

Before Queenstown Lakes District Council

In the matter of the Resource Management Act 1991

And **The Queenstown Lakes District Proposed District Plan –
Topic 15**

Legal Submissions for

Darby Planning LP (#2376)

Henley Downs Farm Holdings Ltd and Henley Downs Land Holdings Ltd (#2381)

Treble Cone Investments Ltd (#2373)

Soho Ski Area Limited, Blackmans Creek No.1 LP (Soho) (#2384)

Mt Christina Limited (#2383)

Glencoe Station Limited (#2379)

Glendhu Bay Trustees Limited (#2382)

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May it please the Panel

Introduction

- 1 These legal submissions are presented on behalf of Darby Planning LP, Mt Christina, Glendhu Bay Trustees Limited, Soho Ski Area Limited and Blackmans Creek No.1 LP, Treble Cone Investments Limited, Henley Downs Farm Holdings Limited and Henley Downs Land Holdings Limited and Glencoe Station Limited (**Submitters**).
- 2 By way of general introduction / overview of the relief sought in respect of each of those submissions, I note the following:
 - (a) The Darby Planning LP (**DPL**) submission provides a general umbrella or overview submission in respect of Stage 2 of the District Plan Review (**DPR**). This submission represents a range of property interests across the District, including those related to residential development and commercial/hospitality and recreational activities. The primary intent of this umbrella submission is to draw attention to fundamental issues with the Topic 15 chapters, and a disconnect between those provisions, the higher order provisions of Stage 1 PDP, and the RPS.
 - (b) Henley Downs Farm Holdings Ltd and Henley Downs Land Holdings Ltd (**Jacks Point**) are principally interested in Topic 15 chapters as those directly relate to the Jacks Point Zone (**JPZ**). It seeks to ensure there is consistency and integration in the Topic 15 chapters with the JPZ Stage 1 Chapter 41 (and as appealed currently by Jacks Point).
 - (c) Treble Cone Investments Ltd (**Treble Cone**) and Soho Ski Area Limited, Blackmans Creek No.1 LP (**Soho**) are principally interested in the effect of Topic 15 chapters on Ski Area Subzones (**SASZ**) and the operation of SASZ with the adjacent rural zone. Pertinent issues to the operation SASZ as year round tourism and recreation destinations are matters raised in the signed, earthworks, and transport chapters.
 - (d) Mt Christina Limited (**MCL**) and Glencoe Land Development own land zoned rural / rural lifestyle and which is affected by Topic 15 chapters, particularly earthworks and visitor accommodation.
 - (e) Glendhu Bay Trustees Limited (**GBT**) owns land sought to be rezoned as the Glendhu Station Zone (**GSZ**) through appeals on stage 1 of the PDP. GBT seeks to ensure that any amendments through topic 15 chapters are aligned and integrated with the GSZ.

- 3 To avoid repetition for the Panel, these submissions have been structured to address specific chapters in topic 15, rather than focus on individual concerns of the submitters jointly represented in these submissions. Where a matter is particularly relevant for an individual submitter this has been stated.
- 4 The Submitters jointly have provided three briefs of evidence supporting their submissions as follows:
 - (a) **Deborah Rowe** –transport
 - (b) **Ralph Henderson**- earthworks
 - (c) **Chris Ferguson** –visitor accommodation, open space and recreation, and signs.

Earthworks – Chapter 25

- 5 Soho, Treble Cone, and DPL supported a number of changes to objectives, policies, rules, and standards, within Chapter 25 as set out in Mr Henderson's evidence, applicable to regulation of earthworks in SASZs. The key reasoning behind these submissions is to reflect the planning framework under the Operative Plan, excluding earthworks in SASZs from regulation in Chapter 22.
- 6 The exception of earthworks rules and standards in SASZs recognises the benefits of earthworks for the continued operation and development of ski areas and the substantial contribution ski fields make to the social and economic well-being of the District, given that earthworks are a necessary part of the development and ongoing operation of these areas. Exemptions should be broad enough to encompass earthworks activities undertaken during the operation and expansion of modern ski-fields, such as the installation and maintenance of infrastructure associated with snow making, trail development, lifts and other activities associated with year round alpine resorts.
- 7 There are many unique factors relating to earthworks in SASZs which justify different regulation to other zones in the District. For example, rules in relation to the control of earthworks near waterbodies may capture activities relevant to snow making, which require the creation of reservoirs and the diversion of streams. It is also currently unclear whether these standards are aimed at protecting natural or significant waterbodies; and not waterbodies created for the purpose of snow making.
- 8 Mr Henderson's summary statement addresses those aspects of the submissions, and as supported in his evidence in chief, which are now agreed with Council. Those are not addressed further in these submissions.

- 9 Of remaining disagreement between the submitters and Council is the need for SASZs to be subject to the Table 3 Standards, particularly Standards 25.5.12 - 14, 25.5.20 and 25.5.21. Those standards control earthworks in relation to erosion and sediment control, effects of earthworks on roads, dust, and waterbodies. The Council's key reasoning for continuing not to exempt earthworks activities in SASZs from these standards appears to be that:

there is a risk that earthworks within the SASZs may result in adverse effects that need to be appropriately managed¹

- 10 This position appears to be an assumption with respect to anticipated effects and the need to regulate / manage these, rather than any particular evidence support an effects- based conclusion as to the need for regulation. This position is contrary to the case law discussed by Counsel in the course of Hearing Stream 14:

In considering what rule may be the *most appropriate* in the context of the evaluation under s 32 of the Act, the presumptively correct approach remains as expressed in *Wakatipu Environmental Society Inc v Queenstown Lakes District Council*² namely where the purpose of the Act and the objectives of the Plan can be met by a **less restrictive** regime then that regime should be adopted. Such an approach reflects the requirement in s 32(1)(b)(ii) to examine the efficiency of the provision by identifying, assessing and, if practicable, quantifying all of the benefits and costs anticipated from its implementation. It also promotes the purpose of the Act by being **enabling** so that people can provide for their well-being while addressing the effects of their activities.³

- 11 Counsel has reviewed further case law reiterating this same principle in the context of preparing rules in planning instruments. In *Otago Presbyterian Girls College Board of Governors Inc (Columba College) v Dunedin CC*⁴ The Court found that it should favour the most liberal provision sought, unless it is satisfied that it was appropriate for a greater restriction to be imposed. In that case, the starting point was that a community support activity, namely a school, should be permitted unless there were good RMA reasons justifying imposing restrictions.
- 12 Furthermore, the partial exemptions now proposed by Council will result in uncertainty, potential costs and issues with enforcement, as well as drafting

¹ Para 3.9, Mr Wyett rebuttal evidence.

² *Wakatipu Environmental Society Inc v Queenstown Lakes District Council* Decision C153/2004 at [56].

³ *Royal Forest and Bird Protection Society of New Zealand Inc v Whakatane District Council*, [2017] NZEnvC 051, at [59].

⁴ *Otago Presbyterian Girls College Board of Governors Inc (Columba College) v Dunedin CC* Environment Court, C128/01, at [34] – [36].

difficulties in the Plan. Given the location, limited number, and unique activities which occur within SASZs, this new regulation is unnecessary, and complete exemption is more appropriate. Moreover this exact debate was had only two years ago, in PC49 (discussed below).⁵

Operative Plan Change 49

- 13 Subjecting earthworks within SASZs to greater regulation as compared to the Operative position is not only contrary to the above case law, it is not justified in the sense that it represents a fundamental change to the (recently) approved Operative earthworks chapter.
- 14 The Operative earthworks chapter was only recently made operative on 30 June 2016. The need / efficiency of completely reviewing this chapter again now is questioned, particularly given it is not entirely clear from the section 32 reports, what effects have changed such as to justify a need to change regulation.
- 15 After considering the same matters before this Tribunal, the Commission on PC49 concluded:

The Commission is also satisfied that earthworks in the Ski Area Sub-Zones should be exempt from Section 22. This is consistent with the Operative District Plan and recognises that substantial earthworks are required in conjunction with ski-field operations, including the establishment of ponds for snowmaking and earthworks for other recreational activities such as cycling and walking⁶.

...

The Commission acknowledges that the submitter and several other submitters represented at the hearing promoted that the Ski Area Sub Zone earthworks exemptions be continued into PC 49. The Commission accepts that the ski-fields are an important part of the District's tourism base and economy; and that substantial earthworks are associated with ongoing ski-field development. The Commission finds that it is appropriate to amend PC 49 to provide for the exemptions for earthworks in the Ski Area Sub-Zone to be continued in the context of PC 49⁷.

...

⁵ See pages 22 – 28, Council Decision PC49.

⁶ Page 36, Council Decision PC49.

⁷ Ibid, at 41.

The evidence and submissions presented at the hearing have demonstrated that substantial earthworks are required within the Ski Area Sub-Zones, particularly associated with creating dams for snowmaking as well as for other ski-field related purposes. Earthworks are also required to accommodate other forms of recreational activity including cycle and walking tracks. The Commission also acknowledges that the rules in the Operative District Plan exempt earthworks within the Ski Area Sub-Zone from the relevant earthworks rules. In all the circumstances the Commission considers that the earthworks within the Ski Area Sub-Zones should be exempt from the rules in Section 22 as introduced by PC 49.⁸

- 16 It is submitted there is no need to reinvent the wheel here. The situation has not changed in the last two years to stray from the above approach, the activities, effects, and consequently, the debate, all remain the same; and it is submitted the Panel are therefore justified in coming to the same conclusion.

Duplication of regulation with ORC

- 17 As discussed in Mr Henderson's evidence, it is generally less efficient, and is unnecessary to duplicate regulation in the District Plan where that is otherwise adequately managed through Regional Plans. One example is that the Regional Plan : Water for Otago provides, as a permitted activity, for a person to alter or reconstruct any defence against water, other than on the bed of any lake or river, provided there is no permanent change to the scale, nature or function of the defence against water. It is unreasonable for the QLDC to require resource consent for such activity when the ORC does not; because the Regional Council recognises that defences against water are important in Otago as they mitigate flood and erosion hazards.
- 18 Other regulation over earthworks in SASZs stems from the underlying nature of land holding / tenure. As discussed in Hearing Stream 11 and Hearing Stream 04, depending on the land tenure of ski fields there are separate controls on activities through either the licences or leases in place (i.e. with Land Information New Zealand), or through concession arrangements (in the case of DOC estate). This further supports the proposition above, that save for express evidence as to the need to control specific effects, SASZs earthworks should not be subject to (new) and necessary regulation.
- 19 This proposition of duplication is also supported by the section 75 requirements to give effect to a regional policy statement, and not be inconsistent with a regional plan, respectively. I.e. for the PDP to give effect to the RPS / is not inconsistent

⁸ Ibid, at 61.

with the Regional Plan, one way to ensure this is to simply avoid duplication of controls.

Earthworks in relation to waterbodies

- 20 As discussed in Mr Henderson's evidence, the submitters remain of the opinion that the Operative distances and volumes are most appropriate for controlling potential effects. Counsel does not reiterate the position above, but the argument is respectfully the same, that the Council has not justified an effects-based case to depart from the Operative regime.

Transport – Chapter 29

- 21 Ms Rowe has provided comprehensive planning evidence for the submitters in respect of the proposed Transport Chapter. Issues raised in Ms Rowe's evidence span district wide matters, however these submissions do not focus further on areas where agreement has now been reached between the Council and submitters' positions. Those matters agreed include:

- (a) Parking requirements within the JPZ Village;
- (b) Exemption of off-site parking associated with activities within the SASZs.

High Traffic Generation Activities (HTGA) Rule and Jacks Point

- 22 As discussed in Ms Rowe's summary statement, the submitters and Council remain in disagreement as to the most appropriate way to manage HTGA in the JPZ. Ms Rowe for the submitters contends that permitted and controlled subdivision and land use activities in the JPZ should be exempt from the additional HTGA rules, whereas Ms Jones for the Council contends these activities should also require restricted discretionary activity HTGA consent.
- 23 As discussed in Ms Jones's summary statement, the background and context of the development of the JPZ is important to understand in terms of what HTGA rules are necessary to impose through the transport Chapter. As referenced by Ms Rowe, comprehensive background to the JPZ as it currently appears in the PDP is traced back through the notification and section 32 report supporting Chapter 41, the evidence presented in Topic 09, and the Commissioner decisions on the PDP. Those all resulted in the inclusion of bespoke and adequate traffic management provisions within Chapter 41 itself to regulate increased traffic effects predicted and anticipated from the (well designed and understood) maximum yields of the JPZ.

24 In relation to this point, it is submitted that:

- (a) Traffic Design Group (**TDG**) prepared a Transportation Assessment Report (**the TDG Report**) to accompany the private plan change request by RCL Queenstown Ltd (Plan Change 44 (**PC 44**)).⁹ The TDG Report considered multi-modal effects of the combined development enabled within both the Jacks Point and Henley Downs areas.
- (b) The notified JPZ and the provisions of Chapter 41 resulted in an increase in capacity beyond that assessed in the TDG Report for PC 44.
- (c) Mr Corbett and Ms Jones (on behalf of QLDC) were both of the view during hearings on Chapter 41 that, due to the uncertainty of the development enabled within the villages, EIC and education area, a policy and matters of discretion/control to manage traffic effects were necessary when considering development proposed within these activity areas.¹⁰
- (d) The Hearing Panel in its decision on Chapter 41 had *“considerable doubts as to whether such assessment [proposed by Ms Jones and Mr Corbett] would actually be necessary. It would be difficult to determine what conditions if any should be imposed on development which is anticipated by the zoning.”* In addition, responding to Ms Jones’ proposed provisions, the Panel stated that *“Given limitations on the scale of commercial development, and that the extent of future residential units is also well understood, we consider that such conditions are not necessary and therefore do not recommend the changes proposed by Ms Jones.”*¹¹
- (e) In a similar vein, the Hearing Panel in its decision on Chapter 27 (in the context of considering the issue of providing for subdivision in accordance with a structure plan) stated that *“We agree that where a Structure Plan or similar document has been incorporated in the PDP there are good grounds for taking a less restricted regulatory approach to subdivision that is consistent with the Structure Plan.”*¹²

25 For these reasons, and as supported in Ms Rowe's evidence, it is clear that regulation of traffic through anticipated development in the JPZ has already been

⁹ Transportation Assessment Report for Henley Downs Plan Change prepared by Traffic Design Group dated December 2012

¹⁰ EIC of Samuel Corbett dated 17 January 2017 at [2.1(e)], [6.2 – 6.3] and [7.12]; S42A report prepared by Victoria Jones dated 17 January 2017 at [14.15]

¹¹ Hearing Panel Report 12 at [252]

¹² Hearing Panel Report 7 at [761]

substantially addressed in this PDP process, and further regulation of HTGA activities beyond those controls already in chapter 41 are unnecessary.

- 26 Ms Jones considers that the matters of control in the subdivision rules that relate to the JPZ are not sufficiently comprehensive to enable the Council to impose conditions of the nature that are envisaged by the HTGA provisions, and the controls provided to the Council through reference to policies are circuitous and too uncertain to rely on.¹³ The comprehensive subdivision and development framework for the JPZ has been developed through significant consultation and hearings with the public, the Jacks Point developers and Council. It provides significant control over a wide range of effects to ensure integrated planning and amenity outcomes for the wider JPZ. There is no justification in Ms Jones's evidence for the allegation that Chapter 27 subdivision provisions applicable to the JPZ are now considered uncertain or circuitous so as to control adverse effects of traffic generation from increased subdivision and development. This was never a concern raised in the context of Topics 04 and 09, to Counsel's knowledge.
- 27 Ms Jones also comments that there is no justification for a lesser consent activity status for large scale subdivision in the JPZ as compared to elsewhere in the District.¹⁴ With respect, section 32 does not require or support planning provisions being promulgated to achieve consistency across all zones within a district for ease of administration purposes. Section 32 does require an effects-based approach to selecting the most appropriate planning provisions for a particular zone or area. The JPZ is an entirely bespoke and standalone special zone within the PDP, subject to its own comprehensive chapter, different activity and rule framework, and structure plan. It is entirely different from (generically referenced) 'other' zones in the District and therefore homogenous planning provisions relating to HTGAs across the District cannot be considered a valid planning reason to support particular regulation in the JPZ.
- 28 The proposition of controlling effects, rather than providing for homogenous rules across a planning instrument/ controlling particular activities has been discussed in a number of cases, including in *Tranz Rail Ltd v Wellington City Council*:

We consider that in general the purpose of the Resource Management Act is better addressed by describing effects on the environment which are to be controlled, than by prescribing general categories, such as industrial activities, which are to be controlled¹⁵.

¹³ Rebuttal Evidence of Ms Jones dated 22 August 2018 at [6.4].

¹⁴ Ibid.

¹⁵ *Tranz Rail Ltd v Wellington City Council*, Environment Court, (1997) 3 ELRNZ 435, at page 16.

- 29 And in *Clulee & Associates Ltd v Kapiti Coast District Council* (although in the context of a resource consent application, rather than a proposed plan determination):

There is a positive direction in Part II to ensure that land is managed and developed for some type of productive purpose unless it is land which contains cultural, environmental, or other qualities which suggest that development or use is not appropriate. The appeal site contains no such elements.¹⁶

...

In concluding this part of the decision we do not consider that the present subdivisional application has any effect whatsoever upon the integrity of the plan. The plan should have been prepared having regard to effects of activities rather than with the objective of providing rigid guidelines intended to direct what activities which can take place on land with no regard being paid to the practicalities of using a particular piece of land for the activities so directed.¹⁷

- 30 Finally, Ms Jones is of the view that the controlled activity status of subdivision in the JPZ provides considerably less control over the transport effects of large scale subdivision than would be possible under the HTGA provisions.¹⁸ A controlled activity status does give a decision maker less control than a restricted discretionary activity in the sense that consent cannot be refused. However, the Panel (and subsequently the Council in making its decisions on Chapters 27 and 41) considered that this was an appropriate planning regime for the JPZ, and in my submission it is entirely appropriate for regulation of HTGAs.
- 31 Specifically in relation to the JPZ Village, Ms Jones considers that the rules relating to its development are not sufficient to exempt such development from the HTGA rule because they are subject to appeal; the role of the CDP in the consenting process is unclear; the rules are not supported by detailed policy or assessment matters to clarify the Council's policy direction or the matters the Council will consider when assessing wider transport effects; it is questionable whether the matters of control enable conditions to be imposed in relation to matters such as ensuring the proposed activity supports development and use of the public transport network; and the controlled activity status provides less control over the transport effects of these activities (presumably than would be the case if the HTGA rule were to apply to them).¹⁹ In response, the uncertain

¹⁶ *Clulee & Associates Ltd v Kapiti Coast District Council*, Environment Court, W15/99, at page 6.

¹⁷ *Ibid*, at page 7.

¹⁸ Rebuttal Evidence of Ms Jones dated 22 August 2018 at [6.4].

¹⁹ *Ibid*, at [6.12].

outcome of the appeal process in the PDP cannot be used as a planning reason justifying a more restrictive activity status / consenting pathway. This must be determined as the preferred approach according to section 32 analysis. As discussed already above, the effects of traffic generation within the JPZ have already been substantially addressed by the Panel in earlier stages of this planning review, and there is no good justification to now revisit those outcomes in the context of the District wide transport Chapter.

- 32 The effect of the HTGA imposing a restricted discretionary activity status on applications which might otherwise be controlled in the JPZ is significant in terms of achieving the purpose of the Zone and the higher order provisions of the PDP. The JPZ is a mixed use comprehensive zone with a significant residential component, and within an area enclosed by an Urban Growth Boundary (**UGB**).
- 33 Chapter 3 of the PDP seeks to ensure urban growth is managed in a strategic and integrated manner by promoting compact, well designed and integrated urban form,²⁰ to apply UGBs around urban areas (including Jacks Point)²¹ and thereafter enable urban development within those UGBs and avoid urban development outside of those.²²
- 34 Chapter 4 follows on from those higher order objectives and policies, to ensure areas within urban growth boundaries provide for anticipated demand or urban development over the planning period and ensure ongoing availability of a competitive land supply for urban purposes.²³
- 35 It is submitted that the identification of the JPZ as within a UGB and the provisions of the JPZ which anticipate urban / residential development should not be undermined by technical district wide chapters subsequently, the restricted discretionary HTGA rule does exactly this because it will have the effect of rendering what would otherwise be controlled (anticipated) urban and residential development within an urban area to become restricted discretionary, and therefore able to be refused by Council.
- 36 Anecdotally speaking, in a District which has major issues with land supply and affordability issues for residential opportunities, it seems counter-intuitive that such an approach would be taken to one of the few currently undeveloped areas identified as fit for future urban expansion.

²⁰ SO 3.2.2

²¹ Strategic Policy 3.3.13

²² Strategic Policy 3.3.14

²³ Policy 4.2.1.4

37 Finally, the recently amended Act also has significant consequences to this proposal in that subdivision and residential activities can now no longer be appealed to the Environment Court, unless those are non-complying. Therefore should an RDA proposal for subdivision / residential development in the JPZ be turned down, a developer may have no further recourse to provide for residential development opportunities.

Transport and SASZs

- 38 As discussed above in relation to earthworks regulations in SASZs, these zones are unique to the District, not only in terms of their limited number, and activities undertaken, but in terms of the substantial economic, social and cultural benefits attributed to these areas. For these reasons, a different management regime for parking and traffic requirements is warranted in SASZs as compared to other zones.
- 39 Ms Rowe's summary statement discusses the relationship between rule 29.4.7 and 29.4.11 (parking associated with ski area activities and offsite parking), and these rules as proposed to be amended in Ms Jones's rebuttal evidence.
- 40 Rule 29.4.7 relating to off site parking being excluded from requiring RDA consent for parking associated with activities undertaken in the SASZ is supported.
- 41 Rule 29.4.11 however currently captures activities which do not otherwise have minimum parking requirements, as a default discretionary activity. Given it is difficult to predict minimum parking requirements for ski field parks, and because there are often multiple car parks within a ski field, it is impracticable to insert such a standard into this rule. Ms Rowe has however found another solution as detailed in her summary statement, which would exempt permitted and controlled activities within a particular zone. This would mean parking associated with (permitted/ controlled) ski area activities is not captured within this rule and does not default to discretionary. As noted by Ms Rowe this is the operative position, and in my submission this is an appropriate standard to apply in the absence of any evidence as to adverse environmental effects otherwise.
- 42 The remaining matter of disagreement between the Submitters and council in respect of this topic is the additional policy within Chapter 29 proposed by Ms Rowe, addressing the unique requirements of SASZs within the transport Chapter framework. As addressed in Ms Rowe's summary statement, this matter appears to have been omitted from Ms Jones's rebuttal evidence, which is assumed to be an oversight.

43 The policy proposed to be inserted by Ms Rowe is:

29.2.1.X

Provide for the functional dependency of ski area activities on transportation infrastructure, such as vehicle access and passenger lift based or other systems, by enabling the linking of on-mountain facilities within Ski Area Sub Zones to the District's road and transportation network.

44 Given Chapter 29 currently regulates parking and transport activities in SASZs, it does not make sense that there are no policies or objectives directly applicable to those zones. This 'gap' in the planning framework means rules would not be guided in the future by any specific objectives and policies and are not supported by a planning framework to guide the appropriateness of consents to be granted.

45 The unique aspects of the SASZs and their locational dependency / reliance on the roading network (currently) to operate efficiently, warrants particular policy support / reference within Chapter 29.

Visitor accommodation variation

46 The summary statement provided by Mr Ferguson outlines those areas of disagreement now remaining between Council and submitters. Those areas are substantially refined since original submissions and evidence in chief were lodged, and I do not repeat those agreed areas.

Jacks Point Visitor accommodation

47 The evidence from Mr Ferguson sought a comprehensive approach to regulating residential visitor accommodation (**RVA**) across different activity areas of the Jacks Point Zone (**JPZ**).

48 In summary, Mr Ferguson sought in his evidence to amend provisions to:

(a) Provide for RVA and Homestays as permitted activities within the Lodge and Village Activity Areas V(JP) and V(HB) without any further standards; and

(b) Provide for RVA and Homestays as permitted activities within the Residential Activity Areas subject to achieving the standards recommended in the s42A report.

49 Alignment has been reached over the treatment of RVA in JPZ residential activity areas and the Lodge activity area, and is not addressed further in these submissions.

50 Alignment has not been reached in respect of the treatment of RVA within the Village activity areas. The key remaining aspect of difference is that Mr Ferguson promotes a permitted regime (not subject to RVA standards) given that effects of RVA would be controlled through the Comprehensive Development Plan (CDP) process in any event, in the same manner as all other activities to be undertaken in the Village. In support of this rationale, Mr Ferguson draws an analogy between the regime for RVA not being regulated in town centre zones, and the purpose and objectives relevant to the JPZ being similar in nature and associated effects.

51 Ms Bowbyes continues to disagree with the analogy drawn, contending rather that RVA should be permitted (subject to standards, i.e. 42 nights let for residential VA / 3 guests maximum for homestays), and otherwise default to controlled activity status. Her key reason for disagreeing with the town centre analogy being:

The provisions for the Queenstown, Wanaka and Arrowtown Town Centres are very enabling, providing for a range of activities to occur. For instance, the default status of activities not listed in the activities tables for these chapters is 'permitted', and commercial activities are permitted, with the focus being more on building design and opportunities for building integration.²⁴

52 Ms Bowbyes also disagrees with permitting RVA, given in her opinion, the status of commercial, residential and visitor accommodation activities that are controlled (provided they are in accordance with a CDP incorporated in the District Plan).²⁵ Technically that is not the case as the PDP as decided in stage 1 has not as yet included a CDP for the Jacks Point Village, with the implication being that would need to be introduced via plan change. Until either the appeals from Coneburn Preserve Holdings Ltd & others²⁶ are resolved on this matter, these activities would be a discretionary activity as they are not provided for in the Zone.²⁷

53 Significant evidence and legal submissions were produced in Hearing Topic 09 relating to the use of a CDP process for the JPZ Village, whereby controlled activity resource consent is required for the CDP development, and thereafter development in accordance with that plan is a permitted activity. Non-compliance with this approach otherwise defaults to a discretionary status. Evidence was provided by Mr John Darby in that topic illustrating the nature of existing consents illustrating the level of detail and rigour that goes into that process, and how the

²⁴ Rebuttal evidence of Ms Bowbyes, at para 10.9.

²⁵ Rule 41.4.2.1 Jacks Point Zone (decision version)

²⁶ ENV-2018-CHC-137

²⁷ Rule 41.3.2.1

matters of control proposed by the Jacks Point submitters provide for significant control over matters such as space, roading and access patterns, streetscape design and building design, so as to overall ensure a consolidated and well-functioning village activity area.

- 54 The JPZ continues to evolve towards the objective of a self-sustaining community, with, at its heart, a vibrant village serving many needs of residents and visitors including commercial, retail, employment, health, education, diversity of dwelling types and visitor accommodation.
- 55 The ultimate aim is to have a set of provisions that enable and incentivise the creation of a vibrant and successful heart of the Jacks Point community, providing for the majority of the residents' and visitors' needs. In the agreements between the parties visitor accommodation and high density residential with mixed uses is a key function of the Village. The Village also has significant potential to meet the currently unsatisfied demand for quality visitor accommodation in the district, as visitor numbers continue to climb. The experts in Topic 09 confirmed the proposed CDP process for the Village gave confidence that the Village area as a whole will be carefully designed and laid out so that both internally and when viewed from the outside, a very high amenity value is retained and the surrounding open space and landscape values are not compromised. The consolidation of commercial, retail, community, residential and visitor accommodation into the Village area maximises the opportunity for creation of a vibrant mixed use centre of Jacks Point, to meet the residents' needs.
- 56 The integration of visitor accommodation in the Village with its commercial objectives was also discussed in the economic evidence presented by the submitters in Topic 09:

Commercial development within the JPZ will largely be orientated at the immediate needs of JPZ residents, overnight visitors and businesses. It will be unlikely to attract residents and over-night visitors located elsewhere within the District and JPZ residents will need to travel outside the JPZ for the bulk of their retail requirements.

The development of visitor accommodation and related activities within the Village Activity Area is consistent with providing for and enabling the socioeconomic benefits of tourism activities across the District. Also as discussed earlier in my evidence, to the extent that the provisions enabling more intensive housing and other forms of development within the JPZ will reduce pressure for development at locations elsewhere within the District and which may be less suitable for such development, they will reduce pressure for development at more sensitive locations within the District potentially having greater negative effects on tourism activities.

...

By providing for a range of residential, visitor accommodation, education, health, employment and other activities within the Village Activity Area the proposed development controls sought for the JPZ encourage connectivity and integration.²⁸

57 Those outcomes are also consistent with the core objectives for development of the Village and the Zone as a whole, as follows:²⁹

41.2.1 **Objective** - Development of an integrated community, incorporating residential living, visitor accommodation, community, and small-scale commercial activities within a framework of open space and recreation amenities.

41.2.1.17 Enable the Jacks Point Village Activity Area to develop as a vibrant mixed use hub for the Jacks Point Zone, comprising a range of activities including high density and medium density residential housing, a small local shopping centre that services the needs of Jacks Point residents and a small amount of destination shopping, office space, visitor accommodation, education, community activities, healthcare, commercial recreation activity, and technology and innovation-based business.

58 It is submitted that the proposed RVA controls from Ms Bowbyes not only present unnecessary and inefficient regulation for the Village, could result in difficulties with regulation and costly consenting requirements, but are ultimately in contradiction to the core purposes of this activity area and its place within the JPZ.

59 Controlling RVA through the same CDP process as for other commercial , residential, and retail activities, is therefore supported, as proposed by Mr Ferguson.

Residential Visitor Accommodation in Rural and rural living zones

60 In relation to RVA within the rural and rural living zones, Mr Ferguson supports the following amendments to the proposed variation:

- (a) Delete all rules for RVA and Homestay for the Rural Zone;
- (b) Delete rule 22.5.15 for the Rural Residential and Rural Lifestyle Zones (this rule details permitted activity standards for Homestays);

²⁸ Evidence in Chief, Mr Copeland, Topic 09, at 62 – 63, 67.

²⁹ As provided in the appeal from Coneburn and others, ENV-2018-CHC-137.

- (c) Delete rule 24.5.15 for the Wakatipu Basin Rural Amenity Zone (this rule details permitted activity standards for RVA);
- (d) Deletion of associated RVA policies and activity standards in chapter 22.

61 Ms Bowbyes does not provide reasoning in her rebuttal evidence for disagreeing with Mr Ferguson's position with respect to a lack of evidential need to regulate RVA in rural and rural living zones. The submitters position, and supported in Mr Ferguson's analysis, is there is no justification for regulation of RVA to standards within rural and rural living environments given:

- (a) No evidence is provided in the Council's s42a report as to an undesirable and increased adverse effect on amenity values as a consequence of visitor accommodation (as compared to residential use) in rural areas;
- (b) Practically, and anecdotally speaking, long term residential letting can be similar (or even more adverse) on residential amenity than visitor accommodation letting;
- (c) The core function of the variation to regulate RVA from the current 90 days to a now proposed 42 days in rural zones is arbitrary and will not necessarily result in a corresponding increase in residential / rural amenity;
- (d) The core purpose of the RVA variations proposed appears rather to be based on a concern that it may impact on the availability of rental accommodation for residents because on average, the earnings of RVA are higher than those of rental properties on a nightly basis.³⁰ However, the core purpose of rural and rural living zones provides for a variety of uses, and is not intended to ensure the provision of housing stock for the District.

62 It is evidence that core concerns as to adverse impacts of RVA are primarily aimed at undermining the purpose of residential ones and the amenity enjoyed by residents in those zones (see in particular paras 6.11 – 6.14 s42A report), however the same case has not been made out for the rural and rural living zones. Consequently, it is submitted there is no effects based justification for the (arbitrary) new standards proposed for RVA in those zones, and I rely on the evidence of Mr Ferguson as to a lack of evidence of adverse effects justifying such changes. Objectives and policies of the rural and rural living zones seek to support a diverse range of uses other than farming and are not exclusively for

³⁰ Section 42A Report, Visitor Accommodation, at 6.11.

residential use, these zones are not the answer to the District's lack of, or reduction in, residential housing stock

- 63 Finally, as discussed in the s42A report, the economic benefits of RVA must also be considered, balancing opportunities for residents and home owners to supplement their income through home-sharing, which can also assist with providing diverse accommodation options for visitors and help meet the demand for visitor accommodation in this District. Generally, the council's economic case for visitor accommodation concludes that RVA is a significant part of the visitor accommodation sector in the District and is a significant contributor to rates and income revenue.³¹ By consequence, the economic evidence does not however assess quantifiable a loss in those benefits as a result of the increased restrictions / regulations proposed, as would logically be required by section 32(1)(b)(ii), requiring an assessment of economic growth and employment to be provided or reduced as a result of the proposed plan provisions.
- 64 I submit this is a fundamental flaw in the Council's case, and coupled with a lack of evidentially based adverse effects in rural and rural living zones from RVA, the changes promoted through the variation are not justified.

Definitions

- 65 Mr Ferguson's summary statement responds to the changes proposed to a Visitor Accommodation definition to ensure more integrated plan drafting. His proposal seeks to include non-complying RVA and Homestays within the definition of Visitor Accommodation, such that those activities become regulated by supporting objectives and policies in the relevant zones. Mr Ferguson's point is that currently there is a gap in the planning framework to regulate RVA when those do not comply with permitted activity thresholds, and for example, then default to a non-complying activity status. While there are objectives and policies guiding Visitor Accommodation (as defined) there are no objectives and policies to guide a non-complying assessment of RVA, given the definition of Visitor Accommodation excludes RVA and Homestays.
- 66 Given this is more of a plan drafting / technically planning issue, I defer to Mr Ferguson to discuss this change in more detail with the Panel. In principle however, and as a matter of good plan administration, I support an integrated approach as proposed by Mr Ferguson to ensure that there is no policy gap to guide non complying RVA assessments.

³¹ R Hayes Economic Evidence, Visitor Accommodation, at 2.

Signs –Chapter 31

- 67 Mr Ferguson's evidence supported separate regulatory requirements for signage within SASZs and within the JPZ Village, given the unique purpose and functions of those zones / areas respectively, and the diverse economic social and cultural contributions those make to the wider District.
- 68 The Council's revised position in rebuttal evidence with respect to treatment of signage in SASZs now accepts the evidential position of the submitters as put forward by Mr Ferguson, and this matter need not therefore be addressed further in these submissions.
- 69 With respect to signage control in the JPZ Village, the Council and submitters remain in disagreement as follows:
- (a) Mr Ferguson promotes a controlled activity framework for signage in the Village, based upon its function as a diverse hub for the wider zone (see submissions above under visitor accommodation), based upon consistency with the CDP framework for development and building in the Village, and based upon the similarities of the Village with the amenity expected of the Local Shopping Centre Zone (**LSC**).
 - (b) Ms Leith now supports a separate rule framework recognising the JPZ Village within the Signs chapter, however promotes a restricted discretionary activity status on the basis that the JPZ Village is perceived as a 'more sensitive environment' as compared to the LSC.
- 70 As discussed above in respect of visitor accommodation in the JPZ Village, the collective objective and policy framework as well as the proposed CDP process together work to ensure that a high degree of amenity and integrated urban design outcomes are achieved. It is submitted that these provisions are generally 'stronger' in promoting a certain type of amenity / design outcome as compared to other District wide zones, and therefore a controlled activity status is appropriate within this framework, given the broad range of controls that can be imposed pursuant to those outcomes.
- 71 Functionally speaking, there are clear analogies to be drawn between the purpose of the LCS and the JPZ Village, namely both are intended to support mixed use service functions of a confined locality / catchment. It is unclear what Ms Leith intends where she concludes the JPZ Village is a more sensitive environment than the LSC, however assuming it is because there are greater urban design controls through standards, policies and objectives in Chapter 41 as compared to Chapter 15, then this concern is not warranted. As discussed above, the greater importance placed on the urban design and built form outcomes

through Chapter 41 ensures greater regulation therefore justifying a controlled rather than restricted discretionary planning framework.

- 72 Further controls on amenity and urban design outcomes are also delivered through the outline development plan process (Operative Plan) / CDP process, which prescribe design guidelines. The outline development plan and design guidelines address elements of signage in the context of the public realm spaces that support the District Plan and give confidence of high quality outcomes.
- 73 The JPZ Village is effectively a large scale commercial centre / hub for the wider JPZ, its core purpose of mixed use vibrancy and diversity are reliant on the establishment of commercial activities, which inevitably involve signage. The restricted discretionary framework for signage, as compared to controlled activity regulation in the LCS therefore does not make sense in ensuring the Village achieves its intended objectives.
- 74 Finally, there is merit in ensuring consistency across Village activity status for signage and other development activities, as discussed by Mr Ferguson. I defer to his summary in respect of the detailed discussion on this consistency.

Open Space and Recreation – Chapter 38

OSA vs Informal Recreation Zone at Jacks Point

- 75 Mr Ferguson and Ms Edgley (for the Council) continue to disagree as to the appropriate zoning of the current OSA activity area within JPZ (now proposed by Council to be rezoned Informal Recreation Zone).
- 76 As detailed in Mr Ferguson's evidence, the key concern for the Submitters is that regulation of this activity area should be consistent with the wider JPZ and structure plan approach, given the Zone has been designed and promulgated on a foundation of integrated planning. Ms Edgley's position is (understandably), looking at the rezoning of recreation zones across the District in a comprehensive way and to ensure that there is a more efficient process to the provision of recreation areas other than through the use of designations.
- 77 In my submission, it is preferable to ensure consistency within a special zone however than ensuring consistency across all of the District's zones for the sake of plan usability. In this instance, the JPZ has a unique planning structure and rule framework as compared to other District wide zones, and its unique open space / recreational activity area treatments mean that it can be treated slightly differently to Council's approach in 'tidying up' other recreational Council owned lands.

- 78 As discussed by Mr Ferguson, the OSA framework appropriately already provides for the intended use of this land as a place for open space and recreation facilities, integral to the overall JPZ vibrancy and functioning as a mixed use Zone. The zoning of the Jacks Point recreation reserve has consistently remained OSA from notification to decision.
- 79 In reliance on Mr Ferguson's planning analysis, I support the conclusion that the addition of a new Informal Recreation Zone within the JPZ lacks analysis of the alternative of retaining this land as OSA and regulated by Chapter 41, including the policy support that exists to implement the objectives for this zone.

Dated this 20th day of September 2018



Maree Baker-Galloway/Rosie Hill
Counsel for the Submitters