under Rule 21.4.31, as follows;

Ensuring that the land is rehabilitated to indigenous vegetation where the pre-existing land cover immediately prior to the exploration, comprised indigenous vegetation as determined utilising Section 33.3.3 of Chapter 33.

713. We also consider the matter commencing “Rehabilitation of the site” should be amended by the inclusion of “ensuring” at the commencement to make it a matter of control.

714. Mr Vivian supported the deletion of Rule 21.4.30(d) on the basis that the scale of the activities set out in 21.4.30 (a) and (b) were small and usually confined to river valleys.⁶⁹³ In addition, Mr Vivian noted that the activities in 21.4.30(c) were potentially of a larger scale and as they were permitted on an annual basis, there was the potential for adverse effects on landscape integrity over time. Mr Vivian concluded that 21.4.30(d) should be combined into Rule 21.4.30(c).

715. Having considered Mr Vivian’s evidence in combination with the submissions lodged, we consider it appropriate to create a table containing standards which mining and exploration activities have to meet. In coming to this conclusion we note that notified rule 21.4.30(d) is expressed as a standard, rather than an activity.

716. Consequently, we recommend the insertion of Table 8 which reads:

| | Table 8 – Standards for Mining and Extraction Activities | Non-Compliance |
|----------------|--|-----------------------|
| 21.11.1 | 21.11.1.1 The activity will not be undertaken on an Outstanding Natural Feature. | NC |
| | 21.22.1.2 The activity will not be undertaken in the bed of a lake or river. | |

717. With that change, we agree with Mr Vivian’s suggestion and recommend that Rules 21.4.30 and 21.4.31 read as follows:

Rule 21.4.29 - Permitted:

The following mining and extraction activities, that comply with the standards in Table 8 are permitted:

- a. *Mineral prospecting.*

⁶⁹² C Barr, Section 42A Report, Page 109, Para 21.24

⁶⁹³ C Vivian, Evidence, Page 25, Para 4.125

- b. *Mining by means of hand-held, non-motorised equipment and suction dredging, where the total motive power of any dredge does not exceed 10 horsepower (7.5 kilowatt); and*
- c. *The mining of aggregate for farming activities provided the total volume does not exceed 1000m³ in any one year.*

Rule 21.4.30 - Controlled

Mineral exploration that does not involve more than 20m³ in volume in any one hectare

Control is reserved to:

- a. *The adverse effects on landscape, nature conservation values and water quality.*
- b. *Ensuring rehabilitation of the site is completed that ensures:*
 - i. *the long-term stability of the site.*
 - ii. *that the landforms or vegetation on finished areas are visually integrated into the landscape.*
 - iii. *water quality is maintained.*
 - iv. *that the land is returned to its original productive capacity.*
- c. *That the land is rehabilitated to indigenous vegetation where the pre-existing land cover immediately prior to the exploration, comprised indigenous vegetation as determined utilising Section 33.3.3 of Chapter 33.*

6.28 Rule 21.4.32 – Other Mining Activity

718. As notified, this rule provided that any mining activity not provided for in the previous two rules was a discretionary activity. There were no submissions on this rule. We recommend it be renumbered, but otherwise be retained as notified.

6.29 Rule 21.4.33 – Rural Industrial Activities

719. As notified, this rule listed the following as a permitted activity:

Rural Industrial Activities within a Rural Industrial Sub-Zone that comply with Table 8.

720. The only submission received on this rule was in support⁶⁹⁴. We recommend that this rule be moved to Table 10 – Activities in Rural Industrial Sub Zone, and with our recommended re-arrangement of the tables, we recommend that the rule refer to the standards in Table 11. Otherwise we recommend the rule be retained as notified.

6.30 Rule 21.4.34 – Buildings for Rural Industrial Activities

721. As notified, this rule provided that buildings for rural industrial activities, complying with Table 8, as a permitted activity. No submissions were received on this rule.

722. As with the previous rule, we recommend it be relocated to Table 10 and that it refer to Table 11. However, we also note an ambiguity in the wording of the rule. While, by its reference to Table 8, it is implicit that it only apply to buildings in the Rural Industrial Sub-Zone, we consider the rule would better implement the objectives and policies of the zone if it were explicitly limited to buildings in the Rural Industrial Sub Zone. We consider such a change to be non-substantive and can be made under Cl 16(2) of the First Schedule. On that basis we recommend the rule read:

Buildings for Rural Industrial Activities within the Rural Industrial Sub-Zone that comply with Table 11.

⁶⁹⁴ Submission 315

6.31 Rule 21.4.35 – Industrial Activities at a Vineyard

723. This rule, as notified, provided for industrial activities directly associated with wineries and underground cellars within a vineyard as a discretionary activity.
724. No submissions were received to this rule and we recommend it be renumbered and retained as notified. We also recommend that the heading in Table 1 directly above this rule be changed to read: “Industrial Activities outside the Rural Industrial Sub-Zone”.

6.32 Rule 21.4.36 – Other Industrial activities

725. As notified this rule provided that other industrial activities in the Rural Zone were non-complying. Again, no submissions were received on this rule.
726. We consider there is an element of ambiguity in the rule, particularly with the removal of the Rural Industrial Sub-Zone activities and buildings to a separate table. We recommend this be corrected by rewording the rule to read:

Industrial Activities outside the Rural Industrial Sub-Zone other than those provided for in Rule 21.4.32.

727. We consider this to be a minor, non-substantive amendment that can be made under Clause 16(2).

7 TABLE 2 – GENERAL STANDARDS

7.1 Rule 21.5.1 – Setback from Internal Boundaries

728. As notified, this rule set a minimum setback of 15m of buildings from internal boundaries, with non-compliance requiring consent as a restricted discretionary activity.
729. No submissions were received on this rule and we recommend it be retained as notified with the matters of discretion listed alphanumerically rather than with bullet points.

7.2 Rule 21.5.2 – Setback from Roads

730. As notified Rule 21.5.2 stated:

Setback from Roads

The minimum setback of any building from a road boundary shall be 20m, except, the minimum of any building setback from State Highway 6 between Lake Hayes and Frankton shall be 50m. The minimum setback of any building for other sections of State Highway 6 where the speed limit is 70 km/hr or greater shall be 40m.

Discretion is restricted to all of the following:

- a. Rural Amenity and landscape character*
- b. Open space*
- c. The adverse effects on the proposed activity from noise, glare and vibration from the established road.*

Non-compliance Status – RD

731. One submission sought that the standard be adopted as proposed⁶⁹⁵ and one submission sought that the standard be retained, but that additional wording be added (providing greater setbacks from State Highways for new dwellings) to address the potential reverse sensitivity effects from State Highway traffic noise on new residential dwellings.⁶⁹⁶
732. Mr Barr, in the Section 42A Report, considered that as the majority of resource consents in the Rural Zone were notified or would require consultation with NZTA if on a Limited Access Road, then in his view, the performance standards suggested by NZTA would be better implemented as conditions of consent, particularly if the specific parameters of noise attenuation standard were to change. Mr Barr therefore recommended that the relief sought be rejected.⁶⁹⁷
733. In evidence for NZTA, Mr MacColl, disagreed with Mr Barr’s reasoning, noting that NZTA were often not deemed an affected party and without the proposed rule, District Plan users may assume, incorrectly, that any building outside the setback areas as notified, would be outside the noise effect area, when that may not be the case.⁶⁹⁸ Mr MacColl further suggested that the rule amendments he supported were required in order that the rule be consistent with the objectives and policies of Chapter 3. In response to questions from the Chair, Mr MacColl advised that the NZTA guidelines for setbacks were the same, regardless of the volume of traffic. We sought a copy of the guideline from Mr MacColl, but did not receive it.
734. Mr Barr, in reply, recommended some minor wording amendment to clarify that the rule applied to the setback of buildings from the road, but not in relation to the 80m setback sought by NZTA.
735. Without evidence as to the traffic noise effects and noise levels depending on the volume of traffic and its speed, we are not convinced as to the appropriateness of a blanket 80 metre setback for new dwellings from State Highway 6 where the speed limit is 70 – 100 km/hr. The only change we recommend is that, for clarity the term “Frankton” be replaced with “Shotover River”. We were concerned that using the term “Frankton” could lead to disputes as to where the restriction commenced/ended at that end. It was our understanding from questioning of Mr Barr and Mr MacColl, that it was intended to apply as far as the river.
736. Accordingly, we recommend that it be reworded as follows:

Setback from Roads

The minimum setback of any building from a road boundary shall be 20m, except, the minimum setback of any building from State Highway 6 between Lake Hayes and the Shotover River shall be 50m. The minimum setback of any building for other sections of State Highway 6 where the speed limit is 70 km/hr or greater shall be 40m.

Non-compliance Status – RD

Discretion is restricted to:

- a. rural amenity and landscape character*
- b. open space*

⁶⁹⁵ Submission 600

⁶⁹⁶ Submission 719

⁶⁹⁷ C Barr, Section 42A Report, Page 22, Para 9.6

⁶⁹⁸ A MacColl, EIC, Pages 5-6, Paras 20-21.

c. the adverse effects on the proposed activity from noise, glare and vibration from the established road.

7.3 Rule 21.5.3 – Setback from Neighbours of Buildings Housing Animals

737. As notified, this rule required a 30m setback of any building housing animals from internal boundaries, with a restricted discretionary activity consent required for non-compliance.

738. There were no submissions, and other than listing the matters of discretion alphanumerically, we recommend the rule be adopted as notified.

7.4 Rule 21.5.4 – Setback of buildings from Water bodies

739. As notified Rule 21.5.4 stated:

Setback of buildings from Water bodies

The minimum setback of any building from the bed of a wetland, river or lake shall be 20m.

Discretion is restricted to all of the following:

a. Indigenous biodiversity values

b. Visual amenity values

c. Landscape and natural character

d. Open space

e. Whether the waterbody is subject to flooding or natural hazards and any mitigation to manage the adverse effects of the location of the building

740. Four submissions sought that the standard be adopted as proposed⁶⁹⁹. One submission sought that the standard be amended so that the setback be 5m for streams less than 3m in width⁷⁰⁰. Another submission⁷⁰¹ sought to exclude buildings located on jetties where the purpose of the building is for public transport.

741. In the Section 42A Report, while Mr Barr recognised that the amenity values of a 3m wide stream may not be high, he considered that a 5m setback was too small.⁷⁰² We heard no evidence to the contrary. We agree in part with Mr Barr and note that there would be several other factors, such as natural hazards, that would support a 20m buffer. Accordingly, we recommend that the submission by D & M Columb be rejected.

742. As to the exclusion of buildings located on jetties where the purpose of the building is for public transport, Mr Barr noted that Rules 21.5.40 - 21.5.43 would trigger the need for consent anyway, and Mr Barr did not consider that Rule 21.5.4 generated unnecessary consents. Mr Barr was also of the view that it was the effects of any building that should trigger consent, not whether it was publicly or privately owned.⁷⁰³

⁶⁹⁹ Submissions 339, 384, 600, 706

⁷⁰⁰ Submission 624

⁷⁰¹ Submission 806

⁷⁰² C Barr, Section 42A Report, Page 23, Para 9.9

⁷⁰³ C Barr, Section 42A Report, Page 23, Para 9.10

743. We heard no evidence in support of that submission and concur with Mr Barr that the wording of rule should be retained as notified. Accordingly, we recommend that Rule 21.5.4 be retained as notified.

7.5 Rule 21.5.5 – Dairy Farming

744. As notified, Rule 21.5.5 required that effluent holding tanks, and effluent treatment and storage ponds be located 300m from any formed road or adjoining property with non-compliance a restricted discretionary activity.

745. Submissions on this provision variously sought:

- a. Its retention⁷⁰⁴
- b. Its deletion⁷⁰⁵ (No reasons provided)
- c. The addition of “lake, river” to the list of “formed roads or adjoining property”⁷⁰⁶
- d. The addition of “sheep and beef farms” and “silage pits” to the list of “effluent holding tanks, effluent treatment and storage ponds”⁷⁰⁷
- e. Amendment to reduce the specified distance of 300m to a lesser distance⁷⁰⁸
- f. Amendment of the activity status for non-compliance to discretionary.⁷⁰⁹

746. In the Section 42A Report, Mr Barr considered that the addition of “sheep and beef farms” and “silage pits” would capture too wide a range of activities that are not as intensive as dairying and do not have the same degree adverse effects. As such, Mr Barr recommended that that submission be rejected.⁷¹⁰ As regards the inclusion “lake or river” to the list of “formed roads, rivers and property boundaries”, Mr Barr considered lakes and rivers are not likely to be on the same site as a dairy farm. Hence in his view, the suggested qualifier to the boundary set back is appropriate.⁷¹¹

747. Mr Edgar, in his evidence for Longview Environmental Trust⁷¹², provided examples where the failure to include lake or river, could result in effluent holding tanks, effluent treatment and storage ponds being within 15 metres of the margin of a lake or unformed road. Mr Edgar was also of the view that amendments were required for consistency with Policies 21.2.1.1 and 21.2.1.4. We note that Mr Edgar’s evidence did not go as far as recommending reference to unformed as well as formed roads, presumably as this relief was not sought by Longview Environmental Trust. In reply, Mr Barr agreed with Mr Edgar as to the identification of public areas whose amenity values needed to be managed through the mechanism of setbacks⁷¹³. We agree with Mr Edgar and Mr Barr that the setback should include lakes or rivers and that it is appropriate in achieving the objectives.

748. We heard no evidence in support of the submissions seeking to reduce the 300m separation distance. The submission itself identified that 300m would create infrastructural problems for

⁷⁰⁴ Submissions 335, 384, 600

⁷⁰⁵ Submission 400

⁷⁰⁶ Submission 659

⁷⁰⁷ Submission 642

⁷⁰⁸ Submissions 701, 784

⁷⁰⁹ Submission 659

⁷¹⁰ C Barr, Section 42A Report, Page 24, Para 9.16

⁷¹¹ C Barr, Section 42A Report, Page 24, Para 9.17

⁷¹² S Edgar, EIC, Pages 3-4, Paras 7 - 13

⁷¹³ C Barr, Reply, Page 14, Para 5.1 – 5.2

farmers.⁷¹⁴ We note that compliance with the 300m distance is for permitted activity status and that any non-compliance, for infrastructural reasons, are provided for as a restricted discretionary activity. Given the potential effects of the activity, and the lack of evidence as to an appropriate lesser distance, we consider the distance to be appropriate in terms of achieving the objectives. Accordingly, we recommend that the submission be rejected.

749. We were unable to identify evidence from Mr Barr or Mr Edgar relating to the submission by Longview Environmental Trust⁷¹⁵ seeking the amendment of the activity status for non-compliance from restricted discretionary to discretionary. The reason set out in the submission for the request is for consistency between Rules 21.5.5 and 21.5.6.⁷¹⁶ We consider that there is a difference between Rules 21.5.5 and 21.5.6 in that 21.5.5 applies to an activity and 21.5.6 applies to buildings. This difference is further reflected in there being separate tables for activities and buildings (including farm buildings). This separation does not imply that they should have the same activity status. Accordingly, we recommend that the Longview Environmental Trust submission be rejected.

750. In summary, we recommend that Rule 21.5.5 be relocated into Table 3 Standards for Farm Activities, renumbered as Rule 21.6.1, and worded as follows:

Dairy Farming (Milking Herds, Dry Grazing and Calf Rearing)

All effluent holding tanks, effluent treatment and effluent storage ponds, must be located at least 300 metres from any formed road, lake, river or adjoining property.

Non-compliance RD

Discretion is restricted to:

- a. Odour*
- b. Visual prominence*
- c. Landscape character*
- d. Effects on surrounding properties.*

7.6 Rule 21.5.6 – Dairy Farming

751. Rule 21.5.6, as notified, required milking sheds or buildings used to house or feed milking stock be located 300m from any formed road or adjoining property, with non-compliance as a discretionary activity.

752. Submissions on this provision variously sought:

- a. Its retention⁷¹⁷
- b. The addition of “lake, river” to the list of “formed roads or adjoining property”⁷¹⁸
- c. Amendment to reduce the specified distance of 300m to a lesser distance.⁷¹⁹

⁷¹⁴ Submission 701, Page 2, Para 16

⁷¹⁵ S Edgar, EIC, Pages 3-4, Paras 7 - 13

⁷¹⁶ Submission 659, Page 2

⁷¹⁷ Submissions 335, 384, 600

⁷¹⁸ Submission 659

⁷¹⁹ Submissions 701, 784

753. We have addressed the matter of the reduction of the 300m distance in Section 8.5 above and do not repeat that analysis here. We simply note our recommendation is that, for the same reasons, those submissions be rejected.
754. Mr Barr considered that the rule is appropriate in a context where farm buildings can be established as a permitted activity on land holdings greater than 100ha.⁷²⁰
755. As regards the addition of lakes and rivers, Mr Barr, again in the Section 42A Report, noted that farm buildings were already addressed under Rule 21.5.4 (as notified) which required a 20m setback from water bodies and therefore, in his view, the submission should be rejected.
756. Mr Edgar, in evidence, raised similar issues with this rule as with 21.5.5 discussed above. In reply, Mr Barr agreed as to the appropriateness of the inclusion of rivers and lakes. Following the same reasoning, we agree with Mr Edgar and Mr Barr that the setback of buildings from water bodies should include recognition of their amenity values. Accordingly, we recommend that Rule 21.5.6 be relocated into Table 5 Standards for Farm Buildings, be renumbered and worded as follows;

| | | |
|--------|---|---|
| 21.8.4 | Dairy Farming (Milking Herds, Dry Grazing and Calf Rearing) All milking sheds or buildings used to house or feed milking stock must be located at least 300 metres from any adjoining property, lake, river or formed road. | D |
|--------|---|---|

7.7 Rule 21.5.7 – Dairy Farming

757. Rule 21.5.7, as notified, read as follows;

| | | |
|--|--|----|
| | Dairy Farming (Milking Herds, Dry Grazing and Calf Rearing) Stock shall be prohibited from standing in the bed of, or on the margin of a water body. For the purposes of this rule: a. Margin means land within 3.0 metres from the edge of the bed b. Water body has the same meaning as in the RMA, and also includes any drain or water race that goes to a lake or river. | PR |
|--|--|----|

758. Submissions on this rule variously sought that it be retained⁷²¹, be deleted⁷²², be widened or clarified to include other livestock including “deer, beef”⁷²³ or expressed concern regarding it overlapping Regional Plan rules⁷²⁴.
759. In the Section 42A Report, Mr Barr considered that dairy farming was more intensive than traditional sheep and beef grazing with a greater potential to damage riparian margins and contaminate waterbodies. Mr Barr considered that the effects of stock in waterways was not only a water quality issue but also a biodiversity, landscape and amenity value issue, and that the proposed rule complemented the functions of the Otago Regional Council.⁷²⁵

⁷²⁰ C Barr, Section 42A Report, Page 24, Para 9.20

⁷²¹ Submission 335, 384

⁷²² Submission 600

⁷²³ Submission 117, 289, 339, 706, 755

⁷²⁴ Submission 798

⁷²⁵ C Barr, Section 42A Report, Pages 25 – 27, Paras 9.24 – 9.36

760. In evidence for Federated Farmers, Mr Cooper raised the issue of confusion for plan users between rules in the Regional Water Plan and Rule 21.5.7. He considered that this was not fully addressed in the Section 32 Report.⁷²⁶ We agree.

761. To us, this is a clear duplication of rules that does not meet the requirements of section 32 as being the most effective and efficient way of meeting the objectives of the QLDC plan. Accordingly, we recommend that the submission of Federated Farmers be accepted and Rule 21.5.7, as notified, be deleted.

7.8 Rule 21.5.8 – Factory Farming

762. As notified, this rule stated in relation to factory farming (excluding the boarding of animals):

Factory farming within 2 kilometres of a Residential, Rural Residential, Rural Lifestyle, Township, Rural Visitor, Town Centre, Local Shopping Centre or Resort Zone.

763. Non-compliance required consent as a discretionary activity.

764. The only submissions on this rule supported its retention⁷²⁷, however it has a number of problems. First, it lists zones which are not notified as part of stage 1 (or Stage 2) of the PDP, notably the Rural Visitor and Township. It also lists Resort Zones as if that is a zone or category, which it is not in the PDP.

765. The most significant problem with the rule, however, is that it appears the author has confused standard and activity status. Given that our recommended Rule 21.4.3 classifies factory farming of pigs or poultry as permitted activities, it appears to be inconsistent that such activities would be discretionary when they were located more than 2 kilometres from the listed zones, but permitted within 2 kilometres. We recommend this be corrected under Clause 16(2) of the First Schedule by wording this rule as:

Factory farming (excluding the boarding of animals) must be located at least 2 kilometres from a Residential, Rural Residential, Rural Lifestyle, Town Centre, Local Shopping Centre Zone, Millbrook Resort Zone, Waterfall Park Zone, or Jacks Point Zone.

766. We also recommend it be renumbered and relocated into Table 3.

7.9 Rule 21.5.9 – Factory Farming

767. This rule, as notified, set standards that factory farming of pigs were to comply with. Non-compliance required consent as a non-complying activity. No submissions were received to this rule and we recommend it be adopted as notified with a minor wording changes to make it clear it is a standard, and renumbered and relocated into Table 3.

7.10 Rule 21.5.10 – Factory Farming of Poultry

768. This rule, as notified, set standards that factory farming of poultry were to comply with. Non-compliance required consent as a non-complying activity. No submissions were received to this rule and we recommend it be adopted as notified with a minor wording changes to make it clear it is a standard, and renumbered and relocated into Table 3.

⁷²⁶ D Cooper, EIC, Para 44

⁷²⁷ Submissions 335 and 384

7.11 Rule 21.5.11 – Factory Farming

769. As notified, this rule read:

Any factory farming activity other than factory farming of pigs or poultry.

770. Non-compliance was listed as non-complying. Again there were no submissions on this rule.

771. It appears to us that this rule is intended as a catch-all activity status rule, rather than a standard. We recommend it be retained as notified, but relocated into Table 1 and numbered as Rule 21.4.4.

7.12 Rule 21.5.12 – Airport Noise – Wanaka Airport

772. As notified, this rule read:

Alterations or additions to existing buildings, or construction of a building on a building platform approved before 20 October 2010 within the Outer Control Boundary, shall be designed to achieve an internal design sound level of 40 dB L_{dn}, based on the 2036 noise contours, at the same time as meeting the ventilation requirements in Table 5, Chapter 36. Compliance can either be demonstrated by submitting a certificate to Council from a person suitably qualified in acoustics stating that the proposed construction will achieve the internal design sound level, or by installation of mechanical ventilation to achieve the requirements in Table 5, Chapter 36.

773. Non-compliance required consent as a non-complying activity.

774. The only submission⁷²⁸ on this rule sought that it be retained.. As a consequence of recommendations made by the Hearing Stream 5 Panel, Table 5 has been deleted from Chapter 36. The reference should be to Rule 36.6.2 in Chapter 36.

775. We also recommend a minor change to the wording so that the standard applies to buildings containing Activities Sensitive to Aircraft Noise, consistent with the following rule applying to Queenstown Airport. Thus, we recommend that the standard, renumbered as Rule 21.5.5, read:

Alterations or additions to existing buildings, or construction of a building on a building platform approved before 20 October 2010 that contain an Activity Sensitive to Aircraft Noise and are within the Outer Control Boundary, must be designed to achieve an internal design sound level of 40 dB L_{dn}, based on the 2036 noise contours, at the same time as meeting the ventilation requirements in Rule 36.6.2, Chapter 36. Compliance can either be demonstrated by submitting a certificate to Council from a person suitably qualified in acoustics stating that the proposed construction will achieve the internal design sound level, or by installation of mechanical ventilation to achieve the requirements in Rule 36.6.2, Chapter 36.

7.13 Rule 21.5.13 – Airport Noise – Queenstown Airport

776. As notified, this rule contained similar provisions as Rule 21.5.12, albeit distinguishing between buildings within the Air Noise Boundary and those within the Outer Control Boundary. Again, there was only one submission⁷²⁹ in respect of this rule, and that submission sought that the rule be retained.

⁷²⁸ Submission 433, opposed by FS1030, FS1097 and FS1117

⁷²⁹ Submission 433, opposed by FS1097 and FS1117

777. Subject to amending the standard to refer to Rule 36.6.2 in place of Table 5 in Chapter 36 and other minor word changes, we recommend the rule be renumbered 21.5.6 and adopted as notified.

8 TABLE 3 – STANDARDS FOR STRUCTURES AND BUILDINGS

8.1 Rule 21.5.14 - Structures

778. Rule 21.5.14, as notified, read as follows;

| | | |
|----------------|--|----|
| 21.5.14 | <p>Structures</p> <p>Any structure within 10 metres of a road boundary, which is greater than 5 metres in length, and between 1 metre and 2 metres in height, except for:</p> <p>21.5.14.1 post and rail, post and wire and post and mesh fences, including deer fences;</p> <p>21.5.14.2 any structure associated with farming activities as defined in this plan.</p> <p>Discretion is restricted to all of the following:</p> <ol style="list-style-type: none"> a. Effects on landscape character, views and amenity, particularly from public roads b. The materials used, including their colour, reflectivity and permeability c. Whether the structure will be consistent with traditional rural elements. | RD |
|----------------|--|----|

779. One submission sought that the rule be retained⁷³⁰, two sought that “nature conservation values” be added the matters of discretion⁷³¹, one submission sought that 21.5.14.2 be amended without specifying such amendments⁷³², and another sought that 21.5.14.2 be amended to read “*any structure associated with farming activities as defined in this Plan. This includes any structures associated with irrigation including centre pivots and other irrigation infrastructure*”⁷³³. Lastly, two submissions sought that 21.5.14 be amended to be restricted to matters that are truly discretionary⁷³⁴.

780. We also note that there were two submissions seeking the heading for Table 3 as notified be amended to specifically provide for irrigation structures and infrastructure.⁷³⁵

781. Mr Barr, in Appendix 2 of the Section 42A Report⁷³⁶, considered that applying nature conservation values to the matters of discretion would be too broad as it would encapsulate ecosystems, hence removing the specificity of the restricted discretionary status and the reason for needing a consent. We heard no other evidence on this matter. We agree with Mr Barr that the relief sought would make the discretion too wide and therefore not be effective in

⁷³⁰ Submission 335, 384

⁷³¹ Submissions 339, 706

⁷³² Submission 701

⁷³³ Submissions 784

⁷³⁴ Submission 701, 784

⁷³⁵ Submissions 701, 784

⁷³⁶ C Barr, Section 42A Report, Appendix 2, Page 107

achieving the objective. Accordingly, we recommend that those submissions be rejected. We note that Mr Atly and Forest & Bird made requests for similar relief to Rules 21.5.15 – 21.5.17. We recommend that those submissions be rejected for the same reasons.

782. Mr Barr, in Appendix 2 of the Section 42A Report⁷³⁷, considered that irrigators were not buildings, as per the QLDC Practice Note⁷³⁸ and therefore did not require specific provisions. We heard no other evidence on this matter. We agree with Mr Barr that irrigators are not buildings and therefore the amendments sought are not required. Accordingly we recommend that those submissions be rejected. This similarly applies to the submissions requesting the change to the Table 3 Heading.
783. In the Section 42A Report, Mr Barr addressed a range of submissions that sought that the matters of discretion be tightened, and specifically the removal of reference to “rural amenity values’ in the consent of Rule 21.5.18⁷³⁹. We address all the submissions on this matter at Rule 21.5.18.
784. In line with our recommendation in Section 7.1 regarding rule and table structure, we recommend that Rule 21.5.14 be relocated to Table 4, renumbered and worded as follows:

| | | |
|---------------|---|--|
| 21.7.1 | <p>Structures Any structure which is greater than 5 metres in length, and between 1 metre and 2 metres in height must be located a minimum distance of 10 metres from a road boundary, except for:</p> <p>21.5.14.1 post and rail, post and wire and post and mesh fences, including deer fences;</p> <p>21.5.14.2 any structure associated with farming activities as defined in this plan.</p> | <p>RD Discretion is restricted to:</p> <p>a. Effects on landscape character, views and amenity, particularly from public roads</p> <p>b. The materials used, including their colour, reflectivity and permeability</p> <p>c. Whether the structure will be consistent with traditional rural elements.</p> |
|---------------|---|--|

8.2 Rule 21.5.15 - Buildings

785. Rule 21.5.15, as notified read as follows;

⁷³⁷ C Barr, Section 42A Report, Appendix 2, Page 107

⁷³⁸ QLDC – Practice Note 1/2014

⁷³⁹ Submission 600

| | | |
|---------|--|----|
| 21.5.15 | <p>Buildings</p> <p>Any building, including any structure larger than 5m², that is new, relocated, altered, reclad or repainted, including containers intended to, or that remain on site for more than six months, and the alteration to any lawfully established building are subject to the following:</p> <p>All exterior surfaces shall be coloured in the range of browns, greens or greys (except soffits), including;</p> <p>21.5.15.1 Pre-painted steel and all roofs shall have a reflectance value not greater than 20%; and,</p> <p>21.5.15.2 All other surface finishes shall have a reflectance value of not greater than 30%.</p> <p>21.5.12.3 In the case of alterations to an existing building not located within a building platform, it does not increase the ground floor area by more than 30% in any ten year period.</p> <p>Discretion is restricted to all of the following:</p> <ol style="list-style-type: none"> a. External appearance b. Visual prominence from both public places and private locations c. Landscape character d. Visual amenity. | RD |
|---------|--|----|

786. One submission sought that the rule be retained⁷⁴⁰; two sought that the reference to colour be removed⁷⁴¹; one submission sought that 21.5.15.1 be deleted⁷⁴²; one submission sought that wording be amended for clarity and that the reflectance value not apply to locally sourced schist⁷⁴³; another submission sought amendments such that the area be increased to 10m² and that the reflectance value be increased to 36% for walls and roofs, and a number of finishes to be excluded⁷⁴⁴; two submissions sought that buildings within Ski Area Sub-Zones be excluded from these requirements⁷⁴⁵; one submission sought that 21.5.15.3 be less restrictive and amended to 30% in any 5 year period⁷⁴⁶; lastly, one submission sought the benefits of the buildings to rural sustainable land use be added as a matter of discretion.⁷⁴⁷

787. In the Section 42A Report, Mr Barr acknowledged that the permitted limits were conservative, but overall, considered that the provisions as notified would reduce the volume of consents that were required by the ODP⁷⁴⁸, and that these issues had been fully canvassed in the Section 32 Report, which concluded that the ODP rules were inefficient.⁷⁴⁹ Mr Barr also considered that for long established buildings and any non-compliance with the standards, the proposed rules allow case by case assessment.⁷⁵⁰ We concur with Mr Barr that the shift from controlled activity under the ODP to permitted under the PDP, subject to the specified standards, is a more efficient approach to controlling the effects of building colour.

⁷⁴⁰ Submission 600

⁷⁴¹ Submissions 368, 829

⁷⁴² Submission 411

⁷⁴³ Submission 608

⁷⁴⁴ Submission 368

⁷⁴⁵ Submissions 610, 613

⁷⁴⁶ Submission 829

⁷⁴⁷ Submissions 624

⁷⁴⁸ C Barr, Section 42A Report, page 34, paragraph 11.13

⁷⁴⁹ C Barr. Section 42A Report, Pages 37 – 38, Paras 12.2, 12.5

⁷⁵⁰ C Barr. Section 42A Report, Page 38, Paras 12.3 – 12.5

788. Mr Barr did not consider that the exclusion of certain natural materials from the permitted activity standards to be appropriate, recording difficulties with interpretation and potential lack of certainty⁷⁵¹. However, in an attempt to provide some ability for landowners to utilise natural materials as a permitted activity, Mr Barr recommended slightly revising wording of the standard⁷⁵².
789. We heard detailed evidence for Darby Planning from Ms Pflüger, a landscape Architect, and for QLDC from Dr Read, also a landscape architect, that schist has no LRV, and concerning the difference between dry stacked schist and bagged schist⁷⁵³. The latter was considered by Dr Read to be inappropriate due to its resemblance to concrete walls. Ms Pflüger, on the other hand, was of the view that bagged schist was sufficiently different to concrete walls as to be appropriate in the landscape context of the district. Mr Ferguson, in his evidence for Darby Planning, relying on the evidence of Ms Pflüger, considered that schist should be excluded from the identified surfaces with LRV.⁷⁵⁴
790. In his Reply Statement, Mr Barr maintained his opinion that a list of material should not be included in this rule, as *“over the life of the district plan there will almost certainly be other material that come onto the market and it would be ineffective and inefficient if these materials required a resource consent because they were not listed.”*⁷⁵⁵
791. We agree in part with Mr Barr’s recommended amendments:
- a. To exclude soffits, windows and skylights (but not glass balustrades) from the exterior surfaces that have colour and reflectivity controls; and
 - b. To include a clarification in 21.5.15.2 (as notified) that it includes cladding and built landscaping that cannot be measured by way of light reflective value.
792. However, we disagree with his view that the inclusion of an exemption for schist from the light reflective control would somehow lead to inefficiencies due to other materials coming on the market. We agree with Ms Pflüger that incorporating schist into buildings is an appropriate response to the landscape in this district. We also consider that the term “luminous reflectance value” proposed by Mr Barr is more readily understood if phrased “light reflectance value”.
793. Mr Barr in the Section 42A Report, agreed that Rule 21.5.15 need not apply to the Ski Area Sub Zones, because these matters were already provided for by the controlled activity status for the construction and alteration of buildings in those Sub-Zones⁷⁵⁶. Accordingly, we accept Mr Barr’s recommendation to clarify that position in this rule and recommend that the submissions on this aspect be accepted. We note that the same submission issue applies to Rule 21.5.16⁷⁵⁷ and we reach a similar recommendation. As a consequence, we do not address this matter further.
794. Accordingly, with other minor changes to the wording, we recommend that Rule 21.5.15 be relocated into Table 4, renumbered, and worded as follows:

⁷⁵¹ C Barr, Section 42A Report, Page 39, Paras 12.9 – 12.10

⁷⁵² C Barr, Section 42A Report, page 39-40, paragraph 12.13

⁷⁵³ Y Pflüger, EIC, Pages 13 -14, Paras 7.3 – 7.5 and Dr M Read, EIC, Pages 8 – 9, Paras 5.2 – 5.6

⁷⁵⁴ C Ferguson, EIC, Page 14, Para 65

⁷⁵⁵ C Barr, Reply Statement, page 23, paragraph 7.4

⁷⁵⁶ C Barr, Section 42A Report, Page 41, Para 12.19

⁷⁵⁷ Submissions 610, 613

| | | |
|----------------------|---|---|
| <p>21.7.2</p> | <p>Buildings</p> <p>Any building, including any structure larger than 5m², that is new, relocated, altered, reclad or repainted, including containers intended to, or that remain on site for more than six months, and the alteration to any lawfully established building, are subject to the following:</p> <p>All exterior surfaces* must be coloured in the range of browns, greens or greys, including;</p> <p>21.7.2.1 Pre-painted steel and all roofs must have a light reflectance value not greater than 20%; and,</p> <p>21.7.2.2 All other surface** finishes, except for schist, must shall have a light reflectance value of not greater than 30%.</p> <p>21.7.2.3 In the case of alterations to an existing building not located within a building platform, it does not increase the ground floor area by more than 30% in any ten year period.</p> <p>Except this rule does not apply within the Ski Area Sub-Zones.</p> <p>* Excludes soffits, windows and skylights (but not glass balustrades).</p> <p>** Includes cladding and built landscaping that cannot be measured by way of light reflectance value but is deemed by the Council to be suitably recessive and have the same effect as achieving a light reflectance value of 30%.</p> | <p>RD</p> <p>Discretion is restricted to:</p> <ol style="list-style-type: none"> a. external appearance; b. visual prominence from both public places and private locations; c. landscape character; d. visual amenity. |
|----------------------|---|---|

8.3 Rule 21.5.16 – Building Size

795. Rule 21.5.16, as notified read as follows;

| | | |
|----------------|--|-----------|
| <p>21.5.16</p> | <p>Building size</p> <p>The maximum ground floor area of any building shall be 500m².</p> <p>Discretion is restricted to all of the following:</p> <ol style="list-style-type: none"> a. External appearance b. Visual prominence from both public places and private locations c. Landscape character d. Visual amenity e. Privacy, outlook and amenity from adjoining properties. | <p>RD</p> |
|----------------|--|-----------|

796. One submission sought that this rule be retained⁷⁵⁸ and two submissions sought that the rule be deleted⁷⁵⁹.
797. We note that at the hearing on 18 May 2016, Mr Vivian, appearing among others for Woodlot Properties, withdrew submission 501 relating to Rule 21.5.16.
798. The reasons contained in the remaining submission seeking deletion suggested that there were circumstances on large subdivided lots where larger houses could be appropriate and that restricting the size of the houses would have a less acceptable outcome. The submitters considered that each should be judged on its own merit and that restrictions on size were already in place via the defined building platform.
799. In the Section 42A Report, Mr Barr noted that the rule was part of the permitted activity regime for buildings in the Rural Zone and that the purpose of the limit was to provide for the assessment of buildings that may be of a scale that is likely to be prominent. Mr Barr noted that buildings of 1000m² were not common and that the rule provided discretion as to whether additional mitigation was required due to the scale of the building.⁷⁶⁰
800. We agree with Mr Barr. Completely building out a 1000m² building platform is not an appropriate way to achieve the objectives of the PDP and, in our view, the 500m² limit enables appropriately scaled buildings. Proposals involving larger floor plates can still be considered under the discretion for buildings greater than 500m².
801. Accordingly, we recommend that the submission seeking the deletion of the rule be rejected and the rule be relocated into Table 4, renumbered and amended to be worded as follows:

| | | |
|---------------|---|---|
| 21.7.3 | <p>Building size</p> <p>The ground floor area of any building must not exceed 500m².</p> <p>Except this rule does not apply to buildings specifically provided for within the Ski Area Sub-Zones.</p> | <p>RD</p> <p>Discretion is restricted to:</p> <ul style="list-style-type: none"> a. external appearance; b. visual prominence from both public places and private locations; c. landscape character; d. visual amenity; e. privacy, outlook and amenity from adjoining properties. |
|---------------|---|---|

8.4 Rule 21.5.17 – Building Height

802. Rule 21.5.17, as notified limited the height of buildings to 8m. Two submissions sought that rule be amended, one to exclude the rule from applying to passenger lift systems⁷⁶¹ and one to exclude the rule from applying to mining buildings⁷⁶². One submission sought that the rule be retained as notified⁷⁶³.

⁷⁵⁸ Submission 600

⁷⁵⁹ Submission 368, 501

⁷⁶⁰ C Barr, Section 42A Report, Pages 40-41, Paras 12.15 – 12.18

⁷⁶¹ Submission 407

⁷⁶² Submission 519

⁷⁶³ Submission 600

803. As regards exclusion of passenger lift systems from the rule, we note that this is related to our discussion on the definition of passenger lifts systems in paragraphs 191 – 193 where we recommended that this matter should be addressed in the definitions hearing.
804. That said, in evidence for Mt Cardrona Station Ltd, Mr Brown considered that passenger lift systems should be excluded from the general standards applying to buildings and structures in the same way that farm buildings are exceptions⁷⁶⁴, although he did not discuss any of the rules in Table 3 in detail.
805. The submission of NZTM (519) seeking exclusion of mining building from this rule was also framed in the general. Mr Vivian’s evidence⁷⁶⁵ addressed this submission, opining that mining buildings necessary for the undertaking of mining activities could be treated much the same way as farm buildings, as they would be expected in the landscape where mining occurs.
806. We noted above, in discussing the definition of Passenger Lift Systems, (Section 5.16) Mr Fergusson’s understanding that ski tows and machinery were exempt from the definition of building in the Building Act. Other than that evidence, we were not provided with any reasons why passenger lift systems should be excluded from this rule. If Mr Fergusson’s understanding is correct, then the pylons of passenger lift systems would not be subject to the rule in any event. In the absence of clear evidence justifying the exclusion of passenger lift systems from the effect of this rule we are not prepared to recommend such an exclusion.
807. Turning to the NZTM submission, we consider that mining building buildings are not in the same category as farm buildings. The policy direction of this zone is to enable farming as the main activity in the zone. The separate provisions for farm buildings recognise the need for such buildings so as to enable the farming activity. However, such buildings are constrained as to frequency in the landscape, location, size, colour and height. In addition, mining, other than for farming purposes, cannot occur without a resource consent. While Mr Vivian may be correct that one would expect buildings to be associated with a mine, without detailed evidence on what those buildings may entail and how any adverse effects of such buildings could be avoided, we are unable to conclude that some separate provision should be made for mining buildings.
808. Accordingly, we recommend that apart from relocation into Table 4, renumbering and minor wording changes, Rule 21.5.17 be retained as notified.

9 TABLE 4 – STANDARDS FOR FARM BUILDINGS

9.1 Rule 21.5.18 – Construction or Extension to Farm Buildings

809. Rule 21.5.18, as notified, set out the permitted activity standards for farm buildings (21.5.18.1 – 21.5.18.7) and provided matters of discretion for a restricted discretionary activity status when the standards were not complied with.
810. One submission opposed farm buildings being permitted activities and sought that provisions of the ODP be rolled over in their current form.⁷⁶⁶ We have already addressed that matter in Section 7.4 above and have recommended that submission be rejected. In the Section 42A Report, however, Mr Barr relied on that submission and the evidence of Dr Read that a density of 1 farm building per 25 hectares (Rule 21.5.18.2 as notified) created the risk to the landscape from a proliferation of built form, as the basis for his recommendation that a density for farm

⁷⁶⁴ J Brown, EIC, Page 24, Paras 2.39 – 2.40

⁷⁶⁵ C Vivian, EIC, page 21, paragraphs 4.95-4.96

⁷⁶⁶ Submission 145

buildings of one per 50 hectares was more appropriate⁷⁶⁷. No other evidence was provided on this provision. We recommend that, subject to minor wording changes to make the rule clearer, Rule 12.5.18.2 be adopted as recommended by Mr Barr.

811. There were other submissions on specific aspects of 21.5.18 that we address now.
812. One submission sought that 21.5.18.3 be amended so that containers located on ONFs would be exempt from this rule⁷⁶⁸. Mr Barr did not address this matter directly in the Section 42A Report. Mr Vivian addressed this matter in evidence suggesting that provision for small farm buildings could be made⁷⁶⁹, but gave no particular reasons as to how he reached that opinion. Given the policy direction of the PDP contained in Chapters 3 and 6, we consider to exempt containers from this rule would represent an implementation failure. We recommend that submission be rejected.
813. One submission sought that 21.5.18.4 be amended to provide for buildings up to 200m² and 5m in height.⁷⁷⁰
814. Mr Barr, in the Section 42A Report, relying on the evidence of Dr Read as to the importance of landscape, considered the proposed rule as notified provided the appropriate balance between providing for farm buildings and ensuring landscape values were maintained. Mr Barr also considered that the rule was not absolute and provided for proposals not meeting the permitted standards to be assessed for potential effects on landscape and visual amenity.
815. We heard no evidence in support of the submission. We agree with and adopt the reasons of Mr Barr. Accordingly, we recommended that the submission be rejected.
816. One submission sought that the permitted elevation for farm buildings be increased from 600 metres above sea level (masl) to 900 masl⁷⁷¹. In the Section 42A Report, Mr Barr noted that this provision had been brought across from the ODP, acknowledged that there were some farms with areas over 600 masl, but considered that the 600 masl cut-off was appropriate because areas at the higher elevation were visually vulnerable.⁷⁷²
817. This is another area where we see that the permitted activity status for farming needs to be balanced against its potential adverse effects on landscape and visual amenity. We consider that the 600 masl cut-off is the most appropriate balance in terms of the rule achieving the objective. Accordingly, we recommend that the submission be rejected.
818. Two submissions opposed the open-ended nature of the matters of discretion that applied to this provision through the inclusion of reference to rural amenity values⁷⁷³. We note these submitters opposed other provisions in the standards of this chapter on a similar basis. Jeremy Bell Investment Limited (Submission 784) considered that the matters of discretion were so wide that they effectively made the provision a fully discretionary activity.

⁷⁶⁷ C Barr, Section 42A Report, Page 31, Para 10.19

⁷⁶⁸ Submission 519

⁷⁶⁹ C Vivian, EIC, Page 21, Para 4.100

⁷⁷⁰ Submission 384

⁷⁷¹ Submission 829

⁷⁷² C Barr, Section 42A Report, Page 29, Para 10.10

⁷⁷³ Submission 600, 784

819. In the Section 42A Report, Mr Barr considered that the matters of discretion related to the effects on landscape and were consistent with the ODP in this regard. However, Mr Barr went on to compare the matters of control for farm buildings under the ODP with the matters of discretion under the PDP, concluding that the ODP matters of control nullified the controlled activity status. Mr Barr acknowledged that the “scale” and “location” were broad matters, but he remained of the view that they were relevant and should be retained.⁷⁷⁴
820. We heard no evidence in support of these submissions. We also note that the change in approach of the PDP, providing for farm buildings as permitted activities, is accompanied by objectives and policies to protect landscape values. We agree with Mr Barr where, in the Section 42A Report, he observes that the matters of discretion relate to landscape and not other matters such as vehicle access and trip generation, servicing, natural hazards or noise. While the matters of discretion are broad, they are in line with the relevant objectives and policies.
821. Nonetheless, we questioned Mr Barr as to relevance of “location” and “scale” as matters of discretion given that matters of discretion listed in this rule already provide for these matters.
822. In reply, Mr Barr noted the importance of “location” and “scale”, observing that they were specifically identified in Policy 21.2.1.2 (as notified) but considered that “... *The matters of discretion would better suit the rural amenity, landscape character, privacy and lighting being considered in the context of the scale and location of the farm building.*”⁷⁷⁵ Mr Barr, went on to recommend rewording of the matters of discretion so that location and scale are considered in the context of the other assessment matters. We agree and recommend that the wording of the matters of discretion be modified accordingly. Otherwise, we recommend that the submissions of Federated Farmers and JBIL be rejected.
823. Another submission sought that wahi tupuna be added to matters of discretion where farm buildings affect ridgelines and slopes⁷⁷⁶.
824. Mr Barr, in the Section 42A Report, considered that this matter was already addressed in Policy 21.2.1.7 and that as it pertained to ridgelines and slopes, it was already included in the matters of discretion⁷⁷⁷. We agree. Accordingly, we recommend that the submission be rejected.
825. Taking account of the amendments recommended above and our overall rewording of the provisions, we recommend that Rule 21.5.18 be located in Table 5, renumbered and worded as follows;

| | Table 5- Standards for Farm Buildings | Non-compliance |
|--------|---|--|
| | The following standards apply to Farm Buildings. | |
| 21.8.1 | <p>Construction, Extension or Replacement of a Farm Building</p> <p>The construction, replacement or extension of a farm building is a permitted activity, subject to the following standards:</p> <p>21.8.1.1 The landholding the farm building is located within must be greater than 100ha; and</p> | <p>RD</p> <p>Discretion is restricted to:</p> <p>a. The extent to which the scale and location of the Farm Building is appropriate in terms of:</p> <p>i. rural amenity values.</p> <p>ii. landscape character.</p> |

⁷⁷⁴ C Barr, Section 42 A Report, Pages 3-32, Para 10.21 – 10.26

⁷⁷⁵ C Barr, Reply, Page 15, Para 5.5

⁷⁷⁶ Submission 810

⁷⁷⁷ C Barr, Section 42A Report, Page 32, Para 10.27 – 10.28

| | Table 5- Standards for Farm Buildings The following standards apply to Farm Buildings. | Non-compliance |
|--|---|--|
| | <p>21.8.1.2 The density of all buildings on the landholding, inclusive of the proposed building(s) must not exceed one farm building per 50 hectares; and</p> <p>21.8.1.3 The farm building must not be located within or on an Outstanding Natural Feature (ONF); and</p> <p>21.8.1.4 If located within the Outstanding Natural Landscape (ONL), the farm building must not exceed 4 metres in height and the ground floor area must not exceed 100m²; and</p> <p>21.8.1.5 The farm building must not be located at an elevation exceeding 600 masl; and</p> <p>21.8.1.6 If located within the Rural Character Landscape (RCL), the farm building must not exceed 5m in height and the ground floor area must not exceed 300m²; and</p> <p>21.8.1.7 Farm buildings must not protrude onto a skyline or above a terrace edge when viewed from adjoining sites, or formed roads within 2km of the location of the proposed building.</p> | <p>iii. privacy, outlook and rural amenity from adjoining properties.</p> <p>iv. visibility, including lighting.</p> |

9.2 Rule 21.5.19 – Exterior colours of buildings

826. Rule 21.5.19, as notified, set out the permitted activity standards for exterior colours for farm buildings (21.5.19.1 – 21.5.19.3) and provided matters of discretion to support a restricted discretionary activity status where the standards were not complied with.

827. One submission sought that the rule be retained⁷⁷⁸, one submission sought that wording be amended for clarity and that the reflectance value not apply to locally sourced schist⁷⁷⁹, and one submission sought removal of visual amenity values from the matters of discretion⁷⁸⁰.

828. The submission on this provision from Darby Planning⁷⁸¹ is the same as that made to 21.5.15 which we addressed above (Section 8.15). For the same reasons, we recommend that the submission on provision 21.5.19 be accepted in part.

829. The submission from Federated Farmers⁷⁸² seeking the removal of visual amenity values from the matters of discretion is the same as that made to 21.5.15 in regard to rural amenity values, which we addressed above (Section 8.15). For the same reasons, we recommend that the submission on provision 21.5.19 be rejected.

⁷⁷⁸ Submission 325

⁷⁷⁹ Submission 608

⁷⁸⁰ Submission 600

⁷⁸¹ Submission 608

⁷⁸² Submission 600

830. Accordingly, we recommend that 21.5.19 be located in Table 5, renumbered and worded as follows;

| | | |
|--------|--|--|
| 21.8.2 | <p>Exterior colours of farm buildings:</p> <p>21.8.2.1 All exterior surfaces, except for schist, must be coloured in the range of browns, greens or greys (except soffits).</p> <p>21.8.2.2 Pre-painted steel, and all roofs must have a reflectance value not greater than 20%.</p> <p>21.8.2.3 Surface finishes, except for schist, must have a reflectance value of not greater than 30%.</p> | <p>RD</p> <p>Discretion is restricted to:</p> <ul style="list-style-type: none"> a. external appearance b. visual prominence from both public places and private locations c. landscape character d. visual amenity. |
|--------|--|--|

9.3 Rule 21.5.20 – Building Height

831. This standard set a maximum height of 10m for farm buildings. Two submissions⁷⁸³ supported this provision. Other than some minor rewording to make the rule clearer, location in Table 5 and renumbering, we recommend it be adopted as notified.

10 TABLE 5 – STANDARDS FOR COMMERCIAL ACTIVITIES

10.1 Rule 21.5.21 – Commercial Recreational Activity

832. We have dealt with this standard in Section 7.15 above.

10.2 Rule 21.5.22 – Home Occupation

833. Rule 21.5.22, as notified set out the permitted activity standards for home occupations and provided for a restricted discretionary activity status for non-compliance with the standards.

834. One submission sought that the provision be retained⁷⁸⁴ and one sought that it be amended to ensure that the rule was effects-based and clarified as to its relationship with rules controlling commercial and commercial recreational activities.⁷⁸⁵

835. In the Section 42A Report, Mr Barr considered that the rule did provide clear parameters and certainty.⁷⁸⁶ We heard no other evidence on this provision. We agree with Mr Barr, that this rule is clear and note that it specifically applies to home occupations. Accordingly, we recommend that the submission seeking that the rule be amended, be rejected.

836. Accordingly, taking account of the amendments recommended above and our overall rewording of the provisions, we recommend that Rule 21.5.22 be located in Table 6, renumbered and worded as follows;

⁷⁸³ Submissions 325 and 600 (supported by FS1209, opposed by FS1034)

⁷⁸⁴ Submission 719

⁷⁸⁵ Submission 806

⁷⁸⁶ C Barr, Section 42A Report, Page 48, Par 13.36

| | | |
|--------|--|---|
| 21.9.2 | <p>Home Occupation</p> <p>21.9.2.1 The maximum net floor area of home occupation activities must not exceed 150m²;</p> <p>21.9.2.2 Goods materials or equipment must not be stored outside a building;</p> <p>21.9.2.3 All manufacturing, altering, repairing, dismantling or processing of any goods or articles must be carried out within a building.</p> | <p>RD</p> <p>Discretion is restricted to:</p> <p>a. the nature, scale and intensity of the activity in the context of the surrounding rural area.</p> <p>b. visual amenity from neighbouring properties and public places.</p> <p>c. noise, odour and dust.</p> <p>d. the extent to which the activity requires a rural location because of its link to any rural resource in the Rural Zone.</p> <p>e. access safety and transportation effects.</p> |
|--------|--|---|

10.3 Rule 21.5.23 – Retail Sales

837. This rule imposed a setback from road boundaries of 30m on buildings in excess of 25m² used for retail sales. No submissions were received on this standard. Other than some wording changes for clarification purposes, we recommend the rule be located in Table 6, renumbered and adopted as notified.

10.4 Rule 21.5.24 – Retail Sales

838. As notified, this rule read:

Retail sales where the access is onto a State Highway, with the exception of the activities listed in Table 1.

839. Non-compliance was listed as a non-complying activity.

840. The sole submission⁷⁸⁷ on the rule sought its retention.

841. The problem with this rule is that it is not a standard. It appears to us that the intention of the rule is to make any retail sales other than those specifically listed in Table 1 (21.4.14 Roadside stalls and 21.4.15 sales of farm produce) a non-complying activity. That being the case, we recommend the rule be relocated in Table 1 as Rule 21.4.21 to read:

Retail sales where the access is onto a State Highway, with the exception of the activities provided for by Rule 21.4.14 or Rule 21.4.16.

Non-complying activity

11 TABLE 6 – STANDARDS FOR INFORMAL AIRPORTS

842. We have dealt with this in Section 7.23 above.

12 TABLE 7 – STANDARDS FOR SKI AREA ACTIVITIES WITHIN THE SKI AREA SUB ZONE

⁷⁸⁷ Submission 719

12.1 Rule 21.5.27 – Construction, relocation, addition or alteration of a building

843. As notified, Rule 21.5.27 read:

| | | |
|---------|--|---|
| 21.5.27 | Construction, relocation, addition or alteration of a building. Control is reserved to all of the following: <ul style="list-style-type: none"> a. Location, external appearance and size, colour, visual dominance b. Associated earthworks, access and landscaping c. Provision of water supply, sewage treatment and disposal, electricity and communication services (where necessary) d. Lighting. | C |
|---------|--|---|

844. One submission sought to add provisions relating to the exterior colour of all buildings⁷⁸⁸; and one submission sought that the table be renamed “Standards for Ski Area Activities within Ski Area Sub Zones and Tourism Activities within the Cardrona Alpine Resort” and that numerous changes be made to 21.5.27 including adding reference to earthworks infrastructure, snow grooming, lift and tow provisions and particular reference to the Cardrona Alpine Resort.⁷⁸⁹

845. The submission seeking specification of the exterior colour for building stated as the reason for the request that the matters listed are assessment matters not standards. Mr Barr, in the Section 42A Report, acknowledged the ambiguity of the table and recommended it be updated to correct this issue. Mr Brown, in evidence for Mt Cardrona Station Ltd, supported such an amendment⁷⁹⁰ and Mr Barr, in reply provided further modification to the Table to clarify activity status⁷⁹¹. We agree with Mr Brown and Mr Barr that clarification as to the difference between activity status and standards is required. However, we do not think that their recommended amendments fully address the issue.

846. Accordingly, and in line with our recommendation in Section 7.1 above, we recommend that the activities for Ski Area Sub Zones be included in one table (Table 9).

847. Mr Barr, in the Section 42A Report, questioned if the substantive changes sought by Cardrona Alpine Resort Ltd were to be addressed in the Stream 11 hearing due to the extensive nature of changes sought by the submission. For the avoidance of doubt, Mr Barr assessed the amendments to 21.5.27 in a comprehensive manner, concluding that the submission should be rejected⁷⁹². We heard no evidence in support of the amendments to Rule 21.5.27 sought by Cardrona Alpine Resort Ltd. As such, we agree with Mr Barr, for the reasons set out in the Section 42A Report, and recommend that the submission be rejected.

848. Accordingly, we recommend that Rule 21.5.27 be located in Table 9 Activities within the Ski Area Sub Zones, renumbered and worded as follows:

| | | |
|---------|--|---|
| 21.11.2 | Construction, relocation, addition or alteration of a building. Control is reserved to: <ul style="list-style-type: none"> a. location, external appearance and size, colour, visual dominance b. associated earthworks, access and landscaping c. provision of water supply, sewage treatment and disposal, electricity and communication services (where necessary) | C |
|---------|--|---|

⁷⁸⁸ Submission 407

⁷⁸⁹ Submission 615

⁷⁹⁰ J Brown, EIC, Page 24, Para 2.38

⁷⁹¹ C Barr, Reply, Appendix 1, Page 21-21

⁷⁹² C Barr, Section 42A Report, Pages 63 – 64, Paras 14.43 – 14.51

| | | |
|--|--------------|--|
| | d. lighting. | |
|--|--------------|--|

12.2 Rule 21.5.28 – Ski tows and lifts

849. As notified, Rule 21.5.28 read as follows:

| | | |
|---------|--|---|
| 21.5.28 | <p>Ski tows and lifts. Control is reserved to all of the following:</p> <ol style="list-style-type: none"> a. The extent to which the ski tow or lift or building breaks the line and form of the landscape with special regard to skylines, ridges, hills and prominent slopes b. Whether the materials and colour to be used are consistent with the rural landscape of which the tow or lift or building will form a part c. Balancing environmental considerations with operational characteristics. | C |
|---------|--|---|

850. One submission sought to replace ski tows and lift with passenger lift systems and add provisions relating to the exterior colour of all passenger lift systems⁷⁹³. We have already addressed the definition of passenger lift system in paragraphs Section 5.16 above, concluding that it is appropriate to use this term for all such systems, including gondolas, ski tows and lifts. In addition, the submission of Mt Cardrona Station Ltd regarding exterior colour has the same reasoning as we discussed in Section 13.1 above. We adopt that same reasoning here. After hearing more extensive evidence on passenger lift systems, the Stream 11 Panel has recommended the inclusion of an additional matter of control ((c) in the rule set out below). Accordingly, we recommend that Rule 21.5.28 be located in Table 9 as an activity rather an a standard, be renumbered and worded as follows:

| | | |
|---------|---|---|
| 21.11.3 | <p>Passenger Lift Systems. Control is reserved over:</p> <ol style="list-style-type: none"> a. the extent to which the passenger lift system breaks the line and form of the landscape with special regard to skylines, ridges, hills and prominent slopes; b. whether the materials and colour to be used are consistent with the rural landscape of which the passenger lift system will form a part; c. the extent of any earthworks required to construct the passenger lift system, in terms of the limitations set out in Chapter 25 Earthworks; d. balancing environmental considerations with operational characteristics. | C |
|---------|---|---|

12.3 Rule 21.5.29 – Night Lighting

851. As notified, this rule made night lighting a controlled activity in the SASZ. There were no submissions on it. We recommend it be located in Table 9 as an activity rather than a standard, and adopted as notified subject to minor wording changes and renumbering.

12.4 Rule 21.5.30 – Vehicle Testing

852. As notified, this rule provided for vehicle testing facilities at the Waiorau Snow Farm SASZ as a controlled activity There were no submissions on it. We recommend it be located in Table 9 as

⁷⁹³ Submission 407

an activity rather than a standard, and adopted as notified subject to minor wording changes and renumbering.

12.5 Rule 21.5.31 – Retail activities ancillary to Ski Area Activities

853. As notified, this rule provided for retail activities ancillary to ski area activities as a controlled activity in the SASZ. There were no submissions on it. We recommend it be located in Table 9 as an activity rather than a standard, and adopted as notified subject to minor wording changes and renumbering.

12.6 New Activity for Ski Area Sub Zone Accommodation within Ski Area Sub Zones

854. Two submissions sought to insert a new rule into Table 7 (as notified) to provide Residential and Visitor Accommodation⁷⁹⁴.

855. In Section 5.19 above, we set out findings as regards a definition and policy for Ski Area Sub Zone Accommodation. We do not repeat that here. Rather, having established the policy framework, we address here the formulation of an appropriate rule. We understood that Mr Barr and Mr Ferguson⁷⁹⁵ were in general agreement as to the substance of the proposed rule. However, in terms of matters that we have not previously addressed, they had differences of opinion in relation to the inclusion in the rule of reference to landscape and ecological values.

856. Mr Ferguson initially recommended inclusion in the matters of discretion of reference to the positive benefits for landscape and ecological values⁷⁹⁶. However, in response to our questions, he made further amendments removing the reference to positive benefits.⁷⁹⁷ Mr Barr, in reply, considered that it did not seem appropriate to have landscape and ecological values apply to Ski Area Sub-Zone Accommodation facilities and not to other buildings in the Sub-Zone, which are addressed by the framework in Chapter 33 and which provided for the maintenance of biological diversity⁷⁹⁸. We agree with Mr Barr. The inclusion of reference to ecological matters would be a duplication of provisions requiring assessment. We note that the policy framework for Ski Area Sub-Zones precludes the landscape classification from applying in the Sub-Zone. This is not to say that landscape considerations are unimportant, but, in our view, those considerations should be applied consistently when considering all buildings and structures in the Sub-Zone.

857. In Section 5.19, we noted the need for the inclusion of the 6 month stay period as it applies to Ski Area Sub Zone Accommodation to be part of this rule. Mr Ferguson included this matter as a separate rule⁷⁹⁹. Mr Barr, in reply, recommended the 6 month period be included as part of a single rule and also considered that given that such activities were in an alpine environment, natural hazards should be included as a matter of discretion.

858. In considering all of the above, we recommend that new rule be included in Table 9 to provide for Ski Area Sub Zone Accommodation, numbered and worded as follows:

| | | |
|---------|--|----|
| 21.12.7 | Ski Area Sub Zone Accommodation | RD |
|---------|--|----|

⁷⁹⁴ Submissions 610, 613

⁷⁹⁵ Expert Planning Witness for Submission Numbers 610 and 613

⁷⁹⁶ C Ferguson, EIC, Page 32-33, Para 125

⁷⁹⁷ C Ferguson, Response to Panel Questions, 27 May 2016, Pages 7 - 8

⁷⁹⁸ C Barr, Reply, Pages 40 – 41, Para 14.12

⁷⁹⁹ C Ferguson, Response to Panel Questions, 27 May 2016, Page 8

| | | |
|--|--|--|
| | <p>Comprising a duration of stay of up to 6 months in any 12 month period and including worker accommodation.</p> <p>Discretion is restricted to:</p> <ol style="list-style-type: none"> a. scale and intensity and whether these would have adverse effects on amenity, including loss of remoteness or isolation b. location, including whether that because of the scale and intensity the visitor accommodation should be located near the base building area (if any) c. parking d. provision of water supply, sewage treatment and disposal e. cumulative effects f. natural hazards | |
|--|--|--|

12.7 New Rule – Ski Area Sub-Zone Activities

859. As a result of hearings in Stream 11, a new Rule 21.12.8 providing for a no build area in the Remarkables Ski Area Sub-Zone has been recommended by the Stream 11 Panel.

12.8 Standards for Ski Area Sub-Zones

860. As will be clear from above, we concluded that all the provisions listed in notified Table 7 were activities rather than standards. We had no evidence suggesting any specific standard be included for Ski Area Sub-Zone. Thus we recommend the table for such standards be deleted.

13 TABLE 8 – STANDARDS FOR ACTIVITIES WITHIN THE RURAL INDUSTRIAL SUB ZONE

13.1 Rule 21.5.32 – Buildings

861. As notified, Rule 21.5.32 read as follows;

| | | |
|---------|---|----|
| 21.5.32 | <p>Buildings Any building, including any structure larger than 5m², that is new, relocated, altered, reclad or repainted, including containers intended to, or that remain on site for more than six months, and the alteration to any lawfully established building are subject to the following: All exterior surfaces shall be coloured in the range of browns, greens or greys (except soffits), including;</p> <p>21.5.32.1 Pre-painted steel and all roofs shall have a reflectance value not greater than 20%; and,</p> <p>21.5.32.2 All other surface finishes shall have a reflectance value of not greater than 30%.</p> <p>Discretion is restricted to all of the following:</p> <ul style="list-style-type: none"> • External appearance • Visual prominence from both public places and private locations. • Landscape character • Visual amenity. | RD |
|---------|---|----|

862. One submission sought that the activity status be amended to fully discretionary or that the Rural Industrial Sub-Zone be removed from this Stage of the Review⁸⁰⁰. On reviewing the submission, we note that the concern expressed was that ‘rural amenity’ was not provided in the list of matters of discretion.
863. This submission was addressed by Mr Barr in the Section 42A Report, Appendix 2 where Mr Barr recorded that, *“The matters of discretion are considered to appropriately contemplate ‘rural amenity’. The matters of discretion specify ‘visual amenity’. Visual amenity would encompass rural amenity.”*⁸⁰¹
864. We heard no evidence in support of the submission. We agree with Mr Barr for the reasons set out in the Section 42A Report. Accordingly, we recommend that the submission be rejected and subject to minor word changes, the rule be adopted as notified as Rule 21.14.1 in Table 11..

13.2 Rule 21.5.33 – Building size

865. As notified this rule set a maximum ground floor of buildings in the Rural Industrial Sub-Zone at 500m², with non-compliance a restricted discretionary activity. No submissions were received on this rule.
866. Other than minor wording changes for clarity and renumbering, we recommend this rule be adopted as notified.

13.3 Rule 21.5.34 – Building height

867. As notified, this rule set the maximum building height at 10m in the Sub-Zone. No submissions were received on this rule.
868. Other than minor wording changes for clarity and renumbering, we recommend this rule be adopted as notified.

13.4 Rule 21.5.35 – Setback from Sub-Zone Boundaries

869. As notified, this rule set the setback from the Sub-Zone boundaries at 10m in the Sub-Zone. No submissions were received on this rule.
870. Other than minor wording changes for clarity and renumbering, we recommend this rule be adopted as notified.

13.5 Rule 21.5.36 – Retail Activities

871. As notified, this limited the location and area of space used for retail sales to being within a building, and not exceeding 10% of the building’s total floor area. Non-compliance was set as a non-complying activity. No submissions were received on this rule.
872. Other than minor wording changes for clarity and renumbering, we recommend this rule be adopted as notified.

13.6 Rule 21.5.37 – Lighting and Glare

873. As notified, Rule 21.5.37 read as follows;

| | | |
|---------|--------------------|----|
| 21.5.37 | Lighting and Glare | NC |
|---------|--------------------|----|

⁸⁰⁰ Submission 314

⁸⁰¹ C Barr, Section 42A Report, Appendix 2, Page 127

| | | | |
|--|-----------|--|--|
| | 21.5.37.1 | All fixed exterior lighting shall be directed away from adjoining sites and roads; and | |
| | 21.5.37.2 | No activity on any site shall result in greater than a 3.0 lux spill (horizontal and vertical) of light onto any other site measured at any point inside the boundary of the other site, provided that this rule shall not apply where it can be demonstrated that the design of adjacent buildings adequately mitigates such effects. | |
| | 21.5.37.3 | There shall be no upward light spill. | |

874. One submission sought that this provision be relocated to Table 2 – General Standards⁸⁰². At this point, we also note that there was one submission seeking shielding and filtration standards for outdoor lighting generally within the zone with any non-compliance to be classified as a fully discretionary activity⁸⁰³.

875. Mr Barr considered that shifting the standard to Table 2 – General Standards was appropriate relying on the evidence of Dr Read, “... that the absence of any lighting controls in the ONF/L is an oversight and is of the opinion that the lighting standards should apply District Wide”⁸⁰⁴. We agree for the reason set out in Mr Barr’s Section 42A Report and recommend that the submission be accepted in part. We also consider that this addresses the submission seeking new lighting standards and accordingly recommended that submission be accepted in part.

876. The submission of QLDC Corporate also sought the following additional wording be added to the standard, ‘Lighting shall be directed away from adjacent roads and properties, so as to limit effects on the night sky’.

877. We agree with Mr Barr that such a standard is too subjective in that the rule itself would limit effects on the night sky and that it would be too difficult to ascertain as a permitted standard. Accordingly, we recommended that that submission be rejected.

878. Consequently, we recommend this rule be located in Table 2 as Rule 21.5.7 with the only text change being the replacement in recommended Rule 21.5.7.3 of “shall” with “must”.

14 TABLE 9 – ACTIVITIES AND STANDARDS FOR ACTIVITIES ON THE SURFACE OF LAKES AND RIVERS

879. This table, as notified, contained a mixture of activities and standards. We recommend it be divided into two tables: Table 12 containing the activities on the surface of lakes and rivers, and Table 13 containing the standards for those activities.

14.1 Rule 21.5.38 – Jetboat Race Events

880. As notified, Rule 21.5.38 read as follows:

⁸⁰² Submission 383

⁸⁰³ Submission 568

⁸⁰⁴ C Barr, EIC, Page 101, Para 20.8

| | | |
|---------|---|---|
| 21.5.38 | <p>Jetboat Race Events</p> <p>Jetboat Race Events on the Clutha River, between the Lake Outlet boat ramp and the Albert Town road bridge not exceeding 6 race days in any calendar year.</p> <p>Control is reserved to all of the following:</p> <ol style="list-style-type: none"> a. The date, time, duration and scale of the jetboat race event, including its proximity to other such events, such as to avoid or mitigate adverse effects on residential and recreational activities in the vicinity b. Adequate public notice is given of the holding of the event c. Reasonable levels of public safety are maintained. | C |
|---------|---|---|

881. One submission sought that the rule be deleted as it would limit recreational opportunities and activities on the Clutha River⁸⁰⁵.

882. Mr Barr, in the Section 42A Report, noted that this rule was effectively brought over from the ODP with the same activity status. The only change was that the limitation of 6 races per year was specified in the rule, rather than in a note⁸⁰⁶. We heard no evidence in support of the submission and we do not consider a 6 race limit unreasonable. Accordingly, we recommend that the submission be rejected and that the only changes be to numbering and structuring, in line with our more general recommendations. Some minor changes to the matters of control are also recommended so they do not read as standards. It would therefore be located in Table 12 as an activity and worded as follows:

| | | |
|---------|---|---|
| 21.15.4 | <p>Jetboat Race Events</p> <p>Jetboat Race Events on the Clutha River, between the Lake Outlet boat ramp and the Albert Town road bridge not exceeding 6 race days in any calendar year.</p> <p>Control is reserved to:</p> <ol style="list-style-type: none"> a. the date, time, duration and scale of the jetboat race event, including its proximity to other such events, such as to avoid or mitigate adverse effects on residential and recreational activities in the vicinity; b. the adequacy of public notice of the event; c. public safety. | C |
|---------|---|---|

14.2 Rule 21.5.39 - Commercial non-motorised boating activities and Rule 21.5.43 – Commercial boating activities

883. As notified, Rule 21.5.39 read as follows:

| | | |
|---------|---|----|
| 21.5.39 | <p>Commercial non-motorised boating activities</p> <p>Discretion is restricted to all of the following:</p> <ol style="list-style-type: none"> a. Scale and intensity of the activity b. Amenity effects, including loss of privacy, remoteness or isolation c. Congestion and safety, including effects on other commercial operators and recreational users | RD |
|---------|---|----|

⁸⁰⁵ Submission 758

⁸⁰⁶ C Barr, Section 42A Report, Pages 88 – 89, Paras 17.43 – 17.48

| | | |
|--|--|--|
| | <p>d. Waste disposal</p> <p>e. Cumulative effects</p> <p>f. Parking, access safety and transportation effects.</p> | |
|--|--|--|

884. One submission sought that the rule be retained⁸⁰⁷, one sought that it be deleted⁸⁰⁸, two submissions sought that the rule be amended to prohibit non-motorised commercial activities on Lake Hayes⁸⁰⁹ and one submission sought that the rule be amended so that the matters of discretion included location⁸¹⁰. We note that Queenstown Rafting Ltd lodged a number of further submissions opposing many of the submissions on this provision and also seeking that the activity status be made fully discretionary. We find this latter point is beyond the scope of the original submissions, and hence we not have considered that part of those further submissions.
885. Mr Barr, in the Section 42A Report, noted the safety concerns raised in the QRL submission⁸¹¹, but considered that the provision as notified adequately addressed safety issues and that the restricted discretionary activity status was appropriate. Mr Barr also considered that the addition of 'location' as a matter of discretion was appropriate.⁸¹² Mr Farrell, in evidence for R/L agreed with Mr Barr⁸¹³.
886. In evidence for QRL, Mr Boyd (Managing Director of QRL) suggested that restricted discretionary activity status would result in the Council not considering other river and lake users when assessing such applications. He also highlighted the potential impact of accidents on tourism activities.⁸¹⁴
887. Mr Brown, in his evidence for Kawarau Jet Services Holdings Limited⁸¹⁵ considered safety and congestion an important factor that should be considered for any application involving existing and new motorised and non-motorised boating activities⁸¹⁶.
888. In reply, Mr Barr considered that the inclusion of safety in the matters of assessment meant that restricted discretionary status did not unduly impinge on a thorough analysis and application of section 104 and section 5.⁸¹⁷
889. Considering the evidence of the witnesses we heard, we had difficulty in reaching the conclusion that restricted discretionary activity status was appropriate for commercial non-motorised boating activities (Rule 21.5.39) alongside fully discretionary activity status for commercial motorised boating activities (Rule 21.4.43), particularly where motorised and non-motorised activities may occur on the same stretch of water. It appeared to us that the same activity status should apply to both motorised and non-motorised commercial boating activities.
890. We therefore consider Rule 21.5.43 at this point. As notified, this rule read as follows;

⁸⁰⁷ Submissions 45, 719

⁸⁰⁸ Submission 167

⁸⁰⁹ Submission 11, 684

⁸¹⁰ Submission 621

⁸¹¹ Submission 167

⁸¹² C Barr, Section 42A Report, Page 84-85, Paras 17.25 – 17.28

⁸¹³ B Farrell, EIC, Page 27, Paras 125 - 126

⁸¹⁴ RV Boyd, EIC, Pages 3- 5, Paras 3.3 – 4.5

⁸¹⁵ Submission 307

⁸¹⁶ J Brown, EIC, Page 20, Para 2.28

⁸¹⁷ C Barr, Reply, Page 30, Para 10.2

| | | |
|---------|---|---|
| 21.5.43 | <p>Commercial boating activities Motorised commercial boating activities.</p> <p>Note: Any person wishing to commence commercial boating activities could require a concession under the QLDC Navigation Safety Bylaw. There is an exclusive concession currently granted to a commercial boating operator on the Shotover River between Edith Cavell Bridge and Tucker Beach until 1 April 2009 with four rights of renewal of five years each.</p> | D |
|---------|---|---|

891. One submission sought that the term “motorised commercial boating activities” be deleted from the rule⁸¹⁸ and one submission sought that the rule be amended to separately provide for commercial ferry operations for public transport between the Kawarau River, Frankton Arm, and Queenstown CBD as a controlled activity⁸¹⁹.
892. We were unable to find direct reference in the Section 42A Report to this rule or to the submission from QRL. Rather, the focus of the Section 42A Report remained on the commercial non-motorised boating activities as discussed above.
893. Reading Submission 167 as a whole, the combination of relief resulting from deleting rule 21.5.39 and deleting “*motorised commercial boating activities*” from Rule 21.5.43 would mean that all commercial boating activities (meaning both motorised and non-motorised operations) would become fully discretionary activities. For the reasons discussed above, we agree that it is appropriate that the same activity status apply to motorised and non-motorised boating activities. We have no jurisdiction to consider restricted discretionary status for motorised activities (other than for commercial ferry operations in the areas specified in Submission 806).
894. Accordingly, we recommend that Rule 21.5.39 and Rule 21.4.43 be combined and renumbered, with the following wording;

| | | |
|---------|--|---|
| 21.15.9 | <p>Motorised and non-motorised Commercial Boating Activities Except where otherwise limited by a rule in Table 12.</p> <p>Note: Any person wishing to commence commercial boating activities could require a concession under the QLDC Navigation Safety Bylaw. There is an exclusive concession currently granted to a commercial boating operator on the Shotover River between Edith Cavell Bridge and Tucker Beach until 1 April 2009 with four rights of renewal of five years each.</p> | D |
|---------|--|---|

895. In relation to the submission of QPL seeking commercial ferry operations for public transport between the Kawarau River, Frankton Arm, and Queenstown CBD be subject to a separate rule as a controlled activity, this issue has also been raised by RJL. Both QPL and RJL sought related amendments to a number of provisions and we address those matters later in the report in Section 15.4.

⁸¹⁸ Submission 167

⁸¹⁹ Submission 806

14.3 Rule 21.5.40 – Jetties and Moorings in the Frankton Arm

896. As notified, this rule provided for jetties and moorings in the Frankton Arm as a restricted discretionary activity. No submissions were received on this rule.
897. Other than minor wording changes and renumbering, we recommend this be adopted as notified.

14.4 Rule 21.5.41 and Rule 21.5.42 – Structures and Moorings

898. As notified, Rules 21.5.41 and 21.5.42 read as follows;

| | | |
|---------|--|----|
| 21.5.41 | Structures and Moorings Any structure or mooring that passes across or through the surface of any lake or river or is attached to the bank of any lake and river, other than where fences cross lakes and rivers. | D |
| 21.5.42 | Structures and Moorings Any structures or mooring that passes across or through the surface of any lake or river or attached to the bank or any lake or river in those locations on the District Plan Maps where such structures or moorings are shown as being non-complying. | NC |

899. One submission sought that Rule 21.5.41 be amended to include pipelines for water takes that are permitted in a regional plan and gabion baskets or similar low impact erosion control structures installed for prevention of bank erosion⁸²⁰.
900. Two submissions sought that Rule 21.5.42 be amended to provide for jetties and other structures for water based public transport on the Kawarau River and Frankton Arm, as a controlled activity⁸²¹.
901. In relation to the amendment sought by RJL regarding water take pipelines and erosion controls, we could not find reference to this submission point in the Section 42A Report. Mr Farrell, likewise did not address this matter in evidence for RJL. In reply, Mr Barr recommended amending 21.5.41 to clarify that post and wire fences were in this situation permitted activities, although he provided no discussion of this change or reference to a submission seeking it.
902. Having heard no evidence in support of the amendments for inclusion of water pipeline takes and erosion control devices, we recommend that that submission be rejected.
903. While there may have been an intention that post and wire fences crossing lakes and rivers were a permitted activity, Rule 21.5.41 as notified did not classify those activities in that way. What the rule did do is exclude fences crossing lakes and rivers from the discretionary activity category. Given the application of (notified) Rule 21.4.1, those fences would therefore be non-complying activities. There is no scope for those activities to be reclassified as permitted. Therefore, we do not agree with Mr Barr's recommended amendment.
904. What we do recommend is a minor, non-substantive change to Rule 21.5.41 to make it clear that it is subject to Rule 21.5.42 (as notified).

⁸²⁰ Submission 621

⁸²¹ Submission 621, 806

905. Accordingly, we recommend that Rules 21.5.41 and 21.5.42 be renumbered and worded as follows:

| | | |
|---------|--|----|
| 21.15.7 | Structures and Moorings Subject to Rule 21.15.8, any structure or mooring other than post and wire fences that passes across or through the surface of any lake or river or is attached to the bank of any lake and river. | D |
| 21.15.8 | Structures and Moorings Any structures or mooring that passes across or through the surface of any lake or river or attached to the bank or any lake or river in those locations on the District Plan Maps where such structures or moorings are shown as being non-complying. | NC |

906. Returning to the submissions regarding jetties and other structures for water based public transport on the Kawarau River and Frankton Arm as a controlled activity, we have already addressed these matters at a policy level in Section 5.48 above, where we recommended separating public ferry systems from other commercial boating activities. We also recorded the need for jetties and moorings to be considered in the context of policies related to protection landscape quality and character, and amenity values.

907. Mr Barr, in the Section 42A Report, was opposed to controlled activity status for jetties and other structures and his recommendation was *“that the restricted discretionary activity status is appropriate, as is a discretionary, or non-complying activity status for other areas as identified in the provisions.”*⁸²² Mr Farrell, in evidence for RJL, agreed with Mr Barr as to the restricted discretionary activity status for structures associated with water based public transport in the Frankton Arm⁸²³.

908. We could not identify anywhere in the Section 42A Report or in his Reply Statement where Mr Barr included any recommendations so that the revised text of the PDP would provide for jetties and other structures as restricted discretionary activities. Even if we are wrong on that matter, we do not agree that that is the appropriate activity status. In our view, Policy 21.2.12.8 recommended above goes far enough towards encouraging public ferry systems and beyond that, the rules need to be balanced so that consideration is given to landscape quality and character, and amenity values, that are to be maintained and enhanced under Policies 6.3.29 and 6.3.30.

909. Accordingly, we recommend that the submissions seeking rule amendments to provide for jetties and other structures for water based public transport on the Kawarau River and Frankton Arm as a controlled activity be rejected.

14.5 Rule 21.5.44 – Recreational and commercial boating activities

910. As notified, Rule 21.5.44 read as follows:

| | | |
|---------|--|----|
| 21.5.44 | Recreational and commercial boating activities The use of motorised craft on the following lakes and rivers is prohibited, except where the activities are for emergency search and rescue, hydrological survey, public scientific research, | PR |
|---------|--|----|

⁸²² C Barr, Section 42A Report, Page 87, Para 17.36

⁸²³ B Farrell, EIC, Page 28, Para 129

| | | |
|------------|---|--|
| | resource management monitoring or water weed control, or for access to adjoining land for farming activities. | |
| 21.5.44.1 | Hawea River. | |
| 21.5.44.2 | Commercial boating activities on Lake Hayes. | |
| 21.5.44.3 | Any tributary of the Dart and Rees rivers (except the Rockburn tributary of the Dart River) or upstream of Muddy Creek on the Rees River. | |
| 21.5.44.4 | Young River or any tributary of the Young or Wilkin Rivers and any other tributaries of the Makarora River. | |
| 21.5.44.5 | Dingle Burn and Timaru Creek. | |
| 21.5.44.6 | The tributaries of the Hunter River. | |
| 21.5.44.7 | Hunter River during the months of May to October inclusive. | |
| 21.5.44.8 | Motatapu River. | |
| 21.5.44.9 | Any tributary of the Matukituki River. | |
| 21.5.44.10 | Clutha River - More than six jet boat race days per year as allowed by Rule 21.5.38. | |

911. Submissions to this rule variously sought that:

- a. 21.5.44 be retained⁸²⁴
- b. 21.5.44.1 be amended to provide for recreational jet sprint racing on the Hawea River⁸²⁵
- c. 21.5.44.3 be amended to provide for recreational and commercial boating activities on the Beansburn tributary of the Dart River⁸²⁶
- d. 21.5.44.7 amend rule to permitted activity status⁸²⁷
- e. 21.5.44.10 amend rule to permitted activity status⁸²⁸.

912. Mr Barr, in the Section 42A Report, addressed the submission of Jet Boat NZ as regards jet sprint racing on the Hawea River, noting that the ODP did provide for such activities 6 days per year on an identified course on the river. However, Mr Barr set out in detail the reasons he considered that the activity status in the PDP should remain as prohibited, as follows;

- “a. There is not any 'one approved jet sprint course' on the ODP planning maps. I accept this is not the fault of the submitter, however it illustrates that the rule has not been exercised.*
- a. *The qualifiers in the exemption to the prohibited status are cumbersome and subject to third party approvals from a whitewater group and the Queenstown Harbour Master.*
 - b. *There is a jet sprint course constructed and in operation near the Wanaka Airport⁵³ for these activities that negate the need to manage risks to safety, amenity and nature conservation values as required in the qualifiers in Rule 5.3.3.5(a) through undertaking the activity on the Hawea River.*
 - c. *The jet sprint course near Wanaka Airport held a New Zealand Jet Sprint Championship event, however the resource consent was for a one-off event⁵⁴. While these activities require a resource consent the physical works associated with constructing a jet sprint course are already done*

⁸²⁴ Submission 688

⁸²⁵ Submission 758

⁸²⁶ Submission 716

⁸²⁷ Submission 758

⁸²⁸ Submission 758

d. *The jet sprint course on the Hawea River has not been used for a long time and is disused. The Council's Albert Town Reserve Management Plan 2010⁵⁵ noted this and states that the jet sprint course was not compatible with the quiet values of the reserve and adjacent camping areas and, Central Otago Whitewater have expressed an interest in using the disused course for a pond to complement the kayak slalom site.*⁸²⁹

53. *<http://www.jetsprint.co.nz/tracks/oxbow-aquatrack-wanaka/> Downloaded 28 February 2016.*

54. *RM130098 Oxbow Limited. To hold the fifth round of the New Zealand Jet Sprint Championship on the 30 March 2013 and undertake earthworks to construct the jet sprint course*

55. *http://www.qldc.govt.nz/assets/OldImages/Files/Reserve_Management_Plan_s/Albert_Town_Recreation_Reserve_Mgmt_Plan_2010.pdf*

913. Mr McSoriley, in evidence for JBNZ, considered that Mr Barr's interpretation of the rules in the ODP was incorrect and that the rules provided for both jet boating runs on the Hawea River itself, as well as jet sprint events on the identified course⁸³⁰. Mr McSoriley considered that there was no support for a blanket prohibition on the Hawea River and also set out the reasons for the limited utilisation of jet sprint course and factors that may have led to the PDP discouraging recreational jet boating⁸³¹.

914. In reply, Mr Barr considered that it was appropriate to have jet boating runs on the Hawea River as per the ODP Rule 5.3.3.5i (a) (2) despite the cumbersome nature of the provisions in the ODP and recommended amendments to that effect⁸³². Having considered the witness's evidence, we agree.

915. We questioned Mr Barr, as to whether the jet sprint course was part of the river, or whether, because it was artificially constructed, it therefore fell under Council's jurisdiction as a land-based activity rather than a surface of water activity. We understood from Mr Barr's evidence in reply that he supported the second interpretation. It followed that any activity on the course would require consideration under the provisions governing noise, commercial recreation activities and temporary activities. Mr Barr provided a copy of a consent from 14 Dec 1999 for a one-off jet sprint event to be held on 3 Jan 2000.

916. We agree with Mr Barr that the jet sprint course is not part of the surface of a lake or river, but that this use should be addressed under other provisions in Plan. We also note that we did not receive any evidence that the activity was lawfully established. In our view, the activity would be most appropriately addressed as a temporary activity.

917. Accordingly we recommend that the submission of JBNZ seeking the reinstatement of the Jet Sprint Course be rejected and recreational jet boat runs on the Hawea be provided for subject to limitations as follows;

⁸²⁹ C Barr, Section 42A Report, Pages 90 – 91, Para 17.52

⁸³⁰ L McSoriley, EIC, Pages 2-3, Para 10 - 12

⁸³¹ L McSoriley, EIC, Pages 4-5, Paras 14 - 24

⁸³² C Barr, Reply, Page 31, Para 10.6

| | | |
|---------|---|---|
| 21.15.3 | <p>Motorised Recreational Boating Activities</p> <p>Hawea River, motorised recreational boating activities on no more than six (6) days in each year subject to the following conditions:</p> <ol style="list-style-type: none"> a. at least four (4) days of such activity are to be in the months January to April, November and December b. The Jet Boat Association of New Zealand (“JBANZ”) (JBANZ or one of the Otago and Southland Branches as its delegate) administers the activity on each day c. The prior written approval of Central Otago Whitewater Inc is obtained if that organisation is satisfied that none of its member user groups are organising activities on the relevant days; and d. JBANZ gives two (2) calendar months written notice to the Council’s Harbour-Master of both the proposed dates and the proposed operating schedule e. The Council’s Harbour-Master satisfies himself that none of the regular kayaking, rafting or other whitewater (non-motorised) river user groups or institutions (not members of Central Otago Whitewater Inc) were intending to use the Hawea River on that day, and issues an approved operating schedule f. JBANZ carries out, as its expense, public notification on two occasions 14 and 7 days before the proposed jet boating g. Public notification for the purposes of (f) means a public notice with double-size font heading in both the Otago Daily Times and the Southland Times, and written notices posted at the regular entry points to the Hawea River. | P |
|---------|---|---|

918. As regards the submission of Ngai Tahu Tourism Ltd seeking that Rule 21.5.44.3 be amended to provide for recreational and commercial boating activities on the Beansburn tributary of the Dart River, Mr Barr, in the Section 42A Report, considered that the submission did not contain any evaluation of safety effects, or how natural conservation values or amenity values of other recreational users would be impacted⁸³³.

919. Mr Edmonds spoke to the submission of Ngai Tahu Tourism Ltd, noting that the jet boat trip includes a stop at toilet facilities up the Beansburn River for which Ngai Tahu Tourism have a concession and presented maps showing stopping points. Mr Barr, in reply, agreed with Mr Edmonds and included a recommended amendment as part of a section 32AA assessment to provide for the exception of Beansburn tributary of the Dart River⁸³⁴.

920. We agree that an exception in this case is appropriate in addressing a practical aspect of the existing commercial boating operation. By excluding the Beansburn from the rule, the more general Rule 21.15.9 (as recommended) would apply making the activities described by Mr Edmonds a discretionary activity. Accordingly, we recommend that 21.5.44.3 be renumbered and worded as follows:

⁸³³ C Barr, Section 42A Report, Page 91, Para 17.55

⁸³⁴ C Barr, Reply, Appendix 2, Page 12, Rule 21.5.44.3

Any tributary of the Dart and Rees rivers (except the Beansburn and Rockburn tributaries of the Dart River) or upstream of Muddy Creek on the Rees River.

921. The submission of JBNZ sought to amend Rule 21.5.44.7, which prohibited recreational motorised craft on the Hunter River during the months of May to October, so that it would be permitted. Mr Barr in the Section 42A Report, noted that the submission stated that the rule would, *“prohibit recreational opportunities in certain months which is a permitted activity under the Operative District Plan”*. Mr Barr recorded that the rule is in fact carried over from the ODP and he considered the rule appropriate in terms of navigation and safety considerations and environmental impacts.
922. We heard no evidence from JBNZ in support of the submission that would contradict Mr Barr’s evidence. Therefore we recommend that the submission be rejected.
923. As regards the amendment sought by JBNZ to Rule 21.5.44.10 seeking permitted activity status for jet boating racing on the Clutha River (up to 6 race days a year), Mr Barr noted in the Section 42A Report that controlled activity status under Rule 21.5.38 is the same as in the ODP.⁸³⁵ Mr Barr did not consider the reasons provided by JBNZ to be compelling enough to alter the existing situation.
924. As for our consideration of Rule 21.5.38, JBNZ did not present any evidence in support of the submission that would cause us to take a different view to Mr Barr. We therefore recommend that the submission be rejected.
925. Notwithstanding the recommended acceptance and rejection of submissions set out above, we consider this rule has some inherent difficulties. As we understand the intention of the rule, it is to make it a prohibited activity for motorised craft to use the listed rivers and Lake Hayes (limited to commercial motorised craft). However, the rule also implies that where motorised craft are used for emergency search and rescue, hydrological survey, public scientific research, resource management monitoring or water weed control, or for access to adjoining land for farming activities, then they can use those rivers and Lake Hayes, presumably as a permitted activity.
926. In our view, the PDP would be a more easily understood document if the permitted activities were specified as such, and the prohibited activity rule was drafted so that it did not apply to those activities. For those reasons, we recommend this rule be split into two rules as follows:

| | | |
|----------|--|----|
| 21.15.2 | Motorised Recreational and Commercial Boating Activities The use of motorised craft for the purpose of emergency search and rescue, hydrological survey, public scientific research, resource management monitoring or water weed control, or for access to adjoining land for farming activities. | P |
| 21.15.10 | Motorised Recreational and Commercial Boating Activities The use of motorised craft on the following lakes and rivers is prohibited except as provided for under Rules 21.15.2 and 21.15.3. 21.15.10.1 Hawea River. 21.15.10.2 Lake Hayes - Commercial boating activities only. | PR |

⁸³⁵ C Barr, Section 42A Report, Page 89, Para 17.47

| | | |
|--|--|--|
| | <p>21.15.10.3 Any tributary of the Dart and Rees Rivers (except the Beansburn and Rockburn tributaries of the Dart River) or upstream of Muddy Creek on the Rees River.</p> <p>21.15.10.4 Young River or any tributary of the Young or Wilkin Rivers and any other tributaries of the Makarora River.</p> <p>21.15.10.5 Dingle Burn and Timaru Creek.</p> <p>21.15.10.6 The tributaries of the Hunter River.</p> <p>21.15.10.7 Hunter River during the months of May to October inclusive.</p> <p>21.15.10.8 Motatapu River.</p> <p>21.15.10.9 Any tributary of the Matukituki River.</p> <p>21.15.10.10 Clutha River - More than six jet boat race days per year as allowed by Rule 21.15.4</p> | |
|--|--|--|

14.6 Rule 21.5.45 – Boating Craft used for Accommodation

927. As notified, this rule provided standards applying to the use of craft for overnight accommodation. Non-compliance was a non-complying activity. No submissions were received to this rule.

928. In his Reply Statement, Mr Barr recommended changed wording so as to make it clear that the activity is allowed subject to the standards. In large part we agree with his recommended amendments. We consider such an amendment to be minor and available under Clause 16(2).

929. We recommend the rule be renumbered and adopted with the following wording:

| | | |
|---------|---|----|
| 21.16.1 | <p>Boating craft used for Accommodation</p> <p>Boating craft on the surface of the lakes and rivers may be used for accommodation, provided that:</p> <p>21.16.1.1 The craft must only be used for overnight recreational accommodation; and</p> <p>21.16.1.2 The craft must not be used as part of any commercial activity; and</p> <p>21.16.1.3 All effluent must be contained on board the craft and removed, ensuring that no effluent is discharged into the lake or river.</p> | NC |
|---------|---|----|

14.7 Rule 21.5.46 – Jetties in Frankton Arm

930. As notified, Rules 21.5.46 read as follows:

| | | |
|---------|--|----|
| 21.5.46 | <p>No new jetty within the Frankton Arm identified as the area east of the Outstanding Natural Landscape Line shall:</p> <p>21.5.46.1 be closer than 200 metres to any existing jetty;</p> <p>21.5.46.2 exceed 20 metres in length;</p> <p>21.5.46.3 exceed four berths per jetty, of which at least one berth is available to the public at all times;</p> <p>21.5.46.4 be constructed further than 200 metres from a property in which at least one of the registered owners of the jetty resides.</p> | NC |
|---------|--|----|

931. One submission sought that the standard be amended to exclude jetties associated with water based public transport or amended to provide flexibility for the provision of such jetties⁸³⁶. Two other submissions similarly sought that the rule not apply to jetties for public transport linkage on the Kawarau River, the Frankton Arm and Queenstown CBD⁸³⁷.
932. Submissions to this rule were not directly referenced in the Section 42A Report, Mr Barr noting in Appendix 2 that the matter was addressed under his consideration of Objective 21.2.12 (as notified)⁸³⁸.
933. Mr Farrell, in evidence for R/L opined that the importance of water based public transport warranted discretionary activity status for associated jetties and structures rather than the non-complying activity status⁸³⁹. Mr Farrell did not provide any further reasons for reaching that opinion.
934. We have already addressed the issue of water based public transport infrastructure at a policy level in Section 5.48 above, where we recommended separating public ferry systems from other commercial boating activities and, in particular, recording the need for jetties and moorings to be considered within the context of landscape quality and character, and amenity values all being maintained and enhanced under Policies 6.3.29 and 6.3.30. For the same reasons, we recommend that these submissions be rejected.
935. Mr Barr, in reply did recommend clarification of the rule by inserting a reference to Outstanding Natural Landscape line as shown on the District Plan Maps⁸⁴⁰. We agree that this is a useful clarification. Accordingly, we recommend that Rule 21.5.46 be renumbered and the wording be as follows;

| | | |
|---------|---|----|
| 21.16.2 | <p>Jetties and Moorings in the Frankton Arm</p> <p>Jetties and moorings in the Frankton Arm, identified as the areas located to the east of the Outstanding Natural Landscape line as shown on District Plan Map</p> <p>No new jetty within the Frankton Arm identified as the area east of the Outstanding Natural Landscape Line shall:</p> <p>21.16.2.1 Be closer than 200 metres to any existing jetty;</p> <p>21.16.2.2 Exceed 20 metres in length;</p> <p>21.16.2.3 Exceed four berths per jetty, of which at least one berth is available to the public at all times;</p> <p>21.16.2.4 Be constructed further than 200 metres from a property in which at least one of the registered owners of the jetty resides.</p> | NC |
|---------|---|----|

14.8 Rule 21.5.47 – Specific Standards

936. As notified, Rule 21.5.47 read as follows;

| | | |
|---------|--|----|
| 21.5.47 | The following activities are subject to compliance with the following standards: | NC |
|---------|--|----|

⁸³⁶ Submission 621

⁸³⁷ Submissions 766, 806

⁸³⁸ C Barr, Section 42A Report, Appendix 2, Page 131

⁸³⁹ B Farrell, EIC, Page 29, Para 135

⁸⁴⁰ C Barr, Reply, Appendix 1, Page 21-27

| | | |
|--|--|--|
| | <p>21.5.47.1 Kawarau River, Lower Shotover River downstream of Tucker Beach and Lake Wakatipu within Frankton Arm - Commercial motorised craft shall only operate between the hours of 0800 to 2000.</p> <p>21.5.47.2 Lake Wanaka, Lake Hawea and Lake Wakatipu - Commercial jetski operations shall only be undertaken between the hours of 0800 to 2100 on lakes Wanaka and Hawea and 0800 and 2000 on Lake Wakatipu.</p> <p>21.5.47.3 Dart and Rees Rivers - Commercial motorised craft shall only operate between the hours of 0800 to 1800, except that above the confluence with the Beansburn on the Dart River commercial motorised craft shall only operate between the hours of 1000 to 1700.</p> <p>21.5.47 Dart River – The total number of commercial motorised boating activities shall not exceed 26 trips in any one day. No more than two commercial jet boat operators shall operate upstream of the confluence of the Beansburn, other than for tramper and angler access only.</p> | |
|--|--|--|

937. One submission sought that the rule be amended to clarify that it did not apply to commercial boating operations providing a public transport service⁸⁴¹. Another submission sought that Rule 21.5.47.1 be amended so as not to provide a disincentive for public transport⁸⁴². A third submission sought that rule 21.5.47.4 be amended to refer to ‘one’ instead of ‘two’ commercial jet boat operators⁸⁴³.
938. Mr Barr, in the Section 42A Report, agreed that the hours of operation specified in Rule 21.5.47.1 could provide a disincentive for public transport and recommended amending the rule to exclude public transport ferries, rather than deleting the rule entirely.⁸⁴⁴
939. We have already addressed public transport ferry activities above. We agree with Mr Barr that the restriction on the hours of operation would be a disincentive that should be removed.
940. In speaking to the submission of Ngai Tahu Tourism Ltd⁸⁴⁵ seeking an amendment to Rule 21.5.47.4, to refer to ‘one’ instead of ‘two’ commercial jet boat operators, Mr Edmonds explained that Ngai Tahu Tourism Ltd now owned all the jet boat operations on the Dart River.
941. We are concerned that, notwithstanding that Ngai Tahu Tourism Limited may be the only present operator on the Dart River, restricting the number of operators to one would amount to a restriction of trade competition. In the absence of evidence of resource management reasons as to why the standard should be further restricted, we do not recommend it be changed.

⁸⁴¹ Submission 806

⁸⁴² Submission 383

⁸⁴³ Submission 716

⁸⁴⁴ C Barr, Section 42A Report, Page 87, Para 17.39

⁸⁴⁵ Submission 716

942. Taking account of all of the above, we recommend that rule 21.5.47 be renumbered and worded as follows:

| | | |
|---------|--|----|
| 21.16.3 | <p>The following activities are subject to compliance with the following standards:</p> <p>21.16.3.1 Kawarau River, Lower Shotover River downstream of Tucker Beach and Lake Wakatipu within Frankton Arm - Commercial motorised craft other than public transport ferry activities, may only operate between the hours of 0800 to 2000.</p> <p>21.16.3.2 Lake Wanaka, Lake Hawea and Lake Wakatipu - Commercial jetski operations must only be undertaken between the hours of 0800 to 2100 on Lakes Wanaka and Hawea and 0800 and 2000 on Lake Wakatipu.</p> <p>21.16.3.3 Dart and Rees Rivers - Commercial motorised craft must only operate between the hours of 0800 to 1800, except that above the confluence with the Beansburn on the Dart River commercial motorised craft must only operate between the hours of 1000 to 1700.</p> <p>21.16.3.4 Dart River – The total number of commercial motorised boating activities must not exceed 26 trips in any one day. No more than two commercial jet boat operators may operate upstream of the confluence of the Beansburn, other than for tramper and angler access only.</p> | NC |
|---------|--|----|

15 TABLE 10 – CLOSEBURN STATION

943. As notified, this table contained one activity rule and four standards applying solely to Closeburn Station. The only submission⁸⁴⁶ on these supported the provisions.
944. We recommend these be split into two tables: Table 14: Closeburn Station – Activities; and Table 15: Closeburn Station – Standards. Other than that, renumbering and a minor grammatical correction to the height standards, we recommend the rules be adopted as notified.

16 NEW STANDARDS SOUGHT

945. The NZFS⁸⁴⁷ sought inclusion of a standard requiring compliance with the NZFS Code of Practice SNZ PAS 4509:2003 in relation to water supply and access. We were not able to find any further submissions opposing the relief sought.
946. In the Section 42A Report, Mr Barr supported the request but raised concerns around the reliance on the Code of Practice, which is a document outside the PDP, for a permitted activity status. As there were no development rights attached to dwellings in the Rural Zone, Mr Barr

⁸⁴⁶ Submission 323

⁸⁴⁷ Submission 438

did not consider the rule necessary and recommended that the submission be rejected⁸⁴⁸. We note that in Section 5.4 above that we have already dealt with the policy matter of the provision of firefighting water supply and fire service vehicle access within this Chapter and the other rural chapters. We also note that Mr Barr, in the Section 42A Report on Chapter 22, recommended that the specifics of the Code of Practice be incorporated into the wording of a standard⁸⁴⁹.

947. We heard evidence from Mr McIntosh, Area Manager Central/North Otago at the NZFS, as to the detail of the Code of Practice and the importance of water supply and access to property in the event of the NZFS attending emergency call outs⁸⁵⁰. We also heard evidence from Ms A McLeod, a planner appearing for NZFS. Ms McLeod had a different view to Mr Barr, considering that a standard should be included. Her reasons included greater certainty and clarity for plan users, consistency with the priority given to fire-fighting water supply in section 14(3) of the RMA and by being *“the most appropriate way to achieve the purpose of the RMA by enabling people and community to provide for their health, safety and well-being by managing a potential adverse effect of relatively low probability but high consequence.”*⁸⁵¹
948. In her evidence, Ms McLeod considered that reference to codes of practice were provided for by the Act and that interpreting the code into the provision as proposed by Mr Barr could lead to the PDP being more restrictive than the code itself⁸⁵². We questioned the NZFS witnesses regarding the detail of the application of the code and proposed standard and activity status during the hearing and also sought additional information on specific questions relating to the treatment of multiple units, separation distances and the suggested 45,000 litre tank size. We received that information on 7 June 2016.
949. Taking into account all the evidence and information we were provided with, we think that reliance on the code of practice is not appropriate in terms of specifying the requirements and that those requirements should be set out in the Plan. We agree that the tank/s size should be 45,000litres and the activity status for non-compliance should be restricted discretionary. In line with our policy recommendation above, we also consider that these provisions be consistently applied across all the rural chapters.
950. Accordingly we recommend the NZFS submission be accepted in part and that the provisions be located in Table 4 (Standards for Structures and Buildings), numbered and worded as follows:

| | | |
|--------|--|---|
| 21.7.5 | <p>Fire Fighting water and access</p> <p>All new buildings, where there is no reticulated water supply or any reticulated water supply is not sufficient for fire-fighting water supply, must make the following provision for fire-fighting:</p> <p>21.7.5.1 A water supply of 45,000 litres and any necessary couplings.</p> <p>21.7.5.2 A hardstand area adjacent to the firefighting water supply</p> | <p>RD</p> <p>Discretion is restricted to:</p> <p>a. The extent to which SNZ PAS 4509: 2008 can be met including the adequacy of the water supply.</p> <p>b. The accessibility of the firefighting water connection point for fire service vehicles.</p> |
|--------|--|---|

⁸⁴⁸ C Barr, Section 42A Report, Pages 99 -100, Paras 20.1 – 20.5

⁸⁴⁹ C Barr, Chapter 22 Section 42A Report, Page 34, Paras 16.6 – 16.8

⁸⁵⁰ D McIntosh, EIC, Pages 2 – 5, Paras 19 - 33

⁸⁵¹ A McLeod, EIC, Pages 8-9, Para 5.10

⁸⁵² A McLeod, EIC, Pages 9 – 11, Paras 5.13 – 5.18

| | | |
|--|--|---|
| | <p>capable of supporting fire service vehicles.</p> <p>21.7.5.3 Firefighting water connection point within 6m of the hardstand, and 90m of the dwelling.</p> <p>21.7.5.4 Access from the property boundary to the firefighting water connection capable of accommodating and supporting fire service vehicles.</p> | c. Whether and the extent to which the building is assessed as a low fire risk. |
|--|--|---|

17 RULE 21.6 – NON-NOTIFICATION OF APPLICATIONS

951. As notified, Rule 21.6 read as follows;

21.6 Non-Notification of Applications

Any application for resource consent for the following matters shall not require the written consent of other persons and shall not be notified or limited-notified:

21.6.1 Controlled activity retail sales of farm and garden produce and handicrafts grown or produced on site (Rule 21.4.14), except where the access is onto a State highway.

21.6.2 Controlled activity mineral exploration (Rule 21.4. 31).

21.6.3 Controlled activity buildings at Closeburn Station (Rule 21.5.48).

952. One submission sought that the rule be amended to include a provision that states consent to construct a building will proceed non-notified⁸⁵³. The reasons set out in the submission include that, *“Buildings within the rural zone can have limited impact upon the environment and the community. Often buildings are related to the activities that occur onsite. Given the limited impact that buildings have on the rural environment and communities it is appropriate that consent for any building proceed non-notified.”*⁸⁵⁴

953. In the Section 42A Report, Mr Barr considered that it was important that all buildings had the potential to be processed on a notified or limited notified basis and recommended that the submission be rejected⁸⁵⁵. We heard no evidence in support of the submission.

954. We agree with Mr Barr that buildings should have the potential to be processed as notified or limited notified. Any decision as regards buildings in the Rural Zone is needs to be subject of a separate assessment as to effects and potentially affected parties. In appropriate cases, applications will proceed on a non-notified basis.

955. Accordingly, we recommend that submission be rejected and that apart from numbering, the provisions remain as notified.

⁸⁵³ Submission 701

⁸⁵⁴ Submission 701, Page 3, Para 23

⁸⁵⁵ C Barr, Section 42A Report, Page 92, Para 18.4

18 SUMMARY OF CONCLUSIONS ON RULES

956. We have set out in full in Appendix 1 the rules we recommend the Council adopt. For all the reasons set out above, we are satisfied that these rules are the most effective and efficient means of implementing the policies so as to achieve the objectives of Chapter 21, and those in the Strategic Directions chapters. Where we have recommended rules not be included, that is because, as our reasons above show, we do not consider them to be efficient or effective.

19 21.7 – ASSESSMENT MATTERS (LANDSCAPE)

19.1 21.7.1 Outstanding Natural Features and Outstanding Natural Landscapes

957. As notified Clauses 21.7.1 and 21.7.1.1 – 21.7.1.2 read as follows;

21.7.1 *Outstanding Natural Features and Outstanding Natural Landscapes (ONF and ONL).*

These assessment matters shall be considered with regard to the following principles because, in or on Outstanding Natural Features and Landscapes, the applicable activities are inappropriate in almost all locations within the zone:

21.7.1.1 *The assessment matters are to be stringently applied to the effect that successful applications will be exceptional cases.*

21.7.1.2 *Existing vegetation that:*

a. was either planted after, or, self-seeded and less than 1 metre in height at 28 September 2002; and,

b. obstructs or substantially interferes with views of the proposed development from roads or other public places, shall not be considered:

i. as beneficial under any of the following assessment matters unless the Council considers the vegetation (or some of it) is appropriate for the location in the context of the proposed development; and

ii. as part of the permitted baseline.

958. Submissions on these provisions sought that the introductory note be deleted entirely⁸⁵⁶, or that the wording in the introductory note be variously amended to remove the wording “*the applicable activities are inappropriate in almost all locations within the zone:*”⁸⁵⁷; or to refer only to the Wakatipu Basin⁸⁵⁸; that the provision be amended to take into account the locational constraints of infrastructure⁸⁵⁹; that the assessment criteria be amended to accord with existing case law⁸⁶⁰; and that 21.7.1.1⁸⁶¹ and 21.7.1.2⁸⁶² be deleted.

⁸⁵⁶ Submissions 179, 421

⁸⁵⁷ Submission 355, 608, 693, 702

⁸⁵⁸ Submission 519

⁸⁵⁹ Submission 433

⁸⁶⁰ Submission 806

⁸⁶¹ Submissions 179, 191, 249, 355, 421, 598, 621, 624, 693, 702, 781

⁸⁶² Submission 249

959. In the Section 42A Report, Mr Barr provided a table that set out in detail the comparison between the assessment criteria under the ODP and PDP⁸⁶³ and recommended that 21.7.1 and 21.7.1.1 be amended in response to the submissions and should be worded as follows:

19.1.1.1 ~~21.7.1~~ Outstanding Natural Features and Outstanding Natural Landscapes (ONF and ONL).

These assessment matters shall be considered with regard to the following principles because, in or on Outstanding Natural Features and Landscapes, the applicable activities are inappropriate in almost all locations within the Wakatipu Basin, and inappropriate in many locations throughout the District wide Outstanding Natural Landscapes:

~~19.1.1.2 21.7.1.1 The assessment matters are to be stringently applied to the effect that successful applications will be exceptional cases.~~

960. Mr Barr's reasoning supporting the amendments, was to clarify that the assessment criteria were not a 'test', and to remove the word exceptional which has connotations to section 104D of the RMA given it is discretionary activities that the assessment is generally applied to⁸⁶⁴.

961. In evidence for Darby Planning, Mr Ferguson considered the wording of the assessment criteria as notified predetermined that activities were inappropriate in almost all locations, and that this was itself inappropriate and unnecessary⁸⁶⁵.

962. Mr Vivian, in evidence for NZTM agreed with Mr Barr's recommendation as to referencing that activities are inappropriate in almost all locations within the Wakatipu Basin and noted the Environment Court decision from which the assessment criteria was derived (C180/99). However, Mr Vivian considered that the term Wakatipu Basin was not adequately defined and recommended additional wording for clarification purposes.⁸⁶⁶

963. Mr Haworth, in evidence for UCES on wider assessment criteria matters, referred to the assessment criteria as a 'test'⁸⁶⁷. We questioned Ms Lucas as to her tabled evidence for UCES as to what the meaning of 'test' was in the context of her evidence. Ms Lucas' response was that "A "test", that is, in application of the assessment matter, "shall be satisfied" that".

964. Mr Barr, in reply, made some changes to the recommended assessment criteria in light of the submissions and evidence noted above, but considered that some of the wording changes added little value or would potentially weaken the assessment required⁸⁶⁸. Also in reply, Mr Barr detailed his view that a test was appropriately located in the objective and policies and that assessment matters provide guidance in considering specified environment effects⁸⁶⁹.

965. In the Section 42A Report, Mr Barr did not support the amendment sought by QAC for the inclusion of locational constraints within the assessment criteria on the basis that it was the

⁸⁶³ C Barr, Section 42A Report, Page 110, Table 1, Issue 12: Landscape Assessment Matters: cross referencing with PDP Landscape Policy and ODP assessment matters

⁸⁶⁴ C Barr, Section 42A Report, Page 98, Para 19.21

⁸⁶⁵ C Ferguson, EIC, Page 15, Para 66

⁸⁶⁶ C Vivian, EIC, Page 22, Paras 4.102 – 4.106

⁸⁶⁷ J Haworth, EIC, Page 12, Para 88

⁸⁶⁸ C Barr, Reply, Pages 31-32, Para 11.1

⁸⁶⁹ C Barr, Reply, Pages 32, Para 11.4

place of policies or higher order planning documents to direct consideration of any such constraints and amendments to the strategic directions chapter had been recommended⁸⁷⁰.

966. In evidence for QAC, Ms O’Sullivan took a different view, considering *“that the Assessment Matters, as drafted, may inappropriately constrain the development, operation and upgrade of infrastructure and utilities that have a genuine operational and/or locational requirement to be located ONLs, ONFs or RCLs. I also consider the complex cross referencing between the Chapter 6 Landscapes, Chapter 21 Rural and Chapter 30 Energy and Utilities will give rise to inefficiencies and confusion in interpretation”*⁸⁷¹. To address these issues Ms O’Sullivan recommended new assessment criteria, narrowing the assessment to regional significant infrastructure with the assessment criteria be worded as follows;

21.7.3.4 For the construction, operation and replacement of regionally significant infrastructure and for additions, alterations, and upgrades to regionally significant infrastructure, in addition to the assessment matters at 21.7.1, 21.7.2, 21.7.3.2 and 21.7.3.3, whether the proposed development:

- a. Is required to provide for the health, safety or wellbeing of the community; and*
- b. Is subject to locational or functional requirements that necessitate a particular siting and reduce the ability of the development to avoid adverse effects; and*
- c. Avoids, remedies or mitigates adverse effects on surrounding environments to the extent practicable in accordance with Objective 30.2.7 and Policies 30.2.7.1 – 30.2.7.4 (as applicable).*

967. We agree with Mr Barr that the assessment criteria are for landscape assessment and the policies are the place where consideration by decision-makers as to policy direction on locational constraints of infrastructure should be found. Earlier in this decision we addressed the inclusion of infrastructure into this chapter⁸⁷². For the reasons we set out there, and because we doubt that Ms O’Sullivan’s suggestion is within the scope of the QAC submission, we recommend that the submission of QAC be rejected.

968. The wording of the first paragraph of 21.7.1 along with 21.7.1.1 are derived from (notified) policy 6.3.1.3. The issue as to inappropriateness and stringency of application were also canvassed before the Hearing Stream 1B in hearing submissions on Policy 6.3.1.3.. We refer to and adopt the reasoning of that Panel⁸⁷³. That Panel has recommended that (revised) Policy 6.3.11 read:

Recognise that subdivision and development is inappropriate in almost all locations in Outstanding Natural Landscapes and on Outstanding Natural Features, meaning successful applications will be exceptional cases where the landscape or feature can absorb the change and where the buildings and structures and associated roading and boundary changes are reasonably difficult to see from beyond the boundary of the site the subject of application.

969. In considering all of the above, we agree in part with Mr Barr that the objectives and policies need to link through to the assessment criteria. However, to our minds, the recommendations

⁸⁷⁰ C Barr, Section 42A Report, Pages 97 – 98, Para 19.20

⁸⁷¹ K O’Sullivan, EIC, Page5, Para 3.4

⁸⁷² Section 5

⁸⁷³ Report 3, Recommendations on Chapters 3, 4 and 6, Section 10.6

to establish that connection do not go far enough. Accordingly, we recommend that there be direct reference to the policies from Chapters 3 and 6 included within the assessment criteria description. In addition, we agree with Mr Barr as the assessment criteria are not tests and accordingly recommend that the submission of UCES be rejected.

970. Given the recommended wording of Policy 6.3.11, we recommend that the introductory paragraph and 21.7.1.1 be reworded consistent with that policy.

971. We heard no evidence from Willowridge Developments Limited⁸⁷⁴ in relation to its submission seeking the deletion of Rule 21.7.1.2. Mr Barr did not particularly discuss the submission, nor recommend any changes to the provision. We understand the provision has been taken directly from the ODP (Section 5.4.2.2(1)). Without any evidence as to why the provision should be deleted or changed, we recommend it remain unaltered.

972. Accordingly we recommend that the introductory part of 21.7.1 be numbered and worded as follows:

21.21 *Assessment Matters (Landscapes)*

21.21.1 *Outstanding Natural Features and Outstanding Natural Landscapes (ONF and ONL).*

The assessment matters set out below are derived from Policies 3.3.30, 6.3.10 and 6.3.12 to 6.3.18 inclusive Applications shall be considered with regard to the following assessment matters.

21.20.1.1 *In applying the assessment matters, the Council will work from the presumption that in or on Outstanding Natural Features and Landscapes, the applicable activities are inappropriate in almost all locations and that successful applications will be exceptional cases where the landscape or feature can absorb the change and where the buildings and structures and associated roading and boundary changes are reasonably difficult to see from beyond the boundary of the site the subject of application.*

21.20.1.2 *Existing vegetation that:*

- a. *was either planted after, or, self-seeded and less than 1 metre in height at 28 September 2002; and*
- b. *obstructs or substantially interferes with views of the proposed development from roads or other public places, shall not be considered:*
 - i. *as beneficial under any of the following assessment matters unless the Council considers the vegetation (or some of it) is appropriate for the location in the context of the proposed development; and*
 - ii. *as part of the permitted baseline.*

19.2 Assessment Matters 21.7.1.3 to 21.7.1.6 Inclusive

973. The only submission on these assessment matters supported 21.7.1.5⁸⁷⁵. We recommend those matters be adopted as notified, subject to renumbering.

19.3 Section 21.7.2 Rural Landscape Classification (RCL) and 21.7.2.1 – 21.7.2.2

974. As notified Rule 21.7.2 and 21.7.2.1 – 21.7.2.2 read as follows;

21.7.2 Rural Landscape Classification (RLC)

These assessment matters shall be considered with regard to the following principles because in the Rural Landscapes the applicable activities are inappropriate in many locations:

21.7.2.1 *The assessment matters shall be stringently applied to the effect that successful applications are, on balance, consistent with the criteria.*

21.7.2.2 *Existing vegetation that:*

- a. *was either planted after, or, self seeded and less than 1 metre in height at 28 September 2002; and,*
- b. *obstructs or substantially interferes with views of the proposed development from roads or other public places, shall not be considered:*
 - i. *as beneficial under any of the following assessment matters unless the Council considers the vegetation (or some of it) is appropriate for the location in the context of the proposed development; and*
 - ii. *as part of the permitted baseline.*

975. Submissions on these provisions variously sought that the introductory note be deleted entirely⁸⁷⁶, that the wording in the introductory note be amended to remove the wording “*the applicable activities are inappropriate in almost all locations within the zone:*”⁸⁷⁷, that the current assessment criteria in 21.7.2 be deleted and replaced with a set of assessment matters that better reflect and provide for the “Other Rural Landscape (ORL) category of landscapes⁸⁷⁸, that 21.7.2 be amended to provide for cultural and historic values⁸⁷⁹, and that 21.7.2.1⁸⁸⁰ and 21.7.1.2⁸⁸¹ be deleted.

976. In the Section 42A Report, Mr Barr disagreed with the request for the inclusion of the ORL category of landscape criteria which the submitters were seeking to transfer from the ODP. Relying on Dr Read’s evidence that the ORL has only been applied in two circumstances, Mr Barr considered that the ORL criteria were too lenient on development and would not maintain amenity values, quality of the environment or finite characteristics of natural physical

⁸⁷⁵ Submission 719

⁸⁷⁶ Submissions 179, 251, 781

⁸⁷⁷ Submission 608

⁸⁷⁸ Submission 345, 456

⁸⁷⁹ Submission 798

⁸⁸⁰ Submissions 179, 191, 421, 781

⁸⁸¹ Submission 251

resources⁸⁸². We agree for reasons set out in Mr Barr’s Section 42A Report. We also note that it has already been determined by the Stream 1B Hearing Panel that there are only two landscape categories (ONL/ONR and RCL) and that is reflected in our recommendations on this Chapter. Accordingly, we recommend that Submissions 345 and 456 be rejected.

977. In the Section 42A Report, Mr Barr recommended that 21.7.2 and 21.7.2.1 be amended in response to the submissions and should be worded as follows:

21.7.2 Rural Landscape Classification (RLC)

These assessment matters shall be considered with regard to the following principles because in the Rural Landscapes the applicable activities are unsuitable in many locations:

~~*21.7.2.1 The assessment matters shall be stringently applied to the effect that successful applications are, on balance, consistent with the criteria.*~~

978. Mr Barr did not alter his opinion in his Reply Statement.
979. We note that before addressing the detail of this provision, a consequential change is required to refer to Rural Character Landscapes (RCL) consistent with the recommendations of the Stream 1B Hearing Panel. In addition, the reference in the introductory sentence to “Rural Landscapes” should be changed to “Rural Character Landscapes” so as to make it clear that these assessment criteria do not apply in ONLs or on ONFs.
980. As in the discussion on 21.7.1 above, we consider the introductory remarks should refer the relevant policies from Chapters 3 and 6. For those reasons, and taking into account Mr Barr’s recommendations, we recommend that 21.7.2 and 21.7.2.1 be renumbered and worded as follows :

21.7.2 Rural Character Landscape (RCL)

The assessment matters below have been derived from Policies 3.3.32, 6.3.10 and 6.3.19 to 6.3.29 inclusive. Applications shall be considered with regard to the following assessment matters because in the Rural Character Landscapes the applicable activities are unsuitable in many locations:

~~*21.7.2.1 The assessment matters shall be stringently applied to the effect that successful applications are, on balance, consistent with the criteria.*~~

19.4 Assessment Matters 21.7.2.2 and 21.7.2.3

981. There were no submissions on these assessment matters and, accordingly, we recommend they be adopted as notified subject to renumbering.

19.5 Assessment Matters 21.7.2.4, 21.2.2.5 and 21.7.2.7

982. As notified Rule 21.7.2.4, 21.7.2.5 and 21.7.2.7 read as follows;

21.7.2.4 Effects on visual amenity:

Whether the development will result in a loss of the visual amenity of the Rural Landscape, having regard to whether and the extent to which:

⁸⁸² C Barr, Section 42A report, Page 98, Para 9.24

- a. *the visual prominence of the proposed development from any public places will reduce the visual amenity of the Rural Landscape. In the case of proposed development which is visible from unformed legal roads, regard shall be had to the frequency and intensity of the present use and, the practicalities and likelihood of potential use of these unformed legal roads as access*
- b. *the proposed development is likely to be visually prominent such that it detracts from private views*
- c. *any screening or other mitigation by any proposed method such as earthworks and/or new planting will detract from or obstruct views of the Rural Landscape from both public and private locations*
- d. *the proposed development is enclosed by any confining elements of topography and/or vegetation and the ability of these elements to reduce visibility from public and private locations*
- e. *any proposed roads, boundaries and associated planting, lighting, earthworks and landscaping will reduce visual amenity, with particular regard to elements which are inconsistent with the existing natural topography and patterns*
- f. *boundaries follow, wherever reasonably possible and practicable, the natural lines of the landscape or landscape units.*

21.7.2.5 *Design and density of development:*

In considering the appropriateness of the design and density of the proposed development, whether and to what extent:

- a. *opportunity has been taken to aggregate built development to utilise common access ways including roads, pedestrian linkages, services and open space (i.e. open space held in one title whether jointly or otherwise)*
- b. *there is merit in clustering the proposed building(s) or building platform(s) having regard to the overall density and intensity of the proposed development and whether this would exceed the ability of the landscape to absorb change*
- c. *development, including access, is located within the parts of the site where they will be least visible from public and private locations*
- d. *development, including access, is located in the parts of the site where they will have the least impact on landscape character.*

21.7.2.7 *Cumulative effects of development on the landscape:*

Taking into account whether and to what extent any existing, consented or permitted development (including unimplemented but existing resource consent or zoning) has degraded landscape quality, character, and visual amenity values. The Council shall be satisfied;

- a. *the proposed development will not further degrade landscape quality, character and visual amenity values, with particular regard to situations that would result in a loss of valued quality, character and openness due to the prevalence of residential or non-farming activity within the Rural Landscape*
- b. *where in the case resource consent may be granted to the proposed development but it represents a threshold to which the landscape could absorb any further development, whether any further cumulative adverse effects would be avoided by way of imposing a covenant, consent notice or other legal instrument that maintains open space.*

983. Submissions on these provisions variously sought that;

- a. 21.7.4.2 (b) be deleted⁸⁸³
- b. 21.7.2.5 (b) be incorporated into the ODP assessment matters⁸⁸⁴
- c. 21.7.2.5 (c) be deleted⁸⁸⁵
- d. 21.7.2.7 be deleted⁸⁸⁶

984. In the Section 42A Report, having addressed the majority of the submissions in relation to 21.7.2, Mr Barr did not specifically address these submissions, but recommended that the assessment matters be retained as notified⁸⁸⁷.

985. Mr Brown and Mr Farrell, in evidence for the submitters, made recommendations to amend the assessment criteria in 21.7.2.4, 21.7.2.5 and 21.7.2.7. Mr Brown and Mr Farrell also made recommendations to amend other assessment criteria in 21.7.2⁸⁸⁸. In summary, Mr Brown and Mr Farrell recommended amendments to reflect RMA language, rephrase from negative to positive language, and remove repetition⁸⁸⁹.

986. In reply, Mr Barr considered that the amendments to these provisions added little value or potentially weakened the assessment required⁸⁹⁰ and hence remained of the view that the provisions as notified should be retained. We agree.

987. In addition, the amendments recommend by Mr Brown and Mr Farrell in some instances go beyond the relief sought. Accordingly, we recommend that the submissions be rejected.

988. We have already the UECS submission seeking the retaining of the ODP provisions. We do not repeat that here and recommend that submission on this provision be rejected.

19.6 Assessment Matter 21.7.2.6

989. There were no submissions in relation to this matter. We recommend it be adopted as notified, subject to renumbering.

⁸⁸³ Submissions 513, 515, 522, 531, 532, 534, 535, 537

⁸⁸⁴ Submission 145

⁸⁸⁵ Submission 513, 515, 522, 531, 532, 534, 535, 537

⁸⁸⁶ Submission 513, 515, 522, 531, 532, 534, 535, 537

⁸⁸⁷ C Barr, Section 42A Report, Page 99, Para 19.25

⁸⁸⁸ J Brown, EIC, Attachment B, Pages 35-37 and Mr B Farrell, EIC, Pages 30-32, Para 138

⁸⁸⁹ J Brown, EIC, Page 15, Para 2.22 and Mr B Farrell, EIC, Page 29, Para 137

⁸⁹⁰ C Barr, Reply, Pages 31-32, Para 11.1

19.7 21.7.3 Other factors and positive effects, applicable in all the landscape categories (ONF, ONL and RLC)

990. One submission⁸⁹¹ supported this entire section. No submissions were lodged specifically in relation to 21.7.3.1. We therefore recommend that 21.7.3.1 be adopted as notified, subject to renumbering and amending the title to refer to Rural Character Landscapes.

19.8 Assessment Matter 21.7.3.2

991. As notified, 21.7.3.2 read as follows:

Other than where the proposed development is a subdivision and/or residential activity, whether the proposed development, including any buildings and the activity itself, are consistent with rural activities or the rural resource and would maintain or enhance the quality and character of the landscape.

992. One submission sought that this provision be amended to enable utility structures in landscapes where there is a functional or technical requirement⁸⁹².

993. We addressed this matter in above in discussing the provisions sought by QAC in 21.7.1. We heard no evidence in relation to this submission. We recommend that the submission be rejected.

19.9 Assessment Matter 21.7.3.3

994. As notified, this criterion set out the matters to be taken into account in considering positive effects. Two submissions⁸⁹³ sought the retention of this matter, and one⁸⁹⁴ supported it subject to inclusion of an additional clause to enable the consideration of the positive effects of services provided by utilities.

995. We heard no evidence in support of the amendment sought by PowerNet Limited. We agree with Mr Barr's comments⁸⁹⁵ made in relation to the QAC submission discussed above. Assessment criteria are a means of assessing applications against policies in the Plan. The amendment sought by the submitter should be located in the policies, particularly those in Chapter 6. Consequently, we recommend this submission be rejected, and 21.7.3.3 be adopted as notified, subject to renumbering.

20 SUMMARY REGARDING ASSESSMENT MATTERS

996. We have included our recommended set of assessment matters in Appendix 1. We are satisfied that application of these assessment matters on resource consent applications will implement the policies in the Strategic Direction Chapters and those of Chapter 21.

21 SUBMISSIONS ON DEFINITIONS NOT OTHERWISE DEALT WITH

997. Several submissions relating to definitions were set down to be heard that were relevant to this chapter that have not been dealt with in the discussion above. In each case we received no evidence in support of the submission therefore we do not recommend any changes to the relevant definitions, which were as follows:

⁸⁹¹ Submission 378, opposed by FS1049, FS1095 and FS1282

⁸⁹² Submission 251, supported by FS1097 and FS1121

⁸⁹³ Submissions 355 and 806

⁸⁹⁴ Submission 251, supported by FS1097, opposed by FS1320

⁸⁹⁵ C Barr, Section 42A Report, page 97, paragraph 19.20

- a. Factory farming⁸⁹⁶;
- b. Farming activity⁸⁹⁷;
- c. Farm building⁸⁹⁸;
- d. Forestry⁸⁹⁹;
- e. Holding⁹⁰⁰;
- f. Informal airport⁹⁰¹;
- g. Rural industrial activity⁹⁰²;
- h. Rural selling place.⁹⁰³

⁸⁹⁶ Submission 805

⁸⁹⁷ Submissions 243 and 805

⁸⁹⁸ Submissions 600 and 805

⁸⁹⁹ Submission 600

⁹⁰⁰ Submission 600

⁹⁰¹ Submissions 220, 296, 433 and 600

⁹⁰² Submission 252

⁹⁰³ Submission 600