

Far North Proposed District Plan

Hearing 1 – Introduction, General Provisions, Tangata Whenua

SPEAKING NOTES

1. These speaking notes have been prepared for the assistance of the Hearing Panel for Hearing 1 relating to the Proposed District Plan (PDP), on 29 May 2024. The notes draw out three key issues, relevant to Hearing 1, from Forest & Bird’s submissions dated 21 October 2022.
2. Those submissions, together with the further submissions dated 4 September 2023 are maintained in their entirety.

Issue 1 – “Primacy” of Strategic Directions

3. The first issue is whether the strategic direction overview should be drafted in a way that creates a hierarchy between Strategic Directions and other objectives and policies in the PDP. Forest & Bird submits that such a hierarchy is not appropriate, the strategic directions and other objectives and policies should be consistent, not in conflict, and any tension should be resolved by reading the relevant plan provisions together.
2. The strategic direction overview in the notified version states that:

For the purposes of preparing, changing, interpreting, and implementing the District Plan, all other objectives and policies in all other chapters of this District Plan are to be read and achieved in a manner consistent with these Strategic Directions.
3. In its submission, Forest & Bird has requested this be replaced with the following wording:

For the purpose of District Plan development, including plan changes, the strategic objectives in this chapter provide direction for the development of the more detailed provisions contained in the District Plan.

For the purpose of District Plan implementation (including the determination of resource consent applications and notices of requirement):

- a) the strategic objectives may provide guidance on what the related objectives and policies in other chapters of the District Plan are seeking to achieve; and
 - b) the relevant objectives and policies of the District Plan (including strategic objectives in this chapter) are to be considered together and no fixed hierarchy exists between them.
4. As explained in the submission, the above proposed wording is essentially the wording approved by the Environment Court in *Darby Planning Ltd Partnership v Queenstown Lakes DC* [2019] NZEnv 133 (electronic copy provided together with these speaking notes).
 5. In *Darby Planning Ltd v QLDC*, the Court noted that it is particularly important that the intended influence of strategic directions is clear.¹ Rather than referring to strategic directions as having “primacy”,² the Court found that the wording proposed above would be more appropriate.³
 6. The risk is that strategic directions, which are necessarily drafted in very general terms, could be considered to override more specific Chapter objectives, policies and rules which have been tailored to suit particular zones or overlays.
 7. Such a hierarchy within the plan is not supported by the RMA. Instead, an integrated approach requires that relevant objectives and policies of the District Plan should be considered together.
 8. Forest & Bird’s submission on this point has not been fully considered in the s 42A reports. This appears to be because separate reports have been prepared by different Council officers for the “General Approach Chapter” and the “Strategic Direction Chapter”.
 9. The Strategic Direction s 42A report accepted the Forest & Bird submission in part, on grounds of unnecessary duplication.⁴ However, the General Approach s 42A report did not consider the submission. It is submitted that this was a mistake,

¹ At [64]

² At [66]

³ At [71], and in its Minute dated 29 March 2019, at [39] (Annexure B to the decision).

⁴ S 42A

because the Forest & Bird substantive submission is also clearly directed towards the relevant passage in the General Approach Chapter.

Issue 2 – inclusion of waterbodies in Strategic Direction objectives

10. In its submission, Forest & Bird has requested an amendment to SD-NE-O5, to include reference to waterbodies and their margins.
11. The rationale for this is that SD-NE-O5 refers to the matters of national importance that are set out in RMA s 6(a) and 6(b):

6 Matters of national importance

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:

- (a) the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:
- (b) the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development: ...

12. It is not clear why Council has chosen to refer to the coastal environment in SD-NE-O5, but *not* to waterbodies and their margins.
13. With respect, the analysis provided in the s 42A report does not provide a convincing justification for the exclusion of waterbodies and their margins from the objective.
14. The Council Officer states that the drafting approach taken:⁵

... was to identify and respond to those resource management issues considered to be of particular importance to the Far North District, including matters of national and regional importance that are particularly relevant within the district.

However, it must surely be the case that the preservation of the natural character of waterbodies and their margins is of particular importance to the Far North District.

15. This importance is recognised in the proposed objectives in the Natural Environmental Values Chapter (Natural Character): NATC-O1, and NATC-O2. Indeed,

⁵ S 42A Strategic Direction, at [253] – [254]

the entire section of the PDP on Natural Character is devoted to waterbodies and their margins.

16. The need to ensure “long-term protection for future generations” applies to the natural character of waterbodies and their margins just as much as it applies to the natural character of the coastal environment.⁶
17. It would be incongruous for the district plan not to recognise the importance of waterbodies and their margins in SD-NE-O5.

Issue 3 – inclusion of indigenous biodiversity in Strategic Direction objectives

18. Forest & Bird supports the proposed Objective SD-NE-O6 concerning significant natural areas. However, the Forest & Bird submission that the Objective should be amended to “identified and protected” has not been considered in the s 42A report.
19. It is important that SNAs are first identified, so that they can be protected. This is reflected in proposed Objective IB-O1 in the Ecosystems and Indigenous Biodiversity section of the PDP. It is submitted that it would be better for the two objectives to be consistent, no explanation has been provided in the s 42A report for the current inconsistency.
20. Strategic direction relating to indigenous biodiversity should not be confined to identifying and protecting SNAs. In its submission, Forest & Bird has requested a new strategic direction to maintain and enhance indigenous biodiversity across the district. This would be consistent with the NPS-IB, which is currently in force.
21. Forest & Bird has also sought the addition of reference to indigenous biodiversity in the Urban Form and Development and Rural Environment strategic objectives. These additions would help to ensure an integrated approach to maintaining and enhancing indigenous biodiversity across the district.

Tim Williams

Forest & Bird

⁶ Cf. S 42A Strategic Direction, at [254]

**BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA**

Decision No. [2019] NZEnvC 133

IN THE MATTER of the Resource Management Act 1991
AND of appeals under clause 14 of the First Schedule of the Act
BETWEEN DARBY PLANNING LIMITED PARTNERSHIP
(ENV-2018-CHC-150)
and all other appellants concerning Topic 1 of Stage 1 of the Proposed Queenstown Lakes District Plan
(as set out in the Schedule attached)
Appellants
AND QUEENSTOWN LAKES DISTRICT COUNCIL
Respondent

Court:¹ Environment Judge J J M Hassan
Environment Commissioner K A Edmonds
Environment Commissioner J T Baines

Hearing: at Queenstown on 18, 19, 20, 21, 22 and 25, 26 & 27 February 2019

Appearances: S Scott and H Ballie for Queenstown Lakes District Council
M Baker-Galloway, R Giles & H Mahon for FII Holdings Ltd, Friends of the Wakatipu Gardens and Reserves and Associated Residents (FOWGR), Te Anau Developments Ltd, Real Journeys Ltd, Ngai Tahu Tourism Ltd, Real Journeys (t/a Go Orange Ltd), Real Journeys (t/a Canyon Food and Brew Co), Darby Planning LP, Coneburn Preserve Holdings Ltd & Others, Glendhu Bay Trustees Ltd, Universal Developments Ltd, Hansen Family Partnership, Ladies Mile Consortium, Southern District Health Board, Waterfall Park Developments
J D K Gardner-Hopkins for Kawarau Jet Services Holdings Ltd
S Anderson for Otago Regional Council
J Leckie for Cardrona Alpine Resort Ltd

¹ For the reasons given by Minute dated 3 April 2019, after the hearing His Honour Judge Jackson withdrew, taking no part in deliberations.



R Wolt for Queenstown Airport Corporation & Trojan Helmet Ltd
G Todd & B Gresson for Hogans Gully Farming Ltd
J D Young for Remarkables Park Limited & Queenstown Park
Limited

Date of Decision: 5 August 2019

Date of Issue: 5 August 2019

**INTERIM DECISION OF THE ENVIRONMENT COURT
Re Topic 1, Stage 1 – ‘A Resilient Economy’**

- A: Subject to the directions given at [195] and [196] and the leave reserved at [198] and [201], the Environment Court confirms the amended Decision Version provisions, marked Annexure 2, attached to and forming part of this decision.
- B: Queenstown Lakes District Council must file a complete set of all Operative District Plan objectives not encompassed by the plan review within ten working days of this decision.
- C: Costs are reserved but applications are not encouraged.

REASONS

Introduction

[1] Queenstown Lakes District Council ('QLDC') is undertaking a review of provisions of its operative district plan ('ODP') ('Plan Review') in chapter-related stages. This is the first substantive decision on appeals against QLDC's decisions in Stage 1 of this Plan Review.

[2] Our hearings and decisions are in topic groupings. This decision concerns QLDC decisions on some of the proposed new "Chapter 3 – Strategic Directions" (to which we refer as the 'decision version' or 'DV'). The theme for this decision is what is termed "Strategic Topic 1 – A Resilient Economy" ('Topic 1'). That is shorthand for what the Ch 3 provisions essentially pertain to, which QLDC describes as being for:



... the development of a prosperous, resilient and equitable economy in the District.²

[3] By way of background, the District has long been a highly popular holiday destination and its economy is heavily dependent on the visitor industry. Its population growth continues to be well above the national average and, compared to other centres, there is a very high proportion of visitors to permanent residents. There are significant growing pressures on services and infrastructure and their funding. Congestion is a daily experience at peak times on its strategic road network. It is also New Zealand's most unaffordable place in which to live.

[4] The s32 report on the notified version ('NV') of Ch 3 describes related issues as follows:³

Issue 1. Economic prosperity and equity, including strong and robust town centres;

...

Issue 6. While median household incomes in the District are relatively high, there is significant variation in economic wellbeing. Many residents earn relatively low wages, and the cost of living in the district is high – housing costs, heating in winter, and transport. This affects the social and economic wellbeing of some existing residents and also reduces the economic competitiveness of the District and its ability to maximise productivity.

[5] The NV of Ch 3 included related goals:

3.2.1 Goal - Develop a prosperous, resilient and equitable economy.

3.2.6 Goal - Enable a safe and healthy community that is strong, diverse and inclusive for all people.

[6] While QLDC's public notices for its review refer to its notified proposed plan provisions as a "proposed district plan"⁴ ('PDP'), this is in fact a partial review. It does not encompass the entire ODP.⁵ The PDP provisions that become operative will merge into and form part of the ODP, rather than constituting a replacement district plan. Even so, the Plan Review is extensive and seeks to substantially change much of the ODP, both in content and effect.

² Strategic Objective 3.2.1.

³ Queenstown Lakes District Council, hearing of submissions on Proposed District Plan, Report 3, Report and Recommendations of Independent Commissioners Regarding Chapter 3, Chapter 4 and Chapter 6, at [91].

⁴ <https://www.qldc.govt.nz/planning/district-plan/proposed-district-plan-stage-1/>

⁵ Refer to Annexure 2 for ODP provisions not the subject of the review.



[7] An aspect of this is the incorporation into the ODP of the proposed Ch 3. The ODP presently has a Chapter 4 on "District Wide" matters. However, that chapter does not operate as an overarching strategic directions chapter. As its title 'Strategic Directions' implies, Ch 3 is intended to set out "the over-arching strategic direction for the management of growth, land use and development in a manner that ensures sustainable management of Queenstown Lakes District's special qualities".⁶ This is primarily through its Strategic Objectives ('SOs') and Strategic Policies ('SPs').

Ch 3 provisions determined and not determined by this decision

[8] This decision pertains to the following Ch 3 provisions:

- (a) the heading "3.1 Purpose" and the text under that heading (including listed "Issues" other than Issues 2 and 4);
- (b) SO 3.2.1, SOs 3.2.1.1 – 3.2.1.6 and SO 3.2.6; and
- (c) SPs 3.3.1– 3.3.12.

[9] This decision does not determine other Ch 3 provisions including:

- (a) sub-topic 4 of Topic 1 on Ch 3 provisions on regionally significant infrastructure;⁷
- (b) Topic 2 provisions (on landscape matters), and related provisions on providing for or enabling resorts or visitor industry activities in rural areas; or
- (c) Topic 4 provisions including on indigenous vegetation and biodiversity.

[10] Two mediation settlements were reached as between relevant parties with interests in Topic 1 sub-topic 4 and Topic 2 sub-topic 11. The settlements seek determinations of relevant provisions by consent order.⁸ As has been communicated to those parties by Minute, the court will determine those provisions in due course (following

⁶ The quote is from the first sentence under 3.1 Purpose, as stated in the Decision Version. The sentence goes on to list certain qualities (a. – i.).

⁷ Relevant parties achieved full settlement that resulted in their filing of two joint memoranda seeking consent orders.

⁸ Joint memorandum of Aurora Energy Ltd and Others dated 9 November 2018. Joint memorandum on behalf of Queenstown Airport Corporation and Transpower, dated 12 November 2018.



the release of its Topic 2 decision).⁹

[11] Although the landscape and rural provisions of Ch 3 were assigned to Topic 2, they were traversed to some extent in evidence and submissions for Topic 1. Additional policies on resorts and visitor industry activities in rural areas were proposed in evidence and in a joint witness statement of planning witnesses ('JWS Planning').¹⁰ Various parties addressed these matters in their closing submissions.¹¹ QLDC also noted that there is a policy gap in Ch 3 in regard to biodiversity, a Topic 4 matter that has yet to be heard.¹² It would be premature for us to make any determinations on these matters. Directions can be anticipated in the event the court considers any supplementary closing submissions should be made in light of matters arising in the court's consideration of sub-topic 4, Topics 2 or 4.

Narrowing of matters in contention

[12] During the hearing, Topic 1 matters in contention significantly narrowed. After evidence was heard, with the support of the parties, the court directed the planning witnesses to undertake further expert conferencing. This was with the guidance of a Minute issued on 22 February 2019 ('Conferencing Minute'). The planners achieved significant progress towards a consensus on the structure and content of several of the Ch 3 provisions in issue. This was recorded in their joint witness statement ('JWS Planning').¹³ The JWS Planning included a set of recommended changes to the DV Ch 3 provisions ('JWS Version'). After the planners filed the JWS Planning, they were recalled as a group (ie 'hot tubbing') to be cross-examined and questioned on their substantive points of agreement and confined points of disagreement.

[13] Oral closing submissions were heard prior to the adjournment. These revealed a

⁹ Minutes dated 28 November 2018 and 28 March 2019.

¹⁰ Joint Statement Arising from Expert Planner Conferencing, Topic 1 (sub-topics 1 to 3), dated 21-22 February 2019.

¹¹ In particular, we refer to the closing submissions for Trojan Helmet Limited in relation to Strategic Topic 1, dated 27 February 2019; closing legal submissions for Cardrona Alpine Resort Limited (s274 party) in relation to Strategic Topic 1, dated 27 February 2019; Topic 1: A resilient economy closing submissions for Kawerau Jet, dated 27 February 2019; augmented closing legal submissions on behalf of various parties regarding Strategic Topic 1: A resilient economy, dated 12 March 2019 (the parties include Real Journeys Group, Ngai Tahu Tourism Ltd, the Darby Group, Friends of the Wakatipu Gardens and Reserves and Associated Residents ('FOWGR'), FII Holdings Ltd, Universal Developments Ltd, Hansen Family Partnership, Ladies Mile Consortium, Southern District Health Board, Waterfall Park Developments); and closing submissions for QLDC.

¹² Supplementary closing submissions for QLDC, dated 29 March 2019, at [2.1]-[2.4].

¹³ Joint Statement Arising from Expert Planner Conferencing Topic 1 (Sub-topics 1-3), dated 21-22 February 2019.



similar pattern of significantly narrowed matters in contention.

[14] On 29 March 2019, at QLDC's request, the court issued a further Minute on matters of drafting and structure ('29 March Minute', see **Annexure 3**). This was to assist Topic 1 parties on relevant matters for written closing submissions (as well as to give some guidance on drafting and structure matters to those parties preparing for the Topic 2 hearing). Written closing submissions filed subsequently confirm that the substantive matters in contention on the Topic 1 provisions are relatively much more confined than they were at the commencement of the hearing.¹⁴ We thank the parties and their planning witnesses for their efforts in that regard.

Statutory framework and legal principles

Relevant version of the RMA

[15] The Stage 1 PDP was notified in August 2015. Therefore, the applicable version of the RMA is that prior to its amendment by the Resource Legislation Amendment Act 2017.

The role of court in the PDP appeals

[16] This is helpfully addressed in QLDC's opening submissions.

Section 290 RMA

[17] Our primary jurisdiction is in s290 RMA which is materially as follows:

290 Powers of court in regard to appeals and inquiries

- (1) The Environment Court has the same power, duty, and discretion in respect of a decision appealed against, or to which an inquiry relates, as the person against whose decision the appeal or inquiry is brought.
- (2) The Environment Court may confirm, amend, or cancel a decision to which an appeal relates.
- ...
- (4) Nothing in this section affects any specific power or duty the Environment Court has under this Act or under any other Act or regulation.



¹⁴ By Minute dated 3 May 2019, the court closed the hearing and set a timetable for supplementary closing submissions.

[18] Our exercise of those powers, duties and discretions is as a judicial body in the determination of appeals, not as a planning authority with executive functions.¹⁵ QLDC is that planning authority. We are limited to matters that are reasonably and fairly raised in the PDP, submissions and appeals (subject to the discretion in s293).¹⁶

Section 293 RMA

[19] Section 293(1) RMA supplements s290 by enabling the court to direct the local authority to prepare changes to a proposed plan to address matters identified by the court, consult with parties and other persons and submit the changes to the court for confirmation. Any exercise of those powers must be after the court has heard the appeal against plan provisions. The court must state reasons for giving any such directions (s293(2)).

[20] The discretion in s293(1) to give directions has been considered in several cases. *Byerley Park*¹⁷ instructs that any expansion of the nature and extent of relief sought beyond the scope of a reference (ie appeal) is fettered insofar as it must still relate back to, and arise out of, the appeal itself. Section 293 does not enable us to change part of the ODP that is not the subject of, or affected by, proposed changes in the PDP.¹⁸ We accept QLDC's submission that any exercise of this discretion must be undertaken with care and strictly in accordance with the authorising parameters.¹⁹

[21] One circumstance in which the powers in s293(1) apply is where, following a hearing, the court finds that a proposed plan would not give effect to a National Policy Statement ('NPS') or a Regional Policy Statement ('RPS'). Where a proposed plan is found to fail to give effect to a relevant higher order instrument, but this failure is "of minor significance and does not affect the general intent and purpose of" the proposed plan, the court may elect to not direct any rectification of the proposed plan (s 293(3) – (5)). Otherwise, the court has a residual discretion whether or not to make a s293(1) direction (although any material failure to give effect to a NPS or RPS would clearly weigh in favour of exercising that discretion).

¹⁵ *Mawhinney v Auckland Council* (2011) 16 ELRNZ 608 (HC).

¹⁶ *Mawhinney*, at [115].

¹⁷ *Auckland Council v Byerley Park Limited* [2013] NZHC 3402.

¹⁸ *Byerley Park*, at [41] and [42], citing *Hamilton City Council v Historic Places Trust* [2005] NZRMA 145, at [25].

¹⁹ QLDC opening submissions, dated 18 February 2019, at [6.10] – [6.12].



Relevant powers, duties and/or discretions

[22] We must have regard to the appealed decision(s) (s290A). We extend that to include the report and recommendations of the independent hearings commissioners that informed QLDC's decisions.²⁰

[23] Through s290, we also inherit the following further powers, duties and/or discretions, but within the above-noted parameters of our appellate function:²¹

- (a) to be satisfied the PDP properly accords with the matters in s74(1), as to QLDC's s31 functions, pt 2, and the relevant RMA instruments;
- (b) to be satisfied that the PDP complies with the relevant content specifications in s75 and that the relevant provisions fulfil their statutory purposes;
- (c) to be satisfied that the PDP duly gives effect to relevant national policy statements²² and the operative regional policy statement ('RPS');²³
- (d) to have regard to relevant instruments specified in s74(2), including the presently proposed RPS provisions ('pRPS') and to take into account any relevant planning document recognised by an iwi authority,²⁴
- (e) to duly consider s32 RMA (which we further discuss at [26]).

[24] The Council's opening submissions refer to *Colonial Vineyards*²⁵ as providing a

²⁰ Queenstown Lakes District Council, hearing of submissions on Proposed District Plan, Report 3, Report and Recommendations of Independent Commissioners Regarding Chapter 3, Chapter 4 and Chapter 6. The Commissioners were Nugent, Cocks, Gilmour, Robinson and St Clair.

²¹ As Topic 2 does not concern PDP rules, we leave aside related powers, duties and discretions.

²² The National Policy Statement on Urban Development Capacity 2016 ('NPSUDC') has relevance to some of the Ch 3 provisions the subject of this decision. The National Policy Statement on Electricity Transmission 2008 ('NPSET') is relevant to a number of the provisions on national grid infrastructure, but these will be the subject of a separate determination. For completeness, there is also a National Policy Statement for Freshwater Management 2014 (amended 2017) ('NPSFM') and a National Policy Statement for Renewable Electricity Generation 2011 ('NPSREG'). These may be relevant to some extent in other Topics in these appeal proceedings. Further, a proposed NPS for biodiversity is under development for public notification. As Queenstown Lakes District does not include coastal marine area and is relatively remote from the coastal environment, the New Zealand Coastal Policy Statement 2010 ('NZCPS') does not significantly bear upon the matters in our PDP decisions.

²³ In this case, extending to some operative provisions of the proposed Otago Regional Policy Statement: see [25].

²⁴ The associated duty to have regard to the extent to which the PDP needs to be consistent with plans or proposed plans of adjacent territorial authorities does not arise on the evidence. We have not had regard to trade competition. We have noted that s74 also specifies relevant management plans and strategies under other Acts, any relevant entry in the Historic Places Register and various fisheries regulations to the extent that their context has a bearing on resource management issues of the district. On the evidence, no such other statutory instruments materially bear upon the matters we must decide concerning Topic 1.

²⁵ *Colonial Vineyard Limited v Marlborough District Council* [2014] NZEnvC 55 at [17].



useful update (post-RMA amendment) of the analysis offered in *Long Bay*²⁶ of the RMA provisions. We agree, but do not need to go further by way of analysis in this decision.

[25] The review of the Otago Regional Policy Statement 1998 ('RPS98') is now well advanced with several of its provisions now superseded by operative provisions of the proposed Otago Regional Policy Statement 2017 ('pRPS'). Some of the pRPS provisions are before the court for consent order determination. It can be anticipated that the advance of the pRPS to becoming the only operative RPS will continue through the process of the court's determination of PDP appeals. As such, in determining whether the PDP gives effect to the RPS, we leave aside all superseded RPS98 provisions and treat all operative pRPS provisions as, in essence, part of the emerging RPS. Further, our regard to yet-operative pRPS provisions is on the basis that provisions beyond contention on appeal are accorded weight that reflects their likely role as future operative RPS provisions.

Application of s32 in the evaluation of provisions

[26] Primarily, the RMA's requirements for s32 reporting pertain to the steps in plan formulation prior to notification and are directed to first instance planning authorities, rather than this court on appeal. The court's exercise, through s290, of the first instance decision-makers' powers, duties and discretions is in our capacity as a judicial body determining appeals. We do not inherit QLDC's statutory planning authority role. In light of s290(4), we read s32 subject to our duties, powers and discretions in ss269 and 276 RMA, in that appellate role.

[27] However, the substance of s32 is important to how the court evaluates the available planning outcomes in the appeals and on the evidence. These aspects are traversed in QLDC's opening submissions.²⁷

[28] Section 32 is not prescriptive as to the methodology for evaluating whether objectives are the most appropriate to achieve the purpose of this Act.

²⁶ *Long Bay-Okura Great Park Society Incorporated & Others v North Shore City Council* A78/2008 at [34].

²⁷ QLDC opening submissions, dated 18 February 2019, at [2.4].



[29] That contrasts with what s32 specifies for the evaluation of whether policies (rules and other provisions) are the most appropriate for achieving the objectives. Section 32(1)(b) specifies a method whereby “other reasonably practicable options” (ie in addition to those proposed) are identified and the efficiency and effectiveness of the provisions in achieving the objectives are assessed. There are further specifications for this approach to assessment, including in regard to:²⁸

- (a) identifying and assessing benefits and costs of the environmental, economic, social and cultural effects anticipated from the implementation of the provisions; and
- (b) if there is uncertain information on the subject matter of the provisions, assessment of the risks of acting or not acting.

[30] An added dimension, in this case, to the s32 evaluation of policies and other provisions, arises from the fact that QLDC is undertaking a partial plan review that would leave a number of ODP provisions unreviewed. This triggers s32(3):

- (3) If the proposal (an **amending proposal**) will amend a ... plan ... that already exists (an **existing proposal**), the examination under subsection (1)(b) must relate to—
 - (a) the provisions and objectives of the amending proposal; and
 - (b) the objectives of the existing proposal to the extent that those objectives—
 - (i) are relevant to the objectives of the amending proposal; and
 - (ii) would remain if the amending proposal were to take effect.

[31] **Annexure 1** to this decision summarises QLDC’s two related resolutions ('Resolution A', 'Resolution B'), provided in response to our direction following opening submissions.²⁹ As can be seen:

- (a) Resolution A excluded from Stage 1 of the review some seven ODP zones, together with the Registered Holiday Homes Appendix, and the ODP’s affordable housing and signs provisions;
- (b) Resolution B modified Resolution A by bringing into the review the ODP’s formerly excluded “Community and affordable housing” provisions. It also confirmed the exclusion from the review of plan changes 19, 45, 46, 50 and

²⁸ Section 32(2) RMA.

²⁹ QLDC memorandum, App A, Full Council meeting 17 April 2014 and Full Council meeting 29 September 2016.



51 (as to various zoning regimes), the Remarkable Parks zone and "any subsequent plan changes" to the ODP.

[32] The court invited submissions on how partial review affects how s32 evaluation is undertaken. This was the subject of a Minute issued on 5 April 2019 ('5 April Minute'):

- (a) QLDC did not make submissions on this matter (ie beyond what counsel explained during the hearing);
- (b) Kawerau Jet Services Holdings Limited ('KJet') pointed out that, while the review is not strictly a full plan review, QLDC has consistently (including in public notices) referred to it as pertaining to a proposed district plan. It submitted that substance should apply over form such that it is treated, in essence, as a full review. It referred to the High Court decision in *Coastal Ratepayers United*³⁰ as offering some support for its interpretation. While that decision is not directly on point, it confirmed the ability of a Council to progress a full review through a proposed plan that had some provisions withdrawn;
- (c) Cardrona Alpine Resort Limited ('Cardrona') submitted that, on its understanding that PDP Chapter 3 would replace the corresponding ODP provisions, s32(3) would not apply;³¹
- (d) Darby Group and various other parties³² who presented a joint case on Topic 1 ('Darby & Ors') also agreed with the preliminary interpretation offered by the court in its 5 April Minute,³³ as did QAC.³⁴ QAC's understanding of what is excluded from the review differs somewhat from what QLDC Resolutions A and B reveal. In particular, QAC indicates its informal discussions with QLDC led it to understand that the review would not encompass the ODP Ch 4.

³⁰ *Coastal Ratepayers United Inc v Kāpiti Coast District Council* [2017] NZHC 2933.

³¹ Closing legal submissions on behalf of Cardrona Alpine Resort Limited (s274 party) in relation to Strategic Topic 1, dated 27 February 2019 ('CARL submissions'). It pointed out that this may not necessarily be the same for other topics to be heard in the PDP appeals.

³² The parties include Real Journeys Group, Ngai Tahu Tourism Ltd, the Darby Group, Friends of the Wakatipu Gardens and Reserves and Associated Residents ('FOWGR'), FII Holdings Ltd, Universal Developments Ltd, Hansen Family Partnership, Ladies Mile Consortium, Southern District Health Board, Waterfall Park Developments.

³³ Supplementary closing submissions on behalf of various parties regarding the proper interpretation of ss 79 and 32 RMA (in relation to Topic 1), dated 18 April 2019.

³⁴ Supplementary closing legal submissions for QAC in respect of Topic 1, Stage 1 of the PDP, dated 18 April 2019.



[33] Were QAC's understanding on that correct, that would have raised some further questions as to how Ch 4, a "District Wide" chapter, would interface with Ch 3, as a new Strategic Directions chapter for the ODP. However, Resolutions A and B confirm what counsel for QLDC explained. In essence, that is to the effect that Ch 4 is encompassed in the review. Therefore, in regard to Topic 1, we confirm the preliminary view we expressed in the 5 April Minute, namely:

... that any necessary examination of the operative district plan's objectives is very confined in the present appeal processes given the extent to which the operative plan provisions are encompassed in the review. ...

[34] Our evaluation of options in regard to the Ch 3 provisions in issue in this Topic 1 decision is on the basis of the intended role that SOs and SPs have within the updated ODP. That is particularly given that Ch 3 is intended to operate as a strategic directions chapter whose objectives and policies can provide guidance on what more detailed ODP provisions are seeking to achieve. That is the case for both reviewed ODP chapters, such as Ch 4, and unreviewed ODP chapters. Given this is a partial review that will leave some of the ODP intact, it is particularly important that the role of Ch 3 within the ODP as a whole is clearly understood. We return to this at [71] and following.

[35] We leave reserved how the nature of QLDC's partial review may bear on our consideration of other Topics yet to be heard. In particular, we are mindful of the potential for objectives of unreviewed ODP chapters to have some bearing, in terms of s32(3) RMA, on our consideration of provisions arising for other Topic hearings. Regarding that, it would assist our consideration of later Topics if QLDC were to file a complete set of all objectives of the ODP that are not encompassed by the plan review. We give an associated direction at [199].

[36] Section 32(2) specifies that an assessment of the effectiveness and efficiency of provisions in achieving objectives "must ... if practicable, quantify the benefits and costs" of, inter alia, "the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions".

[37] One potential methodology for this is the New Zealand Treasury's *Guide to Social Cost Benefit Analysis* ('Treasury Guide'/'Guide'). In *Federated Farmers (Mackenzie Branch)*, on the recommendation of experts who gave evidence, the court endorsed and



applied the Guide in its evaluation of the choice of planning outcomes in that case.³⁵ It concerned a plan change to the Mackenzie District Plan to incorporate a regime of objectives, policies and rules on land use aspects of irrigation for dairy conversions in the Mackenzie Basin. The court heard a significant body of evidence on these matters, including on the comparative benefits and costs of diverting water to irrigation usage or leaving it in the Mackenzie Basin so as to be available for hydro electricity generation.

[38] Commonly, a s32 evaluation of the benefits and costs of planning options, in terms of their effects, would involve consideration of so-termed “use” and “non-use” values. An example of non-use values in issue with the Ch 3 provisions are those in relation to the social and cultural wellbeing of residents and their ‘sense of place’ amenity values. The *Treasury Guide* describes various “stated preference” and other methodologies to quantify non-use values, but warns that such valuations are a “specialist [field] requiring expert advice”.³⁶ Neither of the economists before us applied the Guide in their evidence. When questioned, both of them cautioned that there are significant limitations in the Guide’s approach to evaluation of non-use values.³⁷

[39] No party contends that the evaluation of alternative options should be on a basis that quantifies benefits and costs. We have no trouble in finding it would not have been practicable to have done so, given the broad strategic nature of the provisions in issue and the fact that many of them involve a mix of use and non-use values. In those terms, the SPs in issue stand in significant contrast to those in *Federated Farmers (Mackenzie Branch)*. As we find s32(2) RMA does not apply, we also find no material error or deficiency in the fact that relevant experts have evaluated the planning options in a qualitative way.

[40] However, we leave reserved how s32 should be applied to the evaluation of provisions to be considered in other Topic hearings.

Should Issue 1 be revised?

[41] Ch 3 in the DV lists six overarching strategic issues. Topic 1 concerns Issues 1,

³⁵ *Federated Farmers of New Zealand Inc (Mackenzie Branch) v Mackenzie District Council* [2017] NZEnvC 53 at [457].

³⁶ *Treasury Guide*, p 9 and p 20.

³⁷ Transcript, p 82, l 1 – p 83, l 7, p 306, l 11 – p 307, l 17.



3, 5 and 6. The only contentious one is Issue 1, as follows:

Issue 1 Economic prosperity and equity, including strong and robust town centres, requires economic diversification to enable the social and economic wellbeing of people and communities.

[42] By way of background, the s32 report for the NV identified various resource management issues including the two we note at [4]. However, there was no expression of issues in the NV. Instead, its Ch 3 included a set of seven Goals, the most closely similar ones being those we note at [5].

[43] Submissions made on the NV were heard by independent commissioners who reported, with their recommendations, to QLDC. The Report and Recommendations of Independent Commissioners on Chs 3, 4 and 6 ('Report') recommended that Section 3.1 include a set of six Issues that "provide the linkage to the objectives and clarification" the commissioners considered necessary.³⁸ QLDC decided to include the Report's recommended Issue 1 in the DV (see [41]). The Report explains that its approach of having "a series of more focused objectives" to "flesh out" the goals would overcome a concern expressed by a submitter regarding Issue 1, namely that "equity could be read a number of different ways".³⁹ As for reference to "economic prosperity", the Report observes:⁴⁰

We do not accept Mr Haworth's contentions either that a high-level objective focussing on economic wellbeing is unnecessary or that it threatens environmental values, including landscape values. The evidence we heard, in particular from Mr Cole, indicates to us that economic prosperity (and social wellbeing) are not universally enjoyed in the District. We also intend to ensure that it is clear in the more detailed provisions expanding on this broad high-level objective that while important, economic objectives are not intended to be pursued without regard for the environment (reflecting the emphasis in the Proposed RPS quoted above).

[44] The Report's related recommended strategic objective is included in the DV as SO 3.2.1:

³⁸ Queenstown Lakes District Council, hearing of submissions on Proposed District Plan, Report 3, Report and Recommendations of Independent Commissioners Regarding Chapter 3, Chapter 4 and Chapter 6, at [91]. Commissioners Nugent, Cocks, Gilmour, Robinson and St Clair.

³⁹ Report, at [115].

⁴⁰ Report, at [116].



The development of a prosperous, resilient and equitable economy in the District.

[45] Our 29 August 2018 Minute criticised the drafting of Issue 1 in the DV as using imperative language, akin to a policy, rather than “value neutral” language. It also queried whether reference to “strong and robust town centres” sat logically with the theme of “economic diversification”.

[46] In his evidence-in-chief for QLDC, Mr Collins explained why he considers economic diversification and strong and robust town centres are linked concepts. That is in the sense that there is the potential, in the two main town centres of the District, for a significant downturn in the visitor industry to lead to reduced pedestrian counts and revenues, and an increase in unemployment and vacant tenancies. However, he acknowledged that a significant and prolonged downturn in the visitor industry would have the potential to challenge the resilience of people, businesses and communities throughout the District, not just in the town centres. To address those matters, and to take up the court’s observations about using neutral language, Mr Collins proposed that Issue 1 be revised as follows (‘Collins EIC Version’):

The social and economic wellbeing and resilience of the District’s communities may be challenged in future if the District’s economic base lacks diversification.

[47] In his evidence for Darby and Ors, Mr Farrell recommended the following further amendment to Issue 1:

The social and economic wellbeing and resilience of the District’s communities may be challenged in future if the District’s economic base lacks diversification, supporting infrastructure and growth.

[48] That recommendation was supported by Mr Collins in his rebuttal evidence. Mr Collins reasoned that “ongoing growth, in an appropriate form, will facilitate the community’s social and economic wellbeing and resilience”.⁴¹ Mr Farrell’s amendment to the Collins EIC Version was then endorsed by the other planning experts in the JWS Planning.

[49] The court’s 29 March Minute raised a concern about the lack of clarity in the reference to “growth”. QLDC’s final closing submissions responded to that concern by



⁴¹ Rebuttal evidence of Mr Andrew Collins, for QLDC, dated 23 January 2019, at [6.4].

proposing the following further amendment ('QLDC Closing Version'):

The social and economic wellbeing and resilience of the District's communities may be challenged in the future if the District's economic base lacks diversification, supporting infrastructure and well-planned growth.

[50] The 29 March Minute also invited parties to consider the renaming of the listed issues as "Strategic Issues" and to replace the prefacing words to those issues with the following:

The following Strategic Issues are overarching. While not intended to be an exhaustive list or description of issues to be addressed in the District's pursuit of sustainable management, these Strategic Issues are identified as warranting to be addressed at the present time and during the lifetime of the Plan (and beyond) to enable the retention of the special qualities listed at a. – i. of 3.1 Purpose.

Discussion

[51] We bear in mind that the drivers of a plan are its policies and related rules, for achieving and implementing its objectives. In terms of the design of Ch 3, the drivers are the SOs and SPs. There is no RMA requirement for a district plan to list issues. The listing of issues can provide context for the driving objectives and policies but issues should be expressed in value-neutral language.

[52] The drafting of Issue 1 of the DV could be misread as giving policy direction in its reference to "requires economic diversification". The JWS Version overcomes that problem by expressing Issue 1 in a value-neutral way. However, for the following reasons, we find much of its substantial departure from the DV is not appropriate.

[53] We respectfully observe that, to some extent, parties and witnesses that have sought modifications to Issue 1 appear to have lost sight of its origins in the s32 analysis for the NV. Issue 1 in the NV refers to economic prosperity and equity, including strong and robust town centres. Its Issue 6 refers to the significant variation in economic wellbeing for residents of the District, including through relatively low wages and high living costs, and to a corresponding reduction in the District's economic competitiveness and ability to maximise productivity.



[54] Through the evolution of proposals to amend Issue 1, there would also appear to have been some loss of focus on the importance of ensuring a clear linkage between the Issues and related objectives (a point emphasised by the independent commissioners in their Report on Ch 3).

[55] Issue 1 pertains to SO 3.2.1. The evidence we have heard, particularly the overview given by Mr Theelan (which we set out at [98]) reinforces the substantial relevance of Issue 1, as expressed in the DV, and SO 3.2.1 to which it pertains. SO 3.2.1 refers to the "... development of a prosperous, resilient and equitable economy in the District". Leaving aside its use of imperative language, Issue 1 of the DV reflects, and provides context for, each of those elements of SO 3.2.1. No parties seek any substantial change to SO 3.2.1. On the evidence, we find it is the most appropriate for achieving the RMA's purpose.

[56] We accept Mr Collins' opinion that there is a direct link between the matters of economic diversification and the health of the District's town centres. That link was clearly explained by Messrs Heath and Osborne. In particular, we are assisted by Mr Osborne's explanation of the very strong dependence that Queenstown CBD has on the visitor industry. We accept that, without diversification, a significant downturn in that industry would present the risks Mr Collins explains. On this matter, therefore, our findings differ from the preliminary observations in the court's 29 August 2018 Minute.

[57] We also agree with Mr Collins that, without economic diversification, a long-lasting downturn in the visitor industry could adversely impact on economic prosperity and equity beyond simply the town centres. However, on our analysis, the DV's Issue 1 does not confine itself to town centres. Rather, the reference to town centres is as a subset of the broader concept of "economic prosperity and equity". We agree with the findings of the independent commissioners' Report that, when Issue 1 is read in light of related SO 3.2.1, the concepts of economic prosperity and equity are sufficiently clear.

[58] The framing of Issue 1 in the DV was informed by findings in the independent commissioners' Report to the effect that the District's economy is already lacking resilience in its high dependence on the visitor industry, high living costs, low wages and variable economic wellbeing. The evidence we have heard confirms that picture. Contrary to that evidence, the proposal in the JWS Version to add the qualifier "in future" to the words "may be challenged" would imply that there this is not an issue at present.



Therefore, we find this additional qualifier is not appropriate.

[59] The proposal to add reference to “supporting infrastructure and growth” would cut across sub-topic 4 on regionally significant infrastructure. As we explain at [8] and [9], we do not determine those provisions in this decision. Therefore, while reserving our capacity to revisit this matter, we find it would be premature to add explicit reference to infrastructure to Issue 1 at this time.

[60] We do not find persuasive Mr Farrell’s argument for adding a reference to ‘growth’ to Issue 1. Our 29 March Minute explained various concerns we then had with this addition. We observe that Mr Collins does not give wholesale endorsement to this addition in his rebuttal in that he uses the qualifier “in an appropriate form” (see [48]). That qualifier is not stated in Mr Farrell’s addition, and we do not have a sufficient evidential basis to be satisfied about what “appropriate form” means. Adding reference to ‘growth’ would take Issue 1 significantly beyond its original intentions and open up overlaps with other strategic issues.

[61] We do not find QLDC’s proposed addition of the qualifier “well-planned” would assist to give sufficient clarity to the addition of ‘and growth’ to Issue 1. Rather, it would appear to confuse the role of a district plan with that of an economic planning instrument.

[62] No party raises any issue with the prefacing text proposed in the 29 March Minute and we find it appropriate to include that text for the reasons given in that Minute.

Determination concerning the expression of Issue 1

[63] Our related determinations concerning Issue 1 and the prefacing text are at [193] and [198] and in Annexure 2.

What influence should SOs and SPs have in the formulation and interpretation of other PDP provisions?

Introduction

[64] Given that Ch 3 concerns strategic directions, it is particularly important that its intended influence is clear:



- (a) in the formulation of other PDP provisions, bearing in mind the expectation that Ch 3 would be operative, as part of the ODP, before other PDP provisions under appeal are determined; and
- (b) in the interpretation of other chapter objectives, policies and other provisions of the ODP of which it will be part.

[65] The DV explains those intentions in the following loose narrative:⁴²

This chapter sets out the over-arching strategic direction for the management of growth, land use and development in a manner that ensures sustainable management of the Queenstown Lakes District's special qualities ...

This chapter sets out the District Plan's strategic Objectives and Policies addressing these issues. High level objectives are elaborated on by more detailed objectives. Where these more detailed objectives relate to more than one higher level objective, this is noted in brackets after the objective. Because many of the policies in Chapter 3 implement more than one objective, they are grouped, and the relationship between individual policies and the relevant strategic objective(s) identified in brackets following each policy. The objectives and policies in this chapter are further elaborated on in Chapters 4 – 6. The principal role of Chapters 3 - 6 collectively is to provide direction for the more detailed provisions related to zones and specific topics contained elsewhere in the District Plan. In addition, they also provide guidance on what those more detailed provisions are seeking to achieve and are accordingly relevant to decisions made in the implementation of the Plan.

[66] In his evidence in chief, Mr Collins endeavoured to bring greater clarity to the role of Ch 3 in the PDP by referring to its SOs and SPs as having "primacy". That recommendation was opposed by various parties and their planning witnesses, including in the sense that it would materially depart from the DV.

[67] In addition, we raised with parties our concern that narrative in the DV is loose and unclear. The Conferencing Minute asked the planners in expert conferencing to address whether a more appropriate drafting approach would be to assign these matters of application and interpretation to a dedicated provision. The Minute pointed out that "Strategic Direction" has always featured in the name of Ch 3 and "overarching" has always (at least from the DV) qualified the words "Strategic Direction". The Minute observed that those words, together with the addition of the tag "strategic" to the objectives and policies of Ch 3, indicate an intended hierarchy in the design of Ch 3's



⁴² Purpose 3.1.

place in the PDP (and, in due course, the ODP).

[68] The planners largely agreed with those observations. The JWS Planning records their preference for a dedicated interpretation provision (3.1A Interpretation) in place of the text in the DV, as follows:

3.1A Interpretation

3.1A.1 For the purpose of plan development, including plan changes, the role and purpose of the Strategic Objectives and Strategic Policies in this Chapter is to provide direction for the more detailed provisions related to zones and specific topics contained elsewhere in the District Plan in relation to the strategic issues set out above.

3.1A.2 For the purpose of plan implementation, the role and purpose of the Strategic Objectives and Strategic Policies in this Chapter is to provide guidance on what those more detailed provisions are seeking to achieve in relation to the strategic issues and are accordingly relevant to decisions made in the implementation of the Plan. All relevant objectives and policies of the plan (including strategic objectives and strategic policies) are to be considered together and no hierarchy exists between them.

[69] After the planners were recalled for cross-examination and questioning, the court heard initial oral closing submissions before the adjournment. Those submissions confirmed there is a high degree of support for the JWS Version's proposed approach:

- (a) Darby and Ors⁴³ supported the JWS Version's proposed 3.1A. It pointed out that, once operative, Ch 3 would have influence in the formulation of other provisions. Under s32(3) RMA, it would be an "existing proposal ... in respect of which any subsequent amending proposal must be assessed". It submitted that its prominence also derives from the direction in s31(1) RMA as to integrated management of resources. As for plan implementation, these parties note that all planning witnesses were agreed that the "starting presumption" is that all PDP provisions (including in Ch 3) start off "on an equal footing with no formal or specific hierarchy, and are assessed when relevant, as a whole". It adds that, in specific circumstances (eg as to a site or issue) it might become apparent that additional weight is justified for specific provisions (depending on whether they give relevant direction for those);⁴⁴

⁴³ 'Augmented' closing submissions for Darby and Ors, dated 12 March 2019, at [3] – [8].

⁴⁴ Referring to the Transcript, from p 367.



- (b) Cardrona noted the value in clarifying that the Ch 3 provisions do not have inherent primacy;⁴⁵
- (c) KJet expressed an overall caution about making a final determination, at this stage, on the "primacy issue", on the basis that it arose in rebuttal evidence and has potential significance for parties in other Topics yet to be heard.⁴⁶ It recommended a minor drafting refinement to the JWS Planning's proposed provision, namely to the effect that it make express reference to consideration of resource consent applications and notices of requirement;
- (d) Otago Regional Council ('ORC') submitted that, during the formulation of the PDP, other zone provisions should be treated as having to give effect to the operative SOs and SPs of Ch 3.⁴⁷ At the plan implementation stage, it said that the detailed zone provisions would generally "govern activity" within the zone and SOs and SPs would then provide guidance where ambiguity remains. It submitted that there should be no expression of hierarchy. As such, while supportive of the JWS Planning's proposed provision, it sought deletion of the last six words of 3.1A.2, ie "...and no hierarchy exists between them". ORC also recommends the addition of a provision to the effect that so-termed "enabling" SOs are to be achieved "while also achieving" protective SOs;⁴⁸
- (e) QLDC supported the substance of the preliminary observations in the Conferencing Minute.⁴⁹ It agreed that SOs and SPs are to be applied "in tandem" with other chapter objectives and policies, but "on a basis that some SOs and SPs are more directive in that relationship than others are". As for the relationship of SPs to other PDP chapter objectives, it agreed that, given SPs implement SOs, an SP can also provide relevant direction as to how other chapter objectives are read and applied. Finally, it proposed that the additional 'interpretation provision' should also explain how Ch 3 SOs and SPs interrelate, as follows:

⁴⁵ Closing submissions for Cardrona, dated 27 February 2019, at [8].

⁴⁶ Closing submissions for Kawerau Jet, dated 27 February 2019, at [13].

⁴⁷ Closing submissions of the Otago Regional Council Topic 1: A Resilient Economy (Planning), dated 27 February 2019 ('ORC submissions').

⁴⁸ Closing submissions of the ORC Topic 1: A Resilient Economy (Planning), dated 27 February 2019 ('ORC submissions').

⁴⁹ Closing submissions for QLDC, dated 27 February, at [2.3] – [2.6].



- 3.1B.3 All Strategic Objectives and Strategic Policies in this Chapter shall be read together and applied where relevant. Where some Strategic Objectives and Strategic Policies are enabling of activities, these are also subject to other Strategic Objectives and Strategic Policies that provide direction in respect of environmental outcomes and safeguards.
- 3.1B.4 High level objectives are elaborated on by more detailed objectives. Where these more detailed objectives relate to more than one higher level objective, this is noted in brackets after the high level objective. Because many of the policies in Chapter 3 implement more than one objective, they are grouped, and the relationship between individual policies and the relevant strategic objective(s) identified in brackets following each policy. The objectives and policies in this chapter are further elaborated on in Chapters 4 – 6.

[70] In light of those closing submissions, the court made further preliminary observations in its 29 March Minute. These indicated substantial support for QLDC's proposed amendments to the provision (which QLDC proposed be renamed "Interpretation and application") subject to some minor technical refinements (including to pick up on KJet's proposal to expand the plan implementation provision to cover notices of requirement for designations). The Minute invited parties to make supplementary closing submissions. Only QLDC did so and those submissions did not raise any material further issues.

Discussion

[71] We confirm the interpretation of the intentions of the DV that are offered in our Conferencing Minute. It informs our determination of the most appropriate provisions on the interpretation and application of Ch 3.

[72] We agree with Darby and Ors that, as Topic 1 provisions can be expected to become operative as part of the ODP in advance of the finalisation of other provisions under appeal, their intended role, for the purposes of s 32(3), should be clear. We also agree that such clarity assists QLDC's s31(1) RMA functions concerning achievement of integrated management.



3.1B Interpretation and application

[73] The new provision '3.1 Interpretation and application' in Annexure 2 replaces much of the former narrative. Our drafting is informed by the JWS Planning, and the refinements to it that we proposed in the 29 March Minute. It also takes account of the refinements to the JWS Planning version offered in the closing submissions we have summarised.

[74] We have decided against taking up ORC's suggestion of adding an interpretation provision that expresses the relationship of enabling SOs to protective ones. Adding a provision of this nature would risk changing the provisions beyond the scope of appeals. Overall, we find the more appropriate drafting approach is for particular SOs to speak for themselves in these terms.

[75] Ultimately, our evaluation comes back to what best expresses the intended purposes of SOs and SPs within the ODP. We are mindful that Ch 3 is overarching. In addition to its significance during the formulation of other PDP provisions, it is intended to have an ongoing interface with the entire ODP, including those parts of it that are not the subject of the partial plan review. With a partial plan review of the nature QLDC has instigated here, it is important that the ultimate product, ie the updated ODP, is fully coherent and integrated and clear in its intentions to the ordinary reader.

[76] However, even with the change we have made, we remain concerned that further clarification of the place and influence of Ch 3 may be needed in other ODP chapters (such as Ch 4) to avoid risk of confusion. This was not a matter that was directly traversed in QLDC's planning evidence for Topic 1. Nor was it given any particular attention in evidence from other parties. That leads us to conclude that we should invite supplementary submissions on whether we should exercise our powers under s293 RMA to insert suitable reference to 3.1B in Ch 4 and potentially other relevant chapters. At [195]-[197], we make directions for supplementary submissions on this.

Determination concerning provisions in Annexure 2

[77] Our related determinations concerning these provisions are at [193] and in Annexure 2.



What are the most appropriate SOs and SPs on Issue 1?

Background

[78] As we have noted, the Queenstown Lakes District economy is heavily reliant on tourism and other aspects of the visitor economy. The significant growth in tourist numbers, especially in recent years, has brought an associated increase in the vibrancy of the Queenstown and Wanaka Town Centres. That is reflected, for example, in proposed SO 3.2.1.2, which refers to those Town Centres as hubs of New Zealand's "premier alpine visitor resorts".

[79] However, the PDP acknowledges that there are downsides to this economic growth. For residents, visitor-focussed vibrancy in the Town Centres can bring with it a sense of displacement and loss of amenity values. A further negative, for residents and visitors alike, is the increasing pressures on transport and other infrastructure and services.

[80] As we shortly explain, a particular characteristic of the Wakatipu Ward is that it operates as a two-centre urban area. Queenstown CBD (a 'Town Centre') pairs with Five Mile and Remarkables Park, near the airport, at Frankton. Residents of the Wakatipu Basin rely on those Frankton retail and commercial centres for their day-to-day shopping needs (a round trip of some 15 km or more for many residents). Visitors and locals head to Queenstown CBD for restaurant, entertainment and other needs. These movements contribute to significant congestion on the strategic road network at peak times.

[81] The heavy reliance of the economy on the visitor industry also renders it less resilient to sudden downturns in the numbers of international and domestic tourists.

The relevant provisions and options

JWS Planning

[82] The JWS Planning proposes the following set of provisions relating to Issue 1



(with underlining and ~~strike-through~~ showing changes proposed to the DV):⁵⁰

3.2 Strategic Objectives

SO 3.2.1 The development of a prosperous, resilient and equitable economy in the District. (addresses Issue 1)

SO 3.2.1.2 The Queenstown and Wanaka town centres⁵² are the hubs of New Zealand's premier alpine visitor resorts and the District's economy.

SO 3.2.1.3 The Frankton urban area (including the Remarkables Park mixed use centre) functions primarily as a significant commercial and industrial service centre, and provides community facilities, for the people of the Wakatipu Basin and visitors.

...

SO 3.2.1.6 Diversification of the District's economic base and creation of employment opportunities through the development of innovative and sustainable enterprises.

...

SO 3.2.6⁵¹ The District's residents and communities are able to provide for their social, cultural and economic wellbeing and their health and safety. (addresses Issues 1 and 6).

...

3.3 Strategic Policies

Visitor Industry

SP 3.3.1 Make provision for the visitor industry to maintain and enhance attractions, facilities and services, including supporting infrastructure, within the Queenstown and Wanaka town centre areas and elsewhere within the District's urban areas and settlements at locations where this is consistent with objectives and policies for the relevant zone. (relevant to S.O. 3.2.1.1, and 3.2.1.2 and 3.2.6).

Town Centres and other Commercial and Industrial Areas

SP 3.3.2⁵² Provide a planning framework for the Queenstown and Wanaka town centres that enables quality development and enhancement of the centres as the key commercial, civic and cultural hubs of the District, building on their existing functions and strengths. (relevant to S.O. 3.2.1.2 and 3.2.6).

SP 3.3.3 Avoid new commercial zoning of land that could undermine the role of the Queenstown and Wanaka town centres as the primary focus for the District's economic activity. (relevant to S.O. 3.2.1.2).

⁵⁰ We leave aside SO 3.2.1.9 as this pertains to infrastructure.

⁵¹ The JWS Planning proposes that SO 3.2.6 become SO 3.2.1A but we find it better located as SO 3.2.6 as per the DV.

⁵² See [198] on the fact that this decision leaves reserved final determination of whether/how SP 3.3.1 refers to infrastructure, pending our determination of sub-topic 4.



RPL/QPL Consent Memorandum

[83] After evidence exchange prior to the hearing, RPL, QPL, ORC (as a s274 party) and QLDC reached full settlement whereby they jointly informed the court of their support for a number of the DV's above provisions subject to some agreed changes. This was in a joint memorandum seeking a consent order ('Consent Memorandum').⁵³

[84] As directed, the Consent Memorandum was served on all other s274 parties to those appeals who had not called evidence for Topic 1. None filed notice of any position on the settlement or sought to be heard.

[85] The JWS Version differs, in some confined and immaterial ways, from the set of provisions those parties agreed to in their Consent Memorandum. Counsel for RPL and QPL, Mr Young, confirmed the JWS Version is acceptable to his clients. He characterised the relevant provisions as appropriately recognising "the important function and role of the Frankton Flats and the Remarkables Park Zone, whilst also ensuring that the town centres remain robust and vibrant".⁵⁴ In regard to the JWS Version of 3.2.1.3, in response to court questioning as to the clarity of meaning of the word 'significant', he confirmed that it would be acceptable for this word to be replaced with 'major'.⁵⁵

[86] For the following reasons, in relevant respects, we are satisfied with the agreed outcome as reflected in JWS Version appropriate for the relevant provisions. That is subject to our decision, in regard to SO 3.2.1.3, to replace "significant" with "major" in and not to add "and visitors". Our reasons for those changes are given at [117].⁵⁶

Additional provisions sought by other parties

Darby and Ors

[87] Darby and Ors propose the following new SPs (that would follow the regionally significant infrastructure provisions) as additional to what is proposed in the JWS Version:

⁵³ Joint memorandum of counsel in support of consent order Strategic Topic 1: A resilient economy, dated 15 February 2019.

⁵⁴ Closing submissions for RPL and QPL, dated 26 February 2019, at [1.3], [4.1].

⁵⁵ Closing submissions for RPL and QPL, dated 26 February 2019, at [2.3].

⁵⁶ As for SO 3.3.3, we note that our overall findings are also informed by our findings at [175] and following.



- SP x.x.x Achieve sustainable water-based transport linkages between the Kawarau River and Queenstown Bay, recognising the river and land as a strategic transportation resource.
- SP x.x.1 Recognise and provide for the benefits associated with provision of a water-based transport system, including the provision of strategically located jetties and associated structures, that will provide a key linkage between Queenstown Park, Remarkables Park, and the Frankton Arm and Queenstown.
- SP x.x.2 Provide a planning framework that provides for the integrated management of transport networks (including both private and transportation systems) while protecting established transport activities and services.

Changes sought by FOWGR

[88] Friends of the Wakatipu Gardens and Reserves and associated residents ('FOWGR') seek related additional SOs and SPs. However, they altered their position substantially during the hearing on what those provisions should say.

[89] Initially, FOWGR sought the inclusion of the following SPs:

- SP 3.2.3.2: Built form expresses the individual character and values of those communities and integrates well with its surrounding environment by quality urban design planning.
- SP 3.3.x.x [1]: Provide for the economic wellbeing of the District's people and communities by enabling sustainable use and development of natural resources.
- SP 3.3.x.x [2]: Provide for social and cultural wellbeing of the District's people and communities when undertaking subdivision, use and development of natural and physical resources.

[90] In their first written closing, FOWGR sought that SO 3.2.6 be supplemented by the following further SO:

- SO x.x.x Provide for social and cultural wellbeing of the District's people and communities when undertaking subdivision, use and development of natural and physical resources.



[91] However, in their supplementary closing submissions of 12 March 2019, FOWGR's ultimate position was to seek the following SOs (elaborating on SO 3.2.6):⁵⁷

- SO 3.2.6.1 The social and cultural wellbeing of the District's people and communities is enabled or enhanced through the subdivision, use and development of natural and physical resources, by:
- a. Taking into account cultural diversity
 - b. Promoting community resilience
 - c. Recognising the values and aspirations of residents
 - d. Promoting access to affordable housing
 - e. Promoting events, including within the arts, culture and recreation, based on this District's unique resources.
- SO 3.2.6.2 The important and unique values of the District's social and cultural resources are identified having regard to:
- a. The concentration of social or cultural facilities
 - b. The design, aesthetic and shared values that contribute towards their identity or sense of place
 - c. Any cultural masterplan.
- SO 3.2.6.3 The values of the District's important social and cultural resources and their attributes are recognised, maintained or enhanced, having regard to:
- a. The significance of those values to the District's communities
 - b. Those values recorded within any cultural masterplan
 - c. Enhancement of social and cultural viability through investments, including through the private sector, in the natural and physical resources that sustain those resources and their attributes.

The evidence

[92] The Consent Memorandum essentially resolved all contention between those parties with interests in regard to the above Town Centres and the Frankton Urban Area provisions (including the relative roles of Queenstown CBD, Remarkables Park and Five Mile).⁵⁸

[93] QLDC's retail analyst, Mr Heath, was questioned by the court about the respective roles of Queenstown and Frankton (particularly its Five Mile shopping area) for

⁵⁷ We have renumbered FOWGR's proposed SOs to reflect our decision that SO 3.2.6 should not be renumbered SO 3.2.1A.

⁵⁸ At [135] and following, we discuss how FII ultimately took issue with how SO 3.3.3 is worded in the WS Planning (and the Consent Memorandum).



Queenstown Bay residents. He agreed that, for residents, "going to town" would mean having to go to Frankton Flats for a lot of their basic requirements. He explained that Queenstown Town Centre fulfils a different role and function to that of Five Mile but that "over time the natural progression for Five Mile will be to perform more of a town centre role and function". However, he confirmed he is comfortable with the Consent Memorandum settlement.⁵⁹

[94] QLDC's economist, Mr Osborne, told us that, for the District to remain competitive and efficient, it is important that, where appropriate, business activity is focussed into the two main centres of Queenstown and Wanaka.⁶⁰ He explained that PC50 (a plan change that expands Queenstown CBD's commercial precinct) opens up a helpful degree of capacity within the town centre. He said there are considerable "agglomeration benefits" that can be achieved by a consolidated form for business activity in the CBD.⁶¹

[95] Mr Osborne explained that agglomeration benefits go beyond "just attracting new business" and include "higher productivity through symbiotic relationships". In explaining why it would not be appropriate to elevate Frankton to a third Town Centre, he said that "the difficulty with directing activity elsewhere is that if you start to have a competing area that has very similar productivity with greater capacity, you often find that your activity leaves the centre that you're trying to direct it into". He added:⁶²

Queenstown's a unique environment in that it's driven by tourism and a lot of what's in the centre. ... we're talking about business more than just the cafes and restaurants. You potentially can maintain that as a restaurant destination and there's that sort of amenity but ... we're talking ... as well as ... about the value that Queenstown town centre has as a business location for offices or whatever it happens to be and you would need to make that decision and say, if we are going to allow this to accrue at the same level somewhere else, then we risk that activity moving out of centre and we end up with something that is potentially less resilient to change. If you don't have that office activity in there and something changes with regard to tourism, you can end up with a difficult centre at best.

[96] He acknowledged, however, that the potential agglomeration benefits could be "crowded out" by a "loss of amenity"⁶³ and that "there is a significant cost in actually

⁵⁹ Transcript, p 40, l 8 – 25.

⁶⁰ Statement of evidence of Mr Osborne, for QLDC, dated 21 September 2018, at [3.7].

⁶¹ Transcript, p 88, l 13 – 22.

⁶² Transcript, p 88, l 28 – p89, l 18.

⁶³ Transcript, p 88, l 13 – 22.



producing ... congestion".⁶⁴ He also acknowledged that, in terms of Town Centre function, Queenstown CBD is presently "heavily skewed in ... convenience type amenity driven activities" and, hence, the Town Centre status the PDP confers on Queenstown is more about what "Queenstown wants". He added that encouraging commercial offices into the CBD is important "in terms of encouraging the vibrancy of Queenstown".⁶⁵ The Town Centre zone provisions are not before the court on appeal at this time. However, having checked, we are satisfied that they are materially consistent with what Mr Osborne informed us of.

[97] Mr Richard Lauder, director of various companies owned by Real Journeys,⁶⁶ characterised the transport issues for the District as "significant" with congestion impacting the ability to get tourists to and from Milford. He explained that fatigue-related health and safety risk for bus drivers is also an issue. He emphasised the importance of looking beyond conventional transport modes to, for example, lake ferry services and gondolas.⁶⁷ He offered the following observation as a resident:⁶⁸

I think we've evolved into a two town centre community in Queenstown where we have a commercial town centre out by the airport and its various guises and I think, you know, shopping for supermarket and various things out there is entirely suited to that part of town and if I want my recreation I come to this part of town. So, ... thinking of this as the only town centre is naive now. It's quite a different place than it was even six years ago.

[98] QLDC's Chief Executive, Mr Theelan, provided us with a helpful overview of these matters:

3.4 The District has been experiencing ongoing population growth, which is anticipated to continue, albeit slowing but staying well above national rates of growth... This growth reflects a mixture of continued growth in the visitor industry, increasing servicing requirements for that industry, and the popularity of the area as a holiday destination and a permanent place of residence. The majority of this development is concentrated in the principal urban centres (Queenstown and Wanaka), while a scarcity of available land and high housing costs have led to growth pressures in subsidiary centres such as Luggate, Hawea, Glenorchy and Kingston. Spillover demand is also being experienced in Cromwell and other localities in the adjoining

⁶⁴ Transcript, p 89, l 19 – 32.

⁶⁵ Transcript, p 93, l 19 – p 94 l 13.

⁶⁶ Cardrona Alpine Resort; Soho Ski Area Limited; Go Orange Limited; International Antarctic Centre; Canyon Food and Brew Co and Milford Sound Tourism Limited.

⁶⁷ Transcript, p 346, l 2 – p 347, l 18.

⁶⁸ Transcript, p 346, l 2 – p 347, l 18.



Central Otago, and Southland districts.

- 3.5 This growth is represented in both resident population and tourist numbers. The TYP records that there are 34 international visitors per resident. The impact of this is concentrated around Queenstown, but also Arrowtown and Wanaka. In comparison, Auckland has a ratio of one visitor per resident and for Christchurch the ratio is three visitors per resident. The number of visitors also greatly influences peak population numbers.
- 3.6 While the current usually resident population is estimated to be around 38,000 persons, the current average population in the District is approximately 62,900 with a daily peak population of up to 117,300. This is predicted to increase to a population average of approximately 80,800 and a peak population of 149,000 by 2028. The effects of both the average resident plus visitor population plus the peak day population is primarily experienced in two ways. The first is the demand this places on infrastructure both in terms of the consumption of that infrastructure (e.g. traffic congestion, wastewater demand), which in turn impacts significantly on the capital build and assets maintenance costs for the council and its relatively small ratepayer base.
- 3.7 The second is experienced in the housing market. The effect here is twofold; firstly in the way in which demand for land and housing for holiday homes has made the District the most unaffordable place in NZ to live, and secondly the social and community cost of large parts of the towns being dominated or influenced by short term peer to peer rental accommodation. This has a marked impact on community cohesiveness as well as changing the demand for services. While the District has not reached the levels of concern expressed in centres such as Barcelona, Spain, many of the sentiments in those heavily touristed areas are emerging in the QLDC market.
- 3.8 Tourism-derived demand places a particular burden on the communities' need to provide and service infrastructure. The Council estimates that 33% of its intended new infrastructure over the next 10 years is required to meet the needs of a non-resident population. Ensuring high quality infrastructure services are critical to any visitor's experience, particularly in an area such as Queenstown where poor infrastructure (e.g. mass congestion or the risk of water borne illness) is likely to have international reputation ramifications for the District and the country.
- 3.9 Further, the number of international visitors per rating unit (a different metric) has a ratio of 51 to 1. Consistent with most local authorities, QLDC derives its income principally from rates, development contributions and by way of NZTA subsidies for roading. The Council has traditionally charged a differential on accommodation providers. However, the significant expansion of the district and the high proportion of external visitors has placed considerable pressure on the Council's capacity to fund the necessary infrastructure. The Council is an active and leading proponent of the ability to levy a locally derived visitor levy to support the cost of delivering and maintaining critical infrastructure and is currently addressing this challenge with the Crown.



[99] Mr Theelan was cross-examined on behalf of Real Journeys. He agreed that, if congestion is not addressed, there is a risk that "the desirability of Queenstown as a tourism destination will be forever compromised risking killing the golden goose that the district relies on for its economic well-being".⁶⁹ In that cross-examination, Mr Theelan agreed that, in the District's Long Term Plan, improving and maintaining a good transport network and public transport options is a key priority.⁷⁰ He observed:⁷¹

I would predominantly fit the transportation challenges into the functioning of the economy. The visitor experience is a significant subset of that because we know and experience both the impact the visitors have on our transport network, but also the effects of our transport network back on visitors and other users. In terms of houses, I think again transport the ability to connect growing suburbs, growing developments through good transport infrastructure is a significant challenge for the district and that's partly due to our geophysical make-up, but also the fact that we have a very confined transport infrastructure which we're increasingly looking to move more people around through. So I do think all three are relevant but I would see there's a primacy on the whole overall functioning of the economy.⁷²

[100] In answer to questions from the court, he commented:⁷³

...council's overall objective in working with its key partners and the ORC and NZTA is to say, "How do we reshape the transport experience in a different way that not only meets the needs of visitors and locals, but also actually creates and becomes part of the unique experience of visiting this district?"

[101] There is also relatively consistent expression of concern about congestion by visitors in the data gathered for Destination Queenstown in the Visitor Insights Programme report (exhibit HM1).

[102] On the theme of amenity values and sense of place for residents, we heard from FOWGR chair and Queenstown resident, Mr David Cassells. He has been a resident of Queenstown since 1999. He was not cross-examined. He told us FOWGR was established to "perpetuate a long tradition of local citizens maintaining, protecting and promoting the Queenstown Gardens (Gardens), (amongst other reserves in the district) and for the benefit of the community and its visitors".⁷⁴ The primary thrust of his evidence

⁶⁹ Transcript, p 16, l 13 – 18.

⁷⁰ Transcript, p 15, l 21.

⁷¹ Transcript p 14, l 12 – 23.

⁷² Transcript p 14, l 12 – 23.

⁷³ Transcript, p 20, l 30 – 34 (in answer to question from court).

⁷⁴ Statement of evidence of David Cassells, on behalf of FOWGR and Associated Residents, dated 17 October 2018, at [7].



was to explain why he and those he represents consider the area in the vicinity of the Gardens is of special value for the Queenstown CBD, the district and visitors and deserves to be so recognised, maintained and protected. Pertaining to that, he considers there is a lack of due recognition in the PDP, particularly in Ch 3, of "special character areas, cultural districts, and enhancement of amenity values within residential / urban areas".⁷⁵

[103] He explained that there "has always been quite a useful co-existence" between the tourist market and local residents. He said there is a positive opportunity for the community to develop "in the Stanley Street/Ballararat Street site ... some kind of civic heart arising out of the Town Centre Master Plan". He explained that he considers that the PDP "doesn't take into account sufficiently the contribution of residents to the town". He expressed a perspective that "tourists will go to somewhere if they will find a living community which is engaged and proud of its area" whereas they "will probably badmouth a community that looked like it is only designed to extract tourist dollars and has no regard for its own citizens or a resilient economy".⁷⁶

[104] Mr John Darby also offered some views as a resident with extensive experience in master planning and delivery of a range of significant development projects in the Queenstown district (and in other parts of New Zealand). He emphasised the importance of protecting and looking after Queenstown's resident communities for the future of the tourism industry (alongside landscape protection).⁷⁷

[105] In addition, Messrs Farrell and Ferguson gave planning evidence in support of the various above-noted provisions that Darby and Ors seek. When cross-examined by QLDC concerning his recommended additional transport provisions, Mr Farrell accepted that water-based transport (public or private) would fall within SO 3.2.1.9 of the JWS Planning version (including any future link between the Kawerau River and Queenstown Bay).⁷⁸ He also acknowledged that SH6 is a form of regionally significant infrastructure provided for under SO 3.3.36 and SO 3.3.37.⁷⁹

⁷⁵ Statement of evidence of David Cassells, on behalf of FOWGR and Associated Residents, dated 17 October 2018, at [9] – [12].

⁷⁶ Transcript, p 222, l 18 – p 223, l 28.

⁷⁷ Transcript, p 343, l 3 – 8.

⁷⁸ Transcript, p 298, l 4 – 25.

⁷⁹ As we have noted, these and other Ch 3 provisions on regionally significant infrastructure are the subject of a joint memorandum seeking a consent order.



[106] Mr Farrell was also questioned on whether changes to Ch 29 recommended by QLDC's independent hearings commissioners (but then not yet confirmed by QLDC's decisions) would effectively address the concerns that underpin the additional Ch 3 provisions sought by Darby and Ors. He qualified his answers by noting he had not had the opportunity to do more than "skim read" the recommended changes. Subject to that, he agreed that, if the changes recommended are made, they would essentially provide the relief his client seeks on these matters.⁸⁰

Legal submissions

[107] On the matters of infrastructure and congestion, Darby and Ors submit that:⁸¹

- 33 There seems to be no contest that there is a pressing need to upgrade essential infrastructure, particularly transport related, to meet existing needs and anticipated growth. This is required regardless of the nature and scale of any future growth.
- 34 The consequences of not enabling and achieving these necessary upgrades for the resilience of the district's community and economy go to the wellbeing of residents, efficiency and ultimately, the reputation of the district in the tourist market.

[108] Darby and Ors expressed concern that nowhere in Ch 3 "is the key issue of transport articulated as a matter deserving of attention at the SO or SP level". They observed that this is in contrast to other strategic themes that "get fleshed out and more finely defined". They described transport as "conspicuous in its absence" from Ch 3, given the "severe congestion experienced on our roads".⁸² They added that there is a "unique opportunity provided by the surface of lakes and rivers to play a part in the solution".⁸³

[109] FOWGR emphasised the importance of going beyond simply paraphrasing pt 2 RMA in regard to residents' and community wellbeing. They explained that the expanded set of provisions they offer with their 12 March 2019 closing submissions are to "provide a broad base of support for individual and community wellbeing and to underpin the enablement provisions of Ch 3, and ensure the ability to undertake a holistic assessment." They pointed out that one of the three main themes of QLDC's Ten Year Plan⁸⁴ is "Vibrant Communities" and that one of the spending aims set out in this

⁸⁰ Transcript, p 299, l 2 -- p 300, l 8.

⁸¹ Consolidated closing submissions for Darby and Ors, dated 27 February 2019.

⁸² Augmented closing submissions for Darby and Ors, dated 12 March 2019, at [38], [39].

⁸³ Consolidated closing submissions for Darby and Ors, dated 27 February 2019, at [31].

⁸⁴ Exhibit MT1.



document is to achieve a high quality of life for residents.⁸⁵

[110] QLDC acknowledged Mr Theelan's evidence in cross-examination that there is traffic congestion in the District at peak periods, and that QLDC is exploring the use of Lake Wakatipu for transport. However, it put this in the context of Mr Collins' evidence that transport is a form of "infrastructure" and is appropriately provided for in SO 3.2.1.9 and SPs 3.3.1, 3.3.36 and 3.3.37, together with the more detailed provisions of Ch 29. It also noted Mr Farrell's relevant concessions as to these matters. It explained that Ch 29 is part of Stage 2 of the plan review and decisions on it require QLDC ratification and will be subject to rights of appeal.⁸⁶ It submits that infrastructure is already provided for at a sufficient level in Ch 3 and that, in light of Mr Farrell's concessions, Mr Collins' evidence should be preferred.⁸⁷

[111] QLDC opposes the provisions on the residents' and community wellbeing that Darby and Ors seek in their 19 March 2019 closing. It submitted that these additions would duplicate other provisions and that Darby's last-minute addition of them raises scope and fairness issues (bearing in mind the additional provisions were not tested through evidence). QLDC also identified a number of concerns about the matters of uncertainty and overlap in the drafting.⁸⁸ However, in the event the court finds it necessary to supplement SO 3.2.6, QLDC proposed a new SO 3.2.6.1 as follows:⁸⁹

A diverse, resilient and well functioning community where arts, culture and events are integrated within the built and natural environment.

[112] It explained that this new SO is intended to particularise arts, culture and events in a manner that is broad enough to encompass music, shows, sports, social, heritage, religious and cultural diversity events, and the like. It acknowledged that, together, these contribute to a diverse, resilient and well-functioning community. It adds:⁹⁰

The reference to '... integrated within the built and natural environment' is recognition that arts, culture and events can occur throughout urban and rural parts of the District. There are

⁸⁵ Augmented closing submissions for Darby and Ors, dated 12 March 2019, at [12].
⁸⁶ Closing submissions for QLDC, dated 27 February 2019, at [3.16]. QLDC also refers to Mr Collins' App 5, summarising the transport provisions.
⁸⁷ Closing submissions for QLDC, dated 27 February 2019, from [3.15] – [3.2.1].
⁸⁸ QLDC supplementary closing submissions, dated 19 March 2019.
⁸⁹ Closing submissions for QLDC, dated 19 March 2019, at [2.8].
⁹⁰ Closing submissions for QLDC, dated 19 March 2019, at [2.9].



many urban examples, while events such as the Queenstown Marathon or winery concerts, are examples in rural areas. The concept of social and cultural wellbeing clearly applies District-wide.

Discussion

[113] The evidence of Messrs Osborne and Heath was not contested on these matters. We find that evidence to support what the JWS Planning's relevant provisions describe as the intended roles and functions of Queenstown and Wanaka CBD, as Town Centres and of Frankton Urban Area (and Frankton's close relationship to Queenstown CBD). We also find the provisions as amended by the JWS Planning give appropriate effect to the Consent Memorandum concerning the RPL and QPL appeals, subject to our noted concern that it is not appropriate to add 'and visitors' to SO 3.2.1.3 (and 'major' is preferable to "significant" as a qualifier in that provision).

[114] No significant issues arise, on the evidence, for Wanaka CBD.

[115] The evidence of Mr Osborne satisfies us that the provisions as amended by the JWS Planning achieved the right strategic relationship between Remarkables Park and Five Mile urban areas and Queenstown CBD. In particular, we accept Mr Osborne's evidence in finding that elevating Frankton Urban Area to a Town Centre would put the intended vibrancy of Queenstown CBD in potential jeopardy. That is in the sense that its vibrancy is somewhat dependent on encouraging offices into the CBD to complement, and add agglomeration benefits to, its predominantly visitor-orientated economy. Elevating Frankton Urban Area to a Town Centre at this time would risk downgrading Queenstown CBD to a poorer role of offering convenience shopping, restaurants and other relatively confined offerings. Doing that would not befit Queenstown CBD's intended role as a Town Centre hub for a premier alpine resort.

[116] In a functional sense, Queenstown and Frankton Urban Area will likely continue to operate as a closely-related pair of commercial centres. Residents will likely continue to rely on Remarkables Park and Five Mile, rather than Queenstown CBD, for their regular supermarket and other shopping needs. Any reignition of former levels of such activities in Queenstown CBD is unlikely given the dampening effects of still relatively higher land values and associated rentals, even with a highly enabling planning framework. PC50 offers greater opportunity for consolidation, and we accept Mr Osborne's evidence as to the value of encouraging offices to return to and remain in, the



CBD.

[117] An observation made by Mr Osborne that resonates with us is that the Town Centre status the PDP confers on Queenstown CBD is more about what “Queenstown wants” than what it currently is. Mr Osborne’s observation was in relation to the value of encouraging office development in the CBD. However, in a similar way, we interpret the relevant SOs as setting out what is wanted, strategically, for the District. SO 3.2.1.2 conveys an intention that Queenstown CBD fulfil the role of being one of two hubs of New Zealand’s premier alpine visitor resorts (the other hub being Wanaka). Hence, the CBD is intended to stand apart in fulfilling that role. By contrast, SO 3.2.1.3 describes the intended strategic functions of the Frankton Urban Area as primarily a commercial and industrial service centre, providing community facilities, for the people of the Wakatipu Basin. It may well be that many visitors will also shop there, but that is not its intended strategic function. On Mr Osborne’s evidence, we find that adding “and visitors” to SO 3.2.1.3 could present a strategic risk to Queenstown CBD’s intended role in the centres’ hierarchy as the vibrant hub of this premier alpine visitor resort.

[118] On those matters, we accept QLDC’s closing submissions in finding that the relevant provisions also properly give effect to now operative pRPS policy 5.3.2, which relevantly provides:

Policy 5.3.2 Distribution of commercial activities

Manage the distribution of commercial activities by:

- a) Enabling a wide variety of commercial, social and cultural activities in central business districts, and town and commercial centres;
- b) Enabling smaller commercial centres to service local community needs;
- c) Restricting commercial activities outside of a) and b) when such activities are likely to undermine the vibrancy and viability of those centres;

...

[119] The functional inter-relationships of Queenstown CBD and Frankton Urban Area mean there is a related strategic priority to having an integrated, safe and efficient transport network. That priority encompasses all transport modes, public and private, including water-based links. Effective policy direction on these matters is required to achieve SO 3.2.1 and is also important to achieve SO 3.2.6 (as to the wellbeing of the District’s residents and communities).



[120] However, given the concessions made by Mr Farrell in cross-examination, we find it would not be appropriate to go as far as Darby and Ors seek at this time. In particular, present indications are that the modified Ch 29 recently recommended by QLDC's independent commissioners would effectively address the matters raised by Darby and Ors.

[121] Ch 29 is a Stage 2 chapter. Hence, we are not yet in a position to know its final form. However, pending the finalisation of Ch 29 (including in response to any appeals on that chapter) we reserve our capacity to make a s293 direction on the basis of our evidential findings in this decision (particularly those at [115] – [119]).

[122] In the meantime, however, our provisional view is that SO 3.2.6 should be supplemented by a new SO 3.2.6.1 as follows:

SO 3.2.6.1 The importance of accessibility to places, services and facilities that meet the needs of all the residents and communities of the District.

[123] The paired nature of Frankton and Queenstown CBD means accessibility to places, services and facilities is important to the wellbeing of residents and communities. That includes residents who live in Rural areas outside the identified Town Centres. As proposed SO 3.2.6.1 is not as specific as the infrastructure provisions proposed by Darby and Ors, our provisional view (subject to any supplementary submissions) is that it would not materially duplicate or cut across Ch 29.

[124] We reserve leave to those parties to make supplementary submissions on whether the addition of SO 3.2.6.1 (or similar) would materially cut across or duplicate Ch 29 or other provisions.

[125] The insights offered of residents' wellbeing, in the evidence of Mr Cassells and Mr Darby, help identify significant gaps and limitations in SO 3.2.6. Whilst we acknowledge that Mr Cassell's spoke as a lay observer, with disclosed community advocacy interests, we consider there is some strength in his observations to the effect that tourists better appreciate an area where there is a living, engaged and proud community. Queenstown's vibrancy is not simply reliant on adding agglomeration benefits to visitor conveniences and amenities. We agree with Darby and Ors that SO 3.2.6 is inadequate in that it does little more than rephrase elements of s5 RMA.



[126] QLDC's ultimately proposed additional SO 3.2.6.1 on residents' and community wellbeing would improve the focus of SO 3.2.6 to some extent. That is in its reference to arts, culture and events being integrated within the built and natural environment. However, we see potential for further improvement.

[127] We agree with QLDC that some of Darby and Ors' final proposed SOs overreach the true scope of their evidence. Specifically, we refer to their proposed SOs on affordable housing, QLDC's non-RMA plans and strategies, and private and public sector investment. However, in other respects, we find Darby and Ors' proposed additional SOs are supported by what Messrs Cassells and Darby told us and would further improve the focus of SO 3.2.6.

[128] We find that SO 3.2.6 should be supplemented by SOs that acknowledge:

- (a) the importance of opportunities for arts, culture, recreation and events that are integrated into the built and natural environment; and
- (b) the contribution that community social, recreational and cultural facilities and activities make to identity and sense of place for residents

[129] Whilst Mr Cassell's was essentially focussed on Queenstown CBD, our provisional view is that it would be appropriate for these additional SOs to broaden the focus to the District as a whole as the principles underlying his evidence would appear to be applicable more broadly.

[130] Provisionally, we find these additional SOs should be as follows:

- SO 3.2.6.2 A diverse, resilient and well-functioning community where opportunities for arts, culture, recreation and events are integrated into the built and natural environment;
- SO 3.2.6.3 The contribution that community social, recreational and cultural facilities and activities make to identity and sense of place for residents of the District is recognised and provided for through sound location and design;

[131] As that drafting differs somewhat from both QLDC's and Darby and Ors finally proposed, our directions at [195] reserve leave for those parties to make supplementary submissions on whether the drafting is effective in addressing the findings in this decision.



Determination concerning provisions in Annexure 2

[132] Our determinations concerning provisions are at [193] and in Annexure 2.

Is it appropriate for centres policies to seek avoidance of new commercial zoning?

SPs 3.3.2 – 3.3.11

Introduction

[133] SPs 3.3.2 – 3.3.11 collectively seek to define and protect aspects of the PDP's structured centres regime whereby the roles and functions of different urban nodes are defined and subject to direction intended to protect the overall integrity of that centres structure. We have already discussed an aspect of this, namely that Queenstown CBD and Wanaka are given status as Town Centres and Frankton commercial area is given status as "the key service centre for the Wakatipu Basin".

[134] Most of these SPs are non-contentious. We refer, in particular, to SPs 3.3.2, 3.3.4, 3.3.5, and 3.3.7 – 3.3.11. The DV of those SPs is confirmed as appropriate by the JWS Planning, subject only to some minor updating of cross-referencing and an amendment to SP 3.3.10 (for consistency with the pRPS).

[135] We have already noted that the amended form of SP 3.3.3, as proposed in the JWS Planning, is agreed to by parties to the Consent Memorandum (as set out at [87]). No other party appealed SP 3.3.3. However, as we shortly discuss, one party (FII) made closing submissions questioning whether SP 3.3.3 conflicts with the intentions of the National Policy Statement on Urban Development Capacity 2016 ('NPSUDC'). To the extent that the RMA requires that district plans give effect to national policy statements, we address the issue raised by FII, albeit on the basis that SP 3.3.3 of the DV was not appealed by FII.

[136] FII appealed, and seeks the following changes to, the DV's SP 3.3.6:

SP 3.3.6 ~~Avoid-Manage~~ additional commercial zoning that will may undermine the function and viability of the Frankton commercial areas as the key service centre for the Wakatipu Basin, or which may will undermine increasing integration between those areas and the industrial and residential areas of



Frankton, while ensuring sufficient development capacity for commercial and residential land is provided for over the short, medium, and long term.
(relevant to S.O. 3.2.1.3)

[137] FII owns land⁹¹ at Frankton North that it seeks, under its appeal, to have rezoned from Medium Density Residential to Business Mixed Use Zone (or similar). It told us that this is in order to better provide for the operations of Civil Construction Limited, particularly in terms of securing land for construction yards. Its focus is on ensuring sufficient land zoning for mixed business use, particularly at Frankton.⁹²

The evidence

[138] FII's evidence was from Mr Paul Horrell, a director of FII and Civil Construction Limited. It was admitted by consent.⁹³ It explains:⁹⁴

Civil Construction has been considering suitable site options for its business within recent years. Specific requirements for the business, like access to the road network, size of the yard, location to other industry etc. mean that there are few suitable locations within the Frankton / Queenstown area. In my experience, there is also a lack of suitably zoned land within which to construct this type of operation for lease and / or sale.

[139] QLDC's evidence was primarily from Messrs Heath, Walter Clarke (growth projection modelling), Osborne (economics) and Collins (planning). In addition, as noted, QPL and RPL accommodated the court's request to have its economist (Mr Ballingall) and planner (Mr Sergeant) give evidence.

[140] Mr Collins gave some background to QLDC's Business Development Capacity Assessment 2017 ('BDC Assessment'), which was prepared in response to the NPSUDC and was one of the underpinnings of Mr Heath's evidence. Mr Collins explained that QLDC is also in the process of preparing its Future Development Strategy as required by NPSUDC policy PC12.⁹⁵

[141] Mr Heath was careful to explain that his analysis is confined to the market for commercial office, commercial service and retail activities. It excludes consideration of

⁹¹ Legally described as Sec 5 SO 502556; Sec 3 SO 502556.

⁹² Statement of evidence of Paul Horrell, for FII, dated 17 October 2018.

⁹³ Transcript, p 216, l 27.

⁹⁴ Statement of evidence of Paul Horrell, for FII, dated 17 October 2018, at [19].

⁹⁵ Statement of evidence in chief of Andrew Collins, for QLDC, dated 12 October 2018, at [13.1], [13.5].



industrial activities (as well as other noted activities).⁹⁶ He explained the various foundations for his conclusions. In addition to the BDC Assessment, this included Mr Clarke's growth forecasting, his consultancy's proprietary Property Economics Retail Expenditure Model ('RE Model'), and his forecasts and analysis of employment, commercial office and commercial land trends and requirements. He also took account of the provision made under the PDP (and ODP) for retail and commercial zones.⁹⁷

[142] In answer to the court, Mr Heath acknowledged that zoning does not assure supply to the market (although it is an obviously important component of enabling supply), the Queenstown market is supply restrained (given the scarcity of land) and his analysis does not address actual rates of supply of any of the relevant commercial land categories.⁹⁸

[143] On the basis of his analysis, Mr Heath's overall opinion is that:

... the District is well positioned in terms of commercial zoned capacity to accommodate the forecast commercial growth requirements well into the future, with an excess of around 18.2ha as at 2038, including the relevant [NPSUDC] buffer margin.

[144] In questioning by the court, Mr Heath explained that, for his supply and demand analysis, he assumed a relativity in land prices as between Queenstown and other districts.⁹⁹ Adding to that, he explained that, were there any significant differences in land value for commercial or industrial land at Cromwell for example, that would affect demand for such land in the Queenstown Lakes District.¹⁰⁰

[145] Mr Heath was not cross-examined on the specifics of FII's requested relief. However, as noted, Mr Heath's evidence was confined to the market for commercial office, commercial service and retail activities (excluding consideration of industrial activities).

⁹⁶ Statement of evidence of Timothy Heath, for QLDC, dated 14 June 2018, at [7.8] – [7.11].

⁹⁷ Statement of evidence of Timothy Heath, for QLDC, dated 14 June 2018, at [5.3]. We have added reference to the ODP as it is apparent that Mr Heath included in his consideration ODP zones that are not being reviewed also.

⁹⁸ Transcript, p 36 | 25-30; p 37 | 1-24.

⁹⁹ Transcript, p 38, | 5.

¹⁰⁰ Transcript, p 38, | 5 – 31.



[146] RPL/QPL was party to the Consent Memorandum and support SP 3.3.2. However, the evidence of their economist, Mr Ballingall, filed prior to the settlement being reached, questioned the reliability of Mr Heath's opinions on forecast capacity. Specifically, Mr Ballingall questioned whether Mr Heath underestimated potential retail and commercial land demand out to 2038. He qualified that by noting that he had not interrogated Mr Heath's RE Model (although we record that no application was made to the court for orders to access it). However, he postulated that, *if* actual demands were higher than Mr Heath estimated, land prices and rents in existing Town Centres could be expected to rise, thereby making Frankton more competitive and enhancing the RPL/QPL case for the RPZ (or part of it) to be recognised as a Town Centre.¹⁰¹

[147] In rebuttal, Mr Heath pointed out that, in asserting there is a current lack of capacity in the Queenstown and Wanaka Town Centres, Mr Ballingall did not take Plan Change 50 (PC50) into account. PC50 recently zoned additional land in Queenstown Town Centre for commercial activities. Mr Heath points out that the total vacant land recorded across the Queenstown Town Centre (zone) and PC50 is 5.4ha (1.5ha and 3.9ha respectively).¹⁰²

[148] At the court's request, Mr Osborne provided a supplementary statement of evidence on supply and demand and interrelationships as between the industrial, commercial and residential land markets.¹⁰³ Although the evidence was, as he put it, a "generalised outline", it helps illustrate why it can be particularly difficult in the Queenstown market to source suitable industrial land. He explained that the Queenstown market exhibits some unique drivers and exaggerated influences due in part to its size and the rapid growth it has seen in the last decade.¹⁰⁴ Illustrating the position with a series of supply and demand graphs, for the commercial, industrial and residential markets, he explained that, Queenstown's market is atypical in that it demonstrates a material separation between capacity ("S1" on his graph) and supply of land to the industrial land market ("S2" on his graph). The ability of parties to withhold market supply, as well as servicing constraints, have an atypically greater impact on price within the Queenstown market.¹⁰⁵ He explained the interactive effect of competition for use by

¹⁰¹ Statement of evidence of John Ballingall, for RPL and QPL, dated 18 October 2018.
¹⁰² Rebuttal evidence of Timothy Heath, for QLDC, dated 23 January 2019, at [4.1] – [4.2].
¹⁰³ Supplementary evidence of Philip Osborne, for QLDC, dated 19 February 2019.
¹⁰⁴ Supplementary evidence of Philip Osborne, for QLDC, dated 19 February 2019, at [2.1].
¹⁰⁵ Supplementary evidence of Philip Osborne, for QLDC, dated 19 February 2019, at [2.3] – [2.6].



higher value commercial activities as follows:¹⁰⁶

The relatively high prices of industrial land within the Queenstown market have reduced the competitive level for industrial activity within the District and resulted in pressures on industrial land by commercial activities with greater productivities and thereby ability to service the higher prices. This additional activity increases demand for industrial land and in turn sustains the higher price expectations.

[149] He agreed that, in the tight land supply market in the Queenstown district, industrial, commercial and residential activities are, to a considerable if not total extent, competing for the same resource. He went on to explain that, given the relatively high value land has for residential use, this “puts extra pressure on the business land to make the same types of returns and if it doesn’t then it’s not provided to the market which pushes prices up as well ... so they are interrelated in terms of their value”.¹⁰⁷ He said the greater competitive pressure is from commercial land uses. This drives up the price of industrial land and drives out industrial activities.

[150] In cross-examination on behalf of FII, Mr Osborne accepted that Mr Horrell’s personal experience is that “there are issues with the supply of industrial land at the moment”. However, Mr Osborne did not agree that this conflicts with the analysis he undertook.¹⁰⁸ He was not further tested on his answer in cross-examination.

[151] In questioning by the court, Mr Osborne acknowledged that his graphing of industrial land supply and demand assumes somewhat more than land zoned for industrial purposes to also encompass land that is consented, ie “earmarked for industrial use” (including in a mixed use zone). As such, he also agreed that this does not entirely align with the NPSUDC concept of “zoned” capacity.¹⁰⁹ He agreed with the proposition that “you have to avoid any other land use on a zone that’s industrial because it simply won’t ever win in the market”.¹¹⁰ He observed:¹¹¹

¹⁰⁶ Supplementary evidence of Philip Osborne, for QLDC, dated 19 February 2019, at [2.7].

¹⁰⁷ Transcript, p 85, l 14-19.

¹⁰⁸ Transcript, p 79, l 1 – 6.

¹⁰⁹ Transcript, at p 84, l 3 – 25.

¹¹⁰ Transcript, p 85, l 3 – p 86 l 5.

¹¹¹ Transcript, p 86, l 5 – 22.



... it really depends on the direction you want to take your economy. If you are looking at lower intensity, lower productivity land uses, factories, things like that come to mind. Not all factories, but those sorts of things, logistics are low value land activities simply because they use so much space. If you're looking at those then you need to have that land safeguarded and you need some of that no matter what in any economy. So you need some safeguard of that land for industrial activities to meet a local demand. Beyond that you can compete and most authorities on a supply led type approach where they will supply more and more industrial land, make it cheap and attract the industries that service a much wider market. I wouldn't say that's in Queenstown's interests and nor could it ever actually ever achieve that, so it's got to be considering what type of activity it's actually going to keep and what specific industrial zones it has to have to retain the service component for the local economy and local population and for tourists in fact because it will need to safeguard that land with pressure from other activities.

[152] On the NPSUDC, Mr Collins explained his understanding that it requires councils to "ensure that there is sufficient development capacity to ensure that demand can be met" including "both the total demand for housing and business land, and also the demand for different types, sizes and locations". He added that this development capacity "must also be commercially viable to develop, and plentiful enough to recognise that not all feasible development opportunities will be taken up".¹¹²

[153] For the purposes of court questioning, Mr Ballingall was not asked to prepare any written supplementary evidence. Generally, his answers did not materially take issue with, nor add to, what Mr Osborne said. However, he did offer a comment on the use of the word "avoid" in SP 3.3.3, in light of NPSUDC's PA3, including:¹¹³

... So I think "avoid" could be a somewhat blunt phrase, although I accept it may have a different precise meaning in planning type language. But from my perspective as an economist, I'd prefer to enable first and then move towards more restrictive wording as required to deal with negative effects.

Submissions

[154] QPL/RPL, FII and QLDC made closing submissions on these matters.

QPL/RPL

[155] In view of Mr Ballingall's observations concerning SP 3.3.3, QPL's and RPL's



¹¹² Statement of evidence-in-chief of Andrew Collins, for QLDC, dated 12 October 2018, at [13.1], [13.5].

¹¹³ Transcript, p 313 | 6 – p 314 | 5.

closing submissions confirm their support for the JWS Version of this strategic policy. On the interpretation of the NPSUDC, they noted that the Ch 3 provisions they support are backed by QLDC's BDC Assessment¹¹⁴ and that this reaches two relevant conclusions:

- (a) the PDP provides surplus capacity for projected growth in demand for both the retail and commercial sectors for the next 30 years;
- (b) careful monitoring of the uptake of vacant sites is required and can be done by QLDC.

FII

[156] The focus of FII's closing submissions was primarily on whether SP 3.3.3 and SP 3.3.6 would give effect to NPSUDC. Ms Baker-Galloway submitted as follows:¹¹⁵

- 42 Mr Osborne readily agreed, both in cross examination¹¹⁶ and in discussion with His Honour Judge Jackson, that there is not enough industrial zoned land in the context of the NPSUDC requirements,¹¹⁷ particularly given competition for the land,¹¹⁸ and that in the circumstances industrial land provided a special case for protection from other activities.¹¹⁹ This was confirmed by Mr [Ballingall]¹²⁰, who went further to say there is:

considerable value in retaining flexibility in your zoning so that you can respond to changes in demand [or] supply over time. So I think "avoid" could be a somewhat blunt phrase although I accept it may have a different precise meaning in planning type language. But from my perspective as an economist, I'd prefer to enable first and then move towards more restrictive wording as required to deal with negative effects.

He also confirmed that "protect against" would be a better construct than "avoid".¹²¹

- 43 Given this, not only is 3.3.3 important to get right, but also 3.3.6 (the subject of FII's appeal as well). While not addressed in evidence, the alternative wording proposed in the FII appeal is added to the appendix, in the event amendments are found to be required to ensure the NPSUDC is given effect to on this point. Changes to this provision were originally sought by RPL as well but have been resolved as between

¹¹⁴ Evidence of David Sergeant for RPL and QPL, dated 2 November 2018, Att A, ME Consulting *Business Development Capacity Assessment 2017*, Queenstown Lakes District, 15 March 2018, pp 30, 31.

¹¹⁵ Augmented closing submissions for Darby and Ors, dated 12 March 2019, at [40] – [44].

¹¹⁶ Referring to the Transcript, p 79.

¹¹⁷ Referring to the Transcript, p 83 – 87, esp p 84.

¹¹⁸ Referring to the Transcript, p 85.

¹¹⁹ Referring to the Transcript, p 86.

¹²⁰ Referring to the Transcript, p 313, l 32- p 314 l 5.

¹²¹ Referring to the Transcript, pp 313 – 314.



RPL and QLDC.

- 44 It is submitted that particularly with regards to the NPSUDC policies setting outcomes for planning decisions, it is not consistent with policy PA1 and PA3 in particular to limit the rezoning of commercial land without very good reason...and in the context of industrial land in particular, which has a specific set of challenges when competing with other land uses in the market vying for land, that care should be taken to ensure the policies at the strategic level do not inadvertently take away the choices and options to enable people to meet the growing industrial needs of the community associated with a growing population and ongoing construction.

QLDC

[157] QLDC point out the wording of the provisions as recommended in the JWS Planning reflects the agreed position of the planning witnesses, taking due account of the supporting evidence of Mr Heath.

[158] It disputes FII's interpretation that NPSUDC precludes strong direction being given in Ch 3 on commercial rezoning that could or will undermine the functions and roles of the Town Centres and Frankton commercial area.

[159] It points out that the NPSUDC must be read in the round, and in light of the fact that SP 3.3.3 and SP 3.3.6 are informed by QLDC's capacity evidence. Given that evidence demonstrates there is sufficient commercial zoned land in the District for the next 20 years, it submits that the "avoid new commercial zoning" approach in the policies is appropriate and in proper accordance with the NPSUDC. In any case, it observes that NPSUDC PA.3(c), relied on by FII, is a matter to which particular regard has to be given (rather than something that must be given effect to). It also points out that the SPs do not use "avoid" as an outright prohibition on future commercial rezonings. Rather they include enabling qualifiers.¹²²

[160] It also points out that SP 3.3.3 and SP 3.3.6 are also seeking to give effect to the now-operative pRPS policy 5.3.2(c). As this pRPS policy became operative after the NPSUDC came into effect, it can be taken to give proper effect to that NPS. It refers to the evidence as to the agglomeration benefits derived from concentrating land use in existing commercial zones, and better achieving the integration of infrastructure with land uses.¹²³



¹²² Closing submissions for QLDC, dated 27 February 2019, at [4.6].

¹²³ Closing submissions for QLDC, dated 27 February 2019, at [4.6] – [4.12].

[161] QLDC further explains that the PDP does not in itself, take a significantly different approach to commercial land than the ODP. It says the core commercial capacity providers (zones) largely come across into the PDP in a similar form.¹²⁴

Discussion

[162] On the matter of the NPSUDC, we start by noting that, in this decision, we are concerned only with:

- (a) the NPS's "business land" aspects; and
- (b) the Ch 3 provisions in issue, namely SP 3.3.3 and 3.3.6 (bearing in mind that, as we hear and determine appeals during the various stages ahead, we will need to continue to test whether relevant NPS are given effect to ultimately in the updated ODP).

[163] Ultimately, the ODP must give effect to the NPSUDC (s 75(3)). Allied to that, and subject to the limits we set out at [15] – [25], we have inherited QLDC's responsibility to ensure the PDP is prepared and changed in accordance with the NPSUDC (ss 74(1), 290 RMA).

[164] Queenstown District is a "high-growth urban area" as the NPSUDC defines that term. Fil's focus is in particular on NPSUDC PA1 and PA3. PA1 applies to QLDC, as a local authority. As such, it does not specify how the courts determine appeals. However, we accept that it is relevant to our scrutiny of QLDC's foundation work for the PDP, including its s32 evaluations. PA3, on the other hand, is part of a set of policy directions that apply to RMA decision-makers, including the court in the determination of appeals.

[165] Policy PA1 directs local authorities to ensure that, at any one time, there is sufficient housing and business land development capacity in the short term (to 2019), medium term (2019 – 2026) and long terms (2026 – 2046). As noted, our present focus is on the business land capacity aspect of this direction. PA1 describes requirements to be satisfied to meet that policy direction:



¹²⁴ Closing submissions for QLDC, dated 27 February 2019, at [4.6] – [4.12].

- (a) for the "short term", development capacity must be "feasible, zoned and serviced with development infrastructure";
- (b) for the "medium term", an alternative to the servicing requirement is that funding for the development infrastructure required to service the development capacity must be identified in the Council's Long Term Plan required under the Local Government Act 2002 ('LGA 02');
- (c) for the "long term", the requirement for the development capacity to be zoned does not apply. However, the development capacity must be "identified in relevant plans and strategies". Nor is there any requirement for servicing to be in place or for it to be identified other than in the relevant Infrastructure Strategy required under the LGA 02.

[166] Policy PA3 applies to the making of "planning decisions that affect the way and the rate at which development capacity is provided". It directs decision-makers to "provide for the social, economic, cultural and environmental wellbeing of people and communities and future generations, whilst having particular regard to" listed matters, namely:

- (a) providing for choices that will meet the needs of people and communities and future generations for a range of dwelling types and locations, working environments and places to locate businesses;
- (b) promoting the efficient use of urban land and development infrastructure and other infrastructure; and
- (c) limiting as much as possible adverse impacts on the competitive operation of land and development markets.

[167] The NPSUDC definitions of "business land" and "development capacity" inform how the directions in PA1 and PA3 apply.

- (a) "business land" is defined to mean:
land that is zoned for business uses in urban environments, including but not limited to land in the following examples of zones:
 - industrial
 - commercial
 - retail
 - business and business parks



- centres (to the extent that this zone allows business uses)
- mixed use (to the extent that this zone allows business uses).

(b) "development capacity" is relevantly defined to mean:

in relation to ... business land, the capacity of land intended for urban development based on:

- a) the zoning, objectives, policies, rules and overlays that apply to the land, in the relevant proposed and operative regional policy statements, regional plans and district plans; and
- b) the provision of adequate development infrastructure to support the development of the land.

[168] Policies PA1 and PA3 (and other policies) pertain to NPSUDC objectives OA1 – OA3. These are in relation to:

- (a) effective and efficient urban environments (enabling people, communities and future generations to provide for their social, economic, cultural and environmental wellbeing);
- (b) sufficient opportunities for development of housing and business land to meet demand, provide choices to meet needs of people, communities and future generations in terms of dwelling types and locations, working environments and places to locate businesses; and
- (c) urban environments that, over time, develop and change in response to changing needs of people, communities and future generations.

[169] The NPSUDC goes on to give several directions on how local authorities must gather evidence and undertake monitoring to support their relevant planning decisions. These obligations extend to QLDC in the exercise of its district planning functions (and on the basis that Queenstown Lakes District is a "high-growth urban area"). In particular, PB1 – PB7 prescribe how local authorities are to undertake, at least three-yearly, a 'housing and development capacity assessment' (which, in essence, estimates demand for dwellings, and for different types and locations of business land and floor area for businesses and their interactions). These policies include relevant prescriptions as to how types of information (eg demographics, changes in business activity, market indicators) are to be used, which sectors are consulted in the process and what is to be monitored (e.g. as to price and rents, resource consents and building consents).



[170] PA1 clearly requires all local authorities to ensure that at any one time there is sufficient business land development capacity that accords with its "short term", "medium term" and "long-term" specifications. However, it does not go so far as to require that to be across all classes of zoning listed in the definition of "business land". Nor do related policies PC1 – PC4 include any specified allocation of bespoke industrial land in their requirements for buffers, over-projected demand, to be allowed for. The NPSUDC does not dictate that each district must be self-contained in what it provides for industrial or other classes of business land. For districts to be so self-contained is not necessarily consistent with effective and efficient urban environments.

[171] Rather, subject to its directions (including in PA1), the NPSUDC enables territorial authorities, in their planning authority capacity, to make properly informed choices as to the classes of business land zoning needed in their districts to satisfy the related objectives OA1 – OA3. Ultimately, the soundness or otherwise of those choices made will be adjudged according to whether they deliver the specified outcomes for the district's urban environments, namely for business land:

- (a) are those environments effective and efficient; do they enable people and communities and future generations to provide for their social, economic, cultural and environmental wellbeing?
- (b) do they offer sufficient opportunities for the development of business land to meet demand; do they provide choices that will meet the needs of people and communities and future generations for a range of locations, working environments and places to locate businesses?
- (c) over time, will those environments develop and change in response to the changing needs of people and communities and future generations?

[172] There is no dispute that QLDC undertook a development capacity study, namely its BDC Assessment. The evidence satisfies us that this study was duly undertaken. We also accept Mr Heath's related opinion that the District is well positioned, in terms of commercial¹²⁵ zoned capacity, to accommodate the forecast commercial growth requirements well into the future, with an excess of around 18.2ha as at 2038, including the relevant NPSUDC buffer margin.

¹²⁵ The PDP uses the term "commercial zoning" whereas the NPSUDC uses the term "business land".



[173] The limited evidence we have concerning industrial land indicates that, in the peculiar dynamics of the Queenstown market, it is perennially likely to lose in any competition for land with higher value commercial uses. That also plays out in terms of landowners having a reasonably strong speculative incentive to hold out for land to be used for commercial purposes rather than to release it to the market for industrial purposes. That was the essential thrust of Mr Osborne's supplementary evidence. It was verified by the direct evidence of Mr Horrell.

[174] FII does not go so far as to submit that, in view of these acknowledged challenges in securing suitable industrial land in face of strong competition in the Queenstown District land market, the NPSUDC dictates an approach of enabling access to industrial land through related district plan objectives and policies, zones and rules. Rather, it submits that in the context of these supply challenges, "limiting rezoning of commercial land without very good reason" would not be consistent with NPSUDC PA1 and PA3. It goes on to reason that "care should be taken to ensure the policies at the strategic level do not inadvertently take away the choices and options to enable people to meet the growing industrial needs of the community associated with a growing population and ongoing construction".

[175] With respect, we find that submission to mix two distinct questions each arising from the evidence as to the supply challenges for industrial land:

- (a) does the NPSUDC direct a different policy approach to that espoused in SP 3.3.3 and SP 3.3.6 in the context we have described?
- (b) are SP 3.3.3 and SP 3.3.6 the most appropriate for achieving the related objectives or should one or other be modified, including as sought by FII?

[176] On the first question, we find NPSUDC does not have that effect. Firstly, we agree with QLDC that SP 3.3.3 and SP 3.3.6 are not in the nature of an outright prohibition on future commercial zonings. They do not impose restraint on new commercial zoning if this is not likely to undermine the role of the Town Centres (SP 3.3.3) or the function and viability of the Frankton commercial area (SP 3.3.6). For the reasons we give at [170] to [172], we find that SP 3.3.3 and SP 3.3.6 do not offend the NPSUDC in the fact that they are duly informed and able to be included in the PDP within the scope of QLDC's discretion as a planning authority. We agree with QLDC that we can treat the pRPS policy 5.3.2(c) as giving effect to the NPSUDC. We also agree that



SP 3.3.3 and SP 3.3.6 each help to give effect to that pRPS policy.

[177] As for the second question at [175], FII's closing submissions traverse SP 3.3.3 but do not offer any alternative expression of this policy (and, as noted, FII did not appeal SP 3.3.3). Furthermore, FII acknowledges that it did not address its proposed amendment to SP 3.3.6 in evidence. We find its proposed amendment to SP 3.3.6 would result in an inappropriate lack of clarity in that policy, bearing in mind it applies to commercial zoning more generally.

[178] We accept QLDC's submissions that "avoid new commercial zoning of land" in SP 3.3.3 is appropriate, in light of our findings on the evidence (noting that 'avoid' approach is not used here as an outright prohibition on future commercial rezonings).¹²⁶

[179] For those reasons, we find the JWS Version of SPs 3.3.3 and 3.3.6 (subject to our amendments) will assist to give due effect to the NPSUDC and are more appropriate, in both effectiveness and efficiency terms, than what FII proposes. Our 29 March Minute identified some inconsistencies of expression in the JWS Version's drafting of SP 3.3.3 and SP 3.3.6 (both as between them and with the pRPS). The Minute proposed wording to correct this and closing submissions do not take material issue with this.

Determination concerning provisions in Annexure 2

[180] Our related determinations concerning provisions are at [193] and in Annexure 2.

Are the visitor industry and tourism provisions appropriate?

SO 3.2.1.1 and SP 3.3.1¹²⁷

Introduction

[181] The JWS Version of these provisions is as follows (underlining and ~~strike through~~ against the DV):

¹²⁶ QLDC closing submissions, dated 27 February 2019, at [4.8] – [4.10].

¹²⁷ The JWS Version also proposed some drafting refinements to SOs 3.2.1.7 and 3.2.1.8. Some parties made related closing submissions. However, as noted at [8] and [9], these are Topic 2 provisions not determined by this Topic 1 decision.



SO 3.2.1.1 The significant socioeconomic benefits of well designed and appropriately located visitor industry places, facilities and services are realised across the District.

Visitor industry¹²⁸

SP 3.3.1 Make provision for the visitor industry to maintain and enhance attractions, facilities and services, including supporting infrastructure, within the Queenstown and Wanaka town centre areas and elsewhere within the District's urban areas and settlements at locations where this is consistent with objectives and policies for the relevant zone. (relevant to S.O. 3.2.1.1, ~~and~~ 3.2.1.2 and 3.2.6)

Submissions

[182] Darby and Ors notes that the planners who signed the JWS Planning did not have time to address in their conferencing what SO or SP level provision is needed for ensuring the efficient use of existing visitor industry resources. By reference to the evidence of their planner, Mr Farrell, they explain that there are three dimensions to this:

- (a) protection of established resources;
- (b) promotion of the upgrading of the scope and quality of those resources; and
- (c) protection of them from incompatible activities.

They offer two suggestions for a new SO 3.3.1C to address this:

SO 3.3.1C Provide a planning framework that [provides] for appropriate growth in the visitor industry while protecting established visitor attractions from new incompatible activities.

or

SO 3.3.1C Protect established visitor attractions by managing the adverse effects of incompatible activities.

[183] Real Journeys seeks the inclusion of the following new policy recommended by Mr Farrell ('SP xxx (growth)'):¹²⁹

¹²⁸ In addition it proposes for consideration a new SP 3.3.1A, on which we defer determination for the reasons we give at [187].

¹²⁹ Augmented closing submissions for Darby and Ors, dated 12 March 2019, at [32].



Growth areas

SP xxx Promote growth in the visitor industry and encourage investment in lifting the scope and quality of attractions, facilities and services across the district.

[184] Real Journeys qualifies its position somewhat, saying it proposes this "if it is considered helpful at the strategic level to provide further guidance (across both urban and rural) about what type of growth in visitor industries activities is preferred".¹³⁰

[185] QLDC supports provisions as recommended in the JWS Planning on these matters (subject to reserving its position on Topic 2 related provisions).

[186] On the evidence, we are satisfied that the JWS Planning's modified SOs 3.2.1.1 helpfully elaborates on SO 3.2.1. We are satisfied that this objective is appropriate in assisting to achieve the RMA's purpose.

[187] On the evidence, we are not satisfied that the JWS Planning's recommended change to SP 3.3.1 is appropriate at this time. Firstly, the addition of reference to "and supporting infrastructure" would appear to raise implications for Topic 2 on rural landscapes. That is particularly given that it would apply "... within the District's ... settlements". Secondly, it has an unclear relationship to sub-topic 4 on regionally significant infrastructure. We note Darby and Ors' submission that there remains an apparent policy gap in regard to the visitor industry and rural areas. However, as we note at [198], we reserve determination of whether SP 3.3.1 should be modified as proposed until we issue a decision on Topic 2.

[188] We are not persuaded, on the evidence, that there is a sufficient justification for the addition of Darby and Ors' proposed new SO 3.3.1C. The fact that they propose two iterations in closing underlines one of the difficulties we find with this addition. Both iterations are too broad to be helpful. Each would appear to offer very strong incumbency protection against so-termed 'incompatible' activities. We did not receive sufficient evidence to substantiate such a bald policy intervention. The first iteration suggests this would assist the objective of providing for so-termed "appropriate growth in the visitor industry". We did not receive sufficient evidence that demonstrates that is a sound premise for favouring incumbent activities over new activities. Both iterations appear

¹³⁰ Augmented closing submissions for Darby and Others, dated 12 March 2019, at [32].



much broader than dealing with reverse sensitivity risks. In any case, we find the matter of reverse sensitivity tends to be more location or context specific, such that it is more appropriately addressed in zone chapters, rather than Ch 3. However, we have not yet heard any zone chapters. Hence, we reserve our position on whether any supplementary objectives and/or policies on these matters would be warranted.

[189] As for the further policy SP xxx (growth), the evidence on any need to lift “the scope and quality of attractions, facilities and services across the district” is, at this stage, limited. At best, the evidence supports a case for encouraging economic diversification, both within the visitor industry and beyond it. However, we find that already sufficiently recognised in other SOs and SPs of the JWS Planning.

[190] We find that the JWS Planning provisions we approve assist in giving effect to RPS policies 5.3.5 and 5.3.1(f).

[191] For those reasons, we find the evidence to support the relevant JWS Planning provisions on these matters and not to justify, at this time, the additional provisions pursued by Darby and Ors.

SP 3.3.12 – Climate Change

[192] SP 3.3.12 proved non-contentious and is confirmed.

Conclusion

[193] For those reasons, we confirm that the DV provisions determined by this decision are the most appropriate for including in the ODP subject to the changes shown in Annexure 2. That is because we are satisfied, on the basis of our findings:

- (a) the provisions in Annexure 2 accord with QLDC’s s31 functions, pt 2 and the NPSUDC (and, insofar as applicable, give effect to the NPSUDC and to the RPS and operative pRPS);
- (b) the SOs and SPs and other provisions in Annexure 2 will fulfil their statutory purposes;
- (c) the Strategic Objectives are the most appropriate for achieving the RMA’s purpose;



- (d) the Strategic Policies and other provisions, on our identification assessment of the efficiency and effectiveness of available options, are the most appropriate for achieving related objectives.

[194] At this stage, we do not direct QLDC to include those provisions in the ODP. Firstly, there are various matters we have reserved about which we need to make further decisions to complete our determination of appropriate Ch 3 provisions. Once that is done, we will need QLDC to provide to us a complete and final set of provisions, suitably formatted, numbered and cross-referenced. Hence, this is an Interim Decision.

[195] In regard to our findings (at [122] and [130]) concerning potential new SO 3.2.6.1, SO 3.2.6.2 and SO 3.2.6.3, and the leave we reserve for supplementary closing submissions on those matters:

- (a) any submissions on behalf of QLDC and those parties with relevant interests must be filed **within ten working days of this decision**;
- (b) a further decision will then issue determining whether those provisions are included and in what form.

[196] In regard to our findings at [76] and following concerning potential s293 directions:

- (a) any submissions on behalf of QLDC and those parties with relevant interests in whether we should exercise our powers under s293 to make directions to provide for referencing to Ch 3 in Ch 4 and any other relevant chapters must be filed **within ten working days of this decision**;
- (b) a further decision will then issue determining whether those provisions are included and in what form.

[197] For the avoidance of doubt, supplementary closing submissions on the matters at [195] and [196] may be combined.

[198] To confirm, we reserve our capacity to:

- (a) make further changes to Issue 1 as part of our determination of sub-topic 4 on regionally significant infrastructure;
- (b) determine, in Topic 2, how 3.1a. "dramatic alpine landscapes free of inappropriate development" (under the heading "3.1 Purpose") is



- appropriately expressed;
- (c) add SO 3.2.6.1 as per [122] and SO 3.2.6.2 and SO 3.2.6.3 as per [130] by a further decision, in light of any supplementary closing submissions made in accordance with our directions at [195];
 - (d) amend SP 3.3.1 to add the words “including supporting infrastructure” after “facilities and services” (or similar) in light of our determination of Topic 2 and sub-topic 4;
 - (e) make s293 directions for further changes to Ch 3 and related chapters through s293 RMA for the reasons we give at [121] or under any other decision made in relation to other Topic hearings of appeals.

[199] In regard to our findings at [35], QLDC must file a complete set of all ODP objectives not encompassed by the plan review within ten working days of this Interim Decision.

[200] Directions will issue by separate Minute for QLDC to file a complete updated and properly formatted set of provisions to give effect to this decision, and the further decision we will make in regard to the matters in [198]. We encourage QLDC to give some advance thought to this and would welcome any proposals it may want to put to us on this in the meantime by memorandum of counsel.

[201] Leave is reserved to all parties (to Topic 1 or any other topic) to apply for further or amended timetabling directions.

[202] Costs are reserved, but applications are not encouraged. Parties will be familiar with the usual approach of the courts to matters of costs in plan appeal decisions. The decision records the constructive contributions of all parties to the determinations we have made herein. Any party wishing to seek costs is directed to confer with all relevant parties and file, by memorandum of counsel, proposed timetabling **directions within 25 working days of the date of this decision.**

For the court:



J J M Hassan
Environment Judge



SCHEDULE**List of Appellants**

ENV-2018-CHC-056	Upper Clutha Environmental Society Incorporated
ENV-2018-CHC-082	Kawarau Jet Services Holdings Limited
ENV-2018-CHC-084	FII Holdings Limited
ENV-2018-CHC-092	Trojan Helmet Limited
ENV-2018-CHC-093	Queenstown Airport Corporation Ltd
ENV-2018-CHC-098	Friends of the Wakatipu Gardens and Reserves and Associated Residents
ENV-2018-CHC-101	Universal Developments Limited
ENV-2018-CHC-106	Te Anau Developments Limited
ENV-2018-CHC-119	Halfway Bay Lands Limited
ENV-2018-CHC-124	Waterfall Park Developments Limited
ENV-2018-CHC-126	Remarkables Park Limited
ENV-2018-CHC-127	Queenstown Park Limited
ENV-2018-CHC-131	Real Journeys Limited
ENV-2018-CHC-134	Ngai Tahu Tourism Limited
ENV-2018-CHC-137	Coneburn Preserve Holdings Limited & Others
ENV-2018-CHC-138	Real Journeys (trading as Go Orange Limited)
ENV-2018-CHC-146	Real Journeys Limited (trading as Canyon Food and Brew Company Limited)



Extracts from Resolutions A and B

Resolution A

District Plan Review

...

Resolves pursuant to section 79(1) of the ... RMA ... to commence a review of its Operative District Plan. The provisions that will be excluded from the review and will not be the subject of a public notice under Clause 5 of schedule 1 to the RMA when the review is completed are:

- Frankton Flats A
- Frankton Flats B (once operative)
- Remarkables Park Zone
- Mount Cardrona Station Special Zone
- Three Parks Zone
- Kingston Village Special Zone
- Registered Holiday Homes Appendix
- Open Space Zone
- Affordable housing provisions
- Signs

... it was resolved that ... Council ... Approve pursuant to section 79(1) of the Resource Management Act 1991 (RMA) to commence Stage 2 of its review of the Operative District Plan, including the review of following components of the Operative District Plan and identified other matters:

Resolution B

Stage Two, District Plan Review

...

5. Note that the components that will be excluded from the District Plan Review have changed since the 17 April 2014 Council meeting, including the review of Community and affordable housing, which will now be included.

...

7. Confirm the exclusion of the land covered by the following from the District Plan Review:

- a. Plan Change 19: Frankton Flats B Zone.
- b. Plan Change 45: Northlake Special Zone.
- c. Plan Change 46: Ballantyne Road Industrial and Residential extension.
- d. Plan Change 50: Queenstown Town Centre extension.
- e. Plan Change 51 Peninsula Bay North.
- f. Remarkables Park Zone.
- g. Any subsequent plan changes to the Operative District Plan.



**Text of relevant Decision Version provisions of Chapter 3 – Strategic Direction
(omitting provisions not part of Topic 1)**

3.1 Purpose ~~Explanation and Issues~~

This chapter sets out the over-arching strategic direction for the management of growth, land use and development in a manner that ensures sustainable management of the Queenstown Lakes District's special qualities:

...

- b. clean air and pristine water;
- c. vibrant and compact town centres;
- d. compact and connected settlements that encourage public transport, biking and walking;
- e. diverse, resilient, inclusive and connected communities;
- f. a district providing a variety of lifestyle choices;
- g. an innovative and diversifying economy based around a strong visitor industry;
- h. a unique and distinctive heritage;
- i. distinctive Ngāi Tahu values, rights and interests.

3.1A Strategic Issues

~~The following issues need to be addressed to enable the retention of these special qualities.~~
The following Strategic Issues are overarching. While not intended to be an exhaustive list or description of issues to be addressed in the District's pursuit of sustainable management, these Strategic Issues are identified as warranting to be addressed at the present time and during the lifetime of the Plan (and beyond) to enable the retention of the special qualities listed at a. – i. of 3.1 Purpose:

- a. Strategic Issue 1: Economic prosperity and equity, including strong and robust town centres, requires economic diversification to enable and the social and economic wellbeing and resilience of the District's of people and communities may be challenged if the District's economic base lacks diversification.
- ...
- c. Strategic Issue 3: High growth rates can challenge the qualities that people value in their communities.
- ...
- e. Strategic Issue 5: The design of developments and environments can either promote or weaken safety, health and social, economic and cultural wellbeing.
- f. Strategic Issue 6: Tangata Whenua status and values require recognition in the District Plan.



3.1B Interpretation and Application of this Chapter

3.1B.1 For the purpose of plan development, including plan changes, the Strategic Objectives and Strategic Policies in this Chapter provide direction for the development of the more detailed provisions contained elsewhere in the District Plan in relation to the Strategic Issues.

3.1B.4 For the purpose of plan implementation (including in the determination of resource consent applications and notices of requirement):

- a. the Strategic Objectives and Strategic Policies in this Chapter may provide guidance on what the related objectives and policies in other chapters of the Plan are seeking to achieve in relation to the Strategic Issues;
- b. the relevant objectives and policies of the plan (including Strategic Objectives and Strategic Policies in this Chapter) are to be considered together and no fixed hierarchy exists between them.

3.1B.3 In this plan, the notation 'SO' means 'Strategic Objective'. The notation 'SP' means 'Strategic Policy'.

3.1B.4 The following relationships apply as between Strategic Objectives and Strategic Policies of this Chapter:

- a. Where it is intended that a Strategic Objective elaborates on another Strategic Objective, that is specified in italicised text in brackets immediately following the Strategic Objective that is elaborated on. Unless otherwise specified, where a Strategic Objective enumerated to three digits (e.g. 3.2.1) ('Three Digit Strategic Objective') is followed by one or more Strategic Objectives enumerated to four digits (e.g. 3.2.1.1, 3.2.1.2) ('Four Digit Strategic Objective'), those Four Digit Strategic Objectives elaborate on that Three Digit Strategic Objective;
- b. Many Strategic Policies in Chapter 3 implement more than one Strategic Objective. This is reflected in how Strategic Policies are grouped. The relationship(s) intended between individual Strategic Policies and the relevant Strategic Objective(s) is specified in the italicised text in brackets following each such Strategic Policy.

~~This chapter sets out the District Plan's strategic Objectives and Policies addressing these issues. High level objectives are elaborated on by more detailed objectives. Where these more detailed objectives relate to more than one higher level objective, this is noted in brackets after the objective. Because many of the policies in Chapter 3 implement more than one objective, they are grouped, and the relationship between individual policies and the relevant strategic objective(s) identified in brackets following each policy. The objectives and policies in this chapter are further elaborated on in Chapters 4 – 6. The principal role of Chapters 3 – 6 collectively is to provide direction for the more detailed provisions related to zones and specific topics contained elsewhere in the District Plan. In addition, they also provide guidance on what those more detailed provisions are seeking to achieve and are accordingly relevant to decisions made in the implementation of the Plan.~~



3.2 Strategic Objectives

3.2.1 The development of a prosperous, resilient and equitable economy in the District.
(addresses Issue 1)

3.2.1.1 The significant socioeconomic benefits of well designed and appropriately located visitor industry places, facilities and services are realised across the District.

3.2.1.2 The Queenstown and Wanaka town centres¹³¹ are the hubs of New Zealand's premier alpine visitor resorts and the District's economy.

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

3.2.1.4 The key function of the commercial core of Three Parks is focused on large format retail development.

3.2.1.5 Local service and employment functions served by commercial centres and industrial areas outside of the Queenstown and Wanaka town centres¹³², Frankton and Three Parks, are sustained.

3.2.1.6 Diversification of the District's economic base and creation of employment opportunities through the development of innovative and sustainable enterprises.

...

3.2.6 The District's residents and communities are able to provide for their social, cultural and economic wellbeing and their health and safety.
(addresses Issues 1 and 6).

3.3 Strategic Policies

Visitor Industry

3.3.1 Make provision for the visitor industry to maintain and enhance attractions, facilities and services within the Queenstown and Wanaka town centre areas and elsewhere within the District's urban areas and settlements at locations where this is consistent with objectives and policies for the relevant zone. (relevant to S.O. 3.2.1.1 and 3.2.1.2).



¹³¹ Defined by the extent of the Town Centre Zone in each case.

¹³² Defined by the extent of the Town Centre Zone in each case.

Town Centres and other Commercial and Industrial Areas

- 3.3.2 Provide a planning framework for the Queenstown and Wanaka town centres that enables quality development and enhancement of the centres as the key commercial, civic and cultural hubs of the District, building on their existing functions and strengths. (relevant to S.O. 3.2.1.2).
- 3.3.3 Avoid commercial zoning of land that is likely to ~~would~~ undermine the role of the Queenstown and Wanaka town centres as the primary focus for the District's economic activity. (relevant to S.O. 3.2.1.2).
- 3.3.4 Provide a planning framework for the Frankton urban area that facilitates the integration of the various development nodes. (relevant to S.O. 3.2.1.3).
- 3.3.5 Recognise that Queenstown Airport makes an important contribution to the prosperity and resilience of the District. (relevant to S.O. 3.2.1.3).
- 3.3.6 Avoid additional commercial zoning that will is likely to undermine the function and viability of the Frankton commercial areas as the key service centre for the Wakatipu Basin, or which will undermine increasing integration between those areas and the industrial and residential areas of Frankton. (relevant to S.O. 3.2.1.3).
- 3.3.7 Provide a planning framework for the commercial core of Three Parks that enables large format retail development. (relevant to S.O. 3.2.1.4).
- 3.3.8 Avoid non-industrial activities not ancillary to industrial activities occurring within areas zoned for industrial activities. (relevant to S.O. 3.2.1.3 and 3.2.1.5).
- 3.3.9 Support the role township commercial precincts and local shopping centres fulfil in serving local needs by enabling commercial development that is appropriately sized for that purpose. (relevant to S.O. 3.2.1.5).
- 3.3.10 Avoid commercial rezoning that would is likely to undermine the key local service and employment function role that the centres outside of the Queenstown and Wanaka town centres, Frankton and Three Parks fulfil. (relevant to S.O. 3.2.1.5).
- 3.3.11 Provide for a wide variety of activities and sufficient capacity within commercially zoned land to accommodate business growth and diversification. (relevant to S.O. 3.2.1.1, 3.2.1.2, 3.2.1.5, 3.2.1.6 and 3.2.1.9).

Climate Change

- 3.3.12 Encourage economic activity to adapt to and recognise opportunities and risks associated with climate change.

...



Annexure 3
Minute dated 29 March 2019



BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA

IN THE MATTER of the Resource Management Act 1991

AND of appeals under Clause 14 of the First Schedule of the Act

BETWEEN FEDERATED FARMERS OF NEW ZEALAND INCORPORATED
(ENV-2018-CHC-053)
... (continued on page 17)

Appellants

AND QUEENSTOWN LAKES DISTRICT COUNCIL
Respondent

MINUTE OF THE ENVIRONMENT COURT
(29 March 2019)

Introduction

[1] This Minute follows the adjournment of the hearing on the following Topic 1 provisions:

- (a) the heading '3.1 Purpose' and the text under that heading (except for Issues 2 and 4);
- (b) SO¹ 3.2.1, SOs 3.2.1.1 – 3.2.1.6, SO 3.2.1.9 and SO 3.2.6; and
- (c) SPs² 3.3.1 – 3.3.12.

[2] As our decision on those Topic 1 matters will in due course explain, that adjournment followed:

¹ Strategic Objective.
² Strategic Policies.



- (a) opening submissions;
- (b) hearing and testing of evidence;
- (c) court-directed further planning witness conferencing that produced a joint witness statement ('JWS') revealing a strong consensus of those witnesses on matters of drafting and structure of relevant Topic 1 provisions; and
- (d) closing submissions that also reflect a significant narrowing of matters of substantive difference between parties on those provisions.

[3] The Topic 2 hearing commences on 8 April 2019, and rebuttal evidence on it has now been filed. It also concerns several Chapter 3 provisions, including some with clear inter-relationships to those considered in the Topic 1 hearing. During presentation of QLDC's Topic 1 closing submissions, counsel raised the potential value of the court giving early direction to Topic 2 witnesses on matters that arise in the court's consideration of Topic 1.

[4] The court agrees there is value in this approach, in fairness and efficiency terms given the way the Topic 1 hearing progressed (see [2]). In particular, we are satisfied that we can give guidance to parties to Topic 2, subject to the reservations we state. On a similar basis, again at the request of QLDC, our 13 August 2018 Minute gives direction for the facilitated planning witness conferencing of those planners giving evidence in Topic 2. That is in light of rebuttal evidence on behalf of QLDC which, in part, responds to drafting matters in the above-noted JWS for Topic 1.

[5] Various iterations of the Topic 1 provisions were considered during the hearing. One version was included in the JWS ('JWS Version'). The parties responded to the JWS Version in their closing submissions. In most respects, those responses were supportive of the JWS Version (with parties putting their particular positions, including as to drafting, on some specific provisions). QLDC provided a track change update of the JWS Version in its closing submissions ('QLDC Final Version'). We find it convenient and appropriate to use the QLDC Final Version as a basis for our following observations (using tracking against that version).

The relationship of Chapter 3 to other chapters

[6] The **Annexure** is a copy of a Minute issued to the parties on 22 February 2019 ('22 February Minute') during the course of the Topic 1 hearing. This was to assist



directed planning witness conferencing on drafting clarity matters.³ Parties should also consider the JWS. Closing submissions reflect a strong degree of consensus that the court's preliminary observations in that Minute capture the intended inter-relationship between the so-termed 'strategic objectives' ('SOs') and 'strategic policies' ('SPs') in Chapter 3 and objectives and policies of other proposed plan chapters.

Headings

[7] The following headings (some added to reflect some evolution in thinking during the course of the hearing)⁴ emerged as the most suitable in guiding readers of the proposed plan:

- 3.1 Purpose
 - 3.1A Strategic Issues
 - 3.1B Interpretation and application
- 3.2 Strategic Objectives
- 3.3 Strategic Policies.

3.1 Purpose

[8] The following drafting of 3.1 Purpose reflects the consensus expressed in the JWS and closing submissions (although we note we reserve our determination of the final content of this purpose provision):

3.1 Purpose

This chapter sets out the over-arching strategic direction for the management of growth, land use and development in a manner that ensures sustainable management of the Queenstown Lakes District's special qualities:

- a. dramatic alpine landscapes free of inappropriate development;
- b. clean air and pristine water;
- c. vibrant and compact town centres;
- d. compact and connected settlements that encourage public transport, biking and walking;
- e. diverse, resilient, inclusive and connected communities;
- f. a district providing a variety of lifestyle choices;
- g. an innovative and diversifying economy based around a strong visitor industry;
- h. a unique and distinctive heritage;
- i. distinctive Ngāi Tahu values, rights and interests.



³ Minute re planning witness conferencing on drafting clarity matters, (dated 22 February 2010).

⁴ The odd numbering reflects this, although it is able to be corrected at a later stage of the appeal determination processes.

[9] We point out that a matter raised during questioning of the planning witnesses in 'hot-tubbing' (prior to closing submissions) was whether there also should be reference in this list to indigenous biodiversity and ecosystems. Also, the landscape evidence suggests 'alpine' may not be entirely appropriate as a landscape values descriptor in 3.1.a. Our decision will address those matters in due course (even if it reserves this for determination in Topics 2 or 4).

3.1A Strategic Issues

[10] Relatively confined matters are raised in Topic 1 closing submissions on the expression of Strategic Issues.

The prefacing text

[11] The prefacing text before the listed Issues (commencing: "The following issues need ...") was not a matter of contention in evidence or submission and is clear on its face.

[12] However, a matter addressed during the Topic 1 hearing concerned the intention behind the expression of Issues in 3.1A. An aspect of this was whether the listed Issues were intended to deal with resource management issues for the district exhaustively and comprehensively or on a more flexible and open basis.

[13] Related to this, it can be observed that 3.1 Purpose commences with an explanation that Chapter 3 sets out "the over-arching strategic direction for the management of growth". In light of what the Decision Version itself says and the evidence heard, we made the following observation in the 22 February 2019 Minute:

[8] The word 'over-arching' has always qualified 'strategic direction' (first sentence). Over-arching does not itself imply supervisory direction in that it can also sit with a less directive model. One ordinary meaning is "sitting over all" (as in an arch). That meaning suggests Chapter 3 'addresses' or 'touches on' the key strategic issues for the district but not necessarily that it does so in comprehensive detail. It is that meaning (rather than 'all-embracing') that we understand Chapter 3 attempts to achieve. That means it allows for Chapter 3 strategic objectives ("SOs") and strategic policies ("SPs") to interface, where intended, with other chapter objectives and policies.



[14] Neither the JWS nor closing submissions took material issue with that observation. In drafting clarity terms, we consider it would be helpful to plan readers for that intention to be more clearly expressed in prefacing text. As this is a matter not yet fully tested with parties to the various topics, our Topic 1 decision would not finally determine this.

[15] As these issues are under a heading 'Strategic Issues' and Chapter 3 is 'Strategic Direction', we consider it would be clearer drafting to refer to them on each occasion as 'Strategic Issues' (rather than simply 'Issues').

[16] We recognise that there may be a more elegant or clearer manner of conveying this intention, but invite consideration of the following track changes:

The following Strategic Issues are overarching. While not intended to be an exhaustive list or description of issues to be addressed in the District's pursuit of sustainable management, these Strategic Issues are identified as warranting to be addressed at the present time and during the lifetime of the Plan (and beyond) to enable the retention of these special qualities the special qualities listed at a – i of 3.1 Purpose:

Issue 1 (preferably renamed 'Strategic Issue 1')

[17] QLDC proposed the following rewording of Issue 1 (tracking showing the changes from the QLDC Decision Version):

Issue 1: Economic prosperity and equity, including strong and robust town centres, requires economic diversification to enable the social and economic wellbeing of people and communities. The social and economic wellbeing and resilience of the District's communities may be challenged in the future if the District's economic base lacks diversification, supporting infrastructure and growth.

[18] We make the following preliminary observations.

[19] What is intended in the PDP regarding 'town centres' can also be anticipated to be covered in our decision(s). At this stage, we record our related concern as to the inconsistencies, and lack of clarity, in how the PDP addresses 'town centres'.



[20] We heard relatively limited evidence on the constructs of 'equity', resilience' and 'diversification'. Hence, we may need further assistance (potentially evidence) before finally settling the wording of this Issue.

[21] 'Growth' is covered in Issues 2 and 3 but in a materially different way than is proposed in QLDC's proposed revision of Issue 1:

- (a) Issue 2 (allocated to Topic 2) concerns the impacts on urban areas and rural landscapes of 'growth pressure';
- (b) Issue 3 concerns the potential consequence of high growth rates for the qualities people value in their communities; whereas
- (c) QLDC's proposed revision to Issue 1 appears to be a departure from that approach to how Chapter 3 addresses growth. That is in the sense that it is to the effect that, without 'growth', the wellbeing and resilience of the District's communities may be 'challenged' (whatever that word may mean).

[22] Our preliminary view is that such a revision of Issue 1 would be a substantial shift in the expression of issues. As such, it would at least need to be carefully tested in evidence (which was relatively limited for Topic 1 on this aspect) before it could be determined to be appropriate.

[23] We also reserve for our determination whether there is a gap in Issue 1's lack of present reference to 'supporting infrastructure'.

[24] Hence, our decision can be anticipated to address all those matters concerning both the Decision Version of Topic 1 and QLDC's proposed revision to it.

Issue 2 (preferably renamed 'Strategic Issue 2')

[25] As noted, this is allocated to Topic 2 (but we refer to our above observations on Topic 1).

Issue 3 (preferably renamed 'Strategic Issue 3')

[26] The wording of this Issue proved non-contentious and is clear on its face (but we refer to our above observations on Topic 1).



Issue 4 (preferably renamed 'Strategic Issue 4')

[27] This Issue is allocated to Topic 2. However, its drafting was considered by the planners in their conferencing and revised drafting was put forward (in QLDC's closing). We reserve all consideration of it until Topic 2 but set this out here for the convenience of parties and their witnesses involved in Topic 2 (tracking showing the changes from the QLDC Decision Version):

Issue 4: The District's natural environment, particularly its outstanding landscapes, has intrinsic qualities and values worthy of protection in their own right, as well as offering significant economic value to the District. Inappropriate activities (use and development) have the potential to affect the intrinsic qualities and values of the District's natural environment, particularly its outstanding landscapes, which are valued by the community and from which the District derives significant economic value.

Issue 5 (preferably renamed 'Strategic Issue 5')

[28] The wording of this Issue proved non-contentious and is clear on its face (but we refer to our above observations on Topic 1).

Issue 6 (preferably renamed 'Strategic Issue 6')

[29] Initially, a revision of this Issue was proposed in QLDC's planning evidence. However, as the JWS acknowledges, Issue 6 concerns tangata whenua interests and those interests were not before the court. Therefore, no change to its expression is appropriate at this stage.

3.1B Interpretation and application

[30] In terms of clarity of expression, the consensus reached by the planners (in their JWS) and in closing submissions is that this dedicated provision should replace the 'Explanation' text. The court agrees that having a dedicated provision is the better drafting approach.

[31] We consider that the drafting in the QLDC Final Version requires further refinement in various respects. Our proposed refinement of that drafting below is not intended to represent our final view on the most appropriate expression of this provision. Rather, as this is an 'interpretation and application' provision, it can be expected to



continue to be considered further through other topic hearings and as the PDP provisions are determined. As such, it will remain open for scrutiny by parties for some time yet, before it is ultimately finalised.

Provision heading 3.1B – Interpretation and application of this Chapter

[32] We consider this heading, as recommended in QLDC's closing submissions, is sufficiently clear.

3.1B.1 – Plan development

[33] QLDC's proposal for a clause explaining the role of the SOs and SPs in Chapter 3 for plan development is well-supported on the evidence. We have some concern that reference to "related to zones and specific topics" may be inadvertently too narrow. Another possibility could be to refer to 'in other chapters'. In the meantime, we invite parties to consider this option (tracking as against the QLDC Closing Version):

3.1B.1 For the purpose of plan development, including plan changes, the Strategic Objectives and Strategic Policies in this Chapter provide direction for the development of the more detailed provisions related to zones and specific topics contained elsewhere in the District Plan in relation to the Strategic Issues set out above.

3.1B.2 – Plan implementation, 3.1B.3 and clarity on use of "SO" and "SP"

[34] We deal with this collection of themes together for convenience.

[35] QLDC's proposal for a clause explaining the role of the SOs and SPs in Chapter 3 for plan implementation is well-supported on the evidence. By 'plan implementation', we intend to refer to what may be loosely termed 'decision-making' such as the determination of resource consent applications or requirements for designation.

[36] The QLDC Closing Version of 3.1B.2 and 3.1B.3 are as follows:

3.1B.2 For the purpose of plan implementation, the role and purpose of the Strategic Objectives and Strategic Policies in this Chapter is to provide guidance on what those more detailed provisions are seeking to achieve in relation to the strategic



issues and are accordingly relevant to decisions made in the implementation of the Plan.

- 3.1B.3 All Strategic Objectives and Strategic Policies in this Chapter shall be read together and applied where relevant. Where some Strategic Objectives and Strategic Policies are enabling of activities, these are also subject to other Strategic Objectives and Strategic Policies that provide direction in respect of environmental outcomes and safeguards.

[37] In drafting clarity terms, we see the following difficulties with those provisions:

- (a) there is undue looseness in the terms 'plan implementation', 'decisions' and 'applied where relevant'. While those terms would be understood by those parties who attended the Topic 1 hearing to refer to resource consent application and notice of requirement processes and the like, we need to ensure clarity for all plan users going forward;
- (b) as we understood it Strategic Objectives and Policies *may* provide guidance (as opposed to always necessarily doing so);
- (c) too much is packed into both provisions, and a clearer structure would be to split them into sub-clauses (one for each idea);
- (d) 'the role and purpose' may be too tight a construct in relation to SOs and SPs (e.g. inadvertently colouring what particular SOs and SPs themselves describe as their purpose). In any case, those words double up with the introductory words 'For the purpose of plan implementation';
- (e) the second sentence in 3.1B.3 is problematic conceptually. One reason for that is that some SOs are not clearly or simply 'enabling'. We question whether this sentence is needed in any case, given 3.1B.2 (and what the SOs and SPs themselves already say).

[38] Lastly under this heading, and unrelated to the above, we note that italicised text below particular SOs and SPs uses the shorthand 'SO' or 'SP'. We see no difficulty with that, but consider it may be helpful to add something on this to the 'Interpretation and Application of this Chapter' provision.

[39] Therefore, on this set of those provisions, we invite consideration of the following (tracking against the QLDC Closing Version):

- 3.1B.2 For the purpose of plan implementation (including in the determination of resource consent applications and notices of requirement):



- a. ~~the role and purpose of the Strategic Objectives and Strategic Policies in this Chapter is to may provide guidance on what these the related objectives and policies in other chapters of the Plan more detailed provisions contained elsewhere in the District Plan are seeking to achieve in relation to the sStrategic ilssues;~~
- b. ~~All the relevant objectives and policies of the plan (including sStrategic eObjectives and sStrategic pPolicies in this Chapter) are to be considered together and no formal fixed hierarchy exists between them.~~
- 3.1B.3 In this plan, the notation 'SO' means 'Strategic Objective'. The notation 'SP' means 'Strategic Policy'. ~~All Strategic Objectives and Strategic Policies in this Chapter shall be read together and applied where relevant. Where some Strategic Objectives and Strategic Policies are enabling of activities, these are also subject to other Strategic Objectives and Strategic Policies that provide direction in respect of environmental outcomes and safeguards.~~

3.1B.4 – Relationships between SOs and others that elaborate on them and between SOs and SPs in Chapters 4 – 6

[40] The QLDC Closing Version of 3.1B.4 is as follows:

- 3.1B.4 High level objectives are elaborated on by more detailed objectives. Where these more detailed objectives relate to more than one higher level objective, this is noted in brackets after the high-level objective. Because many of the policies in Chapter 3 implement more than one objective, they are grouped, and the relationship between individual policies and the relevant strategic objective(s) identified in brackets following each policy. The objectives and policies in this chapter are further elaborated on in Chapters 4 – 6.

[41] Starting with the last sentence, on the Topic 1 evidence we are not in a position to determine the appropriate relationships between SOs and SPs in Chapter 3 and objectives and/or policies in other chapters (including Chapters 4 – 6). For that reason alone, we have not included that last sentence in our offered revised drafting of this provision below. This matter will be kept under review as we progress through the various topic hearings.

[42] Leaving that point aside at this stage, QLDC's proposal for a clause explaining the relationships as between specific SOs in Chapter 3 and of SPs to SOs they are intended to implement is well-supported on the evidence. However, we have struck some issues of drafting clarity in the QLDC Decision Version:



- (a) as we noted during questioning the constructs of 'high level objectives' and 'more detailed' are problematic in the sense that they could colour the plain meaning of the particular objectives (i.e. by adding an overlay of meaning).⁵ We consider there is a simple way through this, on our understanding that what QLDC means by 'high level objectives' is simply those that are enumerated to three digits (as opposed to those enumerated to four digits);
- (b) again, too much is packed into one provision. It would be better to split this into two sub-clauses, each for a separate idea.

[43] Therefore, we invite consideration of the following revision of 3.1B.4 (we have dispensed with tracking as it is a full rewrite of the QLDC Closing Version):

- 3.1B.4 The following relationships apply as between Strategic Objectives and Strategic Policies of this Chapter:
- a. Where it is intended that a Strategic Objective elaborates on another Strategic Objective, that is specified in italicised text in brackets immediately following the Strategic Objective that is elaborated on. Unless otherwise specified, where a Strategic Objective enumerated to three digits (e.g. 3.2.1) ('Three Digit Strategic Objective') is followed by one or more Strategic Objectives enumerated to four digits (e.g. 3.2.1.1, 3.2.1.2) ('Four Digit Strategic Objective'), those Four Digit Strategic Objectives elaborate on that Three Digit Strategic Objective;
 - b. Many Strategic Policies in Chapter 3 implement more than one Strategic Objective. This is reflected in how Strategic Policies are grouped. The relationship(s) intended between individual Strategic Policies and the relevant Strategic Objective(s) is specified in the italicised text in brackets following each such Strategic Policy.

[44] As a related drafting refinement, we consider that there needs to be a consistent approach applied to the use of italicised text in brackets throughout the various SOs and SPs. The text below a SO that is intended to explain which SOs elaborate on it should specify the SO numbers in each case (but avoid using words like 'above' or 'below'). Also, while somewhat repetitive, it will be clearer drafting if the intended interrelationships are specified for each and every SO. Here are examples of what we mean (tracking against the QLDC Decision Version):

- (a) in place of what is written below SO 3.2.1:



5

Transcript p 375 | 30 – p 378 | 12.

(The detailed Strategic Objectives 3.2.1.1 – 3.2.1.9 inclusive below elaborate on the above high level Strategic Objectives 3.2.1A and 3.2.1. In addition SO 3.2.2.1 also elaborates on SO 3.2.1A and SO 3.2.1.)

- (b) in place of what is written below SO 3.2.2.1, to the following relevant effect:
(also elaborates on SO [xxx], SO [xxx], and SO [xxx])

Deletion of the explanatory text that precedes 3.2 Strategic Objectives

[45] As we have noted, the replacement of this explanatory text with a new 3.1B 'Interpretation and Application of this Chapter' is well supported on the evidence.

The order in which 3.2 Strategic Objectives are set out

[46] While this was a matter on which the court questioned some planning witnesses, we are now satisfied that there is nothing that would warrant any material reordering of these provisions from the order set out in the QLDC Closing Version (beyond the repositioning of SO 3.2.6 to now be SO 3.2.1A).

SO 3.2.1A (formerly SO 3.2.6)

[47] In the QLDC Closing Version, this reads:

3.2.1A The District's residents and communities are able to provide for their social, cultural and economic wellbeing and their health and safety. (addresses Issues 1 and 6).

[48] We find that drafting appropriately clear and record that the substance of this drafting was not a matter of significant contention.

SOs 3.2.1 – 3.2.1.1 and 3.2.1.6⁶

[49] The QLDC Closing Version of these provisions (leaving aside those not addressed at this time) is as follows:

⁶ For clarity, SOs 3.2.1.7 and 3.2.1.8 are not Topic 1 matters. SO 3.2.1.9 is left aside as it pertains to infrastructure, related to the regionally significant infrastructure matters noted to be addressed by a separate Minute.



3.2.1 The development of a prosperous, resilient and equitable economy in the District (addresses Issue 1)

[The detailed Strategic Objectives below elaborate on the above high level Strategic Objectives 3.2.1A and 3.2.1. In addition SO 3.2.2.1 also elaborates on SO 3.2.1A and SO 3.2.1].

- 3.2.1.1 The significant socioeconomic benefits of well designed and appropriately located visitor industry places, facilities and services are realised across the District.
- 3.2.1.2 The Queenstown and Wanaka town centres are the hubs of New Zealand's premier alpine visitor resorts and the District's economy.
- 3.2.1.3 The Frankton urban area (including the Remarkables Park mixed use centre) functions primarily as a significant commercial and industrial service centre, and provides community facilities, for the people of the Wakatipu Basin and visitors.
- 3.2.1.4 The key function of the commercial core of Three Parks is focused on large format retail development.
- 3.2.1.5 Local service and employment functions served by commercial centres and industrial areas outside of the Queenstown and Wanaka town centres, Frankton and Three Parks, are sustained.
- 3.2.1.6 Diversification of the District's economic base and creation of employment opportunities through the development of innovative and sustainable enterprises.

[50] We record that the substance of this drafting was not a matter of significant contention.

[51] Regarding SO 3.2.1.2, an observation we make at this stage is that, on the evidence heard in Topic 1, our impression is that the Queenstown and Wanaka town centres relate primarily to the visitor-centred economy (rather than the broader construct described here of 'the District's economy').

[52] Regarding SO 3.2.1.3, we favour replacing the word 'significant' with 'major'. That is because 'significant' does not necessarily connote both size and importance as 'major' does (and the parties to the joint memorandum seeking a consent order indicate in closing that they do not oppose this change to their settlement proposal).

[53] Our decision will in due course determine whether those and other adjustments are appropriate to any of the substance of these provisions, although we record that these are only in confined respects.



[54] Subject to those observations, we find that drafting of the QLDC Closing Version appropriately clear.

3.3 Strategic Policies

[55] Those assigned to Topic 1 were SPs 3.3.1– 3.3.12. We leave aside SO 3.3.1A and SO 3.3.1B for consideration in light of Topic 2. The QLDC Closing Version of the remaining SPs is as follows:

3.3 Strategic Policies

Visitor Industry

3.3.1 Make provision for the visitor industry to maintain and enhance attractions, facilities and services, including supporting infrastructure, within the Queenstown and Wanaka town centre areas and elsewhere within the District's urban areas and settlements at locations where this is consistent with objectives and policies for the relevant zone. (relevant to S.O. 3.2.1.1, 3.2.1.2 and 3.2.1A).

...

3.3.1B Provide for resorts in appropriate locations with particular consideration of adverse cumulative effects.

Town Centres and other Commercial and Industrial Areas

- 3.3.2 Provide a planning framework for the Queenstown and Wanaka town centres that enables quality development and enhancement of the centres as the key commercial, civic and cultural hubs of the District, building on their existing functions and strengths. (relevant to S.O. 3.2.1A and 3.2.1.2).
- 3.3.3 Avoid new commercial zoning of land that could undermine the role of the Queenstown and Wanaka town centres as the primary focus for the District's economic activity. (relevant to S.O. 3.2.1.2).
- 3.3.4 Provide a planning framework for the Frankton urban area that facilitates the integration of the various development nodes. (relevant to S.O. 3.2.1.3).
- 3.3.5 Recognise that Queenstown Airport makes an important contribution to the prosperity and resilience of the District. (relevant to S.O. 3.2.1A and 3.2.1.3).
- 3.3.6 Avoid additional commercial zoning that will undermine the function and viability of the Frankton commercial areas as the key service centre for the Wakatipu Basin, or which will undermine increasing integration between those areas and the industrial and residential areas of Frankton. (relevant to S.O. 3.2.1.3).
- 3.3.7 Provide a planning framework for the commercial core of Three Parks that enables large format retail development. (relevant to S.O. 3.2.1.4).
- 3.3.8 Avoid non-Industrial activities not ancillary to industrial activities occurring within areas zoned for industrial activities. (relevant to S.O. 3.2.1.3 and 3.2.1.5).



- 3.3.9 Support the role township commercial precincts and local shopping centres fulfil in serving local needs by enabling commercial development that is appropriately sized for that purpose. (relevant to S.O. 3.2.1A and 3.2.1.5).
- 3.3.10 Avoid commercial rezoning that would undermine the key local service and employment function role that the centres outside of the Queenstown and Wanaka town centres, Frankton and Three Parks fulfil. (relevant to S.O. 3.2.1.5).
- 3.3.11 Provide for a wide variety of activities and sufficient capacity within commercially zoned land to accommodate business growth and diversification. (relevant to S.O. 3.2.1A, 3.2.1.1, 3.2.1.2, 3.2.1.5, 3.2.1.6, and 3.2.1.9).

Climate Change

- 3.3.12 Encourage economic activity to adapt to and recognise opportunities and risks associated with climate change.

[56] There are some matters of substance that our decision will, in due course, deal with. We record, in particular, that various options were proposed on the approach to resorts (in SO 3.3.1B) which need to be considered in light of Topic 2. The court also raised some concerns as to whether the definition of 'resort' (itself not under appeal) was satisfactory for inclusion in a strategic policy as proposed. That issue remains alive. We note the following drafting issues at this stage:

- (a) in SP 3.3.1, we are considering whether or not the proposed words 'including supporting infrastructure' are warranted given the broad expression of this SP allows for matters of such detail to be addressed in other chapter provisions;
- (b) in SP 3.3.2, we are considering whether the proposed words 'and strengths' are appropriate or whether they should be deleted;
- (c) in SP 3.3.3, SP 3.3.6 and SP 3.3.10, we identify some unhelpful inconsistency of expression (both as between them and with the proposed Otago Regional Policy Statement) and are considering whether a clearer and more effective expression could be as follows (tracking against the QLDC Decision Version):

- 3.3.3 Avoid new commercial zoning of land that could is likely to undermine the role of the Queenstown and Wanaka town centres as the primary focus for the District's economic activity. (relevant to S.O. 3.2.1A and 3.2.1.2)
- 3.3.6 Avoid additional commercial zoning that will is likely to undermine the function and viability of the Frankton commercial areas as the key service centre for the Wakatipu Basin, or which will undermine



increasing integration between those areas and the industrial and residential areas of Frankton. (relevant to S.O. 3.2.1.3)

- 3.3.10 Avoid commercial rezoning that would is likely to undermine the key local service and employment function role that the centres outside of the Queenstown and Wanaka town centres, Frankton and Three Parks fulfil. (relevant to S.O. 3.2.1.5)

(d) it appears that there may be omitted cross-referencing to SO 3.2.1A in the bracketed text for SOs 3.3.3, 3.3.4, 3.3.9 and 3.3.11.

[57] Subject to those observations, we find that drafting of the QLDC Closing Version appropriately clear.

Other substantive matters under consideration

[58] For the avoidance of doubt, we record that our above observations do not indicate that the court has formed a view for or against various (relatively confined) substantive content choices being sought by parties to the Topic 1 hearing. Rather, our observations are made subject to reserving our determination of those matters for our decision(s) to follow.

[59] Bearing those parties in mind, the court will make directions to enable Topic 1 parties, who wish to do so, to make supplementary closing submissions on this Minute according to a timetable that will be set before we close the Topic 1 hearing. Parties to Topic 2 are encouraged to consider this Minute in preparation for the Topic 2 hearing.



J J M Hassan
Environment Judge

Issued: **29 MAR 2019**



List of Appellants

ENV-2018-CHC-053	Federated Farmers of NZ
ENV-2018-CHC-054	Gibbston Valley Station Limited
ENV-2018-CHC-055	Hawthenden Limited
ENV-2018-CHC-056	Upper Clutha Environmental Society Incorporated
ENV-2018-CHC-057	Clive Wood
ENV-2018-CHC-058	Ritchie Kerr Trust
ENV-2018-CHC-060	Pujji & Singh (prev Brett Giddens)
ENV-2018-CHC-061	Schrantz
ENV-2018-CHC-062	Jeremy Bell Investments Limited
ENV-2018-CHC-063	Jeremy Bell Investments Limited
ENV-2018-CHC-064	Varina Pty Limited
ENV-2018-CHC-065	Clark Fortune McDonald and Associates
ENV-2018-CHC-066	Matakauri Lodge Limited
ENV-2018-CHC-067	Arthurs Point Protection Society
ENV-2018-CHC-068	Loch Linnhe Station
ENV-2018-CHC-069	Beresford
ENV-2018-CHC-070	Heritage New Zealand Pouhere Taonga
ENV-2018-CHC-071	van Brandenburg
ENV-2018-CHC-072	Kipke
ENV-2018-CHC-073	Southern District Health Board
ENV-2018-CHC-074	Wild Grass Investments No 1. Limited & others
ENV-2018-CHC-075	Jade Lake Queenstown Limited
ENV-2018-CHC-076	Arthurs Point Trustee Limited as trustee of the Arthurs Point Land Trust
ENV-2018-CHC-077	P D Gordon Family Trust
ENV-2018-CHC-078	Department of Conservation
ENV-2018-CHC-079	Otago Regional Council
ENV-2018-CHC-080	Grant
ENV-2018-CHC-081	Grant
ENV-2018-CHC-082	Kawarau Jet Services Holdings Limited
ENV-2018-CHC-083	Mt Cardrona Station Limited
ENV-2018-CHC-084	FII Holdings Limited
ENV-2018-CHC-085	Ngai Tahu Justice Holdings Limited & others
ENV-2018-CHC-086	Streat Developments Limited
ENV-2018-CHC-087	House Movers Section of the New Zealand
ENV-2018-CHC-088	Orchard Road Holdings Limited
ENV-2018-CHC-089	Macfarlane Investments Limited
ENV-2018-CHC-090	Remarkables Station Limited & others
ENV-2018-CHC-091	Burdon
ENV-2018-CHC-092	Trojan Helmet
ENV-2018-CHC-093	Queenstown Airport
ENV-2018-CHC-094	The Middleton Family Trust & others
ENV-2018-CHC-095	Seven Albert Town Property Owners
ENV-2018-CHC-096	Fairfax & others
ENV-2018-CHC-097	Mount Crystal Limited
ENV-2018-CHC-098	Friends of Wakitipu Gardens
ENV-2018-CHC-099	Bill and Jan Walker Family Trust & others
ENV-2018-CHC-100	Peter Manthey
ENV-2018-CHC-101	Universal Developments Limited
ENV-2018-CHC-102	RCL Henley Downs & Others
ENV-2018-CHC-103	Mt Christina Limited
ENV-2018-CHC-104	Soho Ski Area / Blackmans Creek
ENV-2018-CHC-105	Wright
ENV-2018-CHC-106	Te Anau Developments
ENV-2018-CHC-107	Treble Cone Investments
ENV-2018-CHC-108	Aurora Energy Ltd
ENV-2018-CHC-109	Homestead Bay Trustees Limited
ENV-2018-CHC-110	Richter
ENV-2018-CHC-111	Aspiring Lifestyle Retirement Investments Limited



ENV-2018-CHC-112	Queenstown Views Limited
ENV-2018-CHC-113	CSF Trustees Limited
ENV-2018-CHC-114	Transpower NZ Ltd
ENV-2018-CHC-115	Willowridge Developments Ltd
ENV-2018-CHC-116	Wei Heng Fong
ENV-2018-CHC-117	Cardrona Alpine Resort Limited
ENV-2018-CHC-118	Wakatipu Holdings Limited
ENV-2018-CHC-119	Halfway Bay Lands Limited
ENV-2018-CHC-120	Anderson Branch Creek Limited
ENV-2018-CHC-121	Tussock Rise Limited
ENV-2018-CHC-122	Trojan Holdings Limited
ENV-2018-CHC-123	Skyline Enterprises Limited
ENV-2018-CHC-124	Waterfall Park Developments Limited
ENV-2018-CHC-125	Kopuwai Investments Limited
ENV-2018-CHC-126	Remarkables Park Limited
ENV-2018-CHC-127	Queenstown Park Limited
ENV-2018-CHC-128	Well Smart Investment Holding (NZQN)
ENV-2018-CHC-129	Slopehill Properties Limited
ENV-2018-CHC-130	SYZ Investments Limited
ENV-2018-CHC-131	Real Journeys Limited
ENV-2018-CHC-132	Aircraft Owners and Pilots Association
ENV-2018-CHC-133	Royal Forest and Bird
ENV-2018-CHC-134	Ngai Tahu Tourism Limited
ENV-2018-CHC-135	Republic Hospitality Group
ENV-2018-CHC-136	Burgess
ENV-2018-CHC-137	Coneburn Preserve Holdings & Others
ENV-2018-CHC-138	Real Journeys (go Journeys)
ENV-2018-CHC-139	Westwood Group Holdings Limited
ENV-2018-CHC-140	The Otago Foundation Trust Board and Wakatipu Community Presbyterian Church
ENV-2018-CHC-141	Glendhu Bay Trustees Limited
ENV-2018-CHC-142	Queenstown Wharves GP Limited
ENV-2018-CHC-143	Wyuna Preserve Residents Association
ENV-2018-CHC-144	James Wilson Cooper
ENV-2018-CHC-145	Glen Dene Limited
ENV-2018-CHC-146	Real Journeys Limited (trading as Canyon Food & Brew Company Ltd)
ENV-2018-CHC-147	Glen Dene Holdings Limited & Others
ENV-2018-CHC-148	Allenby Farms Limited
ENV-2018-CHC-149	Alps Investment Limited
ENV-2018-CHC-150	Darby Planning LP
ENV-2018-CHC-151	NZ Tungsten Mining
ENV-2018-CHC-152	Queenstown Airport Corporation Limited (designation)
ENV-2018-CHC-160	Lake McKay Station Limited
ENV-2018-CHC-163	Boyd, Redai & others



BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA

IN THE MATTER	of the Resource Management Act 1991
AND	of appeals under clause 14 of the First Schedule of the Act
BETWEEN	DARBY PLANNING LIMITED PARTNERSHIP (ENV-2018-CHC-150) And all other appellants concerning Topic 1 of Stage 1 of the Proposed Queenstown Lakes District Plan Appellants
AND	QUEENSTOWN LAKES DISTRICT COUNCIL Respondent

MINUTE RE PLANNING WITNESS CONFERENCING
ON DRAFTING CLARITY MATTERS
(22 February 2019)

Introduction

[1] This Minute gives directions in relation to expert conferencing of the planners, as has been discussed during the hearing. We emphasise that this direction is confined to drafting considerations, leaving reserved the court's decision on all matters of substance for determination of the appeals for Topic 1. Further, what we set out in response to the request for guidance on principles is simply that and is subject to closing submissions.

[2] The timetable anticipated from here is that:

- (a) all cross-examination and questioning of witnesses is expected to be concluded today;
- (b) conferencing would occur following cross-examination and court questioning on the evidence before the court so that participants are properly informed;



- (c) a Joint Witness Statement ('JWS') will be filed by the morning of Tuesday 26 February;
- (d) all JWS signatories will attend the hearing on Tuesday for cross-examination and court questioning (likely by 'hot tub') (unless the JWS is a consensus document, in which case only Mr Collins must attend); and
- (e) closing submissions will be heard, with QLDC last in sequence, on Wednesday morning.

Conferencing arrangements

[3] While the court is not in a position to offer a facilitator at such late notice, we are comfortable that the conferencing will be ably chaired by QLDC's planning expert, Mr Collins. It would involve those planning witnesses who presently have some differences of opinion on how provisions before the court should be drafted (as reflected in various statements of rebuttal and in answer to questions).

[4] We remind experts that conferencing is to be according to the Code of Conduct. It follows that the JWS must represent the experts' opinions, as independent experts.

Guiding principles

[5] With the rider just noted, at the request of counsel for QLDC for guidance, we make some preliminary observations on some matters of principle concerning drafting approaches. Again, we emphasise that this is guidance on drafting only, not representing any view on what may finally be determined as the content of the Chapter 3 provisions in issue in this hearing. On that basis, we leave aside any observations concerning some contentious proposals, as the proper course on those is for us to issue our determination in due course, in light of all the evidence and submissions received.

Clarity and certainty

[6] An overall guiding principle is that the RMA defines an intended hierarchical relationship between pt 2 RMA and plan objectives, policies and rules (e.g. ss 75(1) and 32). Clarity and certainty in objectives and serving policies and rules is important for maintaining plan integrity in accordance with the RMA's intentions.



What is to be taken to be 'Strategic'

[7] 'Strategic Direction' has always featured as the name of Chapter 3. If the ordinary¹ meaning of 'strategic' is assumed, it connotes something reflecting a long-term plan or aim to achieve a specific purpose. Putting that in an RMA context, our present provisional understanding is Chapter 3 is intended to pertain to long term sustainable management priorities.

[8] The word 'over-arching' has always qualified 'strategic direction' (first sentence). Over-arching does not itself imply supervisory direction in that it can also sit with a less directive model. One ordinary meaning is "sitting over all" (as in an arch). That meaning suggests Chapter 3 'addresses' or 'touches on' the key strategic issues for the district but not necessarily that it does so in comprehensive detail. It is that meaning (rather than 'all-embracing') that we understand Chapter 3 attempts to achieve. That means it allows for Chapter 3 strategic objectives ('SOs') and strategic policies ('SPs') to interface, where intended, with other chapter objectives and policies.

[9] It would seem to us, at this point, that this more qualified meaning of 'over-arching' is reflected in various statements made in the last paragraph of 'Explanation and Issues' (leaving aside Mr Collins' tracked recommended changes). Specifically, the first sentence describes the SOs and SPs as 'addressing' the listed Issues 1 – 6 but the second sentence goes on to describe SOs as 'high level' and 'elaborated on by more detailed objectives' (which we take as encompassing more detailed objectives in other chapters also, at least those of Chapters 4 – 6, but the evidence suggests others also).

[10] All of that is, in light of the evidence, indicative of a design intention that:

- (a) Issues 1 – 6 identify the strategic level issues for the PDP, but only in the sense that this list addresses or touches on those issues rather than being all-embracing on their detail (which may be supplemented or elaborated on elsewhere);
- (b) similarly, the SOs and SPs are not to be treated either in isolation from relevant other chapter objectives and policies or as having inherent primacy in their relationship to other relevant chapter objectives and policies.



¹ My sources of ordinary usage are the Concise Oxford English Dictionary on this occasion (although I prefer the Oxford New Zealand edition when I have access to it).

Rather, as is a relatively standard approach to the consideration of objectives and policies of a plan, they are to be considered according to their relevant groupings and intended relationships in those groupings. For instance, that is reflected in how the last paragraph refers to "elaborated on" and "grouped" (this latter word is used to refer to how Chapter 3 itself is intended to be ordered, but we see this as also consistent with an intention that SOs/SPs and other relevant chapter objectives and policies also be treated in relevant groupings).

SOs and SPs are intentionally to have more or less directive or guiding influence

[11] Cross-examination and questioning revealed some relevant dynamics to that, including how ss 75(1) and 32 express the roles intended by Objectives vis-à-vis pt2 RMA, Policies vis-à-vis Objectives, and Rules vis-à-vis Policies and Objectives. However, those legal requirements do not necessarily preclude a plan design also expressing relative priorities and relationships as between objectives and policies.

[12] The last paragraph of 'Explanation and Issues' (leaving aside Mr Collins' recommended changes) nevertheless reflects an intention that some SOs and SPs are to:

- (a) "provide direction for the more detailed provisions related to zones and specific topics contained elsewhere in the District Plan" (indicating to us a relatively directive higher order role vis-à-vis those more detailed provisions, including objectives and/or policies); or
- (b) "also provide guidance on what those more detailed provisions are seeking to achieve and are accordingly relevant to decisions made in the implementation of the Plan".

[13] Each of those explanations of the intended role of particular SOs or SPs demonstrates that the SOs and SPs are to be applied in tandem with other chapter objectives and policies, but on a basis that some SOs and SPs are more directive in that relationship than others are. Even so, at least where ambiguity or uncertainty arises, all SOs and SPs are intended to inform the overall PDP intention (some more directly than others).



Can a SP be directive as to a chapter objective?

[14] Of course, plan objectives and policies must accord with their statutory roles as specified in s75 RMA (including in their hierarchical relationships). However, with careful drafting, our preliminary view is that the intentions of the PDP design can still be achieved. For example, the requirement that a policy serve to implement or achieve an objective would appear to apply a qualifier to 'relevant' objective. Following from that, if the true intention is that a chapter objective be read as helping to implement a SO, it would appear to be open for a SP (in serving its relevant purpose of implementing a SO) could also provide relevant direction as to how other chapter objectives and policies are intended to be read and applied.

Should the explanation of how SOs and SPs relate to chapter objectives and policies be in a bespoke interpretation provision?

[15] We now address the appropriate drafting approach the paragraph commencing 'This chapter sets out the District Plan's ...'. This is a narrative that functions to describe the relative priorities of SOs and SPs to other objectives and policies. In terms of principles of clear drafting, it may be preferable to put such matters pertaining to interpretation or application of provisions into a specific provision under a heading such as:

Interpretation of Strategic Objectives and Policies

[16] In essence, a bespoke provision of that kind may function much like an interpretation provision in a statute. That is in the sense that an interpretation provision would be read as part of, and in conjunction with, the relevant SOs and SPs it pertains to.

The logical ordering of SOs and SPs in Chapter 3

[17] The ordering of SOs and SPs in Chapter 3 is an important aspect of ensuring better clarity and delivering on the SDP's intentions. Answers given in the court's questioning of planners on the matter of the logical order of SOs and SPs would suggest some reordering is appropriate to those ends. The last paragraph in 'Explanation and Issues' indicates the drafters were mindful of the importance of logical order (e.g. 'Because many of the policies in Chapter 3 implement more than one objective, they are



grouped"). However, answers in questioning by the court would suggest this can be further improved. Some principles we consider sound in this respect include:

- (a) starting with the SO most pertaining to the overall s5 intention;
- (b) working from general to specific (e.g. having elaborating objectives after the objectives they elaborate on); and
- (c) keeping like with like (i.e. logical "grouping").

[18] With those principles in mind, the court invites the planners to consider more logical ordering (e.g. as in the **Annexure**).

Other matters

[19] We have deliberately resisted invitations from some parties and/or witnesses to signal preferences for or against some matters of substantive difference. That is not the proper role of directions of this kind. We simply note the following as some guidance:

- (a) better drafting technique is for important qualifiers or exceptions (in the sense of plan integrity) to be expressed clearly (for instance, on major 'carve out' matters);
- (b) while precision is not always possible, it is desirable to be precise as far as practicable;
- (c) 'more than minor', 'significant' or other hackneyed vagaries do not make for a quality plan. If a qualification needs to be expressed (e.g. enablement subject to riders, or protection subject to riders) a preferable drafting approach would be, at least, to flag the broad themes contemplated by that qualifier;
- (d) cross-referencing may be necessary but carries dangers of inconsistency and mistakes. Self-containment is preferable where possible;
- (e) candidates to a Strategic Directions chapter would be expected to be well-selected. Otherwise, the overall purpose of such a chapter can be defeated; and
- (f) it is undesirable, in plan drafting, to use different words having the same intended meaning. We observe that there appear to be several examples in SOs and SPs of loose drafting method in those terms.



[20] We encourage counsel to brief those planning experts who may have not been in attendance through all relevant parts of the hearing on key matters that arose concerning unclear drafting in specific provisions. We leave to the planners in conferencing to see what further drafting clarity can be delivered in those provisions.

[21] I emphasise that our views are provisional and we have not come to any firm conclusions on any matters referred to in this Minute. We recognise also that the planners have limited time to attend to the issues raised in the evidence. Hence, we do not necessarily expect agreement (or even amended provisions) on everything raised in the evidence. Good resolved positions on some matters are preferable to poor attempted resolutions on everything.

Directions

[22] Subject to any further directions, it is directed:

- (a) the above-noted planning witnesses must attend planning witness conferencing at a time and venue to be arranged by Mr Collins (as chair) (Mr Sergeant having leave to attend only on matters concerning the RPL/QPL/QLDC consent memorandum drafting if he so prefers);
- (b) the planning witnesses in conferencing must file a JWS recording points of agreement and remaining points of disagreement on matters of drafting of provisions;
- (c) the JWS is to be filed by **Monday 25 February 2019 at 4.00 pm**;
- (d) Mr Collins, and those planning witnesses who have points of disagreement (as recorded in the JWS) are to attend the hearing on **Tuesday 26 February 2019 at 10.00 am**, for cross-examination and questioning on the JWS;
- (e) leave is reserved to any party who seeks to cross-examine any signatory to the JWS to apply to do so (orally or in writing by **Tuesday 26 February 2019, 9.00 am**);
- (f) written closing submissions from QLDC (and other parties who wish to) will be heard on **Wednesday 27 February 2019**; and



(g) leave is reserved for any party to apply for further (or other) directions.



J J M Hassan
Environment Judge

Issued: 22 February 2019



STRATEGIC DIRECTION 3

TOPIC 1

Key: Andrew Collins evidence

Recommended changes in red underlined and ~~struck-through~~ text (evidence-in-chief dated 12 October 2018). The substance of Issues 2 and 4 are allocated to Topic 2.

Recommended changes in blue underlined and ~~struck-through~~ text (rebuttal evidence dated 23 January 2019).

Recommended changes in green underlined and ~~struck-through~~ text with grey highlighting were agreed in mediation on Topic 1 Subtopic 4 (October 2018).

Recommended changes in purple underlined and ~~struck-through~~ text with grey highlighting were agreed in mediation on Topic 2 Subtopic 11 (October 2018).

NB: The underlying Word format of this recommended chapter has been updated since filing evidence-in-chief on 12 October 2018.

3 Strategic Direction

3.1 Explanation and Issues Purpose

This chapter sets out the over-arching strategic direction for the management of growth, land use and development in a manner that ensures sustainable management of the Queenstown Lakes District's special qualities:

- a. dramatic alpine landscapes free of inappropriate development;
- b. clean air and pristine water;
- c. vibrant and compact town centres;
- d. compact and connected settlements that encourage public transport, biking and walking;
- e. diverse, resilient, inclusive and connected communities;
- f. a district providing a variety of lifestyle choices;
- g. an innovative and diversifying economy based around a strong visitor industry;
- h. a unique and distinctive heritage;
- i. distinctive Ngāi Tahu values, rights and interests.

The following issues need to be addressed to enable the retention of these special qualities:

- a. Issue 1: ~~Economic prosperity and equity, including strong and robust town centres, requires economic diversification to enable the social and economic wellbeing of people and communities. The social and economic wellbeing and resilience of the District's communities may be challenged in future if the District's economic base lacks diversification, supporting infrastructure and growth.~~
- b. Issue 2: growth pressure impacts on the functioning and sustainability of urban areas, and risks detracting from rural landscapes, particularly its outstanding landscapes.
- c. Issue 3: High growth rates can challenge the qualities that people value in their communities.
- d. Issue 4: ~~The District's natural environment, particularly its outstanding landscapes, has intrinsic qualities and values worthy of protection in their own~~



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right, as well as offering significant economic value to the District. Inappropriate activities (use or development) have the potential to affect the intrinsic qualities and values of the District's natural environment, particularly its outstanding landscapes, which are valued by the community and from which the District derives significant economic value.

- e. Issue 5: The design of developments and environments can either promote or weaken safety, health and social, economic and cultural wellbeing.
- f. Issue 6: Tangata Whenua status and values require recognition in the District Plan. Activities in the District may affect Tangata Whenua values if these values are not sufficiently understood and recognised.

This chapter sets out the District Plan's over-arching strategic Objectives and Policies addressing these issues, including strategic direction for developing the other chapters within the Plan, and for its subsequent implementation and interpretation. High level objectives are elaborated on by more detailed objectives. Where these more detailed objectives relate to more than one higher level objective, this is noted in brackets after the objective. Because many of the policies in Chapter 3 implement more than one objective, they are grouped, and the relationship between individual policies and the relevant strategic objective(s) identified in brackets following each policy. The objectives and policies in this chapter are further elaborated on in Chapters 4 – 6. The principal role of Chapters 3 - 6 collectively is to provide direction for the more detailed provisions related to zones and specific topics contained elsewhere in the District Plan. In addition, they also provide guidance on what those more detailed provisions are seeking to achieve and are accordingly relevant to decisions made in the implementation of the Plan. The strategic objectives and strategic policies in this Chapter have primacy over the objectives and policies in the other chapters of the District Plan. This means that objectives in other chapters must be consistent with the strategic objectives in this Chapter and the policies in other chapters must be consistent with the strategic policies in this Chapter.

3.2 Strategic Objectives

3.2.1 The District's residents and communities are able to provide for their social, cultural and economic wellbeing and their health and safety. (addresses Issues 1 and 6)

3.2.2 The partnership between Council and Ngāi Tahu is nurtured. (addresses Issue 6).

3.2.2.1 Ngāi Tahu values, interests and customary resources, including taonga species and habitats, and wahi tupuna, are protected.

3.2.2.2 The expression of kaitiakitanga is enabled by providing for meaningful collaboration with Ngāi Tahu in resource management decision making and implementation.

3.2.3 The distinctive natural environments and ecosystems of the District are protected. (addresses Issue 4)

3.2.3.1 Development and land uses that sustain or enhance the life-supporting capacity of air, water, soil and ecosystems, and maintain indigenous biodiversity.

The spread of wilding exotic vegetation is avoided.

The natural character of the beds and margins of the District's lakes, rivers and wetlands is preserved or enhanced.



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- 3.2.3.4 The water quality and functions of the District's lakes, rivers and wetlands are maintained or enhanced.
- 3.2.3.5 Public access to the natural environment is maintained or enhanced.
- 3.2.4 The retention of the District's distinctive landscapes. (addresses Issues 2 and 4)**
- 3.2.4.1 The landscape and visual amenity values and the natural character of Outstanding Natural Landscapes and Outstanding Natural Features are protected from adverse effects of subdivision, use and development that are more than minor and/or not temporary in duration.
- 3.2.4.2 The rural character and visual amenity values in identified Rural Character Landscapes are maintained or enhanced by directing new subdivision, use or development to occur in those areas that have the potential to absorb change without materially detracting from those values.
- 3.2.5 Urban growth is managed in a strategic and integrated manner. (addresses Issue 2)**
- 3.2.5.1 Urban development occurs in a logical manner so as to:
- a. promote a compact, well designed and integrated urban form;
 - b. build on historical urban settlement patterns;
 - c. achieve a built environment that provides desirable, healthy and safe places to live, work and play;
 - d. minimise the natural hazard risk, taking into account the predicted effects of climate change;
 - e. protect the District's rural landscapes from sporadic and sprawling development;
 - f. ensure a mix of housing opportunities including access to housing that is more affordable for residents to live in;
 - g. contain a high quality network of open spaces and community facilities; and
 - h. be integrated with existing, and planned future, infrastructure.
- 3.2.6 A quality built environment taking into account the character of individual communities. (addresses Issues 3 and 5)**
- 3.2.6.1 The District's important historic heritage values are protected by ensuring development is sympathetic to those values.
- 3.2.7 The development of a prosperous, resilient and equitable economy in the District (addresses Issue 1)**
- 3.2.7.1 The significant socioeconomic benefits of well designed and appropriately located visitor industry facilities and services are realised across the District.



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- 3.2.7.2 The Queenstown and Wanaka town centres¹ are the hubs of New Zealand's premier alpine visitor resorts and the District's economy.
- 3.2.7.3 The Frankton urban area (including the Remarkables Park mixed use centre) functions primarily as a commercial and Industrial service centre, and provides community facilities, for the people of the Wakatipu Basin and visitors.
- 3.2.7.4 The key function of the commercial core of Three Parks is focused on large format retail development.
- 3.2.7.5 Local service and employment functions served by commercial centres and industrial areas outside of the Queenstown and Wanaka town centres², Frankton and Three Parks, are sustained.
- 3.2.7.6 Diversification of the District's economic base and creation of employment opportunities through the development of innovative and sustainable enterprises.
- 3.2.7.7 Agricultural land uses consistent with the maintenance of the character of rural landscapes and significant nature conservation values are enabled.
- 3.2.7.8 Diversification of land use in rural areas beyond traditional activities, including farming, provided that the character of rural landscapes, significant nature conservation values and Ngāi Tahu values, interests and customary resources, are maintained.
- 3.2.7.9 Infrastructure in the District that is operated, maintained, developed and upgraded efficiently and effectively to meet community needs, while managing adverse effects on the environment, to meet community needs and to maintain the quality of the environment.

30 Energy and Utilities

30.2 Objectives and Policies

- 30.2.8 Objective - The national significance of the National Grid is recognised by the facilitation of the ongoing operation, maintenance, development and upgrading of the National Grid, while subject to the adverse environmental effects on the environment of the National Grid, and on the National Grid, are network being managed.

- Policies 30.2.8.1 Recognise the benefits of the National Grid by:
a. enabling the operation and maintenance of the National Grid;



Defined by the extent of the Town Centre Zone in each case

Defined by the extent of the Town Centre Zone in each case

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- b. providing for the upgrade use and development of the National Grid, while-managing its adverse effects by:
 - i. seeking to avoid adverse effects on the values and attributes of the following:
 - A. Scheduled Significant Natural Areas, and those other areas that meet the criteria in Policy 33.2.1.8;
 - B. Outstanding Natural Landscapes and Features;
 - C. Rural Character Landscapes and other amenity landscapes,
 - ii. where avoiding adverse effects on the values listed in b(i) above is not practicable, remedying or mitigating the adverse effects on those values;
 - iii. avoiding, remedying or mitigating other adverse effects;
- c. when considering the adverse effects of the upgrade and development of the National Grid, having regard to:
 - i. the extent to which measures to avoid, remedy or mitigate adverse effects may be constrained by functional needs;
 - ii. the extent to which adverse effects have been addressed through site, route or method selection;
 - iii. opportunities to reduce existing adverse effects;
 - iv. offsetting for residual adverse effects on indigenous biological diversity.

30.2.8.2 In the event of any conflict with the objectives and policies in chapters 3, 6, 23 and 33 or Policies 30.2.6.1 and 30.2.7.1, Policy 30.2.8.1 takes precedence. The Assessment Matters (Landscape) in chapters 21 and 23 in this plan are relevant when implementing the policy.

30.2.8.3 Managing adverse effects on the National Grid by:

- a. only allowing buildings, structures and earthworks in the National Grid Yard where they will not compromise the operation, maintenance, upgrade and development of the National Grid;
- b. avoiding National Grid Sensitive Activities within the National Grid Yard and, to the extent reasonably possible, managing activities to avoid reverse sensitivity effects on the National Grid;
- c. managing potential electrical hazards, and the adverse effects of buildings, structures and National Grid Sensitive Activities on the operation, maintenance, upgrade and development of the Frankton Substation;
- d. managing subdivision within the National Grid Subdivision Corridor to avoid reverse sensitivity effects and to ensure that the National Grid is not compromised so as to facilitate good amenity and urban design outcomes.



Definitions

Policy 2 Sub-transmission Infrastructure

means electricity infrastructure which conveys electricity between:

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- i. the National Grid and zone substations;
- ii. renewable energy generation sources and zone substations; or
- iii. zone substations.

Functional needs

Means the locational, operational, practical or technical needs of an activity, including development and upgrades.

National Grid

Means the network that transmits high-voltage electricity in New Zealand and that ~~is at the notification of this Plan, was owned and operated by Transpower New Zealand Limited, including:~~

- a. transmission lines; and
- b. electricly substations.

Regionally Significant Infrastructure

Means:

- a. renewable electricity generation activities undertaken by an electricity operator; and
- b. the national grid; and
- c. electricity sub-transmission infrastructure; and
- d. significant electricity distribution infrastructure as shown on the District Plan Maps
- e. telecommunication and radio communication facilities; and
- f. state highways; and
- g. Queenstown and Wanaka airports and associated navigation infrastructure.

