

Before the Queenstown Lakes District
Council

In the matter of The Resource Management Act 1991

And The Queenstown Lakes District Proposed District Plan Topic 13
Queenstown Mapping – Group 1B (Queenstown Urban
(Frankton and South))

LEGAL SUBMISSIONS FOR

Hansen Family Partnership (#751)
FII Holdings (#847)
Peter and Margaret Arnott, Fernlea Trust (#399)
The Jandel Trust (#717)
Universal Developments Limited (#177)

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MAY IT PLEASE THE PANEL

Introduction

- 1 These legal submissions are presented on behalf of the group of five landowners identified on the front cover page of these submissions (**Submitters**) in respect of Topic 13 of the Proposed Queenstown Lakes District Plan (**PDP**).
- 2 The Submitters have elected to present a joint case in this Hearing in order to present an efficient and collaborative outcome for the Commission's consideration.
- 3 Each of the Submitters lodged separate submissions either in respect of their own parcel of land, or otherwise in respect of all or part of the broader area of land the subject of this rezoning. For ease of reference, the collective Submitter land (**Site**) is identified on notified PDP Planning Map 31, appended to these submissions as **Appendix A**, as all of the Medium Density Residential (**MDR**) plus the unusually shaped strip of Rural land located between the MDR land and State Highway 6 (**SH6**).
- 4 Collectively, the submissions received on the PDP in respect of the Site seek a range of zoning outcomes for this land. I refer to and adopt the summary from Ms Banks' s42a report in this respect, which provides:

I consider the general scope to be to rezone the entire area between Hansen Road and Ferry Hill Drive, somewhere in between the range of Rural to Industrial. The scope for the more intensive industrial zone across the entire (notified) Frankton MDR zone, is provided through the relief sought by Submissions 8, 751, 717, 847, who seek rezoning relief on their sites and also surrounding properties.

....

A number of submission points regarding the location of the ONL and the UGB, and whether the land subject to the ONL classification is appropriate for residential development, are also associated with these rezonings.

- 5 Aside from Ms Banks' reference to submitter 8 as seeking relief for a more intensive zoning (this submission in fact is the only submission opposing the notified Medium Density Residential Zoning (MDR) thereby creating scope for a less intensive zoning through this hearing), the above quote accurately reflects the current situation for consideration before the Commission as follows:

- (a) There is a wide range of zoning outcomes within scope for the Commission to consider and determine the appropriate zoning for this Site;
 - (b) The Site is a complex planning environment, which is the subject of numerous planning considerations and overlays, all of which are readily identifiable within **Appendix A**, including:
 - (i) The location of the national grid transmission lines (**Transmission Line**);
 - (ii) The proximity of SH6 and associated transport considerations relevant to SH6;
 - (iii) The location of the Queenstown Airport Outer Control [Noise] Boundary (**OCB**);
 - (iv) The disputed location of the Outstanding Natural Landscape (**ONL**) boundary;
 - (v) The Site being already serviced by requisite infrastructure which can be otherwise efficiently extended and upgraded;
 - (vi) The Site being bordered on 3 sides by zoned or built mixed commercial, industrial, retail, infrastructural and residential land on the Frankton Flats.
- 6 The Commission must approach this rezoning from first principles, taking into account all of the above planning complexities at first instance, and determine what is the most appropriate use, or range of potential uses, of this land for the future.
- 7 That determination of appropriateness will be a decision based upon legislative¹ and practical considerations², as guided by the evidence put before the Commission. In this instance, I submit that the planning complexities listed above culminate in a particular planning environment which is of relatively low amenity (at least in part), is suited to a range of potential mixed use options, and which should be maximised in the most efficient way in light of its proximity to developed land, particularly given the Site's ability to contribute to the District's foreseeable shortage of feasible commercial capacity and to the demand for centrally located residential land.

¹ Referring to Ms Banks S42a report 'strategic overview' statutory considerations for a plan review at section 9.

² Referring to Ms Banks S42a report 'strategic overview' Assessment Principles for determining the most appropriate rezoning at section 15.

8 I submit, for the reasons outlined in these submissions, that the most appropriate zoning for the Site is a site-specific Business Mixed Use (**BMU**) Zone. Put simply, I submit that BMU outcomes will best enable the Council to carry out its functions so as to achieve the purpose of the Act.

9 The Council's hesitations about BMU zoning on this site are principally based upon:

- (a) The location of the ONL boundary;
- (b) Traffic and transport related effects;
- (c) A lack of established 'need' for further commercially zoned land.

10 I address those key concerns in the submissions below.

First Principles Rezoning

11 Although the Commission will by now be well versed on the statutory requirements in respect of the DPR rezoning, it is of particular importance in this hearing that the Commission's attention is drawn to the 'first principles approach' to zoning.

12 Ms Banks' conclusion that the Site is to be partly rezoned Rural (west of the Eastern Access Road (**EAR**)) and partly High Density Residential (**HDR**) is, to say the least, an unusual zoning outcome based upon an unusual rationale:

While I have acknowledged that rural zoning is something of an anomaly in this location, I do not consider any other current PDP or ODP zone to be more appropriate based on the information included in the submissions and Council's expert evidence on which I rely.

...I consider an appropriate zoning framework to be comprised of the following...

(a) land within the ONL – rezoned from MDRZ to Rural;

(b) land located between Hansen Road and the EAR, and located within the OCB are to be rezoned to Rural;

(c) land located from the EAR east to Ferry Hill Drive, and outside of the OCB, are zoned for residential activities...³

13 I note in passing that the quoted description in the previous paragraph is factually incorrect in two respects:

³ Ms Banks s42a report, Group 1B at [4.38] – [4.39]
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- (a) Ms Banks does not mention the (approx.) isosceles triangle shaped area of land on the flat ground, which is coloured green on page 15 of Ms Banks' s42a Report (also attached as **Appendix B** to these submissions for ease of reference) which is located between Hansen Road and the EAR but is not located within the OCB and which is proposed to be zoned Rural;
- (b) There is an area of land east of the EAR outside the OCB which is zoned Rural (not residential as stated in subparagraph (c) of the quote above).

14 In her rebuttal evidence, Ms Banks concludes:

I acknowledge that some type of urban development (other than ASAN), could be appropriate on areas of the recommended Rural zoned land that is unconstrained by the OCB, in addition to the ONL and National Grid activities. This may include (for example) infrastructure, parks and reserves, or office space. However, there is no robust evidence to show there is a need to provide for additional commercial use in this location and no certainty that the possible effects on the existing zoned town centres and traffic environment will be able to be managed appropriately.

Therefore, my recommendation is that the Rural zone is the most appropriate for land between Hansen Road to the Hawthorne Drive roundabout.

Based on the above, I continue to reject the proposed BMUZ and I maintain that the land from the Hawthorne Drive Roundabout to Hansen Road should be zoned Rural, and remaining land to Ferry Hill Drive zoned as HDRZ (as indicated in my s42A report).⁴

- 15 The RMA is not about needs, but rather about effects. Any rezoning is to be approached by the Commission as if to start with a 'clean sheet of paper'.⁵ The process is in the nature of an inquiry into the merits of the use of land. There is no presumption in favour of any one zoning, and there is no presumption that rural zoning should continue unless good cause for an alternative is discovered.
- 16 Whether or not this rezoning will achieve the purpose of the Act is to be determined by considering the potential effects of subsequent development that will be enabled by the rezoning. Such effects can then be evaluated through an analysis of the benefits, costs, and risks as required by section 32.

⁴ Rebuttal Evidence of Ms Banks at [5.21]- [5.23]

⁵ *Guthrie v Dunedin City Council* C174/2001 at [14].

- 17 It is not a matter of 'need' or canvassing a wide range of theoretical options to decide what might be 'best'. That is not the test. Ultimately the question is whether the proposed rezoning is the most appropriate (i.e. 'suitable') means by which to achieve the purpose of the Act.⁶
- 18 Despite her acknowledgements quoted above that Rural zoning is "...*something of an anomaly in this location...*" and that "...*some type of urban development (other than ASAN) could be appropriate...*" Ms Banks recommends a Rural zoning without any analysis as to the appropriateness of that Rural zoning and how that Rural zoning will implement the objectives and policies relevant to the Rural Zone. In respect of Ms Banks's s32AA evaluation, recommending Rural zoning, a paragraph on benefits and costs is given but no assessment of the appropriateness of achieving the Rural objectives. I submit that is not only a deficiency in terms of section 32, but the admission cited above about the 'anomaly' of this zoning exhibits the fact that this proposed zoning fails the requisite considerations for establishing a rezoning.
- 19 Ignoring the disputed location of the ONL boundary for the moment, and referring to the non-ONL, non-OCB land on the flat area, being the combination of lands coloured green and yellow on Figure 3 included as **Appendix B**, Ms Banks does not attempt any assessment of the logical option of zoning, at least that area, BMU (possibly subject to some form of traffic generation limitation).
- 20 The previous point is particularly important when one considers that Ms Banks' recommended rural zoning will effectively sterilize an area of land on the flat floor of the Frankton Flats. As far as the two affected landowners are concerned (the Arnotts and the Hansen Family Trust) that zoning comes very close to preventing any reasonable use of the land. Those landowners are at least entitled to have that logical option carefully examined, and the Commission will be cognisant of a potential section 85 RMA consideration (reasonable use of land) arising in this instance.
- 21 I further submit that there is a wider issue of equity involved. Again putting to one side the ONL boundary issue, there is no doubt that the Site contains areas which are suitable for rezoning and in respect of which the only potential impediment to rezoning is potential adverse effects on the SH6 roundabout depending upon the extent of traffic generation. Ms Banks acknowledges that (at least) up to 1,150 residential units could be developed with minimal adverse effects on SH6. Mr Carr has devised a 'per hectare' traffic generation calculation which equates to enabling up to 1,075 residential units to be developed within the Site. Assuming the Commission accepts the Council's ONL boundary argument, I submit the starting point must be to explore an outcome by which

⁶ *Rational Transport Soc Inc v New Zealand Transport Agency HC Wellington*, CIV-2011-485-2259, 15 December 2011 at [45].

the permissible level of development can be equitably allocated to the affected landowners. Nothing in the evidence of Ms Banks provides any justification for departing from that equitable starting point.

The Appropriateness of BMU Zoning

22 I refer to the reasoning of Mr Osborne, and as relied on by Ms Banks, as follows:

Mr Osborne in his rebuttal evidence discusses the possible effects of a BMUZ in this location. He reiterates that there is sufficient existing capacity for commercial activities in the Wakatipu to meet the expected demand; and that the NPS-UDC does not require oversupply of business land, but rather to provide for the efficient operation of the business market (paragraph 4.6). Mr Osborne discusses that the oversupply of business activities can have a range of adverse effects (listed at paragraph 4.8), including undermining the viability and amenity of existing town centres and effects on land prices. He states at paragraph 4.8 that the rezoning of commercial land comes at a cost. He further states that if the cost of rezoning additional commercial land is not balanced against benefits (that are unique to the rezoned land and cannot be accrued elsewhere for land that is already zoned), then it has potential to cause a net cost to the community. In the case of this land at Ladies Mile, the proposed rezoning would need to possess attributes that are unique to the vacant land supply which cannot be replicated elsewhere; and that these benefits would then need to be greater again than the additional costs incurred. Otherwise, the rezoning has the potential to result in a net loss to the community⁷.

23 In respect of Mr Osborne's concerns in opposition to the BMU rezoning, I note the following:

- (a) The Council's economic evidence does not actually establish a conclusion that this rezoning would undermine other already commercially zoned land within the District based upon a calculation of yield of development from this rezoning request.
- (b) Mr Osborne's 'risks' of rezoning BMU include:
 - (i) *undermining of existing centre viability and amenity;*
 - (ii) *high marginal infrastructure maintenance costs;*
 - (iii) *failure to capture agglomeration benefits;*

⁷ Rebuttal Evidence of Kim Banks at [5.12]
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- (iv) *inappropriate land prices (these often led to underutilisation, inability to finance capital improvements and establishment of inappropriate competition);*
 - (v) *investment uncertainty through low relative demand and price fluctuations;*
 - (vi) *reduced redevelopment (reduction in feasibility of building alterations, due to no impetus to reinvest and lower equity to capitalise);*
 - (vii) *low amenity at a District level through decreased densities; and*
 - (viii) *reduced public transport efficiencies (as a result of redirecting growth away from planned areas).⁸*
- (c) While these 'risks' are generally identified, there is no direct analysis as to how and why those would eventuate in respect of this particular rezoning request on this Site. Moreover, I submit that some of those matters listed are actually directly in support of this rezoning, as provided in evidence for the Submitters. For example, the Site is readily serviceable by way of public transport, and will not have high marginal infrastructure costs and maintenance.
- (d) The fact that the Council appears to have zoned commercial capacity sufficient to meet the demand for the next 20 years arguably undermines Mr Osborne's evidence. If there is sufficient capacity for the next 20 years now then there must be an oversupply at this particular point in time. However there is no evidence that the current oversupply is currently resulting in any of the disbenefits (relating to oversupply) identified in the above quotation from Mr Osborne's evidence.
- (e) On the contrary, in his Evidence in Chief, Mr Osborne comments that the growth of the commercial market is driving rents above \$400/sqm in central Queenstown and above \$350/sqm in the Frankton area.⁹ That evidence does not support an assertion that an additional amount of commercial zoning could result in the potential disbenefits identified by Mr Osborne.

NPS Urban Development Capacity

- 24 Council's case acknowledges there is commercial land capacity to meet demand for the next 20 years, but there will be a shortfall over the longer term

⁸ Rebuttal evidence of Mr Osborne at [4.9]

⁹ Mr Osborne's Evidence Chief paragraph 5.4 on page 10.

(20-30 year) timeframe, however considers that this projected shortfall (of approximately 16ha in the Wakatipu ward) does not need to be provided for now in terms of the lifetime of this DPR. It also relies upon the NPS Urban Development Capacity (**NPSUDC**) requirements to monitor future supply and demand, inferring that this will provide sufficient certainty that any future shortfall can be provided for as and when that need eventuates.¹⁰ Firstly, I submit that, as has eventuated in the past, one cannot rely on the lifetime of a district plan being only ten years- that much has shown to be true in respect of the current Operative District Plan. It is quite possible that this PDP could survive for 20 years; the time period within which such shortfalls might eventuate as projected by the Council's modelling evidence. Secondly, I submit that approach from Council is directly contrary to the NPSUDC requirements as follows.

25 The definition of 'long term' in the NPSUDC is between 10 and thirty years. Planning for that long term period is required in numerous places throughout the NPSUDC as follows:

Objective C1: *Planning decisions, practices and methods that enable urban development which provides for the social, economic, cultural and environmental wellbeing of people and communities and future generations in the short, medium **and long-term**.*

26 'Planning Decisions' as defined in the NPSUDC include any decision on a district plan, and in accordance with section 74(3) RMA I submit this District Plan must give effect to this objective and its long term application to 'enable' urban development.

Policy A1: *Local authorities shall ensure that at any one time there is sufficient housing and business land development capacity according to the table below:*

Short term	Development capacity must be feasible, zoned and serviced with development infrastructure.
Medium term	Development capacity must be feasible, zoned and either: <ul style="list-style-type: none"> • serviced with development infrastructure, or • the funding for the development infrastructure required to service that development capacity must be identified in a Long Term Plan required under the Local Government Act 2002.
Long-term	Development capacity must be feasible, identified in relevant plans and strategies, and the development infrastructure required to service it must be identified in the relevant Infrastructure Strategy required under the Local Government Act 2002.

¹⁰ Council opening legal submissions at [5.14]
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27 Although the table does not refer to development capacity needing to be 'zoned' in the long term (as opposed to in the short and medium terms), it must somehow be identified in relevant plans and strategies, and when looking at the respective definitions used in that table, it appears as though zoning must be provided for:

***Development capacity** means in relation to housing and business land, the capacity of land intended for urban development based on:*

a) the zoning, objectives, policies, rules and overlays that apply to the land, in the relevant proposed and operative regional policy statements, regional plans and district plans; and

b) the provision of adequate development infrastructure to support the development of the land.

***Feasible** means that development is commercially viable, taking into account the current likely costs, revenue and yield of developing; and feasibility has a corresponding meaning*

***Sufficient** means the provision of enough development capacity to meet housing and business demand, and which reflects the demands for different types and locations of development capacity; and sufficiency has a corresponding meaning.*

28 According to the above definitions, and a careful reading of PA1, Council's evidence leads to a conclusion that the projected commercial land shortfall over the long term is directly contrary to PA1. For completeness, I note that PA1 is currently in force and applies to urban environments (including Frankton as per Council's interpretation).

***Policy C1:** To factor in the proportion of feasible development capacity that may not be developed, in addition to the requirement to ensure sufficient, feasible development capacity as outlined in policy PA1, local authorities shall also provide an additional margin of feasible development capacity over and above projected demand of at least:*

- 20% in the short and medium term, and*
- 15% in the long term.*

29 Council has not provided for 15% additional 'feasible development capacity' for the long term (again referencing the definition of 'Development Capacity' being zoning of land in any proposed or operative plan. PC1 is also currently in force.

Policy C3: *When the evidence base or monitoring obtained in accordance with policies PB1 to PB7 indicates that development capacity is not sufficient in any of the short, medium or long term, local authorities shall respond by:*

a) Providing further development capacity; and

b) enabling development

30 Although policies PB1 to PB7 (requiring evidence and monitoring) are not all yet in force, they soon will be¹¹, and PC3 is already in force. In any event, it is unlikely that Council's monitoring would change from that unequivocal evidence presented in this hearing, that there is not sufficient capacity of commercial land in the long term. The consequences of that outcome, as per PC3, are directive and require Councils to 'provide for' further development capacity and 'enable development'.

31 In light of the above, I submit the Council's position appears contrary to the NPSUDC and that the Commission here has two choices; either to accept that there is a projected shortfall of long term commercial development capacity, but consider that can be provided for at a future date through future planning decisions; or to provide for that capacity now, in an area that is entirely appropriate for rezoning and so as to accord with the NPSUDC requirements within this PDP.

Undermining commercially zoned land – standard of evidence

32 In respect of the requisite standard of evidence usually required by the Courts in the instance of such assertions as made by Mr Osborne, I refer the Commission to a wealth of case law under section 74 of the RMA relating to trade competition and rezoning considerations under planning changes or reviews. The general tenor of that case law is that Section 74(3) does not preclude a territorial authority from considering wider social and economic effects of retailing and other commercial activities. It may, for instance, conceivably have regard to the due coordination of transport services, public facilities, and other urban-related infrastructure with retail/commercial centres within its district as a relevant area of concern in pursuing the Act's purpose.

33 Such broader economic and social effects of rezoning on existing developments or zoned areas for development are considered as either 'consequential' or 'distributional' effects (rather than trade competition). The standard of evidence required for establishing such effects is high, as per the Environment Court's considerations in *Kiwi Property Management Ltd v Hamilton City Council*:

¹¹ Due 31 December 2018
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Here we are dealing with city wide provisions restricting retail development. What the epithets do emphasise, is the need not to confuse real consequential effects with economic effects which amount to trade competition. A real possibility of a downturn in retail activity with a possible flow on effect of having to reduce rentals by property owners is not sufficient to justify intervention. The possible flow-on effects must be such that communities and their wellbeing may be affected adversely.¹²

We stress that in these proceedings we are not to have regard directly to the trade competition effects that may result from the Council's latest position concerning the retail provisions of its proposed plan. We are to assess the likely consequential social and economic effects on the people and communities served by the existing shopping centres cited in the evidence.¹³

- 34 The Court heard significant economic evidence from multiple parties supporting either a more liberal or more restrictive commercial zoning regime. It stated such a task was 'difficult' given the array of expert disciplines, no agreed base data, and a range of subjective quantitative assessment meaning forecasts were indicative only. The Court ultimately found favour with qualitative evidence presented, which when looking through the extracted parts of that evidence in the judgment, are obviously much more determinative than those presented by Mr Osborne in this instance. I therefore submit the Council's case with respect to such effects actually eventuating falls well short of determining that this zoning would be contrary to such higher order provisions of the PDP seeking to avoid undermining existing urban areas.¹⁴
- 35 In respect of Ms Banks' statement above, that this land would need to possess attributes that are unique to the vacant land supply which cannot be replicated elsewhere, I challenge the validity of that assertion from a legal point of view. I am unaware of any authority to the effect that there must be unique factors applicable to an area of land before the rezoning of that land can be considered.
- 36 Even if that legal assertion were correct I note there are some fairly obvious unique factors applicable to the Site, including:
- (a) The Site is readily serviced by existing Council infrastructure, which is rare elsewhere in the Wakatipu Basin;
 - (b) The Site is flat, open pasture which would have a low cost of development;

¹² *Kiwi Property Management Ltd v Hamilton City Council* (2003)9 ELRNZ 249 (Environment court) at [88].

¹³ *Ibid*, at [143]

¹⁴ Referring policies 3.2.1.1.2, 3.2.1.2.1, 4.2.1.6.

- (c) The Site is held by multiple registered proprietors which may count towards the rate at which the land can eventually be developed and brought to market.
- (d) The Site is within close proximity to other commercial and residential land, providing public transport and walking options for residents and workers within the area.
- (e) The Site is within an (unchallenged) urban growth boundary, thereby achieving all of the strategic and higher order provisions of the PDP, and numerous growth strategy documents supporting the avoidance of further urban sprawl.

37 I also refer the Commission to Ms Banks' reasoning about the appropriateness of rezoning part of the Site BMU within the OCB, and in response to the recommended prohibition of ASAN in this locality:

*Whilst the BMUZ, if the provisions were reworked, could allow for business and commercial uses other than ASAN, it is my view that such an amendment to the provisions would be at odds with the purpose of the BMUZ that is intended to provide a 'mixed use' function that integrates both commercial and residential uses. The following provisions of the BMUZ are relevant...*¹⁵

38 Ms Banks lists objectives 16.2.1 and 16.2.1.2 in support of this statement (which refer to residential uses among others), but not the purpose statement for the BMU Zone, which states as follows:

The intention of this zone is to provide for complementary commercial, business, retail and residential uses that supplement the activities and services provided by town centres. Higher density living opportunities close to employment and recreational activities are also enabled. Significantly greater building heights are enabled in the Business Mixed Use Zone in Queenstown, provided that high quality urban design outcomes are achieved.

39 I submit the additional following policies of Chapter 16 are also pertinent:

16.2.1.1 *Accommodate a variety of activities while managing the adverse effects that may occur and potential reverse sensitivity.*

16.2.1.6 *Provide appropriate noise limits to minimise adverse noise effects received within the Business Mixed Use Zone and by nearby properties.*

¹⁵ Rebuttal Evidence of Ms Banks at [5.18]
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16.2.1.7 Ensure that residential development and visitor accommodation provide acoustic insulation over and above the minimum requirements of the Building Code to avoid reverse sensitivity.

- 40 Each of the above policies and the purpose are distinct to the BMU Zone, acknowledging the specific planning response required for reverse sensitivity effects and reflecting that the zone provides a relatively low amenity living environment because of location. It is therefore entirely appropriate that a relatively small portion of the Site be prohibited from ASAN (i.e. residential development) within the wider Site providing for the full range of BMU Zone activities. Ms Banks' consideration that this is contrary to the purpose of the Zone artificially looks only at the small area of land within the OCB. It must be acknowledged that the wider Site, if rezoned, will provide for working and living environments within close proximity to each other (and adjacent land) and which is entirely consistent with the provisions of the BMU Zone.
- 41 In paragraph 5.34 of her Rebuttal Evidence (part of her response to the submission by the Otago Foundation Trust Board) Ms Banks helpfully summarises her reasons for recommending a Rural zoning of that part of the Site owned by the Hansen Family Partnership which is subject to a sale and purchase agreement with the Otago Foundation Trust Board. Although that paragraph does not refer to the Arnott land to the west, Counsel assumes that the same reasons justify the recommendation of Ms Banks to also retain that land zoned Rural. Eight reasons are provided. I set them out below in italics and provide a response to each. These comments assume the Commission accepts Dr Read's ONL boundary, although obviously that is disputed.
- (a) *the land is constrained by the OCB and the ONL;*
- 42 MBU zoning would remove the OCB constraint and leave a considerable area of flat land outside the ONL easily able to be developed.
- (b) *zoning these land parcels for residential use is inappropriate, recognising that only a limited and narrow area of land outside the OCB and ONL could be used for the establishment of ASAN;*
- 43 MBU zoning addresses this concern completely by enabling ASAN outside the OCB and non-ASAN inside the OCB.
- (c) *zoning these land parcels for residential use is inappropriate recognising the uncertainty surrounding a possible future internal access route and fourth leg to the Hawthorne Drive roundabout which could significantly limit developable land;*

44 The potential roading routes referred to above would only have a minimal impact on development options for this land. Any uncertainty can be removed by Council through the designation process if the Council considers any of these roading routes to be necessary for roading purposes.

(d) the Rural zone will ensure that the potential for permitted development to occur as of right (which could occur under a residential zone type) will not undermine future integrated infrastructure planning;

45 This appears to suggest that the land should be zoned Rural in order to sterilise it from any reasonable use by the landowners for the purpose of protecting the land for some future unspecified infrastructural activity relating to Council. That is entirely inappropriate.

(e) the Rural zone retains a discretionary regime for non-rural uses, enabling adequate assessment of effects within the context of the values of the ONL to the rear;

46 It is difficult to see how any development of this land could adversely affect the intrinsic values of the wider ONL which extends up Ferry Hill and across Lake Johnson to Queenstown Hill.

(f) successful land use outcomes can be achieved under the Rural zone framework and through consenting processes;

47 The only successful land use outcome achievable under the Rural zone framework would be inappropriate to this location. The reference to "*through consenting processes*" appears to suggest that appropriate development of this land should be determined through a resource consent rather than through zoning. While the zoning of this land Rural would undoubtedly lead to noncomplying activity resource consent applications, I submit that that is an entirely inappropriate approach to take in the context of a District Plan Review which should be seeking to generally avoid such situations.

(h) zoning for more intensive urban zones such as BMUZ or Industrial (discussed in relation to 751, 847, 399, 717, 177) is opposed from a traffic and economic perspective; and

48 These issues are fully addressed in evidence and in the submissions above.

(i) zoning to BMUZ with a bespoke rule that limits the development of ASAN (discussed in relation to 751m 847, 399, 717, 177) is contrary to the purpose of the BMUZ.

49 This reason is quite incorrect, as detailed in submissions above.

50 In summary I submit that none of Ms Banks' reasons justify the Rural zoning she recommends.

Landscape Considerations

51 Counsel agrees with Ms Banks that one of the first principles of rezoning, and in accordance with the strategic and higher order provisions of the PDP, is to assess the landscape categorisation of an area first, then determine the appropriate zoning.

52 In this instance, both the Submitters' and Council's landscape architects have assessed the landscape of the Site from a first principles basis. Each of the respective experts has arrived at a different conclusion in respect of the location of the ONL boundary. The Commission is not bound in this instance by any ruling of the Environment Court as to the particular location of the ONL boundary because the Environment Court has never examined the ONL boundary in this location in detail. The Commission therefore must make a finding of fact based upon the evidence before it as to the appropriate ONL boundary.

53 The experts appear to be at an impasse as to where the boundary is located, based upon differing methodology. At the risk of over-simplifying the differences, these appear to be centred on the following basis:

(a) Mr Bentley considers the area's clear geomorphological boundaries have been blurred to varying extents by cultural interventions, including pastoral farming, and built human elements, such that the Site does not hold the high landscape qualities and values warranting ONL status, and that a more defensible boundary of the ONL would be the water race, a reasonably distinctive feature within the landscape.

(b) Dr Read considers Mr Bentley's preferred boundary is not defensible because she cannot discern a difference in the landscape upon either side of the water race. Her preferred location is the toe of the hill.

54 Determination of this particular debate will be a matter for the Commission based upon the evidence presented and its own on-site consideration. However I draw the Commission's attention to the following matters which I submit count against Dr Read's amended ONL boundary:

(a) In paragraph 5.7 on page 7 of her Rebuttal Evidence Dr Read states "*This boundary was originally based on the maps from the Environment Court decision [C180/99]*". A careful examination of the Operative District Plan's Appendix 8A – Map 1 (Landscape Categorisation in the Wakatipu Basin) reveals that this statement is not correct. It is clear that the

Environment Court placed its dotted ONL boundary on the sloping land some distance above the valley floor, rather than at the toe of the slope as recommended by Dr Read.

- (b) In her description of the wider landscape in paragraph 5.8 of her Rebuttal Evidence Dr Read fails to mention, or take any account of, the recently consented 4 Lot subdivision on the Hansen Family Partnership land adjoining Hansen Road (shown on **Appendix C**). While that factor is not determinative of the appropriate ONL boundary, it must be a relevant factor.
- (c) In order to locate the ONL boundary at the toe of the slope within the Site, Dr Read has to connect that ONL boundary to a higher elevation at the eastern end of the Site and beyond the western end of the Site. As far as the eastern end is concerned, Dr Read acknowledges in paragraph 5.15 of her Rebuttal Evidence that "*This is a relatively arbitrary location with little specific landscape justification...*" Dr Read makes no attempt to explain her landscape justification for where her recommended ONL boundary rises back up to a higher elevation beyond the western end of the Site.

55 Overall, I submit the evidence before the Commission does not however lead to a binary outcome to determining this rezoning. There are a range of possibilities which flow from determining the landscape boundary, it must be recalled that the strategic directions and landscape chapters of the PDP, are one factor within the various relevant statutory and other considerations for this rezoning. Those provisions are not strict bottom lines preventing ONL development, nor is there any other higher order direction (within the Act or other planning instruments) which directs such a bottom line.

56 I therefore refer the commission to Mr Bentley's findings within part 6 of his Evidence in Chief, that effects of rezoning of the Site (even if found to be an ONL) depends on the contextual character of the wider area. From a practical perspective, the Commission must consider the realities of rezoning on the ground. The Site is now surrounded on three sides by intensive urban development, and views across the small section of Council's recommended Rural zoned land will provide only a momentary glimpse of the lower flanks of Ferry Hill in an otherwise urbanised context.

57 Furthermore, Ms Banks refers to this area as being an 'urban entrance' to Queenstown¹⁶ and Dr Read and Ms Banks both acknowledge this Site as being at odds with the Rural Zone purpose and character. It is therefore difficult to

¹⁶ S 42 a report of Kim Banks at [4.33]
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comprehend what values of this particular area are considered to be worthy of protection for their outstanding or preeminent (within the District) status.

58 The conclusion that inappropriate development impinging upon the ONL should be avoided, does not give any thought as to what 'appropriateness' might be. In respect of this matter, I refer the Commission to Mr Bentley's Evidence in Chief and Summary Evidence, which considers the effects of the rezoning in landscape terms, in particular that the rezoning would create an urbanised landscape character within an already urbanised area (that is also consistent with Ms Banks' consideration of the Site as an 'urban entrance').

59 In light of all the above, I submit that Mr Bentley's landscape evidence is to be preferred over Dr Read's analysis. However, the outcome of this rezoning debate does not depend solely upon the outcome of the ONL debate. Should the Commission prefer Dr Read's evidence, or something in between Dr Read and Mr Bentley's recommendations, such that the requested rezoning might be considered partially within an ONL, I submit the rezoning in this instance is still entirely appropriate for the following reasons:

- (a) Urban development in this location of an already highly urbanised area will not undermine or be inconsistent with the outstanding values of the wider Ferry Hill ONL, which in this particular locality, Dr Read even acknowledges to be affected by cultural influence such as the transmission lines. It is therefore not contrary to the strategic direction and landscape provisions of the PDP (Assessment Principle 15.3(c))
- (b) Visual amenity concerns of rezoning as raised in Mr Spence's submission, in particular on the Quail Rise residents have already been assessed by Dr Read to be able to be adequately mitigated by way of setback and landscaping treatment on the eastern boundary of the Site.
- (c) Consideration of landscape is two matters out of a list of 13 in terms of the council's Assessment Principles for rezoning. Those other Principles are entirely supportive of this rezoning, thereby ensuring the rezoning meets the statutory requirements of the Act as well.

Traffic and Transport Considerations

60 This section of submissions address the following traffic and transport considerations relevant to the rezoning of the Site:

- (a) Capacity of the SH6 Roundabout;
- (b) Allocation of Development Capacity;
- (c) Method of management of traffic effects.

Capacity of the SH6 Roundabout

- 61 I submit that the evidence lodged raises the following matters for consideration in relation to the capacity of the SH6 Roundabout:
- (a) What extent of development can or should be enabled within the Site;
 - (b) How should that extent of development be allocated across the Site;
 - (c) What is the appropriate method to manage and monitor this issue in the future.
- 62 It is common ground amongst all of the traffic experts that the existing SH6 Roundabout, which currently has three legs (SH6 comprising the eastern/western legs and the southern leg linking to the Eastern Arterial Route around the eastern end of the airport runway) has been constructed with provision for a fourth leg to provide access into the Site which directly adjoins the SH6 Roundabout.
- 63 In her Evidence in Chief for the Council Ms Wendy Banks expressed the opinion, based upon modelling data supplied to her by Abley Transportation Consultants Limited, that the development of 1,150 dwellings on the Site could only make a "*minimal*" difference to the performance of the SH6 Roundabout.¹⁷
- 64 The Site owned by the Submitters in combination contains 26.1 hectares. Ms Wendy Banks' modelled figure of 1,150 dwellings would equate to a density of 44 residential units per gross hectare of land.
- 65 In his Evidence in Chief for the Submitters Andy Carr carried out a detailed assessment of various development scenarios for the Site and arrived at a conclusion that development not exceeding a threshold of 1,430 vehicle movements (two way) in the peak hours could be enabled with negligible risk to the efficiency of the external roading network. In order to provide an equitable outcome for all of the landowner Submitters, Mr Carr then converted that figure of 1,430 total into a threshold of 55 vehicle movements (two way) in the peak hours for each hectare of land (total 1,430 divided by 26.1 ha).
- 66 In his Summary Evidence Mr Carr will advise that that figure of 55 vehicle movements was based on a 50% in/50% out direction to reflect the proposed BMU zoning. However residential development is much more tidal (ie: most vehicles exit in the morning and enter in the evening) which, when modelled, gives a different result. Having rerun the model Mr Carr will conclude that, based upon residential development, a total of 1,075 houses could be built without exceeding the total 1430 traffic generation threshold. That equates to 41

¹⁷ Wendy Banks' Evidence in Chief dated 25 May 2017, at paragraphs 5.19-5.21 on pages 12-13
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dwelling units per gross hectare, which is very close to Ms Banks' figure of 44 dwellings per gross hectare.

- 67 The Evidence in Chief lodged on behalf of NZTA opposes any form of business or commercial rezoning north of SH6 but does not oppose residential zoning. That evidence does not identify any specific traffic generation threshold in relation to adverse effects on the SH6 Roundabout. The Rebuttal Evidence lodged for NZTA likewise does not challenge the modelled traffic generation figures produced by Ms Banks and Mr Carr, nor does it challenge the conclusions of Ms Banks and Mr Carr that that modelled level of traffic generation have will have minimal adverse effects on the performance of the SH6 Roundabout over the 10 year period modelled by Mr Carr.
- 68 The Rebuttal Evidence for NZTA maintains its opposition to commercial business zoning north of SH6 but supports residential zoning in preference to the Council's recommended Rural zoning of a significant part of the Site. Mr Sizemore states that the NZTA has real concerns about Mr Carr's traffic generation predictions "*for the reasons set out above*". However I submit that little weight should be placed upon that expression of concern, for the following reasons:
- (a) NZTA's concern appears to be based upon the possibility of BMU zoning rather than residential zoning. However Mr Sizemore does not address the fact that Mr Carr's recommendation equates to a traffic generation restriction threshold, regardless of the zoning;
 - (b) Mr Sizemore does not in any way challenge Mr Carr's calculation by which he arrives at his recommended threshold;
 - (c) Mr Sizemore does not challenge Mr Carr's conclusion that the SH6 Roundabout would accommodate Mr Carr's recommended level of traffic generation without adverse effects, within the modelled 10 year planning period;
 - (d) NZTA supports residential zoning on the northern side of SH6 but provides no evidence or assistance to the Commission in relation to the density of residential zoning which NZTA would consider acceptable.
- 69 Mr Sizemore's rebuttal evidence for NZTA considers that given Council has a 2025 and 2045 transportation model, a 30year planning horizon is appropriate¹⁸. I submit that is contrary to usually accepted practice in terms of modelling the 'design year' of a proposed development or rezoning. The generally accepted scenario is ten years when considering rezoning of land, as

¹⁸ Rebuttal Evidence Mr Sizemore at [15].
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set out in the NZTA Research Report 422 (*Integrated Transport Assessment Guidelines*)¹⁹. Mr Carr will address this issue in his Summary.

- 70 In her Rebuttal Evidence for Council, Ms Wendy Banks criticizes Mr Carr's recommended traffic generation threshold because it would result in LoS E which Ms Banks considers to be unacceptable. However Ms Banks does not appear to take into account the fact that Mr Carr's calculations show that LoS E would only just be achieved at the pm peak which means that a very minor tweak to Mr Carr's recommended threshold would result in that LoS E changing to LoS D. More significantly, NZTA does not express any concern about Mr Carr's conclusions in relation to Level of Service.
- 71 In her Rebuttal Evidence Ms Banks accepts that residential development of the Site is appropriate and does not amend her Evidence in Chief to the effect that 1,150 houses on the Site would have minimal adverse effects on the SH6 Roundabout. As Mr Carr's recommended threshold traffic generation level would enable 1,075 houses, which is less than Ms Banks' 1,150 houses, it is difficult to understand the basis of Ms Banks' concern about Mr Carr's recommended threshold.
- 72 I summarise all of the above as follows:
- (a) Ms Banks is comfortable with the traffic generation consequences of 1,150 houses, at an average of 44 houses per hectare;
 - (b) Mr Carr's recommended threshold traffic generation figure would enable a slightly lower extent of development of 1,075 houses, at an average of 41 houses per hectare;
 - (c) NZTA supports residential zoning north of the highway, does not challenge the basis of either Ms Banks conclusion and recommendation or Mr Carr's conclusions and recommendations, and does not provide any alternative threshold level of acceptable traffic generation;
 - (d) It follows from a-c above that an acceptable level of development is at least 1,075 houses within the Site at an average of 41 houses per hectare;
 - (e) Neither Council nor NZTA have provided any solid rationale demonstrating why BMU development, to an extent which generates the same level of traffic movements as residential development, is unacceptable just because the traffic is generated by BMU development. What is critical is the number of traffic movements generated, not the zoning which results in those traffic movements.

¹⁹ NZTA Research Report 422 Section 5.5
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Allocation of development capacity

- 73 In this part of these submissions I address the issue of how development capacity enabled through zoning of the Site could or should be allocated amongst the Submitter landowners. It is necessary to start with a figure of some sort, so I start with the assumption of a zoning which enables the development of 1,075 residential units within the Site on the basis detailed above.
- 74 Ms Kim Banks acknowledges that her proposed HDR zoning will not achieve 1,075 residential units within the Site. She refers to a rezoned HDR area totalling 7.4 ha, which appears to be her assessment of the developable land because the total area of HDR being rezoned contains approximately 11.5ha. She then refers to being able to achieve a potential 646 residential units within that HDR zoning, which is well short of the 1,150 figure which she believes the SH6 Roundabout could accommodate. Assuming the 7.4 ha figure is correct, to achieve 646 units would require achieving a residential density of 87.3 residential units per gross hectare. Achieving that density is highly unlikely, so there may well be a questionmark even around Ms Banks' potential development yield of 646 residential units.
- 75 The Shotover Country Special Zone has a denser medium density Activity Area 2a which enables 33.3 residential units per net hectare of land and slightly less dense medium density Activity Areas 2b and 2c which enable 22.2 units per net hectare of land. Applying the Council's formula of deducting 32% of a gross hectare (for roads and reserves etc.) would result in densities of (33.3 x 68%) 22.6 residential units per gross hectare and (22.2 x 68%) 15.1 residential units per gross hectare respectively.
- 76 Northlake Special Zone includes medium density Activity Area D1 which enables 15 residential units per gross hectare.
- 77 The notified MDR zone enables a maximum site density of 1 residential unit per 250m² net site area. Applying the Council formula of deducting 32% for roads and reserves, rezoning the Site MDR would enable a maximum (26.1ha x 68% x 10,000 ÷ 250) 710 residential units which equates to a residential density of 27.2 residential units per gross hectare. The HDR zone has no maximum site density control.
- 78 I submit that the following conclusions can reasonably be reached from the above analysis:
- (a) Mr Carr's recommended threshold density of 41 residential units per gross hectare is considerably more dense than the range of 15-27 residential units per gross hectare anticipated in the Shotover Country medium density, Northlake medium density and MDR zones;

- (b) If one were to take into account loss of developable land due to the Transmission Line, the proposed 50m BRA setback off SH6 and, the possible HIF Road, achieving 1,075 residential units within the Site would likely require a development density somewhat in excess of 41 units per gross hectare;
- (c) That density would be a high residential density in this location, subject to a 12m-15m height limit, located on the periphery of the Frankton commercial zones;
- (d) If the entire Site is zoned HDR to enable that residential density to be achieved, it is actually unlikely that residential density would ever be achieved (although a density greater than MDR is probably a realistic outcome);
- (e) The likelihood that development of all of the Site for residential activities would result in adverse effects on the SH6 Roundabout which are more than minor is remote;
- (f) Imposing a traffic generation threshold rule removes even that remote likelihood because it enables the traffic generation situation to be managed and monitored into the future;
- (g) The same traffic generation threshold rule would address potential traffic effects arising if BMU zoning enabled development which could generate more traffic than residential development could generate.

Method of management of traffic effects

79 The BMU zoning provisions proposed to be applicable to the BMU rezoning requested by the Submitters are set out in Appendix 5 to Mr Ferguson's Evidence in Chief for the Submitters. Those provisions include a rule intended to address all of the traffic related concerns raised by the Council and NZTA with a formula which:

- (a) Provides a traffic generation threshold below which development is permitted (in relation to this issue) and above which restricted discretionary activity consent is required, with discretion restricted to and directed at traffic impacts;
- (b) Allocates total development capacity enabled by the traffic generation threshold on a per hectare basis.

80 The purpose of this rule is to ensure that development within the Site cannot exceed a threshold which Ms Wendy Banks and Mr Andy Carr agree (not challenged by NZTA) that adverse effects on the SH6 Roundabout would either

be minimal (Ms Banks) or create negligible risk to SH6 (Mr Carr). Any activity which will generate traffic beyond that threshold would require restricted discretionary activity consent so that traffic impacts can be examined, and consent refused if appropriate.

81 A specific advantage of this approach is that it recognises a range of current uncertainties, including the extent and nature of future development within the BMU zone, and provides a method which can react to those uncertainties on a continuing basis going forward.

82 The only challenge to the effectiveness of that proposed rule comes in the Rebuttal Evidence of Mr Sizemore for NZTA in paragraph 20 on page 4, when Mr Sizemore states:

"District Plan Rules imposing limits on traffic generation for each individual site (as suggested by Mr Carr) or for the entire area would be difficult to enforce. I am uncertain as to what mechanisms could be used to achieve this..."

83 In response I submit that the calculation of traffic movements which will be generated by a particular activity is standard practice in the resource management arena. Such predictions are commonly used to establish, for example, whether the design and standard of construction of a road or an intersection will be adequate to cater for the extent of traffic generated by the activity of being considered.

84 However on rereading the rule in question, Mr Sizemore does perhaps have a point. As currently drafted the rule could be interpreted as an ongoing requirement rather than a consent requirement. That uncertainty can be addressed by insertion of a Note. I set out below the relevant rule in full, with the proposed additional underlining.

"16.5.11.3 Vehicle Access onto State Highway 6 at Frankton

Development of the BMU zone in Frankton to the north of State Highway 6 shall:

- (i) Ensure that there is no new direct vehicular access from the zone to State Highway 6.*
- (ii) Not generate more than a total of 1,430 vehicle movements (two-way) using the State Highway 6 / Hawthorne Drive roundabout during the evening weekday peak hour*
- (iii) Not generate more than 55 vehicle movements (two-way), per hectare of land, using the State Highway 6 / Hawthorne Drive*

roundabout during the evening peak hour (calculated in proportion to and on the basis of the gross area of land being developed)

Note: Compliance with (ii) and (iii) above will be assessed and determined, in accordance with the traffic generation rates set out in Table C.1 of the New Zealand Transport Agency Research Report 453 ('Trips and Parking Related to Land Use'), when resource consent is sought for any activity (other than residential activities at a density no greater than 40 residential units per hectare).

(iv) If part of the zone is developed, not adversely affect the ability of any other part of the zone to be developed without requiring consent under this rule.

Discretion is restricted to:

- Potential traffic effects on and arising from the State Highway / Hawthorne Drive roundabout (including outcomes of consultation with the New Zealand Transport Agency (NZTA);
- The potential concentration of traffic generation undermining the development potential elsewhere in the Zone."

85 Rereading the rule in question has also revealed another issue. It is important to ensure that every proposed activity is assessed for its traffic generation potential to ensure that the above Standard is not breached, although an exemption can be made for residential development up to the threshold below which adverse effects will not arise. Counsel considers that an Additional Activity Rule is required as follows:

16.4.15	<p>All activities, except residential activities which do not exceed a density of 40 residential units per gross hectare of land.</p> <p>Discretion is restricted to an assessment of traffic generation to ensure that the proposed activity will not breach Standard 16.5.11.3.</p>	RD*
---------	--	-----

86 I submit that the inclusion of the above rules in the proposed BMU zone will address the concerns relating to traffic generation raised by the Council and NZTA.

Queenstown Airport Corporation (reverse sensitivity and the OCB)

87 QAC has prepared submissions and lodged evidence opposing numerous individual rezoning requests on the basis of possible future aircraft noise arising (out of projected growth of the airport) and reverse sensitivity concerns. I refer to Ms Banks' rebuttal evidence, which considers QAC evidence, in particular

noting that QAC's opposition to a number of rezoning proposals between 49 – 55dBA and therefore subject to a 0-15% level of annoyance. QAC's attempt to restrict rezoning beyond the OCB is inconsistent with the decision on PC35 which did not place limits on development of ASAN beyond the OCB. There is no legal basis within the PDP, operative or proposed policy statements, or the Act itself which imposes such a high level of protection against future (and uncertain) reverse sensitivity effects which may or may not eventuate.

88 Providing further prohibitions on the use of land beyond the OCB would otherwise undermine the purpose of defining and locating the OCB in the first place. I refer to and rely on Mr Ferguson's expert opinion, that the airport can be appropriately protected from reverse sensitivity effects through the inclusion of a rule in the BMU Zone provisions that prohibits ASAN from establishing within the OCB.

89 In this respect, Mr Ferguson is also in agreement with the rebuttal evidence from Ms Banks, which concludes:

Overall I disagree with QAC's position that rezonings outside of the OCB should be rejected on the basis of possible future aircraft noise and reverse sensitivity²⁰.

90 Furthermore, Mr Kyle for QAC acknowledges that the modelling supporting growth evidence for the Airport is not in respect of the crosswind runway:

The location of the OCB over the submitter's landholdings is primarily a consequence of aircraft movements associated with general aviation on the cross-wind runway. This differs from many other rezoning requests which relate to land affected by noise from scheduled aircraft. I understand that QAC's recent passenger growth forecasts are driven primarily by growth in scheduled aircraft using the main runway.

91 That is an important acknowledgement in this case where the OCB in question relates to the crosswind runway, not the main runway.

92 I refer the Commission to an ODT article dated 25 March 2015 attached as **Appendix D**. There were numerous articles around the same time in respect of the same matter, being the refusal by QAC to renew the Wakatipu Aero Club's lease at Queenstown Airport. The Aero Club was one of the principle users of the crosswind runway. This is one recent example to suggest that the use of the crosswind runway may have actually decreased in recent history, let alone there being no evidence that its use is increasing therefore supporting a 'precautionary approach' to rezonings.

²⁰ Rebuttal Evidence of Kim Banks at [4.18]
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Matters Not in Contention

Infrastructure servicing

- 93 Mr Glasner for the Council has stated he has no concerns with urban development of the Site, given its proximity to existing infrastructure and the ability for it to be efficiently upgraded and extended in this location. Moreover, he opposes a reversion to Rural zoning in this location given that:

This site is close to the water source, wastewater treatment plant, and associated trunk mains and is hence an efficient location for future development.²¹

Comment on HDR provisions recommended by Ms Kim Banks

- 94 The Commission is faced with at least two possible options, being the BMU zone provisions proposed by the Submitters and the HDR provisions recommended by Ms Kim Banks. In the event that the Commission may be minded to consider adopting any of the provisions recommended by Ms Banks, whether within an HDR zone, an MDR zone or a BMU zone, Counsel raises the following concerns in relation to those recommended provisions.

- 95 Counsel's primary concern relates to provisions which reference a roading link between Hansen Road and the SH6 Roundabout. I will address the background of this issue before turning to the specific provisions. I refer to the following appendices to these submissions, marked with the capital letters identified below:

E – copy page 9 of Ms Kim Banks' s.42A Report dated 25 May 2017;

F – copy page 23 of Ms Banks Rebuttal Evidence dated 7 July 2017;

G – copy three pages of the Housing Infrastructure Fund Proposal for Quail Rise South which, as evidenced by the third page, is dated 28 March 2017.

- 96 I note that **Appendix G** predates **Appendix E** by two months and predates **Appendix F** by four months. It is clear that Ms Banks' assertion that the HIF Proposal involves a proposed road connecting (in part) Hansen Road with the SH6 Roundabout is fundamentally incorrect.

- 97 None of the evidence presented for this hearing contains any explanation of, or justification for, the roading connection to Hansen Road which is detailed in **Appendices E** and **F** and which is referenced in the HDR provisions recommended by Ms Banks. I note the following facts in relation to that proposed roading link, three of which would be evident in a site inspection:

²¹ Evidence in Chief of Mr Ulrich Glasner at [6.6].
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- (a) It involves quite a significant rise in elevation which means quite significant earthworks;
- (b) It crosses a major gully which would probably require a bridge;
- (c) On the (almost) certain assumption that the existing church and any other possible zoned development located on the flat land at the southern end of Hansen Road would continue to use the Hansen Road/SH6 intersection (almost certainly left turn in/left turn out by then) this expensive roading link would primarily service only about 8 houses (4 existing and 4 consented) on the upper part of Hansen Road;
- (d) The route goes through two Hansen Family Partnership lots recently consented for residential development (and which are shown on **Appendix C**).

98 Counsel's concern in relation to this issue is that Ms Banks is recommending District Plan provisions relating to a proposed roading link not predicted or supported by any evidence and in respect of which there is no obvious logical reason for it to even be built.

99 A second broad concern relates to the indicative possible future road in the HIF Proposal shown on the first page of **Appendix G**. The landowner Submitters potentially affected by that proposed road are aware of the proposal and have no difficulty with the proposal. Their difficulty is with uncertainty as to whether the road will actually happen and when it might happen.

100 This is a designation issue. The design of the SH6 Roundabout containing a possible 4th leg to the north has been known about for years. The desirability of a roading link from the SH6 Roundabout through to Quail Rise has also been known about for years (although the possibility of that road link occurring may now be affected by the recently announced upgrade of the Tucker Beach Road/SH6 intersection). The PDP does not include any designation for this roading link.

101 The affected Submitter landowners have sought to address this issue by lodging a submission to Council's 2017/2018 Annual Plan requesting that, if the Council has plans for this roading link to occur, the Council should initiate the necessary designation procedure as soon as possible. That would enable the landowners to plan for development of their land (assuming the land is rezoned through decisions issued by this Commission early next year) with a degree of certainty about that roading link.

102 Based upon the background outlined above I submit that any District Plan references to any proposed roading link in this zone should assume that, if

there is to be such a roading link, Council can and will designate it in the near future. Landowners should not be left in limbo and unable to develop their land, for an unspecified number of years, due to uncertainty about that roading link.

103 On the above basis I now return to specific comments on the HDR provisions recommended by Ms Banks.

104 I set out below Ms Banks recommended Policy 9.2.XXX, with amendments proposed to that Policy and explanation for those proposed amendments below:

"9.2.XXX

Promote coordinated, efficient and well designed development by requiring, prior to, or as part of subdivision and development, construction of the following to appropriate Council standards:

- a 'fourth leg' off the Hawthorne Drive Roundabout;
- ~~a logical internal road access between Hansen Road and Ferry Hill Drive; and~~
- new and safe pedestrian connections between the Hawthorne Drive Roundabout and Ferry Hill Drive."

105 I comment on the above proposed amendments as follows:

- (a) The second bullet point should be deleted for the reasons detailed above. There is no evidence supporting the possibility, let alone the likelihood, of any such internal road access. If the Council wants such a road access the Council has time to designate it before DPR decisions are released next year, in which case the designation would trump the DPR provisions.
- (b) Counsel assumes that the word "*Roundabout*" was accidentally omitted, because obviously no developer of land north of SH6 could provide a pedestrian connection across SH6 to connect to Hawthorne Drive on the southern side of SH6.
- (c) Rule 9.4.4, 8th bullet point commences "*For land fronting State Highway 6 between...*" Subdivision of the Site could defeat the purpose of this Rule. That reference should be amended to read "*For the HDR zone fronting State Highway 6 between..*"
- (d) The same bullet point referred to above has four subsidiary bullet points. The second sub bullet point should be amended as follows:

"integration with ~~other access points existing and designated roads~~ through the zone to link up to Hansen Road, the Hawthorne Drive Roundabout and/or Ferry Hill Drive"

- 106 The above amendment gives the Council time to resolve any uncertainty through the designation process and avoids a potential situation of complete uncertainty for landowners about the location of unidentified potential future roading links.
- 107 Rule 9.4.4 referred to above contains a restricted discretionary activity rule specific to this proposed zone. That rule is followed by a separate Rule 9.4.4A which is an unlimited discretionary activity rule with no explanation. There is no reason to include the new Rule 9.4.4A which should be deleted.
- 108 Rule 9.5.8 provides for a minimum 50m setback off the boundary fronting SH6. In respect of that rule I comment:
- (a) A setback to some degree from SH6 on land adjoining and level with SH6 has some merit. However any setback should only apply to the western part of the proposed zone where land within the zone is at the same level as SH6. There is no reason to apply such a setback to the land in the 'cutting' going down to the Shotover River Bridge, because that land is below the level of the adjoining zoned land.
 - (b) The extent to which a setback will adversely limit the ability to develop valuable flat land on the Frankton Flats should be a consideration, particularly in relation to this constrained area of land on the northern side of SH6.
- 109 The submitters propose a 20m setback which they contend provides an appropriate degree of separation and setback from SH6 and is enough to allow for a possible future third lane on the northern side of SH6.
- 110 Ms Banks proposed Rule 9.5.13.c requires development within the zone to provide "*pedestrian connections across the State Highway*". The State Highway is controlled by NZTA. Compliance with that requirement is completely beyond the control of the landowners, and failure to meet that requirement results in noncomplying activity status for all development. The requirement is not appropriate and should be deleted.

Witnesses

- 111 The following witnesses have presented Evidence in Chief on behalf of the Submitters and will now be called on to present summaries of that evidence and answer any questions of the Commission:
- (a) Mr Andy Carr – traffic and transportation evidence;
 - (b) Mr James Bentley – landscape evidence;

(c) Mr Christopher Ferguson – planning evidence.

Dated this 11th day of August 2017

A handwritten signature in black ink, appearing to read 'Warwick Goldsmith', written in a cursive style.

Warwick Goldsmith/Rosie Hill

Counsel for the Submitters

Appendix A – Extract from PDP Map 31



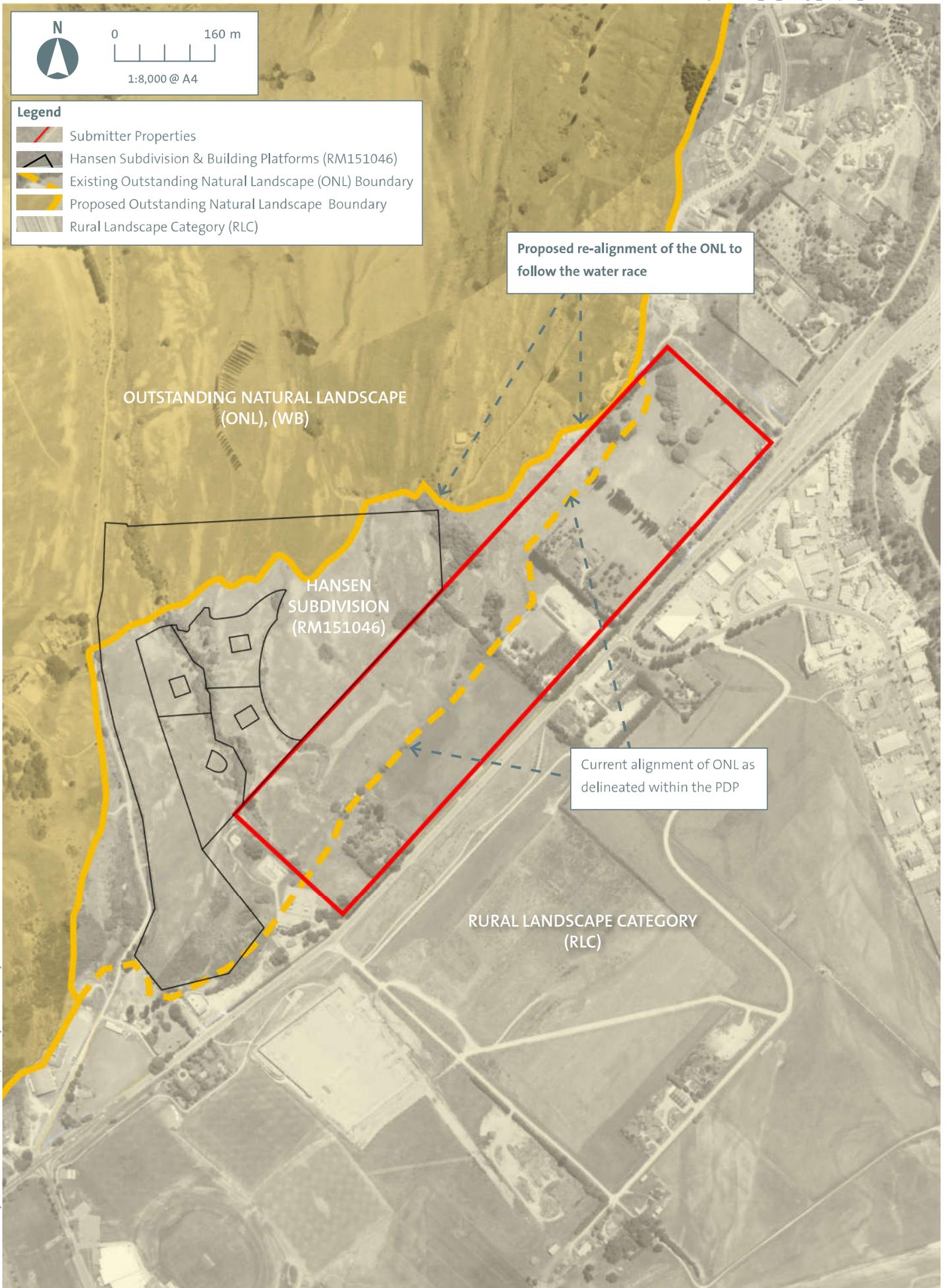
Figure 1: Extract from PDP map 31

Appendix B – Figure 3: Ms Banks s42a report (possible MDRZ land considered impractical to develop)



Figure 3: Possible MDRZ land (green) considered impractical to develop

Appendix C- Map showing consented 4 Lot subdivision on the Hansen Family Partnership land adjoining Hansen Road



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Appendix D – Otago Daily Times Article Wakatipu Aero Club

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Wednesday, **25 March 2015**

Aero club alleges airport inconsistent

By **Guy Williams** (</author/Guy%20Williams>)

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Wakatipu Aero Club has accused the Queenstown Airport Corporation (QAC) of inconsistency in its argument for moving the club off its present site.

In the latest round in its fight for survival, the club sent its lawyer and a senior Civil Aviation Authority (CAA) adviser to plead its case at the public forum of yesterday's Queenstown District Council monthly meeting.

It is the second time in a month the club has done so.

Club lawyer Revell Buckham and CAA aviation safety adviser Carlton Campbell tabled a letter to councillors from president Adrian Snow, which said the airport had "tendered a sequence of explanations, each subsequent explanation appearing when each previous explanation is discredited".

Mr Buckham said the airport was now saying the club had to move because it did not fit its "mix", rather than because its lease had expired.

The club was told a month ago its lease would not be renewed when it expires in June because the airport needed the Lucas PI site for expansion.

It has labelled a suggestion by QAC chief executive Scott Paterson that the club split into two divisions - leaving air transport at Queenstown and shifting its flight training school to Wanaka - as financially unviable.

Mr Snow said the club had received a letter from a council legal services provider intended to "dissuade the aero club with continuing to approach QLDC in its request to have its community value and contribution recognised".

But as the airport's majority shareholder, the council had a statutory responsibility to consider the club's value to the community and the authority to communicate that to the QAC board.

"What we're asking for is that you use your influence and authority and allow the aero club to



Revell Buckham.

continue where it is," Mr Snow said.

Queenstown Lakes Mayor Vanessa van Uden said the club needed to keep talking to the airport, as the council had received "very clear advice that we shouldn't get involved".

0 0

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Appendix E – Copy page 9 of Ms Kim Banks' s.42A Report dated 25 May 2017;

intensification resulting from BMUZ or LSCZ rezonings would likely result in the State Highway operating at capacity during peak periods. She also highlights concerns with the capacity of roads network and also the need to consider future growth of the area (including planned developments in the area).

- 4.13 Ms W. Banks notes that there are numerous single accesses along SH6 and these are all designed for low traffic volumes, and many are located close to each other. Additional turning movements in and out of these accesses has the potential to result in traffic safety concerns.
- 4.14 With regard to infrastructure and transportation networks, I note that this area was the subject of an application by Council for funding under the Central Governments Housing Infrastructure Fund. A decision on this application is anticipated from Central Government in mid-2017. This application sought funding for transportation and infrastructure upgrades to support a possible 1,150 residential units in this specific area; including a possible internal road alignment and connection to the Eastern Arterial Road (**EAR**), as identified in the figure below.

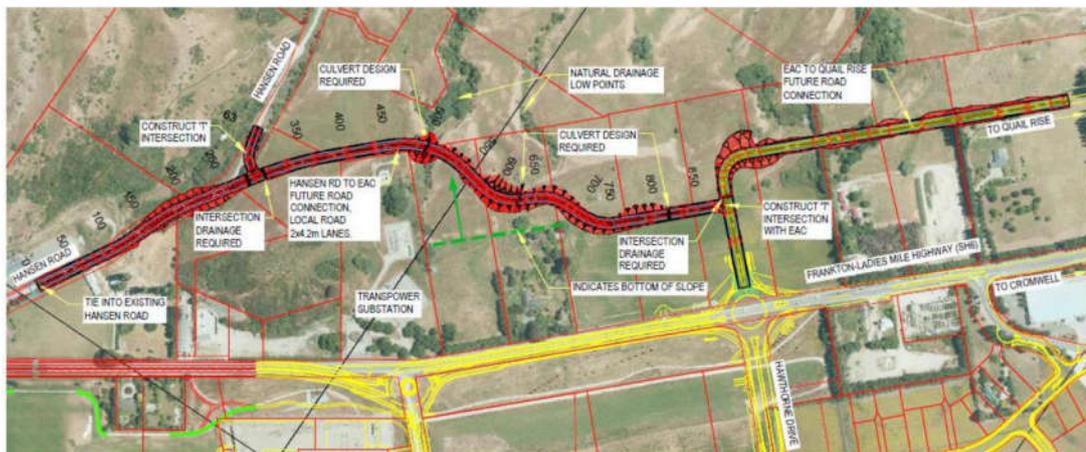


Figure 1: The proposed Quail Rise Development Corridor within Queenstown's Urban Development Area

Figure 2: QLDC Housing Infrastructure Fund Application, 2016

- 4.15 Although Ms W. Banks has highlighted some concerns with traffic effects in this location, she is not opposed to other lower intensity residential zones in this area, or a combination of residential and commercial zoning (such as a mix of HDR or MDR and BMU or LSCZ). Ms W. Banks opposes HDRZ across the entire site as the

Appendix F – copy page 23 of Ms Banks Rebuttal Evidence dated 7 July 2017;

constrained by topography and the National Grid Corridor. I support and rely on the opinion of Dr Read on this matter.

5.27 As discussed in my s42A evidence, these land parcels are also (potentially) affected by the preliminary internal access route submitted within the Housing Infrastructure Fund (HIF) application, which identified a new road through the centre of these land parcels and connecting to Hansen Road (see **Figure 8**). At this time, this internal road access remains preliminary and the outcomes of the HIF are not known. However I understand a decision is expected at the beginning of July 2017.

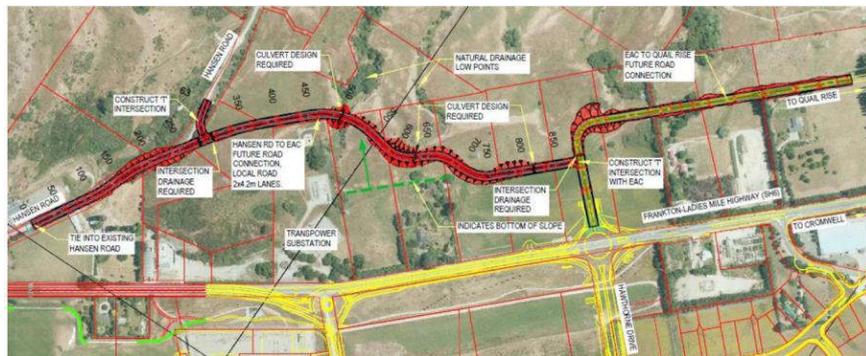


Figure 8: QLDC Housing Infrastructure Fund Application, 2016

5.28 As discussed by Ms Hutton, a resource consent has also been submitted by the Wakatipu Church over a portion of the submitter's land, indicated in the images in **Figure 9** (sourced from the file for resource consent RM170105). It appears from these figures that the Church's proposal has developed a successful site layout which has been able to navigate the constraints of the OCB, highway setbacks and future road corridors. In particular, car parking space and the playing field have been located within the OCB as these are not defined as ASAN.

Appendix G – copy three pages of the Housing Infrastructure Fund Proposal for Quail Rise South which, dated 28 March 2017.



Housing Infrastructure Fund Call for Final Proposals

Summary of Proposal for Quail Rise South



Summary Information

Territorial Authority:	Queenstown Lakes District Council
Proposal Title:	Quail Rise South
Infrastructure Project/s:	Mixed – Transport, Water Supply and Wastewater
Location of Project/s:	The Quail Rise South project borders the existing Quail Rise residential development and SH6. The road will link Ferry Hill Drive to the roundabout at the intersection of SH6 and Hawthorne Drive. Three waters infrastructure will follow the road alignment.
Location of housing being enabled:	<p>The project will enable residential development within the project area itself.</p> <p>The project is also adjacent to the Frankton Flats Special Zone (B) (69Ha, mixed use, Plan Change 19) and the natural public transport corridor.</p>
Is the proposal and/or projects in existing plans	<p>New project – not included in 2015 Long Term Plan. Note that the roundabout it connects to was only recently completed in 2016, prior to this there was no connectivity. Until recently development has been focused on the southern side of the State Highway (Frankton Flats) but with the new access, development of this site has recently become much more feasible. Furthermore, the development of new greenfield sites has predominantly been left for developers to instigate, drive and fund (this strategy resulted from the qualified audit on the 2009 Long-Term Plan).</p>

Funding Information

Total Funding Requested:	\$10,300,000
Funding by infrastructure project	<p>Transport \$7,600,000</p> <p>Water Supply \$1,100,000</p> <p>Wastewater \$1,600,000</p>
Estimated drawdown of funding	First drawdown 01/2018 / Last drawdown 06/2019
Estimated repayment period	First instalment 01/2028 / Last instalment 06/2029

-
- b. I/we have secured all appropriate authorisations to submit this Proposal, to make the statements and to provide the information in the Proposal and I/we am/are not aware of any impediments to enter into an Agreement to deliver a project.

I/we understand that the falsification of information, supplying misleading information or the suppression of material information in this declaration and the Proposal may result in the Proposal being eliminated from further participation in the CfFP process and may be grounds for termination of any Agreement awarded as a result of the CfFP.

By signing this declaration the signatory below represents, warrants and agrees that he/she is a duly elected member of the Territorial Authority and authorised to make this declaration on its/their behalf.

Signature: _____



Full name: James Boult _____

Title / position: Mayor of Queenstown Lakes District _____

Name of Territorial

Authority: Queenstown Lakes District Council _____

Date: 28 March 2017 _____
