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 2 – Rural, Rural Residential and Rural Lifestyle, Gibbston Character Zone, Indigenous Vegetation and Biodiversity, and Wilding Exotic Trees

---

REPLY OF CRAIG ALAN BARR
ON BEHALF OF QUEENSTOWN LAKES DISTRICT COUNCIL

CHAPTER 21 - RURAL

3 June 2016

Simpson Grierson
Barristers & Solicitors

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

TABLE OF CONTENTS

1. INTRODUCTION

1.1 My name is Craig Barr. I prepared the section 42A report for the Rural Chapter of the Proposed District Plan (**PDP**). My qualifications and experience are listed in that s42A report dated 7 April 2016.

1.2 I have reviewed the evidence and submissions filed by other expert witnesses and submitters both in advance of and during the Rural hearing, and attended the hearing except on 25 May 2016 where I was provided with a report of the information from submitters and counsel presented on that day.

1.3 This reply evidence covers the following issues:

(a) chapter structure and drafting;
(b) whether there needs to be a separate chapter for water;
(c) farming activity and non-farming activities;
(d) separation of buildings and activities;
(e) residential activity, residential and non-farming buildings;
(f) standards for structures and buildings;
(g) wanaka airport;
(h) informal airports;
(i) surface of water, rivers and lakes;
(j) landscape assessment matters ;
(k) other matters;
(l) mining;
(m) ski area sub zones; and
(n) conclusion.

1.4 Where I am recommending changes to the provisions as a consequence of considering submitter evidence and the hearing of evidence and submissions before the Panel, I have included those changes in **Appendix 1** (**Revised Chapter**). I have attached a section 32AA evaluation in **Appendix 2**. In **Appendix 3** is an updated table that provides a comparison between the ODP and PDP landscape assessment table,[1] which I have added and populated a column to shows the link between assessment matters and the

1 Previously Table 1 of the s42A report, after my signature.

relevant policies, at the request of the Panel. In **Appendix 4** is an example resource consent that relates to jet sprint activities.

2. CHAPTER STRUCTURE AND DRAFTING

2.1 A number of rules are recommended to be modified to ensure clarity and certainty. The changes are not substantive and do not relax or make any rules more onerous. These changes are related to clarity and questions received from the Panel and observations made over the course of the hearing. The changes are set out in **Appendix 1**, and are identified (and specifically state in bullet points that they are not referenced to a submission). I address the concerns of Mr Brown and Mr Goldsmith below.

2.2 I consider that the location and hierarchy of provisions is appropriate. Mr Brown's evidence discussed the idea of changing the 'batting order' of the objectives and policies so the themes related to commercial activities and other activities that rely on the rural resource were located immediately after the objectives and policies associated with farming and reverse sensitivity.[2] From his evidence the reason for this re-arranging is to place 'other rural activities' on an equal footing to farming. As I have drafted the objectives and policies there is no hierarchy or preference in the layout of the objectives. I therefore do not support the recommended changes to the 'batting' order.

2.3 Mr Goldsmith[3] considers that Chapter 21 does not consider rural living accommodation and that the PDP carries the same flawed approach as the ODP in that it relies on a District Wide chapter for the management of landscapes.[4] As a consequence, Mr Goldsmith purports that Chapter 21 does not have any meaningful policies or a framework on rural living. Mr Goldsmith also takes issue with the

2 Evidence of Jeffrey Brown dated 21 April 2016 at paragraph 2.8. Mr Brown gave evidence on behalf of Trojan Helmet Limited (Submissions 443, 452, 437), Mount Cardrona Station Limited (407), Hogan Gully Farming Limited (456) Ayrburn Farm Estate Limited (430), Kawarau Jet Services Holdings Ltd (307), ZJV (NZ) Limited (343), Queenstown Park Limited (806), Queenstown Wharves Limited (766), Mount Rosa Station Limited (377), Dalefield Trustees Limited (350), Skydive Queenstown Limited (122).

3 For Ayrburn Farm Estate Limited (430), G W Stalker Family Trust, Mike Henry, Mark Tylden, Wayne French, Dave Finlin, and Sam Strain (534 and 535), Slopehill Joint Venture (537), Wakatipu Equities Limited (515), Crosshill Farm Limited (531).

4 Legal Submissions of Mr Goldsmith for those submitters listed in paragraph 1.1 dated 20 May 2016 at section 7.

PDP process in that there is no oversight because the rezonings are to be dealt with at a separate hearing.

2.4 The relevance of the Strategic chapter and evidence provided in those hearings, that provides a foundation for the Council's approach is addressed in the Council's legal submission, however from a planning perspective I disagree for several reasons. These include that the Rural Zone provisions provide detailed contemplation of rural living and the effects, both negative and positive through the Assessment Matters in Part 21.7. The policies under Objective 21.2.1 to 21.2.4 that seek to manage reverse sensitivity and viability of the Rural soil resource are also relevant in that they contemplate the effects of other land uses on the Rural Zone land resource. Such effects include residential activity where it would be incompatible with farming and other established activities. These could include not just farming but established airports, and informal airports, mineral extraction and the State Highways.

2.5 Furthermore, rural living is enabled by the Rural Lifestyle and Rural Residential zones in Chapter 22 of the PDP. There are areas within the Rural Zone that can accommodate further rural living, however I consider that a case by case appraisal of development, using the PDP discretionary activity status regime is the best resource management method to manage rural living. The matters associated with density and allotment sizes are addressed in the Reply for Chapter 22.

3. WHETHER THERE NEEDS TO BE A SEPARATE CHAPTER FOR WATER

3.1 As part of their evidence for Real Journeys (#621) Mr Farrell[5] and Ms Black[6] consider that more recognition is deserved for the surface of water, specifically lakes and rivers.[7] Mr Farrell considers that there should be a new chapter for water in the Strategic Direction part of the PDP that is similar to Landscape but caters for water. Mr Farrell also states at paragraph 32 of his evidence (repeating his evidence

5 At paragraph 32.
6 At paragraph 3.42.
7 Supplementary Planning Evidence of Ben Farrell dated 21 April 2016 at paragraphs 30 to 32.

from the Strategic Direction hearing) that because the responsibilities under s13(1)(a) of the Resource Management Act 1991 (**RMA**) have been transferred from the Otago Regional Council (**ORC**) to the Queenstown Lakes District Council (**QLDC** or **Council**), the Council has additional responsibilities with respect to the management of waterways compared to other territorial authorities. A copy of the Deed recording this transfer of responsibilities was provided to the Panel by way of memorandum of counsel on 5 May 2016.

3.2 I consider that the surface of water and margins are appropriately provided for in the PDP for the following reasons:

(a) the surface of water and margins are zoned Rural.[8] They are an important element of the rural landscape and therefore are provided a landscape classification and are subject to the respective objectives and policies in the Landscape Chapter. This is in addition to the dedicated Objective for lakes and rivers (Objective 6.3.5 as numbered in the Council's Reply dated 7 April) and tourism activities and the interrelationship with the landscape (Objective 6.3.7 as numbered in the Council's Reply dated 7 April);

(b) within the Rural Zone, Objective 21.2.12 and the ten policies provide appropriate direction for the wide range of both recreational and commercial activities that occur on the surface of water;

(c) the activities associated with rivers and lakes are provided for in one table within the Rural Zone. I consider that this is a significant improvement from the ODP, where the rules are scattered throughout the chapter based on the status of activities or compliance with standards;

(d) a supplementary policy framework is not necessary to compensate for the Council's duty under the transfer of functions with the ORC, because the transfer of functions means that the QLDC administers the relevant provisions of the Otago Regional Plan: Water, these do not need to be duplicated throughout the PDP;

8 This is inherent in the fact that most of the objectives, policies and all rules are contained in the Rural Zone Chapter 21, with the exception of Queenstown Bay and the Hydro Generation Zone (reserved for Stage 2). It is recommended that this matter is clarified in Part 21.3.3 of the PDP.

(e) creating a subzone is ineffective because subzones are usually geographically defined[9] and it would be an inefficient and ineffective task to attempt to identify a water zone on the PDP planning maps; and

(f) a separate zone that in terms of a narrative describes the spatial extent of the 'water zone' could be subject to uncertainty and confusion over the definition of water and its margins. A neighbouring District, the Central Otago District (**COD**) Operative Plan has a 'Water Surface and Margin Area' that is identified by areas on the planning maps and '*all other areas of water surface in the District. Margins not identified on the planning maps as Water Surface and Margin Resource Area are subject to the provisions of the resource area within which those margins are located*'[10]. Therefore, there are examples available of separate water resource zones, however in the case of QLDC I consider that the Rural Zone rules are appropriate. This is because they contemplate a range of activities and where these are on the surface of water, the rural zoned margins mesh seamlessly. I do also note that while this might be appropriate in the COD, the COD Operative District Plan has a different philosophical approach to managing the effects of activities in its Rural Resource Zone,[11] which is the equivalent to QLDC's Rural Zone.

3.3 The matters set out in paragraph 32 of Mr Farrell's evidence provide statistics and some facts relating to water in the District but I consider that they do not provide a compelling resource management reason to locate the management of freshwater within a separate chapter. On the basis of the above I reaffirm that the structure of the PDP in terms of the management of water is in my view appropriate and I recommend that it be retained as notified.

3.4 Mr Farrell also maintains the request for water based public transport in paragraphs 36 - 38 of his evidence. I also maintain and reiterate

9 For example the two subzones within the PDP are the Ski Area Subzones and Rural Industrial Subzones and these are geographically defined.
10 Central Otago Operative Plan Part 5.5.1
11 http://www.codc.govt.nz/publications/plans/district-plan/operative-plan/Pages/default.aspx.

my opinion set out in my s42A report that a separate objective and policy framework is not necessary for activities on the surface of water, in particular where these relate to tourism activities and water based public transport.

3.5 In summary, the PDP structure is the most appropriate way to meet the purpose of the RMA, and in particular on the following matters:

(a) providing for the District's social, cultural and economic wellbeing in terms of the wide range of benefits to be derived from the surface of water including both passive and active recreational and commercial recreational uses and the intrinsic and economic benefits (section 5(2) RMA);

(b) the PDP Landscape and Rural Zone Chapters best provide for the preservation of the natural character (section 6(a) RMA), and the protection of these areas landscape values from inappropriate subdivision use and development (section 6(c) RMA), and has appropriate regard to amenity values and the quality of the environment (sections 7(c) and (f) RMA); and

(c) the provisions are appropriate in terms of the economic benefits derived from the surface of water resource in so far that they contemplate applications for commercial boating activities and seek to manage them so that the adverse effects on the resource accord with and meet the purpose of the RMA.

3.6 I also refer to and rely on the evidence of Mr Osborne at paragraph 3.8 of his evidence, where he is of the view that from an economic viewpoint, he considers that it is appropriate to take a precautionary approach to the management of the natural environment resource as both its intrinsic value and profile are extremely difficult to retroactively repair if damage does occur.

4. FARMING ACTIVITY AND NON-FARMING ACTIVITIES

4.1 The submission of Mr James Hadley (675) supports farming as a permitted activity. He also considers that providing too readily for

other activities that rely on the rural land resource would lead to uncontrolled development and the consumption of rural land. Mr Hadley also made a case that the effects on the environment of farming activities are generally well known and predictable, however the effects of other activities are not well defined and much less predictable.[12] I agree with Mr Hadley's submission, which reinforces my opinion that the framework for farming and other activities in the PDP is the most appropriate resource management method in the Rural Zone.

4.2 Related to this matter is the evidence of Ms Black and Mr Farrell both for Real Journeys (#621), where Ms Black, in particular, makes the assertion that the PDP makes it more difficult for tourism activities than under the ODP. I do not consider this to be correct for the following reasons:

(a) The ODP policy framework did not specify other types of activities that seek to utilise the rural land resource,[13] while the PDP is more directive and specifically contemplates commercial (including tourism) activities that rely on the rural land resource through:[14]

(i) Objective 21.2.9, which provides for a range of activities within the Rural Zone subject to achieving environmental performance standards and outcomes;

(ii) Objective 21.2.10, which provides for the diversification of farming to promote sustainable and efficient use of the rural land resource;

(iii) Objective 21.2.11, which provides for a permitted regime and management of informal airports where resource consent is required, to which the tourism industry is a substantial generator of helicopter and fixed wing aircraft flights and user of informal airports; and

12 Refer to Part 5 of the ODP.

13 See for example Objectives 1 -3 and all policies within these objectives in Part 5.2 Rural General and Ski Area Sub Zone Objectives and Policies, Operative District Plan. http://www.qldc.govt.nz/planning/district-plan/volume-1-district-plan/section-5-rural-areas-rural-general-and-ski-area-sub-zone/.

14 Also refer to PDP Landscape Objective 6.3.8 (notified version) and Objective 6.3.7 Council's reply dated 7 April 2016.

(iv) Objective 21.2.12, which seeks to ensure the surface of lakes and rivers are appropriately managed while contemplating commercial recreation activities on the basis the adverse effects are suitably managed (policies 21.2.12.2, 21.2.12.3, 21.2.12.7, 21.2.12.8, 21.2.12.9 and 21.2.12.10.

(b) Commercial recreation as a permitted activity has been increased from 5 to 10 persons in any one group (Rule 21.5.21);

(c) Any landing or take off of an aircraft requires resource consent as a discretionary activity under the ODP, while the PDP 'Informal Airports' rules allow unlimited flights on Public Conservation land and Crown pastoral Land subject to approvals from other agencies and standards, and a permitted number of flights on 'private land' (Rules 21.5.25 and 21.5.26);

(d) Commercial non-motorised boating activities are a restricted discretionary activity under the PDP (Rule 21.5.39), where they are a discretionary activity under the ODP;

(e) Jetties and moorings on the Frankton Arm are a restricted discretionary activity under the PDP (Rule 21.5.40), instead of a discretionary activity under the ODP;

(f) The following activities are specified and have the same activity status in the PDP as the ODP:

(i) Commercial activities ancillary to and located on the same site as recreational activities are a discretionary activity (Rule 21.4.15);

(ii) Cafes and Restaurants located in a winery complex within a vineyard are a discretionary activity (Rule 21.4.17);

(iii) Visitor Accommodation is a discretionary activity (Rule 21.4.20); and

(iv) Commercial activities not otherwise specified are a non-complying activity (Rule 21.4.1).

4.3 For the above reasons I consider that other activities that seek to utilise the resources in the Rural Zone are appropriately contemplated. I also consider that the level of protection provided for in terms of the policy direction and the activity status of activities is appropriate and I refer to and rely on Dr Read's landscape evidence and Mr Phil Osborne's economic evidence that also discuss the importance of protecting the Rural Zone's landscape resource.

4.4 I also note that although seeking modifications to the objectives and policies to provide more enablement for other activities, I infer that Mr Brown appears to be generally supportive of the overall structure of the Rural Zone chapter and the activity status of commercial activities.

4.5 I also note that Ms Black stated during the presentation of the Real Journey submission on 24 May that objectives with the phrase 'protect, maintain or enhance'[15] set too high a bar and would make tourism development very difficult. I disagree, and consider that at a minimum, an outcome to 'maintain' the landscape, recreational, amenity and social, cultural and economic values of a resource is not an unobtainable aspiration and a range of adverse effects would be contemplated within the spectrum of 'maintenance'. The policy framework is not considered too restrictive and the maintenance, at least of the above matters within an environment is important where the District and its commercial and tourism operators rely on the landscape resource.

4.6 Overall, I disagree with Mr Farrell where he considers more recognition is necessary for tourism. I consider that the Rural Zone Chapter achieves an appropriate balance between permitting farming and providing for a range of other activities that rely on the Rural Zone's resources, including the surface of water. Mr Farrell maintains

15 See for example Objectives 21.2.1 and 21.2.12 and Landscape Chapter Objectives

the inclusion of the term 'tourism' within his recommended changes to policies but does not recommend a robust definition of 'tourism'. I consider that it would be inappropriate to accept Mr Farrell's changes without certainty over what makes 'tourism' distinct from commercial activities as defined in the PDP. This is not because I do not support tourism where it is appropriate within the Rural Zone, but because of the potential abuse, unintended use or unintended application of the phrase.

4.7 Related to this matter are the following activities specified in the PDP that are commercial and tourism related and have a genuine affiliation with the Rural Zone land resource:

(a) Rule 21.4.15 Commercial activities ancillary to and located on the same site as recreational activities are a discretionary activity;

(b) Rule 21.4.16 Commercial recreation activities up to 10 persons in any one group is a permitted activity and discretionary activity if this is exceeded; and

(c) Rule 21.4.17 and Rule 21.4.35 cafes and restaurants located in a winery complex within a vineyard and industrial Activities directly associated with wineries and underground cellars within a vineyard are a discretionary activity.

4.8 In relation to Rules 21.4.15 I support Mr Brown's request to include 'commercial recreation' as a specified discretionary activity. I consider that the equivalent rule under the ODP was administered to include commercial recreation activities as part of the rule. I also recommend increasing the permitted number of persons in any one group from 10 to 12, to bring this number in line with mini vans and the reasons set out in Ms Black's submission. I consider that these two matters also go some way to meeting the request of the submitter.

4.9 Mr Greenway for Queenstown Park Limited (**QPL**) (#806) asserted that the Rural Zone Rules would inhibit appropriate tourism activity. Mr Greenway also stated at the hearing on 27 May 2016 that many tourism activities would be non-complying. For example, converting a

farming building to use as a tourism activity would be non-complying. He considered that this would be fettering the ability for an economic return, and would also deny people the right to experience these settings.

4.10 From a planning viewpoint, I consider that Mr Greenway is overstating this matter, and as set out above, a large number of commercial and commercial recreation activities that have a genuine affiliation with the Rural Land Resource would be a discretionary activity. I also consider that a good proposal should not have a fear of obtaining a resource consent. In addition, the objectives and policies in the PDP do contemplate these activities subject to the necessary scrutiny afforded by the important landscape resource and in some parts high levels of rural amenity.

4.11 There seemed to be an understanding from Mr Hazeldene and Mr Greenway for QPL (#806) that the construction of buildings and trails associated with tourism in the Rural Zone would be a non-complying activity. For clarification, the construction of buildings for any use is a discretionary activity pursuant to Rule 21.4.10. which states:

> *The construction of any building including the physical activity associated with buildings including roading, access, lighting, landscaping and earthworks, not provided for by any other rule.*

4.12 I do note that the subheading as notified states 'Residential Activities, Subdivision and Development' and this could have been incorrectly perceived as limiting the activity types covered by the rule. I recommend adding the word 'building' to the subheading for clarity so it is clear that these rules are not solely related to residential activity. The subheading would therefore read 'Building, Residential Activities, Subdivision and Development'.

4.13 Also, the rules for indigenous vegetation in Chapter 33 permit the clearance of indigenous vegetation for the construction of tracks, including within SNAs, up to 1.5m in width, providing the clearance is not a threatened plant or any tree over 4 metres tall. This 'exemption' is specifically provided to permit the construction of walking and

cycling tracks and to not fetter the ability for people to enjoy these areas.

4.14 I consider that these and the other provisions are balanced and appropriately contemplate a range of activities within the Rural Zone. My experience with statutory planning in other districts in New Zealand that have high tourism profiles (such as Waiheke Island administered through the Auckland Council Operative Hauraki Gulf Islands District Plan), is that they do not provide these types of exemptions associated with indigenous vegetation and have a similar activity status for commercial activities in rural zones. An example in particular is a zipline commercial recreation activity[16] that required multiple resource consents including detailed design and consents to create tracks through a tract of indigenous vegetation.[17]

4.15 Mr Brown for QPL (#806) and others[18] considers that the Rural Zone Chapter is weighted too far toward farming, and that non-farming activities should be encouraged subject to ensuring that their effects on the environment are managed.

4.16 Mr Brown's evidence seeks that other activities that rely on the rural resource are given an equal footing to farming. I have considered this evidence, and while acknowledging that the majority of changes sought are at the policy level and do not seek to make significant changes to the overall structure and rule framework, I consider a discretionary activity status best provides the management regime for the variable nature of activities and adverse effects and wide range of effects, including positive effects these activities can have.

4.17 I accept that more recognition of the rural land resource for appropriate commercial development would better reflect the reality that there is already a range of other activities established and that there will be the desire for more activities. I consider that the Rural Zone, and Strategic Direction and Landscape Chapters of the PDP,

16 http://www.ecozipadventures.co.nz/gallery/
17 Auckland Council District Plan Operative Hauraki Gulf Islands Section.
18 Trojan Helmet Limited (Submissions 443, 452, 437), Mount Cardrona Station Limited (407), Hogan Gully Farming Limited (456) Ayrburn Farm Estate Limited (430), Kawarau Jet Services Holdings Ltd (307), ZJV (NZ) Limited (343), Queenstown Wharves Limited (766), Mount Rosa Station Limited (377), Dalefield Trustees Limited (350), Skydive Queenstown Limited (122).

as notified, inherently accepted this reality but sought to direct appropriate development in the right places where there was capacity to do so. In this regard I consider that accepting some parts of Mr Brown's evidence, while tempering it in some places, advances a position already inherent in the PDP as notified.

4.18 Consequently, I accept (and accept in part) a number of the suggested amendments made by Mr Brown and as a result I recommend a number of modifications to Chapter 21, these are shown in **Appendix 1**. Not all of the changes are exactly as requested by Mr Brown however I consider that the changes do go some way to meeting the issues raised.

4.19 I consider that advancing these positions to the point set out in **Appendix 1** further aligns the Rural Zone with the Strategic Directions Chapter Objective 3.2.1.4 '*The significant socioeconomic benefits of tourism activities across the District are provided for and enabled'*. While still being consistent with the following Strategic Directions Objectives:

(a) 3.2.5.1 'Protection of the Outstanding natural Features and Landscapes from inappropriate subdivision, use and development';
(b) 3.2.5.2 The quality and visual amenity values of the Rural Landscapes are maintained and enhanced; and
(c) 3.2.5.4 The finite capacity of rural areas to absorb residential development is considered so as to protect the qualities of our landscape.[19]

4.20 However one matter I wish to make clear is that I do not support the reordering of policies associated with 'other activities' so that they are located next in line to Objective 21.2.1 for farming activities. I do not consider the Rural Chapter to have a hierarchical approach through the order activities are listed, or that the listing of themes places greater weight or entitlement on those listed first (and vice versa). There is nothing in the Chapter that implies this interpretation. Any

19 Referring to the version filed with the Council's Right of Reply on 7 April 2016.

weight or entitlement is expressed through the language in the objectives and policies and the respective rule framework.

4.21 I have also reviewed the evidence and response to the Panel's question by Mr Fergusson.[20] Similar to the above submissions and evidence from Mr Brown and Mr Farrell, Mr Fergusson considers that there should be more attention to the importance of rural land for tourism, recreation and other activities. I have considered Mr Fergusson's evidence as part of the overall position of the Rural Zone provisions and any changes recommended, which are shown in the recommended revised chapter at **Appendix 1**.

5. SEPARATION OF BUILDINGS AND ACTIVITIES

5.1 Mr Scott Edgar, a planner appearing for Submitter Longview Environmental Trust (#659) supported the rules that require a setback of intensive farming (Rule 21.5.5 and 21.5.6) but also seeks that rivers and lakes are included. Mr Edgar cited an example on Roys Peninsula where compliance with the rules as notified would push these activities towards lakes and rivers, and unformed roads. I agree with Mr Edgar that these areas are also public and also require that their amenity values are managed.

5.2 Having considered Mr Edgar's evidence I accept these changes are a better response and method to manage this resource management issue. Recommended revised provisions are included in the revised chapter at **Appendix 1** and a section 32AA evaluation is set out in **Appendix 2**.

5.3 Rule 21.5.7 prohibits dairy grazing stock from standing in the bed of, or on the margin of a water body. The Panel questioned whether it would be more appropriate to require waterbodies to be fenced. I prefer the drafting as proposed because if the rule required a fence, it does not mean that the fence would be effective. In addition, there could also be clarification required as to what constitutes a fence, or whether or not it needs to be electrified. There are also other

20 Darby Planning LP (608) , Soho Ski Area Ltd (610), Treble Cone Investments Ltd (613) , Mount Christina Ltd (764), Lake Hayes Ltd (763) , Lake Hayes Cellar Ltd (767) , Hansen Family Partnership (751).

features that could be effective such as established hedges or dense flax plantings, but these are not fences.

Farm buildings

5.4 In relation to Rule 21.5.18 the Panel questioned the relevance of the matters of discretion of 'scale' and 'location' on the basis that the previous assessment matters adequately provide for these.

5.5 'Scale' and 'location' are two fundamental aspects of whether or not a building would have adverse effects in terms of the other assessment matters which are more to do with components of the environment that could be affected. The matters of discretion would better suit the rural amenity, landscape character, privacy and lighting being considered in the context of the scale and location of the farm building. I recommend the matters of discretion are modified so that the enquiry is on whether the scale and location are suitable in the context of the other assessment matters. Location and scale are identified as elements to be managed in the related policy (21.2.1.2) and the assessment matters should provide guidance on how a proposed Farm Building would accord with this policy and whether the scale and location are appropriate in the circumstances.

5.6 Therefore, I recommend retaining ‘scale’ and ‘location’ in the assessment matters but re-framing them so the other matters of discretion help inform the extent to which ‘scale’ and ‘location’ are appropriate. This recommended change is associated with clarity.

5.7 Mr Philip Bunn (265) considers that the PDP rules for farm buildings are inappropriate, in so far that they are too restrictive. I note that the PDP rules, compared to the ODP rules are more permissive, and largely retain the same qualifiers in terms of the size of the landholdings that would qualify as permitted (100ha), and the density (not more than one building per 50ha). I consider that the rules for farm buildings are appropriate in the context of the permitted status and associated qualifiers.

5.8 I also note that Ms Debbie MacColl made a submission on several of the standards relating to Farm Buildings, in particular citing a large number of changes between the notified version and those recommended in my s42A report. Having reviewed Appendix 2 to the S42A report in light of Ms MacColl's submission, I note that Ms MacColl did not submit on these matters and I question whether her submission is admissible. In addition, the only change to the notified version I recommended to the rule for Farm Buildings in my s42A report is to accept the submission of the Upper Clutha Environmental Society (**UCES**) (#145) and change the permitted density of one Farm Building from one every 25ha, to 50ha.

5.9 With respect to Ms MacColl, I do not know what she is referring to in terms of the changes that have 'snuck in', as was stated when appearing at the hearing on 24 May. I also reiterate that the permitted rules for Farm Buildings, as set out and evaluated in the section 32 report for the Landscape, Rural Zone and Gibbston Character Zone, are to enable modest sized farm buildings. It is appropriate to apply for and obtain a resource consent for larger buildings and those that do not meet the permitted standards of Rule 21.5.18.

5.10 I also reject the submission of New Zealand Tungsten Mining Limited (**NZTM**) (#519) and the evidence of Mr Vivian where it sought to give mining buildings the same entitlement as Farm Buildings. While I acknowledge that mining buildings are necessary as part of mining activities, I consider that it is incongruous with the overall scheme of the Rural Zone to permit mining buildings. This is especially where mining requires resource consent as a discretionary activity, with the exception of very small scale mining, exploration, and prospecting which is permitted or controlled.

5.11 In particular, I do not agree with mining buildings being a permitted activity, even if restricted to a small size, and especially not when they are located on an Outstanding Natural Feature. I consider that the requirement to apply for a resource consent is necessary. In addition, NZTM have not provided any landscape evidence justifying the relief sought nor demonstrating that effects on the landscape will

always be appropriately mitigated. I therefore recommend the relief associated with adding mining buildings to the rules for Farm Buildings is not accepted.

5.12 Mr Brown (806 et. al) requests a number of changes to the related policy for Farm Buildings (21.2.1.2). In my view it is important that the policy does two things: firstly it recognises the framework that Farm Buildings are permitted on large landholdings 100ha or over; and secondly, it provides for Farm Buildings that either do not meet the qualifiers or are on sites smaller than 100ha and would require a resource consent, on the basis the scale and location are appropriate. I recommend some modifications to the policy to make this clearer, which are shown in the revised chapter at **Appendix 1**.

6. RESIDENTIAL ACTIVITY, RESIDENTIAL AND NON-FARMING BUILDINGS

Allowing more than one Residential Unit within a Building Platform

6.1 Mr Goldsmith's submission for Arcadian Triangle Limited (#497), and Mr McDonald and Mr Geddes evidence for several submitters[21] request a permitted activity to allow more than one residential unit within a building platform in the Rural Zone (and Rural Lifestyle Zone[22]). Mr Goldsmith suggests a policy framework and if necessary a prohibited status to ensure building platforms are not further subdivided, while Mr McDonald appeared reluctant to accept the preclusion of the ability for a future subdivision of a building platform containing two residential units.

6.2 Mr McDonald's submission also focussed on where this could be appropriate and suggested the 'river flats' would be an appropriate area. Mr McDonald did not provide any landscape evidence to support his position and I do not accept or support his submission on that matter. I do agree in part with Mr Goldsmith where he expressed concern at the limitations associated with accommodation options and the efficient use of land.

21 Hutchinson (228), Gallagher (534), Sim (235) McDonald Family Trust (411).
22 Refer to the Reply for Chapter 22.

6.3 A relevant matter associated with the number of Residential Units within a building platform that does not seem to be considered by Mr Goldsmith is the effect of the accumulation of living arrangements through Residential Flats. A Residential Flat sits within the definition of Residential Unit, therefore, if two Residential Units are allowed, there would be an expectation that a Residential Flat would be established with each Residential Unit. In addition, within a single building platform with two Residential Units there could be four separate living arrangements. From an effects based perspective this could be well beyond what was contemplated when the existing building platforms in the Rural General Zone were authorised.

6.4 Mr Goldsmith's evidence for Arcadian Triangle (497) criticised the size of a Residential Flat as provided in the definition, that at 70m² the size of a residential Flat is arbitrary and of an urban context. I recommend therefore, that in the Rural Zone (and Rural Lifestyle Zone) the size of a Residential Flat is increased from 70m² to 150m². This is considered to effectively provide for a wider range of opportunities for accommodation. A 150m² residential building could easily provide 4 bedrooms and ample living area. I also note that accessory building(s) associated with Residential Flats are excluded from the size qualifier in the definition of Residential Flat. Therefore, the 150m² can be dedicated to 'living' areas of the Residential Flat.

6.5 I also consider that this method is efficient and effective for the following reasons:

(a) the PDP rules would require a non-complying activity resource consent to subdivide a Residential Flat from a Residential Unit, therefore there are robust processes in place to prevent unintended outcomes and precedent issues can be dealt with;

(b) the development contribution for a Residential Flat is only 50% the development contribution for a Residential Unit. Therefore, it is more efficient for landowners if the Council (through a district plan) encourage Residential Flats instead of multiple residential units;

(c) the only changes required to the PDP provisions is an amendment to the definition of Residential Flat, therefore reducing any potential complexities associated with controlling multiple Residential Units within a single building platform; and

(d) allowing additional Residential Units as part of the PDP submission process could be likely to create a disconnect between the approval in principal and conditions registered on the computer freehold register and the potential desire to establish separate driveways and curtilage areas. This is less likely to happen under the use of Residential Flats.

6.6 An amended definition of Residential Flat is included within **Appendix 1** and a s32AA evaluation is attached at **Appendix 2**.

Rural Living Opportunities

6.7 Mr Brown (#806 et. al) recommends a new policy that states the following:

> *Recognise the existing rural living character of the Wakatipu Basin Rural Landscape, and the benefits which flow from rural living development in the Wakatipu Basin, and enable further rural living development where it is consistent with the landscape character and amenity values of the locality.*

6.8 I note that an entire strategic chapter (Chapter 6 Landscapes) is dedicated to managing development and the landscape. I also consider that a policy framework that enables rural living is already provided for in Chapter 22 Rural Lifestyle and Rural Residential zones. However, there is merit associated with providing policies associated with rural living in the Rural Zone on the basis they do not duplicate or confuse the direction of the Landscape Chapter and assessment matters in part 21.7 that assist with implementing these policies.

6.9 I would not go so far as Mr Goldsmith, Counsel for a range of submitters whom seek a range of rezoning within the Wakatipu Basin,

that opine that the PDP is flawed where it does not provide adequate specificity for rural living in specified locations. As set out in my evidence on the Landscape Chapter (6) and Reply, filed on 7 April 2016, the policies are framed so that they can be effective across a broad range of landscape units in both the ONL and RLC landscape categories.

6.10 I do not support Mr Brown's policy because it is too enabling and has the potential to conflict with the policies in the Strategic Directions and Landscape Chapter, in particular the policies on cumulative effects,[23] where development that is consistent with a pattern can lead to a cumulative adverse effect. I also do not support it because it singles out the Wakatipu Basin and there are other areas within the Rural Zone where this matter is applicable, or could become similarly applicable within the life of the PDP, such as parts of the Wanaka Basin and Hawea Flat.

6.11 I acknowledge that rural living is one of the broad range of other activities that could seek to locate within the Rural Zone, but do not support reference to the Wakatipu Basin alone. Nor do I support the '*benefits that flow from rural living development*' phrase. No evidence was filed that shows that these benefits are actually real benefits to the District, region or nation, over and above the obvious direct benefit from a landowner profiting from creating rights to build and the resultant subdivision.

6.12 With regard to this matter I rely on the landscape evidence of Dr Read and economic evidence of Mr Osborne for the Council. In particular I rely on Mr Osborne's evidence at paragraphs 3.8 and 3.9 where, from an economic perspective, he supports a precautionary approach. He also states, and which I support, that there is the risk of a culmination of activities over time, which affects the landscape resource. Finally, he considers that damaging activities are difficult to retroactively repair and I agree. In this context I consider that the potential costs to the landscape, and in particular the over domestication of rural areas, would be higher to the District

23 Refer to policies 3.2.5.4.1, 3.2.5.4.2, and Policies 6.3.2.1 to 6.3.2.5.

economically, intrinsically and environmentally, than the benefits reaped by any individual landowner.

6.13 In terms of any social benefits associated with increasing accommodation opportunities that might be inherent in the requested policy, I consider that this matter has been accounted for where I recommend that the size of Residential Flats is increased to 150m².

6.14 I recommend a policy with a similar theme in so far that it recognises rural living within the limits of a locality and its capacity to absorb change. I do not consider any more policies are appropriate with the phrase 'providing for' rural living because of the detailed assessment matters in Part 21.7 of the Rural Zone and the Landscape Chapter. I also consider that any additional policies that are enabling of rural living have potential to conflict with policies in the Landscape Chapter (6), especially Objective 6.3.2 (as numbered in the Council's Reply dated 7 April 2016) which seeks to manage the cumulative effects of residential development.

6.15 The policy I recommend is included in **Appendix 1** and is added under Objective 21.2.9, which addresses the broad range of activities that seek to locate within the Rural Zone:

> *21.2.9.8 Ensure that rural living is located where rural character, amenity and landscape values can be managed to ensure that over domestication of the rural landscape is avoided.*

Activity Status for Residential Development

6.16 The Upper Clutha Environmental Society Incorporated (**UCES**) (#145) seek that a non-complying status is adopted for residential development within the ONF/ONL. I maintain my opinion as set out in the Section 11 (Pages 32 – 37) of the s42A report, and as discussed during questioning from the Panel that the most appropriate activity status is discretionary. While I acknowledge that a case could be made for residential development in the ONF/ONL to be non-complying in terms of section 6(b) of the RMA, it is the case in this

District that in the order of 96% of its area is identified as ONL, and while a large part of this is within the Conservation Estate, there will be entire working farms located within the ONL and I would be concerned that some people could treat the non-complying status as a de facto prohibited status.

6.17 This could make it very difficult for farming operations and legitimate tourism ventures to establish worker accommodation, even if well designed and in areas where the landscape had capacity to absorb development. In addition, the need could arise for a policy framework to recognise this matter, and this has not been undertaken because the activity status in the notified PDP is discretionary.

6.18 The discretionary activity status, in lieu of the section 104D tests, allows a broader consideration of the matters at issue. This is not to say that activities with locational constraints do not need to avoid, remedy or mitigate adverse effects, but to emphasise that because of these circumstances, I prefer the discretionary status over non-complying for residential activities in the ONF/L.

6.19 I also consider that in the case of the Rural Zone and residential development (and commercial development), the policy framework is comprehensive enough, in conjunction with the assessment matters in Part 21.7 that there would be no misconception that a discretionary regime is permissive. I consider this matter was emphasised by the Court in C75/2001[24] and I consider that this matter is still relevant.

7. STANDARDS FOR STRUCTURES AND BUILDINGS

Rule 21.5.16: Building Size

7.1 Arcadian Triangle Limited (#497) is one of many submitters who took issue with Rule 21.5.16 that would require a restricted discretionary activity resource consent to construct a single building over 500m². I note that Dr Read in her evidence suggests that the matter could be addressed through volume. As a response, Arcadian Triangle Ltd entertained the idea of making some parts of a building a certain

24 Lakes District Rural Landowners Society Incorporated v Queenstown lakes District Council (2001) ENVC.

height and other parts of the building, once it is over a certain size, a lower building height.

7.2 I consider that this would unnecessarily complicate the rule, which is intended to be able to give the Council the ability to take a closer look at buildings over a certain size. This is to ensure that, while taking into account the expectations of development in that location, the bulk of the building does not appear incongruous and have adverse effects in terms of the amenity of the immediate locality or any wider landscape effects.

7.3 I do appreciate that the ODP requires resource consent for equivalent activities but as a controlled activity. Therefore, across the zone there is a higher level of regulation generally, but the consequences for the applicant are less, because the controlled status means that a consent must be granted. I consider that the rule should be retained in its current form. However, if the Panel considers a change is necessary then I would recommend that the activity status change from restricted discretionary to controlled. This would give concerned submitters assurance that future applicants would obtain resource consent.

Colour of permitted Buildings

7.4 Mr Fergusson's and Ms Pfluger's evidence[25] pursues the inclusion of schist in the permitted materials that cannot be measured by way of light reflectance value. I consider that the revised wording set out in the s42A report includes schist, and I disagree with Mr Fergusson and Ms Pfluger that the rule introduces uncertainty. As set out in the s42A report I am reluctant to list a range of materials because over the life of the district plan there will almost certainly be other materials that come onto the market and it would be ineffective and inefficient if these materials required a resource consent because they were not listed. I prefer the drafting in the Revised Chapter because while it does place discretion at the benefit of the Council, it allows the Council to accept a range of materials and not be hamstrung by the

25 For Darby Planning LP (608) , Soho Ski Area Ltd (610), Treble Cone Investments Ltd (613) , Mount Christina Ltd (764), Lake Hayes Ltd (763) , Lake Hayes Cellar Ltd (767) , Hansen Family Partnership (751).

rule. I consider including only schist or a range of materials is short-sighted.

8. WANAKA AIRPORT

8.1 As set out in my s42A report I maintain that the best resource management approach is to manage Wanaka Airport though a separate zone rather than bespoke Rural zone provisions, however I accept that there is scope with the QAC submission for that zone to be determined through Stage 1 of the PDP. I refer to the Council's legal submission on this matter, and confirm my agreement that the matter is best addressed through the Queenstown Airport Mixed Use zone, and that further drafting and input is needed from QAC before that hearing commences.

8.2 I also refer to the Council's legal submission where the proposed runway end protection area (**REPA**) is discussed.

8.3 I accept Ms O'Sullivan's revised objective 21.2.7 associated with activities sensitive to aircraft noise near Queenstown and Wanaka Airports.

9. INFORMAL AIRPORTS

9.1 A number of submitters[26] appeared before the Panel who opposed the Informal Airport rules and sought to advance the position of recreational pilots and in particular the ability for fixed wing aircraft and airstrips and the continued use of existing airstrips.

9.2 The submitters made some valid points associated with the frequency of flights and lack of restraint preferred to enable the ongoing use of airstrips, in particular where flying is dependent on the weather and where an airstrip could be used intensively, albeit for a relatively short duration associated with training procedures.

26 Vance Boyd for the Aircraft and Pilots Association (NZ) Inc. (211), Steven Bunn (294), Debbie MacColl (285), Jules Tapper (114), Carlton Campbell (162).

9.3 With respect to these submitters, it is important to reiterate, as explained previously in the Informal Airports Research report, the Section 32 and the section 42A report prepared for the hearing, that the ODP requires a discretionary activity resource consent for 'Airports' and this involves the landing or take-off of an aircraft in any circumstance (with the exception of farming, firefighting and emergencies). Therefore, there have been rules in place that are more onerous than those proposed by the PDP, for at least 15 years.

9.4 I also note that the Proposed District Plan 1995, Rule 5.5.3.3.v contained the following relevant rule to manage airports in rural areas:

> *Aircraft*
>
> *The take-off or landing of any motorised aircraft, including amphibious aircraft using the surface of waterbodies, other than for emergency landings and rescues, fire-fighting or ancillary to farming activities or, in the Rural Uplands Zone, ancillary to residential activities.*

9.5 The 'Rural Uplands' area along with much of the original wording disappeared through the submissions and appeals on the Proposed Plan 1995. However it is interesting to note that there was provision for properties located in more remote locations.

9.6 I do not consider it to be an appropriate resource management method to identify existing airstrips on the planning maps and provide provisions to protect the ongoing use of these. Reasons include that there may not be proof of the lawful establishment of these airstrips, there is no record of the nature, scale or frequency of use of any particular airstrip, and therefore it is difficult to wrap any rules around these.

9.7 I appreciate that the same criticism could be made of the PDP rules for informal airports. However, these rules are based on an evidential basis in terms of compliance with the noise rules in Chapter 36, the advice and evidence of Dr Stephen Chiles, and a considered analysis

of what is considered to be an acceptable frequency of flights. This is in the context of the adverse effects on any persons' amenity who could be adversely affected, while enabling informal airports in remote locations and still enabling, but being appropriately more conservative in locations, where there are activities sensitive to informal airports.

9.8 I have also considered the request by these submitters such as Mr Bunn (#294) who seek that at a minimum, the 2 flights per day are able to be 'banked' so that 14 flights can be undertaken on any one day in the week. I have sought advice from Dr Chiles on this matter of spreading flights through a week. Dr Chiles considers that this might be reasonable but does not support all 14 flights on one day because there could not be certainty that the flights would comply with the noise limit. Mr Chiles noted that in other cases elsewhere he has supported doubling the number of flights from the average on any particular day. In this context therefore, the Rule could be amended to no more than 14 flights per week and no more than 4 flights a day.

9.9 Allowing 4 flights in one day constitutes 8 movements and this could be at the cusp of what a particular environments' amenity could withstand, particularly where the movements are likely to be compressed into daylight hours. While I accept Dr Chiles advice, it is my view that the frequency of 2 flights per day is the most appropriate as a permitted activity, with no spread (banking) over a week allowed for. The Panel could consider increasing the flights to 4 per day if they are comfortable with this increase.

9.10 I also agree with Mr Dent's evidence tabled at the hearing on 24 May where he considers that the intensity of banked flights would likely be considered adverse by persons and is not appropriate in terms of a permitted activity standard.

9.11 Overall, I consider that the recommended provisions in the s42A report and attached in **Appendix 1**, that increased the frequency from 3 flights per week, to 2 flights per day, and removing the 500m setback from roads (compared to notification) to be appropriate.

9.12 With regard to the recreational pilots concerns, I consider that the best resource management response is for the owners or operators of existing airstrips who use them for recreational flying to apply for an existing use certificate or apply for a resource consent to exceed the number of permitted flights. While I appreciate that from the perspective of these submitters the less intervention the better, their fear of applying for a resource consent should not compromise the ability for the Council to provide for the social wellbeing of persons from the effects of informal airports. I am also of the view that it is not the Council's responsibility to provide for an existing use in the rule framework if the submitter cannot provide an evidential basis of this existing use.

9.13 Mr Farrell for Te Anau Developments (#607) requests rearranging Objective 21.2.11 and policies associated with informal airports so that they protect existing informal airports rather than maintain amenity. Mr Farrell also seeks that a new rule is added that requires a restricted discretionary activity resource consent for a residential unit within 500m of an existing airstrip.

9.14 I agree that a policy identifying and protecting legally established informal airports is appropriate, however not at the expense of a policy that protects amenity from airports. I do not consider it appropriate to add a rule that protects existing legally established airstrips because there is uncertainty with where these are located. In practice, the Council notifies the majority of resource consent applications in the Rural Zone and if a residential activity seeks to locate where it could impinge on established rural activities, including airstrips, then those matters can be addressed through that process.

9.15 In summary I accept the evidence where the informal airports rule would benefit from a policy protecting established informal airports. However I do not support the addition of a new rule as there is a lack of certainty as the Council would have to know where the airport is in order to administer the rule with any confidence. I also note that Objective 21.2.4 and policies 21.2.4.1 and 21.2.4.2 seek to protect permitted and legally established activities that occur in the Rural Zone from incompatible or sensitive activities. This matter is also

applicable to these policies. However, for certainty and specificity I support the inclusion of an additional policy to do with informal airports. I also note that Mr Dent who appeared for Totally Tourism Limited (#571) also supports a policy to protect existing informal airports from incompatible land use and development.

9.16 Submitter Clive Manners Wood (213), opposes the informal airports rule and seeks that, at minimum, the ODP rules are reinstated that require a resource consent, and prefers that various helicopter activities are prohibited.

9.17 Mr Manners Wood considers that NZS 6807 is not sufficient to control noise effects from informal airports permitted by the proposed rules in Chapter 21. I refer to paragraphs 4.2 to 4.4 of Dr Chiles evidence where he draws the same conclusion that NZS 6807 is not sufficient for these informal airports with low movement numbers. For this reason Dr Chiles' supports more stringent controls than NZS 6807 using a setback distance and a limited number of flights. Therefore, the proposed rules do respond to the issues Mr Manner Wood is raising, but they seek to do so in a practical way that limits the need for detailed acoustics assessment (which can be costly for all parties to undertake and monitor).

9.18 I do not support the relief sought by Mr Manners Wood to require that all informal airports require a resource consent, or are prohibited. I also note that the application of NZS 6807 in the context of the noise rule is out of scope and not part of this hearing.

9.19 Mr Dent,[27] in paragraph 17 of his evidence considers that the Objective (21.2.11) and two policies for informal airports can be improved from the notified version. I agree and accept the intent of Mr Dents suggested changes. I also note that Objective 21.2.11 would be improved if it included the new recommended Policy 21.2.11.3 that seeks to protect informal airports from new incompatible land uses.

27 Appearing for Totally Tourism Limited (571), NZSki Limited (572) and Skyline Enterprises Limited (574).

9.20 Mr Dent also recommended amendments to the policies so they provide a clearer direction to achieve the objective. I recommend similar changes to the policies that are shown in **Appendix 1**. A section 32AA evaluation and explanation of the wording is attached at **Appendix 2**.

9.21 Skydive Queenstown Limited (#122) seek to introduce a new rule that requires a controlled or restricted activity resource consent where the frequency of flights cannot be met (3 per week in the notified PDP and 2 per day in the s42A recommendation version).

9.22 Flights would therefore be subject to the noise rule in Chapter 36. I do not support this submission because I consider that it takes away the pragmatism and certainty that the PDP rules regarding informal airports are trying to achieve. In addition, it cannot be taken that all commercial operators would prefer this rule, because certainty with the controlled or restricted discretionary status would certainly require advice from a noise expert to determine compliance with the applicable noise rule. As differing areas through the Rural Zone and adjoining zones will have different levels of amenity I do not accept that the assessment matters offered by the submitter are likely to suit all instances. I consider that by accepting the relief sought by Skydive Queenstown Ltd the PDP would be introducing a level of adverse effect that could be discordant with rural amenity and various environments.

9.23 The submitter has not provided any section 32aa evaluation of the costs and benefits associated with a more technical and onerous approach that is potentially more enabling, against the PDP version that is conservative but does not require a noise expert to ensure permitted activity status. I also consider that the submitter's proposed assessment matters are too confined, as they are based on an Environmental Court decision on a resource consent application at a specific location, and are not likely to be suitable to be applied across the entire district and address the potential effects on other the environment.

9.24 I do not support Mr Fergusson for Soho Ski Area Ltd (610) and Treble Cone Investments Ltd (613) request to make informal airports exempt within the Ski Area subzones. I consider that the provisions as set out in **Appendix 1** are appropriate.

10. SURFACE OF WATER, RIVERS AND LAKES

10.1 I agree with Mr Brown's evidence[28] where he considers that the objective should be broader and more specific to the outcomes sought from the types of activities that seek to undertake activities on the surface of lakes and rivers. I recommend a revised objective 21.2.12 with similar wording to Mr Brown and this is shown in **Appendix 1**.

10.2 Queenstown Rafting Limited (#167) submit that despite safety being specified twice in the matters of discretion, for both on water and associated with access and parking, the restricted discretionary activity status would limit the Council's ability, as decision maker, to fully consider the broad matters of safety under Part 2 of the RMA. I disagree and consider that assessment under Part 2 of the RMA is not limited. The assessment of adverse effects within the specified matters of discretion and the ability for the Council to notify (either on a limited or fully notified basis) an application as necessary means that a thorough analysis and application under section 104 and section 5 of the RMA is not unduly impinged.

10.3 Jet Boating New Zealand Incorporated (**JBNZI**) seek that the ODP rules that allow the use of a jet sprint course be included in the PDP. The Panel queried whether the jet sprint course is within the jurisdiction of the Council under section 9 of the RMA, because (in summary) it is not a river as it is artificially constructed[29]. Under section 31(1)(e) of the RMA the control of any actual or potential effects of activities in relation to the *surface of water in rivers* falls within a TAs functions. If the jet sprint course does not use the river

28 On behalf of Trojan Helmet Limited (Submissions 443, 452, 437), Mount Cardrona Station Limited (407), Hogan Gully Farming Limited (456) Ayrburn Farm Estate Limited (430), Kawarau Jet Services Holdings Ltd (307), ZJV (NZ) Limited (343), Queenstown Park Limited (806), Queenstown Wharves Limited (766), Mount Rosa Station Limited (377), Dalefield Trustees Limited (350), Skydive Queenstown Limited (122).

29 Refer to the definition of river in section 2 of the RMA.

itself and instead water is diverted from the river for the purposes of the activity within the river bed (presumably through earthworks which falls within the Council's jurisdiction), the activity itself and its amenity effects (such as noise) and safety concerns do still fall within the Council's jurisdiction.

10.4 I do not consider the need to specify the 'one lawfully established jet sprint course' as being exempt from prohibited status because it is not on the Hawea River. The use of this feature for jet boating would however come under other rules depending on the circumstances, including but not necessarily limited to:

(a) the PDP Noise Chapter 36;
(b) the Rural Zone rules for commercial recreation activities; and
(c) the PDP Temporary Activities and Relocated Building Chapter 35.

10.5 Related to this matter, the Panel requested the Council provide any information it has on this activity in form of previous resource consents. The only document held is Resource Consent RM990706 to operate a jet sprint event on 3 January 2000. This resource consent decision is attached at **Appendix 4.**

10.6 JBNZI also seek to reinstate the ODP Rule 5.3.3.5.i (a) (2) to undertake jet boating activity on the river up to 6 days per year. Upon considering their submission I recommend the rule is appropriate and although the qualifiers are cumbersome, are necessary to ensure adequate notice is served to the public. I have included this change in **Appendix 1** and an evaluation in terms of section 32AA in **Appendix 2**.

11. LANDSCAPE ASSESSMENT MATTERS

11.1 A number of submitters including the UCES (#145), and those represented by Mr Vivian, Mr Brown and Mr Ferguson (detailed earlier) have recommended changes to the assessment matters. Overall I prefer those in the notified PDP as I consider that the

changes proposed by those submitters are simply 'wordsmithing' without offering added value, and that the changes seek to weaken the extent a decision maker should be satisfied a proposal accords with the assessment matter, and therefore whether the proposal is consistent with the policies.

11.2 In order to assist the Panel, I have added and populated a column showing the link between the assessment matter and the relevant policy to the Table that provides a comparison between the ODP and PDP landscape assessment. The table is attached at **Appendix 3**.

11.3 The Panel questioned a number of submitters, including Ms Di Lucas, landscape architect for the UCES (#145) whether the assessment matters should be tests. In the case of the questions put to Ms Lucas at the hearing of 'what do you mean by test'? I note Ms Lucas' answer was '*A 'test', that is, in application of the matter shall be satisfied that*'.

11.4 From a planning standpoint, I consider that tests should be located in the objectives and policies and the assessment matters provide guidance or direct users towards considering specified environmental effects or issues.

11.5 I do not agree with Ms Lucas where she considers the phrase 'shall be satisfied' is a test. The phrase 'shall be satisfied', is used in the following instances in the assessment matters in part 21.7:

(a) 21.7.1.3 – Effects on landscape quality and character using the Pigeon Bay criteria – ONF/L;
(b) 21.7.1.4 – Visual Amenity ONF/L;
(c) 21.7.1.6 – Cumulative Effects ONF/L; and
(d) 21.7.2.7 – Cumulative Effects RLC.

11.6 I consider that within the assessment matters in Part 21.7 the phrase 'shall be satisfied' is not a test but directs the user and decision maker to carefully consider the assessment matter against the proposal. This is to the extent that the effects of the proposal accord with (or not) the assessment matter and therefore, assists with determining whether the proposal is consistent with Objective 6.3.4 and related

policies. For example, assessment matter 21.7.1.3 which deals with effects on landscape quality and character within the ONF/L states:

> *In considering whether the proposed development will maintain or enhance the quality and character of Outstanding Natural Features and Landscapes, the Council shall be satisfied of the extent to which the proposed development will affect landscape quality and character, taking into account the following elements: …*

11.7 I consider that a test is a phrase that establishes an ultimatum that requires as a consequence, a direct course of action. For example the following phrase was in the PDP as notified but is recommended to be removed and retained in the Landscape Chapter policies 6.3.1.2 and 6.3.1.3.

(a) Assessment matter implementation method 21.7.1.1 (recommended to be deleted in the s42A):

> *The assessment matters are to be stringently applied to the effect that successful applications will be exceptional cases.*

(b) Landscape Chapter Policy 6.3.1.2 (as set out in the Council reply dated 7 April 2016):

> *That subdivision and development proposals located within the Outstanding Natural Landscape, or an Outstanding Natural Feature, be assessed against the assessment matters in provisions 21.7.1 and 21.7.3 because subdivision and development is inappropriate in almost all locations within the Wakatipu Basin, and inappropriate in many locations throughout the District wide Outstanding Natural Landscapes.*

(c) Landscape Chapter Policy 6.3.1.3 (as set out in the Council reply dated 7 April 2016):

That subdivision and development proposals located within the Rural Landscape be assessed against the assessment matters in provisions 21.7.2 and 21.7.3 because subdivision and development is unsuitable in many locations in these landscapes, meaning successful applications will be, on balance, consistent with the assessment matters.

11.8 Furthermore, I do not consider the preamble statements at 21.7.1 and 21.7.2 to be tests. These are guiding statements that confirm the importance of carefully applying the assessment matters.

11.9 Tests in a statutory context are set out in the RMA and include for example, section 95 that require a resource consent application be notified if the adverse effects on the environment are likely to be more than minor. Also, section 104D of the RMA sets out that a consent authority may grant a resource consent for a non-complying activity only if the adverse effects are no more than minor and the activity is not contrary to the objectives and policies (my emphasis added).

12. OTHER MATTERS

Policies for recreational activities

12.1 Mr Dent's evidence requests the inclusion of a new objective and four policies for commercial recreation activities. I support the intent, however as noted by Mr Dent, the suggested provisions are derived from the Open Space and Recreation Chapter of the ODP (Part 4.4). As set out in the Council's legal submission on the Strategic Direction hearing, the equivalent chapter is programmed for Stage 2 of the PDP. I consider that these policies are best considered in that specific district-wide chapter and invite the submitter to re-submit in Stage 2, rather than the provisions being repeated in two places in the PDP. Further, I note that the primary submission of Totally Tourism Limited did not request for this new objective and four policies

Firefighting

12.2 I maintain my recommendation set out in my s42A report that the best method to manage firefighting in the Rural Zone is via the conditions of resource consents. I also reaffirm where asked by the Panel on 3 May that the proposed rules in the Rural Residential Zone could be applied across the Rural Zone and Gibbston Character Zone, if it is their desire to do so.

Constructing buildings assocaited with Residential Flats' Rule 21.4.12

12.3 The Panel identified a potential drafting error in Rule 22.4.6 (Rural Lifestyle Zone), which identifies a Residential Flat as a permitted activity. The corresponding rule in the Rural Zone is 21.4.12. The rule states:

> *21.4.12 Residential Flat (activity only, the specific rules for the construction of any buildings apply).*

12.4 The Chair wondered whether a resource consent would be required to build the Residential Flat, and whether this was intended through the drafting.

12.5 The relevant rules that identify the status of the construction or alteration of a building as a permitted activity are:

(a) Rule 21.4.7 where the building is located within a building platform; and

(b) Rule 21.5.15.3 for alterations to existing buildings not located within a building platform, up to an area of 30% of the existing ground floor area within a ten year period.

12.6 Therefore, the construction and alterations to buildings used as a Residential Flat are provided for under these two scenarios is a permitted activity.

12.7 Alterations to a building, whether for a Residential Flat or the Residential Unit that would not comply with Rule 21.5.15 would be a

restricted discretionary activity and the construction of buildings not within a building platform would be a discretionary activity pursuant to Rule 21.4.10.

12.8 Also relevant is the relationship between a Residential Flat and a Residential Unit. A Residential Flat is part of a Residential Unit, as defined in the definition of Residential Unit. The Definition of Residential Unit from Chapter 2 is:

> *Means a residential activity (including a dwelling) which consists of a single self contained household unit, whether of one or more persons, and includes accessory buildings. Where more than one kitchen and/or laundry facility is provided on the site, other than a kitchen and/or laundry facility in a residential flat, there shall be deemed to be more than one residential unit.*

12.9 Therefore, Rule 21.4.12 is not technically necessary because a Residential Flat is part of a Residential Unit and the permitted density of a Residential Unit is prescribed in Rule 22.5.12. The reason why it was identified as a separate rule in the PDP is because under the ODP, a Residential Flat requires resource consent as a controlled activity, and it was intended to make it clear that these are now permitted. It is my preference the identification of a Residential Flat as a permitted activity is retained.

12.10 In summary, the rules in this instance are not considered to be drafted incorrectly and no modifications are suggested.

13. MINING

13.1 Mr Vivian for NZTM (#519) provides detailed planning evidence on a range of provisions in the Rural Zone chapter to advance mining. A number of the changes requested were accepted in part through the s42A report. Mr Vivian prefers the versions tabled in his evidence and has also provided more detail on the reasons for making the changes and additions. Overall, I consider that the Rural Zone Chapter provides accurate and balanced provisions for mineral extraction activities. Having reconsidered Mr Vivian's position I

recommend adding two policies under the Objective 21.2.5 that addresses mineral extraction activities. These policies are set out in the recommended revised chapter in **Appendix 1** and a s32AA evaluation is provided in **Appendix 2**.

13.2 Mr Vivian has also recommended some minor changes to the definitions of mining activity, mineral prospecting and mineral exploration. I support these changes and they are set out in the recommended revised chapter in **Appendix 1**.

13.3 The policies I have recommended in the revised chapter are derived from Mr Vivian's requests to include policies that protects mineral deposits from other land development activities. This is different to reverse sensitivity where incompatible land uses arise where one activity is sensitive to the adverse effect of another. In this case the policy seeks to ensure a resource is not impinged by other development activities, these are not necessarily sensitive to it but would hinder the ability for the resource to be utilised. I have rephrased the requested policy so that it more directly implements the objective (21.2.5). The recommended policy is:

> *21.2.5.5 Manage through avoiding or mitigating the potential for other land uses, including development of other resources above, or in close proximity to mineral deposits, to adversely affect the extraction of known mineral deposits.*

13.4 I recommend a policy that encourages the notion of environmental compensation. I note that Mr Vivian seeks to include 'off setting' however I do not agree that this is the correct use of the concept. In addition, I do not want to confuse the issues of 'biodiversity offsetting' and 'environmental compensation', particularly in light of the technical evidence that supports 'biodiversity offsetting'. I am also hesitant in the context of the recommended amendments to the Indigenous Vegetation and Biodiversity Chapter where I support the requested policy and definition of biodiversity offsetting as supported by DoC. Therefore the recommended policy is:

21.2.5.6 Encourage environmental compensation where mineral extraction would have significant adverse effects.

14. SKI AREA SUB ZONES

Passenger Lift Systems

14.1 Mr Brown[30] seeks the addition of policies and rules that provide that more recognition is made for passenger lift systems (or non-road transport) not located within the Ski Area Sub Zones and confirmed at the hearing on 27 May that these should be provided for as a restricted discretionary activity.

14.2 I support the requested policy that provides for non-road transport, except I do not support the reference to urban areas. This reference to urban areas could be discordant with the definition of urban. In addition, I consider that the policy should be applicable to all ski fields, not just Mt Cardrona Station Ltd and Mt Cardrona Special Zone, and the majority do not have urban areas to connect to.

14.3 I consider that creating a restricted discretionary framework for passenger lift systems creates the potential for important components to be missed. It could also create the potential for other operators or persons interpreting the rule to attempt to include 'ancillary support structures and facilities' or the 'structures to enable the embarking and disembarking of passengers' as set out in the proposed definition, to attempt to include base buildings within the restricted discretionary rule and I do not consider this is contemplated.

14.4 However, while a discretionary activity status would be appropriate to cover any matters that could be missed through a restricted discretionary framework, a full discretionary activity would be subject to the landscape assessment matters in Part 21.7. Overall, this would create an ineffective and inefficient plan administration process because the passenger lift system would be a controlled activity

30 Trojan Helmet Limited (Submissions 443, 452, 437), Mount Cardrona Station Limited (407), Hogan Gully Farming Limited (456) Ayrburn Farm Estate Limited (430), Kawarau Jet Services Holdings Ltd (307), ZJV (NZ) Limited (343), Queenstown Wharves Limited (766), Mount Rosa Station Limited (377), Dalefield Trustees Limited (350), Skydive Queenstown Limited (122).

where it passes through the Ski Area Sub Zone, which is arguably more visually vulnerable by virtue of being at a higher elevation.

14.5 Under the recommendations presented by Mr Brown, a potential passenger lift system would be subject to the District Wide Rules including earthworks (in the ODP) and indigenous vegetation clearance. On this basis I am satisfied that the rule status and matters of discretion suggested by Mr Brown are appropriate.

14.6 I recommend specifying in the definition of 'Passenger Lift Systems' that base buildings are excluded because while 'structures to enable the embarking and disembarking of passengers' is included in the definition and these components are part of the base building or terminal buildings, these buildings and activities present a wider range of matters than those contemplated in the matters of discretion put forward by Mr Brown. For example the terminal / Base Building at the valley floor could be expected to include ticketing, toilets, a large car parking area, access, servicing and firefighting. Providing this distinction is made I support the rule activity status and matters of discretion put forward by Mr Brown.

14.7 I also note that Mr Brown anticipates a range of buildings associated with passenger lift system such as ticketing offices, through his commentary in paragraphs 13-17 of the evidence tabled at the hearing,[31] and requests to include these in the definition of 'Ski Area Activities'. However the suggested matters of discretion do not address the other potential effects associated with ticketing offices base or terminal buildings. Therefore I do not support Mr Brown's additional changes sought to the definition of Ski Area Activities where it is sought to add '*buildings for or ancillary to the activities in (a) – (f) above'.*

14.8 I have included the changes I accept from Mr Brown's evidence in recommended revised chapter in **Appendix 1.**

31 http://www.qldc.govt.nz/planning/district-plan/proposed-district-plan/proposed-district-plan-hearings/rural/evidence-presented-at-hearing/ C0122 S0307 Kawarau Jet T02 BrownJ Summary of Evidence

14.9 Mr Fergusson for the submitters identified earlier also recommends a policy that also provides for a transportation policy that includes passenger lift systems. I consider that the recommended policy 21.2.6.4 set out in **Appendix 1** goes at least some way to meeting this submission and therefore do not make any changes to the recommended revised chapter.

Visitor Accommodation

14.10 Mr Fergusson for the submitters identified earlier seeks a policy is added to be able to implement the recommended rule for accommodation activities within the Ski Area Sub Zones. Mr Fergusson's suggested policy is:

> *Enable commercial and visitor accommodation activities within Ski Area Sub Zones and associated with a Ski Area Activity, which are complementary to outdoor recreation activities, can realise landscape and conservation benefits and that avoid, remedy or mitigate adverse effects on the environment.*

14.11 I agree that a policy should be included that helps implement and guide decision making associated with visitor accommodation in the Ski Area Sub Zones because this type of activity is distinct from visitor accommodation generally in the Rural Zone. In terms of the policy requested, I would prefer a phrase that directs that these activities are 'provided for on the basis', with qualifiers rather than 'enabled' because the requested activity status is not permitted.

14.12 In addition, Mr Fergusson proposes further changes to the matters of discretion for visitor accommodation. These are matters associated with an ecological management plan, and I understand this is not to do with the request for an exemption for indigenous vegetation clearance in the Ski Area Subzones, but a separate requirement be made for a controlled activity status. I do not support the relief sought for exemptions from the indigenous vegetation clearance rules and the requirement for an ecological management plan alongside controlled activity status. I also consider if this is advanced, that it seems inappropriate that matters of discretion are limited to the

construction of visitor accommodation buildings and not any other building, in particular passenger lift systems or base buildings. I consider that the framework in Chapter 33 is the most appropriate method to provide for the maintenance of indigenous biodiversity. In addition, the matters of discretion as suggested by the submitter are not thorough and do not appear to be supported by any expert ecological evidence.

14.13 Mr Fergusson also seeks two additional rules that would require a resource consent for visitor accommodation if it is longer than 6 months, and a rule that encourages visitor accommodation to be over 1,100 m elevation. In his response to the Panel's questions, Mr Fergusson also suggests a definition for 'visitor accommodation' in the Ski Area Sub Zones that specifies the length of stay is less than 6 months. The inclusion of the duration of stay as a qualifier in the definition, and then again in the proposed rule is conflicting because according to the definition as requested, any visitor accommodation that is over 6 months would not qualify as 'visitor accommodation in the Ski Area Sub Zones'. Therefore the proposed rule that requires discretionary activity resource consent for visitor accommodation that is longer than 6 months would be ultra vires because the definition itself limits the activity to 6 months.

14.14 The definition of visitor accommodation in Chapter 2 of the PDP is as follows:

Visitor Accommodation	Means the use of land or buildings for short-term, fee paying, living accommodation where the length of stay for any visitor/guest is less than 3 months; and i. Includes such accommodation as camping grounds, motor parks, hotels, motels, boarding houses, guest houses, backpackers' accommodation, bunkhouses, tourist houses, lodges, homestays, and the commercial letting of a residential unit; and ii. (May include some centralised services or facilities, such as food preparation, dining and sanitary facilities, conference, bar and recreational facilities if such facilities are associated with the visitor accommodation activity.

	For the purpose of this definition: a. The commercial letting of a residential unit in (i) excludes: • A single annual let for one or two nights. • Homestay accommodation for up to 5 guests in a Registered Homestay. • Accommodation for one household of visitors (meaning a group which functions as one household) for a minimum stay of 3 consecutive nights up to a maximum (ie: single let or cumulative multiple lets) of 90 nights per calendar year as a Registered Holiday Home. (Refer to respective definitions). b. "Commercial letting" means fee paying letting and includes the advertising for that purpose of any land or buildings. c. Where the provisions above are otherwise altered by Zone Rules, the Zone Rules shall apply.

14.15 Sub clause c of the definition is applicable where it states that the zone rules apply if the above provisions are altered. Therefore, I consider that visitor accommodation in the Ski Area Sub Zones should use the generic definition in the PDP with any modifications located in the rule. Therefore, I recommend some modifications to the rule to make it clear that worker accommodation is anticipated and the length of stay can be any period up to 6 months, as requested by Mr Fergusson.

14.16 I also recommend adding natural hazards to the matters of discretion. This is an important matter worthy of discretion within the alpine environment. These changes are shown in the recommended revised chapter at **Appendix 1**.

15. CONCLUSION

15.1 Overall, I consider that the revised chapter as set out in **Appendix 1** is the most appropriate way to meet the purpose of the RMA.

Craig Barr
Acting Policy Planning Manager
3 June 2016