

Before Queenstown Lakes District Council

In the matter of the Resource Management Act 1991

and **The Queenstown Lakes District Proposed District Plan –
Wakatipu Basin**

**Legal Submissions for Barnhill Corporate Trustee Limited and DE, ME Bunn & LA
Green / Morven Ferry**

Barnhill Corporate Trustee Limited & DE, ME Bunn & LA Green #2509

Morven Ferry # 2449

23 July 2018

Applicant's solicitors:

Vanessa Robb/Maree Baker-Galloway
Anderson Lloyd
Level 2, 13 Camp Street, Queenstown 9300
PO Box 201, Queenstown 9348
DX Box ZP95010 Queenstown
p + 64 3 450 0700 | f + 64 3 450 0799
maree.baker-galloway@al.nz /
vanessa.robb@al.nz

**anderson
lloyd.**

May it please the Panel

Introduction

- 1 As set out in the evidence of Mr Freeman, the land in question is owned by 3 different landowners, namely Barnhill Corporate Trustees Limited and DE Bunn, ME Bunn and LA Green (collectively **Barnhill**) and Morven Ferry Limited (**Morven Ferry**). Of the 79.2 ha owned by Barnhill, they are seeking to rezone 40.9ha. Of the 54.09ha owned by Morven Ferry, they are seeking to rezone 27ha.
- 2 As should become apparent during these submissions, the specific areas sought for rezoning have been carefully selected based on their suitability for a different uses, given their topography and accessibility.
- 3 The evidence of Deborah MacColl explains that her family have owned and farmed the Barnhill land for 4 generations. Morven Ferry with its directors John Darby, John Martin and Michael Reid have owned the Morven Ferry land for 17 years and have utilised the land for various farming activities over this time also. It is submitted that the zoning outcome sought by these submitters stands out in this Variation process. The proposal is driven partly by a family that has looked after the land for generations, and partly by an experienced and proven developer of top quality urban and rural living communities. Together these submitters have experienced the increasing challenges to retain viable farming operations, and have therefore taken the time to carefully consider what development this site can support, and what types of uses for this site will best meet the needs of the Queenstown community – both its residents and visitors.
- 4 The site is naturally suited to absorb development at the density, nature and scale proposed, with the topography, rocky outcrops, natural ponds and wetlands, already in place dictating likely placement of building platforms and providing obvious opportunities to enhance natural features and biodiversity values with the inevitable planting and removal of stock from those areas. Not only on an effects basis is this site ideal for the development and enhancement of rural living and visitor values, enabling such enhancement and diversification is also essential to allow the Bunn family in particular to sustain their family farm, and to enable Morven Ferry to diversify, given the impact the trail has had on operations over the past few years and the challenges for operating viable farming units generally in the Basin.
- 5 Having regard to the relevant considerations when reviewing a district plan, set out in sections 32, 74, and 75, the use of the Site for rural living and commercial visitor/tourism activities, rather than sterilisation through a non-complying 80ha subdivision and development regime is quite clearly a more efficient use of the land resource.

Summary of provisions sought

- 6 Whether it is called Rural Residential, Rural Visitor, WBLP or something else is not the issue. There is wide scope for the outcomes provided by the different zoning types sought in the Stages 1 and 2 submissions, regardless of the label put on them. The intention is to ensure a planning outcome that specifically contemplates and provides for the use of the site for a rural living community with a rural visitor hub at the heart of that community. The key planning parameters and standards sought to enable that enhancement of living and amenity values are summarised in Mr Freeman's evidence. These controls should give you the confidence that council will have the ability to ensure a high quality outcome. And the rezoning sought anticipating rural living and visitor services give the landowners some certainty that they will be able to diversify with appropriate development in the future subject to Council's exercise of control to ensure that such development is sympathetic to the character and anticipated amenities of the site.

Provide for cultural, social and economic well-being

- 7 There are two aspects to this point that are particularly relevant to your considerations; the opportunity to create a rural living community, and the opportunity to ensure the ongoing viability of the Bunn's family farm and the Morven Ferry farming unit.
- 8 Firstly, in terms of the opportunity to create a small community, the submitters' sites together, importantly with the proposed rural visitor hub centre of the community, sets up the framework for the development of a very desirable place to live. In order of up to 71 houses could be provided for, along with the centre of the community with the anticipated facilities such as a café and other communal spaces. The opportunity to create a rural living community like this, of a scale where residents can genuinely develop a sense of place and community, should not be undervalued in terms of what it represents for providing for cultural and social well-being.
- 9 Secondly, not only are the submitters seeking a zoning outcome that will enable and encourage the enhancement of the rural living, visitor amenity and community values of the Wakatipu Basin on this site, as evidenced through the experience of the Bunn family in particular, with the imposition of the trail and the effects that has had on the ability of the family farm to sustain operations, the zoning outcome sought is necessary to enable the family to continue to diversify and adapt to their changed situation. Farming is becoming less and less viable due in part to the trail.
- 10 The Bunn's experience, and their motivation alongside Morven Ferry's to use the ideal features of the site to create a high quality visitor and rural living experience

is a compelling story. It is submitted that the care and thoughtful planning that has gone into developing this proposition over many years is evident and convincing.

Amenity Values

- 11 It is important not to conflate the consideration of amenity values under section 7(c) with the protection of ONFLs from inappropriate development within section 6(b). Done well, tourism, recreation and quality rural living opportunities will enhance the amenity values of the submitters' land, however the zoning of WBRAZ will not enable that enhancement.
- 12 Whilst amenity values can be those derived from natural resources such as landscapes in their current state, there is a substantial amount of case law which discusses the amenity values to be derived from recreational opportunities, and from the development of urban or rural living opportunities.
- 13 It is the specific aim of these submitter landowners to enhance the rural living and recreation values of the subject site, as it is ideally suited to having the amenity values of the site improved in this way due both to the topography and natural features, and the opportunity to enhance the trail users' experience, and meet the currently unmet needs of trail users at this particular point in the trail.
- 14 The definition of amenity values within the Act is much broader than just natural or visual amenity values;

Section 2; Amenity Values - those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes.

- 15 The above definition of amenity embraces a wide range of elements and experiences, and recognises that the appreciation of amenity may change depending on the audience;

"We do not understand the words "pleasantness, aesthetic coherence and cultural and recreational attributes" to be some form of combined absolute value which members of the public appreciate to a greater or lesser extent. In our view the definition is embracing a wide range of elements and experiences. Appreciation of amenity may change, depending on the audience".¹

- 16 This District has undergone significant consideration before the Environment Court in relation to section 7 amenity landscapes. The Environment Court in the 2000 WESI case helpfully considered the above distinction (emphasis added):

¹ *Phantom Outdoor Advertising Ltd v Christchurch City Council* (NZEnvC C90/2001, 7 June 2001) at [18]

An important point in respect of section 7 landscapes is that the Act does not necessarily protect the status quo. There is no automatic preference for introduced grasses over pine forest. Nor should it be assumed (on landscape grounds) that existing rural uses are preferable in sustainable management terms to subdivision for lifestyle blocks which could include restoration" of indigenous bush, grasses or wetlands, especially if predator controls are introduced. Just to show how careful one has to be not to be inflexible about these issues **we raise the question whether it is possible that a degree of subdivision into lifestyle blocks might significantly increase the overall naturalness of a landscape... Logically there is a limit: the law of diminishing returns where too much subdivision leads to overdomestication of the landscape.**²

- 17 In my submission, the words 'maintain and enhance' in section 7 do not equate to protection or preservation of the status quo of the natural environment. Use and development of the land resource are allowed unless protection is required. The landscape evidence presented by submitters in this hearing and in Stage 1 hearings demonstrates that 'amenity' of the environment is not just derived from naturalness but from human interactions and perceptions of that environment.
- 18 The Court in *Yaldhurst Quarries*³ discussed rural character and amenity in respect of a resource consent application to establish a gravel quarry as a discretionary activity in the Waimakariri Zone. The Court considered that '*change per se does not mean that there is an adverse effect on rural character or an effect on amenity values*':

[115] "Amenity values" are those natural and physical qualities and characteristics of an area that contribute to peoples' appreciation of its pleasantness, aesthetic coherence, cultural and recreational attributes.

[116] Amenity values are not solely concerned with visual amenity, although in this proceeding visual amenity is an important consideration. We are also concerned here with the effect on amenity of any change in background levels of noise, dust, vibration and the increase in volume of heavy goods vehicles. That there will be further change in the environment if the land use consent were confirmed is certain. That said, change per se does not mean that there is an adverse effect on rural character or an effect on amenity values. To test the proposition that the scale and intensity of effects will be adverse, experts need first to establish the baseline environment against which the effects are evaluated.

[117] With that in mind, our approach when assessing "values" evidence, is to:

² *Wakatipu Environmental Society Inc v Queenstown Lakes District Council* [2000] NZRMA 59 at [91]

³ *Yaldhurst Quarries Joint Action Group v Christchurch City Council* [2017] NZEnvC 165.

(a) identify the values of people and communities. Based on the topics above this will include the attributes and characteristics of the existing landscape, soundscape and air quality that are valued by them. [We expect the experts will explain how they ascertained the values of people and communities];

(b) ascertain whether the District Plan identifies any valued attributes or characteristics for the relevant zone, landscape or more broadly the receiving environment. These elements may also be identified from other documentation such as a Conservation Management Strategy;

(c) determine whether the amenity values are reasonably held. In that regard we expect the experts to objectively test the basis of the values that are derived from the environment. This is necessary because the residents' views on their existing amenity is subjective and influenced by personal feelings or opinions, including the strength of their attachment to this place;

(d) assess whether the proposal gives rise to adverse effect on the relevant attribute or characteristic;

(e) if it does, then to consider whether, in this case, rural character is maintained and second, whether there are any consequential effects on the existing amenity values; and

(f) finally, to assess those effects in light of the outcomes for the relevant resources and values under the District Plans.

For further guidance see *Schofield v Auckland Council* and *Port Gore Marine Farms v Marlborough District Council*.⁴

(citations omitted)

- 19 The subjective nature of amenity values was also discussed in *Schofield v Auckland Council*, where the Court considered:

The topic of amenity can be emotionally charged, as this case has revealed. People tend to feel very strongly about the amenity they perceive they enjoy. Whilst s 7(c) of the RMA requires us to have particular regard to the maintenance and enhancement of amenity values, assessing amenity values can be difficult. The Plan itself provides some guidance, but at its most fundamental level the assessment of amenity value is a partly subjective one, which in our view must be able to be objectively scrutinised. In other words, the starting point for a discussion about amenity values will be articulated by those who enjoy them. This will often

⁴ *Yaldhurst Quarries Joint Action Group v Christchurch City Council*, at [115] – [117].

include people describing what an area means to them by expressing the activities they undertake there, and the emotions they experience undertaking that activity. Often these factors form part of the attachment people feel to an area or a place, but it can be difficult for people to separate the expression of emotional attachment associated from the activity enjoyed in the space, from the space itself. Accordingly, whilst the assessment of amenity values must, in our view, start with an understanding of the subjective, it must be able to be tested objectively⁵.

- 20 In this case the situation is less clear for this Panel to guide their determination of amenity values given that the objectives and policies of the Plan are under inquiry and the very subject of this decision making. In this respect I submit that the collective evidence and submissions from the public to the notified PDP on the subject of the Basin and further rural living opportunities evidences a significant perception of this community as to the benefits of rural living and this being an integral part of the Basin's amenity.
- 21 In terms of the RPS guidance as to treatment of section 7 amenity landscapes, I refer to the section of these submissions at paragraph 37 onwards discussing recently lodged Consent Orders, in particular policy 3.2.4 which sets a threshold to 'maintain or enhance' highly valued landscapes by 'avoiding significant adverse effects on those values that contribute to the high value of the natural landscape'. I submit that is a very different standard to the higher threshold of protection of section 7 landscapes in proposed Chapter 24.

Recreation amenity values

- 22 As evidenced in the report from Dr Galloway the provision of services, shelter and facilities at the site will support trail users and introduce new recreation opportunities, as an "important community hub in this rural outpost" (page 2). With the proposed connection to the Clutha Gold Trail and Otago Central Rail Trail in the future, it is likely that some touring cyclist will be travelling over greater distances and have different needs and expectations that can be met by the proposed visitor zone (page 4).
- 23 Importantly, the proposed development is supported by the CEO of the Queenstown Trails Trust and is consistent with the New Zealand Cycle Trail Guide 2015 (page 5 and page 7) and Dr Galloway notes that the trail would benefit from facilities given its comparatively remote location (page 6). He concludes that it is necessary and appropriate to enhance the recreation amenity and trail user support at this point in the trail (page 9).

⁵ *Schofield v Auckland Council* [2012] NZEnvC 68, at [51].

Other Effects

Public Place

- 24 The assessment of the likely effects of the proposed rezoning cannot, in my submission, give weight to the experience of trail users where the trail is easement rather than legal road. As shown on the plan **appended** to these submissions prepared by Aurum, it is only the trail as it runs near the 6ha RRZ/WBLP area by the Arrow River that sits over legal road and crown land. As set out in Mr Freeman's evidence (para 40 onwards) the majority of the trail is over an easement in favour of QLDC.
- 25 It is, in my submission, critical to your assessment of this proposal to be clear that a 'public place' is. When assessing the Barnhill/Morven Ferry proposal against the objectives and policies which relate to protection of views and experiences from public places the relevant definitions from the Stage 1 decisions version of the definitions chapter are:

***Public Place** means every public thoroughfare, park, reserve, lake, river [or] place to which the public has access with or without the payment of a fee, and which is under the control of the council, or other agencies. Excludes any trail as defined in this Plan.*

***Trail** means any public access route legally created by way of a grant of easement registered after 11 December 2007 for the purpose of providing public access in favour of the Queenstown Lakes District Council, the Crown or any of its entities, and specifically excludes:*

- (a) roads, including road reserves;*
- (b) public access easements created by the process of tenure review under the Crown Pastoral Land Act; and*
- (c) public access routes over any reserve administered by Queenstown Lakes District Council, the Crown or any of its entities."*

- 26 Most of the trail as it runs near and through the proposed rezonings sits on the easement created in favour of QLDC after 2007 and fits within the definition above. A small portion of the trail sits between proposed RRZ land, and the Arrow River (with DoC land between). Therefore most of the trail is not a "public place" for assessing the impacts of the proposed rezonings.
- 27 The background to this issue is that exclusion of Trails (as defined) from the definition of 'public place' was a consequence of Council Plan Change 28 to the ODP.

28 The history to that plan change shows that it was proving difficult to put in place public trails as landowners were concerned that, if they allowed for a public trail through their land, that might later affect their ability to develop their land due to objectives and policies relating to views from public places. Somewhat ironically as evidenced in the direct and personal experience of the Bunn family, the trail has even affected the family's ability to simply continue farming, and now might also affect their ability to adapt to that changing circumstance and diversity. Having voluntarily granted public access to their land and provided a major and significant community resource, the Bunns have been significantly disadvantaged.

29 The decision of the plan change hearing panel (**appended**) recorded that the purpose of the plan change as notified was:

To remove impediments to the provision of trails, particularly in the rural area, while ensuring that the Plan provisions are not weakened, and the quality of the landscape values are maintained into the future.

30 The Commissioners approved the plan change in an amended form, and noted the reasons for their decision were (page 17) :

If the Plan Change only changes the assessment of visibility from new trails then there is no detrimental effect on the protection of landscape values. This is because the landscape is assessed as if there were no trail there.

The effect of the Plan Change is that any future development in the vicinity of a new trail would not be assessed in terms of its visibility from that trail. This means that the development would be assessed in the same manner as if the trail did not exist. There is no weakening of the Plan provisions, given that the assessment of the development is unchanged whether the new trail exists or not.

31 The outcome of PC28 was the exclusion of Trails (as defined) from the definition of 'Public Place', to avoid adverse consequences on the ability of rural landowners to pursue development options for their land – exactly the situation here.

Effects on landscape

32 Regardless of the above, it is submitted the evidence of Mr Espie, who is most familiar with this site, should be preferred. Mr Espie's detailed site specific assessment illustrates that:

- (a) The development enabled by the zoning outcomes sought will not inappropriately degrade the landscape character and visual amenity of the LCU18 or broader Wakatipu Basin;
- (b) The landscape character of the subject site will change, and this effect is limited to a relatively infrequently accessed part of the basin, not affecting the broader Wakatipu Basin. In other words, there is no cumulative effect to consider and the overall amenity of the Wakatipu Basin will be retained;
- (c) Comparable areas like Whitechapel/Rapley Close and North Lake Hayes give you the impression of the type of rural environment living amenity that will be enabled;
- (d) The site is very well hidden from state highways and high use roads and will be generally inconspicuous from nearby public places

Effects on traffic

- 33 Mr Smith's position for the Council is to basically oppose all Wakatipu Basin rezoning requests on the basis of a concern of cumulative adverse traffic effects on the road network.
- 34 Mr Smith's evidence in chief considers that the Shotover Bridge will be operating at capacity at around year 2035 with the notified zoning under Stage 1 and Stage 2 of the PDP. In response, it is submitted that:
 - (a) There is evidence to show that within 17 years the Shotover Bridge will be required to be upgraded based on the status quo/Council's preferred planning framework. It is submitted that the Submitters' rezoning, whether considered cumulatively with other rezoning proposals or not, should not be singled out as inappropriate, as otherwise development throughout the Wakatipu Basin and Arrowtown would need to be halted, even to maintain the status quo. This is clearly a wider and inevitable issue that the Council and NZTA needs to address, and which will be assisted by knowing clearly what zonings are appropriate on a landscape effects basis and in place sooner rather than later for funding/business case purposes.
 - (b) There is no justification to rely on a 17 year planning horizon for capacity of the Bridge to be reached and decline rezoning proposals in this District Plan Review, where the Plan should technically only be in place for ten years.
 - (c) The RPS infrastructure and urban development provisions are not directive in terms of requiring infrastructure provision to be available and developed at the time of zoning. I note that Mr Langman's rebuttal evidence refers to

Pol 4.5.7(c) of the RPS in supporting his position regarding infrastructure, however, this section has been deleted (very purposefully) through mediations on the RPS, and in the resulting signed consent order, and the subsequent part of the provision requires 'coordinating the design and development of infrastructure with land use change in growth and redevelopment planning'.

- 35 As evidenced by Mr Bartlett, the Submitters' proposed rezoning would not have adverse traffic effects which are not otherwise anticipated over the long term, or which are directly relevant to the Site itself.

Natural hazards and infrastructure

- 36 As evidenced by the uncontested evidence of Mr Hadley:

- (a) There are no natural hazards constraints, and
- (b) It is feasible to service the sites privately.

Inconsistency between RPS and Wakatipu Zones

- 37 I submit the following consent orders recently issued by the Court, and consent memoranda recently lodged of particular relevance to this case. With regards to the consent orders, those chapters of the RPS are now beyond appeal and deemed operative, and therefore should become the focus of the requirement to give effect to the RPS, rather than the previous Operative version that, out of necessity, has been referred too to date.:

- (a) Chapter 1 – resource management in Otago is integrated
 - (i) This is an entirely new chapter of the RPS seeking to specifically recognise the enabling aspects of Part 2 without qualification of protective provisions. The chapter recognises that Otago's resources are used sustainably to promote economic, social, and cultural wellbeing for its people and communities. The chapter seeks to provide for the economic wellbeing of Otago's people and communities by enabling the resilient and sustainable use and development of natural and physical resources. Specifically policy 1.1.2 requires that the diverse needs of people and communities be taken into account, and it is submitted that the proposed zoning outcomes sought give best effect to catering for those diverse needs, particularly when compared to WBRAZ.
- (b) Chapter 4 – urban Growth and Development

- (i) Chapter 4 provides for urban growth and development, rather than restricting it, ensuring it occurs in a strategic and coordinated way. Chapter 4 requires coordinating the design and development of infrastructure with land use change in growth and redevelopment planning, rather than requiring growth to only occur in areas with sufficient capacity (at the time of zone planning). Given that it is uncontested that the zoning outcome sought will be able to be adequately serviced, this aspect of the RPS is given effect to. And zoning this site (and others) will provide certainty to assist with associated upgrades required to roading infrastructure in particular.
- (ii) Chapter 3 natural resources (draft consent order lodged with Court on 6 July but not yet signed off) seeks to 'maintain or enhance' highly valued landscapes by 'avoiding significant adverse effects on those values that contribute to the high value of the natural landscape' (Pol 3.2.6) and otherwise "avoiding, remedying or mitigating other adverse effects". Therefore if the Court confirms policy 3.2.6 in the near future, the decision on the Wakatipu Variation will be required to give effect to that policy as it relates the highly valued but not outstanding landscapes. The proposed zoning outcome sought by the submitters will give effect to that, in that there is no evidence of **significant** adverse effects, and any other effects will be avoided or mitigated through the various controls council retains. Provisions that are more restrictive than the zoning outcome sought by the submitters cannot be justified as it goes beyond what is required by the RPS.
- (iii) Chapter 5 "People are able to use and enjoy Otago's natural and built environment" is also beyond challenge, and recent Consent Orders issued by the Court in respect of commercial activities in particular is relevant. In respect of Commercial centres the relevant policy now specifically contemplates "enabling smaller commercial centres to service local community needs" (policy 5.3.3). With the proposed rural visitor hub servicing both trail users, and the local rural residential surrounds, the proposed zoning gives effect to that relevant part of policy 5.3.3.

38 The above provisions of the RPS are of direct relevance to this case and provide no basis for opposing the rezoning of this section 7 landscape for rural living and visitor purposes. Furthermore, the provisions of Chapter 3 and chapter 5 relevant to natural resources and rural activities provide very little support for the way in which Chapter 24 seeks to protect landscape and severely restrict development of a section 7 landscape, particularly given it is acknowledged in the WBLUS that character is predominantly hobby farming or lifestyle rather than productive.

Section 74 and 32

39 Other standard considerations particularly relevant to the Morven Ferry proposition being advanced by these submitters include:

- (a) In considering what rule may be the most appropriate in the context of the evaluation under s 32 of the Act, the correct approach remains as expressed in *Wakatipu Environmental Society Inc v Queenstown Lakes District Council*⁶ namely where the purpose of the Act and the objectives of the Plan can be met by a **less restrictive regime then that regime should be adopted**. Such an approach reflects the requirement in s 32(1)(b)(ii) to examine the efficiency of the provision by identifying, assessing and, if practicable, quantifying all of the benefits and costs anticipated from its implementation. It also promotes the purpose of the Act by being enabling so that people can provide for their well-being while addressing the effects of their activities.⁷
- (b) The last case cited of *Forest and Bird* is particularly relevant to the submission point that the least restrictive rule framework is appropriate where this gives effect to the objectives and policies of the PDP and this is consistent with the enabling purpose of the RMA. I submit that recent case is directly relevant to your considerations on rules, policies, and objectives notified under Chapter 24 for the submitters' land. As notified they impose unnecessary and onerous controls on a site which is ideally suited for enhancing both living and recreation amenity values of the basin generally.

Dated this 23rd day of July 2018

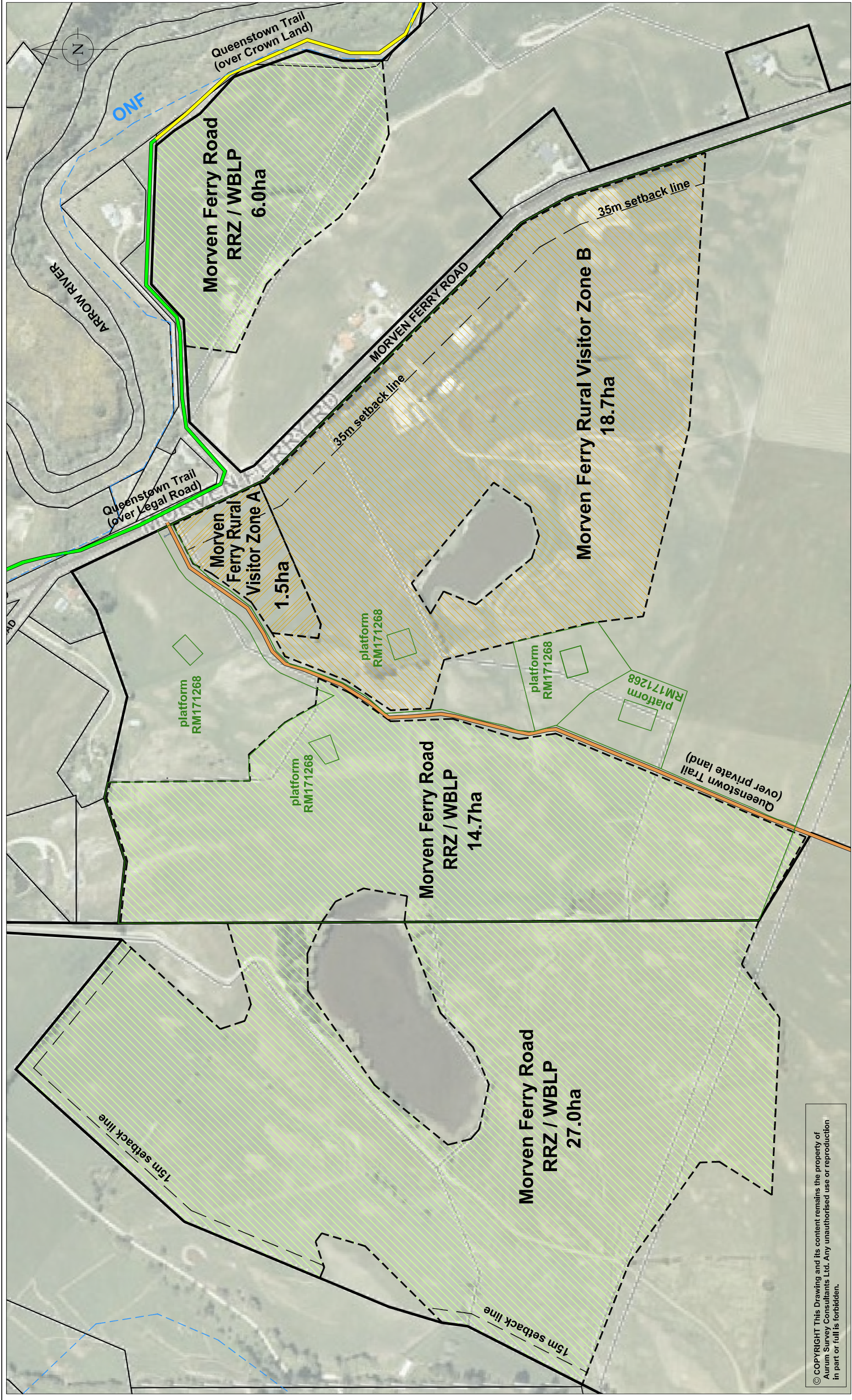


Vanessa Robb/Maree Baker-Galloway
Counsel for the Applicant

⁶ *Wakatipu Environmental Society Inc v Queenstown Lakes District Council* Decision C153/2004 at [56].

⁷ *Royal Forest and Bird Protection Society of New Zealand Inc v Whakatane District Council*, [2017] NZEnvC 051, at [59].

Appendix 1



© COPYRIGHT This Drawing and its content remains the property of Aurum Survey Consultants Ltd. Any unauthorised use or reproduction in part or full is forbidden.

Legend

- Morven Ferry Rural Visitor Zone A
- Morven Ferry Rural Visitor Zone B
- Morven Ferry Road Rural Residential Zone / Wakatipu Basin Lifestyle Precinct
- Outstanding Natural Feature boundary (from District Plan review)
- Queenstown Trail: over Private Land over Crown Land

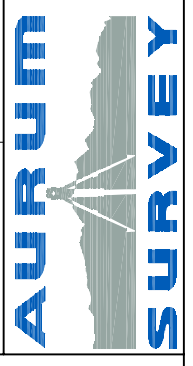
REV.	DATE:	REVISION DETAILS:	BY:
E	17/7/18	Colour labels	BM
D	11/6/18	Labels	BM
C	8/6/18	Setback line extension	BM
B	22/5/18	RM171268 Platform Updates	KB
A	22/10/15	Initial release	BM

**PROPOSED ZONE PLAN
MORVEN FERRY ROAD
WAKATIPU BASIN**

DATE: 18 July 2018
BY: BM & KB

Scale 1:4000
Original Plan A3

DRAWING & ISSUE No.
3015-53A-1E



PO Box 2493
Wakatipu 9349
Ph 03 442 3466
Fax 03 442 3469
Email admin@ascl.co.nz

Appendix 2

QUEENSTOWN LAKES DISTRICT COUNCIL
DECISION OF THE PLAN CHANGE HEARING PANEL
FOR PLAN CHANGE 28: TRAILS



DECISION DATED: 29 AUGUST 2008

EXECUTIVE SUMMARY

In May 2007 it was resolved by the Strategy Committee of the Council that a plan change was needed in order to resolve a conflict within the Partially Operative District Plan (the Plan) whereby the provisions created an impediment to the establishment of new trails throughout the rural areas of the District. The purpose of the Plan Change was defined as:

To remove impediments to the provision of trails, particularly in the rural area, while ensuring that the Plan provisions are not weakened, and the quality of the landscape values are maintained into the future.

In investigating the Plan Change and determining the most appropriate option for achieving its purpose the Council held meetings with representatives of community associations and the Wakatipu Trails Trust and Upper Clutha Tracks Trust (the Trusts). In addition advice was obtained from Council and Department of Conservation staff and Council's legal counsel. These meetings and discussions assisted in the preparation of a discussion document which was then circulated for comment in October 2007. A range of comments were received on the discussion document, these assisted in determining the most appropriate option for achieving the purpose of the Plan Change.

The Plan Change was publicly notified for submission on 16 January 2008 and involved amending the Plan as follows:

Amending the definition of 'public place' to read:

*Public place – means every public thoroughfare, park, reserve, lake, river or place to which the public has access with or without the payment of a fee, and which is under the control of the District Council, or other agencies. **Excludes any trail as defined in this Plan.***

Adding the following definition of trail:

Trail – means any public access route (excluding roads) legally created by way of a grant of easement registered after 11 December 2007 for the purpose of providing public access in favour of the Queenstown Lakes District Council, the Crown or any of its entities.

Amending Policy 4.2.5(4) Visual Amenity Landscapes to read:

4. Visual Amenity Landscapes

- (a) *To avoid, remedy or mitigate the adverse effects of subdivision and development on the visual amenity landscapes which are:*
- *highly visible from public places and other places which are frequented by members of the public generally **(except any trail as defined in this Plan)**; and*
 - *visible from public roads.*

A total of 32 submissions were received, with all but one supporting the intent of the Plan Change and a number requesting specific amendments to the proposed wording. A summary of the submissions was publicly notified on 2 April 2008 and a total of 9 further submissions were received.

A public hearing was held on Tuesday 29 and Wednesday 30 July 2008. The Hearings Panel consisted of Commissioners John Mann (Chair) and Commissioner Mel Gazzard. A total of 12 submitters presented evidence at the hearing. While some submitters supported the Plan Change in its entirety others requested changes to the definition of trail. Key issues raised during the hearing were:

- Whether trails established prior to December 2007 should be excluded from the definition of trail.
- Whether the definition of trail should include those trails or access easements established as a result of tenure review.
- Whether the definition of trail should include those trails that provide informal access (rather than applying only to those trails established by way of legal easement).
- Whether Policy 4.2.5(4) Visual Amenity Landscapes should be amended by deleting reference to 'places frequented by the public generally'.
- Whether Part 4 of the District Plan should be amended to include provisions encouraging the establishment of trails within the rural areas of the District.

Once the Hearings Panel heard all of the evidence presented they deliberated on all of the key issues raised. In making its decisions on the Plan Change the Hearings Panel has:

- (i) Been assisted by a report prepared by its planning staff. This report was circulated to submitters prior to the hearing taking place; and
- (ii) Had regard to matters raised by submitters and further submitters in their submissions and further submissions and at the Council hearing; and
- (iii) Had regard to the provisions of Section 32 of the Resource Management Act 1991

The Hearings Panel found that the recommendations of the Planners Report should be adopted, and as such that

- Trails established prior to December 2007 should be excluded from the definition of trail
- Trails established as a result of the tenure review process should be excluded from the definition of trail
- The definition of trail should only apply to those trails that are formally established.
- Policy 4.2.5(4) should be amended so that trails as defined in the Plan are excluded from the consideration of public place, but that reference to 'places frequented by the public generally' is retained.
- No further amendments are made to the Plan.

While the Hearings Panel sympathise with the points made by submitters, in reaching its decision it was cognisant of the purpose of the Plan Change, which was to balance the objectives of providing increased public access against the need to retain the existing level of protection of landscape values. The proposed changes are the most appropriate option for achieving this balance, whereas the amendments suggested by submitters provide greater weight to the objective of providing access, and pose risks in terms of achieving landscape objectives.

CONTENTS

1.0	Introduction	3
1.1	Points of clarification and terminology	3
2.0	Background and process	4
3.0	List of Submitters	5
4.0	The Hearing	6
5.0	Planners Report and Recommendations	12
5.1	General Support	12
5.2	Withdraw the Plan Change	15
5.3	Exclusion of trails created prior to December 2007	18
5.4	Exclusion of trails created as a result of the tenure review process	21
5.5	Exclusion of trails that are not formally protected	24
5.6	Provision for unformed legal roads	28
5.7	The definition should refer to trails where there is no alternative access, and should specify that it is only trails that cross private land	30
5.8	Amendments to Part 4 of the Plan	33
5.9	Definition should refer to non-motorised uses	34
5.10	Esplanade strips	35
5.11	Trails should be included in the District Plan as a discretionary activity	36
5.12	Address issues of connectivity and passive public areas that support trails	37
5.13	Provide a definition of public access route	38
5.14	Consequential amendments	39
	Appendices	
1	Amendments	

1.0 INTRODUCTION

This Decision discusses submissions received in relation to Plan Change 28: Trails (the Plan Change).

Where changes are proposed as a result of submissions, the effectiveness and efficiency of such changes has been assessed in accordance with the requirements of Section 32 of the Resource Management Act.

The relevant provisions in the Queenstown Lakes District Council's Partially Operative District Plan which are affected by the Plan Change are:

Plan Section	Provision
Definitions	Definition of 'public place' and insertion of a new definition of 'trail'
Section 4	Policy 4.2.5(4) Visual Amenity Landscapes

1.1 POINTS OF CLARIFICATION AND TERMINOLOGY

This decision addresses submissions in groups based on issues raised where the content of the submissions is the same or similar. In summarising submissions, the name of the submitter is shown in **bold**, with their submission number shown in normal font within [square brackets]. In summarising further submissions, the name of the further submitter is shown in **bold italics**, with their submission number shown in *italics* within (round brackets).

Where there is any inconsistency between the provisions contained in Appendix 1 and amendments made by the Decisions then the provisions in Appendix 1 shall be considered correct.

2.0 BACKGROUND AND PROCESS

In recent years the community has recognised the importance of creating a network of public access trails throughout the rural areas of the District and has worked hard to enhance public access in accordance with the key community outcomes of the Long Term Council Community Plan. In many cases achieving this public access necessitates negotiations with landowners either at the time of resource consent or as a result of an approach by the Queenstown Lakes District Council (the Council) or a Trails Trust or community association.

Through the work undertaken to try and establish the trail network it has been realised that there is currently a tension between the District Plan (the Plan) provisions that aim to protect landscape values and the goals of the community associated with creating public access trails throughout the rural areas of the District.

The maintenance of the quality of landscape values is achieved through the implementation of the Plan, particularly those sections relating to the management of subdivision and development within the rural areas of the District. When considering subdivision and development in these areas, the Plan places emphasis on the visibility of development, particularly its visibility from public roads and public places.

These provisions are the result of extensive Environment Court hearings. In Decision C180/99¹ the Environment Court first made decisions regarding assessment of development within the three landscape categories and at Paragraph 95 of that decision stated:

"..retention of existing 'open space' qualities, especially those enjoyed passively by the public rather than landowners, are not so simply protected by the market, and hence the possible need for management under the RMA."

The definition of 'public place' within the District Plan reads:

Means every public thoroughfare, park, reserve, lake, river or place to which the public has access with or without the payment of a fee, and which is under the control of the District Council, or other agencies.

This means that once a public access route is established and is managed by the Department of Conservation (DoC) or by the Council, it becomes a 'public place'. If the landowner then wishes to undertake development on nearby land, any such development will be assessed against its visibility from that public place. In addition, Policy 4.2.5(4) applies to the Visual Amenity Landscape (VAL) and requires that consideration is given to the effect of development on places frequented by the public generally.

The conflict between the landscape provisions of the Plan and the objectives for providing trails has led to landowners being reluctant or unwilling to agree to formally establish trails through their land. This is hindering the ability of the Council and the Trails Trusts to achieve the Community Outcomes of the Long Term Council Community Plan.

This issue was reported to the Strategy Committee of Council in May 2007, where it was resolved that a Plan Change should be initiated with the following purpose:

To remove impediments to the provision of trails, particularly in the rural area, while ensuring that the Plan provisions are not weakened, and the quality of the landscape values are maintained into the future.

Given the need to ensure that the provisions of the Plan as they relate to landscape values are not weakened, the Plan Change proposed to amend the definition of 'public place' so that the following were excluded:

- *trails formally protected after December 2007 (i.e. the date at which this Plan Change was adopted by Council); and*

¹ Wakatipu Environmental Society v Queenstown Lakes District Council. October 1999

- trails that are formally protected through voluntary negotiations and that are agreed between the landowner and the Council or DoC (either through negotiations on a resource consent application or negotiations between the landowner and a relevant agency); and
- trails formally protected through a legal process, and that have legal protection into the future.

A discussion document containing a background to the Plan Change, potential options and the Council's preferred direction was circulated on 31 October 2007. 24 responses were received, 23 of these supported the Plan Change. However many requested specific changes to the suggested amendments focussing on what should and should not be included within the definition of 'public place' with a range of differing views being expressed.

Following detailed consideration of the aims of the Plan Change against relevant statutory and non-statutory documents, the comments received on the discussion document and a detailed assessment of alternatives, it was found that in order to achieve the purpose of the Act, a Plan Change should be notified for submission that amended the Plan as follows:

Amend the definition of 'public place' to read:

*Public place – means every public thoroughfare, park, reserve, lake, river or place to which the public has access with or without the payment of a fee, and which is under the control of the District Council, or other agencies. **Excludes any trail as defined in this Plan.***

Add the following definition of trail:

Trail – means any public access route (excluding roads) legally created by way of a grant of easement registered after 11 December 2007 for the purpose of providing public access in favour of the Queenstown Lakes District Council, the Crown or any of its entities.

Amend Policy 4.2.5(4) Visual Amenity Landscapes to read:

4. Visual Amenity Landscapes

(a) To avoid, remedy or mitigate the adverse effects of subdivision and development on the visual amenity landscapes which are:

- highly visible from public places and other places which are frequented by members of the public generally **(except any trail as defined in this Plan)**; and
- visible from public roads.

The Plan Change was notified for submission on 16 January 2008. A total of 32 submissions were received. All but one submission supported the intent of the Plan Change. However, many submissions requested amendment to the Plan Change in order to resolve the issues and concerns raised with regard to the proposed wording of the Trail definition. A summary of the submissions was publicly notified on 2 April 2008. A total of 9 further submissions were received.

A Planners Report was prepared that provided recommendations on each of the submissions received. This was sent to all submitters prior to the hearing.

3.0 LIST OF SUBMITTERS

Original Submitters	Submission #
Isabella Anderson	28/1
Mary Anderson	28/2
John and Sue Aspinall	28/3

J C Bryant	28/4
Cardrona Landcare Group	28/5
Federated Farmers of New Zealand	28/6
Richard Hanson	28/7
Lakes Landcare Group	28/8
John Lee	28/9
Mary Lee	28/10
Morven Ferry Limited	28/11
Mount Cardrona Station Limited	28/12
Mount Field Limited	28/13
John Pawson	28/14
Raymond Pike	28/15
Porter Group Limited	28/16
Remarkables Park Limited	28/17
Royal Forest and Bird Protection Society	28/18
John Scurr	28/19
Tim and Cathy Scurr	28/20
Southern Planning Group	28/21
Susan Stevens	28/22
Helen Tait	28/23
Dennis Thorn	28/24
Transit New Zealand	28/25
Upper Clutha Environmental Society	28/26
Upper Clutha Tracks Trust	28/27
Upper Clutha Tramping Club	28/28
Wakatipu Trails Trust	28/29
Wanaka Walkers	28/30
John Wellington	28/31
Ben Wilson	28/32
Further submissions	
Bald Developments Limited	
Federated Farmers of New Zealand	
Jacks Point Limited	
John Pawson	
Remarkables Park Limited	
Royal Forest and Bird Protection Society	
Transit New Zealand	
Upper Clutha Environmental Society	
John Wellington	

4.0 THE HEARING

4.1 A total of 12 submitters presented evidence at the hearing. The following provides a summary of the key points raised within the verbal and written submissions presented.

4.2 ***Julian Haworth on behalf of Upper Clutha Environmental Society (UCESI)***
Mr Haworth presented verbal evidence in support of both the original and further submissions lodged by UCESI. To this end Mr Haworth did not present any additional written evidence, and

instead identified key points within UCESI's submissions. Mr Haworth identified that UCESI is generally happy with the recommendations of the Planners Report, but maintains the position as presented in their written submission.

Key issues raised by UCESI are:

- *Public input*- There should be public input into the process of establishing trails. In their submission UCESI suggested discretionary activity status for trails in order to enable their public notification or limited notification to interested parties. Mr Haworth identified that UCESI accepts the recommendations of the Planners Report in respect to this matter but still believes that consultation needs to be wider than the Council and the Trails Trusts because the issues are wider.
- *Tenure Review*- Trails established through the tenure review process should remain excluded from the definition of trails. Mr Haworth submitted that Land Information New Zealand (LINZ) agents offer large incentives through the tenure review process and lessees are very well compensated. Mr Haworth presented Section 24 of Part 2 of the Crown Pastoral Land Act, which identifies the objects of Tenure Review. Clause (c) is to make easier "securing public access to and enjoyment of reviewable land". Mr Haworth agreed with the findings of the Planners Report, in that tenure review occurs under different legislation, and that access easements created by way of tenure review would occur whether the Plan Change proceeds or not.
- *Existing Trails*- UCESI opposes any change to the status of existing trails.
- *Unformed legal roads*- Mr Haworth reiterated that the management of unformed legal roads was determined through the Scenic Rural Roads decision and hence no amendments to the Plan are necessary.
- *Alternative access*- UCESI submit that the definition of trail should apply only where there is no alternative access, and where the trail crosses private land.

Mr Haworth concluded that UCESI opposes the Plan Change in its current form and submits that the status quo is more in keeping with environmental considerations. However, UCESI believes that the Planners Report has addressed many of the issues, and UCESI supports the recommendations of the planner.

4.3 ***Renee Bowman, Chief Executive of the Wakatipu Trails Trust (the Trust)***

The Trust fully supports the Plan Change. Ms Bowman identified a number of future trails that will be affected by the Plan Change, identifying that 8 of the 9 priority trails for the Trust are directly affected by the Plan Change. In response to questions Ms Bowman identified that all of the trails identified will be positively affected by the Plan Change. Ms Bowman identified that the Trust generally tries to involve all affected parties and any person with expertise in a particular area, for example, where ecological values may exist, advice would be obtained from an ecologist.

Ms Bowman identified that the Trust has a map of all unformed legal roads and looks to these for future access in the first instance. Utilising unformed legal roads is seen as a separate process to this Plan Change. Ms Bowman sees benefit in including trails established by way of a formal easement in order to protect the future use of trails.

4.4 ***Sean Dent, Southern Planning Group on behalf of Morven Ferry Limited***

Mr Dent presented written evidence on behalf of Morven Ferry Limited in support of the Plan Change. Mr Dent agrees with the recommendations of the Planners Report and submitted that the proposed changes as contained in Appendix 1 of the Planners Report will, if granted, remove a significant disincentive to landowners who seek to provide a trail through their property, especially when there is intent to either subdivide or develop land.

Mr Dent identified that three key issues were raised in the submissions of Morven Ferry Limited. Namely, that unformed legal roads should be addressed by this Plan Change, trails established prior to December 2007 should not be excluded from the definition of trail, and the definition of trail should apply to those trails established by way of tenure review. Having read the Planners Report Mr Dent agrees with the findings of the Planner, and the recommendations contained in Appendix 1. It is Mr Dent's opinion that the recommended amendments achieve the purpose of the Plan Change and assist the Council to carry out its functions in order to achieve the purpose of the Act.

4.5 **Susan Stevens, Chair of Gibbston Community Association**

Ms Stevens presented verbal evidence in support of the Plan Change. Ms Stevens identified that the Gibbston River Trail is a priority for the Community Association and will provide opportunities for walking and cycling of a nature and scale that can be used by a wide range of people. Because the trail needs to go across private land its establishment relies on this Plan Change, and three of the four landowners will sign easements if the Plan Change is approved.

The Community Association is happy with the Plan Change as drafted because it meets their needs. They request that it is approved quickly so that they don't miss the opportunity to create the Gibbston River and other trails within the Gibbston Valley.

4.6 **John Aspinall, on behalf of John and Sue Aspinall, the Lakes Landcare Group and Cardrona Landcare Group.**

Mr Aspinall identified that the Plan Change was initially supported. However the planners recommendations have narrowed its effectiveness and the vision has been narrowed to the objectives of the Trails Trusts and the District Council.

Mr Aspinall identified the following key issues:

- Trails legally established prior to December 2007 should be excluded from the definition of public place. Those landowners agreed to trails in good faith, generally without compensation and for the public good. Until the Dublin Downs case landowners were not aware of the disadvantage they placed themselves at by providing trails.
- Trails established through tenure review should be included within the definition of public place. The planner's recommendation (that access easements created through the tenure review process are excluded from the definition of trail) represents a significant change affecting a significant number of landowners. Such a change justifies re-notification so that those landowners who may be adversely affected have the opportunity to reconsider. It is submitted that the fact that these trails are established under different legislation is irrelevant and that lessees were compensated for loss of quiet enjoyment, inconvenience and future damage to property, not loss of potential development rights. If the Plan Change proceeds as recommended some trails may not proceed in future tenure review outcomes.
- Informal access should be excluded from 'public place'. Although a commissioner has ruled that an informal trail within ONL would not be deemed a public place this could be overruled by the Environment Court or High Court. It is submitted that the definition of public place should be amended to read:
Public place – means every public thoroughfare, park, reserve, lake, river or place to which the public has legal access with or without the payment of a fee (...)
- 'and other places frequented by the public generally' should be deleted from Policy 4.2.5(4) Visual Amenity Landscapes. Mr Aspinall believes that from a landowner point of view it will be simpler to close informal access rather than formalising it.
- Reference to a world class network of trails should be deleted because the community would have to pay.

In response to questions Mr Aspinall clarified that the trails across the Matukituki Station are informal and based on good will. There is a paper road running up the valley that deviates from the route of the trail. The Department of Conservation (DoC) maintains some signs and markers. The advantage of an informal trail is that the landowner or lessee is able to say no to people who are there for anti social reasons. The advantage of a formal track is that there is a defined trail that people stick to.

In terms of the ability for the Council to become involved in tenure review there is an early warning meeting called by DoC at which anyone who is likely to want something out of the tenure review can attend. The Council has the same opportunities to provide comment as the general public.

4.7 **John Wellington**

John Wellington was unable to attend the hearing in person, but provided written evidence that was read out at the hearing.

Mr Wellington supported the proposed Plan Change as notified, however, he requested that trails established through the tenure review process be excluded from the definition of trail. This is because they are created under an entirely separate process and including them in the definition of trail would:

- weaken the landscape protection provisions of the District Plan
- be unlikely to result in the creation of new trails
- undermine the intention of the Plan Change

Mr Wellington submits that the Planners Report has considered this issue at length and he supports its recommendations.

When considering the issue of whether the December 2007 date should be included within the definition of trail, Mr Wellington requests that the Commissioners consider the intention of the Plan Change, which is to remove impediments to future trails. Mr Wellington requests that trails established prior to December 2007 and that are not secured by enduring easements are excluded from the definition of 'trail'.

4.8 ***Anne Steven on behalf of Royal Forest and Bird Protection Society (Forest and Bird)***

Forest and Bird support the intention of the Plan Change. However, they are concerned that as a result of the Plan Change, where access is created for the purpose of enjoying the landscape it passes through, there is no certainty that the enjoyment and public amenity will be maintained into the future. Ms Steven believes that if the visibility of any further development can not be taken into account then there is no certainty that the public amenity that was accepted by the Council at the time of approving the resource consent or establishing the trail will remain into the future. Hence the value of the trail may be reduced to a means of getting from A to B. Ms Steven submitted that ongoing management of the landscape embracing new trails created as a condition of consent or for the purposes of enjoying the landscape must be assured. If the Plan Change is approved then for each new trail negotiated across private land there needs to be as a matter of public record a statement about the reasons for creating the trail and whether its establishment is independent of any development proposal. In response to questions regarding how this may work Ms Steven suggested such provisions need to be incorporated into the Plan without contradicting the purpose of the Plan Change.

With respect to limiting the definition of trail to those established after December 2007, Forest and Bird agrees with the Planners Report. With respect to the question of whether trails established as a result of tenure review should be included within the definition of trail, Ms Steven submitted that pastoral lease land and the natural landscape values it has are owned by the public of New Zealand, who have a reasonable expectation that those values will be protected for the future. The Council or any Trails Trust does not have any role in negotiating access and therefore they have no say in whether the easement is appropriate. Tenure review is a separate legal process. Ms Steven identified that Forest and Bird has lodged submissions on around 80 tenure review proposals. While the points made in submission can be accepted they may not form part of the final outcome.

In terms of trails that are not formally protected, Ms Steven submitted that such access is 'captured' by Policy 4.2.5(4) Visual Amenity Landscapes. This access is at the whim of the landowner and it is up to them as to whether or not such a trail becomes a public place. Ms Steven agrees with the Planners Report in that as a result of the Plan Change the landowner could either close the access or have it formalised.

4.9 ***Ian McCabe on behalf of Transit New Zealand***

Ian McCabe presented written evidence on behalf of Transit New Zealand (Transit). Transit supports the Plan Change for a number of reasons, including the fact that it builds on principles of travel demand management and provides opportunities to provide alternative access routes for pedestrians and cyclists. Transit's submission suggested that the Plan Change could be extended to provide for connectivity of the trail network and to make associated infrastructure a permitted activity. In response to this request the Planners Report recommended that such detail be provided in the Wakatipu Trails Strategy, the Upper Clutha Tracks Strategy and newly released Walking and Cycling Strategy. Mr McCabe agrees with this response in principle, and identifies that community strategies are important documents that provide guidance on the local community's expectations for specific areas of interest.

4.10 ***John Pawson on his own behalf and on behalf of Federated Farmers.***

John Pawson presented written evidence on behalf of Federated Farmers of New Zealand Otago Province (Federated Farmers) and on his own behalf.

Mr Pawson identified that no landowner is going to, or should be required to, offer formal public access without compensation (this might be direct compensation or a trade off for environmental compensation relating to an RMA application, or compensation in some other form). In Mr Pawson's opinion there is no incentive for landowners to grant public access either informally or formally, regardless of the protections under Plan Change 28. Mr Pawson submitted that for this Plan Change to be effective it needs to apply across the board to both informal and formal access tracks.

In regard to exclusion of trails established prior to December 2007 Mr Pawson stated that it is a matter of goodwill and trust, and denying those landowners who formalised access prior to December 2007.

In regard to the exclusion of trails created as a result of tenure review, Mr Pawson believes that the recommendations of the Planners Report are discriminatory and some of the most used and valuable tracks have come out of tenure review. Mr Pawson agrees that tenure review and the District Plan are separate entities in terms of legislation. However, he submits that they inevitably interact and in the future, if this Plan Change is accepted as recommended, it will affect both the valuation and location of tenure review tracks.

Mr Pawson submitted that the reason for excluding informal access is flawed, and informal access is very important and should be encouraged and supported. Mr Pawson submitted that many informal accesses are enduring, stable and come with a high level of respect by both the visiting public and the landholder. If the recommendations of the Planners Report are accepted there will be a significant decrease in informal access, and there will be no gain to the integrity of the Plan.

Mr Pawson disagrees with the conclusion of Section 4.7 of the Planner's Report and submits that unformed legal roads have a very high status as public land for the purpose of public access and yet the Courts are clearly moderating the emphasis of them as a public place in terms of visibility and the RMA when they are not accessible. Mr Pawson believes that the Courts are likely to apply the same reasoning to marginal strips that can not be readily accessed by the public.

In terms of esplanade strips Mr Pawson suggests that the recommendations of the Planners Report will lead to hours of argument over what is or has been compulsorily acquired.

In conclusion Mr Pawson and Federated Farmers support the objectives and direction of the Plan Change. However, Mr Pawson questions the need for a definition of 'trail', and believes that instead a statement that any views from private land and/or pastoral leasehold land including any public access easements over that land should not be considered public places.

Federated Farmers are of the opinion that to change the definition of 'trail' to exclude tenure review trails from the protections (as recommended in the Planners Report) would require re-notification of the Plan Change in order to enable appropriate consultation.

4.11 ***Helen Tait on her own behalf and on behalf of the Upper Clutha Tracks Trust (the Tracks Trust), the Upper Clutha Tramping Club (the Tramping Club)***

Helen Tait presented evidence on behalf of the Upper Clutha Tracks Trust (the Tracks Trust), the Upper Clutha Tramping Club (the Tramping Club) and on her own behalf. All three submissions support the Plan change and recognise that it is a balance between protection of landscape values and provision of access.

The Tramping Club and Tracks Trust endorse the recommendations of the Planners Report, and endorse the emphasis on the importance of legal protection of trails created to ensure that trails remain accessible through future changes in land ownership or other circumstances. Informal access, while welcome, is not reliable and is not appropriately included in published

maps and trail information which the Tramping Club and the Tracks Trust see as important for both residents and visitors.

The Tramping Club and Tracks Trust do not take a position on planning matters which fall outside their objects, and therefore do not have a position on the issue of trails provided through tenure review. However, both are in sympathy with preserving present levels of environmental protection provided in the Plan, as they are directed towards preserving the amenity which trail users enjoy. To this extent the Tramping Club and Tracks Trust support the inclusion of the December 2007 date within the definition of trail on the basis that the objective of the Plan Change is to encourage new trails without lessening the protection of landscape and amenity values associated with existing trails.

The Tracks Trust and Tramping Club agree with the Planners Report in that processes should be kept as simple as possible. In terms of requesting affected party status, it was their intention to ensure that where a trail was part of a development that required notification the Trust or Club would be recognised as an affected party.

Helen Tait supports all aspects of the Plan Change and fully supports the purpose of the Plan Change and endorses the emphasis on the importance of legal protection of trails created to ensure that trails remain accessible into the future. Ms Tait supports the recommendations to exclude trails created prior to December 2007 on the basis that the purpose of the Plan Change is to encourage the creation of new trails without lessening the protection of landscape and amenity values associated with existing trails.

Ms Tait submits that tracks and easements created out of the tenure review process should be excluded from the definition of trail. This is because the tenure review process provides no opportunity for Trails Trusts, community associations and the District Council to negotiate with Crown Pastoral lessees. The negotiation of such trails is outside the community's hands and so is outside the reasons for the Plan Change. Ms Tait believes that the public value of these tracks and the risks to the lessee of creating additional public places can be taken into account in the tenure negotiations. Without community input it is unlikely that what could be a lessening of landscape protection over wide and significant areas will be sufficiently taken into account. This could seriously weaken landscape protection which is a fundamental aspect of the Plan.

Ms Tait endorses the response to a range of submissions in the Planners Report (Sections 4.6-4.11), which focus on avoiding unnecessary complexities that would act as disincentives, but at the same time retaining landscape protection.

4.12 ***Amy Kirk on behalf of Remarkables Park Limited***

Amy Kirk, a planner with Brown and Pemberton Planning Group, presented written evidence on behalf of Remarkables Park Limited (RPL). RPL supports the overall intent of the Plan Change, but sought that the definition of trail be amended, that provisions for trails be added to Part 4 of the Plan, and that a definition of 'public access route' be added.

Ms Kirk suggested that there is scope to include further recognition and provision of trails within the Plan and the minor addition of provisions and definitions would further recognise the recreational benefits of trails and achieve the overall objective of the Plan Change. Ms Kirk suggested a definition of public access route that no longer contains reference to leases. Ms Kirk confirmed that the submitter understands that provision for golf carts can be achieved at the time of agreeing easements, and therefore does not require the amendment of the definition to include this matter.

4.13 ***Annabel Ritchie on behalf of Jacks Point Limited and Bald Developments Limited***

Annabel Ritchie of Anderson Lloyd presented submissions on behalf of Jacks Point Limited and Bald Developments Limited. In summary, Jacks Point and Bald Developments support the Plan Change, but submit that the definition of trail should be amended to include those trails created prior to December 2007, all access across private land, not just access created by way of registered easement, and all public access created by way of tenure review.

The submitters believe that the Plan Change should recognise the recreational benefits of public access provided by both existing and new trails and submit that inclusion of the December 2007 date is inequitable to landowners who already provide access through their land and will create inconsistency in the visual assessment of properties that have formally protected trails simply because of the date at which they were established. They submit that there is no clear legal justification for the distinction between existing and new trails. Ms Ritchie opines that removing the December 2007 date does not increase the potential to gain additional development rights, nor does it undermine the views from any existing trail.

Jacks Point submit that the reasoning for excluding trails created by way of tenure review from the definition of trail is illogical. Jacks Point identifies that trails are often created through private negotiations between the landowner and a local tracks trust, and a submitter is not able to appeal a resource consent decision solely on the basis that public access was not offered as part of a consent application. The submitter identifies the objectives of tenure review under the Crown Pastoral Land Act 1998, which include making it easier for securing public access to and enjoyment of reviewable land. If trails established through tenure review are excluded from the definition of public place this may be reflected in tenure review negotiations. It is submitted that this defeats the purpose of the Plan Change.

Jacks Point and Bald Developments submit that Policy 4.2.5(4) should be amended by deleting the words 'and other places frequented by the public generally'. It is submitted that retention of this wording frustrates the purpose of the Plan Change and discourages landowners from providing informal access across their land. It is believed that formalising access can be an expensive process for the landowner.

5.0 DECISION

The following provides a brief summary of each submission and responds to each of the decisions sought. The submissions are grouped into sections based on issues or concerns raised by the submitters.

5.1 GENERAL SUPPORT

John and Sue Aspinall [28/3], **Federated Farmers of NZ** [28/6/1] and [28/6/2], **Lakes Landcare Group** [28/8], **Mary Lee** [28/10], **John Pawson** [28/14/1], **John Scurr** [28/19/1], **Tim and Cathy Scurr** [28/20/1], **Helen Tait** [28/23/1], **Upper Clutha Environmental Society** [28/26/1], **John Wellington** [28/31/1] and **Ben Wilson** [28/32/1] support the Plan Change in principal, supporting the general recommendations (subject to suggested amendments).

Bald Developments Limited (28/14/1/1), **John Pawson** (28/14/1/2) and **Jacks Point Limited** (28/14/1/3) support the submission of John Pawson.

John Lee [28/9/3] submits that the Plan Change should be adopted to allow a more speedy process in developing tracks for public use. More tracks should become land owner and user friendly. **Bald Developments Limited** (28/9/3/1) and **Jacks Point Limited** (28/9/3/2) support the submission of John Lee.

J and C Bryant [28/4/1] supports the overall intention to improve and extend public access on trails and remove any impediments to their development.

Richard Hanson [28/7/1], **Mount Field Limited** [28/13/1], **Raymond Pike** [28/15/1], **Susan Stevens** [28/22/1], **Transit New Zealand** [28/25/1], **Upper Clutha Tracks Trust** [28/27/1], **Upper Clutha Tramping Club** [28/28/1], **Wakatipu Trails Trust** [28/29/1] and **Wanaka Walkers** [28/30/1] support the Plan Change.

Remarkables Park Limited (28/13/1/1) supports the submission of Mount Field Limited.

Morven Ferry Limited [28/11/1], **Southern Planning Group** [28/21], **Mount Cardrona Station Limited** [28/12/1], **Porter Group** [28/16/1] and **Remarkables Park Limited** [28/17/1] support the Plan Change in part. **Bald Developments Limited** (28/12/1/1) and **Jacks Point Limited** (28/12/1/2) support the submission of Mount Cardrona Station Limited. **Bald**

Developments Limited (28/16/1/2), (28/17/1/1) supports the submission of Porter Group Limited and Remarkables Park Limited. **Remarkables Park Limited** (28/16/1/1) support the submission of Porter Group Limited.

John Wellington (28/27/1/1) and **Royal Forest and Bird Protection Society** (28/27/1/2) support the submission of Upper Clutha Tracks Trust.

5.1.1 Explanation

J and C Bryant [28/4/1] support the intention to improve and extend public access on trails and to remove any impediments to their development. **Federated Farmers** [28/6] welcomes the intent of the Plan Change, however considers that as notified the Plan Change will fail to achieve its stated objective.

Richard Hanson [28/7/1] submits that currently landowners are being unfairly penalised for their generosity when they provide amenities to the public.

Lakes Landcare Group [28/8] supports the general recommendations, but identifies two areas of concern. **Mary Lee** [28/10/1] supports the change to exclude trails from the definition of public places.

Mt Field Limited [28/13/1] and **Wakatipu Trails Trust** [28/29/1] submit that the Plan Change provides security for landowners who wish to establish trails within their property without hindering any potential for future development of the property. The Plan Change encourages the development of public access in rural areas and will provide viability and use of the trail network throughout New Zealand.

John Pawson [28/14/1] supports the Plan Change because there is clearly an impediment to future public access.

Raymond Pike [28/15/1] submits that the Plan Change is a necessary step in obtaining new access, which is of growing concern as the District develops and grows.

Mount Cardrona Station Limited [28/12/1], **Porter Group Limited** [28/16/1] and **Remarkables Park Limited** [28/17/1] support the intent of the Plan Change to remove impediments to the provision of trails and submit that provision of trails throughout and linking to the Mount Cardrona Station and Remarkables Park Special Zones will provide important recreational opportunities.

Susan Stevens [28/22/1] submits that the options recommended in the Plan Change are consistent with the report of the Walking Access Panel, namely that walking access should be free, certain, enduring and practical while balancing the public interest with respect for private property, the environment and people. The submission identifies that three of the key community outcomes are:

- Quality landscapes and natural environment and enhanced public access
- A safe and healthy community
- Preservation and celebration of the District's local and cultural heritage.

The Plan Change supports these community outcomes by leading to enhanced public access and therefore a healthy community by providing some consideration to those landowners who grant public access across their private land.

It is submitted that the Gibbston Community Association (GCA) has been working with the Wakatipu Trails Trust (WTT) since 2005 to develop the trails network within Gibbston. The GCA is currently working on the Gibbston River Trail, a walking trail on the basis of agreement with private landowners. Enduring public access can not be guaranteed until the private landowners sign formal easements, which they are not comfortable doing until this Plan Change takes effect.

The Plan Change is therefore key to getting the private landowners along the Gibbston River Trail to sign formal easements granting enduring public access.

Transit New Zealand [28/25/1] supports the Plan Change in principle because it:

- builds on the principles of travel demand management
- provides easier opportunities for public access trails to be established and maintained in rural areas and thereby encouraging cyclists and pedestrians to use them as an alternative to the state highway network
- alleviates landowner concerns about constraints placed on future development
- encourages a better environment for a comprehensive network of trails which will have associated benefits, including economic benefits.

The Upper Clutha Environmental Society [28/26/1] recognises the importance of creating a public trails network to the community and the visitor industry and supports the removal of impediments to this process.

The Upper Clutha Tracks Trust [28/27/1] submits that in trying to create new trails and making submissions on resource consent applications the Trust has encountered reluctance from landowners to grant easements for access in the belief that this access would disadvantage them in any future development projects. The Trust supports the Plan Change and believes that it meets the objectives of removing disincentives to landowners to providing as of right public access, while not undermining the ability of the Plan to protect landscape values in the District.

The **Upper Clutha Tramping Club** [28/28/1] supports the Plan Change and believes it meets the objective of removing disincentives to landowners to providing as of right public access without undermining the Plan's ability to protect landscape values of the District. The Club has previously enjoyed good relations with local landowners regarding access over their properties. Recently these permissions have been less willingly granted because of the landowners' fear of establishing additional public places. An example is the Mt Maude Track, which until recently was a very popular walking track but is now no longer accessible for this reason. The Club believes that the Plan Change as drafted removes the existing disincentive to landowners.

Ben Wilson [28/32/1] supports the Plan Change as it will go some way to ensure there are fewer impediments to landowners offering formal access over private land.

5.1.2 Discussion

Through consultation undertaken prior to the notification of the Plan Change and in considering the submissions received, it is recognised that the Plan Change is necessary in order to achieve the community's goals associated with achieving a high quality and extensive trails network throughout the District.

The submissions received and the evidence presented at the hearing re-emphasise the importance of this Plan Change. General support for the Plan Change is therefore accepted. Specific concerns regarding the proposed amendments are discussed in separate sections of this Decision.

5.1.3 Decision

That the submissions of **J and C Bryant** [28/4/1], **Richard Hanson** [28/7/1], **Mount Field Limited** [28/13/1], **Raymond Pike** [28/15/1], **Susan Stevens** [28/22/1], **Upper Clutha Tracks Trust** [28/27/1], **Upper Clutha Tramping Club** [28/28/1], **Wakatipu Trails Trust** [28/29/1] and **Wanaka Walkers** [28/30/1] **Morven Ferry Limited** [28/11/1], **Southern Planning Group** [28/21], **Mount Cardrona Station Limited** [28/12/1], **Porter Group** [28/16/1] and **Remarkables Park Limited** [28/17/1] and the further submissions of **Remarkables Park Limited** (28/13/1/1) **John Wellington** (28/27/1/1) and **Royal Forest and Bird Protection Society** (28/27/1/2) are accepted.

That the submissions of **John and Sue Aspinall** [28/3], **Federated Farmers of NZ** [28/6/1] and [28/6/2], **Lakes Landcare Group** [28/8], **John Lee** [28/9/3] **Mary Lee** [28/10], **John Pawson** [28/14/1], **John Scurr** [28/19/1], **Tim and Cathy Scurr** [28/20/1], **Helen Tait**

[28/23/1] **Transit New Zealand** [28/25/1], **Upper Clutha Environmental Society** [28/26/1], **John Wellington** [28/31/1] and **Ben Wilson** [28/32/1] and the further submissions of **Bald Developments Limited** (28/14/1/1), (28/9/3/1), (28/12/1/1), (28/16/1/2), (28/17/1/1) **John Pawson** (28/14/1/2) and **Jacks Point Limited** (28/14/1/3), (28/9/3/2), (28/12/1/2) and **Remarkables Park Limited** (28/16/1/1) are accepted in part. That part accepted is the general support for the Plan Change; that part rejected is the request for specific amendments associated with the definition of trails; these specific requests are dealt with in separate sections of this Decision.

5.1.4 Reasons

Currently the District Plan provisions relating to the assessment of subdivision and development within the rural areas of the District pose an impediment to the establishment of new trails. This is because the provisions require that any applications for development are assessed in terms of their visibility from public places.

The purpose of the Plan Change is to remove this impediment while retaining the integrity of the Plan provisions in terms of protection of landscape values. Subject to minor amendments resulting from submissions, the amendment to the definition of public place and the amendment to Policy 4.2.5(4) is considered the most appropriate option in terms of achieving the purpose of the RMA and the purpose of the Plan Change.

5.2 WITHDRAW THE PLAN CHANGE

Dennis Thorn [28/24/1] submits that the Plan Change should be abandoned. **John Pawson** (28/24/1/1), **Jacks Point Limited** (28/24/1/2) and **Bald Developments Limited** (28/24/1/3) oppose the submission of **Dennis Thorn**.

Upper Clutha Environmental Society [28/26/1] opposes the Plan Change in its current form. **John Pawson** (28/26/1/1), **Jacks Point Limited** (28/26/1/2) and **Bald Developments Limited** (28/26/1/3) oppose the submission of **Upper Clutha Environmental Society**.

5.2.1 Explanation

Dennis Thorn [28/24/1] opposes the Plan Change for the following reasons:

- 1) The Section 32 Report is inadequate and inappropriately addresses the issues in that the Plan Change is not the most appropriate means of exercising Council's functions, and does not achieve Part 2 of the RMA in that it is inconsistent with the objectives and policies of the Plan on landscape and amenity values.
- 2) The Plan Change will have significant and adverse effects on the landscape and amenity values of the District. The change is a backwards step in the battle to protect landscapes, especially in the ONL.
- 3) The Plan Change is not necessary to achieve the purpose of the Act. A trail in the high country alongside residential, lifestyle and resort subdivision is a poor second rate solution.
- 4) The Plan Change does not promote the sustainable management of natural and physical resources and will weaken the provisions of the Plan concerning residential, lifestyle and resort subdivision and development in the ONL where these developments are visible from public places. More farms will be more easily developed for residential, lifestyle and resort activities, weakening the landscape values.

Upper Clutha Environmental Society [28/26/1] submits that the balance of the Plan Change in its current form is weighted towards the enabling of some additional trails at the expense of potentially weakening existing Plan provisions. It is submitted that in its current form the Plan Change does not represent sustainable management as described in Section 5 Part II of the RMA because:

- The actual, potential and cumulative adverse effects on natural and physical resources of the Plan Change will be more than minor.
- The Plan Change will not protect visual and amenity values or natural landscape features, but instead may permit the spread of development across outstanding natural landscapes.
- The Plan Change will weaken the future protection of the natural character of the landscape in the District.

It is submitted that the Plan Change does not fully recognise and provide for matters in Section 6 of the RMA; in particular Section 6(b). It is submitted that the Plan Change does not have particular regard to Section 7 of the RMA, in particular sections 7(b), (c), (e), (f) and (g). The Plan Change does not enhance the quality of the environment, nor does it maintain or enhance amenity values. It promotes the inefficient use of resources because it promotes significant and adverse landscape and amenity effects.

John Pawson (28/24/1/1) and (28/26/1/1) submits that the net effect of abandoning the Plan Change as suggested would be a significant restriction of public access over private and pastoral leasehold land. The abandonment would come at no gain to the integrity of the Plan in terms of assessment matters. With no public access the private land or leasehold land would not be assessed in terms of visibility.

Bald Developments Limited (28/24/1/3) and (28/26/1/3) and **Jacks Point Limited** (28/24/1/2) and (28/26/1/2) submit that the amendments sought by Dennis Thorn and the Upper Clutha Environmental Society are inconsistent with sound resource management practice.

5.2.2 Discussion

The Plan Change is necessary and appropriate; it has been found that without the Plan Change the Council, Wakatipu Trails Trust, Upper Clutha Tracks Trust and other community groups are unable to negotiate public access routes across private property. Providing good public access throughout the rural areas of the District is important as a means of achieving the purpose of the RMA, in particular providing for the cultural, economic and social wellbeing of the community.

The statement that land would be more easily developed as a result of this Plan Change is incorrect. This is because:

- If the proposed development site can be seen from an existing public place then the assessment of the visibility of that development remains unchanged by the Plan Change. This is because the Plan Change only applies to new trails established after December 2007. If the Plan Change does not affect existing trails it does not increase potential for development that is visible from existing public places.
- If there is no public place in the vicinity of the proposed development then the proposed development site is not visible from a public place and the effect of the development on a public place is not considered (because such an effect does not exist).
- If a new trail is established, then as a result of the Plan Change the proposed development would not be assessed in terms of its visibility from that 'public place'. This means that the assessment of the proposed development is the same whether the new trail is provided or not. The provision of the trail does not reduce the landscape assessment, instead, it retains the same level of assessment as if that trail did not exist.

In practice, due to the current Plan provisions new trails are rarely if ever being formed through private agreements, and therefore landscape protection is not being increased through the creation of new public places. Therefore the negative effect of stifling attempts to improve public access is outweighing any positive benefit of landscape protection (which is largely not occurring).

The Plan Change amends Policy 4.2.5(4) Visual Amenity Landscapes (VAL) by excluding new trails from the terms 'public places' and 'places frequented by the public generally'. As discussed further in Section 4.5 of this Decision, currently the landowner has the option of

closing public access and in so doing removing the assessment of visibility from 'places frequented by the public generally'; if the access is closed then a place is no longer frequented. Enabling the landowner to formalise this access as suggested by the Plan Change also removes the application of the policy in future assessments of visibility as part of resource consent or subdivision applications. In both the existing situation and the situation proposed by the Plan Change development would not be assessed in terms of its visibility from a closed access or a new trail. Therefore the level of assessment remains unchanged, but a benefit of public access can be achieved.

All other policies and assessment matters remain unchanged and therefore provide the same level of assessment of development as is currently the case.

Upper Clutha Environmental Society suggests that the Plan Change does not address Section 6(b), or Sections 7(b), (c), (e), (f) and (g) of the RMA. These read as follows:

Section 6(b):

(b) The protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:

Section 7:

(b) The efficient use and development of natural and physical resources:

(c) The maintenance and enhancement of amenity values:

(e) [Repealed]

(f) Maintenance and enhancement of the quality of the environment:

(g) Any finite characteristics of natural and physical resources:

As identified above the Plan Change does not change the assessment of existing trails and public places. It is therefore effective in achieving Section 6(b) of the Act. It may be that future development will be visible from new trails, given that new trails will be excluded from the definition of 'public place'. However this does not reflect an inefficient use of natural and physical resources or a reduction in amenity values. If people can not access an area they are not able to appreciate its amenity values. On balance it is considered more beneficial to enable access than to restrict access so that development does not affect the views from such access. This also applies to having regard to the maintenance and enhancement of the quality of the environment. In preparing the Plan Change the Council has recognised and provided for the matters within Section 6 and has given particular regard to the matters in Section 7.

5.2.3 Decision

That the submission of **Dennis Thorn** [28/24/1] is rejected and the further submissions of **John Pawson** (28/24/1/1), **Jacks Point Limited** (28/24/1/2) and **Bald Developments Limited** (28/24/1/3) are accepted.

That the submission of **Upper Clutha Environmental Society** [28/26/1] and the further submissions of **John Pawson** (28/26/1/1), **Jacks Point Limited** (28/26/1/2) and **Bald Developments Limited** (28/26/1/3) are accepted in part. That part accepted is the consideration of amendments to the definition of trail. That part not accepted is the acceptance of all amendments suggested. Note that the amendments requested by the Society are considered further in separate sections of this Report.

5.2.4 Reasons

If the Plan Change only changes the assessment of visibility from new trails then there is no detrimental effect on the protection of landscape values. This is because the landscape is assessed as if there were no trail there.

The effect of the Plan Change is that any future development in the vicinity of a new trail would not be assessed in terms of its visibility from that trail. This means that the development would be assessed in the same manner as if the trail did not exist. There is no weakening of the Plan provisions, given that the assessment of the development is unchanged whether the new trail exists or not.

The benefits associated with removing impediments to the provision of trails outweigh any costs associated with amending the provisions.

5.3 EXCLUSION OF TRAILS CREATED PRIOR TO DECEMBER 2007

Mary Anderson [28/2/1], **John and Sue Aspinall** [28/3/1], **Cardrona Landcare Group** [28/5/1], **Federated Farmers** [28/6/6], **Lakes Landcare Group** [28/8/1], **John Lee** [28/9/2], **Mary Lee** [28/10/1], **Morven Ferry Limited** [28/11/1] **John Pawson** [28/14/5], **John Scurr** [28/19/1] and **Southern Planning Group** [28/21/1] submit that trails established before December 2007 should be included in the definition of trail. **Isabella Anderson** [28/1/1] supports the submission of Federated Farmers, John and Sue Aspinall and Lakes Landcare Group.

Remarkables Park Limited (28/2/1/1), (28/3/1/1), (28/5/1/2), (28/19/1/1), (28/21/1/1) supports the submissions of Mary Anderson, John and Sue Aspinall, Cardrona Landcare Group, John Scurr and Southern Planning Group.

Bald Developments Limited (28/5/1/1), (28/19/1/2), (28/21/1/2), (28/6/6/3), (28/8/1/3), and **Jacks Point Limited** (28/5/1/3), (28/19/1/3), (28/21/1/3), (28/6/6/4), (28/8/1/5) support the submissions of Cardrona Landcare Group, Federated Farmers, Lakes Landcare Group, John Scurr and Southern Planning Group. **Royal Forest and Bird Protection Society** (28/5/1/4) opposes the submission of Cardrona Landcare Group.

John Wellington (28/6/6/1), (28/8/1/1) **Upper Clutha Environmental Society** (28/6/6/2), (28/8/1/2) and **Royal Forest and Bird Society** (28/6/6/5), (28/8/1/6) oppose the submissions of Federated Farmers and Lakes Landcare Group.

Bald Developments Limited (28/9/2/1), (28/10/1/1), (28/11/1/3), (28/14/5/1) **Remarkables Park Limited** (28/9/2/2) (28/10/1/2), (28/11/1/4) (28/14/5/3) and **Jacks Point Limited** (28/9/2/3) (28/10/1/3)(28/11/1/5)(28/14/5/5) support the submissions of John Lee, Mary Lee, Morven Ferry Limited and John Pawson. **John Wellington** (28/11/1/1) and **Upper Clutha Environmental Society** (28/11/1/2) oppose the submission of Morven Ferry Limited.

John Wellington (28/14/5/1) opposes the submission of John Pawson.

Richard Hanson [28/7/1] submits that the effective date should be retrospective from the date the RMA became operative in 1991. **John Wellington** (28/7/1/1) opposes the submission of Richard Hanson.

Mount Cardrona Station Limited [28/12/3], **Porter Group Limited** [28/16/3] and **Remarkables Park Limited** [28/17/3] submit that reference to December 2007 should be deleted.

John Wellington (28/12/1/1) opposes the submission of Mount Cardrona Station Limited. **Bald Developments Limited** (28/12/3/2), (28/16/3/2) **Remarkables Park Limited** (28/12/3/3), (28/16/3/1) and **Jacks Point Limited** (28/12/3/4) (28/16/3/3) support the submissions of Mount Cardrona Station Limited and Porter Group Limited. **Bald Developments** (28/17/3/1) and **Jacks Point Limited** (28/17/3/2) support the submission of Remarkables Park Limited.

Royal Forest and Bird Protection Society [28/18/4], **Helen Tait** [28/23/1], **Upper Clutha Environmental Society** [28/26/3] and **John Wellington** [28/31/1] submit that the definition of trail should not extend to any public route or public place legally established before December 2007.

John Wellington (28/18/4/1) supports the submission of Royal Forest and Bird Society. **Remarkables Park Limited** (28/18/4/2), **Jacks Point Limited** (28/18/4/3) and **Bald Developments Limited** (28/18/4/4) oppose the submission of Royal Forest and Bird Society.

John Wellington (28/23/1/1) and **Royal Forest and Bird Protection Society** (28/23/1/3) support the submission of Helen Tait.

John Wellington (28/26/3/1) and **Royal Forest and Bird Protection Society** (28/26/3/3) support the submission of **Upper Clutha Environmental Society**. **Jacks Point Limited** (28/26/3/2) and **Bald Developments Limited** (28/26/3/4) oppose the submission of **Upper Clutha Environmental Society**.

5.3.1 Explanation

The following provides a summary of the reasons for the submissions. Note that only those comments that expanded on the decision requested are included.

John and Sue Aspinnall [28/3/1] and the **Lakes Landcare Group** [28/8/1] submit that it is unfair to penalise those who agreed to tracks even though they knew the risks they were taking.

Morven Ferry Limited [28/11/1] and **Southern Planning Group Limited** [28/21/1] submit that excluding trails formally protected prior to December 2007 from the definition of public place is inequitable to those landowners who have already agreed to trails through their private property. By allowing a cut off date as December 2007 there will be inconsistency in the visual assessment that will occur between properties that have provided formally protected trails simply because of the date they were established. It is unreasonable not to include all trails that are formally protected because of the date at which they were established.

Federated Farmers [28/6/6] submit that the public place exemption should apply across all walking tracks irrespective of their date of operation. It is submitted that the primary focus of the Plan Change is to encourage landowners to enter into public access agreements. The aim of the Plan Change is to alleviate the existing concerns and not punish landowners who have negotiated and covenanted public access.

Mount Cardrona Station Limited [28/12/3], **Porter Group Limited** [28/16/3] and **Remarkables Park Limited** [28/17/3] submit that the December 2007 date is arbitrary and recognition of the benefits of public access should extend to existing trails.

John Pawson [28/14/5] submits that the Plan Change should be fair in its application across all private land. The current definition will discriminate against those who have been generous enough to have formalised access prior to December 2007.

The **Royal Forest and Bird Protection Society** [28/18/4] submits that including trails established prior to December 2007 would introduce an undesirable complexity and uncertainty. It is easy to establish by examination of legal documentation when a track legally became a public place. Such a change would fail to achieve the purpose of this Plan Change, which is to enhance new public access. The purpose is not to address current issues of visibility from existing public tracks and places.

John Scurr [28/19/1] submits that the definition as notified disadvantages the landowners of the properties on which existing public places have been provided if they are considering future subdivision or development.

5.3.2 Discussion

The purpose of the Plan Change is to encourage *new* trails without reducing the protection of landscape and amenity values associated with *existing* trails. Trails already established are protected by way of formal easement. It is not the purpose of the Plan Change to reduce the amenity values associated with the views from those existing public places, and therefore removing the date so that all existing trails are no longer deemed a public place would not be effective in achieving the purpose of the Plan Change.

The submitters identify that restricting the exclusion from public places to those trails that are established after December 2007 is unfair and unreasonable. However, the assessment of visibility from trails established prior to December 2007 will be the same as it was before the Plan Change was notified. It is acknowledged that this will be different to the assessment

applying to new trails. Landowners with existing trails through their land, or who own land that is visible from existing trails located on public land are not being penalised or punished because the visibility assessment remains unchanged.

There is no reason to change the assessment of existing trails; all that this would achieve is an increase in the potential to gain development rights where they are in view of the existing trail. The intention of the Plan Change is to encourage the creation of new trails, not to undermine the views from those that already exist. This is important, given that the amenity values associated with existing trails should be protected into the future. The trail could have been established through negotiations on resource consent or through tenure review, not necessarily as a result of negotiations between the landowner and a trails trust.

Richard Hanson submits that the date should be retrospective, and should be 1991. The reason for such a change is not clear. December 2007 is the date at which the Plan Change was notified, and is therefore the date from which the amended definition of public place came into effect. Changing the date to 1991 would mean that the visibility of potential development from all those trails established over the last 17 years would not be assessed as part of any resource consent. This is not the intention of the Plan Change and would undermine the protection of landscape values when viewed from those trails established in the past 17 years.

5.3.3 Decision

That the submissions of **Mary Anderson** [28/2/1], **John and Sue Aspinall** [28/3/1], **Cardrona Landcare Group** [28/5/1], **Federated Farmers** [28/6/6], **Lakes Landcare Group** [28/8/1], **John Lee** [28/9/2], **Mary Lee** [28/10/1], **Morven Ferry Limited** [28/11/1] **John Pawson** [28/14/5], **John Scurr** [28/19/1] **Southern Planning Group** [28/21/1] **Isabella Anderson** [28/1/1] **Richard Hanson** [28/7/1] **Mount Cardrona Station Limited** [28/12/3], **Porter Group Limited** [28/16/3] and **Remarkables Park Limited** [28/17/3] and the further submissions of **Remarkables Park Limited** (28/2/1/1), (28/3/1/1), (28/5/1/2) (28/19/1/1) (28/21/1/1) (28/8/1/4) (28/9/2/2) (28/10/1/2), (28/11/1/4) (28/14/5/3) (28/12/3/3), (28/16/3/1) (28/18/4/2) **Bald Developments Limited** (28/5/1/1) (28/19/1/2) (28/21/1/2), (28/6/6/3) (28/8/1/3) (28/9/2/1), (28/10/1/1), (28/11/1/3), (28/14/5/1) (28/12/3/2), (28/16/3/2) (28/17/3/1) (28/18/4/4) (28/26/3/4) and **Jacks Point Limited** (28/5/1/3) (28/19/1/3) (28/21/1/3) (28/6/6/4) (28/8/1/5) (28/9/2/3) (28/10/1/3)(28/11/1/5)(28/14/5/5) (28/12/3/4) (28/16/3/3) (28/17/3/2) (28/18/4/3) (28/26/3/2) are rejected.

That the submissions of **Royal Forest and Bird Protection Society** [28/18/4], **Helen Tait** [28/23/1], **Upper Clutha Environmental Society** [28/26/3] and **John Wellington** [28/31/1] and the further submissions of **Royal Forest and Bird Protection Society** (28/5/1/4) (28/6/6/5) (28/8/1/6) (28/23/1/3) (28/26/3/3) **John Wellington** (28/6/6/1), (28/8/1/1), (28/11/1/1) (28/14/5/1) (28/7/1/1) (28/12/1/1) (28/18/4/1) (28/23/1/1) (28/26/3/1) **Upper Clutha Environmental Society** (28/6/6/2) (28/8/1/2) (28/11/1/2) are accepted.

5.3.4 Reasons

The purpose of the Plan Change is to encourage the provision of new trails by removing impediments to their establishment without weakening landscape protection. The December 2007 date ensures that the landscape protection of those trails that were established prior to this Plan Change coming into effect remains the same. It does not pose any increased burden on those landowners with intentions to develop within visibility of trails established prior to December 2007. Instead it simply retains those provisions that have existed since the Environment Court decisions of 1998.

While the Hearings Panel sympathises with the submissions requesting inclusion of trails established prior to December 2007, the exclusion of these trails is necessary in achieving the purpose of the Plan Change through avoiding the weakening of the plan provisions. Determining the effect of including trails established prior to December 2007 is difficult and the risks associated with such an amendment are potentially significant.

5.4 EXCLUSION OF TRAILS CREATED AS A RESULT OF THE TENURE REVIEW PROCESS

Isabella Anderson [28/1/1] submits that tenure review trails should be included.

Federated Farmers [28/6/7] submit that Crown lease hold land, private land as a result of tenure review, and private lease hold land all should be treated as though they were private land in terms of provisions for exemption from public place assessment.

Bald Developments Limited (28/6/7/1) and **Jacks Point Limited** (28/6/7/2) support the submission of **Federated Farmers**. **Royal Forest and Bird Protection Society** (28/6/7/3) oppose the submission of **Federated Farmers**.

John Pawson [28/14/3] submits that a simpler approach may be to state that any views from private land or pastoral leasehold land can not be considered a 'public place' or 'place frequented by the public generally'. **John Wellington** (28/14/3/1) and **Upper Clutha Environmental Society** (28/14/3/2) oppose the submission of **John Pawson**. **Bald Developments Limited** (28/14/3/3/3), **John Pawson** (28/14/3/4) and **Jacks Point Limited** (28/14/3/5) support the submission of **John Pawson**, and the **Royal Forest and Bird Protection Society** (28/14/3/6) partially supports the submission of **John Pawson**.

Royal Forest and Bird Protection Society [28/18/6] submit that easements created through tenure review should not be included in the definition of trail. **John Wellington** (28/18/6/1) and **Upper Clutha Environmental Society** (28/18/6/2) support the submission of **Royal Forest and Bird Protection Society**.

Helen Tait [28/23/1], **Upper Clutha Environmental Society** [28/26/3] and **John Wellington** [28/31/1] submit that trails created through the tenure review process should not be included in the definition of public place. **John Wellington** (28/23/1/1), (28/26/3/1) and the **Royal Forest and Bird Protection Society** (28/23/1/3), (28/26/3/3) support the submissions of **Helen Tait** and **Upper Clutha Environmental Society**. **Jacks Point Limited** (28/23/1/2), (28/26/3/2) (28/31/1/1), and **Bald Developments Limited** (28/23/1/4), (28/26/3/4), (28/31/1/2) support the submissions of **Helen Tait** and **John Wellington** and oppose the submission of **Upper Clutha Environmental Society**.

5.4.1 Explanation

Federated Farmers [28/6/7] submits that while enduring public access is one component of a tenure review outcome there are still a number of properties that have not completed tenure review but where access is provided at the landowner's discretion. Under the current Plan and the proposed Plan Change these existing access arrangements will and are being compromised by the implications of 'public place'.

John Pawson [28/14/3] submits that the Plan Change should not discriminate between those trails created out of tenure review or compensated for.

Dennis Thorn [28/24/1] submits that the tenure review 'trails for freehold' debate stems from a misconception as to the high country pastoral right holders ability to prevent the public accessing the Crown's land. The paradigm shift in 2006 in the Crown's position on pastoral lease rents (where public and recreational access has been brought into the mix) takes away the need for this Plan Change.

Royal Forest and Bird Protection Society [28/18/6] submits that recent legal opinion is suggesting that pastoral lease land is in fact public land. As there is some uncertainty about the status of this land it is submitted that it is best if 'trails' do not include any easements created through tenure review. Very often there are covenants over newly freeholded land preventing development and therefore there should be no issues of effects on future freehold landowners.

In their further submission **Forest and Bird** identify that easements are frequently established across newly created freehold land as a result of the tenure review process. These are usually provided to create access to conservation areas but may also be for the purposes of enjoying

the landscape they pass through. It is acknowledged that if tenure review easements were included as 'trails' then this might ease negotiations in tenure review and facilitate the securing of public access. However, trails should only relate to easements created on existing private land as a result of negotiations between QLDC, DoC or other Crown entities. Tenure review easements cannot be treated the same as other easements because fundamentally the land is public land while it is in a pastoral lease.

It is submitted that the leaseholder does not have the right to trade public access for the right to alter public landscape values. Tenure review is a separate process with different terms of reference and the two should not be confused. It is submitted that the Council has no role in the negotiation and creation of tenure review easements and there is no opportunity for a public hearing. It is a question of whether the community would prefer to have the trail knowing that they may be able to see development from it in future, or forego the trail and avoid that risk.

Forest and Bird suggest that assessment in respect of tenure review easements should be treated as paper roads are now under Assessment Matter b(i) for Visual Amenity Landscapes where the Council shall consider the particularities of the case and whether it is appropriate to include a particular place in the assessment. The purpose and objectives of the easement should be recorded at the time of creation to guide whether visibility of any proposed development from that easement is a reasonable requirement. This may also require amendment to objectives and policies.

Helen Tait [28/23/1] and **John Wellington** [28/31/1] submit that the intention of the Plan Change is to remove disincentives to tracks over private land and this should and will apply to any new tracks that are created over freehold land after the tenure review process is complete. Tracks and easements created out of the tenure review process itself and that are part of the 'package' negotiated, should be excluded from the definition of trails because:

- At the time the easements are created the land tenure is changing from Crown Lease to private freehold. The Crown is transferring the balance of the rights not covered by the pastoral lease but this is conditional on retaining the public right of access along the routes negotiated as part of the tenure review process.
- These tracks are created under tenure review and are negotiated between LINZ and the landowner under the Crown Pastoral Land Act and the Land Act, not the Resource Management Act.
- There is no opportunity under tenure review for Trails Trusts, community associations or the QLDC to negotiate with Crown Pastoral lessees.
- The public view of such tracks and the risks (to the lessees) in the creation of such possible additional public places can presumably be taken into account in the tenure negotiations. Without local community input it is unlikely that what could be a lessening of landscape protection over wide and significant areas will be sufficiently taken into account. This could seriously weaken landscape protection.

Upper Clutha Environmental Society [28/26/3] submits that trails created under tenure review are negotiated between LINZ and the landowner under the Crown Pastoral Land Act and the Land Act. There is no opportunity for trails trusts, community associations or the QLDC to negotiate with Crown Pastoral Land Act leaseholders. The negotiations are outside the community's hands and are therefore outside the reason for the Plan Change.

The Society submits that tenure review tracks are on Crown Land. Recent legal opinion indicates that Crown Pastoral Leases are not private land. It is submitted that if the landowner fails to agree to a track proposed by LINZ as part of tenure review negotiations the tenure review will be halted. A large incentive to agree to tracks proposed by LINZ exists because pastoral lessees are very well compensated for agreeing to tracks under the tenure review process. The Plan Change is not necessary to encourage such tracks.

Tracks in tenure review lands are almost always in ONL and given the sensitivity of these landscapes the default position should be that trails should always be regarded as public places. In its current form it is argued the Plan Change will effectively promote development around these trails.

Bald Developments Limited (28/23/1/4) and **Jacks Point Limited** (28/23/1/2) submit in opposition to the Upper Clutha Environmental Society for the reason that the amendments sought by the submitter are inconsistent with sound resource management practice.

5.4.2 Discussion

It was identified in the Section 32 Report that trails established as a result of tenure review should be included within the definition of trail and thus be excluded from the term 'public place'. This was suggested because it was considered that it would assist in the negotiations between the lessee and the Crown. However, as identified in submissions, the tenure review process is undertaken under separate legislation and while there are opportunities for public input, there is no provision for a public hearing and no ability for submitters to negotiate with the leaseholder or the Crown.

Given that trails established by way of tenure review are determined under separate legislation, trails would be established whether this Plan Change proceeds or not. Therefore, this is a different situation to the case of future trails that are negotiated by the Trails Trust or the Council or DoC which rely on this Plan Change. It is recognised that if the Plan Change excludes tenure review trails it may affect the outcome of some negotiations.

It is noted that Upper Clutha Environmental Society and Dennis Thorn refer to a legal opinion on the status of Crown lease hold land in terms of the right for public to access that land. There is a contrary opinion to that referred to by the submitters which has been prepared by the legal counsel for LINZ. As identified above the legal status of Crown pastoral land and the process of tenure review is managed under different legislation. It is appropriate that the processes of tenure review and the establishment of trails on freehold land remain distinct.

5.4.3 Decision

That the submissions of **Isabella Anderson** [28/1/1] **Federated Farmers** [28/6/7] and **John Pawson** [28/14/3] and the further submissions of **Bald Developments Limited** (28/6/7/1) (28/14/3/3), (28/23/1/4) (28/26/3/4) (28/31/1/2) and **Jacks Point Limited** (28/6/7/2) (28/14/3/5) (28/23/1/2) (28/26/3/2) (28/31/1/1), **John Pawson** (28/14/3/4) are rejected.

That the submissions of **Royal Forest and Bird Protection Society** [28/18/6] **Helen Tait** [28/23/1], **Upper Clutha Environmental Society** [28/26/3] and **John Wellington** [28/31/1] and the further submissions of **Royal Forest and Bird Protection Society** (28/6/7/3) (28/14/3/6) (28/23/1/3)(28/26/3/3) **John Wellington** (28/14/3/1) (28/18/6/1) 28/23/1/1) (28/26/3/1) and **Upper Clutha Environmental Society** (28/14/3/2) (28/18/6/2) are accepted and the definition of trail is amended to read:

Trail – means any public access route (excluding roads and public access easements created by the process of tenure review under the Crown Pastoral Land Act) legally created by way of a grant of easement registered after 11 December 2007 for the purpose of providing public access in favour of the QLDC, the Crown or any of its entities.

5.4.4 Reasons

The tenure review process is undertaken pursuant to the Crown Pastoral Land Act and the Land Act. While the District Council and the general public are able to submit on tenure review proposals, the negotiation and decision making process is between LINZ on behalf of the Crown and the lease holder. If the lease holder does not agree with the tenure review proposal it does not proceed. The Council and community groups do not have the ability to appear at a public hearing, or become involved in negotiations.

Given that tenure review easements result from a separate process under a separate piece of legislation, it is appropriate that they remain included as part of the definition of public place. This avoids the risk of access easements being established by LINZ and the leaseholder that are then adversely affected by nearby development. Once land is in freehold ownership the landowner has the ability to volunteer public access, if agreed to by DoC or Council, and

formally established by way of an access easement this would be included within the definition of trail and therefore excluded from public place.

The consequences of including access easements created by way of tenure review within the definition of trail are uncertain and there is a risk that landscape protection would be reduced. This is particularly of concern because tenure review increases potential development rights where they did not previously exist. The lessees have the ability to take into account the fact that future easements would be deemed a public place during negotiations with the Crown.

Retaining the definition as recommended by the Planners Report retains certainty and provides some safeguard against reducing landscape values. It is within the scope of the Plan Change as notified, and was commented on both prior to notification of the Plan Change, and within the Section 32 analysis. Therefore there is no need to re-notify the Plan Change in order to enable interested parties to comment.

5.5 EXCLUSION OF TRAILS THAT ARE NOT FORMALLY PROTECTED

Mary Anderson [28/2/2] **John and Sue Aspinall** [28/3/2] **Cardrona Landcare Group** [28/5/2] **Federated Farmers** [28/6/1] [28/6/4] **Lakes Landcare Group** [28/8/2] **John Lee** [28/9/1], **Mary Lee** [28/10/2] and **Ben Wilson** [28/32/1] submit that the Plan Change should apply to informal access on private land.

Remarkables Park Limited (28/2/2/1), (28/3/2/1), (28/5/2/2), (28/8/2/4) opposes the submissions of **Mary Anderson** and **John and Sue Aspinall**, **Cardrona Landcare Group**, **Lakes Landcare Group**. **Bald Developments Limited** (28/5/2/1), (28/6/1/3), (28/6/4/1), (28/8/2/3)(28/9/1/1), (28/10/2/1), (28/32/1/2) and **Jacks Point Limited** (28/5/2/3), (28/6/1/4), (28/6/4/2), (28/8/2/5), (28/9/1/2), (28/10/2/2), (28/32/1/1) support the submission of **Cardrona Landcare Group**, **Federated Farmers**, **Lakes Landcare Group**, **John Lee**, **Mary Lee** and **Ben Wilson**. **Royal Forest and Bird Protection Society** (28/5/2/4) supports the submission of **Cardrona Landcare Group** in part.

Mary Anderson [28/2/3], **John and Sue Aspinall** [28/3/3], **Lakes Landcare Group** [28/8/3] submit that the rule should be fair and equitable to all parties. **Bald Developments Limited**, (28/8/3/1) **Jacks Point Limited** (28/8/3/2) support the submission of **Lakes Landcare Group**.

Cardrona Landcare Group [28/5/3] opposes any suggestion that the term trail should only apply where there is no compensation. **Bald Developments Limited** (28/5/3/1) and **Jacks Point Limited** (28/5/3/2) support the submission of **Cardrona Landcare Group**.

John Wellington (28/6/1/1) (28/8/2/1) and **Upper Clutha Environmental Society** (28/6/1/2)(28/8/2/2) oppose the submissions of **Federated Farmers** and **Lakes Landcare Group**.

Federated Farmers [28/6/1] submits that as an alternative to the suggested amendment to the definition of trails Policy 4.2.5(4) could be amended so that it reads:

(a) *To avoid, remedy or mitigate the adverse effects of subdivision and development on the visual amenity landscapes which are:*

- *highly visible from public places ~~and other places which are frequented by members of the public generally~~; and*
- *visible from public roads.*

John Wellington (28/6/1/1) and **Upper Clutha Environmental Society** oppose the submission of **Federated Farmers**. **Bald Developments Limited** (28/6/1/4) and **Jacks Point Limited** (28/6/1/4) support the submission of **Federated Farmers**.

Federated Farmers [28/6/5] submit that associated amendments to the definition of Visual Amenity Landscape should include reference to other amendments requested. **Bald Developments Limited** (28/6/5/1) support the submission of **Federated Farmers**.

Mount Cardrona Station Limited [28/12/3], **Porter Group Limited** [28/16/3] and **Remarkables Park Limited** [28/17/3] submit that the definition of trail should refer to other legal instruments such as leases. **John Wellington** (28/12/3/1) and **Upper Clutha Environmental Society** (28/12/3/5) oppose the submission of Mount Cardrona Station Limited. **Remarkables Park Limited** (28/12/3/2), (28/16/3/1) **Bald Developments Limited** (28/12/3/3), (28/16/3/2), (28/17/3/2) and **Jacks Point Limited** (28/12/3/4), (28/16/3/3), (28/17/3/1) support the submissions of Mount Cardrona Station and Porter Group Limited and Remarkables Park Limited.

John Pawson [28/14/3] submits that a simpler approach may be to state that any views from private land or pastoral lease hold land can not be considered a 'public place' or place frequented by the public generally'.

John Wellington (28/14/3/1) and **Upper Clutha Environmental Society** (28/14/3/2) oppose the submission of John Pawson. **Bald Developments Limited** (28/14/3/3), **John Pawson** (28/14/3/4), **Jacks Point Limited** (28/14/3/5) support the submission of John Pawson, and the **Royal Forest and Bird Protection Society** (28/14/3/6) supports the submission of John Pawson in part.

John Pawson [28/14/4] submits that the Council should encourage informal accesses to remain. **John Wellington** (28/14/4/1) opposes the submission of John Pawson. **Bald Developments Limited** (28/14/4/2), **John Pawson** (28/14/4/3) and **Jacks Point Limited** (28/14/4/4) support the submission of John Pawson.

Royal Forest and Bird Protection Society [28/18/1] submits that the term 'trail' should mean trails and places that have been accepted by the Council, the Crown or any of its entities (and are created by way of the appropriate mechanism) and their purpose, values and future management has been formally recorded (on public record) so that it can be determined whether any future development on any land will either not affect or will contribute to the desired outcome.

Jacks Point Limited (28/18/1/1), **Federated Farmers** (28/18/1/2) and **Bald Developments Limited** (28/18/1/3) oppose the submission of Royal Forest and Bird Protection Society.

Royal Forest and Bird Protection Society [28/18/5] submits that Policy 4.2.5(4) is amended to make it clear that 'other places' are still to be included.

Jacks Point Limited (28/18/5/1) and **Bald Developments Limited** (28/18/5/2) oppose the submission of Royal Forest and Bird Protection Society.

Upper Clutha Environmental Society [28/26/3] and **John Wellington** [28/31/1] support the requirement that trails are those that are legally formed. **John Wellington** (28/26/3/1) and **Royal Forest and Bird Protection Society** (28/26/3/3) support the submission of Upper Clutha Environmental Society. **Jacks Point Limited** (28/26/3/2) and **Bald Developments Limited** (28/26/3/4) oppose the submission of Upper Clutha Environmental Society.

5.5.1 Explanation

John and Sue Aspinall [28/3/2] and **Lakes Landcare Group** [28/8/2] submit that although the Section 32 report states that the rule does not apply to informal access over private land the Environment Court has already applied it in such cases. The only alternative is for landowners who wish to apply for resource consent to deny public access.

Federated Farmers [28/6/1] and [28/6/4] submit that under the Plan Change as notified, where landowners provide informal access within the visual amenity landscapes resource consent applications will be assessed under the Policy provision 'places frequented by the public generally'. These landowners are putting themselves at risk and the current Plan Change as notified does nothing to address this. It is submitted that the only option for the landowners is to decline all public access. It is submitted that extending the exclusion from public place to voluntary access provided to the public across private land will:

- Provide certainty to landowners;

- Remove the current discouragement for landowners to continue to establish private walking tracks and to grant ongoing access to the public across their land at their discretion.
- Not undermine the landscape protection of the Plan; while the discretion remains with the landowner the landscape status of that property or the views associated with it do not change.
- Reward landowners who voluntarily invest resources into ensuring the public can enjoy access to recreation opportunities on their land by providing them with certainty that it will not afford their properties any extra protection over and above existing Plan provisions.

John Pawson [28/14/4] submits that in reality any informal access will be protected in that a landowner will deny access when required so that the commissioner or judge in making an RMA decision can not place weight on the informal access with respect to visibility from public places.

Upper Clutha Tramping Club [28/28/1] submits that applying the exclusion only to those access tracks formed by way of formal easement also provides an additional level of security of future access, rather than access being at the whim of changing landowners and subject to requests for permission on each occasion of use.

Royal Forest and Bird Protection Society [28/18/1], [28/18/5] submit that when agreeing to a new public trail or place in negotiations with a private landowner, the Council envisages a particular outcome in terms of the physical access being gained as well as the type of landscape experience users will enjoy. With no robust mechanism in place to enable Council to control land use around that public trail or place there can be no certainty that the envisaged values will endure. Policy 4.2.5(4) should be amended to make it clear that 'other places' are still to be included, as follows:

From public places (except any trail as defined in this Plan) and other places which are frequented by the public generally (except any trail as defined in this Plan).

Ben Wilson [28/32/1] submits that it is farcical that 'private land' can be considered to be a 'public place' when public access is obtained at the discretion and goodwill of the landowner.

5.5.2 Discussion

Any development within ONL or VAL is assessed in terms of its visibility from any public place. In addition, in the VAL Policy 4.2.5(4) requires that development will be assessed in terms of its visibility from public places and places frequented by the public generally.

Therefore, any existing access within ONL that is not legally formed is not affected by the Plan provisions that refer to visibility from public place, and will not be affected by the Plan Change.

In the VAL development proposals are currently assessed in terms of their visibility from informal access, because these are considered to be 'places frequented by the public generally'.

The purpose of the Plan Change is to remove impediments to the creation of new public access trails. For future management and certainty it is important that these trails are formally protected by way of easement. Without such certainty the following issues arise:

- Council or DoC can not commit public funds to the future maintenance of those trails.
- If access is informal there is a risk that at any time it could be closed at the discretion of the landowner. This gives no certainty to the community.
- Public information on the trails network can not include those trails that are not formally established, given that at any time access to such trails may be stopped by the landowner.

For these reasons the Plan Change focuses on removing impediments to the provision of new, formally protected trails. It does not change the status or assessment of informal trails within the VAL. It does however provide the landowners with the option to formalise that access, given that once formalised the access would no longer be encapsulated by the term 'places

frequented by the public generally' and would not be deemed a public place. Therefore future development would not be assessed in terms of its visibility from that access.

There is a risk that retaining the provision 'places frequented by members of the public generally' will result in landowners closing areas of informal access. However that risk is not changed by the Plan Change and until trails are formally protected that risk continues to exist. It is noted that in requiring formal protection of the trail the Council, DoC or other Crown entities must be willing to accept the management of that trail.

Policy 4.2.5(4) has been amended to exclude 'trails' from both the term 'public places' and 'places frequented by the public generally'. This has been done on purpose, given that once a trail is formalised it needs to be clear that it is no longer encapsulated by the term 'place frequented by the public generally'. Otherwise there would be no incentive to formalise the trail.

Forest and Bird request that the definition of trail is expanded to include a requirement that a public record of the trails is maintained, recording how the trail was established and the consideration of landscape values versus public access. It is considered that the definition of trail should be kept as concise as possible. However, it is acknowledged that there should be a public record of trails; how they were established, where they are located, and the funding used for their maintenance. This is important from both the aspect of monitoring the effectiveness of this Plan Change and the number of trails established, but also so that the community has a clear record of access routes that are available and public funds required for their maintenance.

Mount Cardrona Station et al request that the definition is amended to refer to other legal instruments such as leases. The terminology within the definition has been chosen to ensure that the access excluded from the definition of public place is only access that is enduring and has been agreed to by the Council, the Crown or its entities. It is understood that the concern with leases is that they are not in perpetuity; instead they will at some stage come up for renewal. The current provisions are clear and refer to the legal instruments used for the management of legally formed trails. Therefore no amendment is necessary.

John Pawson submits that instead of amending the definition of public place by excluding the term 'trail', the Plan Change should simply exclude any private land or lease hold land from the definition of 'public place' and the term 'places frequented by the public generally'. This would mean that visibility of development would no longer be assessed from any public place that traversed private property. This suggestion therefore fails to retain the protection of landscape values because it would change the status of many of the trails that are currently incorporated within the definition of public place.

5.5.3 Decision

That the submissions of **Mary Anderson** [28/2/2] **John and Sue Aspinall** [28/3/2] **Cardrona Landcare Group** [28/5/2] **Federated Farmers** [28/6/1] [28/6/4] [28/6/5] **Lakes Landcare Group** [28/8/2] **John Lee** [28/9/1], **Mary Lee** [28/10/2] **Ben Wilson** [28/32/1] **Mount Cardrona Station Limited** [28/12/3], **Porter Group Limited** [28/16/3] and **Remarkables Park Limited** [28/17/3] and **John Pawson** [28/14/3] and the further submissions of **Bald Developments Limited** (28/5/2/1), (28/6/1/3), (28/6/4/1), (28/8/2/3), (28/9/1/1), (28/10/2/1), (28/32/1/2) (28/6/5/1) (28/12/3/3), (28/16/3/2), (28/17/3/2), (28/14/3/3) (28/26/3/4), and **Jacks Point Limited** (28/5/2/3), (28/6/1/4), (28/6/4/2), (28/8/2/5), (28/9/1/2), (28/10/2/2), (28/32/1/1) (28/12/3/4), (28/16/3/3), (28/17/3/1) (28/26/3/2) **Royal Forest and Bird Protection Society** (28/5/2/4) (28/14/3/6) **Remarkables Park Limited** (28/12/3/2), (28/16/3/1) **John Pawson** (28/14/3/4) are rejected.

That the submissions of **Upper Clutha Environmental Society** [28/26/3] and **John Wellington** [28/31/1] and the further submissions of **Remarkables Park Limited** (28/2/2/1), (28/3/2/1), (28/5/2/2), (28/8/2/4) **John Wellington** (28/6/1/1) (28/8/2/1) (28/12/3/1) (28/14/3/1) (28/26/3/1) and **Upper Clutha Environmental Society** (28/6/1/2)(28/8/2/2) (28/12/3/5) (28/14/3/2) **Royal Forest and Bird Protection Society** (28/26/3/3) are accepted.

That the submission of **John Pawson** [28/14/4] and the further submissions of **John Wellington** (28/14/4/1), **Bald Developments Limited** (28/14/4/2), **John Pawson** (28/14/4/3) and **Jacks Point Limited** (28/14/4/4) are accepted in part, in that no changes are made to the provisions as they relate to informal access.

That the submission of **Royal Forest and Bird Protection Society** [28/18/1] and the further submissions of **Jacks Point Limited** (28/18/1/1), **Federated Farmers** (28/18/1/2) and **Bald Developments Limited** (28/18/1/3) are accepted in part, and that public records are maintained of the trails established and maintained by the Council and DoC.

That the submission of **Royal Forest and Bird Protection Society** [28/18/5] is rejected and the further submissions of **Jacks Point Limited** (28/18/5/1) and **Bald Developments Limited** (28/18/5/2) are accepted.

5.5.4 Reasons

In order for a world class trail network to be established, adequately maintained and publicly advertised there needs to be certainty that the trails that link into this network are legally established and protected into the future. The purpose of the Plan Change is therefore to remove impediments to the formation of legally protected and enduring trails.

The Plan Change does not affect the status of informal trails within the ONL. Amending Policy 4.2.5(4) Visual Amenity Landscapes so that places frequented by the public generally are no longer considered in the assessment of potential development, and amending the definition of public place so that it does not apply to any access through private property, would weaken the landscape provisions of the Plan and therefore would be contrary to the purpose of the Plan Change. Instead, amending Policy 4.2.5(4) so that new formalised trails are excluded from the term 'places frequented by the public generally' enables landowners to agree to formalise trails, rather than closing existing informal access.

It is understood that the Trails Trusts can assist landowners in terms of applying for access easements. Once a trail is formally protected its management and maintenance is the responsibility of either DoC or the Council and therefore future costs are not imposed on the landowner.

5.6 PROVISIONS FOR UNFORMED LEGAL ROADS

Morven Ferry Limited [28/11/2] and **Southern Planning Group** [28/21/2] submit that the Council should consider excluding (in certain circumstances) the visibility of proposed developments from unformed paper roads within the District.

John Wellington (28/11/2/1) and **Upper Clutha Environmental Society** (28/11/2/2) oppose the submission of **Morven Ferry Limited**. **Royal Forest and Bird Protection Society** (28/11/2/6), (28/21/2/2) neither supports nor opposes the submissions of **Morven Ferry Limited** and **Southern Planning Group**. **Bald Developments Limited** (28/11/2/3), (28/21/2/31) **Remarkables Park Limited** (28/11/2/4)(28/21/2/1) and **Jacks Point Limited** (28/11/2/5) support the submission of **Morven Ferry Limited**. **Federated Farmers** (28/11/2/7) supports the submission of **Morven Ferry Limited** in part.

5.6.1 Explanation

Morven Ferry Limited [28/11/2] and **Southern Planning Group Limited** [28/21/2] submit that there are a significant number of rural sites within the District where unformed legal roads are located within private property. The assessment matters for the Rural General Zone consider the visibility of proposed development from these unformed legal roads. The likelihood of many unformed roads in the District being formed to their designated purpose is low, due to topography and location issues. While many of these roads will most likely never be established for their designated purpose they still impose an unjust impediment when contained within or in close proximity to a site where development is proposed. It is submitted that the Plan Change should also encompass a change to assessment matters within Section 5 of the Plan in respect of unformed legal roads so that the assessment of visibility of rural

residential development from unformed legal roads within the site is excluded when an alternative public access easement is provided.

Federated Farmers (28/11/2/7) submits that the Plan should support or enable discussions to be had on the most appropriate form and points of access.

John Wellington (28/11/2/1) and **Upper Clutha Environmental Society** (28/11/2/2) submit that Variation 18 Scenic Rural Roads dealt with the unformed legal road issue through Environment Court hearings, the results of which have been incorporated into the District Plan. There is no need to revisit this issue; all public roads whether formed or not should be excluded from the definition of trail as per the notified Plan Change. Upper Clutha Environmental Society submit that if the suggestion is adopted landowners may offer public access trails that do not have public place status in order to preclude the effects from nearby unformed legal roads.

Royal Forest and Bird Protection Society (28/11/2/6), (28/21/2/2) submits that unless the unformed road is closed and no longer available to the public then visibility from it remains a consideration. Even if the road is closed the trail would remain by definition a trail; it would not become a legal substitute for the unformed road unless it becomes a road. Road closure is a public process and therefore there are opportunities to keep the road open if it has values related to landscape.

Remarkables Park Limited (28/11/2/4)(28/21/2/1) submits that there may be circumstances where paper roads serve as trails and these would appear to be precluded from the definition of trails (which excludes roads).

5.6.2 Discussion

The consideration of visibility from unformed legal roads was determined in Environment Court decisions on Scenic Rural Roads, where it was found that the assessment matters should be amended such that when assessing the views from unformed legal roads the Council must consider the potential use of that road into the future. This was recognised at the hearing by Sean Dent on behalf of Morven Ferry Limited, who agreed with the recommendations of the Planners Report.

The submitters are correct in identifying that unformed legal roads are often located where their formation and use is not practical. This situation may result in negotiations with the landowners to 'shift' the public access rights from the location of the unformed road to a new access easement. Under the Plan Change this new easement would be included within the definition of trail. If the Council is comfortable that the new access easement replaces the need for the unformed legal road then the road could be closed through the legal road stopping process. This advantages the landowner in that the visibility of development from the unformed road would not be assessed, nor would it be assessed from the new trail. This also benefits the wider community, given that the landowner is more likely to agree to the new trail. Where access was not previously achievable because of the impracticalities associated with using the unformed legal road, the process has enabled the creation of a new and usable trail.

If the unformed legal road was inaccessible in its existing location little weight would have been given to the effect of development on amenity values experienced from that road. This is because the relevant assessment matters read:

and in the case of proposed development in the vicinity of unformed legal roads, the Council shall also consider present use and the practicalities and likelihood of potential use of unformed legal roads for vehicular and/or pedestrian, equestrian and other means of access; and

The Plan Change is beneficial in that it provides an incentive for landowners to enter into negotiations with the Trails Trusts or the Council where an unformed legal road exists that can not be used for practical reasons.

5.6.3 Decision

That the submissions of **Morven Ferry Limited** [28/11/2] and **Southern Planning Group** [28/21/2] and the further submissions of **Bald Developments Limited** (28/11/2/3), (28/21/231) **Remarkables Park Limited** (28/11/2/4)(28/21/2/1), **Jacks Point Limited** (28/11/2/5) and **Federated Farmers** (28/11/2/7) are rejected.

That the further submissions of **John Wellington** (28/11/2/1), **Upper Clutha Environmental Society** (28/11/2/2) and **Royal Forest and Bird Protection Society** (28/11/2/6), (28/21/2/2) are accepted.

5.6.4 Reasons

Unformed legal roads are public roads and already exist; there is potential for them to either be formed as roads or to be used for pedestrian or cycling access. The Environment Court decisions on Scenic Rural Roads resolved that when assessing the visibility of development from unformed legal roads their potential future use should be considered. This means that if they are in a location that can not be physically accessed little weight will be given to visibility from that road.

Where the unformed legal road can not be used, for instance if it runs across impassable land, the Plan Change improves the ability for the Council or Trails Trusts to negotiate new access easements with the landowner. This is because the new trail would not be included within the definition of public place and could replace the road (if the road is stopped). If the unformed legal road were to remain then the existing assessment matters would come into play; given that an alternative access has been provided the likelihood of using the unformed road would be little and this would be taken into account when considering visibility of development. If the landowner wished to have greater certainty then it could, working with the Council, apply to have the road stopped.

5.7 THE DEFINITION SHOULD REFER TO TRAILS WHERE THERE IS NO ALTERNATIVE ACCESS, AND SHOULD SPECIFY THAT IT IS ONLY TRAILS THAT CROSS PRIVATE LAND

Upper Clutha Environmental Society [28/26/34] submits that the definition of trail should read:

Trail – means any public access route crossing private land (excluding public roads and trails created as part of the tenure review process and where no practicable alternative trail can be created on public land) legally created by way of a grant of easement registered after 11 December 2007 for the purpose of providing public access in favour of the Queenstown Lakes District Council, the Crown or any of ~~its~~ their entities.

Royal Forest and Bird Protection Society [28/18/2] requests clarification of whether reference to ‘views’ and ‘public views’ is meant to include views from public places as defined by this Plan Change. **Bald Developments Limited** (28/18/2/2) and **Jacks Point Limited** (28/18/2/1) oppose the submission of **Royal Forest and Bird Protection Society**.

John Pawson [28/14/1] submits that if it proceeds the Plan Change will improve and strengthen the District Plan within areas of VAL.

Bald Developments Limited (28/14/1/1) **Jacks Point Limited** (28/14/1/3) and **John Pawson** (28/14/1/2) support the submission of **John Pawson**.

5.7.1 Explanation

Upper Clutha Environmental Society [28/26/3] recommends the insertion of ‘crossing over private land’ and ‘public’ before ‘roads’ to provide clarification. It is considered necessary to add the words ‘and where no practical alternative trail can be created on public land’. This addresses the Dublin Downs situation, whereby the landowners decided to close the access track to Mt Maude. It is submitted that the landowner of Dublin Downs has ignored the fact

that an unformed legal road could be opened that serves exactly the same purpose as the track being offered. It follows that even if the Dublin Downs Trail is offered there is no reason to categorise it as a 'trail' because practical public access is already guaranteed. It is also submitted that the definition is amended to refer to 'the Queenstown Lakes District Council, the Crown and their entities'.

Royal Forest and Bird Protection Society [28/18/2] submits that if views are from public places as defined, this would be further erosion of landscape protection measures. It is submitted that the provisions referring to 'views' and 'public and private views' will be legally challenged with attempts to convince hearing commissioners that the provisions do not mean or include public views from public places created after December 2007; i.e. that fall within the new definition. A public view is a view from a public place and therefore would be excluded from consideration (if the place in question had been formed after 11 December 2007).

John Pawson [28/14/1] submits that the Plan Change will strengthen District Plan provisions for VAL given that marginal strips previously unable to be accessed will become accessible; thus able to be frequented by members of the public. This is because the Plan Change will enable access to currently inaccessible marginal strips. It is submitted that because these parcels can not be accessed at present they can not fall within the definition of public place because they are not frequented by members of the public.

5.7.2 Discussion

In the case of Dublin Downs the new trail would only be excluded from the definition of public place if it is protected under an access easement, and therefore agreed to by the QLDC, the Crown, or its entities. When considering whether the trail is necessary they would consider the location of the existing unformed legal road; and using that road if practical is obviously preferable. This re-emphasises the importance of ensuring that it is only those trails that are legally created by way of an easement that are excluded from the definition of public place.

Inserting the words 'crossing over private land' could provide clarification that the access easement would only be necessary, and would only be agreed, if that access passed across private land. It is not the intention of the Plan Change to remove the ability to assess visibility from existing public places. However an existing marginal strip for example can not become an access easement as a result of a landowner providing an easement over private land to access that marginal strip. The access across private property if created by easement will be a trail, and excluded from the definition of public place, however the marginal strip will remain a public place. On this basis there is no need to amend the definition of "trail" to include the term **over private land**.

It appears that the issues raised by John Pawson are not so much to do with the definition of public place, but the weight given to the visibility of development from public places. Given that marginal strips are public land and the public has a legal right to access them, they are considered to be a public place and therefore their status would not change as a result of the Plan Change. However, the assessment of visibility from those marginal strips may change if the Plan Change results in increased access to those marginal strips. Gaining access to lake and river margins is identified in Section 6(d) of the RMA as a matter of national importance. It is believed that the positive effects associated with increasing access to the District's marginal strips outweighs the potential to change the level of assessment applied to future development that is visible from them.

The Society requests that the statement '*where no practical alternative trail can be created on public land*' is inserted into the definition of trails, so that where there is an alternative access across public land the trail is excluded from the definition. This adds an element of subjectivity into the definition given that when determining whether a trail is within the definition consideration must be given to the wider area, and whether alternatives exist.

The insertion is unnecessary. This is because when considering the location of future trails the Trails Trusts and or Council or DoC will first determine whether there is an unformed road or marginal strip that can be used. Given the difficulty in gaining agreement with the landowners this is undertaken in the first instance. It is only where such public land can not be used for

practical reasons that negotiations with the landowner to enable access across private land is necessary. Because only those trails that are formally established are included within the definition there is assurance that prior to that access being formalised consideration will be given to whether this is the most appropriate location. The Council or DoC would not sign an easement if this were not the case given that signing such an easement brings with it maintenance and management responsibilities. It is unlikely that these would be taken on in addition to an existing public access route that is not being used, but in fact provided a better alternative.

The submission by Royal Forest and Bird Society is in regard to the Assessment Matters relating to visibility of development that refer to public and private views. Forest and Bird may be correct that the view from a trail that is excluded from the definition of a public place may not be included within the term 'public view'. However, the provisions give equal weight to public and private views and views in general. The relevant provisions are summarised as follows:

ONL District Wide- whether the proposed development is likely to be visually prominent to the extent that it dominates or detracts from views otherwise characterised by natural landscapes.

ONL Wakatipu Basin- the proposed development will not be visually prominent such that it dominates or detracts from public or private views otherwise characterised by natural landscapes.

Visual Amenity Landscapes- the proposed development is likely to be visually prominent such that it detracts from public or private views otherwise characterised by natural or arcadian pastoral landscapes.

This Plan Change does not affect the application of these assessment matters given that they refer equally to the visibility from public and private views and there is no difference if a trail is considered to be public or private. The Plan Change alters the definition of 'public place'; it does not amend or insert any definitions for public or private views.

Currently, the definition of trail is proposed to read:

means any public access route (...)for the purpose of providing public access in favour of the Queenstown Lakes District Council, the Crown or any of its entities.

Reference to 'entities' refers to the entities of the Crown, not of the Council. It is therefore not appropriate to amend this as requested in the submission so that it refers to 'their entities'.

The Upper Clutha Environmental Society requests that the definition is amended to refer to 'public roads'. This is not necessary given that road is defined in the Plan (which in turn is defined in Section 315 of the Local Government Act).

5.7.3 Decision

That the submission of **Upper Clutha Environmental Society** [28/26/3] is rejected.

That the submission of **Royal Forest and Bird Protection Society** [28/18/2] is accepted and the further submissions of **Bald Developments Limited** (28/18/2/2) and **Jacks Point Limited** (28/18/2/1) are rejected, and it is clarified that it is not the intent of the Plan Change to affect the application of those assessment matters that refer to 'views' and 'public and private views'.

That the submission of **John Pawson** [28/14/1] is rejected.

5.7.4 Reasons

Legal advice has assisted in clarifying that the definition of public place includes public land to which the public has a legal right of access. The term 'to which the public has access' refers to this legal right of access rather than the ability to physically access a site. Therefore, marginal

strips, even if they are difficult to access are deemed a public place. Given that the Plan Change may result in increased levels of access to marginal strips the assessment of visibility from them may change as a result of the Plan Change. This is outweighed by the positive effects of achieving greater access to lakes and rivers.

The process of formalising a trail ensures that it is the most appropriate and practical. The definition does not need to stipulate this matter. However it is acknowledged that this matter should be communicated to staff processing resource consent applications so that they are aware of the need to utilise unformed legal roads or other existing public places before agreeing to new access easements proposed by a resource consent applicant.

The provisions that refer to 'public and private views' remain unchanged by the Plan Change.

5.8 AMENDMENTS TO PART 4 OF THE PLAN

Mount Cardrona Station [28/12/2], **Porter Group Limited** [28/16/2] and **Remarkables Park Limited** [28/17/2] submit that Part 4 District Wide Objectives and Policies be amended to promote the provision of new trails and recognise the recreational benefits of public access provided by both existing and new trails.

***Jacks Point Limited** (28/12/2/1), (28/16/2/1), (28/17/2/1) **Transit New Zealand** (28/12/2/2), (28/16/2/2), (28/17/2/2) and **Bald Developments Limited** (28/12/2/4), (28/16/2/4), (28/17/2/3) support the submissions of Mount Cardrona Station Limited, Porter Group Limited and Remarkables Park Limited. **Remarkables Park Limited** (28/12/2/3), (28/16/2/3) supports the submissions of Mount Cardrona Station Limited and Porter Group Limited.*

5.8.1 Explanation

Mount Cardrona Station [28/12/2] submit that there should be consistency between the Mount Cardrona Station Plan Change 18 and Plan Change 28. **Porter Group Limited** [28/16/2] and **Remarkables Park Limited** [28/17/2] submit that Plan Change 28 should be consistent with the Remarkables Park Zone provisions.

The parties submit that the benefits of public access should be recognised in the Part 4 objectives and policies. The policies should promote the provision of new trails and recognise the recreational benefits of public access provided by both existing and new trails.

5.8.2 Discussion

The submitters are correct in identifying that Part 4 of the Plan lacks provisions that clearly state a desire to provide additional trails throughout the rural areas of the District. However, the provision of access easements or trails as part of a development proposal is already taken into account as a positive effect of proposed developments. This is without the inclusion of objectives and policies encouraging their provision.

The inclusion of provisions encouraging the creation of trails might provide greater weight to the positive effects of the trails when resource consents are assessed. This may tip the balance in favour of subdivision or resource consents that provide trails but have negative landscape effects. This is not the intention of the Plan Change.

5.8.3 Decision

That the submissions of **Mount Cardrona Station** [28/12/2], **Porter Group Limited** [28/16/2] and **Remarkables Park Limited** [28/17/2] and the further submissions of **Jacks Point Limited** (28/12/2/1), (28/16/2/1), (28/17/2/1) **Transit New Zealand** (28/12/2/2), (28/16/2/2), (28/17/2/2) and **Bald Developments Limited** (28/12/2/4)(28/16/2/4), (28/17/2/3) support the submissions of Mount Cardrona Station, Porter Group Limited and Remarkables Park Limited. **Remarkables Park Limited** (28/12/2/3)(28/16/2/3) are rejected.

5.8.4 Reasons

It is acknowledged that the provisions of Part 4 provide little encouragement for the provision of public access trails throughout the rural zones. However, public access is already considered to be a positive effect of development. The purpose of the Plan Change is clear in that it aims to remove impediments to the provision of trails without reducing landscape protection. There is a risk that inserting objectives and policies or amending existing objectives and policies so that they encourage the provision of trails would tip the balance in favour of trail provision over landscape protection. Given that trails are already taken into account as a positive effect the changes proposed are not necessary.

5.9 DEFINITION SHOULD REFER TO NON-MOTORISED USES

Mount Cardrona Station Limited [28/12/3] submits that the definition should refer to non-motorised uses. **John Wellington** (28/12/3/2) and **Upper Clutha Environmental Society** [28/12/3/1) oppose the submission of **Mount Cardrona Station Limited**. **Remarkables Park Limited** (28/12/3/3), **Bald Developments Limited** (28/12/3/4) and **Jacks Point Limited** (28/12/3/5) support the submissions of **Mount Cardrona Station Limited**

Porter Group Limited [28/16/3] and **Remarkables Park Limited** [28/17/3] submit that the definition should be amended include electric carts.

Remarkables Park Limited (28/16/3/1), **Bald Developments Limited** (28/16/3/2) and **Jacks Point Limited** (28/16/3/3) support the submissions of **Porter Group Limited**. **Bald Developments Limited** (28/17/3/2) and **Jacks Point Limited** (28/17/3/1) support the submission of **Remarkables Park Limited**.

5.9.1 Explanation

Mount Cardrona Station Limited [28/12/3] submit that the definition of trails should be specific and refer to non-motorised uses, including walking, cycling and horse riding.

Remarkables Park Limited [28/17/3] and **Porter Group Limited** [28/16/3] submit that the definition of trails should be capable of including electric carts (specifically golf carts and those for disabled people). It is submitted that this is of particular relevance to the Remarkables Park Zone given the anticipated mixed use development and resort type uses/activities and the link with the future ferry terminal which will cater for all age groups.

5.9.2 Discussion

As identified on page 32 of the Section 32 Report the potential uses of the trails would be determined at the time of establishing the access easement. Amendment to the definition would therefore create unnecessary complexity.

The Remarkables Park Zone is a Special Zone, and therefore is not affected by the Plan Change given that potential development is not assessed in terms of its visibility from public places. The developer, in conjunction with the Council, can determine appropriate public access routes within the Special Zone as and when necessary. At the time of forming these access routes their future uses and activities can be determined. It is therefore unnecessary to amend the definition of trail as requested.

5.9.3 Decision

That the submissions of **Mount Cardrona Station Limited** [28/12/3], **Remarkables Park Limited** [28/17/3] and **Porter Group Limited** [28/16/3] and the further submissions of **Remarkables Park Limited** (28/12/3/3), (28/16/3/1), **Bald Developments Limited** (28/12/3/4), (28/16/3/2), (28/17/3/2) and **Jacks Point Limited** (28/12/3/5), (28/17/3/1), (28/16/3/3) are rejected.

That the further submissions of **John Wellington** (28/12/3/2) and **Upper Clutha Environmental Society** [28/12/3/1) are accepted.

5.9.4 Reasons

The potential use of the trail into the future is best dealt with at the time of establishing the access easement. The requested amendments are therefore not necessary.

5.10 ESPLANADE STRIPS

John Pawson [28/14/2] submits that esplanade strips should also fall within the formalised public access. **Remarkables Park Limited** (28/14/2/1), **Bald Developments Limited** (28/14/2/2), **John Pawson** (28/14/2/3), **Jacks Point Limited** (28/14/2/4) and **Federated Farmers** (28/14/2/5) support the submission of **John Pawson**.

5.10.1 Explanation

John Pawson [28/14/2] and **Federated Farmers** (28/14/2/5) submit that esplanade strips are in essence a formalised access easement across private land; this should be clarified in terms of the Plan Change. It is submitted that easements should be exempt from public places provisions.

Bald Developments Limited (28/14/2/2) and **Jacks Point Limited** (28/14/2/4) submit that the Plan Change should extend to all access across private land, not just access created by way of easement registered.

5.10.2 Discussion

Esplanade strips and reserves are created through the subdivision process. As identified in the discussion document for this Plan Change the RMA identifies when esplanade reserves and strips are mandatory, and also leaves discretion as to their requirement to the Council. Part 15 of the Plan therefore includes provisions relating to esplanade strip provision. It is not the intention of this Plan Change to change these provisions.

The Plan Change has taken the position that if a trail is mandatory then it should not be excluded from the definition of public place. This is because the purpose of the Plan Change is to remove impediments to the provision of new trails. The Plan Change is not needed to encourage a trail that is required by law, and it is unnecessary to reduce the landscape protection of the views from such trails into the future.

Esplanade strips are not created by way of a grant of easement for the purposes of providing public access in favour of the Council or the Crown. Therefore they are not included within the definition of trail and will remain to be considered as a 'public place' within the Plan. This is appropriate given that they are managed under the subdivision consent process.

5.10.3 Decision

That the submission of **John Pawson** [28/14/2] and the further submissions of **Remarkables Park Limited** (28/14/2/1), **Bald Developments Limited** (28/14/2/2), **John Pawson** (28/14/2/3), **Jacks Point Limited** (28/14/2/4) and **Federated Farmers** (28/14/2/5) are rejected, and esplanade strips and esplanade reserves are not included within the definition of trail.

5.10.4 Reasons

Esplanade strips and esplanade reserves are created at the time of subdivision consent through rules in the Plan or through requirements within the RMA. These rules specify the circumstances in which esplanade strips or esplanade reserves will be required. This is a process separate from negotiations with landowners for the purposes of enhancing public access throughout the District. Excluding esplanade strips, which may be mandatory, from the definition of public place is not necessary and may reduce landscape protection of public places that are mandatory as a result of subdivision provisions.

If an agreement is reached that an esplanade strip should be formalised as an access easement it would then be incorporated into the definition of trail.

5.11 TRAILS SHOULD BE INCLUDED IN THE DISTRICT PLAN AS A DISCRETIONARY ACTIVITY

Upper Clutha Environmental Society [28/26/2] submit that trails should be included in the District Plan as a discretionary activity where public notification or limited notification of affected parties is mandatory.

Jacks Point Limited (28/26/2/1), **Federated Farmers** (28/26/2/2) and **Bald Developments Limited** (28/26/2/3) oppose the submission of Upper Clutha Environmental Society.

Upper Clutha Tracks Trust [28/27/1] submits that the Upper Clutha Tracks Trust and the Wakatipu Trails Trust should be deemed affected parties where any trail is proposed. **John Wellington** (28/27/1) supports the submission of Upper Clutha Tracks Trust.

5.11.1 Explanation

Upper Clutha Environmental Society [28/26/2] submits that the Plan Change allows the negotiation of trails to be carried out between the landowner and the Council without necessarily having reference to any community group or other party. It is submitted that the lack of public input in this process may result in trail outcomes that are not the most efficient for the public. Better linkage and alternative routes may be suggested by the community using local knowledge.

It is submitted that public notification or limited notification of affected parties would be beneficial in providing efficient community outcomes. Notification is consistent with the Wakatipu Trails Strategy which identifies as a key goal 'to engage active community participation in trail development'. It is submitted that the notification could be limited to trails extending through the Rural General Zone and should be at the Council's expense.

It is submitted that consultation needs to be wider than just the Trails Trusts because these groups tend to be entirely trails focussed to the exclusion of wider resource management and District Plan issues.

Federated Farmers (28/26/2/2) submit that the intent of the Plan Change is to encourage the formation of new trails in the District. The Society's proposal places further impediments in the way of the provision of public access and creates a similar situation to what the Plan Change is trying to address.

Upper Clutha Tracks Trust [28/27/1] submits that it should be consulted as an affected party to ensure that the proposed trail 'fits' with the existing network and does not unnecessarily duplicate an access already planned or under development. Affected party status would pick up non-notified consent applications and 'trails' created outside the resource consent process. **John Wellington** (28/27/1/1) submits that the Trusts already form an effective link between public bodies working to create trails and as advocacy groups are well placed to assess and integrate any proposed new tracks on private land into the existing network.

5.11.2 Discussion

The purpose of the Plan Change is to remove impediments to the creation of new trails. Imposing resource consent requirements for any future trail is considered an impediment. While the submitter proposes that the Council should meet the costs of notification, with the consent process comes both time and cost delays and uncertainty.

The intention of the resource consent requirement appears to be for the purpose of ensuring public notification and consultation, instead of relying on the Council, DoC and Trails Trusts to undertake negotiations with landowners. Consultation on the need for future trails and their potential location has been undertaken through the Council's decision making processes under the Local Government Act. All of the Community Plans identified the provision of a

network of trails as a key community outcome. These key outcomes were then built into the Long Term Council Community Plan, and actioned through the Trails Strategies and the Walking and Cycling Strategy. It is believed that beyond those clear directions further consultation is not necessary on a case by case basis for every trail.

A collaborative approach needs to be taken for the establishment of the trails network within the District. It is understood that the ground work is to a large extent undertaken by the Trails Trusts and community associations, with DoC and the Council then agreeing to accept access easements, and undertaking the legal processes required to formalise easements. The purpose of the Plan Change is not to change the management structure, or improve internal processes for the establishment of trails. These processes are best dealt with outside the District Plan.

5.11.3 Decision

That the submissions of **Upper Clutha Environmental Society** [28/26/2] and **Upper Clutha Tracks Trust** [28/27/1] and the further submissions of **John Wellington** (28/27/1/1) are rejected and the further submissions of **Jacks Point Limited** (28/26/2/1), **Federated Farmers** (28/26/2/2) and **Bald Developments Limited** (28/26/2/3) are accepted.

5.11.4 Reasons

Inserting a rule that requires resource consent for the establishment of new trails is inconsistent with the purpose of the Plan Change and is not necessary or appropriate. The purpose of the Plan Change is to remove the existing impediment to the creation of trails; it is not to change the status of the Trails Trusts or change the resource consent process.

Ensuring affected party status for the Trails Trusts and the Upper Clutha Environmental Society is recognised as important. However, this is a process issue and is beyond the scope of this Plan Change.

5.12 ADDRESS ISSUES OF CONNECTIVITY AND PASSIVE PUBLIC AREAS THAT SUPPORT TRAILS

Transit New Zealand Limited [28/25/2] requests that consideration is given to whether there is scope to amend the Plan to address issues of connectivity. **Remarkables Park Limited** (28/25/2/1) supports the submission of **Transit New Zealand**, and **Federated Farmers** (28/25/2/2) partly supports the submission of **Transit New Zealand**.

Royal Forest and Bird Protection Society [28/18/3] submits that the word 'place' should be inserted after the word 'route'. **Jacks Point Limited** (28/18/3/1) and **Bald Developments Limited** (28/18/3/2) oppose the submission of **Forest and Bird**.

5.12.1 Explanation

Transit New Zealand [28/25/2] submit that consideration be given to whether there is scope in the Plan Change to consider issues of connectivity- i.e. new tracks connect with existing tracks in order to positively contribute to the network and to provide for associated infrastructure as a permitted activity. It is submitted that these issues are particularly important at state highway/walkway interfaces which need to be safe and efficient.

Federated Farmers (28/25/2/2) submit that it will be inequitable and impractical in situations where a network of trails are connecting to have one trail exempt from public place provisions and an adjacent or adjoining trail subject to such provisions.

Royal Forest and Bird Protection Society [28/18/3] submit that passive public areas that are not linear such as trail heads and picnic areas should be included. It is submitted that car parks should be excluded.

5.12.2 Discussion

This Plan Change is one of the mechanisms available to the Council and the community for providing trails throughout the District and should be read in conjunction with the Wakatipu Trails Strategy, the Upper Clutha Trails Strategy and the newly released Walking and Cycling Strategy. These Strategies identify the network of trails that the community desires and this Plan Change is one of the mechanisms available for assisting in establishing that network.

Inclusion of references to the overall trails network and connections between trails is not considered necessary for the purposes of the Plan Change, which is to remove impediments to the provision of trails.

The proposed definition of trail refers to 'route', given that the purpose of the Plan Change is to provide access for walkways and cycleways. Amending the definition to incorporate trail ends and picnic areas while specifically excluding car parks is not considered necessary or appropriate. This detail can be resolved at the time of negotiations between landowners and the Council and/or the Trails Trust.

5.12.3 Decision

That the submissions of **Transit New Zealand Limited** [28/25/2], **Remarkables Park Limited** (28/25/2/1) and **Federated Farmers** (28/25/2/2) are accepted in part, in that consideration of connectivity is provided within the Council's Walking and Cycling Strategy and the Wakatipu and Upper Clutha Trails Strategies.

That the submission of **Royal Forest and Bird Protection Society** [28/18/3] is rejected and the further submissions of **Jacks Point Limited** (28/18/3/1) and **Bald Developments Limited** (28/18/3/2) are accepted and no change is made to the definition of trails as a result of this submission.

5.12.4 Reasons

The connectivity between trails is appropriately dealt with by the Council's Walking and Cycling Strategy and the Upper Clutha and Wakatipu Trails Strategies, which identify the future trails networks. The future networks assist in removing walkers and cyclists from the state highway and onto commuter trails.

Inclusion of picnic areas and trail heads within the 'trail' can be determined at the time of establishing the easement, and it is believed that the current definition does not restrict the access route to providing only linear access.

5.13 PROVIDE A DEFINITION OF PUBLIC ACCESS ROUTE

Porter Group Limited [28/16/4] and **Remarkables Park Limited** [28/17/4] submit that a definition of 'public access route' should be inserted. **Remarkables Park Limited** (28/16/4/1) supports the submission of **Porter Group Limited**, **Jacks Point Limited** (28/16/4/2)(28/17/4/1) and **Bald Developments Limited** (28/16/4/3)(28/17/4/2) support the submissions of **Porter Group Limited** and **Remarkables Park Limited**.

5.13.1 Explanation

Porter Group Limited [28/16/4] and **Remarkables Park Limited** [28/17/4] request that the following definition of 'public access route' is included as follows:

Public access route or public access- means every public thoroughfare to which the public has access with or without payment of a fee, and which is all or partially under the control or leased by or the subject of an access easement or agreement in favour of the District Council or other agencies.

It is submitted that the proposed definition of 'trail' requires further clarification with respect to 'public access route' or 'public access'. Because these terms are not separately defined in the

Plan or proposed to be defined in the Plan Change uncertainty is created with respect to how the proposed definitions will achieve the intended purpose of the Plan Change.

5.13.2 Discussion

The submitters have correctly identified that the proposed definition of trail includes the term 'public access route' and 'public access' which have not been defined. The definition reads (underlining added for emphasis):

Trail – means any public access route (excluding roads) legally created by way of a grant of easement registered after 11 December 2007 for the purpose of providing public access in favour of the Queenstown Lakes District Council, the Crown or any of its entities.

The Plan defines public place, but not public access route. The submitter has suggested a definition similar to that used for public place for 'public access route'. The benefit of including a definition of public access route is that it provides greater clarity. However, legal advice has been obtained with respect to this matter and the requested amendment is not necessary because the term 'public access route' is self explanatory, as is the term 'public access'.

5.13.3 Decision

That the submissions of **Porter Group Limited** [28/16/4] and **Remarkables Park Limited** [28/17/4] and the further submissions of **Remarkables Park Limited** (28/16/4/1), **Jacks Point Limited** (28/16/4/2)(28/17/4/1) and **Bald Developments Limited** (28/16/4/3)(28/17/4/2) are rejected.

5.13.4 Reasons

Legal advice obtained has advised that no further clarification of the meaning of terms used within the definition of trail is required given their self explanatory nature.

5.14 CONSEQUENTIAL AMENDMENTS

Federated Farmers [28/6/3] submits that the definition of public place should be further amended to incorporate the concerns outlined in their submission. **Bald Developments Limited**, (28/5/3/2) **Jacks Point Limited** (28/6/3/1) support the submission of **Federated Farmers**. **Royal Forest and Bird Protection Society** (28/6/3/3) supports the submission of **Federated Farmers** in part.

Morven Ferry Limited [28/11/3] and **Southern Planning Group** [28/21/3] request that the Council proceed with the Plan Change but make such additions, amendments or consequential changes to any relevant part of the District Plan as are necessary to address the issues raised in the submission. **Bald Developments Limited**, (28/11/3/1), (28/21/3/2) **Jacks Point Limited** (28/11/3/2) (28/21/3/1) support the submissions of **Morven Ferry Limited** and **Southern Planning Group**.

Mount Cardrona Station Limited [28/12/4], **Porter Group Limited** [28/16/5] and **Remarkables Park Limited** [28/17/5] request that such alternative, similar and/or consequential amendments are made to the District Plan to address the issues and concerns raised in their submission. **Bald Developments Limited** (28/12/4/5) (28/16/5/3), (28/17/5/2) and **Jacks Point Limited** (28/12/4/1), (28/16/5/1), (28/17/5/1) support the submissions of **Mount Cardrona Station Limited**, **Porter Group Limited** and **Remarkables Park Limited**. **Remarkables Park Limited** (28/12/4/4), (28/16/5/2) supports the submissions of **Mount Cardrona Station Limited** and **Porter Group Limited**.

John Wellington (28/12/4/2) and **Upper Clutha Environmental Society** (28/12/4/3) oppose the submission of **Mount Cardrona Station**.

5.14.1 Explanation

The submitters request consequential amendments to the Plan if needed in order to address the issues and concerns raised in their submissions.

5.14.2 Discussion

The issues and concerns identified within submissions have been addressed and where considered appropriate and necessary amendments have been recommended that assist in meeting the concerns raised.

5.14.3 Decision

That the submissions of **Federated Farmers** [28/6/3], **Morven Ferry Limited** [28/11/3], **Southern Planning Group** [28/21/3], **Mount Cardrona Station Limited** [28/12/4], **Porter Group Limited** [28/16/5] and **Remarkables Park Limited** [28/17/5] and the further submissions of **Bald Developments Limited**, (28/5/3/2), (28/11/3/1), (28/21/3/2), (28/12/4/5) (28/16/5/3), (28/17/5/2) **Jacks Point Limited** (28/6/3/1), (28/12/4/1), (28/16/5/1), (28/17/5/1), (28/11/3/2), (28/21/3/1) **Royal Forest and Bird Protection Society** (28/6/3/3), **Remarkables Park Limited** (28/12/4/4), (28/16/5/2), **John Wellington** (28/12/4/2) and **Upper Clutha Environmental Society** (28/12/4/3) are rejected.

5.14.4 Reasons

No consequential amendments are necessary in order to meet the concerns raised within the submissions.

APPENDIX 1- RECOMMENDED AMENDMENTS AS A RESULT OF SUBMISSIONS

The following identifies the amendments as proposed by the Plan Change. Changes recommended as a result of consideration of submissions are shown as **bold**.

Amend the definition of 'public place' to read:

*Public place – means every public thoroughfare, park, reserve, lake, river or place to which the public has access with or without the payment of a fee, and which is under the control of the District Council, or other agencies. **Excludes any trail as defined in this Plan.***

Add the following definition of trail:

Trail – means any public access route (excluding roads and public access easements created by the process of tenure review under the Crown Pastoral Land Act) legally created by way of a grant of easement registered after 11 December 2007 for the purpose of providing public access in favour of the Queenstown Lakes District Council, the Crown or any of its entities.

Amend Policy 4.2.5(4) Visual Amenity Landscapes to read:

4. Visual Amenity Landscapes

- (b) To avoid, remedy or mitigate the adverse effects of subdivision and development on the visual amenity landscapes which are:
- highly visible from public places and other places which are frequented by members of the public generally (**except any trail as defined in this Plan**); and
 - visible from public roads.