

## **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

# **Legal Submissions on behalf of **Bush Creek Property Holdings Limited, Bush Creek Property Holdings No. 2 Limited and Bush Creek Investments Limited****

Dated: 7 August 2020

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## INTRODUCTION

1. These legal submissions are presented on behalf of Bush Creek Property Holdings Limited, Bush Creek Property Holdings No. 2 Limited (collectively submitter #3353) and Bush Creek Investments Limited (submitter #3354), together referred to as the **Bush Creek Entities**.
2. The Bush Creek Entities lodged submissions on the Queenstown Lakes Proposed District Plan (**PDP**) – Stage 3 on 18 November 2019 (**Submissions**).
3. The Bush Creek Entities own the following properties in Arrowtown:
  - (a) 7 Bush Creek Road (Lot 1 DP27675) – Bush Creek Property Holdings Limited;
  - (b) 9a Bush Creek Road (Lot 1 DP17215) – Bush Creek Property Holdings No.2 Limited; and
  - (c) 11 Bush Creek Road (Lots 1 and 2 DP18134) – Bush Creek Investments Limited.
4. I refer to the above properties collectively as the **Sites** for the remainder of these submissions.
5. The properties at (a) and (b) above are depicted by the white outline in the following image:



Figure 1: Extracted from submission 3353.

6. The property at (c) above is depicted by the white outline in the following image:



Figure 2: Extracted from submission 3354.

7. The Sites have been notified as General Industrial Zone (**GIZ**).
8. From our ground-truthing exercise undertaken on 6 August 2020 the activities undertaken in the Bush Creek neighbourhood notified GIZ are a combination of service<sup>1</sup>, commercial and residential with some office and retail. They are certainly not industrial and they immediately adjoin residential activities on three boundaries.

## SUMMARY OF RELIEF SOUGHT

9. The Bush Creek Entities oppose the GIZ zoning of the Sites and instead seek the rezoning of the Sites to Business Mixed Use Zone (**BMU**). In the alternative, the Bush Creek Entities seek the rezoning of the Sites to an amended BMU or GIZ specific to the Bush Creek neighbourhood that provides for greater mixed use commercial and residential activities.
10. We submit that the Sites and the surrounding 'Bush Creek neighbourhood' are not suitable for the GIZ because the area is too small for GIZ and is poorly located in terms of surrounding residential development and access. Rather, we submit that the BMU is the more appropriate zoning in terms of existing use, future demand and management of adverse effects. We submit that the BMU will not result in a material loss of industrial land in the District because the existing activities are protected through the relief sought and remaining sites not well suited to traditional industrial activities.

<sup>1</sup> Service Activity: Means the use of land and buildings for the primary purpose of the transport, storage, maintenance or repair of goods.

11. Ms Mahon's evidence supports the application of the BMU over the full extent of the Bush Creek neighbourhood. It is submitted that there is scope for this relief on the basis of the alternative relief detailed in the Submissions, and the submissions by Schist Holdings Limited (#3111) and Michael Thomas (#3003).
12. The Council has outlined the legal tests for scope in its opening legal submissions.<sup>2</sup> We adopt those submissions, particularly with regard to whether certain relief is within the scope of a submission.<sup>3</sup>
13. It is submitted that BMU zoning over the Bush Creek neighbourhood is within the ambit of what is fairly and reasonably raised in the submissions<sup>4</sup> and it is also a foreseeable consequence of the relief sought in the submissions.<sup>5</sup>
14. For clarity, reference to the 'Bush Creek neighbourhood' refers to the area notified as GIZ and demonstrated by the following PDP Map – Stage 3:

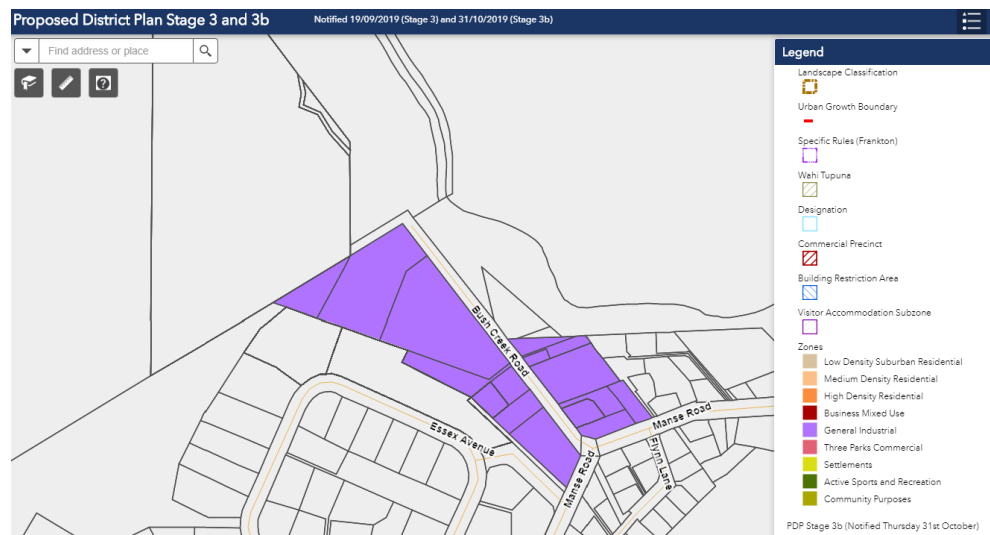


Figure 3: Stage 3 GIZ zoning over the 'Bush Creek neighbourhood'.

## PROPOSED BMU PROVISIONS

15. As primary relief, the Bush Creek Entities are seeking a rezoning to BMU to reflect and continue to enable the current environment at Bush Creek and prevent reverse sensitivity effects.
16. Ms Mahon has provided an options analysis and considers the BMU zoning is the most appropriate.
17. In light of the Council's clear intention for the Bush Creek neighbourhood to enable industrial activities, the Bush Creek Entities are now proposing the following

<sup>2</sup> Opening Legal Submissions for Queenstown Lakes District Council dated 29 June 2020 (**Council Legal Submissions**), at [4.2] – [4.4].

<sup>3</sup> Council Legal Submissions, at [4.4].

<sup>4</sup> *Countdown Properties (Northlands) Limited v Dunedin City Council* [1994] NZRMA 145, at 166.

<sup>5</sup> *Westfield (NZ) Limited v Hamilton City Council* [2004] NZRMA 556, at 574-575.

amendments to the BMU to enable the expansion of existing 'industrial' activities in the Bush Creek neighbourhood.

18. Following the filing of her evidence, Ms Mahon has prepared a tracked change version outlining the modified BMU relief she supports. The tracked changed version is **attached** at **Annexure A**. The amendments seek to enable the expansion or alteration of existing 'industrial' activities in the Bush Creek neighbourhood whilst addressing concerns raised by Mr Place regarding built form.<sup>6</sup> By way of summary the amendments, which apply to the Bush Creek neighbourhood only:

- (a) provide for the following activities on a restricted discretionary basis:
  - (i) warehousing, storage and lock-up facilities (including vehicle storage) and trade suppliers;
  - (ii) expansion of existing 'industrial' activity at Bush Creek;
  - (iii) visitor accommodation; and
  - (iv) panelbeating, spray painting, motor vehicle repair or dismantling;
- (b) reduce the permitted height to 7m and provide for height of between 7 and 10m on a restricted discretionary basis with anything over 10m being non-complying;
- (c) impose continuous building length standards with a non-compliance status of non-complying;

19. These provisions, as they relate to the Bush Creek neighbourhood, would enable a greater mix of symbiotic activities and bring the BMU more inline with the National Planning Standards intention for mixed use zones. A mixed use zone is described in the national planning standards as:<sup>7</sup>

*Areas used predominantly for a compatible mixture of residential, commercial, light industrial, recreational and/or community activities.*

20. The Environment Court in *Bunnings Limited v Queenstown Lakes District Council*<sup>8</sup> (**Bunnings**) has also noted the suitability of a mixed use zone for light industrial activity. Judge Jackson found that the '*synergistic potential for light-industrial activities to establish in mixed use zones should not be underestimated*'.<sup>9</sup>

<sup>6</sup> Rebuttal evidence of Luke Thomas Place on behalf of Queenstown Lakes District Council, Planning: Chapter 18A General Industrial Zone – Text and Mapping dated 12 June 2020 (**Council Planning Rebuttal**), at [11.16].

<sup>7</sup> National Planning Standards, Table 13: Zone names and descriptions – mixed use zone.

<sup>8</sup> *Bunnings Limited v Queenstown Lakes District Council* [2019] NZEnvC 59 (**Bunnings**).

<sup>9</sup> *Bunnings*, at [83].

21. The National Planning Standards distinguish between levels of industrial activity. We submit that the enablement (on a restricted discretionary basis) of only existing 'industrial' activities in the BMU reflects national direction because the existing activities, where they are 'industrial', are 'light industrial'. The fact that the existing 'industrial' activities are in fact light industrial activities is acknowledged by Mr Place, the Section 42A author, in his rebuttal.<sup>10</sup>
22. The PDP does not distinguish between levels of industrial activity however, despite the fact that the ODP did<sup>11</sup> and the National Planning Standards do. The grouping together of the different industrial activities is too blunt of a tool and in our submission results in zoning controls not being able to enable targeted activities that generate similar effects. This is evident in the notified GIZ zoning for the Bush Creek neighbourhood, where heavy industrial activity is a permitted activity – despite neighbouring residential uses.
23. The Bush Creek Entities therefore seek to retain the non-complying activity status for Industrial Activities not otherwise provided for in the BMU at rule 16.4.9. We submit that this activity status is most appropriate to determine whether the level of industrial activity and the associated adverse effects are appropriate in the environment. In our submission some light industrial activity may be appropriate in the BMU, but the non-complying activity status should be maintained to discourage heavy industrial activity – if there is in fact any demand for it (which the Bush Creek Entities contest).
24. In our submission, enabling the existing 'light industrial' activities in the BMU at Bush Creek enables the current environment of Bush Creek as well as future demand, and more appropriately manages adverse effects on the adjacent properties in a reverse sensitivity and residential amenity context.

## COUNCIL POSITION

25. The Council supports the notified GIZ zoning of the Sites (and the Bush Creek neighbourhood more generally). The Council does not support a rezoning of the Sites (or Bush Creek generally) to BMU or any other zoning.
26. The Council's reasoning generally relates to its view that the existing environment is industrial in nature, and its intention to retain industrial land across the District. We submit that the broad grouping of different levels of industrial activity in the

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<sup>10</sup> Council Planning Rebuttal, at [11.2].

<sup>11</sup> *Light Industrial Activity: 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.*

PDP results in the Council's interpretive assessment of the existing environment as it does not provide a precise effects based classification of the level of industrial activity in the area.

27. Given the PDP's policy and rule approach to non-industrial activities, in our submission a GIZ zoning would result in activities appropriate for the Bush Creek neighbourhood (such as commercial activities) being unconsentable.

## LEGAL TESTS

28. We have read the opening legal submissions by the Council, in particular the summary of the statutory functions of Councils and the legal tests relating to plan preparation at Appendix 1.
29. We agree with the Council's summary and do not propose to repeat the statutory functions and legal tests.

## NATIONAL POLICY STATEMENT ON URBAN DEVELOPMENT

30. We have reviewed that Council's memorandum of counsel (**Memorandum**)<sup>12</sup> relating to the National Policy Statement on Urban Development 2020 (**NPS-UD**) and largely agree with the contents of the Memorandum. Of relevance, we agree that the District has two 'urban environments' – being Queenstown and Wanaka.
31. In our submission, Arrowtown forms part of Queenstown's 'urban environment' as it functions with Queenstown and shares a housing and labour market. In this regard, we refer to the definition of 'urban environment' which indicates that an urban environment is not restricted to local authority or statistical boundaries.<sup>13</sup>
32. The Council has advised in its Memorandum that it is meeting the requirements under the National Policy Statement on Urban Development Capacity 2016 (**NPS-UDC**), and expects to meet its obligations under the NPS-UD, which builds on the NPS-UDC. We do not disagree with the Council in this regard, but in our submission if the NPS-UD is further implemented by the relief sought by the Bush Creek Entities and that is a more appropriate means of achieving the purpose of the Resource Management Act 1991 (**RMA**) in a section 32 sense.
33. In our submission, the following objectives and policies contained within the NPS-UD would be better implemented by rezoning the Bush Creek neighbourhood to BMU:

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<sup>12</sup> Dated 31 July 2020.

<sup>13</sup> National Policy Statement on Urban Development 2020 (**NPS-UD**), definition of urban environment.

**Objective 1:** *New Zealand has well-functioning urban environments that enable all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future.*

**Objective 3:** *Regional policy statements and district plans enable more people to live in, and more businesses and community services to be located in, areas of an urban environment in which one or more of the following apply:*

- (a) *the area is in or near a centre zone or other area with many employment opportunities*
- (b) *the area is well-serviced by existing or planned public transport*
- (c) *there is high demand for housing or for business land in the area, relative to other areas within the urban environment.*

Note: A 'centre zone' includes; a city, metropolitan, town, local or neighbourhood centre zone. The centre zones are commercial and mixed use zones in the National Planning Standards that are described as providing different levels of commercial, community, recreational and residential activity.

**Objective 6:** *Local authority decisions on urban development that affect urban environments are:*

- (a) *integrated with infrastructure planning and funding decisions; and*
- (b) *strategic over the medium terms and long term; and*
- (c) *responsive, particularly in relation to proposal that would supply significant development capacity.*

**Policy 1:** *Planning decisions contribute to well-functioning urban environments, which are urban environments that, as a minimum:*

...

- (b) *have or enable a variety of sites that are suitable for different business sectors in terms of location and site size; and*
- (c) *have good accessibility for all people between housing, jobs, community services, natural spaces, and open spaces, including by way of public or active transport; and*
- (d) *support, and limit as much as possible adverse impacts on, the competitive operation of land and development markets; and*

...

**Policy 2:** *Tier 1, 2, and 3 local authorities, at all times, provide at least sufficient development capacity to meet expected demand for housing and for business land over the short term, medium term, and long term.*

Note: "at least" is an addition from NPS-UDC.



**Policy 6:** *When making planning decisions that affect urban environments, decision-makers have particular regard to the following matters:*

...

- (c) *the benefits of urban development that are consistent with well-functioning urban environments (as described in Policy 1)*
- (d) *any relevant contribution that will be made to meeting the requirements of this National Policy Statement to provide or realise development capacity*

...

### **3.3 Sufficient development capacity for business land**

(1) *Every tier 1, 2, and 3 local authority must provide at least sufficient development capacity in its region or district to meet the expected demand for business land:*

- (a) *from different business sectors; and*
- (b) *in the short term, medium term, and long term.*

(2) *In order to be **sufficient** to meet expected demand for business land, the development capacity must be:*

- (a) *plan-enabled (see clause 3.4(1)); and*
- (b) *infrastructure-ready (see clause 3.4(3)); and*
- (c) *suitable (as described in clause 3.29(2)) to meet the demands of different business sectors (as described in 3.28(3)); and*
- (d) *for tier 1 and 2 local authorities only, meet the expected demand plus the appropriate competitiveness margin (see clause 3.22).*

### **3.29 Business land development capacity assessment**

...

(2) *A local authority may define what it means for development capacity to be “suitable” in any way it chooses, but suitability must, at minimum, include suitability in terms of location and size.*

34. With regard to sufficient development capacity specifically, we note that Policy 2 has been amended from the NPS-UDC under the NPS-UD to include the words “at least”. In our submission, this addition reflects the intention that where there is an option to exceed minimum requirements this can and should be implemented.
35. Finally, clause 3.39(2) confirms that what constitutes sufficient must consider suitability in terms of location and size. As our submissions will detail below, the location and size of the Bush Creek neighbourhood make it more appropriate to be zoned BMU rather than GIZ.

## BUSH CREEK ENVIRONMENT

36. In this section we address the environment at Bush Creek, before going on to explain why, in a section 32 sense, this environment is more appropriately zoned BMU with provision for the expansion of existing 'industrial' activity.
37. Ms Mahon and Mr Place are agreed that the environment of Bush Creek is a mix of service activities with light industrial activities and some commercial activity. They disagree as to the general character this creates; Ms Mahon considers this creates a mixed character with the predominant use being service, whilst Mr Place considers the overall character to be industrial encompassing service.
38. Specifically, Ms Mahon assesses the activities within the Bush Creek receiving environment as an area predominantly used for service activities, office activities and light industrial activities with ancillary office and commercial activities.<sup>14</sup>
39. The interpretation of Bush Creek's receiving environment is debated on the basis of definitions in the Operative District Plan (**ODP**) compared to the PDP. The ODP contains a definition for light industrial activity, but the PDP does not. Rather, the PDP classifies all levels of industrial activity into one definition.
40. On that basis Mr Place considers the character to be 'industrial' under the PDP. In our submissions that is an interpretive analysis, as opposed to an effects assessment of what is on the ground.
41. In our submission, Ms Mahon's more detailed analysis of the environment of the Bush Creek neighbourhood is more helpful to the section 32 process, and is also more consistent with the national direction (under the National Planning Standards) distinguishing between light, heavy and medium industrial activities.
42. We submit that the size of the Bush Creek neighbourhood is particularly relevant to its zoning. The Bush Creek neighbourhood that has been notified as GIZ is 4.27ha. In the instance that this land was bare land, Ms Hampson (Economist for the Council) would not recommend the zoning as GIZ on the basis that it would be better to create a larger zone elsewhere.<sup>15</sup> We would add that the access, in terms of distances from an arterial road and the traffic effects on residential amenity, and reverse sensitivity effects on adjacent residential neighbours add to the unsuitability of a GIZ zoning.
43. However, the size and location of the Bush Creek neighbourhood means that it could be utilised as a BMU and any commercial activity will not detract from the town centres in accordance with strategic direction in the PDP.

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<sup>14</sup> Brief of Evidence of Hayley Jane Mahon dated 29 May 2020 (**Mahon Evidence**), at [38].

<sup>15</sup> 01.07.2020 – Recording 4 PDP Stage 3, at 7:00.

44. Importantly, the Bush Creek neighbourhood is also surrounded by residential development on the one hand and an ONL on the other. We submit that this receiving environment is particularly important to determining the level of industrial activity that will be suitable in the Bush Creek neighbourhood in the future, particularly in a reverse sensitivity context.

## SECTION 32 ANALYSIS

45. In our submission, the zoning of the Bush Creek neighbourhood as GIZ is not the most appropriate means of achieving the purposes of the Resource Management Act 1991 (**RMA**). The GIZ has a number of problematic implications, including;
- (a) the activities on the ground in the Bush Creek neighbourhood are a mix of service, light industrial, commercial, office, retail and residential, which is not reflected by Council classifying 'light industrial' and service activities into an industrial classification;
  - (b) given that, GIZ zoning won't give effect to Strategic Objective 3.3.8 (confirmed by the Environment Court), which seeks to avoid non-industrial activity in industrial zones;
  - (c) the unsuitability of the Bush Creek neighbourhood for GIZ zoning in a location and size sense;
  - (d) the unsuitability of the Bush Creek neighbourhood for GIZ in terms of access through a residential area rather than along an arterial road;
  - (e) the implications of strategic policy 3.3.8 and the consequent prohibited activity status on an environment with existing commercial, office, retail and residential uses and their ability to continue and expand;
  - (f) the inappropriate sterilisation of the land, directly in conflict for the strategic direction to diversify the District's economic base;
  - (g) the lack of demand for heavy industrial activity in the Bush Creek neighbourhood;
  - (h) the reverse sensitivity effects on adjacent residential properties and their effect on demand for heavy industrial activities in the area;
  - (i) the sterilising of much of the Sites due to the proposed setbacks required to address reverse sensitivity issues caused by the GIZ zoning.
46. On the other hand, the BMU is an appropriate means of achieving the purpose of the RMA. Ms Mahon has provided detailed evidence as to why the BMU is

appropriate in the Bush Creek neighbourhood, and these submissions build on Ms Mahon's evidence in the context of a BMU that provides for the expansion of existing 'industrial' activity.

47. Specifically, a BMU with provision for the expansion of existing 'industrial' activity is the most appropriate means of achieving the purposes of the RMA because;

(a) The BMU enables the social, economic and cultural well-being of Arrowtown and the District, in accordance with Part 2 of the RMA, by:

(i) Removing the pressure on Queenstown and Wanaka (urban environments) to provide for housing and business land as required under the National Policy Statement for Urban Development (**NPS UD**).

(ii) Servicing the local vicinity, whilst not undermining or detracting from the town centres or Frankton in accordance with strategic direction. Specifically;

(A) Strategic Objective 3.2.1.2: *The Queenstown and Wanaka town centres are the hubs of New Zealand's premier alpine visitor resorts and the District's economy.*

(B) Strategic Objective 3.2.1.3: *The Frankton urban area (including Remarkables Park mixed use centre) functions primarily as a major commercial and industrial service centre, and provides community facilities, for the people of the Wakatipu Basin.*

(C) Strategic Objective 3.2.1.5: *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.*

(D) Strategic Policy 3.3.3: *Avoid new commercial zoning of land that is likely to undermine the role of the Queenstown and Wanaka town centres as the primary focus for the District's economic activity.*

(E) Strategic Policy 3.3.9: *Support the role of township commercial precincts and local shopping centres fulfil in serving local needs by enabling commercial development that is appropriately sized for that purpose.*

(iii) Diversifying the District's economic base in accordance with:

- (A) Strategic Objective 3.2.1.6: Diversification of the District's economic base and creation of employment opportunities through the development of innovative and sustainable enterprises; and
  - (B) Strategic Policy 3.3.11: *Provide a wide variety of activities and sufficient capacity within commercially zoned land to accommodate business growth and diversification.*
- (iv) avoiding adverse reverse sensitivity effects.
- (b) The National Planning Standards envisage light industrial activity in mixed use zones, so in our submission amendment to the BMU to include expansion of existing 'industrial' activities is appropriate.
  - (c) It accommodates existing use of the Bush Creek neighbourhood and does not unduly prejudice the expansion of existing activity.
  - (d) It takes a realistic and factual assessment of the current environment, and the future environment in terms of market demand and realistic use.

### **Strategic Policy 3.3.8 and Prohibited Activities in the GIZ**

48. Under the GIZ various activities are prohibited, of particular relevance:
- (a) Office, Retail and Commercial activities which are not ancillary to any Industrial or Service activities; and
  - (b) Residential Activities, Residential Units and Residential Flats.
49. The Council relies on a 'hierarchy of documents ahead of the district plan' to justify the prohibited activity status of these activities.<sup>16</sup> The Council also relies heavily on Strategic Policy 3.3.8 to support the prohibited activity status, which reads: *Avoid non-industrial activities not ancillary to industrial activities occurring within areas zoned for industrial activities.*
50. Ms Mahon has addressed a number of the issues that arise from the prohibited activity status and the Council's interpretation of the 'hierarchy of documents', particularly the interpretation of Policy 5.3.3 of the Otago Regional Council's Regional Policy Statement. We consider there are significant issues relating to the prohibited activity status, including:

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<sup>16</sup> Council Opening Submissions, at [7.14].

- (a) The fact that the *Coromandel Watchdog*<sup>17</sup> does not consider an environment where there is existing built form.
- (b) The failure to consider alternative land for industrial use (including Cromwell), thereby forcing industrial activity into unsuitable environments.
- (c) The failure to provide for ongoing activities and/or their expansion.
- (d) Complications with existing rights, particularly if there is a break in activity or change in scale.
- (e) The unsuitability of current infrastructure to be converted into heavier industrial.
- (f) The flaws with the reverse sensitivity reasoning: by prohibiting non-industrial activity to avoid reverse sensitivity, the existing type of activity is prohibited thereby forcing new industrial activity that will have reverse sensitivity effects on the remaining existing activities.
- (g) The fact a prohibited activity status is contrary to other strategic direction, including the diversification of the District's economic base.

51. We do not submit on the appropriateness of the prohibited activity status in the GIZ generally, rather we submit that the prohibited activity status (and the associated issues detailed above) reinforce that the GIZ is not an appropriate zoning for the Bush Creek neighbourhood.

52. Assuming that there would be any demand for a conversion to heavier industrial activity at Bush Creek (which, as detailed below, our clients contest), the conversion to a heavier industrial zone would result in significant reverse sensitivity effects not only on the existing use in the Bush Creek neighbourhood, but on the adjacent residential activity. Rather than zoning Bush Creek neighbourhood a zone that attempts to prohibit some of the existing use (and the adjacent residential use), it is more appropriate to zone the Bush Creek neighbourhood a zone enabling of that existing use and other compatible uses.

### **Economic Effects and Demand**

53. Ms Mahon has outlined the environment of the Bush Creek neighbourhood, and the fact that the environment has developed out of an industrial zone, but shows no sign of heavy industrial activity.<sup>18</sup>

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<sup>17</sup> *Coromandel Watchdog of Hauraki Inc v Chief Executive of the Ministry of Economic Development* [2007] NZCA 473.

<sup>18</sup> Mahon Evidence, at [36] – [39].

54. In our submission, a GIZ zoning in the Bush Creek neighbourhood is unnecessary in an area where there is no demand for the level of industrial activity provided by that zone. Whilst the GIZ does provide for 'light industry' it is not distinguished from heavy industrial activity. In our submission a BMU zone with a restricted discretionary provision for the expansion of existing 'industrial' activity is better able to achieve the balance of activities currently present in the area and most appropriate for future development.
55. As described by Ms Hampton in her evidence at the hearing, larger sites are better suited to industrial activity.<sup>19</sup> In our submission, there are more appropriate sites for traditional or heavy industrial activity than the Bush Creek neighbourhood, such as Frankton and Cromwell. We have already submitted that these areas service the Queenstown and Arrowtown urban environment, regardless of the local authority boundaries.
56. Further, Judge Jackson's decision in the *Bunnings* case supports the relevance of Cromwell when considering the availability of industrial land in the area.<sup>20</sup> We agree with Ms Mahon's interpretation of the *Bunnings* case – that the use of industrial land for non-industrial purposes is an efficient use where there is sufficient other industrial land available.
57. In our submission, Judge Jackson took a similar approach to that required under the NPS-UD by not restricting the industrial market to ward boundaries. Judge Jackson agreed with Mr Tansley and Mr Heath, for Bunnings, that: '*there is no relationship between market efficiency and ward boundaries, hence industrial land outside of the Wakatipu ward is relevant to this assessment*' and '*for the Queenstown District the urban environments of Wanaka, Wakatipu and of Cromwell, all form part of the wider urban environment under the NPS-UDC.*<sup>21</sup>
58. In our submission, the same analysis applies to the NPS-UD. The NPS-UD specifically defines an urban environment as not being restricted to local authority of statistical boundaries. The Council acknowledges that Queenstown and Wanaka are to operate as two non-contiguous urban areas, and in our submission Cromwell forms part of those areas.
59. We submit that there is sufficient land in Queenstown Lakes and the Central Otago districts to meet the needs for industrial activities, and those areas will be in greater demand (regardless of local authority boundaries) as they are better suited to industrial activity than the Bush Creek neighbourhood.

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<sup>19</sup> 01.07.2020 – Recording 4 PDP Stage 3, at 7:00.

<sup>20</sup> Mahon Evidence, at [54] – [58].

<sup>21</sup> *Bunnings*, at [129].

60. In addition Arrowtown will benefit from a BMU zone in the Bush Creek neighbourhood in terms of accessibility to a diverse range of activities and employment opportunities. This applies Strategic Objective 3.2.1.6 and Policy 3.3.11, but also the strategic directions detailed at 47(a)(ii) by creating greater diversity of economic activities in Arrowtown without detracting from the town centres across this District.
61. An example where such a mix of activities is working well and creating a positive urban space is the Frankton Marina area. The Frankton Marina area was rezoned from Low Density Residential to BMU through the PDP review process.

### **Reverse Sensitivity Effects**

62. Related to demand, a potential purchaser is unlikely to buy property in the Bush Creek neighbourhood to establish heavy industrial activity where it is going to create reverse sensitivity effects.
63. The area is surrounded by existing residential activity. It is submitted that provision of an enabling industrial zone adjacent to residential development is highly likely to result in reverse sensitivity effects.
64. It was acknowledged by Mr Place that this would result in noise constraints on the GIZ at Bush Creek.<sup>22</sup> In our submission there are also other reverse sensitivity effects that may require constraint, including potentially odour, dust or smoke.
65. The Council is proposing setbacks of 7m to address reverse sensitivity concerns,<sup>23</sup> which are large in the context of an urban environment – particularly a proposed GIZ of only 4.27ha. These setbacks demonstrate the unsuitability of the zoning in the context of the adjoining activities and also make the land less desirable for would-be purchasers.
66. Whilst the Council has noted that the BMU zone is more permissive in terms of building height and density,<sup>24</sup> the more permissive rules in relation to these aspects will be measure against design quality. In our submission, any adverse effect stemming from building form would be less offensive than the adverse effects associated with heavy industry. In any case, the proposed amendments to the building height standards, and the proposed continuous building length standard, limit any adverse effects stemming from built form.

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<sup>22</sup> 01.07.2020 – Recording 4 PDP Stage 3, at [recording corrupted].

<sup>23</sup> PDP Chapter 18A General Industrial Zone, standard 18A.5.3.

<sup>24</sup> Council Planning Rebuttal, at [11.16].



## COUNCIL REBUTTAL

67. The majority of the points raised by Mr Place in his rebuttal related to the environment in the Bush Creek neighbourhood and his interpretation of what constitutes an industrial activity.<sup>25</sup> We have submitted that in our view Ms Mahon's interpretation of the environment better represents what is happening on the ground.
68. Finally, it is worth noting that Mr Place does not provide any rebuttal to Ms Mahon's evidence of reverse sensitivity effects, except to opine that the BMU would have worse visual effects due to the greater height and density allowance.<sup>26</sup> As we have already submitted, the greater height and density are allowed for on the basis of greater design quality, and provisions are proposed to address these concerns (including a permitted height of 7m). Further, the primary reverse sensitivity concern is not in relating to effects stemming from building design but rather external industrial activity and any associated noise, odour or other discharges such as dust or smoke.

## CONCLUSION

69. In our submission, the notified GIZ zoning over the Bush Creek neighbourhood is not the most appropriate means of meeting the purpose of the RMA and cannot be on the basis realistic and factually based assessment of the current or future environment for the area.
70. The Bush Creek neighbourhood is currently mixed use; the predominant use being service with some light industrial, commercial and residential activities. The future outlook for the Bush creek is similar, given that it is not suited to heavy industrial activity because of its size, location and proximity to residential development and an ONL.
71. The Bush Creek Entities recognise that provision for continuation of light industrial activity may be beneficial, and therefore seek the BMU zoning with bespoke provisions addressing light industrial activity. Further industrial activity is unnecessary.
72. The BMU, and the proposed amendments, will enable activities that are well suited to the environment rather than prohibiting them.

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<sup>25</sup> Council Planning Rebuttal, at [11.1] – [11.6].

<sup>26</sup> Council Planning Rebuttal, at [11.16].

73. Finally, we submit that the BMU will better give effect to the NPS which in our submission is the more appropriate means of achieving the purpose of the RMA.



Joshua Leckie

Counsel for Bush Creek Property Holdings Limited, Bush Creek Property Holdings No. 2 Limited and Bush Creek Investments Limited

**16 Business Mixed Use**

Please note: Variations to parts of this chapter have been decided by Council on 7 March 2019 as part of Stage 2 of the PDP. You can view the Stage 2 Decisions, appeals and section 274 notices on our website. The appeal and section 274 periods for the Stage 1 and 2 Decisions have closed.

*This table identifies new provisions sought to be added:*

Appellant Court Number	Provision/s Sought to be Added into Chapter 16
FII Holdings Limited ENV-2018-CHC-084	Provide for the Frankton North Structure Plan and associated provisions, as necessary, including: <u>16..x.xx Structure Plan</u> <ul style="list-style-type: none"> <li>• <u>Internal road access shall be provided in accordance with the Structure Plan in Rule 16.7 as follows:</u></li> <li>• <u>Road access into the zone from State Highway 6 shall be via the fourth (northern) leg of the Hawthorn Drive/State Highway 6 roundabout (Designation #370), unless otherwise approved by the NZ Transport Agency;</u></li> <li>• <u>Subject to compliance with a. above, Required Primary Road Access shall be provided as shown on the Structure Plan except that the exact location of such roading may vary by up to 50 metres.</u></li> </ul>
FII Holdings Limited ENV-2018-CHC-084	Amend Chapter 16 to provide a site specific suite of objectives, policies, and rules relevant to the Frankton North land, including but not limited to matters currently contained in Chapter 16.
Universal Developments Limited ENV-2018-CHC-101	Amend Chapter 16 to provide site specific suite of objectives, policies, and rules relevant to the Frankton North land, including but not limited to matters currently contained in Chapter 16. Provide for the Frankton North Structure Plan (included in the submission) and associated provisions as necessary, including:  <u>16..x.xx Structure Plan</u> <ul style="list-style-type: none"> <li>• <u>Internal road access shall be provided in accordance with the Structure Plan in Rule 16.7 as follows:</u></li> <li>• <u>Road access into the zone from State Highway 6 shall be via the fourth (northern) leg of the Hawthorn Drive/State Highway 6 roundabout (Designation #370), unless otherwise approved by the NZ Transport Agency;</u></li> </ul> <u>Subject to compliance with a. above, Required Primary Road Access shall be provided as shown on the Structure Plan except that the exact location of such roading may vary by up to 50 metres.</u>
Airbnb Australia Pty Ltd ENV-2019-CHC-061	Amend the following permitted activity standards in the Lower Density Suburban Residential (7.5.19), Medium Density Residential (8.5.18), High Density Residential (9.5.15), Arrowtown Residential Historic Management (10.5.10), Large Lot Residential (11.5.14), Business Mixed Use (16.5.13) and zones as follows: Add a new standard: <u>Must comply with the noise limits for the relevant zone in Rules 36.5.1 to 36.5.4 in Chapter 36 Noise.</u> <u>Delete the following two standards:</u> <ul style="list-style-type: none"> <li>• <u>Must comply with minimum parking requirements of standard 29.8.9 in Chapter 29 Transport.</u></li> <li>• <u>Must not generate any vehicle movements by heavy vehicles, coaches or buses to and from the site.</u></li> </ul>

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<p>Airbnb Australia Pty Ltd ENV-2019-CHC-061</p>	<p>1. Delete non-compliance activities status statements or letters in the 'non-compliance status' column in Rules 7.5.19, 8.5.18, 9.5.15, 10.5.10, 11.5.14, 22.5.15, 23.5.13, 41.5.1.13, and replace with 'C' to indicate controlled activity status for non-compliance.</p> <p>2. Delete all matters of discretion listed in the 'non-compliance status' column in Rules 7.5.19, 8.5.18, 9.5.15, 10.5.10, 11.5.14, 22.5.15 and replace with the following; and add the following to the 'non-compliance status' column of Rules 22.5.15, 23.5.13 and 41.5.1.13: <u>Control is reserved to:</u>  <u>a. The potential impact of the number of paying guests on site per night on the amenity values of the neighbourhood;</u>  <u>b. The keeping of records of Homestay use, and availability of records for Council inspection;</u>  <u>and</u>  <u>c. Monitoring requirements, including imposition of an annual monitoring charge.</u></p> <p>3. Amend Rules 21.9.6 and 24.5.22 as follows (in the 'non-compliance status' column): <u>Control is reserved to:</u>  <del>a. The scale of the activity, including the number of guests per night and the number guest nights the activity operates in a 12 month period;</del>  <del>b. The management of noise, rubbish and outdoor activities;</del>  <u>a. The potential impact of the number of paying guests on site per night on the amenity values of the neighbourhood;</u>  <u>and re-number (b) and (c) to (c) and (d).</u></p> <p>4. Amend the 'non-compliance status' columns of rules 16.5.13, 42.5.10 and 43.5.15 as follows: <u>Control is reserved to:</u>  <u>a. The potential impact of the number of paying guests on site per night on the amenity values of the neighbourhood;</u>  <del>a. The location, nature and scale of activities;</del>  <del>b. The location, and provision, and screening of parking and access;</del>  <del>c. The management of noise, rubbish and outdoor activities;</del>  <u>and re-number (d) and (e) to (b) and (c).</u></p>
<p>Airbnb Australia Pty Ltd ENV-2019-CHC-061</p>	<p>Amend the permitted activity standards for RVAs in the High Density Residential (9.5.14), and Business Mixed Use (16.5.12) zones as follows:</p> <ul style="list-style-type: none"> <li>• Must not exceed a cumulative total of <del>120</del> <u>90</u> nights occupation by paying guests on a site per 12 month period.</li> <li>• <del>Must not generate any vehicle movements by heavy vehicles, coaches or buses to and from the site.</del></li> <li>• <u>Must comply with the noise limits for the relevant zone in Rules 36.5.1 to 36.5.4 in Chapter 36 Noise.</u></li> <li>• <del>Where the RVA involves construction of a new residential dwelling, the RVA must comply with the minimum parking requirements for a residential unit and/or residential flat (whichever is used for the residential visitor accommodation activity) in Chapter 29 Transport.</del> ...</li> <li>• <del>Smoke alarms must be provided in accordance with clause 5 of the Residential Tenancies (Smoke Alarms and Insulation) Regulations 2016.</del></li> </ul>
<p>Airbnb Australia Pty Ltd ENV-2019-CHC-061</p>	<p>1. For Rules 7.5.18; 8.5.17; 9.5.14; 10.5.9; 11.5.13:  a. delete all text within the 'non-compliance status' column except for the following two matters (which have different numbering for each rule):  <i>"The keeping of records of RVA use, and availability of records for Council inspection; and Monitoring requirements, including imposition of an annual monitoring charge."</i></p> <p>b. Insert into the 'non-compliance status' column, above the two remaining matters  - 'C' (to indicate controlled activity status).  - the statement "<u>Control is reserved to:</u>"  - the following new matter of control: "<u>The location and provision of parking and access for the construction of new residential dwellings to be used for RVA</u>"</p> <p>2. For Rules 16.5.12; 21.9.5; 24.5.20; 42.5.9; 43.5.14, within the 'non-compliance status' column, make the following changes:  a. delete all matters of control, except the following two (which have different numbering for each rule):</p>

	<p>"The keeping of records of RVA use, and availability of records for Council inspection; and Monitoring requirements, including imposition of an annual monitoring charge."</p> <p>b. add the following new matter of control: "<u>The location and provision of parking and access for the construction of new residential dwellings to be used for RVA</u>"</p> <p>3. For Rules 22.5.14; 23.5.12; 41.5.1.12, within the 'non-compliance status' column, make the following changes:</p> <p>a. delete "D" and replace with "C" (to indicate controlled activity status).</p> <p>b. Add the following text: "<u>Control is reserved to:</u>"</p> <p>c. Add the following matters of control:</p> <p><u>a. The location and provision of parking and access for the construction of new residential dwellings to be used for RVA;</u></p> <p><u>b. The keeping of records of RVA use, and availability of records for Council inspection; and</u></p> <p><u>c. Monitoring requirements, including imposition of an annual monitoring charge.</u></p>
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*Note: the annotations in this chapter reflect the Council's interpretation of the provisions affected by appeals.*

## 16.1 Purpose

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

## 16.2 Objectives and Policies

**16.2.1 Objective – An area comprising a high intensity mix of compatible residential and non-residential activities is enabled.**

### Policies

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

16.2.1.2 Enable a range and mix of compatible business, residential and other complementary activities to achieve an urban environment that is desirable to work and live in.

16.2.1.3 Avoid activities that have noxious, offensive, or undesirable qualities from locating within the business mixed use Zone to ensure that a high quality urban environment is maintained.

16.2.1.4 For sites adjoining Gorge Road in Queenstown, discourage the establishment of high density residential and visitor accommodation activities at ground floor level, except where commercial and/or business activities continue to have primacy at the interface with the street.

16.2.1.5 Provide appropriate noise limits to minimise adverse noise effects received within the business mixed use Zone and by nearby properties.

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- 16.2.1.6 Ensure that residential development and visitor accommodation provide acoustic insulation over and above the minimum requirements of the building Code to limit the potential for reverse sensitivity effects.
- 16.2.1.7 Ensure that the location and direction of lights does not cause significant glare to other properties, roads and public places and promote lighting design that mitigates adverse effects on views of the night sky and provide a safe and well-lit environment for pedestrians.
- 16.2.1.8 Ensure that outdoor storage areas are appropriately located and screened to limit any adverse visual effects on public places and adjoining residential zones.
- 16.2.1.9 Minimise opportunities for criminal activity through incorporating Crime Prevention through Environmental Design (CPTED) principles as appropriate in the design of lot configuration and the street network, carparking areas, public and semi-public spaces, accessways/pedestrian links/lanes, and landscaping.
- 16.2.2 Objective – New development achieves high quality building and urban design outcomes that minimises adverse effects on adjoining residential areas and public spaces.**

### Policies

- 16.2.2.1 Require the design of buildings to contribute positively to the visual quality, vitality, safety and interest of streets and public spaces by providing active and articulated building frontages, and avoid large expanses of blank walls fronting public spaces.
- 16.2.2.2 Require development close to residential zones to provide suitable screening to mitigate adverse visual effects, loss of privacy, and minimise overlooking and shading effects to residential neighbours.
- 16.2.2.3 Require a high standard of amenity, and manage compatibility issues of activities within and between developments through site layout, landscaping and design measures.
- 16.2.2.4 Utilise and, where appropriate, link with public open space nearby where it would mitigate any lack of open space provision on the development site.
- 16.2.2.5 Incorporate design treatments to the form, colour or texture of buildings to add variety, moderate their scale and provide visual interest from a range of distances.
- 16.2.2.6 Where large format retail is proposed, it should be developed in association with a variety of integrated, outward facing uses to provide reasonable activation of building facades.
- 16.2.2.7 Allow buildings between 12m and 20m heights in the Queenstown business mixed use Zone in situations when:
- the outcome is of high quality design;
  - the additional height would not result in shading that would adversely impact on adjoining Residential zoned land and/or public space; and
  - the increase in height would facilitate the provision of residential activity.

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- 16.2.2.8 Apply consideration of the operational and functional requirements of non-residential activities as part of achieving high quality building and urban design outcomes.
- 16.2.2.9 Encourage the layout and design of new buildings and landscaping to integrate with Horne Creek where feasible.
- 16.2.3 Objective – The development of land north of State Highway 6 (between Hansen Road and Ferry Hill Drive) provides a high quality environment which is sensitive to its location at the entrance to Queenstown, minimises traffic impacts to the State Highway network, and is appropriately serviced.**
- 16.2.3.1 Encourage a low impact stormwater design that utilises on-site treatment and storage / dispersal approaches.
- 16.2.3.2 Avoid the impacts of stormwater discharges on the State Highway network.
- 16.2.3.3 Provide a planting buffer along the State Highway frontage to soften the view of buildings from the State Highway network.
- 16.2.3.4 Provide for safe and legible transport connections that avoid any new access to the State Highway, and integrates with the road network and public transport routes on the southern side of State Highway 6.

Note: Attention is drawn to the need to consult with the New Zealand Transport Agency (NZTA) prior to determining an internal and external road network design under this policy.

Note: Attention is drawn to the need to obtain a Section 93 notice from the NZ Transport Agency for all subdivisions on State Highways which are declared Limited Access Roads. The NZ Transport Agency should be consulted and a request made for a notice under Section 93 of the Government Roading Powers Act 1989.

- 16.2.3.5 Require that the design of any road or vehicular access within individual properties is of a form and standard that accounts for long term traffic demands for the area between Hansen Road and Ferry Hill Drive, and does not require the need for subsequent retrofitting or upgrade.
- 16.2.3.6 Provide a safe and legible walking and cycle environment that links to the other internal and external pedestrian and cycle networks and destinations on the southern side of State Highway 6 along the safest, most direct and convenient routes.
- Note: Attention is drawn to the need to consult with the New Zealand Transport Agency (NZTA) to determine compliance with this policy.
- 16.2.3.7 Require the provision of an internal road network that ensures road frontages are not dominated by vehicular access and parking.
- 16.2.3.8 Ensure coordinated, efficient and well-designed development by requiring, prior to, or as part of subdivision and development, construction of the following to appropriate Council standards:

- a. A 'fourth leg' off the Hawthorne Drive/SH6 roundabout;

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- b. All sites created in the area to have legal access to either Hansen Road or the Hawthorne Drive/SH6 roundabout; and
- c. New and safe pedestrian connections between the Hawthorne Drive/SH6 roundabout, Ferry Hill Drive and the southern side of SH6.

16.2.3.9 Encourage the creation of a legal internal road between Hansen Rd and Ferry Hill Drive.

**16.2.4 Objective –The development of land at Frankton Marina (Sugar Lane) provides for a range of activities, while restricting the scale of office and retail activities, to achieve a high quality environment that is compatible with its location adjacent to Frankton Marina, Lake Wakatipu and Frankton Road.**

16.2.4.1 Restrict the scale of office and retail activities so that the function and viability of the Queenstown Town Centre and Frankton commercial area are not undermined.

16.2.4.2 Allow buildings between 12m and 15m heights when the additional height:

- a. Does not result in significant adverse shading effects on adjoining residential zoned land; and
- b. Does not dominate the Frankton Road streetscape.

16.2.4.3 Ensure all new and altered buildings intended for Activities Sensitive to Road Noise are designed to provide protection from sleep disturbance and to otherwise maintain reasonable amenity values for occupants.

## 16.3 Other Provisions and Rules

### 16.3.1 District Wide

Attention is drawn to the following District Wide chapters

1 Introduction	2 Definitions	3 Strategic Direction
4 Urban Development	5 Tangata Whenua	6 Landscapes and Rural Character
25 Earthworks	26 Historic Heritage	27 Subdivision
28 Natural Hazards	29 Transport	30 Energy and utilities
31 Signs	32 Protected Trees	33 Indigenous Vegetation
34 Wilding Exotic Trees	35 Temporary Activities and Relocated buildings	36 Noise
37 Designations	Planning maps	

### 16.3.2 Interpreting and Applying the Rules



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- 16.3.2.1 A permitted activity must comply with all the rules listed in the Activity and Standards tables.
- 16.3.2.2 Where an activity does not comply with a Standard listed in the Standards table, the activity status identified by the 'Non-Compliance Status' column shall apply unless otherwise specified.
- 16.3.2.3 Where an activity breaches more than one Standard, the most restrictive status shall apply to the Activity.
- 16.3.2.4 The status of any Plantation Forestry will be determined by the Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017.
- 16.3.2.5 The following abbreviations are used within this Chapter.

P	Permitted	C	Controlled
RD	Restricted Discretionary	D	Discretionary
NC	Non Complying	PR	Prohibited

## 16.4 Rules - Activities

	Activities located in the Business Mixed Use Zone	Activity status
<b>16.4.1</b>	Activities which are not listed in this table and comply with all standards	P
<b>16.4.2</b>	Residential Visitor Accommodation and Homestays	P
<b>16.4.3</b>	<p>Visitor Accommodation</p> <p>Control is reserved to:</p> <ul style="list-style-type: none"> <li>a. the location, provision, and screening of access and parking and traffic generation;</li> <li>b. landscaping;</li> <li>c. the location, nature and scale of visitor accommodation and ancillary activities relative to one another within the site and relative to neighbouring uses;</li> <li>d. the location and screening of bus and car parking from public places; and</li> <li>e. where the site adjoins a residential zone: <ul style="list-style-type: none"> <li>i. noise generation and methods of mitigation; and</li> <li>ii. hours of operation, in respect of ancillary activities.</li> </ul> </li> </ul>	C
<b>16.4.X</b>	<p><u>Visitor Accommodation at Bush Creek</u></p> <p><u>Discretion is restricted to:</u></p> <ul style="list-style-type: none"> <li><u>a. the location, provision, and screening of access and parking and traffic generation;</u></li> <li><u>b. landscaping;</u></li> </ul>	<u>RD</u>

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	<p><u>c. the location, nature and scale of visitor accommodation and ancillary activities relative to one another within the site and relative to neighbouring uses;</u></p> <p><u>d. the location and screening of bus and car parking from public places; and</u></p> <p><u>e. where the site adjoins a residential zone:</u></p> <p style="padding-left: 40px;"><u>i. noise generation and methods of mitigation; and</u></p> <p style="padding-left: 40px;"><u>ii. hours of operation, in respect of ancillary activities.</u></p>	
<b>16.4.4</b>	<p>Buildings</p> <p>Discretion is restricted to:</p> <p style="padding-left: 40px;">a. building materials;</p> <p style="padding-left: 40px;">b. glazing treatment;</p>	RD

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	Activities located in the Business Mixed Use Zone	Activity status
	<ul style="list-style-type: none"> <li>c. symmetry;</li> <li>d. vertical and horizontal emphasis;</li> <li>e. location of storage;</li> <li>f. signage platforms;</li> <li>g. landscaping;</li> <li>h. where residential units are proposed as part of a development, provision made for open space on site whether private or communal;</li> <li>i. where applicable, integration of the development with Horne Creek, including site layout and landscaping; and</li> <li>j. where a site is subject to any natural hazard and the proposal results in an increase in gross floor area:               <ul style="list-style-type: none"> <li>i. the nature and degree of risk the hazard(s) pose to people and property;</li> <li>ii. whether the proposal will alter the risk to any site; and</li> <li>iii. the extent to which such risk can be avoided or sufficiently mitigated.</li> </ul> </li> </ul> <p>Assessment matters relating to buildings:</p> <ul style="list-style-type: none"> <li>a. the impact of the building on the streetscape including whether it contributes positively to the visual quality, vitality, safety and interest of streets and public places by providing active and articulated street frontages and avoids large expanses of blank walls fronting public spaces;</li> <li>b. whether the design of the building blends well with and contributes to an integrated built form and is sympathetic to the surrounding natural environment.</li> </ul>	
<b>16.4.5</b>	<p>Licensed Premises</p> <p>Premises licensed for the consumption of alcohol on the premises between the hours of 11pm and 8am, provided that this rule shall not apply to the sale of liquor:</p> <p>This rule shall not apply to the sale and supply of alcohol:</p> <ul style="list-style-type: none"> <li>a. to any person who is residing (permanently or temporarily) on the premises; and/or</li> <li>b. to any person who is present on the premises for the purpose of dining up until 12am.</li> </ul>	RD*

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	Activities located in the Business Mixed Use Zone	Activity status
	<p>Discretion is restricted to consideration of the following:</p> <ul style="list-style-type: none"> <li>a. the scale of the activity;</li> <li>b. car parking and traffic generation;</li> <li>c. effects on amenity (including that of adjoining residential zones and public reserves);</li> <li>d. the configuration of activities within the building and site (e.g. outdoor seating, entrances);</li> <li>e. noise issues; and</li> <li>f. hours of operation.</li> </ul>	
<b>16.4.6</b>	<p><b>Daycare Facilities</b></p> <p><b>Discretion is restricted to:</b></p> <ul style="list-style-type: none"> <li>a. the compatibility of the development with respect to existing land uses on the subject site and nearby properties;</li> <li>b. potential reverse sensitivity issues;</li> <li>c. traffic, parking and access limitations; and</li> <li>d. noise.</li> </ul>	RD
<b>16.4.7</b>	<p>Warehousing, Storage &amp; Lock-up Facilities (including vehicle storage) and Trade Suppliers except as provided for by Rule 16.4.18</p> <p>Discretion is restricted to:</p> <ul style="list-style-type: none"> <li>a. the impact of buildings on the streetscape and neighbouring properties in terms of dominance impacts from large, utilitarian buildings;</li> <li>b. the provision, location and screening of access, parking and traffic generation; and</li> <li>c. <a href="#">landscaping; and</a></li> <li><del>e.d.</del> <a href="#">at Bush Creek, effects on adjoining residential areas and activities-</a></li> </ul>	RD
<b>16.4.8</b>	Community Activities at Sugar Lane	D
<b>16.4.9</b>	Industrial Activities not otherwise provided for in this Table	NC
<b><u>16.4.X</u></b>	<p><a href="#">Expansion or alteration of existing Industrial Activities at Bush Creek approved prior to 19 September 2019.</a></p> <p><a href="#">Discretion is restricted to:</a></p> <ul style="list-style-type: none"> <li><a href="#">a. The location, provision and screening of access and parking;</a></li> <li><a href="#">b. Landscaping;</a></li> <li><a href="#">c. The location, nature and scale of industrial activities within the site</a></li> </ul>	<u>RD</u>

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	<p style="text-align: center;"><u>and relative to neighbouring uses;</u></p> <p style="text-align: center;"><u>d. Where the site adjoins a residential zone:</u></p> <p style="text-align: center;"><u>i. Noise generation and methods of mitigation; and</u></p> <p style="text-align: center;"><u>ii. Hours of operation</u></p>	
<b>16.4.X</b>	<p>Panelbeating, spray painting, motor vehicle repair or dismantling at Bush Creek</p> <p><u>Discretion is restricted to:</u></p> <p style="text-align: center;"><u>a. The location, provision and screening of access and parking;</u></p> <p style="text-align: center;"><u>b. Landscaping;</u></p> <p style="text-align: center;"><u>c. The location, nature and scale of industrial activities within the site and relative to neighbouring uses;</u></p> <p style="text-align: center;"><u>d. Where the site adjoins a residential zone:</u></p> <p style="text-align: center;"><u>i. Noise generation and methods of mitigation; and</u></p> <p style="text-align: center;"><u>ii. Hours of operation</u></p>	<u>RD</u>
<b>16.4.10</b>	Service Stations	NC
<b>16.4.11</b>	Panelbeating, spray painting, motor vehicle repair or dismantling <u>(except as provided for in 16.4.X).</u>	NC

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	Activities located in the Business Mixed Use Zone	Activity status
<b>16.4.12</b>	Fibreglassing, sheet metal work, bottle or scrap storage, motorbody building or wrecking.	PR
<b>16.4.13</b>	Fish or meat processing (excluding that which is ancillary to a retail premises such as a butcher, fishmonger or supermarket).	PR
<b>16.4.14</b>	Factory Farming	PR
<b>16.4.15</b>	Mining Activities	PR
<b>16.4.16</b>	Forestry Activities, except for Plantation Forestry where the Resource Management (Resource Management (National Environmental Standard for Plantation Forestry) Regulation 2017) Regulation 2017 prevails.	PR
<b>16.4.17</b>	Airport	PR
<b>16.4.18</b>	Activities Sensitive to Aircraft Noise within the Queenstown Airport Outer Control boundary	PR
<b>16.4.19</b>	Warehousing, Storage & Lock-up Facilities (including vehicle storage) and Trade Suppliers in the zone at Frankton North	PR

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## 16.5 Rules - Standards

	Standards for activities located in the Business Mixed Use Zone	Non-compliance status
<b>16.5.1</b>	<p>Setbacks and sunlight access – sites adjoining a Residential zone or separated by a road from a Residential zone</p> <p>16.5.1.1 Buildings on sites adjoining, or separated by a road from, a Residential zone shall not project beyond a recession line constructed at the following angles inclined towards the site from points 3m above the Residential zone boundary.</p> <p>a. 45° applied on the northern boundary; and</p> <p>b. 35° applied on all other boundaries</p> <p>16.5.1.2 Where a site adjoins a Residential Zone all buildings shall be set back not less than 3m.</p> <p>16.5.1.3 For 30-46 Gorge Road (as shown on the planning maps):</p> <p>a. Standards 16.5.1.1 and 16.5.1.2 only apply to the boundary with 10A-10B Boundary Street; and</p> <p>b. Buildings shall be set back not less than 4.5m from the property boundary adjacent to Horne Creek.</p>	<p>RD</p> <p>Discretion is restricted to:</p> <p>a. the visual effects of the height, scale, location and appearance of the building, in terms of visual dominance and loss of residential privacy on adjoining properties and any resultant shading effects; and</p> <p>b. For 30-46 Gorge Road (as shown on the planning maps) integration of the development with Horne Creek, including site layout and landscaping</p>
<b>16.5.2</b>	<p>Storage</p> <p>Outdoor storage and storage of waste and recycling shall be screened from public places and adjoining Residential zones.</p>	<p>RD</p> <p>Discretion is restricted to:</p> <p>a. the effects on visual amenity;</p> <p>b. the location relative to the public realm and adjoining residential properties;</p> <p>c. consistency with the character of the locality; and</p> <p>d. whether pedestrian and vehicle access is compromised.</p>

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	Standards for activities located in the Business Mixed Use Zone	Non-compliance status
<b>16.5.3</b>	<p>Residential and visitor accommodation activities</p> <p>All residential activities and visitor accommodation activities on sites adjoining Gorge Road in Queenstown located within 10m of the boundary adjoining Gorge Road shall be restricted to first floor level or above, with the exception of foyer and stairway spaces at ground level to facilitate access to upper levels.</p>	<p>RD</p> <p>Discretion is restricted to:</p> <ol style="list-style-type: none"> <li>a. the effects of residential and visitor accommodation activities at ground floor level on surrounding buildings and activities;</li> <li>b. the location of residential and visitor accommodation activities at ground floor level relative to the public realm;</li> <li>c. the maintenance of active and articulated street frontages.</li> </ol>
<b>16.5.4</b>	<p>Building Coverage</p> <p>Maximum building coverage of 75%</p>	D
<b>16.5.5</b>	<p>Acoustic insulation</p> <p>For all residential development and visitor accommodation the following shall apply:</p> <p>16.5.5.1 A mechanical ventilation system shall be installed for all critical listening environments in accordance with Table 5 in Chapter 36; and</p> <p>16.5.5.2 All elements of the façade of any critical listening environment shall have an airborne sound insulation of at least 40 db Rw+Ctr determined in accordance with ISO 10140 and ISO 717-1.</p>	D
<b>16.5.6</b>	<p>Fencing</p> <p>A solid fence of 1.8m shall be erected on the boundary of any residential zone, except for 30-46 Gorge Road (as shown on the planning maps) where no fence is required along the property boundary adjacent to Horne Creek.</p>	D
<b>16.5.7</b>	<p>Commercial Activities within 30-46 Gorge Road (as shown on the planning maps):</p>	D



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	Standards for activities located in the Business Mixed Use Zone	Non-compliance status
	<p>a. shall not exceed 100m<sup>2</sup> GFA per site; and</p> <p>b. shall only occur at ground floor or street level.</p>	
<p><b><u>16.5.X</u></b></p>	<p><u>Discretionary building height (Bush Creek only)</u></p> <p><u>Maximum building height: 7m</u></p>	<p><u>RD</u></p> <p><u>Discretion is restricted to:</u></p> <ul style="list-style-type: none"> <li><u>a. the design and quality of the building, including the use of articulated facades, active street frontages and the treatment of corner sites;</u></li> <li><u>b. modulated roof forms, including screening of plant and services;</u></li> <li><u>c. material use and quality;</u></li> <li><u>d. the avoidance of large monolithic buildings;</u></li> <li><u>e. the impact on the street scene;</u></li> <li><u>f. privacy and outlook for residential uses;</u></li> <li><u>g. sunlight access to adjoining Residential zoned land and/or public space;</u></li> <li><u>h. Crime Prevention Through Environmental Design (CPTED) considerations;</u></li> <li><u>i. where appropriate, the integration of Horne Creek into the development and landscaping; and</u></li> <li><u>j. facilitation of the provision of residential activities.</u></li> </ul>
<p><b>16.5.8</b></p>	<p>Discretionary building Height (Queenstown and Frankton Marina (Sugar Lane) Only)</p> <p>In Queenstown and at Frankton Marina (Sugar Lane) the discretionary maximum building height shall be 12m.</p>	<p>RD</p> <p>Discretion is restricted to:</p> <ul style="list-style-type: none"> <li>a. the design and quality of the building, including the use of articulated facades, active street frontages and the treatment of corner sites;</li> <li>b. modulated roof forms, including screening of plant and services;</li> </ul>

# BUSINESS MIXED USE 16

		<ul style="list-style-type: none"> <li>c. material use and quality;</li> <li>d. the avoidance of large monolithic buildings;</li> <li>e. the impact on the street scene;</li> <li>f. privacy and outlook for residential uses;</li> <li>g. sunlight access to adjoining Residential zoned land and/or public space;</li> <li>h. Crime Prevention Through Environmental Design (CPTED) considerations;</li> <li>i. where appropriate, the integration of Horne Creek into the development and landscaping; and</li> <li>j. facilitation of the provision of residential activities.</li> </ul>
<b>16.5.9</b>	Maximum building height	NC
	16.5.9.1 The absolute maximum building height shall	

# BUSINESS MIXED USE 16

	Standards for activities located in the Business Mixed Use Zone	Non-compliance status
	<p>be:</p> <p>a. Queenstown - 20m</p> <p>b. Wanaka - 12m</p> <p><u>c.</u> Frankton Marina – 15m</p> <p><u>e.d.</u> <a href="#">Bush Creek – 10m</a></p> <p>16.5.9.2 Any fourth storey (excluding basements) and above shall be set back a minimum of 3m from the building frontage.</p>	
<a href="#">16.5.X</a>	<p><a href="#">Continuous Building Length at Bush Creek</a></p> <p><a href="#">16.5.X.X No unbroken building length shall exceed 16m. Breaks in building length shall be a minimum of 2m in depth and 4m in width for the full height of the wall and shall include a discontinuous eave line and roofline at the break.</a></p> <p><a href="#">16.5.X.X The aggregate length along any true elevation of a building, including breaks, shall not exceed 30m.</a></p> <p><a href="#">16.5.10.3 This rule does not apply to underground structures which are not visible from ground level.</a></p>	<a href="#">NC</a>

# BUSINESS MIXED USE 16

<b>16.5.10</b>	<p>Noise</p> <p>16.5.10.1 Sound* from activities shall not exceed the following noise limits at any point within any other site in this zone:</p> <ul style="list-style-type: none"> <li>a. Daytime (0800 to 2200hrs) 60 dB L<sub>Aeq(15 min)</sub></li> <li>b. Night-time (2200 to 0800hrs) 50 dB L<sub>Aeq(15 min)</sub></li> <li>c. Night-time (2200 to 0800hrs) 75 dB L<sub>AFmax</sub></li> </ul> <p>*measured in accordance with NZS 6801:2008 and assessed in accordance with NZS 6802:2008</p> <p>Exemptions:</p> <ul style="list-style-type: none"> <li>a. the noise limits in rule 16.5.10.1 shall not apply to construction sound which shall be assessed in accordance and comply with NZS 6803:1999.</li> </ul> <p>Note: Sound from activities in this zone which is received in another zone shall comply with the noise limits set out in Chapter 36 standards for that zone.</p>	NC
<b>16.5.11</b>	<p>Glare</p> <p>16.5.11.1 All exterior lighting installed on sites or buildings shall be directed away from adjacent sites, roads and public places, except footpath or pedestrian link amenity lighting and directed downward so as to limit the effects on views of the night sky.</p> <p>16.5.11.2 No activity shall result in a greater than 10 lux spill (horizontal or vertical) of light onto any adjoining property within the business</p>	NC

# BUSINESS MIXED USE 16

	Standards for activities located in the Business Mixed Use Zone	Non-compliance status
	<p style="text-align: center;">mixed use Zone, measured at any point inside the boundary of any adjoining property.</p> <p>16.5.11.3 No activity shall result in a greater than 3 lux spill (horizontal or vertical) of light onto any adjoining property which is in a Residential Zone measured at any point more than 2m inside the boundary of the adjoining property.</p> <p>16.5.11.4 External building materials shall either:</p> <ul style="list-style-type: none"> <li>a. be coated in colours which have a reflectance value of between 0 and 36%; or</li> <li>b. consist of unpainted wood (including sealed or stained wood), unpainted stone, unpainted concrete, or copper.</li> </ul> <p>Except that:</p> <ul style="list-style-type: none"> <li>a. architectural features, including doors and window frames, may be any colour; and roof colours shall have a reflectance value of between 0 and 20%.</li> </ul>	
<p><b>16.5.12</b></p>	<p>Development on land north of State Highway 6 between Hansen Road and Ferry Hill Drive shall provide the following:</p> <p>16.5.12.1 Transport, parking and access design that:</p> <p style="padding-left: 40px;">Ensures connections to the State Highway network are only via Hansen Road, the Hawthorne Drive/SH6 Roundabout, and/or Ferry Hill Drive.</p> <p style="padding-left: 40px;">There is no new vehicular access to the State Highway Network.</p> <p>16.5.12.2 Where a site adjoins State Highway 6, landscaping provides a planting buffer fronting State Highway 6 as follows:</p> <ul style="list-style-type: none"> <li>a. a density of two plants per square metre located within 4m of the State Highway 6 road boundary selected from the following species: <ul style="list-style-type: none"> <li>i. Ribbonwood (<i>Plagianthus regius</i>)</li> <li>ii. Corokia cotoneaster</li> <li>iii. Pittosporum tenuifolium</li> </ul> </li> </ul>	<p>NC</p>

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	Standards for activities located in the Business Mixed Use Zone	Non-compliance status				
	<ul style="list-style-type: none"> <li>iv. Grisilinea</li> <li>v. Coprosma propinqua</li> <li>vi. Olearia dartonii</li> </ul> <p>b. once planted these plants are to be maintained in perpetuity.</p>					
<b>16.5.13</b>	<p>Residential Visitor Accommodation</p> <p>16.5.13.1 Must not exceed a cumulative total of 90 nights occupation by paying guests on a site per 12 month period.</p> <p>16.5.13.2 Must not generate any vehicle movements by heavy vehicles, coaches or buses to and from the site.</p> <p>16.5.13.3 Must comply with the minimum parking requirements for a residential unit and/or residential flat (whichever is used for the residential visitor accommodation activity) in Chapter 29 Transport.</p> <p>16.5.13.4 The Council must be notified in writing prior to the commencement of a Residential Visitor Accommodation activity.</p> <p>16.5.13.5 Up to date records of the Residential Visitor Accommodation activity must be kept, including a record of the date and duration of guest stays and the number of guests staying per night, and in a form that can be made available for inspection by the Council at 24 hours' notice.</p> <p>16.5.13.6 Smoke alarms must be provided in accordance with clause 5 of the Residential Tenancies (Smoke Alarms and Insulation) Regulations 2016.</p> <p>Note: The Council may request that records are made available to the Council for inspection at 24 hours' notice, in order to monitor compliance with rules 16.5.13.1 to 16.5.13.6.</p>	<p>C</p> <p>Control is reserved to:</p> <ul style="list-style-type: none"> <li>a. The location, nature and scale of activities;</li> <li>b. The location, provision, and screening of parking and access;</li> <li>c. The management of noise, rubbish and outdoor activities;</li> <li>d. The compliance of the residential unit with the Building Code as at the date of the consent;</li> <li>e. Health and safety provisions in relation to guests;</li> <li>f. Guest management and complaints procedures;</li> <li>g. The keeping of records of RVA use, and availability of records for Council inspection; and</li> <li>h. Monitoring requirements, including imposition of an annual monitoring charge.</li> </ul>				
	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 70%; text-align: left;">Rule <b>16.5.13</b> and relief sought</th> <th style="width: 30%; text-align: left;">Appellant Court Number</th> </tr> </thead> <tbody> <tr> <td>                     Rule 16.5.13                      Residential Visitor Accommodation                      ...                      16.5.13.2 Must not generate any vehicle movements by heavy vehicles, <del>coaches or buses</del> to and from the site.                 </td> <td>                     Wayfare Group Ltd                      ENV-2019-CHC-076                 </td> </tr> </tbody> </table>	Rule <b>16.5.13</b> and relief sought	Appellant Court Number	Rule 16.5.13 Residential Visitor Accommodation ... 16.5.13.2 Must not generate any vehicle movements by heavy vehicles, <del>coaches or buses</del> to and from the site.	Wayfare Group Ltd ENV-2019-CHC-076	
Rule <b>16.5.13</b> and relief sought	Appellant Court Number					
Rule 16.5.13 Residential Visitor Accommodation ... 16.5.13.2 Must not generate any vehicle movements by heavy vehicles, <del>coaches or buses</del> to and from the site.	Wayfare Group Ltd ENV-2019-CHC-076					

# BUSINESS MIXED USE 16

	Standards for activities located in the Business Mixed Use Zone	Non-compliance status				
<b>16.5.14</b>	<p>Homestay</p> <p>16.5.14.1 Must not exceed 5 paying guests on a site per night.</p> <p>16.5.14.2 Must comply with minimum parking requirements of standard 29.8.9 in Chapter 29 Transport.</p> <p>16.5.14.3 Must not generate any vehicle movements by heavy vehicles, coaches or buses to and from the site.</p> <p>16.5.14.4 The Council must be notified in writing prior to the commencement of a Homestay activity.</p> <p>16.5.14.5 Up to date records of the Homestay activity must be kept, including a record of the number of guests staying per night, and in a form that can be made available for inspection by the Council at 24 hours' notice.</p> <p>Note: The Council may request that records are made available to the Council for inspection at 24 hours' notice, in order to monitor compliance with rules 16.5.14.1 to 16.5.14.5.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="background-color: #d9ead3;">Rule 16.5.14 and relief sought</th> <th style="background-color: #d9ead3;">Appellant Court Number</th> </tr> </thead> <tbody> <tr> <td>Rule 16.5.14 Homestay ... 16.5.14.3 Must not generate any vehicle movements by heavy vehicles, <del>coaches or buses</del> to and from the site.</td> <td>Wayfare Group Ltd ENV-2019-CHC-076</td> </tr> </tbody> </table>	Rule 16.5.14 and relief sought	Appellant Court Number	Rule 16.5.14 Homestay ... 16.5.14.3 Must not generate any vehicle movements by heavy vehicles, <del>coaches or buses</del> to and from the site.	Wayfare Group Ltd ENV-2019-CHC-076	<p>C</p> <p>Control is reserved to:</p> <ol style="list-style-type: none"> <li>a. The location, nature and scale of activities;</li> <li>b. The location, provision, and screening of parking and access;</li> <li>c. The management of noise, rubbish and outdoor activities;</li> <li>d. The keeping of records of Homestay use, and availability of records for Council inspection;</li> <li>e. Monitoring requirements, including imposition of an annual monitoring charge.</li> </ol>
Rule 16.5.14 and relief sought	Appellant Court Number					
Rule 16.5.14 Homestay ... 16.5.14.3 Must not generate any vehicle movements by heavy vehicles, <del>coaches or buses</del> to and from the site.	Wayfare Group Ltd ENV-2019-CHC-076					
<b>16.5.15</b>	<p>At Frankton Marina (Sugar Lane) the following limits on office and retail activities apply:</p> <p>16.5.15.1 1000m<sup>2</sup> GFA for retail activities; and</p> <p>16.5.15.2 1000m<sup>2</sup> GFA for office activities; and</p> <p>16.5.15.3 300m<sup>2</sup> GFA for individual tenancies for retail activities.</p> <p>16.5.15.4 200m<sup>2</sup> GFA for individual tenancies for office activities.</p>	D				

# BUSINESS MIXED USE 16

	Standards for activities located in the Business Mixed Use Zone	Non-compliance status
	Exemption: a. The retail limits in 16.5.14.1 and 16.5.14.3 do not apply to marine retail activities.	

## 16.6 Rules - Non-Notification of Applications

**16.6.1 Applications for Controlled activities shall not require the written approval of other persons and shall not be notified or limited-notified.**

**16.6.2 The following Restricted Discretionary activities shall not require the written approval of other persons and shall not be notified or limited-notified:**

16.6.2.1 Buildings.

16.6.2.2 Building Heights between 12m and 20m in the Business Mixed Use Zone in Queenstown, except:

a. for 30-46 Gorge Road (as shown on the planning maps) where applications may be limited notified to the adjoining properties along the Horne Creek boundary; and

b. except for the Frankton Marina (Sugar Lane) Business Mixed Use Zone.

~~16.6.2.2~~ 16.6.2.3 [Building Heights between 7m and 10m in the Business Mixed Use Zone at Bush Creek.](#)

**16.6.3 The following Restricted Discretionary activities will not be publicly notified but notice will be served on those persons considered to be adversely affected if those persons have not given their written approval:**

16.6.3.1 Setbacks and sunlight access – sites adjoining, or separated by a road from, a Residential zone.