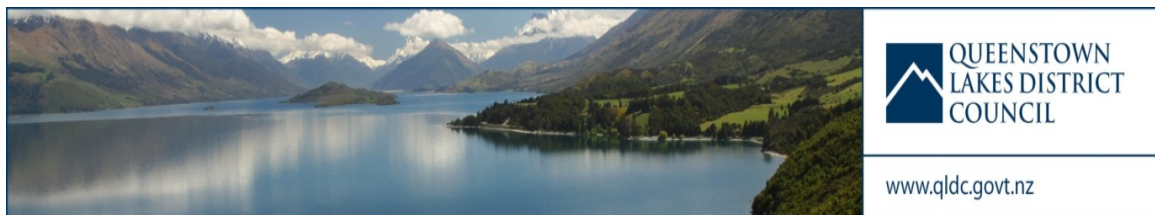


DECISION OF THE QUEENSTOWN LAKES DISTRICT COUNCIL

RESOURCE MANAGEMENT ACT 1991

Applicants:	Bunnings Limited
RM reference:	RM170347
Location:	148-150 Frankton – Ladies Mile Highway, Frankton
Proposal:	Land use consent is sought to construct and operate a Bunnings retail store, with associated parking, access, landscaping, earthworks and signage.
Type of Consent:	Land Use Consent
Legal Description:	Lot 1 and 2 Deposited Plan 23542
Zoning:	Frankton Flats B (Activity Area E1): Operative District Plan
Activity Status:	Non-complying activity
Public Notification:	23 August 2017
Commissioners:	Commissioners Dr Lee Beattie, Ms Jan Caunter and Ms Gina Sweetman
Date:	9 March 2018
Decision:	CONSENT IS REFUSED



IN THE MATTER

of the Resource Management Act 1991

AND

IN THE MATTER

Of an Application to **QUEENSTOWN LAKES DISTRICT COUNCIL** by **BUNNINGS LIMITED (RM170347)**

DECISION OF COMMISSIONERS DR LEE BEATTIE, MS JAN CAUNTER AND MS GINA SWEETMAN APPOINTED BY QUEENSTOWN LAKES DISTRICT COUNCIL

The Hearing and Appearances

Hearing Date: Tuesday 16 January and Wednesday 17 January 2018 in Queenstown

Appearances for the Applicant: Mr Daniel Minhinnick, Legal Counsel

Mr Brett Lawrence, National Development Manager for New Zealand, Bunnings Limited

Mr Tim Heath, Urban Demographer, Property Economics Limited

Mr Mark Tansley, Statistical and Retailing Consultant, Director of Marketplace New Zealand Limited

Mr Richard Knott, Urban Designer

Mr Robert Pryor, Landscape Architect

Mr Paddy Baxter, Landscape Architect, Director of Baxter Design Group

Mr Michael Rossiter, Principal Transportation Engineer, Traffic Design Group Limited

Ms Kay Panther Knight, Planning Consultant and Director of Forme Planning Limited

Appearances for the Queenstown Lakes District Council

Ms Erin Stagg, Senior Planner

Mr Blair Devlin, Manager: Planning Practice

Mr Michael Wardill, Engineer

Mr Derek Foy, Economic Consultant, M.E Consulting

Mr David Compton-Moen, Landscape Architect, DCM Urban

Appearances for Submitters:

Mr Lindsay Williams

Mr Graeme Todd, Legal Counsel, H
& J Smith Limited

Abbreviations

The following abbreviations are used in this decision:

Bunnings Limited	‘the Applicant’
Queenstown Lakes District Council	‘the Council’
The Operative Queenstown Lakes District Plan	‘the District Plan’
The Proposed Queenstown Lakes District Plan	‘the Proposed District Plan’
Assessment of Environmental Effects	‘AEE’
Resource Management Act 1991	‘RMA’ or ‘the Act’
The New Zealand Transport Agency	‘NZTA’

The land subject to this application is referred to as “the site”.

The hearing was closed on 8 February 2018, following confirmation from the Commissioners that we had sufficient information to make a decision on the application.

INTRODUCTION AND BACKGROUND

1. This decision is made on behalf of the Queenstown Lakes District Council ('the Council') by Independent Hearing Commissioners Dr Lee Beattie, Ms Jan Caunter and Ms Gina Sweetman, appointed and acting under delegated authority under sections 34 and 34A of the Resource Management Act 1991 ('the RMA').
 2. The site is located at 148- 150 Frankton – Ladies Mile Highway, Frankton. It has a legal description as Lots 1 and 2 Deposited Plan 23542. The site comprises a total area of 16201m².
 3. The site and the surrounds have been set out in detail within Ms Panther Knight's AEE at Part 3. There was no disagreement between the parties over her site and location description, and therefore Ms Panther Knight's description is adopted for this decision.
 4. In reaching this decision we have considered:
 - a. The application, its AEE and all its supporting expert reports and documents;
 - b. The Council officer's s.42A report, with supporting expert reports attached to her s.42A report;
 - c. The pre-circulated evidence from the applicant;
 - d. The written submissions from the submitters to the application;
 - e. The submissions (both from the applicant and submitters) and evidence provided at the hearing;
 - f. The responses to our questions during the hearing process;
 - g. The Applicant's right of reply;
 - h. The site visit; and
 - i. The relevant provisions of both the Operative and Proposed Queenstown Lakes District Plans.
-

THE PROPOSAL

5. The proposed development is for a new 'Bunning Retail Store' and was described in detail within Ms Panther Knight's AEE (Part 4) and Ms Stagg's s.42A report. Ms Stagg's report highlighted a number of amendments made by the applicant through the application process and before the completion of her s.42A report. The proposal comprises the following key features:
 - The removal of the existing garden centre on site;
 - The construction of a new 8,119m² Bunnings Store, including the main retail area, timber trade sales, outdoor nursery and landscape yard;
 - Building of varied heights up to a maximum of 12 metres
 - Earthworks
 - Surface grade car parking
 - Landscaping

- Signage, including a 6 metre high pole sign fronting State Highway 6; and
 - Access from State Highway 6 (left in and left out only).
6. There was no disagreement between the parties over Ms Panther Knight's description of the proposal, including Ms Stagg's amendments set out in her s.42A report, and these are therefore adopted for this decision¹.

NOTIFICATION AND SUBMISSIONS

7. The application was publicly notified on 23 August 2017, with submissions closing on 20 September 2017.
8. Four submissions were received, all in opposition. Of these, Mr Paul Wilson raised concerns about the potential adverse off-site lighting effects, including cumulative effects and the impact the proposal could have on the night sky. He also raised concerns about the level of signage proposed. He sought that the light levels be controlled and exterior signage only be illuminated in trading hours. Finally, he sought controls over the level of, and height of, the signage proposed. We note that Mr Wilson did not appear at the hearing in support of his submission.
9. The New Zealand Transport Agency (NZTA) initially opposed the application on a range of traffic engineering grounds. However, following discussions with the applicant and further design changes, which will be considered later in our decision, the NZTA amended its submission to neutral.
10. Mr Lindsay Williams raised significant concerns about the proposal and sought that consent be refused. In essence, his concerns related to:
- The proposal would undermine the planning approach taken (through the district plan) for the Frankton B Flats area, including the appropriate mix and range of land use activities;
 - The proposal provides for eight times the GFA permissible in the zone;
 - Impacts from the traffic movement into and from the site onto State Highway 6;
 - The failure to provide a footpath and cycle way in front of the site;
 - The height, bulk and massing are beyond what was anticipated in the Zone;
 - The signage, which he considered completely inappropriate for this location; and
 - That there are better locations in the district for an activity of this nature.
11. Mr Graeme Todd, on behalf of H & J Smith, suggested that the adverse visual amenity and supply of industrial land effects were more than minor and that the proposal was contrary to the objectives and policies of the District Plan. Moreover, he suggested that the proposal would generate cumulative adverse effects and this proposal in this location would adversely

¹ Section 2 of Ms Stagg's s.42A report

impact on the amenity of the existing town and business centres. Finally, he suggested that the proposal is contrary to Part 2 of the RMA.

12. As we will address later in our decision, issues surrounding trade competition were raised by the applicant over H & J Smith's submission.

CONSENTS REQUIRED

13. The site is zoned Frankton Flats B, Activity Area E1 sub-zone under the District Plan. The reasons for consent were specified in detail within part 5.2 of Ms Stagg's s.42A report, including the District Plan's objectives and policies at Appendix 12. There was no disagreement between the parties as to the range of consents required. As a result we adopted these for this decision, noting that the activity overall must be assessed as a **non-complying activity**.
14. As a non-complying activity, the application is subject to a s.104D gateway assessment before a s.104 determination can be made. In essence, which we will expand on this later on in our decision, s.104D requires the applicant to show that the adverse effects on the environment are no more than minor (noting that there is no balancing between positive and adverse effects) or that the proposal is not contrary to the objectives and policies of the Operative and Proposed District Plans in order to then be determined under s.104. Our decision will follow this format and only undertake a s.104 determination if one or both of the s.104D gateway test are met.
15. For completeness, based on Council records it appears more than likely that the proposed activity would be on a piece of land that is considered to be a *HAIL* site. Accordingly, consent is required as a controlled activity pursuant to Clause 9 of the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health 2012.

The Proposed District Plan

16. Ms Stagg advised that on 29 September 2016 the Council resolved to separate the District Plan into two volumes, Volume A and Volume B, based on geographic area. Volume A consists of the Proposed District Plan chapters notified in Stages 1 and 2 of the Proposed District Plan. All other land currently forms Volume B of the District Plan.
17. She advised that the Frankton Flats B Zone (FFB Zone) is contained within Volume B (the District Plan). The reason for this is because land that was subject to a plan change at the time of notification of the Proposed District Plan, or in the case of the FFB Zone had only recently been made operative, has been excluded from the Proposed District Plan to eliminate the potential for these plan changes to be submitted upon and re-litigated through the Proposed District Plan hearings and appeal processes. Other land in proximity to the application site and FFB Zone

that is also contained in Volume B are Quail Rise Zone, Remarkables Park, Industrial A Zone and the Quail Rise Zone.

18. As considered above Ms Stagg advised that the Council is currently undertaking assessments on business and industrial land for the purposes of the National Policy Statement on Urban Development Capacity 2016 and intend to notify the remaining business and industrial land in the Proposed District Plan in the first quarter of 2019. For these reasons, the FFB Zone is not part of the Proposed District Plan at this point in time.

STATUTORY FRAMEWORK S.104D AND CONSENTING BACKGROUND

19. In this part of our decision, we set out the statutory framework for s.104D of the Act and the consenting background. The latter is relevant because, as discussed above, other applications for resource consent in this zone have been the subject of much judicial scrutiny and these were part of discussions with the witnesses. Also, the Environment Court spent several years considering the Council's Proposed Plan Change 19, which put in place the FFB zone and Activity Areas relevant to the Bunnings application.
20. The application must pass one of the 'gateway' tests set out in s.104D. If it passes one or both of those tests, it may then be considered under s.104. The two gateway tests in section 104D require that either:

- A) Any adverse effects of the activity will be minor; or
- B) The activity is not contrary to the objectives and policies of the relevant district plans.

21. In terms of the first legal test, case law has confirmed the meaning of minor. In *Elderslie Park*,² the High Court stated:

"The word 'minor' is not defined in the Resource Management Act. It means lesser or comparatively small in size or importance. Ultimately an assessment of what is minor must involve conclusions as to facts and the degree of effect. There can be no absolute yardstick or measure."

22. In *Saddle Views*,³ the Environment Court approached the test this way:

"Turning to the dictionaries we find that the adjective 'minor' is defined in the New Zealand Oxford Dictionary of 'lesser or comparatively small in size or importance'. According to the Shorter Oxford English Dictionary 'minor' means '...lesser....opposite to major...comparatively small or unimportant'. We hold that those meanings are what is intended in section 104D(1)(a). The reference to 'comparatively' emphasises that what is minor depends on context – and at least all the authorities agree on that."

² *Elderslie Park Limited v Timaru District Council* [1995] NZRMA 433 (HC) at 445-446

³ *Saddle Views Estate Limited v Dunedin City Council* [2014] NZEnvC 243 at [78]

23. Under the second test of section 104D(1)(b), in order to be “contrary to” the objectives and policies of the relevant plans, an activity must be “opposed to” or “repugnant to” the objectives and policies.⁴
24. Case law generally confirms that the objectives and policies must be considered as a whole. However, it is possible for one objective or policy to trump all others, albeit such situations would be rare. In that regard, the Environment Court has stated:⁵

“..if a proposal is to be stopped at the second gateway it must be contrary to the relevant objectives and policies as a whole. We accept immediately that this is not a numbers game: at extremes it is conceivable that a proposal may achieve only one policy in the district plan and be contrary to others. **But the proposal may be so strong in terms of that policy that it outweighs all the others if that is the intent of the plan as a whole.** Conversely, a proposal may be consistent with and achieve all bar one of the relevant objectives and policies in a district plan. **But if it is contrary to a policy which is, when the plan is read as a whole, very important and central to the proposal before the consent authority, it may be open to the consent authority to find the proposal is contrary to the objectives and policies under section 104D.** We add that it is rare for a consent authority, or the court, to base its decision either way, on a single objective or policy. The usual position is that there are sets of objectives or policies either way, and **only if there is an important set to which the application is contrary can the local authority rightly conclude that the second gate is not passed.**”

(our emphasis)

25. This passage signals to us that while the general approach is that objectives and policies should be read as a whole, there may be some occasions when a particular part of a plan, or even one objective or policy, provides clear and indisputable direction on the intent for the zone or sub-zone and the land use activity to occur there. There may be specific objectives and policies that direct land use and which should take precedence over more general plan provisions. The important point is that the plan must be read as a whole in undertaking that assessment.
26. As noted by the Supreme Court in the *King Salmon* decision,⁶ it is important to interpret objectives and policies within their proper context and to give words in planning documents their plain and natural meaning. In that case, where the term “inappropriate” was used in the context of protecting areas from inappropriate subdivision, use and development under section 6(a) of the Act, the natural meaning was that “inappropriateness” should be assessed by reference to what it was that was sought to be protected.⁷

⁴ *NZ Rail v Marlborough District Council* [1994] NZRMA 70 (HC) at [80]

⁵ *Akaroa Civic Trust v Christchurch City Council* [2010] NZEnvC 110 at [74]; see also *Re Waiheke Marinas Ltd* [2015] NZEnvC 218

⁶ *Environmental Defence Society Inc v Marlborough District Council* [2014] NZSC 38

⁷ At paragraph [101]

27. Likewise, the Supreme Court noted that the language of relevant policies is important. The use of the word “avoid” meant “not allow” or “prevent the occurrence of”. The word “inappropriate” was to be assessed against the characteristics of the environment the relevant policies sought to preserve.⁸ While some policies left some room for flexibility, others were more directive and specific in their terms. The differences in approach mattered.⁹ The opening words of a policy were also relevant in understanding the reference to “avoid adverse effects”.¹⁰
28. We have adopted this approach in our assessment of the relevant objectives and policies.
29. The Frankton Flats B zone was finalised after some 7 years of hearings before the Council and Environment Court (Plan Change 19). Specific objectives and policies and their associated rules separate out various types of land use through the use of Activity Areas. The subject site sits within Activity Area E1 sub-zone. Our reading of the Court’s various decisions indicates serious consideration was given to the location of specific activities in the Activity Areas. From Plan Change 19’s earliest stages, it was the Council’s intent that Activity Areas E1 and E2 were to provide for predominantly industrial and trade service activities, but in order to ensure the land was used for its intended purpose within Activity Area E1 sub zone, any office and/ or retail was intended to be “minimal and ancillary to the principal use of the site”.¹¹
30. Through the Court’s three Interim Decisions and its Final Decision¹², the final wording of Objective 10 and its relevant associated policies was arrived at, specifically excluding retailing in Activity Area E1 sub zone unless it is ancillary to the primary land use.
31. At the same time as Plan Change 19 was being considered by one division of the Environment Court, applications for resource consent were made by Foodstuffs South Island Limited to establish and operate a Pak n Save supermarket and by Cross Roads Properties Limited to establish and operate a Mitre 10 Mega store. Both applications were non-complying activities. In both cases, the properties were zoned Rural General under the Operative District Plan. Under Proposed Plan Change 19, the Pak n Save site was zoned both Activity Areas E1 and E2 sub zones and the Mitre 10 Mega site was zoned Activity Area E1 sub zone.
32. These applications made their way to the Environment Court on appeal and were heard by a different division of the Court to that hearing Plan Change 19.¹³ The Environment Court granted consent to both applications.

⁸ At paragraph [126]

⁹ At paragraph [127]

¹⁰ At paragraph [145]

¹¹ *Queenstown Airport Corporation Inc and others v QLDC* [2013] NZEnvC 14 at [440]

¹² *Queenstown Airport Corporation Limited and others v QLDC* [2013] NZEnvC 14, [2014] NZEnvC 54, [2014] NZEnvC 93 and [2014] NZEnvC 197

¹³ *Foodstuffs (South Island) Limited v QLDC* [2012] NZEnvC 135; *Cross Roads Properties Limited v QLDC* [2012] NZEnvC 177

33. The Environment Court's decisions were appealed to the High Court by another party, Queenstown Central Limited. The two appeals were heard together. The High Court held that material errors of law were made by the Environment Court in granting consent.
34. In considering the Mitre 10 Mega proposal against Objective 10 of the Plan as it stood at that time and s.104D of the Act, the High Court noted the following relevant points:¹⁴

"When interpreting objective 10, it is important to keep in mind the indisputable context that there is a shortage of industrial land in Queenstown. The Environment Court accepted that. The only issue being, how big was the shortage?"¹⁵

"For s104D(1)(b), the question is not whether some retail activities can be provided for in plan change 19, but whether the scale of the retail activity proposed in E1 and E2 can be provided consistent with the industrial objectives."¹⁶

"The question in s104D(1)(b) is whether there can be a gateway satisfaction that the proposal will not compromise any objectives and policies."¹⁷

"....no consent authority informed by the purpose of s 104D and applying subsection (1)(b) as intended could have been satisfied that allowing two big box retail operations to locate in the E1 and E2 zones would not be contrary to at least policies 10.1, 10.2, 10.5 and 10.11."¹⁸

"The section 104D(1)(b) test "....is not an overall judgment of some degree of the adverse effects of the proposal. The test is tougher. The activity must not be contrary to any of the objectives or policies."¹⁹

"...it was not the intention of Parliament that this gateway section should be used for finessing out qualifiers of one objective by looking at another objective, to reach some overall conclusion that viewed "as a whole" the objectives allowed retail activity of this size in the E1 and E2 zones."²⁰

"It is abundantly clear that E1 and E2 were intended to be predominantly industrial areas for light industry, with business activity related thereto."²¹

35. We have applied the High Court reasoning to our assessment of the objectives and policies later in our decision. We consider the specific policy direction in Objective 10 and its associated policies must take priority over the more general policies found in other parts of

¹⁴ *Queenstown Central Limited v QLDC* [2013] NZHC 817

¹⁵ At paragraph 25

¹⁶ At paragraph 29

¹⁷ At paragraph 30

¹⁸ At paragraph 35

¹⁹ At paragraph 37

²⁰ At paragraph 39

²¹ At paragraph 40

the Plan. As the High Court noted, it is incorrect to finesse out qualifiers of the various objectives and view the proposal as a whole.

36. We do not agree with the submissions for the Applicant that:²²

“...it would be inappropriate to read down the importance of directive district-wide provisions by preferring more specific provisions that are less directive. Just because a policy relates to a specific site, it does not mean that it should trump broader objectives or policies.”

37. That approach fails to read the plan as a whole. The district wide provisions do not provide more directive policy in this case. Objective 10 and its associated policies provide clear directive policy, that must trump the district wide provisions. That does not mean the district wide objectives and policies are irrelevant. Those too have been assessed.
38. We shall expand on these points within our assessment of the District Plan’s objectives and policies section in that part of our s.104D assessment.

LEGAL SUBMISSIONS AND EVIDENCE

For the Applicant

39. **Mr Daniel Minhinnick** introduced the application with detailed legal submissions. In doing so, he began by highlighting a number of changes the applicant had undertaken to the proposal resulting from their on-going consultation with NZTA and the comments received from Council. This had resulted in the following changes to the proposal:
- Revised access arrangements from State Highway 6;
 - Revised landscaping plan to provide greater screening of the proposal from State Highway 6;
 - Reduction in the signage (size and number); and
 - Reducing the pylon size and altering its location.
40. Mr Minhinnick submitted that the evidence would show that the application would meet both tests under s.104D, that the effects were no more than minor and the proposal was not contrary to either the District Plan or Proposed District Plan.
41. Mr Minhinnick then addressed the site and its location and stressed the dynamic state of the area and brought to our attention the high degree of development currently taking place in the Activity Area E1 subzone, including a range of commercial, retail and light industrial land use activities. This was supported by a land use survey undertaken by Mr Knott which was presented to us. He reinforced the applicant’s view that the site was in an ideal location for a

²² Closing submissions for the Applicant at paragraph 2.11

Bunnings Store of this nature and that Bunnings require large sites which could not generally be provided for in town centres. He then submitted:

“that other centres in the district were unsuitable for trade supplies for a number of reasons, including their relative inaccessibility, small lot sizes and fragmented land ownership, as well as unsustainable land prices”²³.

42. He then turned to the relevant statutory framework and took us through the s.104D tests and how, he submitted, based on the relevant case law, this should be applied. This is especially relevant given the long and detailed statutory history surrounding the Plan Change that established the Frankton Flat B zoning framework and a number of relevant resource consent applications in the local area, which we have considered above.
43. We note that at the beginning of the hearing we asked the Council for copies of the relevant High and Environment Court decisions as they related to this application and Plan Change 19.
44. Mr Minhinnick submitted that the key issues still in contention were related to:
 - Landscape effects;
 - Urban Design effects; and
 - The supply of industrial zoned land.
45. He submitted that the traffic issues were now addressed with NZTA and that this matter was no longer in contention and that the traffic effects were minor. In terms of landscape effects he submitted that Mr Pryor’s and Mr Baxter’s evidence had shown that the building was appropriate to its context, especially in light of the amended landscape design, which included the introduction of a row of mountain beech (*Nothofagus solandri* var. *cliffortioides*) fronting State Highway 6. He was highly critical of Mr Compton-Moen’s assessment and suggested he had fundamentally misinterpreted the District Plan through his assessment of the relevant District Plan provisions and how these should be applied. As a result, he submitted that his evidence should be treated with *“some care”*.²⁴
46. In turning to urban design, Mr Minhinnick submitted that Mr Knott’s evidence had shown that the proposed building structure was appropriate in urban design terms. Again, for the same reasons as with the landscape issues we were advised to treat Mr Compton-Moen assessment’s with some care.
47. This left the issue of industrial land supply, which he submitted that the evidence of Mr Heath and Mr Tansley had shown that the impact of the proposal would be minor.

²³ Mr Minhinnick submission dated 16 Jan 2018, paragraph 2.4

²⁴ Mr Minhinnick submission dated 16 Jan 2018, paragraph 4.12 (d) and 4.13

48. He submitted that once the s.104D tests were met, we could consider the application under s.104 and he then highlighted a range of positive effects the proposal would bring to the district, including:
- New employment opportunities;
 - Supply of trade equipment which could assist in lowering the costs of construction;
 - The benefits of Bunning's national pricing policy; and
 - A well designed building with extensive landscaping.
49. Mr Minhinnick turned to the relevant planning provisions, beginning with the National Policy Statement on Urban Development Capability. He submitted that the evidence of Mr Heath and Mr Tansley had shown that there was sufficient industrial land supply until 2030. He submitted that it was also unreasonable and inappropriate for the applicant to have to show that there is a 30 year supply of industrial zone land in the district.²⁵ In his view this was the Council's role and should be addressed through the Proposed District Plan process. However, he did suggest that there was about to be re-zoned industrial land in the 'Coneburn' Area. As we were to discover later on, this was not the case, as the Council officer dealing with this part of the Proposed District Plan had recommended to the Proposed District Plan Commissioners that this land not be re-zoned in this way.²⁶
50. He then addressed the planning framework, including the District Plan and Proposed District Plan and submitted that Ms Panther Knight's evidence had shown that the application was not contrary to these objectives and policies, it thereby met this test under s.104D.
51. He then addressed us on the issue of precedent effects and how the Council's officer (Ms Stagg) had raised this matter. He submitted, based on Ms Stagg's own s.42A report which recognises the unique characteristics of the site, that there could not be any precedent effects resulting from the application. He highlighted Ms Panther Knight's evidence, which set out, in her view, four similar applications approved by the Council in the local area.
52. He then moved to the issue of Part 2 and how we should approach this in light of *Environmental Defence Society Inc v The New Zealand King Salmon Company and Ors* [2014] NZSC 38 and *RJ Davidson Family Trust v Marlborough District Council* [2017] NZHC 52. He submitted, with respect to the High Court that we should take the approach set out in *Envirofume Services Limited v Bay of Plenty Regional Council* [2017] NZEnvC 12 where Part 2 provides an overview or check on the application process. He highlighted Ms Panther Knight's Part 2 assessment as part of her evidence.
53. Mr Minhinnick then turned to the submitters. He noted that NZTA's concerns had now been addressed. He outlined the discussions that had been undertaken between Bunnings (Mr Moody) and Mr Williams, noting his concerns regarding traffic had not been resolved, but that

²⁵ Mr Minhinnick submission dated 16 Jan 2018, paragraph 5.8

²⁶ Response to questions from Mr Devlin, Council's Manager of Planning Practice

the amended landscape design and shared pathways had gone some way to address his concerns.

54. Turning to H & J Smith's submission, Mr Minhinnick submitted that in his view H & J Smith was a trade competitor and that its submission was based on trade competition grounds. In doing so, he questioned its ability to participate in the hearing process. When asked by us as to why his client had not sought us to strike them out, he advised given the time and cost involved it was not worth the effort. This is another area we will return to later in our decision. However, we feel it is appropriate to highlight at this early stage that we agree with Mr Minhinnick that this submitter is a trade competitor.
55. Mr Minhinnick addressed the issue of the potential conditions of consent, should we come to a view to grant consent, and how Ms Panther Knight was generally supportive of the suggested conditions set out in Ms Stagg's s.42A report, with some minor amendments. He then reinforced that the proposal was worthy of consent, meeting both the s.104D gateway tests and Part 2 of the Act.
56. Finally, for completeness at this stage we wish acknowledge that Mr Minhinnick provided us with further submissions at the beginning of day two of the hearing, which in part responded to questions we asked of him and issues raised during the first day of the hearing. We will detail these later on in this section of our decision so they sit in the appropriate sequencing of events.
57. **Mr Brett Moody**, Bunnings National Development Manager's evidence was taken as read and he then brought to our attention some key issues from his evidence. In doing so, he spoke about Bunnings' business model, its long term plans for, and commitment to the district. He discussed how Bunnings had been thinking of establishing a store in the District since 2010, noting that the closest Bunnings store is currently in Dunedin. Bunnings wanted to support and provide competition in the building industry to address the significant housing growth and pressures faced by the District and the wider Central Otago region generally.
58. He noted that finding a suitable site for Bunnings was challenging and that town centre and edge of town centre locations were not ideal for its form of retail/trade model. In order to find a suitable site in the District he had engaged a local real estate firm to assist Bunnings find a site which met its needs. These were, in essence, a site with a high profile, ease of access for customers, sufficient site size and an affordable price. He advised us that he had considered a site in the Remarkables Park area, but this had not met Bunnings' criteria, especially in terms of accessibility, site size and land price. Once the site subject to the application had been identified as a potential option, as was Bunnings standard business practice, he engaged a range of professionals, including traffic and planning, to determine if the site was viable in planning terms.
59. Finally, he highlighted Bunnings on-going commitment to the community, including allowing community group's fund raising activities with sausage sizzles etc. on site, with their store in Grey Lynn (Auckland) used as an example. He also highlighted the many positive benefits of

the proposal, including how the District's residents would benefit from Bunnings national price model, which ensured that the price was the same for the same product in all their stores.

60. We asked him if he considered a location within the FFB C1 sub-zone, which he advised he had, but again just as with the Remarkable Park site, the site was not big enough and land costs were too high. He also advised through questioning that vehicle access from State Highway 6 was a critical factor for them.
61. **Mr Michael Rossiter**, Transportation Engineer, Traffic Design Group Limited's evidence was taken as read, and he read his executive summary highlighting his view that the traffic effects were minor, including retaining left in and left out from State Highway 6 from the site. In doing so, he addressed the applicant's discussions with NZTA and how the amended design given to us by Mr Minhinnick had addressed NZTA's concerns. This included requiring a large portion of the access from Road 9, a small public road designed to provide vehicle access to the site. He addressed how the amended design provided for a shared cycle/pedestrian path across the length of the site and how this would contribute to the Council's overall cycle network.
62. Through questions we explored the potential impacts the proposed access arrangements would have on the existing bus stop. He advised us that as the bus usage was low in this location (every 30-minute in-peak and every hour off-peak) the trade vehicle exit not adversely impact either access from the site or the effective use of the public bus stop. He was asked about his understanding of Road 9 and what it was designed for, as the District Plan sought to restrict vehicle access to Lot 1 DP 23542 from State Highway 6 as a non-complying activity once Road 9 was completed. He advised that, while not involved in the Plan Change process, that was his understanding. He was then asked if the proposal could be designed to provide for vehicle access solely from Road 9, to which he advised that would be possible. Finally, he was asked about the proposed pylon sign and whether it was appropriate in traffic engineering terms. He advised he was not concerned about the amended pylon sign height. He advised that there was no opportunity to provide such a sign on Hawthorne Drive as this was beyond the applicant's site.
63. **Mr Richard Knott**, Urban Designer's evidence was taken as read, and he read his executive summary highlighting that in his view the urban design effects were minor. In his view there were two key outstanding issues in contention, being:
- The visual amenity of the Frankton-Ladies Mile Highway frontage; and
 - Whether views of the Remarkable range are available over the site.
64. Mr Knott was of the view that the proposal was appropriate in urban design terms. In reaching this view Mr Knott stated he had considered a range of District Plan objectives and policies from an urban design point of view and how they applied to the proposal and the site. He was of the view that the District Plan was not seeking to completely screen off building form from view from State Highway 6, just substantially screen it. In his view, the District Plan

policy approach was seeking to protect the viewing opportunities from State Highway 6 across the Frankton Flats B area to the Remarkable Range beyond. This did not prevent, in his view, vehicle access to and from the site from State Highway 6 or require a complete vegetative wall between the site and State Highway 6. It was about ensuring the views of the Remarkable Range were maintained and the building form and access did not detract from these views as you entered the Frankton/Queenstown area.

65. In terms of the building appearance from State Highway 6, he said it should be noted that the building design was a significant departure from the traditional 'Bunnings' design and that the building elements and chosen materials reflected its local context and, in conjunction with the proposed landscape treatment, integrated the building into its context appropriately.
66. Through our questions Mr Knott was asked his view on the height, bulk and massing for the building. He advised that the overall design, with car parking towards the State Highway enabled a building of this height and massing to be located toward the north-eastern boundary of the site without adversely affecting the building relationship with the street or impacting on views to the Remarkable Range. We asked him his view as to the site being a 'gateway' site on the journey to Queenstown's centre and what impact the building and proposed pole signage would have on this. He acknowledged that the site could fit this description, but the building was of a design which would not adversely impact on this, especially in the long view. In terms of signage he did not think that the pylon sign was inappropriate in the short or long views and the site could accommodate building signage of this scale, given the size of the building.
67. Finally he was asked about the need to landscape the 'side' boundary with the new Council reserve (Activity Area A) to assist in breaking up the building's bulk and massing when viewed from the southern direction and across the new roundabout with State Highway 6 and the Hawthorne Drive. He advised that he agreed this would assist in achieving that outcome as the landscaping on the adjoining council reserve could not be relied upon for mitigation.
68. **Mr Robert Pryor**, Landscape Architect's evidence was taken as read, and he read his executive summary highlighting that in his view the landscape and visual effects were minor. In doing so he highlighted the established pattern of land use in the local area and how the proposal would 'fit in' to this developing landscape. He also commented on the building form and design, and was of the view that it responded well to its context and the streetscene (State Highway 6) and achieved a high standard of amenity. He also supported Mr Knott's view that the proposed building height, bulk and massing, with the landscaping proposed would not adversely impact on the viewing opportunities across the site to the Remarkables Range.
69. It was his view that the extensive landscape buffer (and bund), along the State Highway 6 frontage, with mass planting and the introduction of the mountain beech (*Nothofagus solandri var. cliffortioides*), with its width ranging between 8 to 13.5 metres would provide an effective screen for the car parking area and building beyond. Finally, he also believed the signage was appropriate to its location, including the pylon sign and would not result in visual clutter.

70. Through our questions Mr Pryor was asked his view on this site forming part of a 'gateway' to Frankton and Queenstown and what impact the design would have. He agreed with this concept but also highlighted that the viewing opportunities of the site were limited as you travelled towards Queenstown from the Lake Hayes Estate direction along State Highway 6. This was due to two factors, the site was hidden or screened by vegetation (including that proposed) and given the grade changes of the road (rising) as you travel over the Shotover River towards the site, it had only a limited visual catchment. He, like Mr Knott, was of the view that the building was appropriate in height and supported the use of proposed building materials and landscaping treatment to integrate it into this context.
71. He did not agree with Mr David Compton-Moen's report and was of the view that the proposal was suitably screened, even with the proposed vehicle crossing. He pointed out that only 15 metres of the total 150 metre road frontage did not have landscaping opportunities. He was asked a range of questions about the growth rates of the planting proposed, to which he advised that Mr Baxter may be better placed to answer this question, given his local knowledge. He did suggest that it would take the mountain beech (*Nothofagus solandri* var. *cliffortioides*) about 10 years to reach the heights shown in the photomontages (2.5 metres). Finally, he was asked about the need for, and length of on-going maintenance to ensure planting establishment. Again, he advised that Mr Baxter may be better placed to answer this, given his local knowledge.
72. **Mr Paddy Baxter**, Landscape Architect was engaged by the applicant to undertake a peer-review of Mr Pryor's assessment and landscape plan. His evidence was taken as read. He confirmed that he agreed with Mr Pryor's assessment. We then moved straight into questioning. We asked about whether the current landscaping approach would 'fit in' with the overall planting strategy along this part of State Highway 6. He was supportive and believed it would be appropriate. He was supportive of the scale of planting proposed and agreed with Mr Pryor over the growth rates and supported a 5 year management plan for the planting.
73. **Mr Timothy Heath**, property consultant, retail analyst and urban demographer, evidence was taken as read, and he read his executive summary highlighting his view that that application's impact (potential loss of) on industrial land supply was minor. His evidence highlighted the changing face of retail, changing demography in the district, the economic impact of the proposal and trade and distribution effects. He was of the view that the proposal represented only 1.3% loss of industrial land for the district and when the 'Coneburn' re-zoning was added this would reduce to 1.1%. He was of the view that there was sufficient zoned industrial land available, at current and projected demand until at least 2028, which was within this District Plan cycle, and this would increase to availability until 2038 when the 'Coneburn' re-zoning was included. As we have considered above, the Coneburn' re-zoning could not be relied upon.

74. It is fair to say that there was significant disagreement between Mr Heath and Mr Foy (the Council's witness) over the impacts of the proposal and Mr Heath's evidence highlighted why he disagreed with Mr Foy.
75. We asked Mr Heath about the National Policy Statement on Urban Development Capacity's desire for 30 years of industrial land supply. He was of the strong view that the applicant was not required to show this and these issues should be addressed through the plan making process and it was his understanding that the Council was currently undertaking this work. This would ensure the National Policy Statement on Urban Development Capacity's desire for 30 years of industrial land supply would be met.
76. **Mr Mark Tansley**, a statistical and retailing consultant was engaged to undertake a peer-review of Mr Heath's analysis and in doing so he undertook his own analysis, which supported Mr Heath's views, subject to the fact Mr Tansley believed that Mr Heath was being too conservative and overestimated his figures by 30%. His evidence was taken as read, and he read his executive summary highlighting that in his view the approach taken by Ms Stagg in her s.42A report was not supportable on the evidence. His evidence spent a great deal of time explaining why he preferred Mr Heath's view over that of Mr Foy.
77. Through our questions Mr Tansley advised that, in his view, fixed employment which required industrial zone land was declining in the district as it was moving to a more tourism focused economic base. He also argued that Bunnings could not compete with 'Main street' retail activities and needed sites of their own away from the Main Street where rents were more realistic for the volume and type of their turn over. He did not think that any of the sites in the Remarkables Park area were appropriate for a Bunnings store of this nature.
78. **Ms Kay Panther Knight's** planning evidence was taken as read and she covered the key points of her evidence. This included the site zoning and her rationale for supporting the application. In doing so, she acknowledged that the proposal was contrary to Policies 10.3 and 10.4 and inconsistent with Objective 10 of the Activity Area E1 sub-zone. However, it was her view that the District Plan was to be read as a whole and the proposal was not contrary to the District Plan as a whole.
79. Relying on the evidence of Mr Rossiter (Traffic), Mr Knott (Urban Design), Mr Pryor (Landscape) and Mr Heath (Economics) and placing that in planning terms, Ms Panther Knight set out her opinion of why the effects of the proposal were minor. She concluded that the proposal met both the s.104D gateway tests and could be considered pursuant to s.104. She then highlighted the positive impacts of the proposal and the unique characteristics of the site which would ensure that there would be no precedent effects from the approval of this application. She then advised us of the amended proposed conditions of consent reflecting the changes to the proposal.
80. In questioning, she was asked for her view on the hierarchical relationship between what appeared on the face of it to be a set of clear and directional policies (Policies 10.3 and 10.4)

preventing retail developing on the site, and the rest of the District Plan. It was her opinion that these were not to be seen as ‘lead policies’ and that on balance, when reading the District Plan as a whole, the proposal was not contrary to the District Plan policy intentions for the site.

Further Legal Submissions

81. As noted above, Mr Minhinnick provided us with further legal submissions in the course of the hearing. He outlined the Frankton Flats B planning framework, which as we have discussed above has been subject to a long and detailed statutory history.
82. Mr Minhinnick also covered the issue of whether Bunnings could locate in other parts of the District. He acknowledged the non-complying nature of the application, which as he rightly pointed out enables the applicant to apply for resource consent as proposed. He submitted that had the Council wished to prevent this form of development (retail) it could have made this a prohibited activity. He noted that the FFB’s activity table (12.20.3.7) provided a range of prohibited activities. He then took us through some key implications of the Plan Change history.
83. He submitted that Policies 10.3 and 10.4 were not “*lead policies*” and should not be seen as trumping the District Plan’s other objectives and policies.²⁷ Finally, he reinforced the evidence of Mr Heath, Mr Tansley and Mr Moody which had highlighted the difficulties Bunnings would have establishing on other sites within the District. These include the access arrangements, land cost and a number of land covenants on some other sites, including those in the Remarkables Park area which prevented the establishment of activities like Bunnings. At this stage, we signalled to Mr Minhinnick that we would like copies of these covenants and a map showing us which sites these applied to. Mr Minhinnick kindly provided this to us in his right of reply.

For the Submitters

84. **Mr Lindsay Williams** provided us a written statement, which he read. It reinforced the key points in his written submission. He maintained his view that the proposal was contrary to the District Plan’s approach for the Frankton Flat B area, which he suggested had been subject to long and involved history. He suggested that the applicant was “*re-litigating this by stealth*” and this should not be allowed.²⁸
85. He accepted the applicant had addressed the cycling issues he was concerned about and suggested that cycles be given priority at the crossing point with the vehicle crossing points to and from the site along State Highway 6. The applicant agreed with this request. However, he expressed his concerns over the level of signage both on the building and the pylon sign’s

²⁷ Mr Minhinnick further legal submissions dated 17 Jan 2018, paragraph 2.5

²⁸ Page one of Mr Williams’ tabled submission dated 18 Jan 2018

visual impacts on State Highway 6. He suggested that other businesses in the vicinity could successfully trade without signage on the State Highway directing customers to their activities.

86. In response to our questions, he expressed concerns about the landscaping and how this provided a weak barrier from State Highway 6, and did not screen the building from the State Highway. He also suggested that the low volume of submissions against the proposal was a result of community consultation ‘burn out’ in this area and the high level of development generally in the district.
87. **Mr Graeme Todd on behalf of H & J Smith** provided us with legal submissions on the proposal, which he subsequently provided to us in writing at our request. As we address below in our discussion of Trade Competition, we agree with Mr Minhinnick that H & J Smith is a trade competitor. However, for completeness we acknowledge Mr Todd’s key points expressed in his submission.
- There had been no consultation between the applicant and his client, contrary to the view expressed by Mr Minhinnick;
 - H & J Smith’s submission was not trade competition and they were entitled to express their concerns about the proposal;
 - In doing so, they were entitled to rely on the applicant’s evidence;
 - Visual amenity and industrial land supply effects would be more than minor
 - The proposal is contrary to the objectives and policies of the Operative and Proposed District Plans;
 - The proposal would have cumulative adverse environmental effects;
 - The proposal is contrary to Part 2 of the RMA;
 - The proposal consented in this location would affect the amenity of the existing town centre and business zones; and
88. Finally, we wish to acknowledge that Mr Todd reinforced the discrepancies in the photomontages between the different views shown, noting that not one showed a ‘front on’ perspective of the proposed building and associated layout.

The Council

89. **Mr Derek Foy**, a consultant from Market Economics, provided us with a written statement addressing a number of the issues raised by Mr Heath and Mr Tansley and highlighted how he had been engaged by the Council to undertake the assessment to meet the Council’s requirements for the National Policy Statement on Urban Development Capacity. He also spent some time discussing his disagreement with Mr Heath and highlighted why, in his view, the District was experiencing an undersupply of industrial land in the medium term (10 years) or at best in the long term (10-30 years), contrary to Mr Heath’s view.

90. **Mr Compton-Moen** provided a written statement, which was read. In it he highlighted the areas of agreement he had now reached with Mr Knott and Mr Pryor and how the amended landscape plan had gone some way in addressing his concerns. However, while agreeing that substantial screening of the site from State Highway 6 did not require 100% screening, he was of the view that the degree of landscaping proposed, with breaks created in landscape screening by the vehicle access-ways, did not meet the approach described in the District Plan. That is, it was not substantial. This was compounded by the lack of landscape screening on the side boundaries with the Council reserve (Activity Area A) and on the vacant lot to the north-east of the site and adjacent to Hardware Lane. He also expressed concerns over the applicant's ability to rely on the landscaping in the council reserve to mitigate the effects of the signage on the building. In respect of the vacant site to the north east, he expressed concern that screening was an issue here, as the rest of the FFB Zone has Activity Area A to provide a landscaping buffer. Overall, he was still of the view that the proposal would create more than minor landscape and visual effects.
91. He also noted that the proposed pylon pole sign was not screened at all and he maintained his view that this would be visually inappropriate and out of context for its location. Finally, he agreed that a 5 year maintenance plan was appropriate.
92. He was asked by us about the best location on the site for the proposed building form, to which he suggested that there was a better building orientation for the site, which would include changing the building around on the site. He suggested that the key view shafts were provided by the public access roads (e.g. Hardware Lane) and the Hawthorne Drive and that the breaks in the landscape screening would undermine this approach.
93. **Mr Michael Wardill's** engineering report was taken as read and he was asked a number of questions by us including if he supported the cycle way proposed. He confirmed that he did, subject to the final detail being to the Council's satisfaction. He advised that Road 9 was about to be upgraded to a 20 metre width and all the access could be accommodated using this Road.
94. **Ms Erin Stagg** had concluded in her s.42A report that the proposed Bunnings store would generate more than minor effects from:
- Bulk, massing and landscaping effects on State Highway 6,
 - Signage, and
 - Loss of industrial land.
95. She also concluded that the proposal was contrary to the objectives and policies of the District Plan. After listening to all the applicant's case and the submissions, we asked her if she maintained the same opinion expressed in her s.42A report. Ms Stagg reaffirmed this view - that she considered the adverse landscaping, signage and loss of industrial land effects were more than minor and that the proposal was contrary to the objectives and policies of the District Plan. As a result, she was of the view that the proposal failed to meet both threshold tests under s.104D. She recommended that the application should be refused consent.

96. Her conclusions were informed by her own professional judgement, responses to our questions, and the Council's experts and/or external consultant's views. She noted that the Council's Landscape Consultant, Mr David Compton-Moen, still had significant concerns over the visual and landscape effects of the proposed. She relied on, and preferred Mr Foy's evidence on the potential loss of industrial land and was of the view, that in planning terms these effects were going to be more than minor.
97. She provided us with:
- A copy of the Remarkable Park Zone rules and suggested a number of locations within this zone that a Bunnings store could establish;
 - A rough map showing the types of land uses established in the Activity E1 sub-zone, with a list of resource consents for these activities;
 - A copy of the Coneburn s.32 report confirming that the Council officer had recommended against the re-zoning of this land to industrial; and
 - A photo showing how some of the new buildings in the vicinity were being marketed for industrial use.
98. She then advised us that some of the Council experts had provided written statements addressing the issues raised by the applicant's experts. We found this helpful. We should note for completeness that Mr Blair Devlin, Council's Manager: Planning Practice was present throughout the hearing and answered some of our questions directed at him.
99. We explored the issue of the existing uses within the Activity Area E1 sub-zone with Ms Stagg. She and Mr Devlin advised that the Council had attempted to maintain a strong line protecting the intention of the zone. However, she noted that the zone did enable a range of land uses to be established within the sub-zone, including car yards. She expressed the opinion that the Mitre 10 and some smaller consents have undermined the intended industrial nature of this zone, while noting that the Mitre 10 and Pak n Save were approved before the FFB Activity E1 sub zone was made fully operative.

Minute

100. As the end of the hearing and before Mr Minhinnick's right of reply we issued a Minute (dated 18 Jan 2018) to all the parties requesting information, which we feel was relevant. We asked the applicant to provide a plan showing all sites within the Activity Area E1 subzones which have a covenant preventing the establishment of land use activities such as Bunnings, including a copy of the covenant(s).
101. We asked Council officers to provide:
- A survey of all the resource consents approved in the Activity Area E1 Sub Zone which included a retail element beyond what would be considered to be a permitted activity in land use terms. This was to be accompanied by a plan showing their location; and

- A plan showing sites within the Remarkables Park Zone where an activity like Bunnings could establish as either a permitted or controlled activity in land use terms. This was to be done as a GIS overlay, and was to identify all sites currently built on as well as sites where consent has been granted but construction has yet to commence.

102. Finally, we asked Mr Todd provide his submissions in writing.

Right of Reply

103. Mr Minhinnick provided the information required by our Minute as part of his right of reply.

104. His right of reply highlighted that (our paraphrasing) .

- The traffic issues had been resolved;
- That we should refer to the evidence of his experts for the rationale set out in their evidence;
- H & J Smith's submission was trade related and beyond that it lacked merit;
- That the sites within the Remarkables Park Zone were either unavailable or wholly unsuitable for this activity; and
- The evidence had shown that the proposal was worthy of consent.

105. Again, he took us through the statutory framework, including how the District Plan was a framework to consider applications against, but not the final answer. He then submitted on the s.104D test and what 'minor' meant in this context. Finally in this area he submitted that the District Plan must be read as an integrated whole and some policies did not trump others and must be considered with the appropriate assessment.

106. Mr Minhinnick submitted that traffic issues had been addressed and were not in contention. Also, he reinforced that while Mr Wardill did agree that all the access could be achieved via Road 9 this would, in his view, require a '*careful look*'. He then submitted that urban design, visual and landscape, signage and the supply of industrial zoned land were still issues in contention and that the evidence of the experts appearing for Bunnings should be preferred.

107. He then addressed the issue of the Coneburn rezoning. While he accepted this may not proceed, the evidence from Mr Heath and Mr Tansley had confirmed that the impact on the supply of industrial land supply was nevertheless minor. He responded to the submitters, and provided us with updated proposed conditions of consent, which included a response to Mr Williams' concerns about the cycle way in front of the site.

108. Mr Minhinnick addressed the matter of trade competition, setting out why he considered the H & J Smith submission was trade related. He submitted the other issues Mr Todd raised were not supported by evidence and were speculative. He then turned to a detailed evaluation of why other sites within the district, with particular regard to the Remarkables Park Zone, were not appropriate for a Bunnings store of this nature. This was supported with parts of the visual renders for the Remarkables Park master plan.

109. Mr Minihinnick put it to us that if we still had residual concerns about the pylon sign, it would be open to us to grant consent without the pylon sign, or to reduce it in size commensurate with other consented signs in the vicinity via a condition. However, when asked he advised that he was not formally withdrawing this from the application
110. Finally he submitted that the application met both s.104D gateway tests and could be considered pursuant to s.104, with the proposed conditions of consent attached to his right of reply.
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TRADE COMPETITION: H & J SMITH SUBMISSION

111. The Act limits submissions from trade competitors. Section 96(2) states:

“any person may make a submission, but the person’s right to make a submission is limited by section 308B if the person is a person A defined in section 308A and the applicant is a person B as defined in section 308A.”

112. Section 308A of the Act identifies a trade competitor as including a person who is a trade competitor of the other in the same consenting process and includes a third party that may also be receiving assistance from a trade competitor to bring an appeal against a decision made under the Act in favour of an applicant.
113. Section 308B limits submissions from such persons, so that a trade competitor may make a submission **only if directly affected by an effect of the activity** to which the application relates, that:
- a) Adversely affects the environment; and
 - b) Does not relate to trade competition or the effects of trade competition.
114. We set out earlier in our decision Mr Minihinnick’s legal submissions on this point and the matters raised by H & J Smith in its submission.
115. H & J Smith did not state in its submission how it was directly affected by the development and did not call evidence on this topic. In his legal submissions to us, Mr Todd noted that his client was concerned with the loss of industrial land *“because they are reliant on other businesses being able to establish in this district such as warehouses, transport operators, distributors all of which feed into their retail activity.”*²⁹
116. In his right of reply Mr Minihinnick referred us to a number of points in support of its claim that H & J Smith was a trade competitor, as follows:

²⁹ Todd legal submissions paragraph 6

- H & J Smith and Cross Roads Properties Limited are both owned by H & J Smith Holdings Limited;
- Cross Roads Properties Limited is the owner and operator of the Mitre 10 Mega Queenstown store. The two companies have the same shareholding and are “sister companies”. This is supported by public statements linking the two companies (Appendix A to the Applicant’s closing legal submissions);
- Both H & J Smith and Bunnings engage in a competitive trade activity, both being involved in trade supplies;
- Mr Todd, counsel for H & J Smith, did not have a response to the Commissioner’s question as to why H & J Smith did not appeal against the granting of consent for the Mitre 10 Mega store;
- If we find that H & J Smith is not a trade competitor, it is still acting as a surrogate;
- H & J Smith is not directly affected by the proposal. Mr Todd had suggested the direct effect was the supply of industrial land, but H & J Smith does not operate on industrial land;
- Mr Todd’s submissions that H & J Smith relied on distribution of product through this zone lacked substance and merit;
- Mr Todd’s submission that Bunnings could have involved itself in Plan Change 19 had no merit as the plan change was underway before Bunnings had an interest in Queenstown;
- Mr Todd’s submissions that the Remarkables Park zone was more appropriate for this activity were not supported by planning, traffic or economic analysis; and
- Criticisms made by Mr Todd of the visual simulations were without merit as these viewpoints were agreed between the experts for Bunnings and the Council.

117. We agree with all of the points, other than the last one. As we discuss elsewhere in this decision, we did not consider the photomontages to be helpful. Otherwise, we consider H & J Smith to be a trade competitor. No evidence was provided detailing any distribution effects that might arise, or how H & J Smith is otherwise directly affected. We have therefore given minimal weight to the H & J Smith submission.

SECTION 104D ASSESSMENT

118. As considered above, it was common ground between the parties that the application was for a non-complying activity under the District Plan. We note that even if we considered that the application satisfied one or other of the gateway tests under s.104D, we still have the

discretion as to whether or not to grant consent under s.104. In this section of our decision we undertake a S.104D assessment.

119. In doing so, we have considered the effects generated from the principal issues in contention, other effects not in contention and the relevant objectives and policies of the Operative and Proposed District Plans.

Section 104D(1)(a) test

Principal areas in contention

120. We find that the following areas are matters in contention between the parties:
- Urban Design issues, including the building's height, bulk, massing and layout on the site, in conjunction with the building's appearance in the streetscene (State Highway 6, Activity Area A, Hawthorne Drive and wider public domain);
 - Landscaping and visual issues;
 - Signage, both on the building and the pylon sign; and
 - Loss of industrial land.
121. We record that matters relating to earthworks (related effects of land stability, runoff, dust, stormwater, wastewaters etc.), servicing, natural hazards and site contamination, were not in contention between the parties. Traffic engineering effects were essentially resolved. For completeness we will address these issues in our decision below.

Main findings on the principal issues in contention and reasons

122. Our main findings on the principal issues that were in contention and reasons are addressed below. However, as will become apparent through our s.104D assessment, a number of these issues could have been addressed through a building and layout re-design of the proposal and the removal of the pylon sign. Our starting point for this assessment is what the District Plan provides for future development on the site. However, in determining whether consent should be granted or whether the proposal meets the gateway tests of s.104D it is not simply a matter of identifying non-compliances, or even the extent of them, but how the proposed design adequately addresses adverse effects and potentially contributes to the open space and rural landscape of the approach to Queenstown and the changing urban character within Frankton Flats and the surrounding area.

Urban Design issues

123. The issues associated with urban design raises a number of areas of concern, including the building's height, bulk and massing and its impact on the streetscene and/or the public domain.

124. As considered above, determining whether consent should be granted is not simply a matter of identifying non-compliances, or even the extent of them, but how the proposed design adequately addresses adverse effects. However, it does provide us with a good guide as to the District Plan's intended outcomes for the site. To achieve this, the District Plan has provided for a range of Site and Zone standards in the Activity Area E1 sub-zone, including maximum heights, site coverage, permeable area, yards and landscape controls, just to name a few.
125. In our view, the key standards include the 8 metre height limit within 65 metres of the State Highway 6 (12.20.6.2 xvii), landscaping and set back yards of 5 metres for the Boundary to Activity Area A (now a Council Reserve) and between 5 to 15 metres onto the State Highway 6 ((12.20.6.2 xx) boundary (noting that the area between a 5 and 15 metre set back from State Highway 6 can be used for surface grade car-parking). In addition to these there is a permeable area standard of 10% (12.20.3.5(i)). These standards, when read in conjunction with site access arrangements and car parking, provide the degree of building bulk and massing anticipated for this site.
126. In this situation, the proposal fails to meet the landscaping and permeable area standards. This is through the infringement of the landscape yard standard along the State Highway 6 boundary with the inclusion of two vehicle crossings and the failure to provide a 5 metre strip along the Activity Area A (Council reserve) boundary. This space is currently allocated to a vehicle access coming from Road 9. The latter, in conjunction with access arrangements enabling vehicle access to and from State Highway 6 and on-site car parking arrangements, has resulted in a building outcome, both in terms of building bulk and massing, beyond that anticipated for this site.
127. We have considered the effect of this on the environment, especially from the public domain and State Highway 6, and have taken account of the expert evidence. Mr Knott was of the view that the current layout was acceptable in urban design terms, while acknowledging that the introduction of the 5 metre landscaping strip along the Activity Area A (Council reserve) boundary would assist in mitigating the visual bulk of the building form when viewed from the public domain.³⁰ Mr Compton-Moen was of a different view and believed there was a better site layout which could have addressed adverse urban design and visual effects. This included reorientation of the 'front' of the building away from State Highway 6 towards Road 9, enabling more landscaping along this boundary.
128. He was also concerned that the failure to provide a 5 metre landscape strip along the Activity Area A (Council reserve) boundary would create adverse visual effects when viewing the building from the public domain and he questioned whether the applicant could rely on the vegetation (significant trees) located outside of the site to mitigate the impacts of their built form. These are located on the Council reserve (Activity Area A)

³⁰ Mr Knott's response to our questions

129. Ms Stagg's s.42A report (part 5.2) referred us to assessment criteria for building and landscaping on this subject lot (Rule: 20.20.3.3 (vii)(d). It is interesting to note, as we have elsewhere in our decision, that the District Plan provides for a range of specific Standards and policy approaches for this individual site. This assessment criteria addresses building location, siting, design, orientation and external appearance, including materiality (with colours) and vehicle layout and access. We find this a helpful guide to our assessment of the relevant urban design issues for this proposal.
130. We agree with both witnesses (Mr Knott and Mr Compton-Moen) that the provision of the 5 metre landscaping strip along the Activity Area A (Council reserve) boundary would assist in mitigating the visual impacts of the building form from the public domain, including the users of the public reserve. We also agree the applicant should not be able to rely on the vegetation currently within the reserve, on for that matter on the State Highway 6/Hawthorne Drive roundabout and landscaping screening that would be provided when the site to the north-east (adjacent to) Hardware Lane is developed, as this mitigation is beyond their control. We agree with Mr Compton-Moen that the failure to provide this landscaping strip has created adverse effects which are more than minor on the streetscene and the public domain. It should be noted that, while it is not our role to redesign the proposal, these issues could be readily addressed by reducing the size and scale of the proposed building and reconsidering vehicle access to the site. This would enable the landscaping strip to be provided along the boundary with the Council reserve and petrol station and on-site landscaping to be provided along the north-eastern boundary with the adjacent vacant lot. This would also address the permeable area issue.
131. Turning to the visual impact from State Highway 6, while we acknowledge the design approach is well beyond what could be called the 'traditional Bunnings design response' through the use of different materiality and colour, we find (as we will expand upon in the landscaping and visual section below), the breaks in the visual landscaping buffer proposed will create adverse visual effects on the streetscene which are more than minor. In this regard we prefer the evidence of Mr Compton-Moen. As a result, we find that there are adverse urban design effects which are more than minor. However, it is our view that these issues could be addressed with a reduced building form and potentially a different vehicle access and car parking arrangement.

Landscaping and visual effects

132. The issues of the landscaping and visual effects generated by the proposal were subject to detailed discussion throughout the hearing and reflected in the evidence provided. At this point we would like to acknowledge that we did not find the photomontages provided particularly helpful as there were discrepancies between them and through the evidence of different witnesses.
133. It is necessary for us to consider whether the visual impact of the proposal on the streetscene and the wider public domain has been satisfactorily addressed through the provision of sufficient or 'substantial' landscaping to mitigate the proposal's appearance when viewed

from the public domain. We note there is a high degree of overlap between the visual and the urban design issues, which is as would be expected. A great deal of the evidence addressed the District Plan's intention of achieving 'substantial' screening of the site, through the use of a landscaping strip along the State Highway 6 boundary. In our view, the intention of the District Plan approach was for development in the FFB to protect and not diminish viewing opportunities from State Highway 6 across the site to the Remarkables Range. There was no disagreement between the parties on this point.

134. The word 'substantial' is not defined in the District Plan, but the New Zealand Oxford (Paperback) Dictionary (Sec Ed, 2006), defines this as:

"Of solid material or structure" or "of considerable amount, intensity, or validity"

135. In our view this would suggest that the District Plan is seeking a solid structure or a continuous landscaping strip (and bund) be provided along the State Highway 6 boundary. This is at odds with the evidence of the landscape witnesses for the applicant. Mr Pryor was of the view that 90% was a 'substantial' landscaping strip along this boundary. This figure was derived by Mr Pryor from our questions, when he subtracted the length of the vehicle crossing away from the length of the site boundary onto State Highway 6. This view was supported by Mr Baxter, who, with Mr Pryor, was of the view that the landscaping proposed was appropriate and met the District Plan's intentions for a substantial landscaping strip and mitigated the adverse effects of the building on State Highway 6.
136. Mr Compton-Moen was of a different view. He suggested that this did not mean 100% but something of a predominant or great extent. He did not consider the landscaping proposed was 'substantial', nor did he consider it mitigated the adverse visual effects of the proposal from State Highway 6.
137. The key issue for us to decide is whether or not the proposal provides 'substantial' landscaping to reduce the visual impacts of the proposal on the State Highway to a level we consider to be minor and ensures that the viewing opportunities from State Highway 6 across the site to the Remarkables Range are protected and maintained. In our view it is clear that the District Plan did not intend a complete screening of built form from State Highway 6. If it had it would have expressed its intention in this way. Moreover, it was evident from our site visit that, while there was substantial screening along the State Highway, other buildings in the Activity E1 sub zone were still visible from the State Highway.
138. In essence, the provision of vehicle access to and from State Highway 6 and the location of the internal access through the site has created this issue. Had the applicant chosen to use Road 9 for its vehicle access it would have mostly likely provided a continuous landscaping strip along this boundary as was evidenced by the examples of other buildings in the vicinity from our site visit. However, as it is rightly entitled to do, it has applied for consent for the access arrangements proposed.

139. We find, based on Mr Compton-Moen's evidence and our own assessment, that the proposal has not provided substantial screening of the proposed development from State Highway 6. The landscaping as proposed has not mitigated the adverse visual impacts of proposal from State Highway 6 to a degree which we could consider to be minor or less than minor.
140. As a result, we find that the potential adverse landscape and visual effects are more than minor.

Signage

141. The proposal provides for a range of signage, which can be broadly grouped into two areas - the signage on the building and the pylon sign on State Highway 6.
142. The pylon sign was an area of detailed discussion, before and during the hearing process. It is our understanding that NZTA had concerns about the height and size of this sign and its impact on traffic safety, which resulted in the applicant amending its height and size to the version we are now considering. We were advised by Mr Moody that the sign was needed to provide Bunnings customers with a clear direction as to where the Bunnings store was located. Exposure to State Highway 6, as with access to it, were critical factors in Bunnings' decision to seek resource consent for this site. We find this argument difficult to follow given all the other businesses within this part of the FFB appear to be successfully trading without signage of this type located on the State Highway directing their customers to their site. A point that Mr Williams also raised. This includes Bunnings' potential competitors, Mitre 10 Mega and Placemakers.
143. It is fair to say that there was significant disagreement between the witnesses as to the impacts this pylon sign would have on the streetscene, with Mr Knott, Mr Pryor and Ms Panther Knight being of the view that it was an appropriate height and scale for its location in this part of the State Highway 6 streetscene. Mr Compton-Moen and Ms Stagg took a very different view and considered that it was the first type of an element of this nature and would be inappropriate in this part of the State Highway 6 streetscene. We note that the District Plan does not provide for this type of signage and it requires consent as a non-complying activity.
144. We found it very difficult to see how a sign of this size and height in this location, potentially being a gateway site into the Queenstown/Frankton area could create only a minor effect on the streetscene in this location. From our site visits, we could not find any similar signage located along the State Highway except for NZTA road signage, making such a pylon sign clearly out of keeping with the existing environment. Further, the existing and developing streetscene in this section of State Highway 6 is dominated by landscaping strips along activities fronting on to State Highway 6 (e.g. Placemakers), a Council Reserve (in Activity Area A) and a requirement for a 50 metre landscaping strip in Activity Area A on the south-west side of Hawthorne Drive. This creates a strong vegetative edge for the FFB along the State Highway and the introduction of signage of this nature would create significant adverse effects. In this regard, we favour the evidence of Mr Compton-Moen and Ms Stagg.

145. With regards to the signage on the building, while we acknowledge that this is not the level of signage traditionally seen on Bunnings stores, we must see this in light of its context in this location. As with the visual and landscaping effects we considered above, which sought to substantially screen the proposed built form from the street and the public domain, the same issue would apply to the level of proposed signage on the building. As discussed above we found that the building was not substantially screened from the public domain and would create adverse visual effects that are more than minor.
146. It logically follows that this would be the case for the signage on the building as well, especially given its size and scale. The lack of the 5 metre landscape strip along the boundary with the Council Reserve reinforces this from viewing opportunities at the State Highway and Hawthorne Drive roundabout, and Hawthorne Drive. We note that the evidence of Mr Pryor and Ms Panther Knight suggested that this signage was appropriate to its location. We disagree and favour the evidence of Mr Compton-Moen and Ms Stagg in this regard. Moreover, an analysis of the surrounding signage within the FFB highlights the modest level of signage that it is expected and typical in this location, let alone a building orientated to face the State Highway in this fashion.
147. We therefore consider that the signage on the building to have more than minor visual effects. As with the bulk and location of the building, it is our view that the visual impact of the signage could be reduced to a minor level should the applicant choose to amend the size and orientation of the building.

Loss of industrial land

148. It was common ground between the parties, that if the Bunnings application was granted consent, it would result in the loss of 1.62 hectares of the District's Industrial-zoned land. This represented approximately 1.4% of the District's total industrial land provision. We note that Ms Panther Knight's and Mr Heath's evidence suggested that if the potential rezoning of the 'Coneburn' site was included this would reduce this to approximately 1.1%. This, however, as we set out earlier, may not occur. As a result, we have had no further regard to it as a potential option.
149. As we have discussed above, it is fair to say that there was significant disagreement between Mr Heath and Mr Foy (the 'economic' witnesses) over the impacts of the proposal. Also, as we have discussed, we believe we were actually presented with evidence on urban demographic analysis and projection as opposed to a pure economic analysis. We believe this raises two issues we shall address in turn. The first issue is the retail impacts of the Bunnings store on the existing centres in the District (retail economic distribution effects). The second issue is the potential loss of the supply of industrial land in the District.

Retail economic distribution effects

150. This issue was not in contention as Mr Foy and Mr Heath both agreed that the proposal would not result in any significant adverse retail distributional effects on Queenstown's centres,

given the small competitive overlap between the Bunnings' product range and the types of products sold by in-centre stores.

151. We accept the evidence that there would be no adverse retail distributional effects, and therefore focus on whether the proposal would result in an undersupply of industrial land.

152. Supply of industrial land

153. Mr Heath's conclusion was that the proposed use of the site would not adversely affect the District's ability to provide for and accommodate forecast sector growth of industrial land up to 2028. He also suggested that we should not look beyond a 10 year time period, as in his view, it was inappropriate to ask the applicant to address the District's industrial land supply issues. This was the role of the Council and could be addressed in the next District Plan cycle.

154. He was of the view the impact on industrial land supply would be no more than minor.

155. In essence, Mr Tansley's view was that Mr Heath had over stated the demand for future Industrial land by up to 30%. This was because of the transfer of manufacturing activities outside of the Queenstown / Frankton area and the over-representation of construction workplaces. In his view, construction workplaces inflate the District employment figures, because most its labour force are engaged with construction off-site, rather than at any base address. He also thought the industrial employment projections to be too high, the level of assessed residential growth as optimistic with the high influence of construction workers and the declining manufacturing employment trends reinforcing that possibility.

156. He supported Mr Heath's conclusion and was of the view the impact on industrial land supply would be no more than minor.

157. Mr Foy took a different view and was concerned that Queenstown would experience an undersupply of industrial land within the medium term of 10 years, or at best early in the long term (10 to 30 years). He suggested we should consider the impact of the loss of industrial land, as which that resource had been used for other land use activities it was difficult to replace. Especially in a place like Queenstown, where there was limited opportunities for land suitable for industrial use, which generally required 'flat land', as opposed to places like Auckland or Christchurch where industry could establish at the edge of the suburban area.

158. Ms Panther Knight's position was that Bunnings, a trade supplier, was an appropriate activity within industrial zones, because:

- a. It sells building-related products to trade customers and the general public
- b. The nature of the Bunnings means that the buildings generally appear utilitarian in design and form
- c. Bunnings has traditionally straddled historic planning definitions of retail and light industrial activities, including warehousing, wholesaling and trade retail

- d. Contemporary district plans are adopting terms that distinguish Bunnings and similar activities from general retailers, recognising the nature of the activity is more akin to industrial
 - e. There are no corresponding reverse sensitivity effects
 - f. Trade suppliers can act as a buffer between industrial uses and sensitive activities, such as residential to the west
 - g. There are a number of other similar developments within the Zone, in the near vicinity that Council has consented.
159. As outlined earlier, we spent some time during the hearing questioning why Bunnings proposed this site and why it could not locate elsewhere within the District, given it would result in a loss of industrial zoned land. It was the Council's view that there were other locations within the District, and in Queenstown itself, which would be more suitable for a Bunnings. The applicant's position was there were limitations on where Bunnings could locate. These included accessibility, visibility and the existence of land covenants restricting the use of land. Mr Moody told us that Remarkables Park was not attractive, as it is hard to access, and that Bunnings sought to be in a visible location. We were provided with relatively detailed information of remaining land availability and land covenants within the Activity Area E1 sub zone and in Remarkables Park that significantly limit land that could be developed for a Bunnings retail store.
160. We concur with the applicant that there are limited options within Queenstown where a Bunnings could establish and operate. However, our premise should not be that just because it may not be able to easily locate elsewhere, that it should be able to locate on this site or in the Activity Area E1 sub zone. It is important that we consider the effects of Bunnings locating on this site, in this zone and on industrial land, in terms of effects on industrial land supply.
161. There was a lot of discussion about the requirements of the National Policy Statement on Urban Development Capacity and the District Plan. We put a question to the Council as to whether the National Policy Statement on Urban Development Capacity requires that 30 years of land supply is zoned. Council agreed that the National Policy Statement on Urban Development Capacity requires that there be land zoned in the District Plan for the next 10 years. The land in the long term (10 to 30 years) does not have to be zoned in the District Plan. Mr Foy believed the District may run out of land by 2027, but there was dispute over this.
162. We heard a lot about the nature of the Bunnings business activity. The applicant's position was that it was not a true retail activity, noting that other councils around New Zealand treat trade supply activities differently.
163. Mr Foy raised concerns that trade suppliers buy cheap land and contribute to the creep of non-industrial activities in industrial zones. While Mr Foy was of the initial view Bunnings is not an industrial type activity, except for the building, he clarified in questioning that large buildings are not complementary to district centres and acknowledged that Bunnings does have yard based activities and forklifts, so in that respect it has some similarities to warehouse

and storage activities. He also noted that a Bunnings has a trade component which distinguishes it from a standard retail activity. His final position was that Bunnings has some aspects of industrial activities and some aspects of non-industrial activities.

164. Ms Stagg concurred with Ms Panther Knight that the proposed Bunnings would be compatible with industrial activities. Its nature would mean that there would not be issues of reverse sensitivity as may arise with retail activities. She acknowledged that a Bunnings does need a big site and a big building. However, she noted that this zone seeks to exclude retail and on that basis the loss of industrial land would be more than minor. We do not agree with this leap in logic that because the zone excludes retail activity, a Bunnings retail store on this industrial land would automatically mean the effect of the loss of industrial would be more than minor.
165. We asked Ms Stagg what industrial activities would likely locate on this site, given the development that has already occurred on adjacent sites. She considered that it may accommodate small scale engineering, trade servicing activities, furniture manufacturing, or small scale light industrial activities. Her position was that the Mitre 10 and some smaller consents have already undermined the industrial nature of this zone. We agree.
166. In hearing all the evidence on the matter the fundamental question we must resolve is whether the granting of a Bunnings store in the Activity Area E1 sub-zone would impact on the District's industrial zoned land supply to a degree which could be considered to be more than minor. In essence, do we favour Mr Heath and Mr Tansley's or Mr Foy's evidence on this matter? In doing so, we believe it is appropriate to add a further question, would the establishment of a Bunnings store, which had successfully addressed all the issues we have considered above in terms urban design, landscaping and signage effects, be appropriate and compatible with other industrial and service activities in this location. In our view, the answer to this question is yes, a point both Ms Stagg and Ms Panther Knight agreed with.
167. Returning to the issue of industrial land supply, we agree that industrial land is a limited resource especially in locations like Queenstown, the wider District and Central Otago generally. As we have considered above, the term minor is defined as lesser or comparatively small in size. In the absence of a cumulative assessment of the loss of industrial zoned land in the District, we have before us different projections on when this resource may or may not 'run out'. As a result, we are left with the situation, based on the evidence, that the proposal would result in the loss of up to 1.4% of the industrially zoned land in the District. While not seeking to place metrics on the term minor, we find that 1.4% falls within the definition of comparatively small in size. As a result, we find that the use of the Bunnings store in the Activity Area E1 sub-zone will have a minor impact on the District's industrial zoned land.
168. Our overall finding, having considered all of the evidence, is that the Bunnings activity is complementary to and compatible with other activities within proximity to the site, and would support construction activities. In terms of the loss of industrial land, we consider that this effect would be no more than minor in nature.

Effects not in contention

Traffic engineering effects

169. As notified, the proposal intended to maintain the existing access into the subject site, as a left in, left-out and right-in arrangement. The existing access into the garden centre which currently occupies the subject site allows for left turn movements into and out of the garden centre, and a right turn entry movement from the south. Currently, customers who wish to depart the site to the north must first turn left and then perform a U-turn at the Hawthorn Drive roundabout.
170. All service vehicles were proposed to move through Proposed Road 9, which lies to the south west of the site.
171. NZTA lodged a submission expressing concerns about the proposed access arrangements, the safety and efficiency of the state highway network, the adjacent bus stop and the shared cycle way. Another submitter, Mr Williams, also had concerns about the traffic safety and the shared cycle path.
172. Discussions then occurred between the applicant and NZTA which resolved NZTA's concerns. An alternative access arrangement was proposed, allowing customer access from State Highway 6 to be through a left turn only. The existing gap in the central median on State Highway 6 would be closed, preventing any right turns into and out of the Bunnings site. Service vehicle movements would enter through Road 9, undertake an anti-clockwise movement around the rear of the building and exit via a second driveway to State Highway 6 adjacent to the subject site's northern boundary. This would be left turn only.
173. Prior to the hearing, we received a letter from NZTA dated 4 December 2017 confirming the matters agreed and indicating NZTA was satisfied with this outcome and accepted the conditions of consent suggested in the s.42A report. On that basis, NZTA amended its submission to be a neutral submission and no longer sought to be heard.
174. In his evidence, Mr Williams addressed the cycle path. He accepted the changes tabled by the applicant to improve the cycle path. Mr Williams also sought further conditions be imposed, should consent be granted, including the provision of an easement to protect the cycleway, the prioritisation of cycle traffic, and NZTA approval on the design of the exit and entry points where they would intersect with the cycle path. The applicant has amended its conditions to respond to these concerns.
175. For the Council, Mr Wardill confirmed that he supported the application as amended and considered the service access/ exit to be a good solution. We asked Mr Wardill for his opinion on traffic effects if all traffic access was to be through Road 9. He considered the access to Road 9 would need careful consideration and the design would possibly need to be revisited but was of the opinion that Road 9 could cater for this traffic.

176. Given the amendments to the traffic elements of the proposal, including the cycleway, we are satisfied that the traffic effects of this proposal are no more than minor.

Servicing, earthworks and site contamination

177. The application noted the intention to remove the existing reticulated water main located within the State Highway 6 frontage. New connections would need to be applied for.
178. Mr Wardill considered additional fire hydrants would be required to service the development. He was satisfied there is sufficient capacity within the reticulated system to provide for these services.
179. In terms of wastewater, the site is currently serviced with two 150mm sewer connections to Council reticulations. Mr Wardill was satisfied that connection from the Bunnings building to these services was feasible.
180. Mr Wardill was not satisfied that stormwater has been adequately provided for on-site and recommended that detailed design of the stormwater disposal system be submitted to Council for approval prior to works commencing on site, should we decide to grant consent. Mr Wardill accepted that it was possible to cater for stormwater disposal on site.
181. There was no dispute that the proposal could be adequately serviced in relation to power and communications.
182. On earthworks, Mr Wardill referred us to the geotechnical report submitted with the application, which identified that some excavated material would not be suitable as fill and that additional fill would be required to be brought on site.
183. There were no concerns about land stability. Any adverse effects arising from sedimentation and dust would need to be addressed through a site management plan.
184. The site was identified as being subject to contamination due to its earlier uses as a HAIL site. A Detailed Site Investigation was prepared by Tonkin and Taylor and formed part of the application. This concluded that the contaminants present do not exceed the permitted thresholds for human health and safety set by the NES. Nor do they meet the Regional Plan: Waste definition of a contaminated site.
185. Tonkin and Taylor proposed that part of the contaminated soil on site be retained and re-used on site, given the proposed commercial land use, with approximately 240m³ requiring off-site disposal to a suitable facility. A controlled activity ground contamination related consent would be required under the NES for soil disturbance. A Site Management Plan had been prepared to support that application.
186. The Tonkin and Taylor report was reviewed by the Otago Regional Council, which suggested that, should consent be granted, a condition be imposed requiring any material taken off site be disposed of at a suitable disposal site. The Applicant included this requirement in its proposed conditions.

187. We are satisfied that adverse effects of servicing, earthworks and site contamination are no more than minor.

Natural hazards

188. The Council's Hazard Register Maps show the site as falling within the LIC1 liquefaction hazard category. The assessed risk is "Nil to Low". The application was supported by a liquefaction report from Tonkin and Taylor, which confirmed this level of risk. Mr Wardill was satisfied that the Bunnings building was unlikely to be at risk of liquefaction in a seismic event and no special engineering foundation requirements were necessary under the resource consent.
189. We are satisfied that natural hazard effects are no more than minor.

Conclusion - Section 104D(1)(a) Effects Assessment

190. We find that the urban design, landscape, visual and signage effects are more than minor. As a result, the proposal fails the s.104D(1)(a) gateway test.

Section 104D(1)(b) Test

191. We shall now turn to the issue of whether the proposal is contrary to the objectives and policies of the Operative and Proposed District Plans, noting the appropriate weighting to be assigned to the Proposed District Plan.
192. Under s.104D, we are only required to consider whether a proposal is contrary to the objectives and policies of both the Operative District Plan and Proposed District Plan. We are not required to consider whether the proposal is contrary to the Operative or Proposed Regional Policy Statements for the Otago Region.
193. Section 104D(1)(b) states:
- (b) the application is for an activity that will not be contrary to the objectives and policies of—*
 - (i) the relevant plan, if there is a plan but no proposed plan in respect of the activity; or*
 - (ii) the relevant proposed plan, if there is a proposed plan but no relevant plan in respect of the activity; or*
 - (iii) both the relevant plan and the relevant proposed plan, if there is both a plan and a proposed plan in respect of the activity.*
194. Under s.43AA of the RMA a plan is defined as 'a regional plan or a district plan'. This definition does not include policy statement. We note the difference to s.104(1)(b) which does require

an examination of (iii) a national policy statement and (v) a regional policy statement or a proposed regional policy statement.³¹

195. It is important firstly that we identify the relevant objectives and policies to consider. As outlined earlier, the Council has two district plans. These are the District Plan (2007), and Proposed District Plan 2015. As, discussed above, we were informed by Ms Stagg that the Council are undertaking a partial and staged review of the District Plan. Stage 1 of the Proposed District Plan was notified on 26 August 2015. Stage 2 was notified on 23 November 2017.
196. As outlined earlier, the application triggers the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health and requires a controlled activity consent. As the National Environmental Standard is solely at rule level, we consider that any objectives and policies relating to contaminated land are relevant.
197. Both planning witnesses (Ms Stagg and Ms Panther Knight) outlined the objectives and policies in the District Plan and Proposed District Plan that they considered relevant to this application. We have gone through the relevant objectives and policies by chapter and identify for each chapter which objectives and policies the planners both agreed were relevant and noted any additional objectives or policies that were also brought to our attention by either Ms Panther Knight or Ms Stagg. We note that on some occasions we did not agree with the planners that some of the identified objectives or policies were relevant, particularly in respect to Chapter 12 – Special Zones Frankton Flats B in the District Plan. This was where they related to:
- The structural framework for the zone, including the use of a structure plan;
 - Residential activities and visitor accommodation;
 - Establishing a network of open space, streets and reserves;
 - The outcomes sought for other parts of the sub-zone which did not relate to the subject matter of this application; and
 - The aircraft noise controls for the Queenstown Airport.

Planners positions on s.104D(1)(b).

198. Ms Panther Knight's view, summarised in the pre-circulated evidence, was:

“that the proposal is contrary to Policies 10.3 and 10.4 and is inconsistent with Objective 10 and Policy 10.1 of the Operative District Plan's Frankton Flats B Special Zone due to the strict (and in my opinion overly limited) interpretation of trade suppliers as retail rather than industrial, or even a hybrid activity that is suited to the industrial zone.”

I also conclude that the proposed development achieves the intent of many of the relevant objectives and policies from the Regional Policy Statement (both Operative and Proposed), the

³¹ As well as national environmental standards, other regulations and the New Zealand Coastal Policy Statement.

*Operative and Proposed District Plans and the National Policy Statement on Urban Development Capacity.*³²

199. Her conclusion was on balance, that the proposal is not contrary to the objectives and policies of the relevant plans as a whole, and therefore was consistent with s104D(1)(b). However, as we noted above, s104D(1)(b) is clear that it applies only to the objectives and policies of a plan, and not a policy statement. Therefore, the regional policy statement (operative and proposed) and the National Policy Statement on Urban Development Capacity are not relevant considerations. We note that Mr Minhinnick concurred with 3.2 of his opening legal submissions that s.104D(1)(b) only requires consideration of the objectives and policies in the relevant district and regional plans.
200. However, in paragraphs 9.32 and 8.46 of her pre-circulated evidence, Ms Panther Knight did limit her assessment to the District Plan and Proposed District Plan, which we agree is correct. She concludes in 8.48 that on balance, the proposal is not contrary to the objectives and policies of the relevant plans as a whole.
201. Ms Stagg's position was that the proposal is contrary to objectives and policies of Parts 4, 12.19 and 18 of the District Plan. She considered that as these sections of the District Plan are fundamental to providing objectives and direction in relation to future development within the Frankton Flats, overall the proposed development is contrary to the objectives and policies of the District Plan. In respect to the Proposed District Plan, it was her opinion that the proposal is not generally contrary to its objectives and policies, other than objective 3.2.1.2 and policy 3.2.1.2.3, given the proposal is for a retail activity to be established in an industrially zoned area.
202. We note that the test in s.104D(1)(b) is whether a proposal is not contrary to the objectives and policies, rather than being consistent with them, and the conclusions the planners come to under their s.104D(1)(b) assessments are not always therefore necessarily technically correct. While we have directly referenced the planners' conclusions, our evaluation is based on whether the proposal is contrary to the objectives and policies.
203. Given the differences between the planners witnesses, we have also considered all the objectives and policies discussed by the planners. In order to do so, we have found it useful to group them into themes following on from the principal areas of disagreement, as follows:
- 1) Land development
 - Transport
 - Servicing, earthworks and site contamination
 - Hazards
 - 2) Urban form, land use patterns and use of industrial land
 - 3) Visual amenity
 - Urban design, landscape and visual amenity
 - Signage

³² Paragraphs 1.6 and 1.7 of Ms Panther Knight's pre-circulated evidence

Land Development

Transportation and Traffic Engineering Issues

204. There were no specific objectives or policies identified at strategic level in either the District Plan or Proposed District Plan. In the District Plan, we consider the following objectives and policies are relevant:

Chapter 14 - Transport

Objective 14.1.3.1 Efficient use of the District's existing and future transportation resource and of fossil fuel usage associated with transportation

Policies:

- 1.3*** *To promote the efficient use of roads by ensuring that the nature of activities alongside roads are compatible with road capacity and function.*
- 1.4*** *To protect the safety and efficiency of traffic on State Highways and arterial roads, particularly State Highway 6A, by restricting opportunities for additional access points off these roads and by ensuring access to high traffic generating activities is adequately designed and located.*
- 1.9*** *To require off-road parking and loading for most activities to limit congestion and loss of safety and efficiency of adjacent roads and to promote the maintenance and efficiency of those roads.*
- 1.10*** *To require access to property to be of a size, location and type to ensure safety and efficiency of road functioning.*

Objective 14.1.3.2 Safety and Accessibility

Maintenance and improvement of access, ease and safety of pedestrian and vehicle movement throughout the District.

Policy

- 2.2*** *To ensure the intensity and nature of activities along particular roads is compatible with road capacity and function, to ensure both vehicle and pedestrian safety.*

205. Ms Panther Knight also considered objective 14.1.3.3 was relevant, and we agree:

Objective 14.1.3.3 Environmental Effects of Transportation

Minimal adverse effects on the surrounding environment as a result of road construction and road traffic.

Objective 14.1.3.5 Parking and Loading - General

Sufficient accessible parking and loading facilities to cater for the anticipated demands of activities while controlling adverse effects.

206. Ms Stagg also brought policy 5.5 to our attention as being relevant, and we agree.

Policy 5.5: To require the design of parking areas to ensure the safety of pedestrians as well as vehicles.

Objective 14.1.3.6 Pedestrian and Cycle Transport

Recognise, encourage and provide for the safe movement of cyclists and pedestrians in a pleasant environment within the District.

207. At Zone specific level (12.19), we find the following objectives and policies are relevant:

Objective 3 Managing Interfaces, Integration and Improving Connections

- a. *Development physically and visually integrates within the Zone and with surrounding Zones including the Frankton Flats Special Zone (A), Glenda Drive Industrial Zone and the Events Centre.*
- b. *The Eastern Access Road (EAR) develops as a corridor that has an important linking role as well as being an urban place in its own right formed by the road and adjacent development.*
- c. *A connected internal roading network develops that helps to facilitate movement demands between activity areas while also providing a block structure that supports a quality urban environment.*
- d. *Interfaces between incompatible activities are managed to avoid or mitigate adverse effects*

Policy

- 3.5 *To provide pedestrian and cycle linkages between the Zone and Frankton Flats Special Zone (A), the Events Centre and Glenda Drive as well as within the Zone.*

Objective 4: Providing for and managing impacts on infrastructure

- b. *A safe, efficient and effective transportation network is provided and travel demands are managed to reduce reliance on the private car.*

Policies

- 4.3 *To provide a safe, convenient and integrated transportation network that provides for pedestrians, cyclists, the expected range of vehicles and public transport.*
- 4.4 *To require that a safe, efficient and effective connection to any site from State Highway 6 exists prior to any development being occupied within the Zone.*

Advice Note: State Highway 6 is a limited Access Road. Lot 1 DP 23542 and Lot 2 DP 23542 have an authorised crossing place from and to State Highway 6 as provided

for in the Government Rounding Powers Act 1989. The NZ Transport Agency may exercise its discretion to cancel and disestablish the crossing place under circumstances where a parcel of land has reasonably practicable alternative legal access to some other road (section 91 (1)(a)(iii) Government Rounding Powers Act 1989).

- 4.5 *To provide safe, sustainable and integrated road connections to and from State Highway 6 in locations agreed with the NZ Transport Agency. These agreed locations are all-access roads at Grant Road and the EAR, and limited access at Glenda Drive.*
- 4.8 *To ensure that businesses that are serviced by trucks provide safe and functional loading zones on site so that the effective functioning of the road network is not compromised.*
- 4.10 *To provide suitable, convenient, safe and accessible areas for car parking on site in a way that contributes to the amenity of the Activity Area.*
- 4.12 *To ensure that car parking is available consistent with a reduced reliance on the private car for travel while not over providing car parking and not exceeding the rates necessary to service the development.*
- 4.14 *To encourage a range of physical and behavioural measures to reduce reliance on motor vehicles and to manage demand to travel.*
- 10.11 *At the time of subdivision or development, to ensure that:*
 - a. *there is adequate provision for road access, onsite parking (staff and visitors) and loading and manoeuvring for all types of vehicle so as to cater for the intended use of the site;*
 - b. *where the intended use may require the use of large truck and trailer units, or a large number of vehicles using the same access point, there is sufficient area for these to exit on to the road in a forwards direction;*
 - c. *all vehicles that exit onto the EAR can do so in a forwards direction; and*
 - d. *vehicle access to and from the EAR is limited to either shared crossing points or accessways, or alternative access locations.*
 - e. *Clauses (b), (c) and (d) above can be enabled by shared parking, access and loading arrangements that are secured by an appropriate legal mechanism.*

208. As outlined earlier, under our s.104D(1) assessment, we found that with the amendments to the traffic elements of the proposal made since notification and as part of the hearing, the traffic effects of the proposal are no more than minor.

209. In her s.42A report Ms Stagg expressed that she considered the proposal was inconsistent with the above-mentioned objectives and policies, because of the parking layout, the access over the bus stop, the access onto State Highway 6, and the potential effects on the safe and efficient

functioning of State Highway 6. However, during the hearing, after the amendments to the proposal made by the applicant, the receipt of the NZTA letter's in response to those amendments and on Mr Wardill's advice, she subsequently advised us that she had no further traffic-related concerns.

210. In her statement of evidence, pre-circulated before the hearing, Ms Panther Knight informed us of her view that the proposal is generally consistent with the Transportation provisions, particularly in consideration of NZTA's letter, and the assessment of the applicant's traffic engineer.
211. Neither Mr Williams or Mr Todd addressed these objectives and policies.
212. Having heard no evidence to the contrary, we find that the proposal is not contrary to the district-wide and zone-specific objectives and policies.

Servicing, earthworks and contamination

213. Ms Stagg and Ms Panther Knight identified the following Zone-specific objectives and policies relevant to servicing.

Objective 4 Providing for and managing impacts on infrastructure

...

- c. *Appropriate provision is made for public and private utilities to meet future needs and to protect public health and safety.*
- d. *Effective integration of land uses with stormwater management systems occurs.*

Policies

- 4.15 *To ensure that subdivision and development recognises and provides for any necessary cross boundary infrastructure and utilities including but not limited to the provision of overland flow paths for stormwater.*
- 4.16 *To ensure that any run-off from impervious surfaces is treated and discharged through a combination of on-site infiltration, piping, and overland flow and attenuation primarily along the roading network in accordance with stormwater catchment management plan(s) for the Frankton Flats.*
- 4.17 *To ensure that, in addition to offsite stormwater soakage and storage areas, sufficient space is provided on each site to accommodate on-site soakage of stormwater run-off through the provision of permeable areas, as well as soakage bores, pits and galleries.*

214. Ms Panther Knight also identified district-wide earthworks objectives and policies 22.2.1 – 22.2.3 in the District Plan.

Objective 22.2.1

Enable earthworks that are part of subdivision, development, or access, provided that they are undertaken in a way that avoids, remedies or mitigates adverse effects on communities and the natural environment.

Objective 22.2.2

Avoid, remedy or mitigate the adverse effects of earthworks on rural landscapes and visual amenity areas.

Objective 22.2.3

Ensure earthworks do not adversely affect the stability of land, adjoining sites or exacerbate flooding.

215. There were no strategic objectives or policies in the District Plan or Proposed District Plan, and no zone-specific ones in the District Plan, brought to our attention. There are no relevant objectives in the District Plan or Proposed District Plan relevant to contaminated land.
216. We discussed the servicing, earthworks and site contamination effects in paragraphs 174 to 184 of this decision.
217. The evidence from the applicant and Council, was that (in summary):
- Any effects of earthworks would be avoided, remedied or mitigated and would not affect adjoining sites or result in flooding;
 - Stormwater disposal could be appropriately managed on-site and not result in offsite flooding;
 - the proposal could be adequately serviced in relation to water, wastewater, power and communications; and
 - any adverse effects could be addressed through conditions of consent.
218. Based on this evidence, we are satisfied that the proposal is not contrary to the District Plan objectives and policies.

Hazards

219. The relevant hazards considerations are in respect to the potential for liquefaction on the site.
220. There were no specific objectives and policies of the District Plan brought to our attention. Our own reading of the District Plan notes that the District-Wide objectives and policies address natural hazards in Part 4.8. Objective 1 requires the avoidance or mitigation of loss of life, damage to assets or infrastructure, or community disruption from natural hazards. Policy 1.4 seeks to ensure that buildings and developments are constructed and located so as to avoid or mitigate the potential risk of damage to human life, property or other aspects of the environment.

221. Objective 3.2.2.2 of the Proposed District Plan seeks to manage developments in areas affected by natural hazards. Neither Ms Stagg or Ms Panther Knight identified any policy guidance in respect of the use of contaminated land.
222. We received evidence from both the applicant and the Council that any potential liquefaction effects could be managed, and any natural hazards effects would be no more than minor. We therefore find that the application is not contrary to Objective 1 and Policy 1.4 of the District Plan and objective 3.2.2.2 of the Proposed District Plan.

Urban form, land use patterns and use of industrial land

223. Ms Stagg and Ms Panther Knight both identified objectives and policies at a strategic, district wide level and at a zone-specific level. We set these out below. In doing so, we note that the FFB Zone was clearly introduced, by way of a plan change, to give particular effect to objective 4.9.3.6 and policy 6.2, as well as other relevant strategic level objectives and policies.

Objective 4.9.3.2 – Existing Urban Areas and Communities

Urban growth which has regard for the built character and amenity values of the existing urban areas and enables people and communities to provide for their social, cultural and economic wellbeing.

Policies:

- 2.1 *To ensure new growth and development in existing urban areas takes place in a manner, form and location which protects or enhances the built character and amenity of the existing residential areas and small townships.*

Objective 4.9.3.6 – Frankton

Integrated and attractive development of the Frankton Flats locality providing for airport operations, in association with residential, recreation, retail and industrial activity while retaining and enhancing the natural landscape approach to Frankton along State Highway No. 6.

Policy:

- 6.2 *To provide for expansion of the Industrial Zone at Frankton, away from State Highway No. 6 so protecting and enhancing the open space and rural landscape approach to Frankton and Queenstown.*

224. Ms Stagg also considered that Objective 4.9.3.4 and its supporting policies were relevant. Those we agree are relevant are set out below.

Objective 4.9.3.4 - Business Activity and Growth

A pattern of land use which promotes a close relationship and good access between living, working and leisure environments.

Policies:

- 4.1 *To promote town centres, existing and proposed, as the principal foci for commercial, visitor and cultural activities.*

225. Ms Panther Knight considered that objective 4.9.3.7 was also relevant.

Objective 4.9.3.7 Sustainable Management of Development

The scale and distribution of urban development is effectively managed.

226. We now turn to the more specific FFB Zone. We consider that the following objectives and policies are relevant.

Objective 1 Urban growth and the sustainable management of resources

- a. *The needs of the District are provided for by utilising the Zone for a range of urban activities.*

Policies:

- 1.1 *To provide for a wide range of non-residential activities including retailing, community activities and commercial uses, mixed live/work units and industry (including yard based) to help meet projected land use requirements.*

- 1.3 *To ensure that development within the Zone is structured so that:*

- a. *compatible activities are co-located and incompatible activities are adequately separated by the position of activity areas and roads, and suitable interface controls;*
b. *the Zone is effectively integrated with adjacent zones; and*

Objective 10 Activity Area E1 (Industrial)

An area for industrial and service activities, which has a standard of amenity that is appropriate to the function of the Activity Area.

Policies

- 10.1 *To enable a wide variety of industrial activities and service activities ranging from lighter industrial activities through to those of a yard based nature.*

- 10.2 *To ensure that any office space is ancillary to the use of the site for industrial and service activities.*

- 10.3 *To exclude retailing unless retail activities are:*

- a. *ancillary to, and minimal in comparison with the use of the site for industrial and service activities; or*
b. *In addition to (a) where located on a site with frontage to, and not extending more than 50m from the EAR, then to enable yard based retailing ancillary to industrial or service activities.*

- 10.4 *Unless otherwise provided for in the policies for this Activity Area, to exclude activities (such as residential, retail and visitor accommodation activities) that conflict with the*

intended purpose of the Activity Area through the generation of reverse sensitivity effects; or will result in the reduction of land available for industrial and service activities.

227. Ms Stagg and Ms Panther Knight agreed that the strategic level objectives and policies contained in the Proposed District Plan are relevant and we agree, as these set out the strategic direction for the District. Those we agree are relevant are set out as follows:

Objective 3.2.1.1

Recognise, develop and sustain the Queenstown and Wanaka central business areas as the hubs of New Zealand's premier alpine resorts and the District's economy.

Objective 3.2.1.2

Recognise, develop and sustain the key local service and employment functions served by commercial centres and industrial areas outside of the Queenstown and Wanaka central business areas in the District.

Objective 3.2.2.1

Ensure urban development occurs in a logical manner:

- to promote a compact, well designed and integrated urban form;*
- to manage the cost of Council infrastructure; and*
- to protect the District's rural landscapes from sporadic and sprawling development*

228. Ms Stagg also brought the following objectives and policies to our attention. We agree these are relevant.

Policies:

3.2.1.2.3

Avoid non-industrial activities occurring within areas zoned for Industrial activities.

Objective 3.2.1.3

Enable the development of innovative and sustainable enterprises that contribute to diversification of the District's economic base and create employment opportunities.

Objective 4.2.4

Manage the scale and location of urban growth in the Queenstown Urban Growth Boundary.

Policy:

4.2.4.2

Ensure that development within the Queenstown Urban Growth boundary:

- Provides an urban form that is sympathetic to the natural setting and enhances the quality of the built environment*
- Provides a range of urban land uses that cater for the foreseeable needs of the community*

229. Read together, the Plans set out a framework of urban form, development and growth, within the Queenstown District. Ms Stagg and Ms Panther Knight agreed that the proposal was not

contrary to the objectives and policies contained in Chapter 4 of the District Plan as they relate to a commercial hierarchy, urban form and industrial land within the District. We note that Ms Stagg considered the proposal to be contrary to objective 4.9.3.6 and policy 6.2 as it relates to the visual amenity aspects of the application, which we address further in this decision. We heard no evidence from Mr Williams or Mr Todd to the contrary. We therefore accept and adopt the Ms Stagg's and Ms Panther Knight's evidence that the proposal is not contrary to the urban form and industrial land related objectives and policies of Chapter 4.

230. We heard about the background to the FFB Zone in Chapter 12.19 and the Environment Court proceedings and, as noted above, were provided with copies of the relevant decisions of the Court by the Council. Ms Panther Knight provided copies of recent resource consents in the nearby area and provided narrative on these. Mr Minhinnick's position was that we need to interpret the District Plan provisions on the face of them. Mr Todd supported this position. We agree with that approach and believe this it is in accordance with the approach set out in *Environmental Defence Society Inc v Marlborough District Council* [2014] NZSC 38.
231. In respect of Objective 1 to Chapter 12.19, the FFB Zone, both Ms Stagg and Ms Panther Knight were of the opinion that the proposal was not contrary to the objective and the supporting policies. We heard no evidence from Mr Williams or Mr Todd to the contrary. On the face of them, these policies set the overarching framework for the zone through the provision of a range of urban activities, including non-residential activities. These in themselves include retailing and industry. This framework also seeks to co-locate compatible activities and separate out incompatible ones. In our view, it would be difficult to be contrary to these objectives and policies in respect to the use of industrial land, given that they are at a high level and set the framework for the entire zone. We accept and adopt the Ms Stagg's and Ms Panther Knight's evidence that the proposal is not contrary to Objective 1 and Policies 1.1 and 1.3 of the FFB Zone.
232. Ms Stagg and Ms Panther Knight agreed that the proposal is contrary to Policies 10.3 and 10.4 of Objective 10 of the FFB Zone in Chapter 12.19. Ms Stagg considered that the proposal is also contrary to Objective 3.2.1.2 and Policy 3.2.1.2.3 of the Proposed District Plan given the proposal is for a retail activity to be established in an industrially zoned area. Ms Panther Knight's view was that the proposal was not contrary to the hierarchy of commercial activity in Queenstown on the basis that trade suppliers are not typically seen as a town centre activity. She did not comment on the specific Policy 3.2.1.2.3.
233. The purpose of the E1 zone is set out in Objective 10, as providing for industrial and service activities, with minimal provision of ancillary retail activities. The Proposed District Plan in Policy 3.2.1.2.3 requires that non-industrial activities are avoided in areas zoned for industrial activities.
234. Accepting that we should interpret the Plan and its objectives and policies at its face, the first question is whether Bunnings is an industrial or service activity, and then, whether any retail is ancillary to the main industrial or service activity. We find it useful to look at the District Plan and Proposed District Plan definitions.

235. The relevant District Plan definitions are as follows:

Industrial:

Means the use of land and buildings for the primary purpose of manufacturing, fabricating, processing, packing, or associated storage of goods.

Light Industrial Activity

Means the use of land and building for an industrial activity where that activity, and the storage of any material, product or machinery (including waste storage) incidental to the activity occurs wholly indoors, within and enclosed by a building. The requirement for the activity to occur indoors does not apply to required car parking and manoeuvring areas. These activities will not require the use, storage or handling of large quantities of hazardous substances nor require air discharge consents.

Retail Sales/Retail/ Retailing

Means the direct sale or hire to the public from any site, and/or the display or offering for sale or hire to the public on any site of goods, merchandise or equipment, but excludes recreational activities.

Service Activity

Means the use of land and buildings for the primary purpose of the transport, storage, maintenance or repair of goods.

Yard Based Industrial Activity

Means the use of land and buildings for the primary purpose of manufacturing, fabricating, processing, packing or associated storage of goods, where no more than 40% of the site is covered by built form.

Yard Based Service Activity

Means the use of land and buildings for the primary purpose of the transport, storage, maintenance and repair of goods, where no more than 40% of the site is covered by built form.

236. The relevant Proposed District Plan definitions are:

Industrial: Means the use of land and buildings for the primary purpose of manufacturing, fabricating, processing, packing, or associated storage of goods

Retail

Means the direct sale or hire to the public from any site, and/or the display or offering for sale or hire to the public on any site of goods, merchandise or equipment, but excludes recreational activities.

Service activity

Means the use of land and buildings for the primary purpose of the transport, storage, maintenance or repair of goods.

Yard Based Industrial Activity

Means the use of land and buildings for the primary purpose of manufacturing, fabricating, processing, packing or associated storage of goods, where no more than 40% of the site is covered by built form.

Yard Based Service Activity

Means the use of land and buildings for the primary purpose of the transport, storage, maintenance and repair of goods, where no more than 40% of the site is covered by built form.

237. The applicant advised us that they had appealed the Proposed District Plan definition for Retail, seeking that it excludes ‘building supplier’, and a concurrent amendment to the definition of Building Supplier, so that it applies wider than just the Three Parks and Industrial B Zones and includes garden and patio supplies. The applicant also advised that they had subsequently refined the relief sought to a trade supplier definition, which would include the specific reference that trade suppliers are to be treated as both retail and industrial activities, unless otherwise specifically provided for. We were not made aware of any other submissions seeking changes to these definitions. At the time of the hearing, the District Plan Hearings Commissioners had not released decisions on the Bunnings submission. Irrespective, any amendment to the definitions in the Proposed District Plan would not change the definitions in the District Plan. Nor is it appropriate for us to speculate on any future decision the District Plan Hearing Commissioners may or may not reach on this matter.
238. We are required to make our decision based on the objectives and policies in the District Plan and Proposed District Plan as they currently stand, and this includes the words that are defined in them. In respect of the Proposed District Plan, given the early stage in its development, we agree with both Ms Stagg and Ms Panther Knight that we should give little weight to it.
239. Mr Minhinnick for the applicant discussed the nature of Policies 10.3. and 10.4 in this submission before closing his case dated 17 January 2018. Mr Minhinnick’s position was that if the Court had intended these policies to be determinative, then it could have used prohibited activity status to secure that outcome. But it did not, and retail is provided for as a non-complying activity, and anyone may apply for a consent for such uses.
240. There was no dispute between the Ms Stagg and Ms Panther Knight that the Bunnings proposal constituted a retail activity as defined in both the District Plan and Proposed District Plan. Ms Panther Knight, however, considered that the Council had a strict interpretation of trade suppliers as retail activities. A lot of her argument, supported by Mr Moody, was that Bunnings is not a retail activity, and is a trade supplier activity. We found no definition of trade supplier activity that would apply to the FFB Zone in either the District Plan or the Proposed District Plan.
241. From reading the definitions used in the District Plan, we concur that Bunnings constitutes a retail activity as it would involve the direct sale and hire to the public from the site and/or the display or offering for sale or hire to the public on any site of goods, merchandise or equipment. There is no distinction as to whether those sales are made to the general public or to trade

customers. We were not made aware of any manufacturing, fabricating, processing or packing occurring as part of the activity, but accept that there would be storage. However, storage is required to be associated with manufacturing, fabricating, processing or packing. Therefore, we find it does not constitute an industrial activity. We also heard no evidence that the primary purpose of the use of the land and buildings was for the transport, storage, maintenance or repair of goods; however, some of these may occur on the site, as ancillary to the retail. All activities are proposed within a building, and therefore the yard-based definitions do not apply. We therefore find that the proposal is a retail activity and is not an industrial or service activity.

242. Ms Stagg considered that the proposal is contrary to Policies 10.3 and 10.4 because:

- The proposal relates to the site uniquely for retailing purposes;
- There is no distinction in the policy for trade related retail; and
- It would reduce land available for industrial and service activities.

243. On questioning by the us, Ms Stagg advised that she considered the Bunnings activity would be compatible with other activities in the Zone and would not generate reverse sensitivity effects. Her focus was on Bunnings being defined as a retail activity in the District Plan and the reduction of land available for industrial and service activities.

244. Ms Panther Knight considered that the proposal is contrary to Policies 10.3 and 10.4 because of the Plan's narrow interpretation that trade suppliers are retail activities.

245. We consider that the proposal is contrary to Policy 10.3 because it is for a retail activity that is not ancillary to the use of the site for industrial and service activities. While there would be some yard-based activity and storage, this is minimal and ancillary to the retail activity itself. We find that the proposed activity is retail, as it is defined in the District Plan. The policy therefore requires that it is excluded from the Activity Area E1 sub zone.

246. We also consider that the proposal is contrary to the second part of Policy 10.4, in that it will result in the reduction of land available for industrial and service activities, and therefore conflicts with the purpose of the Activity Area E1 sub-zone. The policy therefore requires that retail activities are excluded from the Activity Area E1 sub-zone.

247. Given the objective is an area for industrial and service activities, we concur with Ms Stagg that the proposal is contrary to this objective.

248. In respect of Policy 3.2.1.2.3 of the Proposed District Plan, there is no definition of non-industrial activities, but there is a definition of industrial. As with the District Plan, the proposed Bunnings falls within the definition of a retail activity and does not fall within the definition of an industrial activity. Therefore, the proposal would fail in providing for, rather than avoiding, a non-industrial activity in an industrial zone.

249. We therefore find the proposal is contrary to Objective 10 and Policies 10.3 and 10.4 of the FFB Zone and Policy 3.2.1.2.3 of the Proposed District Plan. We find that the proposal is not contrary to the District Plan strategic Objectives 4.9.3.2, 4.9.3.4, 4.9.3.6 and 4.9.3.7 and Policies 2.1, 6.2 and 4.10 Proposed District Plan strategic Objectives 3.2.1.1, 3.2.1.2, 3.2.2.1, 3.2.1.3 and 4.2.4 and Policy 4.2.4.2.

Visual amenity

Urban design, landscape and visual amenity

250. The following objectives and policies in the District Plan were brought to our attention.

Objective 4.2.5 – Landscape and Visual Amenity

Subdivision, use and development being undertaken in the District in a manner which avoids, remedies or mitigates adverse effects on landscape and visual amenity values.

251. Ms Stagg brought our attention to the following policies that support this objective, which we agree are relevant.

1 Future Development

(a)

- (b) To encourage development and/or subdivision to occur in those areas of the District with greater potential to absorb change without detracting from landscape and visual amenity values.*

2 Outstanding Natural Landscapes (District-Wide/Greater Wakatipu)

- (d) To recognise and provide for the importance of protecting the naturalness and enhancing amenity values of views from public roads.*

Objective 4.9.3.1 - Natural Environment and Landscape Values

Growth and development consistent with the maintenance of the quality of the natural environment and landscape values.

Policies:

- 1.1 To ensure new growth occurs in a form which protects the visual amenity, avoids urbanisation of land which is of outstanding landscape quality, ecologically significant, or which does not detract from the values of margins of rivers and lakes.*
- 1.2 To ensure growth does not adversely affect the life supporting capacity of soils unless the need for this protection is clearly outweighed by the protection of other natural or physical resources or important amenity values.*

Objective 4.9.3.6 – Frankton

Integrated and attractive development of the Frankton Flats locality providing for airport operations, in association with residential, recreation, retail and industrial activity while

retaining and enhancing the natural landscape approach to Frankton along State Highway No. 6.

Policy:

- 6.2 To provide for expansion of the Industrial Zone at Frankton, away from State Highway No. 6 so protecting and enhancing the open space and rural landscape approach to Frankton and Queenstown.*

252. We now turn to the more specific FFB Zone. Those objectives and policies that were brought to our attention that we consider are relevant are set out below.

Objective 1 Urban growth and the sustainable management of resources

- b. The Zone develops in a manner that achieves environmental quality and amenity while avoiding or mitigating any adverse effects on the environment.*

Policies:

- 1.6 To ensure quality urban design occurs within the public and private realms so that the built environment provides an appropriate level of amenity for residents, visitors and workers.*

Objective 2 Visual Amenity and Connections

- a. Visual connections to surrounding Outstanding Natural Landscapes are maintained*
b. All development visible from State Highway 6 is of a high standard in terms of visual appearance.

Policies:

- 2.2 To require a building setback from State Highway 6 and generous areas of landscape planting to substantially screen built development and outdoor storage of goods, materials and equipment when viewed from State Highway 6 at the eastern portion of the Zone's northern edge, within that part of Activity Area E1 located to the east of Activity Area A.*
- 2.3 To provide views from State Highway 6 to the face of The Remarkables, in addition to Activity Area A, through:*
- a. a graduated stepping of building height within the Zone;*
b. viewshafts along Grant Road and the EAR; and
c. three viewshafts through Activity Areas C1 and C2.
- 2.5 To encourage views from within the Zone to the face of The Remarkables, Cecil and Walter Peaks, Ferry Hill, K Number 2, Queenstown Hill and Peninsula Hill through the position of open space, streets and accessways.*
- 2.7 To ensure that the nature and location of landscaping proposed to complement development does not itself adversely affect the view shafts to The Remarkables.*

- 2.8 To achieve a high level of amenity for all development that is visible from State Highway 6 through managing building design, site layout and landscaping.

Objective 5 Creating a high quality urban environment

A high quality, urban environment develops with integrated built and open space elements, including roads.

Policies:

- 5.1 To ensure a high standard of building design, site layout and landscape treatment including amenity planting within:
- a. ...
 - b. E1 at the interface of the EAR and SH6; and
 - c. ...
- 5.2 To enable variations in building height in order to create interesting streetscapes and variety in form, scale and height of buildings.
- 5.4 To ensure buildings and site layout enhances street frontages and street amenity taking into account the context of the site.
- 5.5 To encourage the use of colours and materials that complement the surrounding landscape character.
- 5.6 To ensure that crime prevention techniques are incorporated in the design of buildings (including parking areas), public and semi-public spaces and landscaping.
- 5.10 To complement the appearance of buildings through the judicious placement of trees so building bulk and height is less apparent.

Objective 10 Activity Area E1 (Industrial)

An area for industrial and service activities, which has a standard of amenity that is appropriate to the function of the Activity Area

- 10.7 To require sites provide an attractive frontage to all streets.
- 10.8 To require buildings and outdoor areas that adjoin and are visible from the EAR, State Highway 6 or Road 2 to:
- a have a high quality building façade design and associated road frontage landscaping; and
 - b appropriately screen outdoor storage of goods, materials and equipment (except for those goods, materials and equipment that are offered for sale adjoining the EAR) in order to provide high amenity values.

253. We also agree that the following objectives and policies from the Proposed District Plan are relevant.

Objective 3.2.3.1

Achieve a built environment that ensures our urban areas are desirable and safe places to live, work and play.

254. Ms Stagg brought the following to our attention.

Policy 3.2.3.1.1

Ensure development responds to the character of its site, the street, open space and surrounding area, whilst acknowledging the necessity of increased densities and some change in character in certain locations.

Objective 4.2.4

Manage the scale and location of urban growth in the Queenstown Urban Growth Boundary.

Policy:

4.2.4.2

Ensure that development within the Queenstown Urban Growth boundary:

...

- Provides an urban form that is sympathetic to the natural setting and enhances the quality of the built environment*

...

- Does not diminish the qualities of significant landscape features*

255. Ms Stagg considered the proposal to be contrary to Objective 4.9.3.6 and Policy 6.2 and Policy 2.2 because the proposed landscaping would not substantially screen the buildings and the building and associated signage would dominate the view in this location. She also considered it was contrary to Policies 2.2 because, in summary:

- It would be visible from the State Highway corridor; and
- Sufficient landscaping had not been provided along the western extent of the road boundary to substantially screen it.

256. In respect of Policy 2.2, she was of the opinion that it is central to achieving Objective 2 and the anticipated level of visual amenity of the zone when viewed from the State Highway. She was therefore of the view that it was also contrary to Objective 2.

257. In respect of the specific FFB Zone Objectives and Policies, she considered that it was inconsistent with Policies 1.6, 2.8, 5.1, 5.4, 5.5, 5.10, 10.7 and 10.8 because of, in summary:

- The extent of the proposed signage and corporate colours, insufficient landscaping and the resulting dominance of the building when viewed from the public realm;
- The proposed development does not achieve the enhancement of street amenity along the State Highway;

- The Bunnings green is not complementary to the surrounding landscape character;
 - The proposed landscaping would not reduce the visual bulk of the building when viewed from the State Highway, particularly when travelling east; and
 - The building and signage would dominate the streetscape, with parking visible from the State Highway, meaning it did not provide an attractive street frontage.
258. In respect of the Proposed District Plan, Ms Stagg considered the proposal to be inconsistent with Objectives 3.2.3.1 and 4.2.4 and Policies 3.2.3.1.1 and 4.2.4.2.
259. Mr Compton-Moen also addressed Policy 2.2 during the hearing, addressing the changes made by the applicant. He was of the opinion that the changes to the landscape plan would be an improvement, and that any landscape strip and bund did not have to be 100% screening. However, he was of the view it needed to be substantial, of great extent with the development predominantly screened from State Highway 6. He considered that the substantial screening was weakened by the access points from the State Highway 6, particularly at the eastern end. In respect of this eastern end, he noted that screening is reliant on planting on the adjacent site and road reserve, which if removed, would open up clear views of the Bunnings sign on the eastern elevation and potentially a smaller sign above the nursery. He also noted that the pylon sign is not screened at all.
260. Ms Panther Knight considered that the proposal was consistent with all the strategic objectives in Chapter 4 of the District Plan and in the Proposed District Plan. In respect to Chapter 12.19 of the District Plan, she considered that the proposal was not contrary to the relevant objectives and policies because, in summary:
- All development visible from the State Highway 6 would be of a high standard;
 - There would be substantial screening when viewed from the State Highway 6;
 - Views from the State Highway 6 to the Remarkables would be retained, through the use of a graduated stepping of building height and the landscaping; and
 - There would be a high quality urban environment, through the variation in building height, materials and colours.
261. In his consideration of the Chapter 12.19 objectives and policies, Mr Knott was of the view that, in summary:
- The proposed development achieves a high-quality interface with the State Highway 6 through the creation of generous bunds, landscaping, trees and the building design;
 - The landscaping will seamlessly link to the adjoining open space;
 - The visual connections to the Outstanding Natural Landscapes would be maintained;
 - The development would have a high quality visual appearance and assist to create high quality public and private realms; and
 - It would be undesirable to expect substantial screening to entirely hide the building and that it is appropriate that some views remain.

262. Mr Baxter specifically addressed Policies 10.7 and 10.8 of Part 12.19. He supported Mr Knott's conclusions in that regard. He did not address Policy 2.2.
263. Mr Williams advised us that he was concerned about the final appearance of any development on the site, in terms of landscape and visual amenity. He said his concern would be met if Bunnings could demonstrate that it had the same effect as a complying development. In response to a question we had put to Ms Panther Knight about the role of the district plan, Mr Williams agreed with Ms Panther Knight that the Plan is a framework, that there are always unique situations and sometimes trade-offs are made.
264. However, he also told us that people rely on the District Plan, and he hoped that Commissioners at hearings would respect the processes that have been worked through. He said he looks at the State Highway corridor in light of how Placemakers was treated, and that screening sets the tone for the corridor, with the State Highway frontage having a high amenity, with everything happening on the other side of the landscape barrier.
265. Our reading of Policy 2.2 is that the policy does not require complete screening. However, the use of the word "substantial" in the policy suggests a considerable amount of screening such that it would be difficult to see the built development. We consider this proposal is contrary to the policy as the screening is not "substantial" and the built development remains visible. In part, this is the result of the building facing State Highway 6 and having its access ways open to State Highway 6. But it is also because the built form remains visible due to insufficient screening, as viewed from several angles in the public realm.
266. We have discussed the urban design, landscape and amenity effects in our s.104D(1)(a) assessment, where we concluded that these effects are more than minor. While not wanting to repeat our evaluation, we found that:
- a. The bulk and massing of the building is greater than what is anticipated for the site;
 - b. The lack of sufficient landscaping along the Activity Area A boundary to mitigate the visual impact of the building form from the public domain; and
 - c. The breaks in the visual landscaping along the State Highway 6 boundary results in the development having adverse effects from the public domain and road users, and does not result in substantial screening, as anticipated by the District Plan.
267. For these reasons, we concur with Ms Stagg that the proposal is contrary to Objective 2 and Policy 2.2 of Chapter 12.9. This objective and policy is central to the relationship between development within Frankton Flats B and the State Highway. We simply find that the proposal does not substantially screen built development and the outdoor storage of goods, materials and equipment. The site and development on it will be substantially visible for road users traveling north and south along the State Highway and we do not consider that this means that it will have a high standard in terms of its visual appearance.
268. For this reason, we also agree that the proposal is contrary to Objective 4.9.3.6 and Policy 6.2, which seeks to protect and enhance the open space and rural landscape approach to Frankton

and Queenstown. We consider that Policy 2.2 implements Policy 6.2 and Objective 4.9.3.6 in respect of the Frankton Flats B Zone. Quite simply, the proposal would be visible from both approaches to the site and does not protect the open space and rural landscape approach.

269. We find as well that it would not be contrary to policies 2.3, 2.5, 2.7, 2.8, 5.1, 5.2, 5.4-5.6 and 5.10, 10.7 and 10.8, for the same reasons as outlined by Ms Stagg. However, we note that while it would not be contrary to them, we would as the proposal sits before us, consider it inconsistent for the reasons we discuss in our urban design effects assessment.

Signage

270. The objective and policies that we consider relevant are set out below.

Objective 18.1.2.1

Signs which convey necessary information and assist in creating a sustainable and vibrant community, while avoiding or mitigating any adverse effects on public safety, convenience and access and on the District's important landscape, streetscape, cultural heritage and water area visual amenity values.

Policies:

- 1 To ensure the number, size, location and design of signs in different areas are compatible with the character and amenity of those areas.*
- 2 When located on buildings, to ensure the design and display of signs is consistent with and complementary to the overall design of the building through attention to:*
 - lettering design*
 - location on the building*
 - relationship to the architectural features of the building and any adjacent buildings*
 - the number, area and height of signs*
 - ensuring signs are designed in a way that is compatible with and sympathetic to the amenity, visual, heritage and streetscape values of the surrounding area*
 - the effect of illumination on adjoining properties and public places.*
- 3 To ensure the design and display of signs does not adversely affect traffic safety by causing confusion or distraction to, or obstructing the views of, motorists or pedestrians.*
- 4 To ensure all signs are constructed and located in a manner that does not pose a danger to property and/or obstruction to pedestrians.*
- 6 To enable a diversity of sign types within commercial areas that provide for effective communication of business information and enable commercial individuality whilst maintaining public safety, access needs and the overall character of the area.*
- 7 To ensure signs relating to a particular activity and/or use of land or buildings are located on the site of that activity, land or building.*

- 12 *To provide, in limited circumstances, for signs on commercial buildings of a size or dimension which exceeds that otherwise anticipated in the area where the increased size is visually compatible with the surrounding environment and the scale and character of the building to which it relates*

Chapter 12.19 - FFBZ:

Objective 2 Visual Amenity and Connections

- b. *All development visible from State Highway 6 is of a high standard in terms of visual appearance.*

Policy:

- 2.9 *To ensure that commercial signage avoids adverse effects of visual clutter as viewed from State Highway 6 and that it does not compromise traffic safety.*

271. There are no relevant objectives and policies in the Proposed District Plan.
272. Ms Stagg was of the view that the proposal was inconsistent with the objectives and policies in Part 18 of the District Plan, and inconsistent with Policy 2.9. This was because, in summary:
- The sign, as amended through the consent process, would result in visual clutter along the State Highway Corridor;
 - It would be substantially larger than any other signage approved within the Frankton Flats Area and incompatible with its character;
 - The extent of signage and the pylon sign is not sympathetic with amenity values in the surrounding area; and
 - The signage was not visually compatible with the surrounding environment and the subject building.
273. She was not concerned about traffic safety, pedestrians or property.
274. Ms Panther Knight's view was that the proposed signage was not contrary to Part 18 and was consistent with Policy 2.9 because, in summary:
- The building design reduces the use of the Bunning's corporate colour and adopts a range of natural colours and construction materials;
 - Signage is used for branding and way-finding, in keeping with the scale of the building and overall development;
 - The signage is consistent with other similar developments nearby;
 - No more than two fascia signs would be visible at a time;
 - There are no traffic safety effects from the pylon sign; and
 - One freestanding sign would not result in visual clutter and would replace the existing free-standing sign.

275. We note that during the consent process, the applicant undertook amendments to both the signage on the building and to the proposed pylon sign; specifically:
- Reducing the signage on the building from six to five fascia signs and reducing each sign by approximately 10% in area; and
 - Amending the location of the pylon sign to the south-western corner of the site and reducing it from 9m in height and 4.8m in width to 6m in height and 4m in width.
276. During the hearing, we questioned the applicant on the height of the existing garden centre sign. Mr Knott advised us that it is approximately 2.5m in height. Ms Stagg also advised us that after searching Council files, she could not find a resource consent permitting the sign. On this basis, we proceed on the basis that it is unauthorised and should not form part of the existing environment. Therefore, that there is a pylon sign existing on the site is irrelevant to our consideration.
277. In respect of the pylon sign and the argument that Bunnings put forward that it would enable people to find their way to the site, Mr Williams told us that everyone knows what businesses are in Hawthorne Drive and that people still manage to find Mitre 10. Also, that the sign was not required as the Bunnings would be visible.
278. We have discussed the effects of the proposed signage in our s.104D(1)(a) assessment, where we concluded that the visual effects of both the pylon sign and the signage on the building would be more than minor. We were satisfied that any traffic related effects of the signage would be minor in nature.
279. We find the signage to be contrary to objective 18.1.2.1, policies 1, 2 and 3; and objective 12.19.2 and policy 1.9 of the District Plan.

SECTION 104D DETERMINATION

280. Based on our assessment above, we have concluded that the proposed activity will have more than minor adverse effects and that the proposal is contrary to the objectives and policies of the District Plan and the Proposed District Plan.
281. Accordingly, we do not have the jurisdiction to undertake a s.104 assessment and the application must be refused consent. However, we note for completeness that while we did not undertake a s.104 assessment we had come to the initial view, based on the adverse landscape and signage effects which cannot be mitigated through the appropriate conditions of consent, that we would have most likely refused consent on these grounds.

DECISION

Pursuant to Section 104D of the Resource Management Act 1991, for the reasons considered above the application is **Declined Consent**.

A handwritten signature in purple ink, appearing to read 'L Beattie', is positioned above the Commissioner's name.

Commissioner (Chair) Dr Lee Beattie

Date 8 March 2018