BEFORE THE HEARINGS PANEL
FOR THE QUEENSTOWN LAKES PROPOSED DISTRICT PLAN

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of Hearing Stream 08 - Business Chapters

LEGAL SUBMISSIONS ON BEHALF OF QUEENSTOWN LAKES DISTRICT COUNCIL AS PART OF COUNCIL'S RIGHT OF REPLY

Hearing Stream 8 – Business

13 December 2016

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1. INTRODUCTION

1.1 The purpose of these legal submissions is to assist the Hearing Panel (**Panel**) regarding legal issues that have arisen during the course of the Business hearing on the Queenstown Town Centre (**QTC**) Chapter 12, Wanaka Town Centre (**WTC**) Chapter 13, Arrowtown Town Centre (**ATC**) Chapter 14, Local Shopping Centres (**LSC**) Chapter 15, Business Mixed Use Zone (**BMUZ**) Chapter 16, and Queenstown Airport Mixed Use / Airport Zone (**AZ**) Chapter 17 (together, **Business Chapters**) and to provide the Council's position on specific issues.

1.2 These submissions also seek to address some matters raised by submitters through their written evidence filed prior to, and presented at the hearing, including submitters' legal submissions, where the Council considers that further analysis is required.

1.3 Otherwise, these submissions do not respond to every legal issue raised by submitters during the course of the hearings. The absence of a specific response in these submissions should not be regarded as acceptance of the points made by counsel for various submitters.

1.4 Filed alongside these legal submissions are the planning replies of:

(a) Ms Vicki Jones, QTC Chapter 12 and WTC Chapter 13;
(b) Ms Amy Bowbyes, ATC Chapter 14, LSC Chapter 15 and BMUZ Chapter 16; and
(c) Ms Rebecca Holden, AZ Chapter 17.

1.5 Having considered matters raised and evidence produced during the course of the hearing, the planning replies and associated revised chapters represent the Council's position.

2. CHAPTER STRUCTURE REGARDING PERMITTED ACTIVITIES

2.1 During the Council's opening, the Panel queried the approach taken in the various Business Chapters regarding the need to comply with all standards in order to be permitted.

2.2 In the QTC, WTC, ATC, LSC and BMU zones "*Activities which are not listed in this table and comply with all standards*" are permitted activities.[1]

2.3 The s42A authors have considered this issue and remain of the view that the drafting of the default rules is appropriate. In particular, the default permitted activities need to state that any activity not listed must comply with all of the standards listed in the chapter, otherwise there would be no regulation around any unlisted activity, at all.

2.4 The provisions, in their notified and s42A versions, are intended to work as follows:

(a) an activity not listed in the table (eg the table in Rule 12.4) must comply with all standards in order to be permitted;

(b) if an activity not listed in the table breaches one of the standards, then it is no longer permitted, and a consent is required; and

(c) the standard that was breached is what determines the basis on which consent is required (for example, if the unlisted activity breached 12.5.1 then it would become Restricted Discretionary; if it breached 12.5.10 then it would become Non-Complying).

2.5 It is submitted that an argument that an activity does not contravene any district rule in terms of s 9 of the Resource Management Act 1991 (**RMA**), merely because that activity is not explicitly described in the Table, would not be tenable. This is because Rule 12.4.1 is drafted so as to capture all potential "undescribed" activities and requires them to comply with a group of standards. In that respect, Rule 12.4.1 is a catch-all district rule for the purposes of s 9 of the RMA.

2.6 In the Airport Zone:

(a) for Wanaka Airport, Reply Rule 17.4.15 provides for non-complying activity status for "*Any activity not listed in Rules 17.4.16 to 17.4.29*". In this zone, the default status is not

[1] Through redraft rules 12.4.1, 13.4.1, 14.4.1, 15.4.1 and 16.4.1.

permitted, which explains why there is no need to comply with the standards; and

(b) conversely for Queenstown Airport, Reply Rule 17.4.6 provides for restricted discretionary status for "*Activities not listed in Rules 17.4.6 to 17.4.12* In addition, "*Airport and Airport Related Activities which comply with all the standards in Table 2 are permitted*" (through Rule 17.4.1). Queenstown Airport is submitted to require a different approach, given the activity status of all other activities (ie, residential) is prohibited.

3. POTENTIAL VIRES ISSUES

Glare Standard

3.1 Recommendations on the merits were made by s42A authors in their s42A reports, to delete the words "and so as to limit the effects on the night sky" from the "Glare" standard in 14.5.14.1 (with the exception of the AZ, which doesn't contain this phrase). The reports also note that there is no scope to remove the phrase from the standard. This standard is included in all of the Business Zones (with the exception of the AZ), and the following submissions therefore apply across the chapters (but use the ATC relevant provision numbers for reference purposes).

3.2 The Panel asked counsel to consider whether there is scope in the submissions of Grant Bisset (568) and Ros and Dennis Hughes (340) to delete the phrase "and so as to limit the effects on the night sky" from relevant standards.

3.3 Submission 568 does not specifically address any of the Business Zones, but it seeks new provisions to be added into strategic direction Chapter 3 (Strategic Direction) to avoid light pollution. The submission states that the night sky is a valuable resource and the ability to clearly view it is an amenity value of the Queenstown Lakes District (**District**). The submission also supports the provisions controlling the effects of lighting in Chapters 6 (Landscape) and 21

(Rural Zone) and states that "a greater level of direction is required" to achieve this.

3.4 Similarly, submission 340 takes the position that the PDP does not adequately recognise the significance of the night sky, and seeks that it be given greater prominence in Chapters 3 (Strategic Direction) and 6 (Landscapes).

3.5 It is submitted that these submissions do not give scope to delete the phrase, but do give scope to make the zone provisions (ie, the phrase or the relevant standard) more measurable and specific, as "a greater level of direction" is sought in submission 568. Chapters 3 and 6 are located within the "Strategy" part of the PDP, and apply across the District. Although these submissions are on Chapters 3 and 6, it is submitted that to give effect to those submissions, subsequent changes would also be required to the more specific zone chapters that apply in specific locations across the District.

3.6 Despite these submissions on scope, there are submitted to be two problems with the phrase:

(a) the phrase is an attempt to state the purpose of the rule, in that it essentially repeats Policy 14.2.4.3 ("promote lighting design that mitigates adverse effects on the night sky"). A rule should not just repeat the policy – instead it should give effect to it; and

(b) a standard which includes this phrase is too uncertain and subjective, and thus *ultra vires*. Lighting can be designed so as to direct it away from adjacent sites, roads and public places, as those are reasonably easy to identify. However, it is difficult to know what sort of lighting design would be considered sufficient to "limit" effects on the night sky. A plan user cannot tell from this rule the extent to which effects have to be limited, or how effects are supposed to be measured. Therefore, it is difficult for a plan user to know if their lighting design is going to breach 14.5.9 or not.

3.7 It is therefore submitted that the phrase can be deleted from the standards in various chapters because the uncertainty would make the standard *ultra vires*. Simply excising the words in the phrase would however make the standards *vires*.

3.8 It is noted that, in the Residential Reply chapters, the phrase "and so as to limit the effects on the night sky" has been retained (eg 7.3.12, 8.5.11). A consistent approach should be taken to this phrase, across the PDP chapters, which in the Council's view is that they should be deleted for being *ultra vires*.

Deeming NZTA Notification Rule

3.9 Two redraft Rules (12.6.1.1 and 15.6.2.2) in the Business Chapters contain a "deeming" provision that would exempt a road controlling authority from rules precluding notification or limited notification. This was the subject of Panel questions during the hearing.

3.10 The Council accepts that redraft Rules 12.6.1.1 and 15.6.2.2 are *ultra vires*. They seek to preclude both public and limited notification while still allowing the Council to give limited notification to a road controlling authority. It is accepted that under section 77D a local authority may only make a rule specifying the activities in respect of which applications must be notified or non-notified. Section 77D does not allow a local authority to make a rule containing an exemption from non-notification for particular parties.[2]

3.11 To rectify this issue, Ms Jones has recommended amending Rule 12.6.1.1 so that the exemption is framed in terms of vehicle access directly onto a State highway. It is submitted that this is *vires* because it specifies an activity rather than a particular party. With the addition of the word "vehicle", this recommendation is consistent with what was recommended in the Rural right of reply.[3]

3.12 Ms Bowbyes has not recommended any changes to Rule 15.6.2.2. This is because that rule relates only to 1 Hansen Road. As set out

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[2] Redraft Rule 17.7.1 contained exemptions for two activities rather than exemptions for a particular person or party. Although these exemptions are considered to have been *intra vires,* they have been recommended to be deleted on other grounds.

[3] For example, at reply Rule 23.6.2.

earlier the Panel has directed that a number of submissions addressing the appropriateness of site specific rules for this site are to be transferred to the rezoning hearing. The Council submits that the appropriate time to recommend any amendments to Rule 15.6.2.2 is as part of the rezoning hearing.

4. SCOPE/JURISDICTION ISSUES

4.1 A number of scope issues have arisen during the course of this hearing, and are responded to under the respective chapter headings, below. The legal principles from case law are, in summary, that the Panel's powers to recommend (and subsequently the Council's power to decide) are limited in that:

(a) a submission must first, be *on* the proposed plan;[4] and

(b) a decision maker is limited to making changes within the scope *of the submissions* made *on the* proposed plan.[5]

4.2 It is noted that Mr Goldsmith's amended legal submissions for John Thompson and MacFarlane Investments Limited (FS1274)[6] are that:

> "*scope and jurisdiction are determined by the combination of all relevant submissions lodged to the PDP, and that evidence can be led by any submitter provided it falls within that overall scope and jurisdiction.*"

4.3 While this submission is not disputed by the Council, in order to assist this Panel, the Council's earlier submissions on this matter can be summarised as:[7]

(a) there is no dispute that the concept of "collective scope" applies to the Panel in terms of defining the boundaries of relief that it might recommend. This is subject to fairness

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4 Council's Opening Legal Submissions on Hearing Streams 1A and 1B dated 4 March 2016 at Parts 5 and 7.

5 Council's Legal Reply on Hearing Streams 1A and 1B dated 7 April 2016 at part 2; Council's Legal Reply on Hearing Stream 2 dated 3 June 2016 at part 2.

6 Dated 1 December 2016, at paragraph 7.

7 Council's Legal Reply on Hearing Streams 1A and 1B dated 7 April 2016 at Section 2; Council's Legal Reply on Hearing Stream 2 dated 3 June 2016 at Section 2.

considerations in terms of the reasonable foreseeability of any relief that might be granted;

(b) as to whether submitters are also able to avail themselves of the "collective scope" concept is less clear. There is no authority for the proposition that an individual submitter can avail itself of that concept at their discretion to provide legal standing, irrespective of what relief they might have specified in their original submission or whether or not they have made a further submission;

(c) to the extent that a submitter has not sought relief in their submission and/or has not made a further submission on specific relief, the submitter could not appeal a decision in that respect or advance relief. Submitters could not rely on collective scope to alter that position, not is there any legal authority supporting that approach;

(d) it is not suggested that there is a legal constraint on submitters presenting evidence or commenting on matters raised by other submitters, although the weight that could be attributed to such evidence may be at issue if it did not relate to the relief specified in their submission or a matter addressed in a further submission;

(e) Schedule 1 of the RMA is a code in terms of how submitters achieve standing to pursue relief, and it is an improper extension of the reasoning in *Simons Hill Station Limited v Royal Forest & Bird Protection Society of New Zealand Inc*[8] to suggest that submitters can pick and choose all or any part of the relief set out on the same subject matter and present a case on matters not addressed in their own submission; and

(f) such 'standing' can only be achieved through the statutory mechanism of lodging a further submission pursuant to Clause 8 of Schedule 1 (providing a submitter has standing

[8] [2014] NZHC 1362.

to do so in terms of the thresholds/circumstances identified in Clause 8(1)).

4.4 In support of the Council's position, Counsel also refers to Mr Todd's synopsis of legal submissions for Man Street Properties Limited (**MSPL**), where he refers to the *Hinton v Otago Regional Council* decision as authority that it "*is clear law that supporting evidence cannot enlarge the scope of proceedings beyond matters pursued by the party to whom the evidence is supporting*".[9] Mr Todd's submission is made in the context of MSPL's objection to the evidence of Mr Farrell for Well Smart Investments Limited going outside the scope of the matters and relief sought in Well Smart's primary submission.

4.5 It is noted that the *Hinton* case was a procedural decision in the context of appeals against resource consents but, in that context, the Environment Court did hold that an appeal under section 120 of the RMA cannot enlarge a submission. This is entirely consistent with the Council's current submissions.

5. ISSUES RELATING TO TOWN CENTRES

Increase in QTC height limits

5.1 Mr Goldsmith filed legal submissions on behalf of John Thompson and MacFarlane Investments Limited (FS1274), which he subsequently replaced with amended submissions on 1 December 2016. Although formally replaced, it is noted that the earlier submissions raised an issue with the Council's reliance on the Cowie submission (20) for increased height limits in the QTC.

5.2 Counsel has assumed the question of whether Mr Cowie's submission provides scope for increased height limits in the QTC is not being pursued given those submissions were replaced. For completeness however, Council wishes to draw the Panel's attention to the legal submissions of Mr Todd for MSPL, where it is recorded that both MSPL and the NZIA made further submissions to the Cowie

[9] Dated 29 November, at paragraph 20.

submission on the very matter of increased height within the QTC. It is thus submitted that the matter of increased height limits in the QTC was a reasonably foreseeable outcome of Mr Cowie's submission, and the existence of further submitters to Mr Cowie's submission strongly supports this position.

Scope for MSPL to seek removal of viewshafts in QTC

5.3 Mr Todd's synopsis of legal submissions for MSPL (398) refers to the evidence of Mr Williams on the "duplicity of rules proposed specifically for the MSPL property in terms of site coverage and the requirement for view corridors".[10] At the hearing, the deletion of viewshafts was then pursued.

5.4 The submission of MSPL stated that it was unclear in "Figure 2: Height Precinct Map" where the view shafts identified on the submitter's sites were positioned. The relief sought was that the position of the view shafts should be confirmed to ensure the western view shaft is located to align with Section 26 Block IX Town of Queenstown. If the view shaft was not aligned then the submission sought that it be moved to align with this property. The submission did not seek removal of either of the two notified viewshafts.

5.5 Mr Williams' evidence presented at the hearing on 1 December 2016 then supported the view shaft over the car park entrance, but stated that any consideration of a second view shaft should be considered as part of a resource consent application.

5.6 The Council submits that the submission did not seek removal of the second view shaft and accordingly there is no scope to do so in evidence presented on that submitter's behalf. For completeness, we note that no other submitter has sought the removal of the second view shaft.

[10] At paragraph 14.

Change in site size trigger in Rule 12.5.1 and 13.5.13

5.7 Mr Todd has submitted there is no scope for Ms Jones' recommended changes to Rule 12.5.1, which retains the notified maximum building coverage of 75% in the Town Centre Transition Subzone or when undertaking a comprehensive development in the QTC, but reduces the site size trigger from 1800m^2 to 1400m^2. Ms Jones has recommended inserting a provision to state that for the purposes of Rule 12.5.1, "comprehensive development" means the construction of a building or buildings on a site or across a number of sites which total a land area greater than 1400m^2.

5.8 Ms Jones relied on the NZIA submission (#238) to recommend the change, which sought an 80% coverage rule for all sites rather than being limited to only those sites in the Town Centre Transition Subzone and sites over 1800m^2. That is, for sites both within the Transition Subzone, and for those sites outside of the Transition Subzone, the NZIA submission is seeking an 80% coverage rule, no matter the size of the site.

5.9 Mr Todd submitted that the relief sought by the NZIA was that all development in excess of 80% of a site should be a discretionary activity. Mr Todd questioned how this could justify a more restrictive rule whereby all development on sites over 1400m^2 would have a maximum site coverage of 75%.

5.10 It is submitted that one outcome of the relief sought by the NZIA was to capture more sites within the maximum building coverage rule. This is because the submission sought not only to increase the maximum site coverage from 75% to 80%, but also to apply this rule to all sites (rather than only sites in the Transition Subzone and sites over 1800m^2). The changes recommended by Ms Jones in her s42A also have the effect sought, of capturing more sites within the rule, but by a different route being the reduction in the site size trigger to 1400m^2.

5.11 In any event, Ms Jones has revisited the rule and has suggested two alternatives; to amend the building coverage limit to 80% as sought

by NZIA or, alternatively, to apply the 75% coverage as recommended in the s42A report but limit its application only to sites over 1800m². Ms Jones notes in her reply that both options have pros and cons and she does not have a firm view as to which is most appropriate.

5.12 Ms Jones has relied on the NZIA submission to recommend an equivalent rule for the Wanaka Town Centre chapter (reply Rule 13.5.13) as the submission sought the same relief in respect of both Queenstown and Wanaka Town Centres. Her position across the two chapters is consistent.

Legality of pedestrian links

5.13 Mr Todd submitted that the pedestrian links in Chapter 12 (for example, within Stratton House and the Skyline Arcade) are the imposition of de facto designations. He cited *Thurlow Consulting Engineers & Surveyors Limited v Auckland City Council.*[11]

5.14 This case involved a challenge to a rule in a Council initiated plan change. The effect of the rule was to delay subdivision in a particular area until a new road had been completed. The Court noted the status of the "preferred road" notation on the map was unclear and could best be described as "indicative".[12] Various memoranda had been filed setting out steps taken by the Council towards a Notice of Requirement although the Court observed that this was a separate and independent process from the current plan change proceedings and the Court had no influence over them at that stage[13]). The Court held that the wording of the rule was uncertain,[14] the parties could not agree on an appropriate wording, and it was not appropriate for the Court to provide a wording.[15] The rule was too uncertain and not the most appropriate method to implement the policies and achieve the objectives of the Plan.[16] The appeal was allowed.

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11 [2012] NZEnvC 082 and the associated costs decision (footnote to [2012] NZEnvC 097).
12 Footnote to paragraph [31].
13 Footnote to paragraph [33].
14 At paragraph [34].
15 At paragraph [36].
16 At paragraph [38].

5.15 Costs were awarded against the Council, in part because the Council's preferred solution of a new road was not able to be achieved without a designation.[17]

5.16 Taking these facts into account, it is submitted that the Court in the *Thurlow* case did not refuse to uphold the rule only because it was a de facto designation. Rather, the uncertain wording of the rule was the reason for allowing the appeal.

5.17 In the situation now before the Panel there is no such uncertainty about the location of the pedestrian links, noting that it is clear that if they are not provided resource consent will be required but that the link needs to be in the general (rather than exact) location shown (reply Rule 12.5.8.1), and that where an alternative link is proposed as part of the application, which is not on the development site but achieves the same or a better outcome, then this is likely to be considered appropriate (note to 12.5.8). Nor is there any evidence before the Panel that the links require a designation. It is submitted that they can be compared to other built form standards and requirements that, provided they are related to achieving the purpose of the RMA, can be included in a district plan as a standard.

Wanaka Town Centre Character Guideline 2011

5.18 While the Wanaka Town Centre Character Guideline 2011 was referred to in the s32 report for the Wanaka Town Centre chapter and a hyperlink provided, the report was not included in the list of 'material incorporated by reference' into the plan at notification of Stage 1 of the PDP.

5.19 This was an oversight by the Council, rather than intentional, and it is submitted to be a matter of form over substance in that it is evident to submitters what was intended from the rules. There are clear references to the Guidelines in the rules, and submitters would have gone to the rules first to work out that they were clearly referenced. For example, Mr Greaves in responses to questions from the Panel, made it clear that he understood that the Guidelines would have statutory weight under the PDP.

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[17] Footnote to paragraph [16] of the costs decision.

5.20 It is accepted that if a strict interpretation is to be taken, then the Council should initiate a variation to notify the guidelines as documents incorporated by reference under Schedule 1 of the RMA. Overall however, the guidelines were clearly provided as a link to the s32 report that was notified alongside the WTC chapter, and therefore submitters are alive to the statutory effect of the Guidelines.

6. ISSUES RELATING TO LOCAL SHOPPING CENTRE ZONE

Cardrona Valley Road and 1 Hansen Road

6.1 During the course of the hearing the Panel has made directions that a number of submissions that address the appropriateness of site specific rules for the Cardona Valley and 1 Hansen Road LSC zones, be transferred to the rezoning hearing alongside rezoning submissions that raise matters that are intrinsically linked. This is consistent with the Panel's preference that site specific submissions are best heard in parallel with submissions relating to the zoning of a specific site.

6.2 Consequently, the recommended chapter included in Ms Bowbyes right of reply for the LSCZ, has highlighted the rule provisions that are specific to the LSCZ at 1 Hansen Road (there aren't any provisions specific to the Cardona Valley Road LSCZ) so they can be transferred to the rezoning hearing. She has not updated her recommendations from her s42A version on these rules.

Matters relating to scope

6.3 Mr Todd has submitted on behalf of the Gordon Family Trust (FS1193) that:

(a) there is no submission seeking to limit the size of offices; and

(b) Willowridge (249) sought a 400m^2 limit for retail activities and there is no jurisdiction to apply the 300m^2 limit included in Redraft Rule 15.5.9.

Limit to office size

6.4 The Council respectfully submits that there is scope within Willowridge's submission to limit the size of offices to no more than 200m^2 GFA.

6.5 Willowridge's submission considers that the rules in the LSCZ are too permissive of commercial and retail activities, which has the potential to undermine the town centres and other commercial centres. The specific part of the submission and relief is as follows:

Provision	*Support/ Oppose*	*Submission*	*Relief Sought*
…			
Local Shopping Centre Zone			
15.4	*Oppose*	*The rules in the Local Shopping Centre Zone are permissive of commercial and retail activities and seem to provide for a range of activities from small scale shopping to supermarkets. This has the potential to undermine the town centres and other commercial centres, particularly where the land zoned neighbourhood shopping centre of a significant size, such as the neighbourhood shopping centre on Cardrona Valley Road.*	*Include rules in 15.4 to restrict retail activities to those providing a local service (dairies, off-license, bakery) with a gross floor area of no more than 400m^2, or rules to like effect.*

6.6 When read as a whole, it is submitted that Willowridge's submission raises issues with the scale of both commercial activities and retail activities. The definition of "Commercial Activity", as defined in notified Chapter 2 of the PDP, includes *commercial and administrative offices*, and therefore office activities fall within the scope of this submission. While the specific relief sought does not refer to commercial activities, the Council submits that when the submission is read as a whole it is clear that commercial activities are also sought to have a GFA limit.

Limit retail activities to 300m^2 GFA

6.7 The Council respectfully submits that there is scope to apply the 300m^2 GFA limit to retail activities, which was included in redraft Rule 15.5.9. As the extract from Willowridge's submission above shows, it sought to restrict retail activities to "*no more than*" 400m^2 GFA. It is therefore respectfully submitted that these words provide scope to apply a GFA limit of any size less than 400m^2 GFA.

7. ISSUES RELATING TO BUSINESS MIXED USE ZONE

7.1 During Council's opening, the Panel asked the Council to confirm the submission withdrawal referred to in paragraph 6.3 of the Council's opening legal submissions. The withdrawn submission is that of HW Richardson Group (#252), and Counsel understands the withdrawal has been forwarded to the Chair of the Panel.

Horne Creek

7.2 In her s 42A report Ms Amy Bowbyes recommended the addition of Redraft Policy 16.2.2.9(b) (reply 16.2.2.9), which required any person substantially developing or redeveloping the Gorge Road area to daylight Horne Creek, where reasonably possible.[18] Ms Jayne Macdonald provided legal submissions for High Peaks Limited and Trojan Holdings Limited that there was an inherent issue with Redraft Policy 16.2.2.9(b) in that daylighting a stream involves diverting water and potentially carrying out works on the bed of the stream. Such works would potentially require a resource consent from the Otago Regional Council (**ORC**) and if ORC declined to give a consent then the policy might be frustrated.

7.3 The Council accepts that there is a risk that a policy requiring daylighting would be frustrated if the ORC did refuse to grant consent. Ms Bowbyes has recommended changes to resolve this issue and to ensure that the policy falls within the functions of the Council.

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[18] S 42A Report of Ms Amy Bowbyes Chapter 15, Business Mixed Use Zone dated 2 November 2016 at paragraphs 9.28 to 9.35.

7.4 Section 31(1)(a) of the RMA provides that territorial authorities have the function of the establishment, implementation, and review of policies to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district. With the focus of the policy on amenity outcomes, it is submitted that the policy is *vires* in terms of the Council's land use functions.

8. ISSUES RELATING TO AIRPORT ZONE

Scope for prohibited activities in Wanaka Airport Zone

8.1 The background to the proposed rezoning of Wanaka Airport is discussed at paragraphs [8.1] – [8.9] of the Council's opening legal submissions in this hearing stream.[19] In summary, Wanaka Airport was notified as part of the Rural Zone of the PDP. However, the Council's position is that it is more appropriate that the Airport Zone apply, containing specific provisions relating to Airport and Airport Related Activities at Wanaka Airport.

8.2 As part of her s 42A report on the Airport Zone, Ms Holden proposed redraft Rules 17.4.17 - 17.4.23, which give the following activities (**Prohibited Activities**) a prohibited status at Wanaka Airport:

Activity	**Redraft rule**	**Reply rule**
Forestry	17.4.17	17.4.26
Factory farming	17.4.18	17.4.27
Mining	17.4.19	17.4.28
Any activity requiring an Offensive Trade Licence under the Health Act 1956	17.4.20	17.4.29
Residential Activity	17.4.21	Replaced by reply Rule

[19] Council's Opening Legal Submissions Hearing Stream 08 dated 25 November 2016.

		17.4.25
Community Activities (excluding those identified in reply rule 17.4.15)	17.4.22	Replaced by reply Rule 17.4.25
Day Care Facilities	17.4.23	Replaced by reply Rule 17.4.25

Reply Rule 17.4.25

8.3 In his evidence for Queenstown Airport Corporation Limited (**QAC**), Mr Kyle identified that notified Chapter 21 Rural contains Rule 21.4.28, which makes any new Activity Sensitive to Aircraft Noise (**ASAN**) or new building platform to be used for an ASAN, within the Outer Control Boundary of Wanaka Airport, a prohibited activity.

8.4 Mr Kyle recommended that it would be more appropriate for Redraft Rules 17.4.21 - 17.4.23 to be drafted in a manner similar to Rule 21.4.28.[20] Ms Holden agrees with Mr Kyle's recommendation and has proposed Reply Rule 17.4.25 in place of Redraft Rules 17.4.21 - 17.4.23, in the revised chapter appended to her right of reply.[21]

Scope for the Prohibited Activities

8.5 During the Council's opening for this hearing, the Panel asked the Council to confirm whether scope exists to include the Prohibited Activities in the Wanaka Airport Zone.

8.6 The Council submits that, with the exception of the provision for police stations, fire stations, medical facilities and education facilities, Reply Rule 17.4.25 is consistent with Rule 21.4.28. Aviation related police stations, fire stations, medical facilities and education facilities are proposed to be included in the definition of Airport Activities and are proposed to be permitted activities at Wanaka Airport. It is the Council's position that the provision for these permitted activities falls reasonably within the general relief sought by QAC's submission,

[20] Evidence of Mr John Kyle for the Queenstown Airport Corporation Limited, dated 18 November 2016 at paragraph [6.36].

[21] Planning Reply of Ms Holden, dated 13 December 2016 at paragraph 14-23.

being that provision be made for Airport and Airport Related Activities at Wanaka Airport. Accordingly, the Council submits that scope exists for the entirety of reply Rule 17.4.25.

8.7 The evidence of Ms Holden is that there are no rules in the notified Rural Zone consistent with Redraft Rules 17.4.21 - 17.4.23 (Reply Rules 17.4.26 - 17.4.29). However, it is the Council's position that QAC's submission provides the scope for the Prohibited Activities contained within these rules.

8.8 The Council submits that the types of activities sought to be prohibited by Redraft Rules 17.4.21 - 17.4.23 (Reply Rules 17.4.26 - 17.4.29) are fundamentally at odds with the function of an airport. As a result, the inclusion of the Prohibited Activities in the Wanaka Airport Zone is a reasonably foreseeable consequence of the provision for Airport and Airport Related Activities at Wanaka Airport and falls within the scope of QAC's submission on Wanaka Airport. The Council further submits that the inclusion of the Prohibited Activities would be unlikely to cause prejudice to any person as such activities are incompatible with the aviation activity that is currently carried out under Designation #64.

Visitor Accommodation at Queenstown Airport

8.9 The notified Airport Zone Chapter provided for Visitor Accommodation in the Queenstown Airport Zone as a permitted activity subject to permitted activity standards. Dr Stephen Chiles provided acoustics evidence on behalf of the Council that short-stay visitor accommodation in the Queenstown Airport Zone could be appropriately designed to mitigate noise effects.[22] However, after hearing the evidence presented at the hearing, Ms Holden's view is that it cannot be ensured that Visitor Accommodation in the Queenstown Airport Zone would be used only by transiting or short stay visitors. Ms Holden is also of the view that, providing for Visitor Accommodation within the zone could give rise to adverse traffic effects that have not been appropriately assessed.[23]

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[22] Summary of Evidence of Dr Stephen Chiles dated 25 November 2016 at paragraph 9(a).
[23] Planning Reply of Ms Rebecca Holden dated 16 December 2016 at Part 11.

8.10 Further, at the hearing the Panel raised the question as to whether the provision for Visitor Accommodation in the Queenstown Airport Zone was inconsistent with the objectives and policies of the surrounding zones. Ms Holden has carried out an assessment of the objectives, policies and rules of the zones surrounding the notified Airport Zone (Low Density Residential, Frankton Flats B, Remarkables Park and Rural Zones) and determined that permitting Visitor Accommodation in the Queenstown Airport Zone would result in a fundamental inconsistency across the District Plan.[24] Further, Ms Holden's view is that the provision for Visitor Accommodation in the Queenstown Airport Zone is inconsistent with notified Policy 17.2.2.1 (reply 17.2.3.1) of the Airport Zone Chapter, which seeks to maintain Queenstown Airport as a memorable and attractive gateway to the District. [25]

8.11 On account of the regulatory inconsistencies and potential adverse effects identified by Ms Holden, her view is that Visitor Accommodation should be a prohibited activity in the Queenstown Airport Zone.

8.12 It is submitted that inconsistencies between district plan provisions are not precluded, provided that there are clearly distinguishable facts or circumstances and/or a different approach to the same issue is justified under section 32 of the RMA. The issue in the present instance is that there is not a sufficiently strong RMA justification for taking a materially different approach to Outer Control Boundary within the Airport Zone to that outside the zone (but still within the Outer Control Boundary).

8.13 The evidence for QAC is that, notwithstanding it being within the Outer Control Boundary, the provision for Visitor Accommodation in the Queenstown Airport Zone would provide a level of convenience to airport users.[26] Ms Holden has however identified that Visitor Accommodation is already provided for outside the Outer Control Boundary within the adjoining zones and is easily accessible from the

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[24] Planning Reply of Ms Holden, dated 13 December 2016 at paragraph [11.3].

[25] Planning Reply of Ms Rebecca Holden dated 16 December 2016 at Part 11.

[26] Evidence of Mr John Kyle for Queenstown Airport Corporation Limited dated 18 November 2016 at paragraphs 5.57 – 5.62; Ms Rebecca Wolt Legal Submissions for Queenstown Airport Corporation dated 19 November 2016 at paragraph 78.

airport.[27] On this basis, it is the Council's position that the need to provide for Visitor Accommodation in the Queenstown Airport Zone is not so great as to justify a considerably different regulatory approach from the surrounding zones or to justify an inconsistency between Notified Policy 17.2.2.1 (Reply 17.2.3.1) and the rules relating to Visitor Accommodation.

The extent of the Queenstown Airport Zone

8.14 The notified Queenstown Airport Zone is significantly more expansive that the operative Queenstown Airport Mixed Use Zone, encompassing 99 hectares of additional land to the north and east of the operative zone (**additional zoned land**). Remarkables Park Limited (**RPL**) has made a submission on the Airport Zone Chapter requesting that the zone is not expanded as proposed. While the extent of the zone is a matter to be considered at the rezoning/mapping hearing, the provisions that relate to the additional zoned land were considered in this hearing stream.

8.15 During the hearing, the Panel raised a concern as to the uncertainty of the scale and type of commercial activity that the notified provisions would allow to be developed on the additional zoned land and the effects that such activity would have on the surrounding environment. On the Panel's request, QAC provided a plan showing the location and extent of airside areas within the proposed zone, obstacle limitation surfaces (Designation #4) and other CAA requirements that restrict the use of land within the Queenstown Airport Zone.[28]

8.16 Upon review of the plan provided by QAC, Ms Holden has identified a number of risks and uncertainties that exist in respect of the scale and type of activity that could be developed on the additional zoned land under the notified provisions. These include the risk that significant commercial activity could be developed to the north of the runway and terminal building and the uncertainty as to how such

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27 Planning Reply of Ms Rebecca Holden dated 16 December 2016 at Part 11.
28 Memorandum of Counsel for Queenstown Airport Corporation dated 6 December 2016.

development would integrate with the wider environment or impact the surrounding road network.[29]

8.17 On the basis of these risks and uncertainties, Ms Holden's preliminary view is that either the extent of the zone should be reduced to the area surrounding the existing terminal building or, if the extent of the zone is to remain as notified, more restrictive provisions should apply to the additional zoned land, to ensure that unanticipated activities and effects do not occur.[30] The Council submits that RPL's submission requesting that the Airport Zone not be expanded provides scope for either of these approaches to be taken. Further, the Council submits that the most appropriate forum to address the options identified by Ms Holden is the hearing on rezoning/mapping. This is because the uncertainties and risks to be addressed relate directly to the extent of the zone.

9. PROPOSED REGIONAL POLICY STATEMENT

9.1 Appeals to the Environment Court on Otago Regional Council's (**ORC**) decision on the Proposed Regional Policy Statement (**PRPS**) closed on 9 December 2016. At the time of filing this reply, the Council has not had an opportunity to consider the scope and extent of appeals received, and the ORC has not released a summary nor indication of provisions affected by any appeals.

9.2 As covered in the Council's opening and the Panel's minute of 7 October 2016,[31] the Council will be filing written submissions and possibly filing planning evidence if necessary, on the implications of the PRPS for the chapters of the PDP that have already gone to hearing, after the content and scope and any appeals on the Decisions Version, are known.

10. MINOR NON-SUBSTANTIVE CHANGES

10.1 The Council officers have recommended a number of minor, non-substantive amendments by way of the s 42A reports on the

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29 Planning Reply of Ms Rebecca Holden dated 13 December 2016 at Part 7

30 Planning Reply of Ms Rebecca Holden dated 13 December 2016 at Part 7

31 Panel Minute concerning Otago Proposed Regional Policy Statement, dated 7 October 2016, at paragraphs 4-6

Business Chapters. These non-substantive amendments generally relate to structural issues, matters of clarification, and minor errors where there have been no submissions.

10.2 The Council maintains the position taken in the District Wide hearing,[32] namely that as the proposed changes are of neutral effect, there is no legal or procedural barrier preventing the Panel from recommending them, and the Council subsequently making the changes under Clause 16(2).

10.3 Despite the above, it would be appropriate for the Panel to distinguish any recommended non-substantive amendments from recommended changes that are based on submissions. The Council submits that any recommended non-substantive amendments could be marked by the Panel in a similar manner as is done by the Council officers in the proposed revised chapters filed alongside their s 42A report and planning replies.

11. QUESTIONS ON STAGE 1 / 2 MEMORANDUM

11.1 During the Council's opening, the Panel asked legal counsel a number of questions about its memorandum of counsel regarding approach to Stage 1 and Stage 2, dated 23 November 2016. The Council now confirms the following responses.

Panel question	Response
Is there any inconsistency between the Strategic chapters (in particular the Strategic Direction and Landscape chapters) and Volume B land?	This question was asked in the context of the Strategic approach to protection of landscapes with in the District. Council's position is there is no inconsistency. Specifically in relation to each "excluded ODP zone" as listed in paragraph 10 of the memorandum: • Frankton Flats B Zone, Ballantyne Road Industrial and Residential extension and Queenstown Town Centre expansion are not located within a PDP ONL • Northlake Special Zone and Remarkable Park Zone (small part near water edge) have a small component located within an ONL

[32] See Legal Submissions for Queenstown Lakes District Council as part of Council's Right of Reply, District Wide (Hearing Stream 05), dated 22 September 2016, at paragraphs 5.1-5.3

Panel question	Response
	• Peninsula Bay North is all located within ONL. This does not mean that there is an inconsistency between the PDP strategic chapters and the Volume B provisions, as the Volume B provisions also include measures to protect and manage the landscape. The Volume B areas that are within sensitive landscapes are managed through the respective Volume B provisions. Further, the business areas within Volume B are located within the PDP UGBs of Frankton (Remarkables Park Zone, Frankton Flats B Zone) and therefore the location, and effects of the use of this land are consistent with the strategic and urban development chapters, including the commercial node of Frankton.
Is PC50 an exception to the Council's position / approach that the Introductory and Strategic chapters apply to both Volume A and B land (as set out in paragraphs 7.1, 11, 15 and 16 of the Memo), given that the Council's withdrawal was of "*all provisions as they relate to the geographic area addressed by Plan Change 50 – Queenstown Town Centre zone*"?	No, the PC50 geographic area is not an exception. The fundamental position is that the Strategic chapters are over-arching across the District, and set the high level objectives and policies for the district irrespective of whether specific geographic areas or issues have been excluded from the PDP or withdrawn from it. The Strategic chapters were drafted in the knowledge that specific geographic areas would be excluded from the PDP review, but that they would still fall under and be aligned with the high level policy direction provided by the Strategic chapters, particularly once there is an operative District Plan at the end of the PDP process. Further, except for the Landscape chapter which includes some implementation methods (to be called 'General Rules for consistency with other PDP recommendations), the Strategic chapters only contain objectives and policies, so do not necessarily cause conflict with areas excluded from the PDP. It is also noted that the PC 50 land is within the PDP UGB and on this basis does not conflict with chapters 3, 4, and 6.
Timing of formal withdrawals – presumably before rezoning hearings but please confirm.	Proposed to be March 2017
Can Council give consideration to including the Signs and Earthquakes chapters in a Variation to Stage 1, given	Proposed to be May 2017 (subject to resourcing)

Panel question	Response
it is understood no major changes are proposed to the two chapters as they will apply to Volume A land.	
Timing of cl 16(2) changes referred to in paragraphs 24 and 25. Please consider and revert on suggestion from Denis Nugent that changes to text not helpful given Stage 1 hearings almost completed.	In light of the Panel's suggestion that clause 16(2) changes to Stage 1 text will not be helpful at this stage of the hearings process, Council now proposed to (before the end of 2017): • Correct the Maps, to assist through the rezoning hearings in 2017 • Formally change the ADG references from 2006 to 2016 references, as required by RMA. • Formally withdraw the Visitor Accommodation provisions No other changes will be made to the PDP text, except to correct the typo in Protected Trees Chapter (replace Roof with Root).

DATED this 13th day of December 2016

J G A Winchester / S J Scott
Counsel for Queenstown Lakes
District Council