

Before the Hearings Panel

In the Matter of the Resource Management Act 1991

And

In the Matter of the Proposed Queenstown Lakes District Plan – Stage 3

Brief of Evidence of **Hayley Jane Mahon** for
Bush Creek Property Holdings Limited and Bush Creek Property
Holdings No. 2 Limited (submitter #3353),
Bush Creek Investments Limited (#3354) and
M J Thomas (#3355)
Dated: 29 May 2020

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INTRODUCTION

Qualifications and Experience

1. My full name is Hayley Jane Mahon.
2. I hold the position of planner at John Edmonds and Associates. I am based in Wanaka but grew up in Queenstown and have lived in the District on and off throughout my life. I have been employed by John Edmonds and Associates since November 2019. I hold the qualifications of a Bachelor of Laws and a Bachelor of Science majoring in Land Planning and Development from Otago University. I have 5 years' experience as a property lawyer employed in Queenstown, Invercargill and the United Kingdom and 1 years' experience as a resource management lawyer in Queenstown. I have 2 years' experience as a planner.

Code of Conduct

3. I confirm that I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2014 and have complied with it in preparing this evidence. I confirm that the issues addressed in this evidence are within my area of expertise and I have not omitted material facts known to me that might alter or detract from my evidence.
4. The key documents I have referred to in drafting this brief are:
 - (a) The Section 32 Evaluation for Chapter 18A – the General Industrial Zone including appendices;
 - (b) The QLDC Business Development Capacity Assessment 2017;
 - (c) The Section 42A Report for Chapter 18A General Industrial Zone by Mr Place;
 - (d) Economic Assessment of Queenstown Lakes District's Industrial Zones – Stage 3 District Plan Review dated 22 May 2019 by M.E Consulting; and
 - (e) The Otago Regional Council Partially Operative Regional Policy Statement dated 14 January 2019.

SCOPE OF EVIDENCE

5. I have been engaged by Bush Creek Property Holdings Limited, Bush Creek Property Holdings No. 2 Limited and Bush Creek Investments Limited (**Bush**

Creek Entities) to provide planning evidence on the Proposed Queenstown Lakes District Plan – Stage 3 (PDP).

6. My evidence covers the notified zoning of the land owned by Bush Creek Entities. Bush Creek Entities own the following properties in Arrowtown:
 - (a) Bush Creek Property Holdings Limited owns the land at 7 Bush Creek Road (Lot 1 DP27675);
 - (b) Bush Creek Property Holdings No. 2 Limited owns the land at 9a Bush Creek Road (Lot 1 DP17215); and
 - (c) Bush Creek Investments Limited owns the land at 11 Bush Creek Road (Lots 1 and 2 DP18134).
 - (d) M J Thomas owns the land at 14 Bush Creek Road (Lot 1 DP20056 and Lot 1 DP24863) Collectively the two lots are known as 14 Bush Creek Road and are held in one Record of Title.
7. These sites have been notified as General Industrial Zone (**GIZ**). The Bush Creek Entities oppose the GIZ zoning of their sites and instead seek rezoning of the Bush Creek area to Business Mixed Use Zone (**BMU**).
8. The evidence is provided in the following parts:
 - (a) Executive Summary;
 - (b) Relief Sought in Submissions;
 - (c) Background;
 - (d) Notified General Industrial Zone;
 - (e) Statutory Considerations;
 - (f) Evaluation;
 - (g) Response to Section 42A; and
 - (h) Conclusion.

EXECUTIVE SUMMARY

9. This evidence has been prepared to address the most appropriate zoning for the area proposed to be zoned as GIZ in the Bush Creek area at Arrowtown as part of Stage 3 of the PDP Review.

10. The evidence sets out that the current use of the ODP Industrial A Zoning at Bush Creek which forms part of the legal environment is in fact not currently industrial; it is largely service based with office, commercial and residential activities taking place there. This influences the environment anticipated by people in the area. The proposed GIZ zoning with its prohibitive approach to any non-industrial activities does not most appropriately fit the existing environment at Bush Creek. It will constrain the opportunities for existing landowners as well as impose new reverse sensitivity effects from new industrial activities which have not been experienced by occupants and residents of the Bush Creek area and the neighbouring residential zones.
11. I consider the most appropriate zoning to be Business Mixed Use zoning because it best achieves the purpose of the Act and the Strategic Direction of the PDP, best takes into account the activities currently occurring within the area, best reduces reverse sensitivity effects on surrounding residential land, enables the Arrowtown community and achieves the best urban design outcomes for the area.
12. In coming to this conclusion, I have considered and assessed the proposal to rezone the area as BMU against the relevant statutory considerations including the National Policy Statement on Urban Development Capacity, Regional Policy Statements, and Objectives of the Proposed District Plan.
13. My evidence considers the options available for zoning of the Site including: rezoning to BMU; an amended BMU zone which allows for industrial activity; an amended GIZ allowing for commercial, office, retail and residential activities; and the notified GIZ zoning.
14. In analysing the options against the relevant statutory considerations, I consider that BMU is the most appropriate zoning for the land.

RELIEF SOUGHT IN SUBMISSIONS

15. The Bush Creek Entities sought to rezone the area notified as General Industrial Zone at Bush Creek to Business Mixed Use Zone. The proposed area to be rezoned as Business Mixed Use is shown below outlined in red.



Figure 1: Proposed area Bush Creek Entities seek to be rezoned as BMU

16. As secondary relief, Bush Creek Entities seek the area outlined in red above to be rezoned either to a modified BMU or GIZ that is specific to the Bush Creek area with provision for office, retail, commercial and residential activities that are not necessarily ancillary to industrial or service activities.

BACKGROUND

Receiving Environment

17. The land owned by Bush Creek Investments Limited at 11 Bush Creek Road (Lots 1 and 2 DP18134) contains an existing civil construction yard.
18. The site at 11 Bush Creek Road had a resource consent approved for a retail complex approved in 2006 (RM040987). The complex contained eight retail premises comprising a total of 5600m² GFA ranging in size from 180m² GFA to 1900m² GFA. Additionally, the complex contained three office units of 650m² in total, eight residential apartments and on-site parking for 273 cars. This consent has not been implemented.



Figure 2: Site owned by Bush Creek Investments Limited and known as 11 Bush Creek Road

19. The land owned by Bush Creek Property Holdings Limited (Lot 1 DP27675) known as 7 Bush Creek Road contains a business complex with various tenants.
20. The land owned by Bush Creek Property Holdings No. 2 Limited (Lot 1 DP17215) known as 9a Bush Creek Road contains a workshop and yard.



Figure 3: Sites owned by Bush Creek Property Holdings Limited and Bush Creek Property Holdings No. 2 Limited

21. The land owned by M J Thomas includes two lots: Lot 1 DP20056 and Lot 1 DP24863. Collectively the two lots are known as 14 Bush Creek Road and are held in one Record of Title.
22. Lot 1 DP20056 was included within the notified GIZ, however the more northern Lot 1 DP24863 was zoned PDP Rural Zone and is located within an ONL. The submitter sought to treat both lots as having the same zoning and rezone them as BMU. Mr Place rejects rezoning the more northern Lot 1 DP24863 from PDP Rural to BMU and removing the site from the ONL.
23. The zoning of Lot 1 DP24863 as PDP Rural with the ONL overlay is inconsistent with the use of Lot 1 DP20056 contained in the same title which is zoned PDP GIZ and has been used for residential purposes since 1991/1992. The zoning of Lot 1 DP24863 as PDP Rural with the ONL overlay is also inconsistent with the neighbouring address to the north known as 16 Bush Creek Road which is also used for residential purposes and has been since 1993.
24. I consider that it is likely that these properties have been accidentally classed as ONL as it seems the existing residential built form has not been taken into account on the site. I consider that the ONL should be moved to the north-eastern

boundary of 14 Bush Creek Road. This would align the ONL with the marginal strip/reserve land containing Bush Creek.



Figure 4: Site owned by M J Thomas known as 14 Bush Creek Road consisting of Lot 1 DP24863 and Lot 1 DP20056 held in Record of Title OT16D/619

25. The remainder of the area notified as GIZ in the PDP contains the following properties and activities:
- (a) The Arrow Irrigation yard at 31 Bush Creek Road;
 - (b) An industrial complex at 9 Bush Creek Road containing 9 industrial units for service activities with 3 residential units;
 - (c) A storage complex at 43 Manse Road (on the corner with Bush Creek Road);
 - (d) A storage shed/workshop at 45 Manse Road (on the northern corner with Bush Creek Road);
 - (e) A plumbers' workshop at 4 Bush Creek Road;
 - (f) A storage building with caretaker's unit at 6 Bush Creek Road;
 - (g) A residential dwelling and storage sheds at 10 Bush Creek Road; and

- (h) An shed/workshop at 12A Bush Creek Road; and
 - (i) A workshop, office and custodial residence at 12 Bush Creek Road.
26. The Meadow Park Zone to the south contains a residential subdivision with residential terraced housing on Essex Avenue immediately adjacent to the Bush Creek Entity Land.

Operative District Plan

27. The area known as the Bush Creek Industrial area was zoned as Industrial A Zone under the ODP with the Urban Growth Boundary running along the northern boundary of this zone.



Figure 5: Industrial A Zoning of Bush Creek Road Industrial Area from ODP Map 27 shown in blue.

Proposed District Plan

28. To the north and east of the land zoned as GIZ in the PDP is land zoned Rural and within the ONL. Immediately to the south and south east is land zoned under the ODP as Meadow Park Zone which has not been through the PDP yet. The remaining land to the east along Manse Road is zoned as Low Density Residential under the PDP. An image taken from the Operative and Proposed District Plan Webmaps from the QLDC website is shown below with the notified GIZ in purple, ODP Meadow Park zone in bright green, and the PDP LDR zoning in brown. The

ONL line is shown in brown dashes to the north of the notified GIZ with PDP Rural zoning to the north of this line.

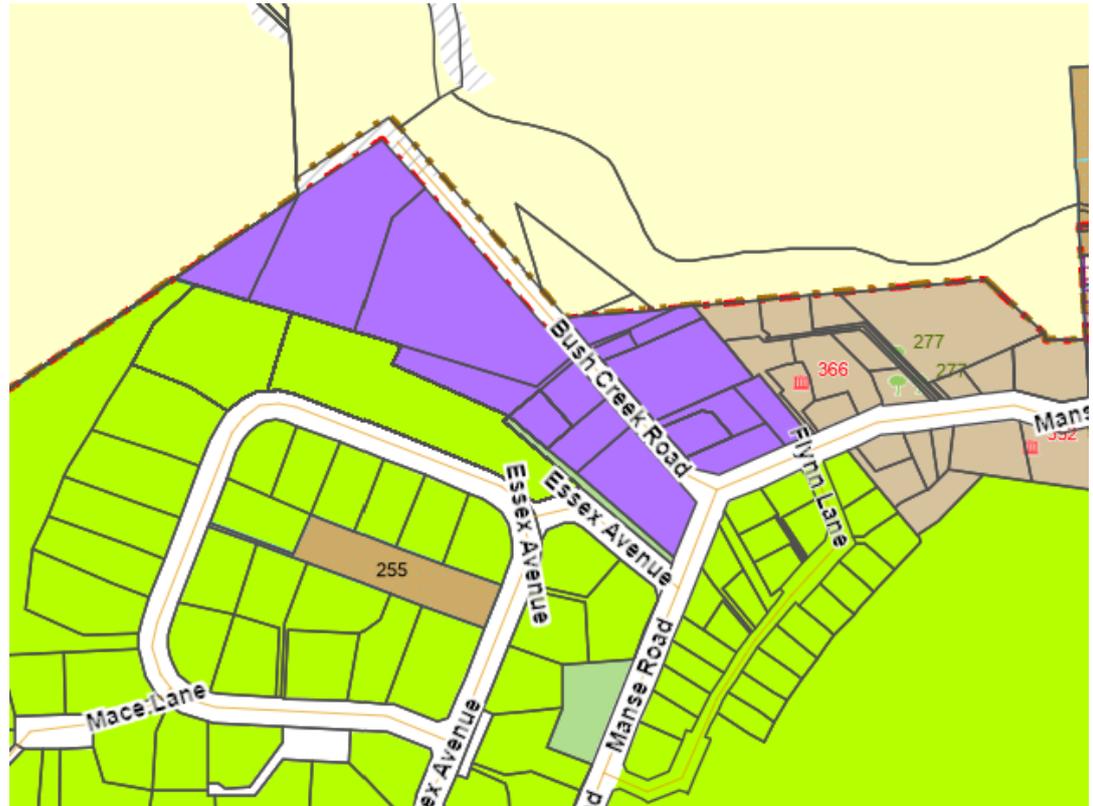


Figure 6: Notified zoning of Bush Creek GIZ and surrounding zoning from QLDC ODP and PDP Zoning Webmap. Accessed 26 May 2020.

NOTIFIED GENERAL INDUSTRIAL ZONE

29. The proposed GIZ at Bush Creek has objectives, supporting policies and several rules relating to the outcomes sought for this area. The four objectives for the zone are:

18A.2.1 Industrial and Service activities are enabled within the Zone and their long-term operation and viability is supported.

18A.2.2 The establishment, operation and growth of Industrial and Service activities within the Zone is not undermined by incompatible land uses.

18A.2.3 Activities and development within the Zone provide a level of amenity which make it a pleasant, healthy and safe place to work in and visit.

18A.2.4 Activities and development within the Zone are undertaken in a way that does not adversely affect the amenity of other zones.

30. These objectives are supported by a number of policies that seek to enable office, retail and commercial activities which are ancillary to industrial or service activities; enable food and beverage retail activities; recognise that industrial and service

activities may have incompatible effects with activities in adjoining zones; avoid any other activities that are not industrial or service activities so as not to displace industrial activities in the future; avoid activities that may undermine the role of town centres and other business areas; managing activities to ensure pleasant amenity is maintained; and ensuring amenity of neighbouring zones and gateway routes is not adversely affected.

31. A summary of the activity rules notified in the GIZ is as follows:
- (a) Industrial activities and Service activities are permitted;
 - (b) Office, Retail and Commercial activities that are ancillary to Industrial or Service activities are permitted;
 - (c) Commercial sale of food and beverages is permitted;
 - (d) Outdoor storage is permitted;
 - (e) Buildings are a restricted discretionary activity;
 - (f) Commercial Recreation and Recreation activities are non-complying;
 - (g) Trade suppliers and Large Format Retail activities are prohibited;
 - (h) Office, Retail and Commercial activities which are not ancillary to any Industrial or Service activities are prohibited;
 - (i) Residential Activities, Residential Units and Residential Flats are prohibited;
 - (j) Visitor Accommodation is prohibited.

STATUTORY CONSIDERATIONS

National Policy Statement on Urban Development Capacity 2016

32. As QLDC is classified as a high growth urban area under the NPS-UDC, a Business Development Capacity Assessment has been produced by Council.¹ I have reviewed this report as part of drafting this brief of evidence. Matters relating to industrial development and the supply of industrial land have been considered later in this brief of evidence.

Partially Operative Otago Regional Policy Statement 2019

33. In reviewing the District Plan, Council is required to “have regard to” any proposed regional policy statement.²

¹ Business Development Capacity Assessment 2017, produced by M. E Consulting
² s.74(2), Resource Management Act 1991

34. The Otago Regional Council has released its appeals version of the Regional Policy Statement (**RPS**).
35. The provisions of the RPS of most relevance to this area relate to urban growth and development. Particularly relevant is Policy 5.3.3:

Policy 5.3.3 Industrial Land

Manage the finite nature of land suitable and available for industrial activities, by all of the following:

- a) Providing specific areas to accommodate the effects of industrial activities;*
 - b) Providing a range of land suitable for different industrial activities including land-extensive activities;*
 - c) Restricting the establishment of activities in industrial areas that ~~may~~ are likely to result in:
 - i. Reverse sensitivity effects; or*
 - ii. Inefficient use of industrial land or infrastructure.**
36. The above policy directs territorial authorities to provide specific areas to accommodate the effects of industrial activities. It should be noted that the Section 32 Report for the GIZ shows that the current Bush Creek industrial area has no traditional industrial activities or no yard-based industrial located within it. There are four light industrial activities³ out of a total of 24 activities with the predominant activity taking place in the zone being service activities⁴. See below Table 2 taken from the Section 32 Report:

³ The ODP defined Light Industrial Activities as *Means the use of land and building for an industrial activity where that activity, and the storage of any material, product or machinery (including waste storage) incidental to the activity occurs wholly indoors, within and enclosed by a building. The requirement for the activity to occur indoors does not apply to required car parking and manoeuvring areas. These activities will not require the use, storage or handling of large quantities of hazardous substances nor require air discharge consents.*

⁴ Pages 35-38, Section 32 Report General Industrial Zone

Table 2 - Predominant activates within the Arrowtown Industrial Zone		
Activity	Total	%
Office	4	16.7
Industrial		
Light Industrial	4	16.7
Outdoor Storage	1	4.2
Commercial	2	8.3
Service Activity	10	41.7
Retail		
Commercial Recreation		
Community Activity		
Yard Based Industrial		
Yard Based Service	3	12.5
Total	24	100.0

Figure 7: Table 2 from Arrowtown Industrial Zone analysis in Section 32 Report – General Industrial Zone.

37. There are also no ancillary industrial or yard-based industrial activities occurring in the Bush Creek Industrial area.⁵
38. If there are no industrial or yard-based industrial activities taking place in the Bush Creek Industrial area and only four of 24 activities being classed as light industrial, then this is an area that should not be specifically provided to accommodate the effects of industrial activities based on those existing activities. This is currently predominantly an area used for service activities, office activities and light industrial activities with ancillary office and commercial activities.
39. The finding that there are no traditional industrial or yard-based industrial activities taking place within the Bush Creek Industrial Area supports the case for rezoning to Business Mixed Use zoning where there is more flexibility than the proposed GIZ zoning for the existing uses taking place in the Bush Creek area such as the service, office and commercial activities.
40. RPS Policy 5.3.3 directs territorial authorities to restrict the establishment of activities in industrial areas that are likely to result in inefficient use of industrial land. In other words, activities can be established in industrial areas if it can be shown that the proposed activity is not likely to result in the inefficient use of industrial land. Further will be built on this later in this brief of evidence.

⁵ Page 37, Section 32 Report General Industrial Zone

41. Policy 5.3.3 directs territorial authorities to restrict the establishment of activities in industrial areas which are likely to result in reverse sensitivity effects. I consider that promoting and only allowing heavy industrial activity in the Bush Creek area is inconsistent with Policy 5.3.3 as the immediately adjoining residential activity and zoning makes the application of the GIZ inconsistent with Policy 5.3.3 as these industrial activities are likely to result in reverse sensitivity effects.

Strategic Directions Policies, Proposed District Plan

42. The proposed rezoning is to be assessed as to whether it will give effect to relevant objectives of the plan.⁶

Chapter 3 Strategic Direction

43. The objectives within Chapter 3 provide overall strategic direction for the management of district wide issues relating to the management of land within the Queenstown Lakes District.
44. Strategic Direction 3.2.1.5 directs that local service and employment functions served by commercial centres and industrial areas outside of the Queenstown and Wanaka town centres, Frankton and Three Parks are sustained. If the submitter's relief is granted and the Bush Creek Industrial area is rezoned to BMU, the current local service and employment functions which take place within the area now (which are not classified as industrial) could continue to be sustained in a BMU zone.⁷
45. Strategic Policy 3.2.3 directs that commercial zoning that could undermine the role of Queenstown and Wanaka town centre as the primary focus for the District's economic activity be avoided. A BMU zoning of the area is going to better reflect the reality of what is in place in the area now – no industrial activities and predominantly service activities with office and commercial use.⁸ The area notified as GIZ which the submitters want to rezone as BMU is limited in size and so will have a limited capacity for commercial zoning anyway. A small pocket of land as BMU in this area is not going to undermine the town centre as the primary focus for economic activity.
46. Strategic Policy 3.3.6 seeks to avoid additional commercial zoning that will undermine the function and viability of Frankton commercial areas as the key

⁶ S.32(1) Resource Management Act 1991

⁷ Pages 35-38, Section 32 Report General Industrial Zone

⁸ Pages 35-38, Section 32 Report General Industrial Zone

service centre for the Wakatipu Basin. The current activities which are taking place within the Bush Creek Industrial area are already largely service and commercial activities as the ODP Industrial A zoning has already allowed these activities to occur. By rezoning as a PDP BMU zone, there is not going to be *additional* commercial zoning as the ODP Industrial A zoning has already created a commercial area at Bush Creek. Also as mentioned above, the Bush Creek area currently notified at GIZ is of a small size and constrained by surrounding residential development therefore commercial use of this area is not going to undermine Frankton's status as the key service area for the Wakatipu Basin.

47. Strategic Policy 3.3.8 reads as follows:

Avoid non-industrial activities not ancillary to industrial activities occurring within areas zoned for industrial activities.

Mr Place, as the author of the s42A Report, discusses how the word "avoid" is now to read as "not allow" or "prevent the occurrence of" due to the *King Salmon*⁹ decision and this gives justification to the prohibited activity status for commercial, office and retail uses within the GIZ.¹⁰

48. Mr Place is also of the opinion that Strategic Policy 3.3.8 gives effect to the RPS Policy 5.3.3:

Policy 5.3.3 Industrial Land

Manage the finite nature of land suitable and available for industrial activities, by all of the following:

- a) *Providing specific areas to accommodate the effects of industrial activities;*
- b) *Providing a range of land suitable for different industrial activities including land-extensive activities;*
- c) *Restricting the establishment of activities in industrial areas that are likely to result in:*
 - i. *Reverse sensitivity effects; or*
 - ii. *Inefficient use of industrial land or infrastructure.*

49. Mr Place discusses the Hearings Panel in Stage 1 stating that the wording of Strategic Policy 3.3.8 is guided by the Proposed RPS.¹¹

⁹ *Environmental Defence Society Inc. v New Zealand King Salmon Company Limited* [2014] NZSC 38

¹⁰ Paragraphs 5.7 to 5.11, s42A Report for General Industrial Zone

¹¹ Paragraph 5.8, s42A Report for GIZ

50. Given that the RPS Policy 5.3.3 allows for the establishment of activities in industrial areas which can be shown are not likely to result in reverse sensitivity effects or inefficient use of industrial land or infrastructure, I consider that the use of the word “avoid” in Strategic Policy 3.3.8 with the *King Salmon* reading of “prevent the occurrence of” to justify the prohibited activity status in the GIZ for commercial, office and retail activities goes too far beyond the RPS Policy 5.3.3.
51. If the Panel makes the decision that the zoning at Bush Creek is to stay as GIZ, then I consider that Strategic Policy 3.3.8 should be amended to take into consideration the fact that the RPS Policy 5.3.3 does allow for other activities to occur in Industrial Areas as long as assessments at the time of resources consenting demonstrate that they are not likely to result in reverse sensitivity effects or inefficient use of the industrial land or infrastructure.
52. Even though Strategic Policy 3.3.8 was considered as part of Stage 1 of the PDP review and decisions have been made and the policy is not subject to appeal, the wording of the policy can be reopened for consideration. Council released a practice note¹² stating that you are able to make submissions on any district-wide provisions that apply to a notified zone as long as your submission focuses on the interplay between the proposed PDP zone applying to land in the notified zone and the relevant district-wide provisions.
53. When considering Policy 3.3.8 in Stage 1, the Hearing Panel accepted that “*non-industrial activities in industrial zones should be tightly controlled*” taking into account “*the guidance provided by the Proposed RPS, the lack of land available for industrial development, and the general unsuitability of land zoned for other purposes for industrial use.*”¹³
54. Since Policy 3.3.8 was considered in Stage 1, the *Bunnings Limited v QLDC*¹⁴ decision from the Environment Court has been released. Judge Jackson specifically discusses the RPS Policy 5.3.3 (then known as 5.3.4) and what constitutes the “*inefficient use of industrial land*”¹⁵.
55. Judge Jackson opines: “*what is an inefficient use of industrial land? In particular is it “inefficient” to use land zoned industrial for some other business activity if the land owner can obtain higher rents for it? It appears not, provided that there is zoned capacity elsewhere in the region (or market) and there is no externality*

¹² QLDC Practice Note 2/2019 available from <https://www.qldc.govt.nz/services/resource-consents/practice-notes-and-guidance> - accessed 27/05/2020

¹³ Paragraph 530, Report 3 Report and Recommendations of Independent Commissioners Regarding Chapter 3, Chapter 4 and Chapter 6; s42A Report for GIZ, paragraph 5.8.

¹⁴ *Bunnings Limited v Queenstown Lakes District Council* [2019] NZEnvC 59

¹⁵ RPS Policy 5.3.3

*which needs to be taken into account and which, if uncosted, would lead to inefficiency.*¹⁶

56. In other words, when interpreting RPS Policy 5.3.3 and the word “inefficient”, other business activities are appropriate in industrial zoned areas so long as there is zoned capacity elsewhere in the region.
57. Judge Jackson accepted that when considering whether there is zoned industrial capacity throughout the region, Cromwell should be included along with Wanaka and the Wakatipu as there is “*no relationship between market efficiency and ward boundaries*”.¹⁷ QLDC’s Business Development Capacity Assessment (**BDCA**) does not include data on Cromwell because Central Otago District Council (**CODC**) is not currently required to provide a BDCA.¹⁸ However, the NPS-UDC does “*seek to achieve better integration across local and regional markets through collaboration across administrative boundaries*”¹⁹ and given that the *Bunnings* decision points to Cromwell being considered in the network of industrial areas with Wakatipu and Wanaka, the next BDCA which is prepared should take into account the industrial land that Cromwell can supply.
58. Additionally, in the *Bunnings* decision, Judge Jackson opined that the Bunnings proposal (a trade supply activity) only reduced the quantity of industrial land capacity by 16% and this was a minor effect.²⁰
59. If the data is taken from the BDCA 2017-2019, the Wakatipu Ward has 43.6ha of potential industrial use land²¹. The total land area at the current Bush Creek Industrial Area is 4.27ha. Therefore, if the Bush Creek Industrial area was rezoned as BMU, there would only be a loss of 9.8% of industrial land capacity within the Wakatipu Ward which using a *Bunnings* application would be a minor effect. Also, this is a calculation on the Wakatipu Ward alone; if the Wanaka and Cromwell industrial land capacity was taken into account, a loss of 4.27ha of industrial land (which currently has no industrial activities taking place in it)²² would be at a far lesser proportion.

¹⁶ *Bunnings Limited v Queenstown Lakes District Council* [2019] NZEnvC 59 at [61].

¹⁷ *Bunnings Limited v Queenstown Lakes District Council* [2019] NZEnvC 59 at [129].

¹⁸ QLDC Business Development Capacity Assessment 2017-2019 at page 33

¹⁹ QLDC Business Development Capacity Assessment 2017-2019 at page 33

²⁰ *Bunnings Limited v Queenstown Lakes District Council* [2019] NZEnvC 59 at [95].

²¹ QLDC Business Development Capacity Assessment 2017-2019 at pages 13-14

²² Pages 35-38, Section 32 Report General Industrial Zone

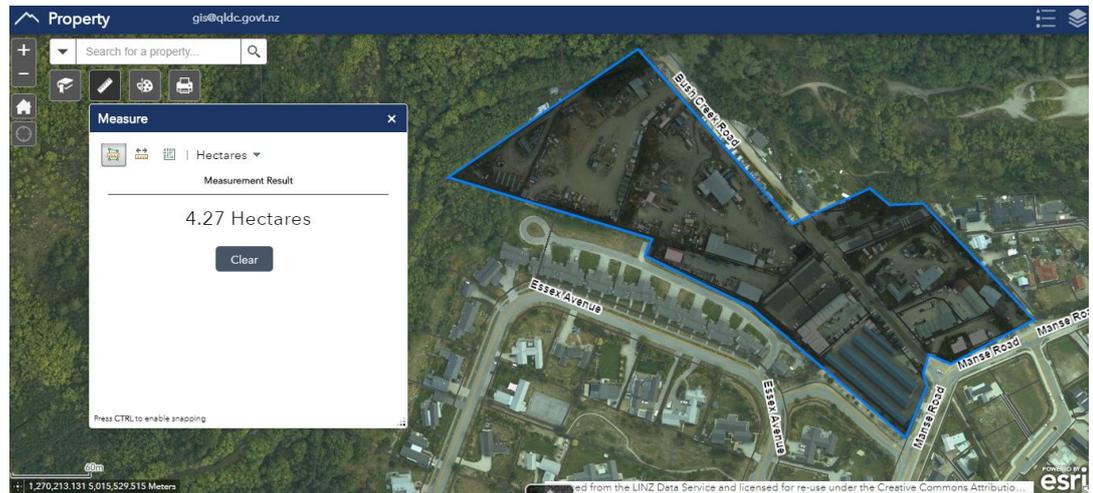


Figure 8: Image of QLDC mapping application showing area of Bush Creek Industrial Area as 4.27ha.

60. Mr Place in the s42A report considers that the Strategic Policy 3.3.8 and its requirement to *avoid* non-industrial activities occurring in industrial zoned areas justifies the use of the prohibited activity status. Given that Strategic Policy 3.3.8 requires amendment because it goes beyond the RPS parent policy 5.3.3 and can be amended because the panel can reopen strategic district-wide policies once a later zoned piece of land comes up in the later stages of the district plan review, I consider that the prohibited activity status is inappropriate.
61. The application here of the precautionary principle is contrary to case law which suggests that a precautionary approach is appropriate where there is insufficient information about the effects of a proposal in determine what activity status should be applied.²³ The RPS Policy 5.3.3 supports this with its requirement to prove whether non-industrial activities will actually have reverse sensitivity effects or is results in inefficient use of industrial land. I consider that the effects of proposals to establish non-industrial activities in the area can be determined and assessed through resource consent applications and so the precautionary principle used to justify a prohibited activity status is inappropriate.
62. Additionally, I consider that the application of RPS Policy 5.3.3 to justify the prohibited activity status is questionable for the Bush Creek area because the land is not being used for industrial uses. The ODP Industrial A zoning has resulted in uses that are predominantly service based. The RPS Policy 5.3.3 is aimed to restrict the establishment of activities in *industrial* areas and so if the area is not being used for true industrial use, this policy should not be applied.

²³ *Coromandel Watchdog of Hauraki Inc v Chief Executive of the Ministry of Economic Development* [2007] NZCA 473 at [34]

Chapter 4 Urban Development

56. The objectives and policies within Chapter 4 manage the spatial location and layout of urban development within the District.
63. Policy 4.2.1.3 requires urban development to be contained within the defined Urban Growth Boundaries. The land at Bush Creek Industrial area which the submitters seek to rezone as BMU is within the PDP Urban Growth Boundaries.



Figure 9: Image from QLDC Operative and Proposed District Plan webmaps showing urban growth boundary in red dashed line.

64. Policy 4.2.2.1 requires urban development to be integrated with the capacity of existing or planned infrastructure. Given that there are already established service and commercial activities on the site, in the short term I consider that the existing infrastructure is suitable for rezoning to BMU. However, roading infrastructure and services may need to be upgraded in the future if the land is rezoned as BMU. I note that in the commercial development consent RM040987 granted in 2004 on 11 Bush Creek Road, the developer was required to upgrade Bush Creek Road and the intersection with Manse Road. If a large comprehensive development was proposed within the submitters' proposed BMU, similar proposals could be put forward to upgrade the infrastructure.

65. Policy 4.2.2.2 requires the allocation of land within UGBs into zones which are reflective the appropriate land use having regard to:
- (a) Topography;
 - (b) Ecological, heritage or cultural or landscape significance;
 - (c) Any risk of natural hazards;
 - (d) Connectivity and integration with existing urban development;
 - (e) Convenient linkages with public transport;
 - (f) Provide a mix of housing densities and forms;
 - (g) ...
 - (h) ...
 - (i) The function and the role of town centres and other commercial and industrial areas as provided for in the Chapter 3 Strategic Objectives 3.2.1.2 – 3.2.1.5 and associated policies;
 - (j) ...
66. The allocation of the Bush Creek Industrial land as BMU is a similar zoning to what is currently the Industrial A zoning applying to the site – there is flexibility for service, office, retail and commercial activities as well as residential activities. The current activity within the area is largely service based with commercial, office and residential activities with no industrial activities within the area.²⁴ Given what is already occurring on the site could largely continue with BMU, the area is an appropriate BMU zone. As mentioned above at 42, the activities taking place are largely service and commercial activities as the ODP Industrial A zoning has already allowed these activities to occur. By rezoning as a PDP BMU zone, there is not going to be *additional* commercial zoning as the ODP Industrial A zoning has already created a commercial area at Bush Creek. Also as mentioned above, the Bush Creek area currently notified at GIZ is of a small size and constrained by surrounding residential development therefore commercial use of this area is not going to undermine the role of other commercial areas and town centres.

²⁴ Pages 35-38, Section 32 Report General Industrial Zone

EVALUATION

Examination of extent to which the objectives of the proposal are the most appropriate way to achieve the purpose of the Act s.32(1)(a)

67. The following is my examination of the objectives of the proposal to rezone the Bush Creek Industrial area as BMU and whether they are the most appropriate way to achieve the purpose of the Act and higher order strategic direction.
68. As covered above, Strategic Direction 3.2.1.5 has the aim of keeping local service and employment function which are outside of the Queenstown and Wanaka Town Centres and Frankton sustained. If BMU zoning is applied to the site, the existing local service and employment functions which already take place within the area can continue to be sustained. If the GIZ was applied with its prohibited activity status for non-industrial activities, the current activities taking place in the zone would be phased out to introduce industrial activities. If BMU was applied to the zone, the current employment function could be maintained.
69. Strategic Policy 3.3.2 and Strategic Policy 3.3.6 are aligned in trying to prevent commercial zoning which would undermine the role of town centres and Frankton commercial areas. A BMU zoning of the area is going to better reflect the reality of what is in place in the area now – no industrial activities and predominantly service activities with office and commercial use.²⁵ The current Industrial A zoning has already allowed the establishment of service and commercial activities. The area notified as GIZ which the submitters want to rezone as BMU is limited in size and so will have a limited capacity for commercial zoning anyway. A small pocket of land (4.27ha) as BMU in this area is not going to cause economic distribution effects that undermine the town centre as the primary focus for economic activity.
70. By rezoning as a PDP BMU zone, there is not going to be *additional* commercial zoning as the ODP Industrial A zoning has already created a commercial area at Bush Creek. Also as mentioned above, the Bush Creek area currently notified at GIZ is of a small size and constrained by surrounding residential development therefore commercial use of this area is not going to undermine the dominance of town centres and Frankton has the commercial hubs for the Wakatipu.
71. Strategic Policy 3.3.8 which seeks to avoid non-industrial activities taking place in an industrial zone would not apply if the area was rezoned as BMU. However, if the zoning does change to GIZ, I consider (for reasons discussed above) that Strategic Policy 3.3.8 goes far beyond the parent RPS Policy 5.3.3 and should be amended to provide flexibility for activities which are not an inefficient use of industrial land.

²⁵ Pages 35-38, Section 32 Report General Industrial Zone

72. The Business Mixed Use objectives and policies would allow flexibility for the activities already taking place in the zone (service, commercial, office and residential) with greater urban design outcomes and better consideration of reverse sensitivity effects with neighbouring residential zones.
73. Objective 16.2.1 aims towards achieving an area comprising of a high intensity mix of *compatible* residential and non-residential activities. The area currently has a high presence of residential activities – with 44.4% of all predominant activities within the Bush Creek area having a residential element or being the predominant activity on the site²⁶. A set of objectives and policies aiming toward compatibility between commercial/service activities and residential activities will provide less reverse sensitivity effects than if the area was rezoned as GIZ with its prohibition on any other activity other than industrial.
74. As there are currently no industrial activities taking place in the area²⁷, reverse sensitivity effects on the neighbouring Meadow Park zone would increase if the area was rezoned to GIZ. The residents of the Meadow Park zone are currently not experiencing any industrial activities and therefore any reverse sensitivity effects from industrial activities neighbouring their zone and I consider this would change if GIZ was applied to this area.
75. Objective 16.2.2 sets out that new development should achieve high quality building and urban design outcomes that minimise adverse effects on adjoining residential areas and public spaces. Given the high amount of residential activities taking place within the area and the adjoining residential zones, the BMU objectives directing high quality building and urban design are more sympathetic to surrounding uses. To change the current use of the zone to solely Industrial uses through the GIZ would result in greater adverse effects on the amenity of the area than BMU would. The Bush Creek Industrial area is visible from public tracks in the area such as Sawpit Gully Track and Feely Hill; a BMU zoning would provide less adverse visual effects from public places than GIZ.
76. I consider that the BMU zoning of the Bush Creek area is the most appropriate way to achieve the s5 purpose of the Act being in this case the development of physical resources in a way which enables people and communities to provide for their social, economic and cultural well-being while avoiding, remedying or mitigating adverse effects of activities on the environment.
77. The already existing wholly non-industrial activities on the site can continue with greater flexibility under a BMU zoning than they can under a prohibitive GIZ zoning providing more efficient economic use of the existing activities and structures on

²⁶ Section 32 Report – GIZ, page 37.

²⁷ Pages 35-38, Section 32 Report General Industrial Zone

the land while providing improved urban design and amenity outcomes for the residents of the Bush Creek area and neighbouring residential zone.

78. As there are no strictly industrial activities taking place in the Bush Creek Road Industrial area, there is not going to be a loss of land already used for industrial activities if the land is rezoned BMU. The small size of the area is not going to undermine other commercial areas such as Frankton or town centres if it zoned as BMU.

Identification of other reasonably practicable options for achieving the objectives s.32(1)(b)(i)

79. I consider the reasonably practical options to enable the use and development of the area to include:
- (a) Option 1 – Business Mixed Use Zone across all the area currently notified as GIZ;
 - (b) Option 2 – An amended BMU Zone which allows for industrial activity;
 - (c) Option 3 – An amended GIZ which allows for commercial, office, retail, service and residential activities;
 - (d) Option 4 – The PDP as notified, as being GIZ.
80. Option 1 to apply the BMU zoning would be particularly aligned with achieving Strategic Objective 3.2.1.5 in sustaining local service and employment functions served by commercial areas outside of town centres and Frankton. The current activity on the site being largely service and commercial can be sustained under BMU. The current local service at Bush Creek which is not industrial²⁸ would be slowly lost under the proposed GIZ due to its prohibitive status on non-industrial activities.
81. The option would also assist in achieving the Strategic Policy 3.2.1.6 around the diversification of the District's economic base and creation of employment opportunities by allowing a combination of activities within the area rather than one strict industrial activity.
82. Option 1 would also contribute to Strategic Objective 3.2.3 which is to have a quality built environment taking into account the character of individual communities. The character of the current Bush Creek Industrial area is largely service based with commercial, office and residential activities taking place. A

²⁸ Pages 35-38, Section 32 Report General Industrial Zone

strict industrial activity approach will ignore the current character of the Bush Creek area and neighbouring residential areas and not result in the quality built environment that BMU could.

83. I have covered the policies above that are aimed around avoiding undermining town centres and the Frankton commercial area. Due to the fact that the Bush Creek area is already functioning as a commercial area and not undermining town centres or Frankton, I do not consider that BMU which allows those same commercial activities which are already existing on the site would undermine town centres. Also, the small size of the area at 4.27ha and constrained boundaries limits the potential of the area to undermine any other commercial area.
84. Additionally, I consider that BMU would provide services and employment in Arrowtown which the Strategic Direction of the PDP is silent on. Arrowtown is a satellite community with a village centre focussed on retail for tourists and hospitality but no real services and employment for its community. I consider that a BMU would provide this for the communities' residents.
85. Option 1 will assist in achieving Strategic Policy 3.3.11 in providing for a wider array of activities and sufficient capacity within commercially zoned land to accommodate business growth and diversification over a prohibitive broad-brush industrial only zoning.
86. Option 1 best fits the activities already existing in the Bush Creek Road area being service, commercial, office and residential activities rather than prohibiting anything other than industrial activities through a GIZ zoning. The BMU will provide more positive urban design outcomes for the existing residential and commercial activities in the area and result in less adverse reverse sensitivity effects for neighbouring residential areas.
87. Option 2 with an amended BMU zoning to allow for industrial activities could assist in achieving Council's goal of providing for industrial land whilst balancing other activities within the area using the BMU compatibility objectives and greater attention to reverse sensitivity effects.
88. Option 2 fits with the enabling purpose of the RMA under Section 5 in allowing people to provide for their economic well-being while avoiding adverse effects. I consider the prohibitive status of the notified GIZ zone does not fit with the enabling purpose of the RMA.
89. Option 3 would provide for already existing service, office, commercial, retail and residential activities occurring in the Bush Creek area, however, I consider it would change the existing character of the area from a largely service/commercial/residential area to a more industrial area due to its prohibitive

stance on non-industrial activities. Existing residential activities within the area and the neighbouring residential zones are currently not experiencing reverse sensitivity effects from traditional industrial activities as there are none occurring within the area²⁹ and so there is potential for reverse sensitivity effects to increase with a GIZ zoning.

90. The Strategic Policy 3.3.8 to avoid non-industrial activities within industrial zones which Mr Place relies on to establish a prohibited activity status for non-industrial activities can be amended as there is the ability to review already decided Strategic Directions. As covered above, I consider that Strategic Policy 3.3.8 goes beyond the parent RPS Policy 5.3.3 which allows for non-industrial activities in industrial areas as long as they are not an inefficient use of industrial land and therefore Strategic Policy 3.3.8 can be amended to be less restrictive.
91. Option 4 would be to apply the notified GIZ to the area. I do not consider this zone to be appropriate as the activities currently taking place in the area are not traditionally industrial – they are service/commercial/office and residential activities.³⁰ To apply the GIZ will create new industrial activities which are currently not taking place in the area leading to increased reverse sensitivity effects on businesses and residents of the area and surrounding residential areas which have not experienced them before. A GIZ in this area will not achieve the enabling purpose of the Act under Section 5 as it is not consistent with enabling activities while avoiding, remedying or mitigating adverse effects on the environment.
92. Of all of the options assessed above, only BMU zoning takes into account the existing character of the area being service/commercial/office and residential based and enhances the urban design outcomes to provide greater amenity for occupants and others experiencing the zone. BMU zoning best achieves the purpose of the Act in enabling people to provide for their social, economic and cultural wellbeing while avoiding adverse effects of activities. The GIZ and its prohibitive stance on non-industrial activities does not give effect to the enabling purpose of the Act.
93. The BMU zone is designed to provide for complementary commercial, business, retail and residential uses that supplement activities and services provided by town centres. Higher density living opportunities close to employment and recreation activities are also enabled. The rules for the BMU do provide for a number of activities as permitted activities e.g. residential, commercial, service and office activities, however, a key rule requires all new buildings to obtain restricted discretionary consent which will ensure appropriate building design and

²⁹ Pages 35-38, Section 32 Report General Industrial Zone

³⁰ Pages 35-38, Section 32 Report General Industrial Zone

appearance. Therefore, no new development can be established without a resource consent.

94. I conclude that Option 1 and the rezoning to BMU of the Bush Creek area best achieves the purpose of the Act and the strategic direction of the PDP, best takes into account the activities currently occurring within the area, best reduces reverse sensitivity effects on surrounding residential land and achieves the best urban design outcomes for the area.

RESPONSE TO SECTION 42A

95. The evidence of Mr Place recommends the Bush Creek Industrial area be rezoned to GIZ and he does not agree with the submitters' proposal to rezone the area as BMU.
96. In terms of the existing uses of the area, Mr Place points to the Section 32 analysis where it is stated that *"the zone appears to have a strong industrial character, with 75.1% of all observed predominant activities being those more traditional industrial uses"*³¹ In response, I reviewed the tables and graphs within the Section 32 analysis³² which show there are no traditional "industrial" activities or "yard based industrial" activities occurring within the area – there are 10 service activities which can take place within a BMU zone as there is no rule against this. There are five light industrial activities taking place within the area. Light industrial activities are not defined in the PDP but are defined in the ODP as meaning *"the use of land and buildings for an industrial activity where that activity, and the storage of any material, product or machinery (including waste storage) incidental to the activity occurs wholly indoors, within and enclosed by a building"*. As long as reverse sensitivity and noise factors were managed by rules, I consider that this is an activity which could occur in a BMU zone.
97. Mr Place disagrees that BMU would provide for a wider range of uses that would serve the Arrowtown community.³³ In response, I point to Strategic Objective 3.2.1.5 which aims to sustain commercial centres and industrial areas outside of town centres and Frankton. I consider that given the finding in the Section 32 report, the area cannot currently be considered as Industrial use and so areas which are already commercial centres (i.e. the Bush Creek area) is to be sustained. I consider that the commercial nature of the Bush Creek area can better be sustained through the flexibility of the BMU rules rather than the prohibition on non-industrial activities in the GIZ.

³¹ Section 42A Report – GIZ, Para 10.3.

³² Section 32 Report – GIZ, Pages 35-37

³³ Section 42A Report – GIZ, Para 10.4

98. Mr Place considers that rezoning to BMU and the provision of office, commercial, retail and residential activities would be contrary to RPS Policy 5.3.3 and the Strategic Policy 3.3.8 to avoid non-industrial activities in industrial areas.³⁴ I consider that the area is already not industrial with no strict industrial activities taking place in the area and so non-industrial activities are compatible with existing uses. Even though Strategic Policy 3.3.8 is aimed at avoiding non-industrial activities in industrial zones, it should not be used to justify retaining the land zoned as industrial when there is in fact no strict industrial activities taking place in the area.
99. As covered extensively above, I consider that the avoid policy 3.3.8 goes beyond the parent RPS Policy which allows for non-industrial activities in industrial areas as long as they are not an inefficient use of Industrial land and then the *Bunnings* case builds further on what is not an inefficient use of Industrial land. I consider that the Strategic Policy 3.3.8 can and should be amended to better align with the RPS parent policy 5.3.3.
100. Mr Place considers that rezoning to BMU would undermine Strategic Policies 3.3.2, 3.3.3 and 3.3.6 which seek to protect the key commercial roles that town centres and Frankton play.³⁵ As covered above, I consider that the area is already largely functioning as a service/commercial/office area and is not undermining the role of town centres or Frankton. Additionally, the Bush Creek area is small in size at only 4.7ha and so is not going to undermine the central role of town centres and Frankton. I also consider that it will achieve the Strategic Direction 3.2.1.5 which aims to sustain commercial centres outside of town centres and Frankton.
101. Mr Place opines that there are provisions in the GIZ which would manage reverse sensitivity effects on neighbouring residential zones and a BMU zoning would enable business activities which are likely to attract visitors, customers, staff and associated vehicle movements.³⁶ I consider that the BMU would provide for increased amenity with better urban design outcomes and cohesiveness adjacent to a residential zone. The BMU also contains provisions such as objectives and policies which are aiming to increase compatibility and managing reverse sensitivity.
102. I consider that BMU is the best zone for achieving Strategic Direction 3.2.3 which aims to achieve a quality built environment taking into account the character of individual communities. This is a service/commercial/office/residential community with neighbouring residential zoning. This existing character of the community has to be taken into account in aiming to achieve a quality built environment. Additionally, Strategic Objective 3.3.11 directs decision makers to provide for a

³⁴ Section 42A Report – GIZ, para 10.5

³⁵ Section 42A Report – GIZ, para 10.6

³⁶ Section 42A Report – GIZ, para 10.7

wide variety of activities and sufficient capacity in commercially zoned land to accommodate business growth and diversification. GIZ is not going to provide for a wide variety of activities and diversification with its prohibitive stance on non-industrial activities. BMU is going to provide the greatest flexibility to increase the variety and diversification of activities.

CONCLUSION

103. On the basis of the assessment above, I consider that the most appropriate zone for the area notified at Bush Creek as General Industrial Zone is Business Mixed Use Zone. Therefore, the relief by the Bush Creek Entities should be granted.



Hayley Jane Mahon

29 May 2020