

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

IN THE MATTER of the Resource
Management Act 1991

AND

IN THE MATTER of Hearing Stream 4 –
Subdivision and
Development chapter
27

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

Hearing Stream 4 - Subdivision

22 July 2016

 **Simpson Grierson**
Barristers & Solicitors

S J Scott
Telephone: +64-3-968 4018
Facsimile: +64-3-379 5023
Email: sarah.scott@simpsongrierson.com
PO Box 874
SOLICITORS
CHRISTCHURCH 8140

MAY IT PLEASE THE PANEL:

1. INTRODUCTION

1.1 These legal submissions are made on behalf of Queenstown Lakes District Council (**Council**) in respect of the Subdivision and Development chapter of the Proposed District Plan (**PDP**).¹

2. OUTLINE OF LEGAL SUBMISSIONS

2.1 For the assistance of the Panel, these opening submissions:

- (a) explain the Council's approach to consideration and deferral of submissions points;
- (b) provide a general overview of subdivision under the RMA;
- (c) address the Council's proposed controlled, restricted discretionary and discretionary activity framework for subdivision within the Queenstown Lakes District (**District**); and
- (d) address other key issues raised in submissions and evidence filed in relation to the Subdivision and Development Chapter.

2.2 They are not a comprehensive response to all evidence that has been filed, which will be covered in the Council's right of reply if necessary.

2.3 There are a number of issues raised in evidence for submitters that are contested and/or not accepted by the Council. In order to assist the Panel and because there is no direction for rebuttal evidence, the summaries of the Council's evidence have responded, at a very general level, to some of the key issues raised in submitters' evidence. These submissions also endeavour to provide an update on Mr Bryce's consideration of evidence filed, for the convenience of the Panel and submitters.

2.4 Council refers to and adopts the opening legal submissions presented at the Strategic Direction hearing, in terms of Council's functions and statutory obligations (section 3), relevant legal considerations (section

¹ Chapter 27.

4), and whether various submissions are "on" Stage 1 of the PDP (section 7).² Those submissions are not repeated here.

3. SCOPE – SUBMISSIONS DEFERRED

- 3.1** Section 4 of Mr Bryce's s42A report explains the approach he has taken to consideration and grouping of submissions on the subdivision chapter, and the accept/reject table in Appendix 2 of the report also provides additional information. Deferral or transfers of submissions is further explained below.
- 3.2** Those submissions seeking specific new provisions that relate directly to a rezoning submission, have been deferred to the rezoning/mapping hearings.
- 3.3** Those submissions that seek to modify the lot size and density rules for zone chapters in the PDP have also been deferred to the rezoning/mapping hearings, *except for* the Rural Zone, Rural Residential and Gibbston Character Zones, as these chapters have already been heard in Hearing Stream 2. Submissions on lot size and density rules for these three zones are therefore being considered in this hearing stream.
- 3.4** Although the Rural Lifestyle Zone also formed part of Hearing Stream 2, equivalent submissions on the lot size or density rules within the Wakatipu Basin have been deferred/transferred to the rezoning hearings following a suggestion from the Hearings Panel.³ Council is not aware of any submitters that have advised the Panel that their submission relates more broadly to the zone provisions across the District, rather than to the Rural Lifestyle Zone as located in the Wakatipu Basin, and that wish to continue to have their submission heard in this hearing stream. It is noted that Mr Farrell's evidence⁴ does address the minimum lot size for subdivision in the Rural Lifestyle Zone but this appears to be focused on the Wakatipu Basin.

2 Opening Representation / Legal Submissions for Queenstown Lakes District Council, Hearing Streams 1A and 1B - Strategic Chapters in Part B of the Proposed District Plan, dated 4 March 2016.

3 Panel Minute deferring certain submissions, dated 4 July 2016.

4 At paragraphs 10-15.

3.5 In addition, in Mr Daniel Wells' evidence for RCL Queenstown PTY Ltd, he suggests there may be some sense in deferring consideration of some location specific objectives, policies and rules that relate to the Hanley Downs part of the Jacks Point Zone until the hearing on the Jacks Point Zone.⁵ The Council is concerned that Objective 27.3.13⁶ and the policies sitting under it, apply to all of the Jacks Point zone, not just the Hanley component of the zone, and therefore Mr Well's suggestion is not practicable as the same provisions would still need to be considered as far as they apply across the rest of the zone. .

3.6 Finally, submissions on notified Rule 26.6.2 from the Heritage Chapter, as they relate to matters associated with subdivision, were transferred to this subdivision hearing and have been considered by Mr Bryce in his section 42A report.

4. OVERVIEW OF SUBDIVISION PROCESS UNDER THE RMA

4.1 To assist the Panel, set out below is a high level overview of the subdivision process under the Resource Management Act 1991 (**RMA**).

4.2 Subdivision provisions in plans are one tool that can be used to control the use, development and protection of land and associated natural and physical resources in a district. Subdivision provisions can be implemented through one, or a combination of, the following approaches:

- (a) district plan objectives, policies and rules (provisions are usually generalised and district wide, and may incorporate by reference detailed codes of subdivision and development); and
- (b) structure, concept or development plans (often area specific and more detailed – the names of these differ within plans).

4.3 Subdivision is defined under the RMA to mean the division of an allotment by a number of methods, all of which are set out in section

⁵ Statement of Evidence of Daniel Wells dated 15 July 2016 at paragraph 16.

⁶ Notified Objective 27.7.14.

218(1) of the RMA. Of particular relevance to the subdivision chapter, no person may subdivide land unless subdivision is allowed by a national environmental standard, a rule in a district plan and a proposed district plan (if there is one), or a resource consent.⁷ There are currently no national environmental standards that allow subdivision.

4.4 Land subdivision creates separate titles (computer registers), including in the case of buildings stratum and cross lease estates). Restrictions on landowners or occupiers and their successors as to how the land can be used or developed, may be imposed through conditions of consent imposed under sections 108 and 220 of RMA. In the case of conditions having on-going effect, consent notices are registered. Subdivision also provides the opportunity for a council to require land to be vested and reserve and other financial contributions to be taken to provide necessary infrastructure.

4.5 Subdivision is referred to in section 6 of the RMA, which sets out matters of national importance, through:

- (a) the preservation of the natural character of wetlands, lakes and rivers and their margins from inappropriate subdivision, use and development;
- (b) the protection of outstanding natural features and landscapes from inappropriate subdivision, use and development; and
- (c) the protection of historic heritage from inappropriate subdivision, use and development.

4.6 The methods available to a territorial authority to carry out its functions under section 31(1) of the RMA may include the control of subdivision.⁸ As already mentioned, a territorial authority may also include rules in its district plan to provide for setting aside of esplanade reserves, or esplanade strips including circumstances where these may be greater or less than required by the Act, through section 77.

⁷ Section 11 of the RMA. Also, the subdivision must also be shown on a survey plan, through one of the methods in section 11(1)(a)(i)-(iii).

⁸ Section 31(2) of the RMA.

4.7 In processing a subdivision consent, section 106 of the RMA provides a territorial authority with the ability to refuse to grant consent or to grant a subdivision consent subject to conditions if it considers land is, or is likely to be, subject to material damage by erosion, falling debris, subsidence, slippage or inundation from any source. Section 106 also empowers a council to refuse a subdivision consent if sufficient provision has not been made regarding legal and physical access to the allotments within it.

5. ACTIVITY STATUS FOR SUBDIVISION

5.1 Messrs Ferguson, Brown and Farrell have filed evidence for various submitters⁹ who seek a district wide controlled activity status for subdivision.

5.2 The PDP was notified with a discretionary activity status for all subdivision. A variety of submissions seek different types of relief related to the default discretionary activity status. Mr Bryce has accepted submissions seeking that the Council move away from this approach, and the Council now recommends:

- (a) Controlled activity status for subdivision in accordance with a structure or development plan;
- (b) Controlled activity status for boundary adjustments beyond the permitted activity rule;
- (c) Restricted discretionary activity status (**RDA**) for subdivision in urban and rural living areas along with a non-notification clause for subdivision activities that are classified RDA;
- (d) RDA for boundary adjustments in Arrowtown and on a site containing a heritage or any other protected item;

9 Statement of Evidence of Christopher Bruce Ferguson dated 15 July 2015 on behalf of Darby Planning LP (608), Soho Ski Area Ltd (610), Treble Cone Investments Ltd (613), Lake Hayes Ltd (763), Jacks Point Residential No.2 Ltd, Jacks Point Village Holdings Ltd, Jacks Point Developments Ltd, Jacks Point Land Limited, Jacks Point Land No. 2 Ltd, Jacks Point Management Ltd (762), Glendhu Bay Trustees LTd (583) and Hansen Family Partnership (751).

Statement of Evidence of Jeffery Andrew Brown dated 15 July 2016 on behalf of Hogan Gully Farming Ltd (456), Dalefield Trustee Ltd (350), Otago Foundation Trust Board (408), Ayrburn Farm Estate Ltd (430), Trojan Helmet Ltd (FS1157), and F S Mee Developments LTd (525).

Statement of Evidence of Ben Farrell for G W Stalker Family Trust Mike Henry Mark Tylden Wayne French Dave Finlin Sam Strain (535/534), Ashford Trust (1256), Bill & Jan Walker Family Trust (532/1259/1267), Byron Ballan (530), Crosshill Farms Ltd (531), Robert and Elvena Heywood (523/1273), Roger and Carol Wilkinson (1292), Slopehill Joint Venture (537/1295) and Wakatipu Equities (515/1298).

- (e) discretionary activity status for subdivision within the Rural Zone and Gibbston Character Zone; and
- (f) discretionary activity status for subdivision of land containing a heritage or any protected item, heritage landscape, sites with known archaeological sites, and significant natural areas.

5.3 Mr Bryce has recommended controlled activity status where a subdivision proposal is in accordance with the relevant Structure Plan, spatial layout plan, or concept development that forms part of the PDP.¹⁰ A structure plan is a plan that guides the development or redevelopment of a particular area of land by defining the basic geographical and management frameworks around which future land uses, provision of infrastructure, open space networks, transportation linkages, and other features for managing the effects of development or redevelopment will be based. The inclusion of one in the plan is evidence that the appropriate level of detail is already engrained in the plan, and satisfies the Council that good subdivision design is a more certain outcome.

5.4 Supporting this approach is Mr Falconer's evidence that good design principles are already installed within a structure plan, therefore providing a positive response to location specific characteristics.¹¹

5.5 Where there isn't sufficient certainty in the PDP (in that no Structure Plan exists), Mr Bryce's recommended chapter generally allows for the activity status to be restricted discretionary. The Council's proposed RDA framework provides an appropriate level of certainty for developers through defining the matters of discretion to discrete matters, as well as supporting this rule framework with a non-notification clause.

5.6 The recommended RDA framework responds to the variability in subdivision activities within rural living (Rural Residential and Rural Lifestyle zones) and urban areas, provides an ability to decline substandard subdivision (infrastructure and design), and in respect of the latter, allows an improvement in the quality of the built subdivision

¹⁰ For example, at Jacks Point, Milburn, Waterfall Park, Rural Residential Ferry Hill Subzone.

¹¹ At paragraph 9.5.

outcomes, especially in terms of fitting a proposal to its context.¹² Mr Bryce's section 42A report responds to submitters' concerns that the notified discretionary activity status will impose significant uncertainty, cost and time delays on simple subdivisions, and how the RDA and non-notification rules address these concerns.¹³

5.7 As explained in Mr Bryce's section 42A, the section 32 report and submissions focused on three key matters:

- (a) the ability to respond to subdivision variability and design;
- (b) efficiencies of administration; and
- (c) ability to decline substandard subdivision.

5.8 Each are addressed by Mr Bryce in some detail in his report, but these legal submissions address the third matter in more detail.

5.9 This concern regarding the use of a district-wide controlled activity status for subdivision is related to the Council's inability to decline applications that have substandard subdivision design in terms of roading and allotment layout, and connection of the subdivision with the existing neighbourhood (including vehicle and non-vehicle connections).

5.10 Subdivision design is critical to the effective functioning of the District because the subdivision approval process encompasses the design, construction and vesting of infrastructure and services that are inherited by the community. Aspects of subdivision design including road layout, pedestrian and cycle connections, parks, reserves and open spaces is a key determinant of sustainable management and influences how people and communities provide for their social, economic, and cultural well-being and for their health and safety.¹⁴

Operative Plan framework

5.11 The Operative District Plan attempts to address all possible eventualities associated with a subdivision that cannot be declined.

¹² Section 42A Hearing Report (Chapter 27 Subdivision and Development) dated 19 July 2016, at paragraphs 10.44 to 10.47. Statement of Evidence of Garth Falconer dated 29 June 2016, at paragraph 2.1(e).

¹³ S42A Report, at paragraphs 10.50 to 10.55.

¹⁴ Section 32 Evaluation Report; Subdivision and Development, at page 8.

In addition to the objectives and policies there are in the order of 29 pages of matters of control and discretion for subdivision (Parts 15.2.6-15.2.19 of the Operative District Plan).¹⁵ In essence, in order to draft a framework that allows the Council sufficient consideration to include conditions of consent, the plan has become lengthy and complex.

- 5.12** Further, the controlled activity status in the ODP does not mean that it is the activity status commonly used for consenting purposes. Mr Bryce's evidence is that 69% of applications processed and granted under the Operative Plan from 2009 – 2015 had an activity status that enabled the Council to decline consent (with the remaining 31% of applications processed and granted with a controlled activity status).¹⁶ Further, there are also access and road width performance standards in the ODP transportation chapter that would trigger the requirement for a RDA consent in any event. It is therefore submitted that the ability to decline consent is already a feature of the existing ODP subdivision chapter and does not represent such an "elevated risk".

Controlled activity status

- 5.13** The RMA framework for controlled activities contains four core elements:
- (a) the Council must grant a resource consent,¹⁷ with limited exceptions;¹⁸
 - (b) the Council's power to impose conditions is restricted only to the matters over which control is reserved (whether in a plan, national environmental standard or otherwise).¹⁹ Part 2 matters or the broader terms of regional and district plans might help to inform the wording of those reserved areas of control;²⁰

¹⁵ S32 Report, at page 8.

¹⁶ Mr Bryce s42A report at paragraph 10.50.

¹⁷ Sections 87A(2)(a) and 104A(a) of the RMA.

¹⁸ Section 106 would allow the Council to refuse a controlled activity subdivision consent in certain circumstances relating to hazards and access issues. Section 104A(a) of the RMA enables refusal if the Council has insufficient information to determine whether or not an activity is a controlled activity.

¹⁹ Sections 87A(2)(b) and 104A(b) of the RMA.

²⁰ *Mygind v Thames-Coromandel District Council* [2010] NZEnvC 34, at paragraph 79.

- (c) the activity must comply with the requirements, conditions, and permissions if any, specified in the RMA, regulations, plan or proposed plan;²¹ and
- (d) the Council's ability to impose conditions on a resource consent for a controlled activity is subject to the well-established legal principle that a condition on a resource consent cannot negate the consent itself.²²

5.14 It is the fourth element that is of most relevant to the Council's position to prefer RDA where there is no structure plan in the plan. The controlled activity framework allows a consent authority to modify an application, but subject to the proviso that:

- (a) the condition relates to a matter over which control has been reserved; and
- (b) the condition does not *negate* the consent itself.

5.15 In *Aqua King Ltd*²³ the Court held that *conditions are required not be of such a nature as to effectively prevent the activity taking place*.²⁴ Mr Bryce considers that the monitoring reports supporting the District's urban zones show that the effectiveness of the current controlled activity regime in driving good subdivision design is an issue. It is respectfully submitted that without the Council's ability to decline substandard consents, it is limited in what conditions it imposes to address its concerns as it may be in danger of unintentionally negating an application.

5.16 Further, the Court in *Aqua King Ltd* held that the limits of the consent application limit the jurisdiction of the council in making its decision.²⁵ *Aqua King Ltd* refers to *Clevedon Protection Society Inc* where Judge Jackson stated:²⁶

The starting point is the principle that every resource consent is limited by the terms of the relevant application. If

²¹ Section 87A(2)(c) of the RMA.

²² *Taranaki Regional Council v Willan EnvC* Wellington W150/96, 23 October 1996; *Ravensdown Growing Media Limited v Southland Regional Council EnvC* Christchurch C194/00, 5 December 2000.

²³ *Aqua King Ltd v Marlborough District Council* (1998) 4 ELRNZ 385.

²⁴ *Aqua King Ltd*, at paragraph 23.

²⁵ *Aqua King Ltd*, at paragraph 35.

²⁶ *Clevedon Protection Society Inc v Warren Fowler Ltd* C43/97, at page 18.

the resource consent goes beyond what is sought in the application it is ultra vires: (Sutton v Moule [1992] 2 NZRMA 41, at 46).

5.17 The obvious example where this can be an issue is with roading and allotment layout, and connection of the subdivision with the existing neighbourhood. As Mr Wallace sets out in his evidence, if subdivision is an RDA then at least the Council will be able to decline the consent and allow it to discourage an applicant from advancing substandard roading widths and access width configurations (which of course raise safety concerns),²⁷ or substandard subdivision designs which is Mr Falconer's evidence. If a solution cannot be found within the terms of the application, then any consent condition will essentially negate the consent itself.

5.18 It is also submitted that:

- (a) there are situations where proposals are of such poor quality that urban design issues cannot be resolved through discussions or conditions and therefore it is appropriate for the Council to retain a discretion to decline an application; and
- (b) it is inappropriate for the Council in its regulatory role to effectively undertake a fundamental redesign of a proposal through conditions on a controlled activity consent; and
- (c) the council's position has considered the activity status

5.19 As set out in Mr Bryce's section 42A, the justification for the RDA is based on achieving good urban (or subdivision) design outcomes, appropriate infrastructure and servicing requirements, and consequential appropriate environmental outcomes.²⁸

5.20 Mr Ferguson considers that the Council's further justification for RDA based on the existence of landscape sensitive zones is flawed.²⁹ He considers that the Panel will need to conduct an inquiry first in the *appropriateness of the spatial planning outcomes before it settles on*

²⁷ Evidence of Mr Wallace at paragraph 5.2.

²⁸ S42A Report, at paragraph 10.37.

²⁹ Evidence of Mr Ferguson at paragraph 20.

*the provisions that will apply to those areas, including subdivision.*³⁰ It is respectfully submitted that this reasoning is incorrect, there is a significant amount of land within the district that is zoned for urban development and does not have a structure plan in place.

5.21 Further, a restricted discretionary subdivision consent can be advanced without the need for limited or public notification, and this is submitted to greatly reduces any potential consent risk and developer uncertainty.³¹ This also provides certainty that the consideration of the development details is solely a matter between the developer and Council, and other people within the Structure Plan area whose own development might be affected by the proposed design in the consent application.

5.22 Of relevance, the New Zealand Fire Service supports RDA status, and Heritage New Zealand supports discretionary activity status for subdivision to land containing heritage items, which is consistent with the Council's position.

Jacks Point

5.23 In his evidence, Mr Ferguson queries the activity status of subdivision as it relates to Jacks Point as he considers it is unclear what it is.³² Redrafted Rule 27.5.5 states that subdivision within all urban areas is a RDA, while redrafted Rule 27.7.1 provides for a controlled activity status when subdivision is undertaken in accordance with a structure plan. Jacks Point is within both an urban area and is part of a zone containing a structure plan. He goes on to suggest amendments to redrafted Rule 27.5.5 that would be required if the Panel were not to accept his evidence that the 'default status' of subdivision should be controlled. Council's position is that controlled activity status at Jacks Point, where subdivision is consistent with the Jacks Point Structure Plan³³ is appropriate, where subdivision activity accords with the Jacks Point Structure Plan in accordance with redrafted Rule 27.7.1.

30 Evidence of Mr Ferguson at paragraph 20.

31 This is not acknowledged by Mr Alexander Reid for the Stalker Family Trust in his evidence.

32 Evidence of Mr Ferguson, at paragraph 119.

33 Refer to Part 41.7 of the PDP that contains the Jacks Point Structure Plan.

5.24 Mr Bryce recommends that the suggested changes to redrafted Rule 27.5.5 should be accepted in part, and only as this relates to the following:

- (a) Adoption of wording "*All subdivision activities, except as otherwise stated ...*" so as to assist with plan administration; and
- (b) Deletion of "*Lot sizes, averages and dimensions, including whether the lot is of sufficient size and dimensions to effectively fulfil the intended purpose of the land use,*" and replace with "*The intended purpose of any land use, having regard to the relevant standards of the zone;*".

5.25 In relation to (b), this is understood to address Mr Brown's evidence seeking the deletion of "*lot sizes, averages and dimensions*" as a matter of discretion under Rules 27.5.5 and 27.5.6, however Mr Ferguson's suggested wording is preferred. This change will assist in removing uncertainty held by submitters that the Council could use its discretion to push for larger lot sizes than specified under the minimum site standards.

6. QLDC LAND DEVELOPMENT AND SUBDIVISION CODE OF PRACTICE AND QLDC SUBDIVISION DESIGN GUIDELINES

6.1 The QLDC Land Development and Subdivision Code of Practice (**Code of Practice**) and the QLDC Subdivision Design Guidelines (**Subdivision Guidelines**) were referred to in notified Policies 27.2.1.1 and 27.2.1.2 respectively. The PDP sought to ensure that subdivision was consistent with the Code of Practice. The Subdivision Guidelines were introduced with the main aim of delivering good urban design outcomes within the District's urban areas, as reflected within Policy 27.2.1.2.³⁴

6.2 Both documents were included with the PDP at notification and "incorporated by reference" under Part 3 of Schedule 1 of the RMA. Submitters sought the deletion of these policies as these documents

³⁴ S42A Report, at paragraph 10.21.

had not been consulted on and could be changed without public consultation.

6.3 External documents can be used in a number of different ways in a district plan, for example some will be referred to as providing a basis for permitted activity standards, some will be considered in the assessment of resource consent applications, while others may be referred to via explanatory notes as providing one means of compliance with various rules.

6.4 Whether a document is incorporated by reference depends on the way it is referenced in a plan. If a plan seeks for an external document to be complied with in the proposed plan through a rule or standard, or be a trigger for a consent and have legal effect as such, that document will need to be incorporated by reference, complying with clause 30 of Part 3 of Schedule 1 of the RMA. If that document or parts of it are subsequently modified, the updated version will then need to be incorporated under a plan change or variation, given that clause 31 essentially "fixes" the version of an external document referred to in a district plan.

6.5 In recognition of this position and submissions received, Mr Bryce has recommended amendments that distinguish between the two documents in his section 42A:

- (a) **Code of Practice:** amendment to Policy 27.2.1.1 to remove reference to the Code of Practice but still provide for suitable guidance on the need to adopt best practice for subdivision infrastructure.³⁵
- (b) **Subdivision Guidelines:** The Subdivision Guidelines are to remain incorporated by reference. Mr Bryce has recommended a RDA regime that specifically references the Subdivision Guidelines as a matter of discretion in 27.5.5:

The extent to which the subdivision design achieves the subdivision and urban design

³⁵ S42A report, at paragraphs 18.19 to 18.20.

principles and outcomes set out in the QLDC Subdivision Guidelines.

7. UPPER CLUTHA ENVIRONMENTAL SOCIETY (INC.) (145/1034)

7.1 The UCES submitted that the *Glentarn*³⁶ Environment Court case "*effectively made residences controlled activities on small rural lots within Outstanding Natural Landscapes*".³⁷ This case is not one where the Court is making a decision on appropriate plan provisions, instead it is an appeal against a refusal of land use consent to enable the construction of a dwelling with associated landscaping, roading and earthworks, in a rural setting at the head of Lake Wakatipu.³⁸ The application was for a discretionary activity,³⁹ and the site was partly within an ONL.

7.2 In the *Glentarn* decision, the Court undertook an analysis of the applicable objectives and policies that related to the application,⁴⁰ and took into account a previously granted consent for a barn.⁴¹ It critiqued the landscape assessment evidence presented,⁴² and concluded that the *addition of a new farming activity (a farmhouse) is no surprise, as it is consistent with the modification which human activity has already made to this part of the landscape.*⁴³

7.3 In its conclusion, the Court held that:

[99] ... We have considered the provisions of the Plan, relating both to the Rural General zone and to ONLs, and conclude that those provisions, taken as a whole, support the application. Although we accept that there will be some reduction of the openness of the landscape, it will not be inappropriate in its context [sic]

³⁶ *Glentarn Group Ltd v Queenstown Lakes District Council* C10/2009.

³⁷ Submissions and Evidence on Proposed District Plan for UCES (145/1034) dated 14 July 2016, at paragraph 19.

³⁸ *Glentarn*, at paragraph 1.

³⁹ *Glentarn*, at paragraph 38.

⁴⁰ *Glentarn*, at paragraphs 22 to 35.

⁴¹ *Glentarn*, at paragraph 38.

⁴² *Glentarn*, at paragraph 39 to 47.

⁴³ *Glentarn*, at paragraph 47.

[100] In terms of any other relevant matters, we have no concerns that approval of this proposal will create an unwelcome precedent. Few serious farming ventures are unlikely to be without a farmhouse on or near the farm, and the detail of this development should allow it to sit comfortably in the rural setting of the valley floor without compromising the ONL.

7.4 This is a decision on a site specific resource consent, and does not reflect an effective *controlled activity* status compared to the existing plan's discretionary activity status. Council disputes the relevance of this case, to this current hearing, and remains of the view that discretionary activity status is acceptable for responding to residential subdivision in ONLs/ONFs.

7.5 Mr Bryce's evidence (which relies upon Mr Barr's earlier consideration of this matter under Hearing Stream to the Rural Chapter) is that imposing a non-complying activity status has the potential to impose too great a constraint on genuine farming activities involving subdivision, and which may have associated residential activities.

7.6 Further, the draft PDP that was made public for consultation prior to formal notification, has no weight in respect of the Panel's recommendations on this chapter, as suggested by Mr Haworth at his paragraph 17.

8. MILLBROOK COUNTRY CLUB LTD (696) AND RCL QUEENSTOWN PTY LTD (632)

8.1 Mr Daniel Wells filed evidence on behalf of these two submitters.⁴⁴ In the Appendix attached to his evidence he sets out recommended changes that he considers to be a more logical and consistent structure of rules than proposed in the s42A Report. Mr Bryce has reviewed these suggested amendments and considers they that they should be accepted, with the exception of the suggested amendments to:

44 Statement of Evidence of Daniel Wells, dated 15 July 2016.

- (a) Subdivision activity that does not comply with the standards in Part 27.6 and the location specific standards in part 27.7 should be a discretionary activity (as per redrafted Rule 27.5.13);
- (b) Deletion of New 27.3.13.3; and
- (c) Deletion of fourth, sixth and seventh bullet points to Rule 27.7.4.

9. QUEENSTOWN AIRPORT CORPORATION (433/1340)

9.1 Ms Kirsty O'Sullivan filed evidence on behalf of the Queenstown Airport Corporation (**QAC**).⁴⁵ QAC initially sought a new policy be inserted into Chapter 27 in respect of bird strike, specifically to discourage activities that encourage the congregation of birds within aircraft flight paths. Mr Bryce rejected this relief as he did not believe that the practical application of the policy would achieve the outcomes sought, because there is no recommended method (i.e. rule) to assist with guiding plan users.⁴⁶

9.2 Ms O'Sullivan considers that as the notified activity status of subdivision was discretionary, any assessment of a consent application would require assessment against the relevant objectives and policies of the District Plan, which would include QAC's proposed new policy.⁴⁷ After reviewing this evidence, Council accepts the inclusion of this policy (located under Objective 27.2.2), although with the following amendment:

Policy 27.2.2.11

Discourage *subdivision and ancillary* activities that encourage the congregation of birds within aircraft flight paths.

9.3 As the s42A report has now recommended that subdivision be provided through a restricted discretionary activity status, Ms O'Sullivan also now proposes a new matter of discretion be inserted into recommended rule 27.5.5. This is in order to ensure that consent authorities have the ability to consider the appropriateness of

45 Evidence of Kirsty O'Sullivan dated 15 July 2016.

46 Mr Bryce's s42A Report, at paragraph 18.54.

47 Evidence of Mr O'Sullivan, at paragraph 4.5.

activities associated with subdivision that may give rise to the congregation of birds within aircraft flight paths within other zones.⁴⁸

9.4 Having reviewed Ms O'Sullivan's evidence, Mr Bryce now considers that QAC's relief be accepted as it relates to the new matter of discretion in Rule 27.5.5, although with the following amendment:

- *The extent to which the safe and efficient operation of aircraft may be compromised by subdivision and its ancillary activities that encourage the congregation of birds within aircraft flight paths.*

10. CLARK FORTUNE MCDONALD & ASSOCIATES LTD (414)

10.1 Mr Nicholas Geddes filed evidence on behalf of this submitter and sought that the Code of Practice make an exception for proposals which meet NZS4404:2004 (in accordance with Rule 14.2.4.1(iv) of the ODP) but do not meet the provisions contained in the Code.⁴⁹

10.2 Mr Geddes is seeking an exception be inserted into Part 14 of the ODP. However, Part 14 of the ODP is not within scope of Hearing Stream 4 nor part of the Stage 1 review of the ODP.

10.3 The Council therefore respectfully submits that there is no scope within Hearing Stream 4 to make the changes suggested by Mr Geddes. This is a matter that is best responded to in Stage 2, when the Transport provisions are notified.

11. NEW ZEALAND FIRE SERVICE COMMISSION (438/1125)

11.1 Ms Ainsley McLeod filed evidence on behalf of the New Zealand Fire Service Commission (NZFS)⁵⁰ and generally agrees with the s42A report.⁵¹ However, Ms McLeod also supports the following amendment to the matters of discretion in Rules 27.5.5 and 27.5.6 as follows:

48 Evidence of Mr O'Sullivan, at paragraph 4.7.

49 Statement of Evidence of Nicholas Karl Geddes dated 13 July 2016, at paragraph 15.

50 Statement of Evidence of Ainsley Jean McLeod dated 15 July 2016.

51 Evidence of Ms McLeod at paragraph 3.10.

- *Fire-fighting water supply (adequate water supply for firefighting purposes would be achieved by connecting to a fully reticulated water supply or through compliance with the New Zealand Fire Service Firefighting Water Supplies Code of Practice SNZ PAS 4509:2008.)*

11.2 The Council reiterates its view as set out in Mr Craig Barr's s42A Report for Chapter 21.⁵² In particular, its reluctance to incorporate SNZ PAS 4509:2008⁵³ by reference because:

- The rule would have to rely on the relevant Standards New Zealand COP and this would mean directing people to provisions outside the plan for permitted activity status;*
- The rule/permitted activity status would be entirely reliant on the whole COP. There are components of the COP that provide the ability to apply more discretion than I consider is sufficiently certain to be a permitted activity standard; and*
- Referencing the standard would mean the council need to undertake a plan change if/when the standard is updated. If not, council are obliged to administer the old standard and this matter has caused problems with the administration of the ODP (e.g. having to rely on a superseded noise standard in terms of administering the rule but in terms of assessment the more recent standard is preferred. The administration of resource consents for helicopter landings and departures being one example).*

12. TRANSPOWER NZ LTD (805/1301)

12.1 Ms McLeod's evidence also addresses Transpower's submission. While she generally agrees with the s42A's recommendations, she still considers that further minor amendments are necessary to new Policy 27.2.2.10 to give effect to Policies 10 and 11 of the National Policy Statement of Electricity Transmission (**NPSET**). This change is accepted by Mr Bryce.

⁵² At paragraphs 20.1 to 20.5.

⁵³ Note that in the context of Chapter 21 Rural, NZSC sought to require compliance with the HZFS Code of Practice SNZ PAS 4509:2003.

12.2 In addition, Ms McLeod suggests amendments to Rules 27.5.7 and 27.5.19 to provide clarity, as well as some amendments to the definition of 'National Grid Corridor'.⁵⁴ Both of these changes are accepted by Mr Bryce.

13. NEW ZEALAND TRANSPORT AGENCY (719)

13.1 The further refinement sought to Objective 27.2.5 by Mr Anthony MacColl on behalf of the New Zealand Transport Agency (**NZTA**) is not accepted.⁵⁵ The changes are not considered necessary and the s42A wording is preferred.

14. CABO LIMITED AND OTHERS

14.1 Mr Vivian's evidence on behalf of these submitters seeks a change to Rule 27.5.5 (as this relates to the amended wording to where no minimum lot size is specified under Rule 27.6). Council's position is that the rule should retain specific matters for each type of service infrastructure as opposed to simply relying on "services" as suggested by Mr Vivian.

14.2 The Council is also concerned that Mr Vivian's proposed wording removes "property access and roading" which is a fundamental matter of discretion.

14.3 Mr Vivian seeks the deletion of "*Effects on views and outlook from neighbouring properties*" as a matter of discretion from Rule 27.5.6, as in his view this is covered under matter of discretion "*the extent to which the design maintains and enhances rural living character, landscape values and visual amenity*". Although duplication should be removed, the former matter of discretion is targeted at development, rather than subdivision design which is the target of the latter.

14.4 Mr Bryce agrees with Mr Vivian that the matter of discretion "*the extent to which the location of building platforms could adversely affect adjoining non residential land uses*" may not be necessary given the need for residential building platforms to comply with

⁵⁴ Evidence of Ms McLeod, at paragraphs 4.16 and 4.18.

⁵⁵ Statement of Evidence of Anthony Stuart MacColl dated 12 July 2016, at paragraph 18.

boundary setbacks. That said, there could be instances within the District where a greater than 10 metre setback is required from an internal boundary so as to avoid reverse sensitivity effects occurring. An example of this could be the siting of a residential building platform in close proximity to a silage pit or other instances where good planning practice would be to establish a building platform further away from a site boundary. For this reason, the deletion of this matter of discretion is opposed by Mr Bryce.

14.5 Council does however support the deletion of "minimum lot size" from Rule 27.5.6 given that this is already governed under a separate rule, and non-compliance would trigger a non-complying activity consent under Rule 27.5.14. This also offers landowners certainty that the Council will not use its discretion to advance a larger lot size than the minimum set for the zone. This was also raised by Mr Ferguson in relation to Rule 27.5.5 and Mr Brown in relation to Rule 27.5.6.

15. REMARKABLES PARK LIMITED (807) AND QUEENSTOWN PARK LIMITED (806)

15.1 Legal submissions on behalf of these submitters seek that Rule 27.4.3 be retained, and suggest amendments. Council accepts the suggestion set out in paragraph 3.6 of those submissions. The rule was incorporated to guide plan users, so the rule, as amended, would assist with Plan administration.

16. WITNESSES

16.1 The Council will call the following evidence:

- (a) Mr Garth Falconer, Urban Designer;
- (b) Mr David Wallace, Infrastructure; and

- (c) Mr Nigel Bryce, Planner, who is the author of the section 42A report on the Subdivision and Development chapter.

DATED this 22nd day of July 2016



S J Scott
Counsel for the Queenstown Lakes
District Council