

**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 08  
– Business Zones

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**REPLY OF AMY BOWBYES  
ON BEHALF OF QUEENSTOWN LAKES DISTRICT COUNCIL**

**15 LOCAL SHOPPING CENTRE ZONE CHAPTER**

**13 December 2016**

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**Appendix 1 – Revised Chapter 14 Local Shopping Centre Zone**

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## 1. INTRODUCTION

1.1 My name is Amy Bowbyes. I prepared the section 42A report for the Local Shopping Centre Zone (**LSCZ**) Chapter 15 of the Proposed District Plan (**PDP**). My qualifications and experience are listed in that s42A report dated 2 November 2016.

1.2 I have reviewed the evidence filed by other expert witnesses on behalf of submitters, attended parts of the hearing between 28 November and 6 December 2016 and have been provided with information from submitters and counsel presented at the hearing, including reports of what has taken place at the hearing each day when I was not in attendance.

1.3 This Reply evidence covers the following issues:

- (a) confirmation of the Hearing Panel's (**Panel**) directions<sup>1</sup> in respect of submissions that specifically relate to the LSCZ at Cardrona Valley Road in Wanaka and 1 Hansen Road in Frankton;
- (b) provisions that specifically relate to development of 1 Hansen Road (these are highlighted blue in **Appendix 1**);
- (c) further consideration of the acoustic insulation requirements for development within the Outer Control Boundary of Queenstown Airport (Rule 15.5.3) having regard to the evidence of Mr Day, Mr Kyle and Ms Wolt for QAC (433) and Dr Chiles for the Queenstown Lakes District Council (**Council**);
- (d) consideration of whether Objective 15.2.1 should be amended to convey that the LSCZ is a focal point of activities;
- (e) further consideration of the appropriateness of restrictions on specified retail activities and office activities (Rule 15.5.9; reply Rule 15.5.10) in response to questions from the Panel and having further regard to the evidence of Mr Polkinghorne for the Gordon Family Trust (FS1193);

1 Minute issued by the Panel on 2 December 2016; Memorandum of Counsel for Queenstown Lakes District Council dated 1 December 2016; and Memorandum of Counsel for Stuart Ian & Melanie Kiri Agnes Pinfold & Satomi Enterprises Limited and Satomi Holdings Limited (submission 622) dated 29 November 2016.

- (f) consideration of Rule 15.4.5 (final bullet point) responding to questions from the Panel and having regard to the evidence provided by Ms Sian Swinney for the Council on the equivalent rule for the Queenstown Town Centre Chapter;
- (g) consideration of the exemptions to noise Rule 15.5.7 (reply Rule 15.5.8);
- (h) further consideration of Rule 15.5.8(a) (reply 15.5.9a) regarding the phrase "*and so as to limit the effects on the night sky*" as I understand that component of rule to be *ultra vires*;
- (i) consideration of the default permitted activity Rule 15.4.1;
- (j) non-substantive changes to improve the consistency of drafting across the chapters heard in Business Zones Hearing Stream 08; and
- (k) screening of outdoor storage.

**1.4** Where I am recommending changes to the provisions as a consequence of the hearing of evidence and submissions, I have included these in the recommended chapter in **Appendix 1 (Revised Chapter)**. I have attached a section 32AA evaluation in **Appendix 2**.

**1.5** In this Reply:

- (a) if I refer to a provision number without any qualification, it is the notified provision number and has not changed through my recommendations;
- (b) if I refer to a 'redraft' provision number, I am referring to the s 42A recommended provision number; and
- (c) if I refer to a 'reply' provision number, I am referring to recommended provision number in **Appendix 1** to this Reply.

**2. LSCZ AT CARDRONA VALLEY ROAD AND 1 HANSEN ROAD – DEFERRAL OF SUBMISSION POINTS TO HEARING ON MAPPING**

**2.1** I confirm that the Council has carried out<sup>2</sup> the instructions of the Panel's Minute of 2 December 2016, which directs that submissions that specifically relate to the LSCZ at Cardrona Valley Road in Wanaka and 1 Hansen Road in Frankton are deferred to the hearing on mapping. The relevant submission points are referred to in the Panel's Minute dated 2 December 2016.

**2.2** Following the filing of my s42A report and also after filing of the Council's memorandum dated 1 December, it has come to my attention that JA Ledgerwood's submission (507) is also on the Cardrona Valley Road site and, in a similar vein to the Pinfold and Satomi submission (622), seeks particular controls (20m setback and lower building heights) for that site and a decrease in the size of the LSCZ.

**2.3** This submission is not addressed in my s42A report as the entire submission had incorrectly been categorised in the summary of submissions as relating only to the hearing on mapping.

**2.4** I consider it would be appropriate to hear JA Ledgerwood's submission together with submissions 622, 274, FS1101 and FS1212 in the hearing on mapping. Submission 507 has already been allocated to the mapping hearing, and I have confirmed the Panel's approach in its minute of 2 December 2016 with the Submitter. If a further minute directing this transfer is necessary, I welcome one from the Panel.

**3. PROVISIONS SPECIFICALLY RELATING TO THE LSCZ AT 1 HANSEN ROAD**

**3.1** The Panel discussed the merits of Policy 15.2.3.5 and Rule 15.4.3.2, and suggested that I consider their appropriateness and, in particular whether there is a *vires* issue regarding the requirement for a Spatial

<sup>2</sup> Memorandum of Counsel for Queenstown Lakes District Council dated 1 December 2016.

Layout Plan in light of decisions on the Proposed Auckland Unitary Plan.

- 3.2** The Panel also queried the exception from non-notification in Rule 15.6.2.2 (which only relates to 1 Hansen Road) for a road controlling authority.
- 3.3** As consideration of the 1 Hansen Road LSCZ has now been deferred to the hearing on mapping, and the zone of that site may subsequently change, I have not addressed the Panel's comments in this Reply. I understand that the *vires* of the Spatial Layout Plan requirement will be addressed in legal submissions in the hearing on mapping, if necessary.
- 3.4** Regarding Rule 15.6.2.2, while this applies only to 1 Hansen Road and it would therefore be logical to address the Panel's comments on it in the hearing on mapping, I understand from Ms Vicki Jones that the Panel has queried the equivalent provision in Chapter 12. In my view it would be appropriate, when addressing the Panel's comments on 1 Hansen Road in the mapping hearing, to seek to achieve consistency between Rule 15.6.2.2 and the non-notification provisions in the other Business chapters.
- 3.5** For completeness, the provisions in the LSCZ that are site specific to 1 Hansen Road are:
- (a) Policy 15.2.3.5;
  - (b) Rule 15.4.3.2;
  - (c) Rule 15.5.1 (in part);
  - (d) reply Rule 15.5.5; and
  - (e) Rule 15.6.2.2 (in part).
- 3.6** There are no provisions in chapter 15 that are site specific to the LSCZ at Cardona Valley Road.

#### 4. ACOUSTIC INSULATION REQUIREMENTS WITHIN THE OUTER CONTROL BOUNDARY (OCB) OF QUEENSTOWN AIRPORT

4.1 Mr John Kyle and Mr Chris Day have provided evidence on behalf of QAC (433) regarding the acoustic insulation requirements in Rule 15.5.3. Mr Kyle considers that the notified rule adequately addresses the potential reverse sensitivity effects arising as a result of airport noise and has suggested that the mechanical ventilation requirements proposed during the District Wide hearing stream 5 (relating to the noise chapter 36) should be applied to the LSCZ at Frankton.<sup>3</sup> This view is supported by both Mr Day<sup>3</sup> for QAC and Dr Chiles<sup>4</sup> for the Council.

4.2 Ms Rebecca Wolt for QAC submits that the QAC submission has sufficient scope such that the amended airport related mechanical ventilation requirements can be incorporated into the LSCZ.<sup>5</sup> I concur with Ms Wolt's view and recommend that the chapter is amended as shown in **Appendix 1** (Rule 15.5.3 and reply Rule 15.5.4), and as considered in the s32AA evaluation in **Appendix 2**. I note that my recommended amendments are largely consistent with the tracked changes suggested by Mr Kyle,<sup>6</sup> with minor changes to refer generally to sites within the *Outer Control Boundary (OCB) Queenstown*<sup>7</sup> rather than referring to the *Frankton Local Shopping Centre Zone*.

#### 5. OBJECTIVE 15.2.1

5.1 The Panel has requested that I consider whether it would be appropriate to amend Objective 15.2.1 to convey that the LSCZ provides a focal point for the activities provided. I agree that amendments are required, and in addition I am of the view that such a change would provide further acknowledgement of the differences between the LSCZ and the Commercial Precincts that are embedded within the Township Zones of the ODP (and that will be reviewed in

3 Mr Day's evidence at paragraph 33.

4 Dr Chiles' evidence at paragraph 15.2.

5 Ms Wolt's evidence at paragraphs 196 & 197.

6 Mr Kyle's evidence at Appendix B, pages 15-8 & 15-9.

7 This ensures that the relevant definition of *OCB* in PDP Chapter 2 (Definitions) has direct application.

Stage 2 of the PDP). In my view the Commercial Precincts have resulted in sporadic dispersal of commercial activities intermingled with residential activities, which is not the pattern of development anticipated within the LSCZ.

- 5.2 I am of the view that Objective 15.2.1 would be improved with the addition of the following specific amendments:

*Local Shopping Centres provide a focal point for a ~~Enable a~~ A ~~range of activities to occur in the Local Shopping Centre Zone~~ to that meet the day to day needs of the community and ensure ~~that they~~ are of a limited scale that supplements the function of ~~town centres.~~*

- 5.3 These changes are shown in the recommended revised chapter in **Appendix 1.**

**6. RESTRICTIONS ON RETAIL AND OFFICE ACTIVITIES (RULE 15.5.9; REPLY RULE 15.5.10)**

- 6.1 The Panel questioned the merits of Rule 15.5.9 (reply Rule 15.5.10), which places restrictions on the gross floor area (**GFA**) of retail and office activities. The Panel requested that further consideration be given to the 300m<sup>2</sup> limit for retail activities, and that examples of the GFA of existing activities occurring within the LSCZ be considered.

- 6.2 I have used the LSCZ at Albert Town as a case study as this site was relatively recently the subject of resource consent RM140802, which sought consent for a coffee bar/café. Consent was granted with conditions on 4 December 2014.

- 6.3 The information submitted with that application lists the following floor areas of the various activities operating on that site (this information was used for the purposes of calculating car parking requirements):

(a)	Public bar/restaurant	95m <sup>2</sup>
(b)	Function room bar/restaurant	187m <sup>2</sup>
(c)	Bottle store	45m <sup>2</sup>



(d)	Gaming room	14m <sup>2</sup>
(e)	Public Toilets	22m <sup>2</sup>
(f)	Dining/restaurant	58m <sup>2</sup>
(g)	Takeaway shop	10m <sup>2</sup>
(h)	Convenience Store	164m <sup>2</sup>
(i)	Manager's flat and ablutions	88m <sup>2</sup>
(j)	Kitchen, office and chillers	83m <sup>2</sup>
(k)	Storage area, inwards goods	115m <sup>2</sup>
(l)	Hallway and bar servery, staff lounge, toilets etc	128m <sup>2</sup>

**6.4** I consider that the above information is useful as it provides an example of the breadth of activity types operating within the LSCZ, and it provides an example of the scale of the respective activities. Each activity identified above is below the 300m<sup>2</sup> threshold for retail in reply Rule 15.5.10.

**6.5** For clarity, and as raised by the Panel, I consider it would be useful to include a note within reply Rule 15.5.10 that clarifies that each 'activity' includes any associated office, storage, staffroom and bathroom facilities.

**6.6** One constraint I have identified within the above example is that it does not show how the various activities are bundled within each individual tenancy. I have used the term 'activity' in reply Rule 15.5.10, rather than 'tenancy'. Parking standards (to be reviewed in Stage 2 of the District Plan Review in the review of the Transport Section of the ODP) refer to 'activity' types, and the PDP definitions are based on various 'activities'.

**6.7** I remain of the view that the term 'activities' within reply Rule 15.5.10 is appropriate, and the addition of the clarification note will ensure that associated 'back-of-house' activities are included in the GFA calculation. This recommended change is shown in **Appendix 1** and is considered in the s32AA evaluation in **Appendix 2**.

**6.8** In reviewing other district plans I note that the Proposed Auckland Unitary Plan includes the Business - Neighbourhood Centre Zone,

which has similar function<sup>8</sup> to that of the LSCZ. The zone permits retail up to 450m<sup>2</sup> per tenancy (as per Table H12.4.1 (A20 and A21)<sup>9</sup>), with tenancies greater than 450m<sup>2</sup> requiring consent for a non-complying activity. Office tenancies up to 500m<sup>2</sup> GFA are permitted, with tenancies greater than 500m<sup>2</sup> also requiring non-complying activity consent (as per Table H12.4.1 (A18 & A19)<sup>10</sup>). I note that the office tenancy thresholds are currently under appeal.

- 6.9** The partially operative Hamilton City Plan includes a Neighbourhood Centres Zone<sup>11</sup> which also has a similar purpose to that of the LSCZ. Shop sizes are limited to between 100m<sup>2</sup> and 300m<sup>2</sup>.
- 6.10** The Invercargill District Plan includes the Business 4 (Neighbourhood Shop) Zone<sup>12</sup> which enables, as a permitted activity, retail sales premises not exceeding 300m<sup>2</sup> (pursuant to Rule 3.26.1(H) to which proviso (B) of that rule applies).
- 6.11** The Dunedin Second Generation District Plan also has a 'neighbourhood centres' commercial zone which includes a maximum permitted GFA for 'dairies' of 200m<sup>2</sup> which specifically includes any area occupied for storage (Rule 18.5.5.2<sup>13</sup>).
- 6.12** Mr Polkinghorne<sup>14</sup> for the Gordon Family Trust suggests that the cap for retail activities should be set at 400m<sup>2</sup>, rather than 300m<sup>2</sup>, as the definition of "Large Format Retail (Three Parks Zone)" in Chapter 2 of the PDP refers to 400m<sup>2</sup> GFA. It is Mr Polkinghorne's view<sup>15</sup> that the 300m<sup>2</sup> threshold recommended by Mr Heath and adopted in my s42A would result in retailers seeking to establish premises of the 300m<sup>2</sup> to 400m<sup>2</sup> range having limited options. In my view the Business Mixed Use Zone, which by Mr Polkinghorne's own admission was not

<sup>8</sup><http://unitaryplan.aucklandcouncil.govt.nz/Images/Auckland%20Unitary%20Plan%20Operative/Chapter%20H%20Zones/H12%20Business%20-%20Neighbourhood%20Centre%20Zone.pdf> p1.

<sup>9</sup><http://unitaryplan.aucklandcouncil.govt.nz/Images/Auckland%20Unitary%20Plan%20Operative/Chapter%20H%20Zones/H12%20Business%20-%20Neighbourhood%20Centre%20Zone.pdf> p5.

<sup>10</sup><http://unitaryplan.aucklandcouncil.govt.nz/Images/Auckland%20Unitary%20Plan%20Operative/Chapter%20H%20Zones/H12%20Business%20-%20Neighbourhood%20Centre%20Zone.pdf> p5.

<sup>11</sup> <http://www.hamilton.govt.nz/our-council/council-publications/districtplans/PODP/chapter6/Pages/6-2-Objectives-and-Policies-Business-1-to-7-Zones.aspx> see objective 6.2.3 and Policies 6.2.3a to 6.2.3c.

<sup>12</sup> <http://icc.govt.nz/wp-content/uploads/2016/10/DP-Section-3-Rules-October-2016.pdf> with rules commencing at page 3 - 74

<sup>13</sup><https://2gp.dunedin.govt.nz/2gp/documents/plan/sections/18.%20Commercial%20and%20Mixed%20Use%20Zones.pdf> at page 23.

<sup>14</sup> Mr Polkinghorne's evidence at paragraph 164.

<sup>15</sup> Mr Polkinghorne's evidence at paragraph 169.

considered in his modelling, would accommodate activities of the 300m<sup>2</sup> to 400m<sup>2</sup> range, as it does not place limits on the GFA of retail activities. I therefore do not accept his rationale for opposing the 300m<sup>2</sup> limit and am not persuaded that a limit of 400m<sup>2</sup> is a more appropriate alternative.

- 6.13** In addition, I consider that the 300m<sup>2</sup> limit provides a clear distinction between the scale of retailing enabled by the LSCZ when compared to that of the Three Parks Zone Commercial Core Subzone (ODP Chapter 12), which enables large format retail.<sup>16</sup> Enabling retail activities of up to 399m<sup>2</sup>, when the established threshold for large format retail is 400m<sup>2</sup> would, in my view not achieve the zone purpose of providing "*small scale commercial*" activities.<sup>17</sup> The definition Mr Polkinghorne refers to is specific to the Three Parks Zone only.
- 6.14** In relation to Mr Polkinghorne's recommendation to include provision for fashion stores, a supermarket of up to 1,500m<sup>2</sup> GFA and a single tenancy of up to 750m<sup>2</sup> within the Cardrona Valley Road LSCZ, I remain of the view that Mr Polkinghorne has not sufficiently considered the planning framework of the LSCZ, nor has consideration been given to the retailing opportunities provided for within the Business Mixed Use Zone. I remain of the view that the changes recommended by Mr Polkinghorne would not be consistent with the zone purpose in 15.1, and would not assist with achieving Objective 15.2.1 and Policy 15.2.1.2. I therefore remain of the view that the relief sought should be rejected. I refer also to Mr Heath's summary of evidence where Mr Heath responds to Mr Polkinghorne's evidence.
- 6.15** I note that Mr Todd has raised two legal issues regarding scope and these are addressed in Council's Legal Reply.

<sup>16</sup> Provision 12.26.7.1 of the ODP Three Parks Zone, and whereby Large Format Retail (Three Parks Zone) is defined as a single tenancy exceeding 400m<sup>2</sup> GFA (Chapter 2: Definitions).

<sup>17</sup> Provision 15.1 Zone Purpose.

## 7. RULE 15.4.5 – LICENSED PREMISES

- 7.1 The Panel noted the evidence provided by Ms Sian Swinney for the Council in respect of the Queenstown Town Centre Zone, including Rule 12.4.4 of that chapter which concerns itself with licensed premises. Ms Swinney<sup>18</sup> supports removal of the final bullet point of the rule which lists as a matter of discretion "*consideration of any relevant Council alcohol policy or bylaw*". The reason stated by Ms Swinney is that there is currently no alcohol policy in place and breach of any bylaw could result in enforcement action being required.
- 7.2 The Panel have asked that I consider whether LSCZ Rule 15.4.5, which includes the same matter of discretion, should also be amended.
- 7.3 I accept Ms Swinney's view and consider that, on the face of it, it would be appropriate to amend Rule 15.4.5. However, as no submission was received on this rule it is my view that there is no scope to make the amendment.
- 7.4 I therefore have not recommended any changes to this rule, but added a note to this effect in **Appendix 1**.

## 8. RULE 15.5.7 (REPLY RULE 15.5.8) – NOISE RULE EXEMPTIONS

- 8.1 The Panel has asked that I consider whether Rule 15.5.7 (reply Rule 15.5.8) should be amended to remove the exemptions for sound associated with airports and windfarms. I agree that it is very unlikely that an airport or windfarm will establish within the LSCZ, and the exemptions do appear to be superfluous.
- 8.2 In the absence of a submission seeking amendments to reply Rule 15.5.8 it is my view that there is no scope to amend the rule. I therefore have not recommended making any changes to this rule but added a note to this effect in **Appendix 1**.

18 Ms Swinney's evidence at paragraph 5.32.

**9. RULE 15.5.8 a) (REPLY RULE 15.5.9 a)) – NIGHT SKY**

**9.1** The Panel has asked that I reconsider my position on Rule 15.5.8(a) (reply Rule 15.5.9(a)) having regard to submissions received that specifically consider the effects of lighting on the night sky. I have subsequently considered the submissions of Grant Bisset (**Bisset**) (568) and Ros and Dennis Hughes (**Hughes**) (340).

**9.2** The Bisset submission<sup>19</sup> seeks that the effects of light pollution are appropriately controlled in order to limit the effects on the night sky.

**9.3** The Hughes submission relates specifically to Chapter 3 (Strategic Directions) and Chapter 6 (Landscapes). However, the submission<sup>20</sup> generally highlights the importance of the night sky as a natural feature and seeks that it is a consideration in the design of lighting infrastructure.

**9.4** The matter of scope is addressed in the Council's Reply legal submissions. Relying on those submissions, there is not scope to delete the phrase but there is scope to make the zone provisions (ie, the phrase) more measurable and specific, as "a greater level of direction" is sought in submission 568.

**9.5** In any event, I understand that the phrase "*and so as to limit the effects on the night sky*" is *ultra vires* for uncertainty, as also discussed in the Council's Reply Legal Submissions. I therefore consider that the phrase "*and so as to limit the effects on the night sky*" should be deleted in Rule 15.5.8(a), as shown in **Appendix 1** to this report.

**10. RULE 15.4.1 – DEFAULT PERMITTED ACTIVITY RULE**

**10.1** The Panel has asked that consideration be given to whether Rule 15.4.1 is necessary. This rule provides the 'default' permitted activity status for activities which comply with all standards and are not otherwise listed in the activity table.

<sup>19</sup> Submission 568, paragraphs 4.14 and 4.15.

<sup>20</sup> Submission 340, paragraph 4, bullet 2.

**10.2** This matter is discussed in the Right of Reply provided by Ms Vicki Jones for the Queenstown<sup>21</sup> Town Centre Chapter. I concur with Ms Jones' view and the reasons outlined in her Reply.

**10.3** I therefore have not recommended any changes to this rule.

## **11. NON-SUBSTANTIVE CHANGES FOR CONSISTENCY**

**11.1** The Panel has pointed to a number of minor drafting inconsistencies between the PDP chapters heard in Business Zones Hearing Stream 08. I have consulted with Ms Vicki Jones and Ms Rebecca Holden (who are the other authors of the s42A Reports for this hearing) and I recommend minor changes to the following provisions to increase consistency between the chapters:<sup>22</sup>

- (a) Rule 15.4.2: remove the words "*in respect of*" and replace with "*Control is reserved to the following*";
- (b) Rules 15.4.3.1, 15.4.3.2, 15.4.4, 15.4.5, 15.5.1, 15.5.2 and 15.5.3: amend so that the text in each rule consistently says: "*Discretion is restricted to consideration of the following...*";
- (c) redraft Rule 15.4.12: amend to make layout consistent across the Business zone chapters by separating redraft Rule 15.4.12 into three rules (shown in **Appendix 1** as reply Rule 15.4.12, reply Rule 15.4.13 and reply Rule 15.4.14); and
- (d) Rule 15.5.7 (redraft Rule 15.5.8): to clarify which parts of the rule are exemptions and which are explanatory notes, and to adjust the numbering within the rule.

**11.2** These changes are detailed in **Appendix 1**.

## **12. SCREENING OF OUTDOOR STORAGE**

**12.1** During the reading of my Summary of Evidence to the Panel on 29 November 2016 I highlighted one additional matter that was not

<sup>21</sup> Ms Jones' Right of Reply for the Queenstown Town Centre Chapter at paragraph 3.1 to 3.4.

<sup>22</sup> These changes increase consistency between the following PDP chapters: 12 Queenstown Town Centre Zone, 13 Wanaka Town Centre Zone, 14 Arrowtown Town Centre Zone, 15 Local Shopping Centre Zone, 16 Business Mixed Use Zone and 17 Airport Mixed Use Zone.

addressed in my s42A Report or my written Summary, namely the absence of a rule requiring the screening of outdoor storage areas in the LSCZ. I highlighted to the Panel that this was an error and I noted the following relevant notified provisions:

- (a) Policy 15.2.2.6, which seeks to ensure that "*outdoor storage areas are appropriately located and screened to limit any adverse visual effects and to be consistent with established amenity values*"; and
- (b) Rule 15.5.1, which lists as a matter of discretion "*the ability to meet outdoor storage requirements*".

**12.2** Therefore, in my view there was a clear intent to include outdoor storage requirements, however the notified LSCZ did not contain a corresponding rule.

**12.3** As no submissions were received in respect of outdoor storage requirements, in my view there is no scope to introduce a rule. Therefore I consider it would be appropriate, in the future, to introduce a rule either through a variation to the PDP or through a future plan change.

### **13. CONCLUSION**

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



**Amy Bowbyes**  
**Senior Policy Planner**  
**13 December 2016**