Before the Queenstown Lakes District Council

Under	the Resource Management Act 1991
In the matter of	a submission under clause 6, Schedule 1 of the Resource Management Act 1991 on Stage 3B of the Queenstown Lakes Proposed District Plan
Between	**Wayfare Group Limited (#31024)**
	Submitter

Further Legal Submissions for Wayfare Group Limited

25 June 2021

Applicant's solicitors:
Maree Baker-Galloway |
Anderson Lloyd
Level 2, 13 Camp Street, Queenstown 9300
PO Box 201, Queenstown 9348

p + 64 3 450 0700
maree.baker-galloway@al.nz |

anderson lloyd.

May it please the Commissioners

1 These submissions reply to questions and matters arising from the in the course of this hearing. In particular the following is provided:

(a) More background to the determination of the ONL

(b) Comment on *EDS v King Salmon*[1] and inappropriate/appropriate

(c) Scale of assessment of ONL values

(d) Controlled activity status

(e) Legacy Zone

(f) Natural hazards

(g) Urban development and residential development

2 Before going in to these matters of detail, as per Mr Norris' and Ms Black's evidence, it is important to the Submitter that the Commission understand why it has not been presented with a detailed Structure Plan or resort plan, and why the Submitter has had no realistic option but to present a more generic position.

(a) Real Journeys acquired the property in 2013, when the tail end of the GFC was still being felt;

(b) Real Journey's initial strategic priorities were undertaken between 2015 to 2019, as set out in Mr Norris's summary at paragraph 8:

> *…Walter Peak capital projects (extension to Colonel's Homestead; Amphitheatre construction; Woolshed modifications; installation of generator and storage and the provision of new staff accommodation) $8.5 million; and $0.5 million in Wilding Pine removal / remediation.*

3 In other words, in terms of planning, the Submitter has not been sitting on its hands in utilising and implementing what is enabled by the legacy Rural Visitor Zone (**RVZ**) – there has been significant planning in terms of the first priorities, and investment and implementation of the same, consistent with the purpose of the Operative RVZ.

4 A detailed Structure Plan for the 155ha Site is a significant undertaking. Not only is there detailed landscape capability assessment, but there is also the equally if not more resource intensive determination of what the detailed

[1] *Environmental defence Society Inc v New Zealand King Salmon Company Ltd* [2014] NZSC 38.

vision is for the site as a whole – what specific activities are to be provided for, where and subject to what guidelines and constraints and so on. This would have been the next step for the Submitter after 2019 having completed the staff accommodation - but then 2020 brought with it the unforeseen challenges that meant during 2020 to present, strategic planning of this nature simply could not be prioritised as the company responded to lock downs, closed borders, and the unprecedented effect that has had on its operations and staff. Furthermore such planning is now occurring in an environment which expects the tourism model to change and adapt. Any future planning is affected by this context.

5 The Submitter repeatedly requested not be drawn into this stage of district plan review prematurely so that Wayfare could work with Council on a long term plan. There were 3 formal written requests (along with various discussions) setting out substantive reasons and asking Council to not notify Walter Peak (in 2019) and then asking for Council to withdraw Walter Peak (2020)[2]. Those requests were declined, not because QLDC couldn't (ie there was no statutory bar to withdrawing) but because it declined to do so. Hence, the Submitter had no choice but to take part.

6 However, going forwards, and with more time, the Submitter will be in the position where it will be ready and able to do this long term planning for this important place.

7 As indicated at the hearing, if the Panel is of the mind to issue an interim decision allowing for an iterative response to outstanding questions or concerns, the Submitter would be supportive of that, and seeks that the Council indicate its support for seeking an extension pursuant to clause 10A of the 1st Schedule RMA to enable more time for this to take place.

WESI C180/00 and the 'original' ONL including Walter Peak

8 In response to questions about what work or assessment was done in the past to recognise the wider ONL, Judge Jackson's *WESI* decision is **attached.** In that decision little attention was given to a fine grained landscape assessment on the extent of the outstanding natural landscape surrounding Lake Wakatipu. The following extracts are relevant:

> [107] We find as facts that:
>
> (1) Mt Aspiring National Park is an outstanding natural landscape;

[2] Letter From Richard Lauder to the Planning and Strategy Committee, 22 August 2019, Letter from Anderson Lloyd to QLDC dated 27 March 2020, Letter from Anderson Lloyd to QLDC dated 1 May 2020.

> (2) Lake Wakatipu, all its islands, and the surrounding mountains are an outstanding natural landscape. This area comprises all the land in the district south and west of the lake (planning maps 6, 10, 12, 13 in the revised plan) excluding Glenorchy, Kinloch, and Kingston.[3]

9 This very general finding of fact of the ONL of the Lake and its surrounding mountains appears to be more of a default position, upon reading the case, than any finding based on evidence. The Court was in fact critical of a lack of evidence from the Council and parties to appeal in identifying where particular section 6 landscapes begin and end, and what the values of each of those landscapes are, such as to enable their subsequent protection from inappropriate development:

> [96] We start our assessment by returning to the problem we identified briefly in the introduction to this decision. While almost everyone agrees that there are outstanding natural landscape in the district, none of the parties other than WESI and Federated Farmers is prepared to say where they finish.
>
> …
>
> [97] We consider that unwillingness has led to a basic flaw in the case for all parties (other than WESI) in respect of landscape vales. The RMA requires us to evaluate, as one relevant factor, the outstanding natural landscapes of the district so that appropriate objectives and policies (and implementation methods) can be stated from them. If the areas of outstanding natural landscape cannot be identified then how can objectives and policies (and methods) be properly stated for them?
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> …
>
> [99] … Usually an outstanding natural landscape should be so obvious (in general terms) that there is no need for expert analysis. The question of what is appropriate development is another issue, and one which might require an expert's opinion. **Just because an area is or contains an outstanding natural landscape does not mean that development is automatically inappropriate.**
>
> (citations omitted and emphasis added)

10 The conclusions that can be reached from these parts of the *WESI* decision are:

(a) The landscape within which the subject land sits has not been assessed at a finer grained landscape analysis level[4]. The beginning

[3] Wakatipu Environmental Society v Queenstown Lakes district Council C180/99, at [107].
[4] It is noted that the work of Ms Mellsop and Mr Skelton is a platform from which to start to determine values of the landscape, but is not as of yet a significantly detailed assessment of values of, and effects on, landscape.

and end of the landscape, its particular values and characteristics worthy of protection from inappropriate development, have never been particularised in the Plan.

(b) At the time of making the general finding on the ONL the Walter Peak legacy / transitional zoning was in place, and was rolled over in the Operative District Plan. Tourism zoning for development has therefore always been a part of the ONL since it was first identified and mapped in an RMA plan. The enabling zone was part of the ONL that the Court found to be outstanding – the logical conclusion being that there was a determination that that zoning was appropriate within the wider ONL. There is no specific statement to that effect, but as a matter of fact, that was the zoning at the time.

11 The above citation at [99] from *WESI* referring to appropriateness of development in section 6 landscapes is also of importance to the next section on the effect of *King Salmon* on 'appropriateness' of development in a section 6 landscape.

***EDS v King Salmon*[5] on 'appropriate' or 'inappropriate'**

12 The Chair raised the issue of the relevance of the Supreme Court's comments in relation to qualifier of "inappropriate". In considering the background and structure of Part 2 of the RMA, the Supreme Court noted:

> [28] It is significant that three of the seven matters of national importance identified in s 6 relate to the preservation or protection of certain areas, either absolutely or from “inappropriate” subdivision, use and development (that is, ss 6(a), (b) and (c)). Like the use of the words “protection” and “avoiding” in s 5, the language of ss 6(a), (b) and (c) suggests that, within the concept of sustainable management, the RMA envisages that there will be areas the natural characteristics or natural features of which require protection from the adverse effects of development. In this way, s 6 underscores the point made earlier that protection of the environment is a core element of sustainable management.
>
> [29] The use of the phrase “inappropriate subdivision, use or development” in s 6 raises three points:
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> (a) First, s 6(a) replaced s 3(c) of the Town and Country Planning Act, which made “the preservation of the natural character of the coastal environment, and the margins of lakes and rivers, and the protection of them from unnecessary subdivision and development” a matter of national importance.52 In s 6(a), the

[5] *Environmental defence Society Inc v New Zealand King Salmon Company Ltd* [2014] NZSC 38.

word “inappropriate” replaced the word “unnecessary”. There is a question of the significance of this change in wording, to which we will return.

(b) Second, a protection against “inappropriate” development is **not necessarily a protection against any development. Rather, it allows for the possibility that there may be some forms of “appropriate” development.**

(c) Third, there is an issue as to the precise meaning of “inappropriate” **in this context,** in particular whether it is to be assessed against the particular features of the environment that require protection or preservation or against some other standard. This is also an issue to which we will return.

(citations omitted and emphasis added)

…

[101] 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. It will be recalled that s 6(b) of the RMA provides:

> *In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:*
>
> *… (b) the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:*

A planning instrument which provides that any subdivision, use or development that adversely affects an area of outstanding natural attributes is inappropriate is consistent with this provision.

….

[105] We consider that “inappropriate” should be interpreted in s 6(a), (b) and (f) against the backdrop of what is sought to be protected or preserved….

13 In these extracts of the Supreme Court's decision, the word inappropriate was carefully examined in the policy context of the NZCPS. It was in that context that the section 6 requirement to 'protect [natural character of the coastal environment]' was further articulated by the NZCPS policy to 'avoid adverse effects on natural character'.

14 In that instance, the avoidance policy, coupled with the remaining scheme and intent of the NZCPS lead to an interpretation that 'inappropriate' could be interpreted in the nature of a very restrictive bottom line (at [103]).

15 The same context does not exist in this case. Counsel is not proposing an overall broad judgement where enabling policies are weighed against protective policies, and one set comes out trumps. Instead, all relevant policies in higher order chapters 3 and 6 have been assessed, and on the Submitter's planning and landscape evidence, have not been found to be contrary to the proposal. The reference to 'inappropriate' does mean, as per the *WESI* decision above, and *King Salmon*, that there may be some forms of appropriate development:

> **SO 3.2.5.3** In locations other than in the Rural Zone, the landscape values of Outstanding Natural Features and Outstanding Natural Landscapes are protected from inappropriate subdivision, use and development.
>
> …
>
> **3.3.30** Protect the landscape values of Outstanding Natural Features and Outstanding Natural Landscapes.

16 The inappropriate reference in SO 3.2.5.3 is particularised by SP 3.3.30, which loses that term, instead requiring protection of landscape values on the ONL. This policy cascade in Chapter 3 is quite different to the NZCPS where the avoidance policy is used to compliment reference to what 'inappropriate' development and use might be.

17 'Protect' is a positively framed protective policy, whereas 'avoid' is a negatively framed protection. That difference is an important distinction in this case.

18 As per SO 3.1B.6, SP 3.3.30 does not apply to subdivision and use of an Exception Zone once established, but does apply to plan development including plan changes. Because of the staged review of the PDP and the changes to the Exception Zone framework, Walter Peak is not yet explicitly included in this Exception Framework. However as a Rural Visitor Zone under the ODP it was always exempted from the landscape categories and policies. It is submitted that the intent of 3.1B.6 and 3.3.30 is really aimed at applying a rigorous test to **new** zoning proposals for exception zones. I.e. where land is being up-zoned from rural. Walter Peak has always had the equivalent zoning of an 'Exception Zone' (noting that is a new concept in the PDP) and it is assumed that it is consistent with 3.3.30 on the same principled basis as other existing legacy zones (SASZ, Gibbston Character Zone, Rural Residential Zone, Rural Lifestyle Zone, Jacks Point Zone).

19 Finally, the determination that 97% of the entire District is a section 6(b) landscape (i.e. that 97% is considered to be outstanding or pre-eminent within this District) is relevant to interpreting SO 3.2.5.3, SP 3.3.30 (and the implications of *King Salmon*). If the determination were that protect is synonymous with avoid, and is a bottom line policy, the consequence is that there will be no further development or use of such landscapes in the future while this PDP is in place. That is not a logical outcome for this Plan.

ONL scale for determination

20 The appropriate 'scale' for considering landscape assessments was considered in the Environment Court, albeit in the context of a resource consent, *Save Wanaka Lakefront Reserve Inc v Queenstown Lakes District Council*[6]:

> [118] We are directed to assess on the evidence whether the particular landscape is vulnerable to degradation or has capacity to absorb change and whether the ONL has an open character 'at present'. We are directed also to assess whether visual amenity values are vulnerable to degradation. That initial stage of assessment is important in the sense that it can be fatal to a proposal. Specifically, the direction is that development be avoided if the landscape is adjudged as vulnerable to degradation and/or if a proposal would not maintain the openness of ONLs that have an open character 'at present'. Depending on the circumstances, a determination that visual amenity values are vulnerable to degradation could be fatal also (unless this could be satisfactorily mitigated).
>
> [119] We find that, to correctly apply this approach, it is particularly important to determine, on the evidence, an appropriate scale of reference for landscape assessment. Both the absorptive capacity of a landscape and its open character are relative concepts. Hence, depending on the size of the landscape unit chosen, a landscape expert would likely derive different answers both on absorptive capacity and open character. Yet, those answers are intended to be critical to the question of whether a proposal would accord with, or be contrary to, the objectives and policies…
>
> [120] … The danger in selecting an overly small part of an ONL landscape for an assessment is that related findings about 'absorptive capacity' and 'openness' could be driven by overly localised considerations, more in the nature of an amenity value assessment.

21 In that case, the Court was critical of an approach to overly confine a landscape unit, which could have an impact in any assessment of cumulative effects and natural character, and be more in the nature of a

[6] *Save Wanaka Lakefront Reserve Inc v Queenstown Lakes District Council* [2017] NZEnvC 88.

visual amenity assessment, rather than a proper assessment of the absorptive capacity of a relevant part of an ONL.

22 Similarly, in *Ohau Protection Society v Waitaki District Council*,[7] the Environment Court considered:

> [93] … properly-informed landscape units for assessment of the ONL values of a proposal can be much more confined than are mapped ONL in the WOP.

23 Interestingly, Chapter 3 now essentially codifies the criteria for undertaking a landscape assessment in order to identify values worthy of subsequent protection. But this criteria does not assist in determining the extent of a landscape.

24 Mr Skelton's landscape evidence has assessed the effects of the proposed zoning both in the context of the Von Terraces landscape (which has its own distinctive landscape features and the requisite minimum size to be rendered a landscape in its own right, rather than a unit), as well as the wider ONL:

> [6] The subject site is part of a terraced landscape between the foot of the Eyre Mountains and the surface of Lake Wakatipu. I refer to this landscape as the Von Terraces Landscape. The Von Terrace Landscape is part of the much greater lake and mountain Outstanding Natural Landscape (ONL). In terms of scale, the site occupies approximately 5% of the Von Terraces Landscape and roughly 1% of the visible, northern aspects of the Eyre Mountains and Von Terraces ONL.
>
> [7] I consider the site is small scale in the context of the much wider ONL and that the ONL landscape has the ability to absorb the type of development which would be enabled by the Walter Peak Tourism Zone (Tourism Zone). The provisions in the proposed zone would ensure development was undertaken in a manner which would be visually recessive within the landscape and sensitive to the landscape values. I consider the site has the ability to absorb appropriate development while maintain the values that contribute to the natural landscape being outstanding. By controlling development and promoting predominantly open space and planting, adverse effects on the ONL values should be cumulatively minor.[8]

25 Mr Skelton specifically reflects on the learnings from the *Save Wanaka* decision, and any conclusion he makes either on values, or on effects of development, relate not only to the von Terrace landscape but also the 'wider ONL'.

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[7] *Ohau Protection Society v Waitaki District Council* [2018] NZEnvC 243.
[8] Evidence in Chief of Mr Skelton, at [6] – [7]

26 Applying Mr Skelton and Ms Mellsop's landscape assessments, and following the case law above, the Panel should consider the wider ONL context, its values, and the potential effect of the proposed zoning on those. Mr Skelton's assessment assists in doing this by assessing the values of and effects on both the Von Terraces Landscape, as well as the wider Eyre Mountains ONL context, noting that:

> [44]… the site forms approximately 1% of the visible northern Eyre Mountains. This does not take into account the balance of the ONL, which extends to the Southland District and forms the backdrop to Lake Wakatipu, from Glenorchy to Kingston.

Further case law on controlled activities and frustration of a consent

27 Counsel's legal submissions tabled extensive case law in respect of controlled activity consent 'controls' and legitimate conditions. The Panel queried whether any further case law was relevant on this point, and specifically, at what point a change to location of a proposed controlled activity building(s) through consent conditions would be tantamount to refusal.

28 The extent of design through conditions in a controlled activity context will logically reach a point where significant changes to a proposal would be tantamount to refusal. It is submitted that such changes through conditions would cross this threshold based upon intent or purpose of the proposal being amended, rather than just by geographic location.

29 On this point, the Panel proffered the question as to whether an application for building could be so specific as to its 'siting' within the Site, that movement beyond this would be a refusal of consent. It is important to consider the difference between siting and '**S**ite' (capital 'S' emphasised). A proposal for consent must be described in the RMA under Schedule 4 by its 'site'. Site is not defined in the RMA but is defined in the PDP as follows:

> Means: Any area of land which meets one of the descriptions set out below: a. An area of land which is: i. Comprised of one allotment in one certificate of title, or two or more contiguous allotments held together in one certificate of title, in such a way that the allotments cannot be dealt with separately without the prior consent of the council; or ii. Contained in a single lot on an approved survey plan of subdivision for which a separate certificate of title could be issued without any further consent of the council; Being in any case the smaller area of clauses i. or ii. above; or b. An area of land which is composed of two or more contiguous lots held in two or more certificates of title where such titles are: i. Subject to a condition imposed under section 75 of the Building Act 2004; or ii. Held together in such a way that they cannot be dealt with separately without the prior consent

> of the council; or c. An area of land which is: i. Partly made up of land which complies with clauses (a) or (b) above; and ii. Partly made up of an interest in any airspace above or subsoil below a road where (a) and (b) are adjoining and are held together in such a way that they cannot be dealt with separately without the prior approval of the council; Except in relation to each description that in the case of land subdivided under the Unit Titles Act 1972 and 2010, the cross lease system or stratum subdivision, 'site' must be deemed to be the whole of the land subject to the unit development, cross lease or stratum subdivision.

30 The *Mygind* case provides a specific example of where certain sites (within a development proposal (**'S**'ite)) were considered inappropriate for development and were therefore excluded from the proposed development. In that case the Applicant was to re-draft amended plans for circulation and approval post decision:

> [33] It is possible that some of the provisions set additional standards to those in Rule 743. For example, Rule 702.1 requires that the building site should be free of inundation, erosion, subsidence, slippage or other potential hazard. Equally, almost all of these provisions can be read as allowing a consent authority to impose consent conditions for a controlled activity to properly control the particular effect identified. For example, in respect of the hazard issue, although the activity is controlled, there may be certain sites proposed by an applicant which could not be included because they represented significant hazard. In this regard, the two areas of subsidence, for example, between Lots 66 & 67 are in that category and have properly been excluded from development as a result.[9]

31 It follows, that Counsel does not consider a specifically worded application for building could confine the boundaries of development to a siting within a '**S**ite', and that Council does have discretion to move the siting of a proposal within the wider Site (that is a cadastral boundary / as per the PDP definition above).

32 Although the *Mygind* example above was a re-siting on the basis of hazards, it is logical that an effect such as landscape could render particular siting to be inappropriate in the Site and therefore a proposed building could be moved through conditions to address this.

33 However, there will be a point where re-siting of a building will be integral to its purpose, function, or design, and therefore changes could, at some point, render that building unable to be used for its intended purposes. At this point, the consent would effectively be refused by such a change to the proposal. An example is where the building proposed has a connection with, or reliance on, a particular resource within proximity to it. A jetty

[9] *Mygind v Thames-Coromandel District Council* [2010] NZEnvC 34.

building, golf course clubhouse, star gazing platform, or horse stable are all potential examples which have a need to obviously locate near a specific resource within a Site. Moving such structures a significant location from the resource within which they are connected to, or rely on, would render their purpose unusable.

34 To conclude, Council has a wide discretion to change the location or layout of proposed building(s) within a Site so as to control environmental effects of concern. Where the proposed development relies on a specific location within a Site for its purpose and function, a significant deviation from that location such that it could not carry out that function and purpose, would be tantamount to refusal.

35 With this in mind, Counsel acknowledges the lack of policy support in the proposed Zone which reflects all of the matters of control associated with controlled activity buildings, and in this respect proposes the additions as follows:

X.2.x Control the location, density, and scale of buildings in order to protect or enhance landscape values and nature conservation values.

Legacy zoning

36 The Site's landscape has not been static over time, as evidenced by Ms Cain. It has evolved with a specific history of significant modification, and increasing use and character as a visitor destination. The associative values and openness of the wider landscape were emphasised by Ms Mellsop in the hearing, and it is submitted that enabling the Site to continue to develop along the lines the bespoke zone provides for, is consistent with maintaining these values, and continuing the landscape character change enabled by the legacy zone to date.

37 The fact that there were no public submissions on the PDP zoning of the Site or on the submission by Wayfare to introduce a bespoke zone is evidence of the acceptance (or at least complacency) that Walter Peak high country farm has been, for a long time, accepted as a place for built development to occur.

38 Wayfare Group bought the land relying on its developable nature for tourism activities. It had a legitimate expectation that such zoning would continue in the plan (as it had done for decades) or that such zoning would not become effectively more prohibitive over the majority of the site than any other rural zoning.

39 The legacy zoning is a relevant factor as an 'alternative' in section 32 and as an 'existing environment' assessment in the PDP decision making framework. In the commercial decision making framework, it is not just a relevant factor, but is a critical or determinative factor. Wayfare has a considered approach to business, the fact that it has taken time to upgrade and enhance the site as a priority rather than structure planning or developing under the operative regime does not draw an inference that it waived legitimate expectations in respect of the continued zoning of the Site for the proposes which it was bought for.

40 This commentary on the legacy zoning, changing character of landscapes, and public perception of Walter Peak is also relevant to the context and determination of what is 'appropriate' development in the above section.

Natural Hazards

41 Mr Meldrum and Mr Bond are in agreement that:

(a) Zones A and C per the Golder report require additional controls for structures for living purposes as these are at higher risk of natural hazards;

(b) Provisions are required to maintain current mitigation measures implemented in response to natural hazards risks.

42 Point 'b' above is addressed by the policy proposed in the Submitter's amended chapter, X.2.1.14 – which seeks to ensure ongoing management and maintenance of existing hazard mitigation measures.

43 Point 'a' above is proposed to be addressed through a mapping of the hazard areas in the PDP map, and complimented by a non-complying activity and avoidance policy for new living activities in Zones A and C.

44 As to the actual mapping of those zones, the Golder Report extract and the mapping proposed in Mr Bond's evidence are extracted below:

45 The differences between the two areas as mapped are sufficiently minor that the Submitter is comfortable with accepting the BRA as mapped in Mr Bond's evidence (above) and as tabled in the course of the hearing. It is however noted that the nature of hazards is they are dynamic and can move over time, therefore the policy support above for ongoing maintenance of mitigation measures is important to compliment this mapping system. Furthermore, separate appeals are being pursued on Stage 3 of the PDP relevant to exemptions for mitigation measures relevant to natural hazards.

46 In terms of scope for the mapping of the natural hazard area and associated rules, it is submitted that the Submissions provides scope for the relief sought. In particular:

(a) At paragraph 18 (a) the submission seeks a bespoke new zone
(b) At paragraph 18 (b) the submission seeks a range of outcomes to be expressed either in a bespoke zone **or** Walter Peak specific RVZ provisions. This includes reference to permitted or controlling tourism development, residential development and natural hazard mitigation.

47 The combination of the above, and breadth of relief sought, provides the Panel with scope to accept the combination of mapping the hazard areas, and associated rules.

Urban development and residential development

48 Counsel acknowledges residual concerns raised by the panel in respect of potential urban development outcomes over the Site. As already discussed in Counsel's legal submissions, residential development related to staff accommodation is fully discretionary – signalling that this is only (if anything) anticipated as a supporting or ancillary activity within the principle purpose of the Zone.

49 The definition of Urban Development in the PDP provides:

> 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, nor does the provision of regionally significant infrastructure within rural areas

50 No relief has been sought by the Submitter to include an Urban Growth Boundary around the Site, and as stated in legal submissions, the potential develop-ability and scale of the Site is naturally limited by on-site infrastructure and servicing constraints. According to the definition above, it is submitted that it is obvious that any development within the Site could not be of an urban nature.

51 Moreover, Chapter 4 specifically controls urban development and seeks that such development be contained within defined UGBs and is avoided outside of those boundaries. (policy 4.2.1.3). It is not considered a specific policy that references urban development is required.

52 With that in mind and with respect to the discretionary residential rule, the Submitter proposes a new policy to indicate how discretionary residential development on the site is to be assessed, in a similar manner to that which is controlled in comparable Exception Zones.

X.2.X "Residential activity not related to ancillary onsite staff accommodation shall not compromise the Zone purpose".

X.2.XX "Residential activity not related to ancillary onsite staff accommodation shall maintain an overall low average density of development of the Zone, and shall protect or enhance landscape values and nature conservation values".