

**BEFORE AN INDEPENDENT HEARING PANEL
APPOINTED BY QUEENSTOWN LAKES DISTRICT COUNCIL**

UNDER THE Resource Management Act 1991

IN THE MATTER of a Variation to the proposed Queenstown Lakes District Plan
(Te Pūtahi Ladies Mile) in accordance with Part 5 of Schedule 1
to the Resource Management Act 1991

LEGAL SUBMISSIONS ON BEHALF OF THE ANNA HUTCHINSON FAMILY TRUST

DATED: 8 DECEMBER 2023

Hearing date: 12 December 2023

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MAY IT PLEASE THE HEARING PANEL

1. The case for the Anna Hutchinson Family Trust (**Trust**)¹, is that the land which is the subject of its submission is an integral part of the eastern growth corridor and the Ladies Mile area itself, is clearly appropriate for urban zoning now, and its inclusion will enable the objectives of the Variation and the requirements of the National Policy Statement on Urban Development (**NPS-UD**) to be better achieved. The rezoning is also required to give effect to the requirements of Chapter 4 of the Proposed District Plan (**PDP**) as part of the Indicative Expansion Area of the Queenstown Lakes Urban Environment.
2. A comprehensive body of evidence from highly experienced and objective expert witnesses has been presented for the Trust, and a number of those experts have responsibly and proactively participated in conferencing to seek to refine areas of difference with their counterparts.
3. These submissions address the relevant legal issues relating to the Trust's case and the Council's position in response. At the outset, it is noted that the opening legal submissions on behalf of the Council have provided a comprehensive overview of the legal framework relating to the Streamlined Plan Process (**SPP**), and I would observe that there are few material differences between the Council and the Trust in terms of the law – rather the issues relate to how the Council has sought to apply the law to the facts.
4. It is acknowledged that the Council has a wider range of matters to consider and address than individual submitters, who inevitably are able to advance a more focused position reflecting their specific interests. Nevertheless, it is submitted that the Council has not adequately considered important factual matters in advancing its legal position on scope, and nor does it appear to have fully appreciated the implications of important aspects of the NPS-UD for the Variation.
5. It is submitted that the reports and work that underpinned the Variation, as well as the Council's evidence in chief, reveal a narrow, somewhat defensive and inwardly-directed focus on internal working of the Variation itself,

¹ Due to the comprehensive nature of the case for the Trust, leave has been sought for these submissions to exceed the 20 page limit

involving micro-management of a range of issues, without the Council “putting its head up” to consider the broader factual, environmental or legal context². This, it is submitted, has only occurred through the work of submitters and their experts, who have taken a broader and more considered approach about improvements to the Variation so that it can better achieve its intention and properly address the real urban development issues in the Wakatipu Basin.

- 6.** The Extension Area is a highly strategic piece of land, is located on the Ladies Mile and within the eastern corridor, has no material development constraints, generates significant benefits in terms of active transport modes. Given its proximity to the Old Shotover Bridge and Five Mile/Frankton employment centres, its omission on the merits when there is such a pressing housing capacity and affordability crisis in the District would be illogical, a lost opportunity, and would likely have greater costs and risks than the matters that Council experts seek to raise. The Extension Area provides an opportunity to make a good concept, only adequately executed by the Council, into something considerably better in terms of both the objectives of the Variation and the requirements of the NPS-UD.
- 7.** The Extension Area is strategically situated for accommodating residential development, meeting the requirements outlined in the NPS-UD and being an economically efficient location for residential activity. It is a highly suitable location for development with one of the highest levels of access to required services, amenities and employment in Queenstown³. Exclusion of the Extension Area from the Variation would raise the obvious question as to what the long-term future of the land should be.
- 8.** It is however now agreed through conferencing that the land is suitable for urbanisation. There is submitted to be no single or collective evidential reason given by the Council that is a “knock out” of this position on the merits. If the land is not properly integrated into the corridor through this process, then it is likely that the full range of benefits identified by the Trust’s witnesses will be far more difficult to realise, along with significant costs and process

² Which can be contrasted with the southern corridor process, as discussed in the evidence of Mr Church

³ Tim Heath evidence at paras 53-54

inefficiencies through having to negotiate some other process in the future. On the other hand, there is little to no downside or risk in rezoning the Extension Area as part of the Variation.

9. These submissions will address the following matters:

- (a) background to the Trust;
- (b) scope;
- (c) assumptions under-pinning the Variation;
- (d) relevance and effect of the NPS-UD;
- (e) evidential issues; and
- (f) relevant case law.

Background to the Trust

10. The Trust owns part of the proposed Extension Area, as identified in its submission. The Trust did not purchase its land for development; and hence the Trust is not a commercial developer in the normally understood sense. Little turns on this, but it does explain why the Trust's motivations for rezoning are not to maximise yield and profit as an overriding motivation. The Trust is consciously seeking to provide a meaningful and considered contribution to the district's pressing need for well-located and high quality affordable housing. This also explains why the Trust has been proactive in engaging with the Queenstown Lakes Community Housing Trust towards establishing a genuine partnership, and in volunteering the application of the inclusionary housing rule to the Extension Area.

Scope issues

11. Despite its consistent efforts over time and in different processes to have its land recognised as being appropriate for urban development, following the notification of the Variation, the Trust was well aware that it would face a scope issue. Given however the history and factual background, and indeed the Council's own preparatory work and analysis, it is submitted that this is not entirely an issue of the Trust's own making. Mr Murray can attest to Council staff recommending to him that the Trust make a submission on the Variation to address their concerns about being "left out". Given that context, it is

disappointing that the Council's legal team at least are stridently seeking rejection of the submission on jurisdictional grounds.

12. The legal principles relating to scope are as outlined in the Council's opening submissions are an accurate reflection of case law. They are however submitted to be applied in somewhat of a factual vacuum, without adequate reference to or understanding of the specific facts and circumstances. As a consequence, the Council's position on scope as far as the Trust's submission is concerned, is submitted to be both blunt and overstated. In addition, there is no small irony that the Council uses its own inadequate assessment of practicable options in its section 32 report as a primary tool to raise scope issues, which becomes self-fulfilling from the Council's perspective.
13. In order to provide the Panel with some reassurance on scope as it relates to the Trust's submission, advice has been sought from Chapman Tripp partner Luke Hinchey, and this advice is attached to these submissions as **Appendix A (CT advice)**. It is submitted that the Panel will identify a more nuanced and fact-specific analysis in the CT advice which is more thorough, balanced and reliable than the position advanced by the Council.
14. The CT advice speaks for itself and I do not intend to repeat it, but rather adopt its analysis and conclusions. There are some points in the advice that are worthy of emphasis, the first being that case law is clear that the questions of scope are not to be looked at narrowly. In addition, one must look at the facts in leading cases (such as *Motor Machinists*) to understand what the basis for the legal concern/tests is. Put simply, the facts are critical to an application of the law, for both limbs of the test.
15. While each case turns on its own facts, the CT advice⁴ identifies a case which, on the facts, appears to bear a close relationship to the Trust's position. The case of *Calcutta Farms*⁵ involved a Council-initiated plan change to rezone rural land to residential following an extensive spatial planning process. The plan change did not propose to rezone Calcutta Farms' land, despite the fact that

⁴ See CT advice at Appendix 1

⁵ *Calcutta Farms Limited v Matamata Piako District Council* [2018] NZEnvC 187

that area had been considered for residential expansion through the spatial planning process.

16. In that case, the Court carefully analysed the facts, noting that the scope and purpose of the plan change (in terms of the proposed change to the management regime) was highly relevant when considering the submitter's relief. It also acknowledged that while the scale of relief sought is a relevant factor, it is not determinative of scope. The Court also placed considerable weight on the genesis for the plan change and the significant preliminary spatial planning exercise which preceded it in terms of addressing the suggestion that the land which was the subject of the submitter's relief was not in the public arena or "on the radar" (my words). In this instance, there are a number of highly relevant factual matters that are addressed by the CT advice that have not been considered by the Council's legal submissions.

Background to the Variation/first limb of scope test

17. The Council's opening submissions do not identify the history and background to the Variation. When these are better understood, it is submitted that the Council's position that relief of rezoning the Extension Area is not "on" the Variation is significantly weakened.
18. The notified boundaries, zoning overlays and precincts are summarised in a Council fact sheet that accompanied the notified Variation⁶ (see Figure 1 below). Of note is the *inclusion* of the Queenstown Country Club land to the south of SH6 (in red), the *exclusion* of a significant area of land to the north-eastern end of SH6 towards Lake Hayes (the so-called Threepwood land), and the northern boundary of the UGB and zone boundary extending along the toe of the hills. The Extension Area is also *excluded*.

⁶ https://www.qldc.govt.nz/media/xdjhxtoi/qldc_ladies-mile-notification_a4-factsheet_apr23-web.pdf

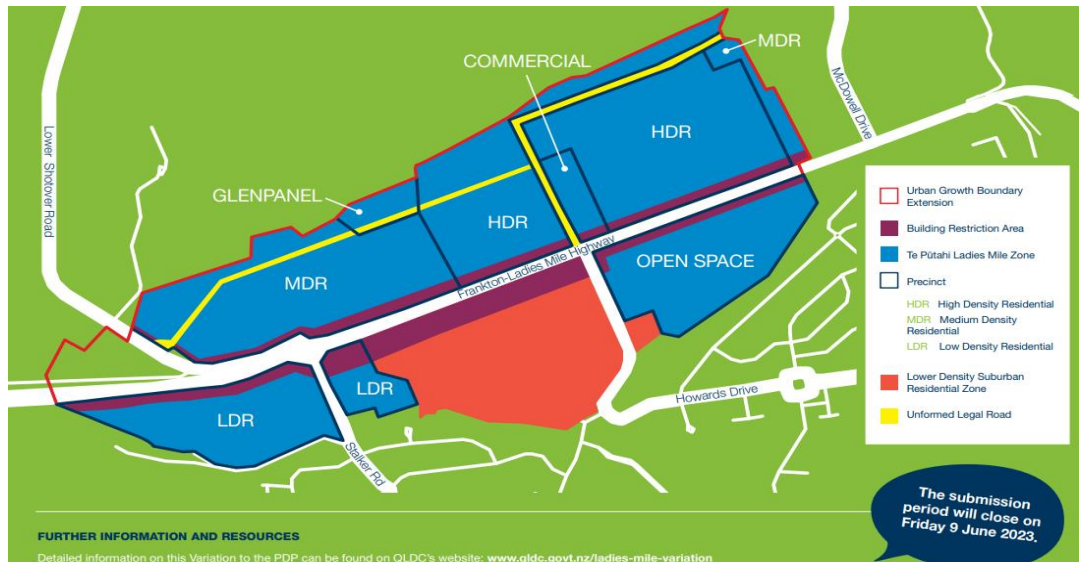


Figure 1

19. The reason that this is submitted to be material is that it shows that the boundaries of the zone and the land being considered have changed (in some instances considerably) over the course of relevant processes. There has been material fluidity about the land being considered, with some changes being explained by the Council, and others being ignored.
20. The variation was preceded by a Masterplan process. The final draft Masterplan report was attached to the Council's SPP application to the Minister and is therefore integral to the Variation. There are several instances where the context to the Variation is clearly explained in terms of the geographical scope and issues to be addressed. For example, page 12 of the Masterplan report⁷ shows the Geographic Scope, and expressly notes that "... the Area of Focus fluctuated over the project timeline as various factors came into play, however the wider areas of Influence and Interest continued to inform decisions within the Area of Focus". An image of the Masterplan Area of Focus and Area of Interest is set out below as Figure 2.

⁷ <https://www.qldc.govt.nz/media/15bnkx1o/1-appendix-a-te-putahi-final-draft-masterplan-report-pages-i-to-22.pdf>



Figure 2

21. It is apparent that the original Masterplan *excluded* the QCC land to the south of SH6 (the red area on the fact sheet), as well as taking a straighter line along the northern extent of the land to the north (more land is now *included* along the toe of the hills). In addition, the Threepwood land which was originally included but is *excluded* from within the Variation as notified. Importantly, part of the Trust's land was originally *included* as an Area of Focus (enlarged images are at **Appendix B** to these submissions).
22. When the factual context is better understood, it is difficult to understand why the Council is maintaining a very strict and narrow view on scope when there was significant fluidity around the boundaries of the Variation through the process. This indicates that the Variation Area has been subject to change over time but not apparently on a particularly principled basis. This background supports not taking an overly rigid view on submissions seeking to further extend the current boundaries. It also raises the question of why the Council failed (completely) to carry out any s32 analysis of the Extension Area. Only the QCC land was expressly considered in the s32 report⁸, and the omission of the Threepwood land was not mentioned at all.

⁸ <https://www.qldc.govt.nz/media/qk2gl5oh/appendix-d-i-tplm-section-32-report.pdf> at pages 74 - 78

23. For these reasons, it is submitted that the Council's reliance on the absence of a section 32 analysis as being highly material to scope⁹ is overstated, when the failure is not the Trust's but the Council's. In addition, unlike the CT advice, the Council's legal submissions fail to acknowledge that the Trust land has been identified and considered in spatial planning exercises, so it is clearly on the radar and should have been considered by the Council.

Fairness/second limb of scope

24. The Council's written legal submissions then address fairness considerations (and this was a particular focus of counsel's oral submissions to the Panel on the opening day of the hearing). Again however, the legal position advanced failed to identify important factual information which was on the record and, as a consequence, materially overstated fairness concerns.

25. In order to address the risk of likely affected or interest people being taken by surprise by the Trust's submission, the Trust proactively served a copy of its submission on a range of parties so that they would be on notice and could express a view on the Trust's submission should they wish. A list is attached at **Appendix C** to these submissions. The record shows that a number of those persons, particularly the Spence Road residents, submitted on the Trust's relief and have therefore had the chance to participate in the process. The expert planning witness engaged by a number of those parties has now agreed on an amendment to the Trust's relief with the Trust's planning witness Mr Murray¹⁰.

26. In addition, in response to concerns expressed by Mr and Mrs Stalker, expert evidence has been prepared and submitted by the Trust's witnesses which demonstrates that the concerns expressed by the Stalkers about the use of their land can be addressed without compromising the benefits of the Trust's relief¹¹.

⁹ Council's opening legal submissions, 24 November 2023 at paras 42 - 46

¹⁰ See Updated Joint Witness Statement of Werner Murray and Nick Geddes dated 14 November 2023

¹¹ See Evidence of Werner Murray at [59]

27. As to broader concerns about unfairness, the CT advice identifies that the wider context, including the extensive past consultation processes undertaken by the Council, means that anyone with an interest in the urbanisation of the area should have become involved in the Variation process. The prospect of parties (particularly the Trust given its prior submission on the Spatial Plan) seeking additional land to be included in the Variation through submissions was a likely scenario.
28. Finally on this point, fairness issues cut both ways. Counsel for the Council point to the Variation being considered through being a SPP¹² and the lack of an appeal process creating enhanced fairness concerns for uninformed third parties. By the same token, the lack of appeal rights for the Trust means that it is equally as important that the Panel approaches the question of scope carefully and on a fully informed basis, given the benefits of the Variation could be substantially increased by granting the Trust's relief (or completely lost by ruling out the Trust's relief). There are therefore potentially significant consequences of determining that the Trust's submission is out of scope¹³.

Matters raised in Council's oral legal submissions

29. A number of matters raised in oral legal submissions and in exchanges with the Hearing Panel require brief comment.
30. The first was the point that the Wakatipu Basin Lifestyle Precinct (**WBLP**) zoning of the Trust's land is not being changed through the Variation, and therefore the status quo of the management regime is not being changed. Although briefly addressed at para 42 of Council's opening submissions, reliance was placed on the fact that no other WBLP land is being rezoned by the Variation¹⁴. When the context and history is properly considered, this is a very weak point and somewhat of a red herring. If this was a conscious decision by the Council, then it should have been identified in the s32 report (and was not). There can

¹² Council opening legal submissions at paras 36 and 49

¹³ Noting that the "backstop" of a s293 direction is not available under a SPP and a rejection on scope grounds is effectively a strike out of the submission which, given the consequences for the Trust, suggests caution should be exercised by the Panel

¹⁴ It is understood that land to the east of the Extension Area is within the Wakatipu Basin Rural Amenity Zone (of which the Lifestyle Precinct is a sub-zone) and is subject to the Variation, so the management regime is in fact being proposed to be changed

be no unfairness issue arising and the real issue is whether the Council is appropriately addressing the requirements of the NPS-UD.

31. The second matter was a concern about alignment between the Trust's submission and evidence. Counsel for the Council identified concerns about changes in evidence internal to the Variation potentially impacting on 3rd party land, and depriving them of the ability to comment¹⁵. There are several comments that need to be made in response:

- (a) almost all of the land referred to in this regard is internal to the Variation as notified, and recommended changes to the internal roading network were identified in the Trust's submission so there can be no scope issue with relief sought that seeks changes within the Variation Zone (as notified);
- (b) the landowners subject to the original and revised roading layouts are participants in the SPP and, in some instances, advised by common experts;
- (c) as noted previously, those landowner parties at the western end of the Variation as notified were served with a copy of the Trust's submission;
- (d) it is otherwise implausible that such parties would not have been put on notice of the tenor of relief sought regarding roading alignments through the Council's summary of submissions and relief sought;
- (e) one of the reasons for the change to roading layouts at the western end was to responsibly consider whether the benefits of roading layout changes were still possible if additional land sought by the Trust was not included in the Variation¹⁶; and

¹⁵ A review of the recording of the first hearing day suggests that counsel for the Council said "So it's the spatial change and it's not it's not ... if the submission is on the variation, then that may well be fine. But what I'm cautioning is that there are potentially other people interested, for instance, who own the land where they are now saying that the roading alignment should go, who were never required under, who may not have appreciated that there was a submission seeking that particular change that has actually now changed through evidence as well." When pressed by Commissioner Munro, it was submitted by counsel that "...it highlights in my submission that there are people that might not have been involved, might not be involved in this process, who are actually affected by what they are seeking."

¹⁶ Grant & Sharyn Stalker opposed the addition of a triangle of their land on the eastern side of Lower Shotover Road to accommodate an enhanced roading layout, as suggested in the Trust's submission. This land was within the original Masterplan area of focus but not in the Variation.

(f) the Council does not appear to have acknowledged that some of the critical assumptions underlying the Variation have changed fundamentally in light of the change of position, only introduced through evidence, that the SH6 road corridor through the Variation Area will now have a 60kmh speed limit, signalised intersections, and accommodate a dedicated bus lane for which funding is committed – the flow-on implications of this across a range of disciplines are very significant and have generated the need for detailed consideration through a number of joint witness statements¹⁷.

32. It is therefore somewhat of a diversion and a double standard for the Council to be raising concerns about submitters responsibly advancing updated positions in evidence and through conferencing, when the material change to the roading assumptions for the Ladies Mile corridor (introduced belatedly through a statement of evidence) is, of itself, a game-changer.

Scope – neighbourhood centre at western end of Ladies Mile

33. A small commercial node/neighbourhood centre at the intersection of SH6 and Lower Shotover Road has been identified as desirable by several Trust witnesses, and this has also been accepted on the merits by some Council witnesses¹⁸. The desirability of this outcome has been identified by Trust witnesses in their evidence¹⁹ and reinforced by the changes to the traffic environment on SH6 identified through the Council’s evidence.

34. It is however accepted that this outcome was not expressly sought in the Trust’s submission, notwithstanding advice from experts that recommended that it be pursued. The Trust elected to take a conservative approach based on its understanding of the underlying assumptions of the Variation as at notification.

35. There is now a clear need and justification for this outcome due to the material change in the assumptions for the Ladies Mile road and traffic environment. While there is no clear scope arising from the Trust’s submission for this

¹⁷ It now appears that the entire roading layout, including the location of the collector road, is no longer “fixed”

¹⁸ See summaries of evidence of Natalie Hampson and Bruce Harland, 4 December 2023

¹⁹ Evidence of Tim Church at [57(b)], [58] and [64], and Tim Heath at [46] in particular

outcome to be included in the Variation, it is possible that this could arise from another submission²⁰ or, more fundamentally, is open to Panel to consider as generally being within the purview of achieving the over-riding “well-functioning urban environment” goals of the Variation.

- 36.** From the Trust’s point of view, it considers that the outcome is still achievable through a resource consent process by applying the Variation’s zoning and rules for this location. Mr Murray is of the view that the node, if sought, would be assessed as a restricted discretionary activity under the Variation and that consent could readily be achieved for an appropriately designed and located development at this location²¹. Accordingly, the issue of scope need not be a barrier to achieving an optimal result, albeit that there may be less certainty about this outcome if it is not clearly identified in the Variation. It would, however, be better directed by the Variation, rather than left solely to the consent process to achieve.

Assumptions underpinning the Variation

- 37.** I have already referred to the very significant change in assumptions, introduced through the evidence of Waka Kotahi, about the transport environment of Ladies Mile. Instead of being an 80kmh road with roundabouts and underpasses, it is now proposed to have a 60kmh speed limit with signalised intersections, at-grade pedestrian crossings and a dedicated bus lane. This is a very significant change in assumptions, which has implications in terms of urban design, transportation, economic, commercial and density considerations (to name a few). It is also significant in terms of the NPS-UD, a matter which will be addressed later in these submissions.
- 38.** Another underlying assumption that has notably found no “owner” from the Council’s perspective is the relevance of 2400 households for the Variation. It appears that it is not a target, nor a cap²², but rather a projection of possible

²⁰ It is potentially arguable that the consequences of the RTS and changes to the traffic environment address the concerns in the submission and further submission by Park Ridge Limited (submission 75)

²¹ It is submitted that any necessary roading changes to accommodate the outcome would be plainly within scope given the subject matter of a number of submissions

²² There was a half-hearted claim to that effect in Mr Harland’s rebuttal evidence, but that appears to have been abandoned

yield based on transport modelling. There has (appropriately) been no clear suggestion from the Council that the 2400 household number is required or constrained for the purposes of meeting Housing Bottom Lines in 4.1.2 of the Proposed District Plan (PDP).

- 39.** There are a number of reasons why this point is submitted to be relevant. The first is that it is abundantly clear that a yield of 2400 households is entirely optimistic due to the removal of land from the possible scope of the Variation²³ and/or its likely consumption for educational or other purposes. The second is the resistance of landowners within the Variation Zone to providing households at highly optimistic levels of density (based on the receptiveness of the market and/or the economics of development). Putting it simply, the Variation needs the additional capacity (and housing typology) provided by the Extension Area – quite apart from the pressing need for additional housing in the Basin.
- 40.** With respect to the possible argument that 2400 households should be a cap, this would be misguided. The Variation cannot be seen in a vacuum; it must be seen in the context of the needs of the eastern corridor, the Wakatipu Basin and the district. What is very clear (and is becoming even clearer) is that, for a long time, there has been a significant mismatch between plan-enabled capacity and feasible development capacity. The evidence of Mr Osborne and Ms Scott identifies that, despite some confidence from the Council that there is adequate zoned land to provide for demand, provision of suitable and affordable housing capacity is not being realised. If anything, the capacity and affordability problem is getting worse. Much of the plan-enabled capacity is a mirage and the Council needs to do more than simply catch up.
- 41.** Another way of approaching this issue is that the problem is not necessarily capacity, affordability, and suitable housing typologies in the Ladies Mile, but rather in the Basin and district. Therefore, the Variation needs to be seen in the broader context of a Basin and district-wide problem, rather than the discrete area of the Variation as notified.
- 42.** When considering matters from this perspective it is noted that the Housing Bottom Lines, which were directly inserted without a public process in 4.1.2 of

²³ For example, the Threepwood land

the PDP based on the Housing and Business Capacity Assessment 2021 (**HBA 2021**), are both out of date and materially unreliable²⁴. This point is illustrated by recent communication from the Council to submitters on the Spatial Plan 2.0²⁵:

Unfortunately, the work to develop of the Spatial Scenarios has not yet been finalised. This is due to a delay in the Housing and Business Capacity Assessment (HBA) which provides the evidence base for the Spatial Plan Gen 2.0 to respond to. For example, how much new plan enabled capacity we need and for what activity, i.e. residential, commercial and/or industrial and in what locations.

While significant work has been undertaken to progress the HBA, several factors, including higher than anticipated population projections, has [*sic*] delayed the process. Therefore, work has paused on the Spatial Plan Gen 2.0 until work on the HBA is completed approximately mid-2024. We will keep you updated as our timeframes are confirmed.

- 43.** This has resulted in the Council and Otago Regional Council jointly proposing to write to the Minister for the Environment to seek additional time to deliver the Future Development Strategy for the district²⁶. This is because the HBA 2021 is no longer considered robust, and a new HBA and model needs to be built from scratch²⁷.
- 44.** It is submitted that, in terms of relevant case law, it is usually assumed that proposed plan provisions (ie. the Variation) should be required to give effect to settled provisions of the relevant planning instrument (in this instance, Chapter 4 of the PDP). While it was a resource consent case, *RJ Davidson*²⁸ had indicated that logically the *King Salmon* approach should apply so that higher order documents should be regarded as being particularised in the relevant plan unless there is a problem with the relevant plan (one of the three caveats) or the relevant plan precedes the higher level documents, in which case more weight will need to be accorded to the higher level documents than would otherwise be the case.

²⁴ The Trust, as part of its submission on the Spatial Plan 2.0, offered to engage with the Council and have its experts assist with rectifying the HBA model and numbers, but this offer was rejected

²⁵ E-mail from Liz Simpson, Senior Strategic Planner – Future Development, dated 21 November 2023

²⁶ See ORC agenda 22 November, item 10.2 <https://orc.govt.nz/media/15683/2023-11-22-council-agenda.pdf>

²⁷ Because the Council did not own the data for the HBA 2021

²⁸ *RJ Davidson Family Trust v Marlborough District Council* [2018] NZCA 316, [2018] 3 NZLR 283

45. In a subsequent Environment Court case²⁹, it was questioned whether the *King Salmon* approach extends to the relationship between regional or district plan provisions and higher order instruments such as regional and national policy statements. In that case, it was held that if the plan provisions are ambiguous, incomplete or illegal then an answer should be looked for in the higher level instruments.
46. It is submitted that the unreliability of the Housing Bottom Lines in Chapter 4 of the PDP means that the guiding planning instrument that needs to be given effect to by the Variation is, in this instance, the NPS-UD and, for some purposes, the partially operative Otago Regional Policy Statement 2019 (RPS). The balance of Chapter 4 will still remain relevant, but the Housing Bottom Lines and any concept of housing caps or targets for the Variation should be dispensed with.

National Policy Statement on Urban Development

47. A number of the Trust's expert witnesses have prepared their evidence with a strong focus on the achievement of the requirements of the NPS-UD. This is particularly evident from the evidence of Mr Church, Mr Weir, Mr Heath, Mr Osborne, Mr Bartlett, Mr McKenzie and Mr Murray, who have all looked at the Variation more broadly within its context and location (ie. within the eastern corridor, part of the Ladies Mile, proximate to Frankton/Five Mile, and an important part of the Basin). In large part, it appears that the evidence for the Council has now fallen into alignment with the evidence of Trust's witnesses.
48. One of the important matters that needs to be addressed in terms of the NPS-UD is the consequence of the changes to traffic and roading assumptions along the SH6 corridor, and in particular the confirmation of a dedicated westbound bus lane as part of that corridor. While it is a matter that has been discussed at length in transportation and urban design conferencing, identifying why (as a matter of law) it is important for the Variation should assist the Panel³⁰.

²⁹ *Infinity Investment Group Holdings Ltd v Canterbury Regional Council* [2017] NZEnvC 36

³⁰ And aims to respond to Panel question 1.4 in its Minute dated 21 November 2023

- 49.** It is submitted that the addition of a dedicated westbound bus lane to the SH6 corridor makes SH6 a Rapid Transit Service (**RTS**) as defined under the NPS-UD because:
- (a) a RTS is defined in the NPS-UD as “...any existing or *planned frequent, quick, reliable and high-capacity public transport service* that operates on a permanent route (road or rail) that is *largely separated from other traffic*”; (emphasis is mine)
 - (b) in turn “planned” in the NPS-UD in relation to *forms or features of transport*, means “planned in a *regional land transport plan (RLTP)* prepared and approved under the Land Transport Management Act 2003 (**LTMA**)”
 - (c) \$90m has been committed for SH6 Corridor improvements, Ladies Mile Corridor improvements and SH6 Grant Road to Kawarau Bridge Improvements in a RLTP prepared under the LTMA;
 - (d) the Otago Southland Regional Land Transport Plans 2021-31, being a RLTP approved under the LTMA, identify the Ladies Mile SH6 as a “*committed activity*”³¹ and allocate \$35 million in funding for corridor improvements, including a westbound bus lane, bus priority onto bridge consideration, and a Howards Drive roundabout (ie. it is a planned form or feature of transport and meets the definition of a permanent route (road) that is largely separated from other traffic);
 - (e) in terms of frequency, the Otago Regional Public Transport Plan (**ORPTP**), also prepared under the LTMA, defines “*frequent services*” as “*Direct services that connect residential areas with commercial, industrial, community, and other key activities. They provide frequent services throughout the day at a target of between 15 – 30 minutes but may provide lower levels of service at off-peak times. They are sometimes supported by bus priority measures*”³²;
 - (f) Table 16 of the ORPTP identifies the proposed bus service *frequencies* and includes the two bus services being “Arthurs Point to Arrowtown” and “Queenstown to Lake Hayes Estate” as being “Frequent Services” at a 30 minute frequency each;

³¹ See <https://www.orc.govt.nz/media/10143/rltp-2021-2031-rtc-adopted-11-june-2021.pdf> at page 67

³² See https://www.orc.govt.nz/media/10128/orc_rtp_document_final-july-2021_online.pdf at page 47

- (g) in terms of being a *quick* and *reliable* public transport service, this will depend on the resilience of a transport network, with factors such as separate bus lanes contributing to this provision as does allocated funding such as that allocated and committed through the RLTP;
- (h) the ORPTP identifies that “ ... a *good and reliable journey experience will be achieved through high standards of on-board facilities, communication and transfer infrastructure. These will be well integrated with the surrounding environment, ensuring that customers can use different modes to complete their journey. The journey experience will be further enhanced through stops and interchanges that are accessible, convenient, clean, comfortable, and safe*³³”;
- (i) Finally, in terms of capacity, Table 6 of the ORPTP directs a strategic response to encourage modal shift towards public transport, specifically the “*introduction of higher capacity vehicles **on core and frequent routes** connecting employment, economic activities with high growth areas*”³⁴. (emphasis is mine)

50. It is submitted that, as committed projects under the RLTP, they must be taken at face value by the Hearing Panel. The implication of the SH6 corridor including a RTS does of course have implications in terms of walkability and catchments for Rapid Transit Stops under Policy 5 of the NPS-UD³⁵ as well as the desirability of a transit-oriented commercial node at the western end of the Variation. These matters are directly relevant to the merits of rezoning of the Extension Area.

51. There is a further implication of the RLTP that is important to bring to the Panel’s attention. The RLTP is a method implemented by the RPS³⁶, as follows:

Regional council will set objectives, policies and activities to assist in the implementation of policy 4.4.6, 4.5.2, 4.3.1, 4.3.2, with a particular focus on:

- a. Enhancing road safety;
- b. Ensuring travel needs in Otago are met;
- c. Enabling increased freight efficiency;

³³ ORPTP - Section 5.4

³⁴ ORPTP - Table 6

³⁵ Noting that the mandatory requirements of Policy 3 would apply if QLDC became a Tier 1 local authority

³⁶ Method 6.3 at page 97 of the RPS https://www.orc.govt.nz/media/9658/rps_partially-operative_2019_2021.pdf

- d. Managing Otago’s public transport services;
- e. Ensuring transport networks are resilient, efficient and sustainably managed

52. Policy 4.5.2 is “Integrating infrastructure with land use”, which is squarely within the ORC’s statutory function under section 30(1)(gb) of the RMA being “strategic integration of infrastructure with land use through objectives, policies, and methods”. Policy 4.5.2 sits under Objective 4.5 of the RPS³⁷ and provides:

Achieve the strategic integration of infrastructure with land use, by undertaking all of the following:

- a) Recognising and providing for the functional needs of infrastructure;
- b) Locating and designing infrastructure to take into account all of the following:
 - i. Actual and reasonably foreseeable land use change;
 - ii. The current population and projected demographic changes;
 - iii. Actual and reasonably foreseeable change in supply of, and demand for, infrastructure services;
 - iv. Natural and physical resource constraints;
 - v. Effects on the values of natural and physical resources;
 - vi. Co-dependence with other infrastructure;
 - vii. The effects of climate change on the long-term viability of that infrastructure;
 - viii. Natural hazard risk.
- c) *Coordinating the design and development of infrastructure with land use change in growth and redevelopment planning* (emphasis is mine)

53. Why is all of this important? Because the RLTP is reflected in and embedded in the RPS, and therefore must be taken at face value as the outcome of a separate statutory process. In turn, the Variation is required to give effect to both the RPS and NPS-UD under section 75(3) of the RMA. The SH6 corridor improvements give effect to both the NPS-UD and the RPS and, it is submitted, require the Variation to be based on and assessed against the same assumptions.

54. It is also important because it shows that there is, in fact and law, the requirement for joined up thinking between investments in important infrastructure such as the bus lanes and associated transport projects along the SH6 corridor, and the planning and integration of adjoining urban environments.

³⁷ Objective 4.5 of the RPS is that “Urban growth and development is well designed, occurs in a strategic and coordinated way, and integrates effectively with adjoining urban and rural environments”

- 55.** In essence, because there is a planned RTS along the Ladies Mile corridor, then the Extension Area must be considered as part of that corridor and its urbanisation is both anticipated and needs to be coordinated with the design and development of infrastructure (along with the rest of the Variation Zone). This has a range of implications for the Variation in terms of matters including density, walkability, building heights, location of Rapid Transit Stops and transit-oriented commercial activity, and appropriately requires a focus on what happens at the western end of the Ladies Mile corridor. In other words, on the merits, it is submitted that urban rezoning of the Extension Area and its integration with the transport network is not optional.
- 56.** Careful consideration and appropriate solutions for both the western end and the Variation as notified have been identified in the evidence for the Trust. This evidence is compelling and consistent across a range of disciplines, with witnesses being very clear that the inclusion of the Extension Area and the other recommended changes to the Variation better achieve the requirements of the NPS-UD and result in a superior well-functioning urban environment than the Variation as notified.
- 57.** As noted earlier, a number of witnesses for the Council have now accepted and agreed in principle with that evidence, with a number of the remaining outstanding issues being related to matters of detail. There are however still some Council witnesses who oppose the Trust's relief on the merits, the reasons for which will be briefly addressed below.

Evidential issues

- 58.** As a general statement, the Council's evidence has been very difficult to follow in terms of its lack of clarity and the propensity of its witnesses to complicate matters rather than simplify them.
- 59.** In considering the Extension Area on its merits, the Council evidence which continues to raise issues or concerns is that of Ms Fairgray, Mr Skelton, and Mr Shields. The concerns of Ms Fairgray and Mr Shields appear to be based on a very narrow view of the Variation and those witnesses do not appear to have proper regard to the relationship between the Extension Area and Variation,

nor the broader eastern corridor and the key employment and commercial centres of Five Mile and Frankton.

- 60.** The evidence of Ms Fairgray seems to be based on a highly theoretical and orderly form and timing of development that is divorce from commercial realities. In addition, her concerns about potential risks of the Extension Area diluting of the Variation's commercial centre and surrounds could be considered to contradict the position she reached in conferencing, which was that more households in the catchment would likely support the centre.
- 61.** That is certainly Mr Heath's view. In terms of the risks of vitality, performance and fragmentation, of the commercial centre and surrounds, Mr Heath considers that there is not a direct relationship between intended development of the Extension Area and the risks that concern Ms Fairgray. His view is that the Commercial Precinct is the closest centre to the Extension Area, and that this is within the Commercial Precinct's closest primary catchment. Any residents in the Extension Area would use the Commercial Precinct just as frequently as a household in closer proximity to the Precinct, so any development in the Extension Area is just as positive for the Commercial Precinct as another development in the Variation area.
- 62.** A highly theoretical and micro-managed approach, which seems to assume a perfectly functioning and rational market, would also appear to fail to adequately consider or balance the ongoing and likely more problematic risks and costs to the district of failing to provide appropriate and well-located housing (such as the Extension Area would provide) to a market that is desperately short of suitable supply. That factor must be just as important to consider, if not more so, yet it does not appear to feature clearly in Ms Fairgray's evidence. There is also, in Mr Osborne's view, a significant risk of the Extension Area not realising its potential if some two-step approach to density of development in the area is applied.
- 63.** Mr Shields maintains a concern apparently based on his preferred walkability metrics and the Extension Area's distance from the proposed Commercial

Precinct and other facilities³⁸. Again however, if those facilities are the closest and most convenient such facilities to the Extension Area, then residents are likely to use them as their first choice (including the option of accessing them by bike, which he did not appear to have considered in detail until questioned by the Panel).

- 64.** It is noted that Mr Shields now seems to regard a total household yield for the Variation of 1800 households as being acceptable and viable from a transportation perspective, and appears to place the needs of the network above those of people and communities of the district, who could no doubt find a valuable social, economic and cultural use for the additional 600 households included in transport modelling for the Variation that Mr Shields is prepared to forego.
- 65.** Finally, the evidence of Mr Skelton is worthy of mention, both for its confusing content as well as for the conduct of Mr Skelton in preparing for the hearing. Despite the clarity of the Panel's expectations regarding ongoing expert conferencing and engagement, Mr Skelton has, apparently consciously, failed to adequately engage with Mr Milne before appearing before the Panel. This has occurred despite repeated attempts by Mr Milne to arrange a suitable time for discussions, and a direct request from me to the Council's legal team to remind Mr Skelton of the Panel's expectations in paras 1.13 – 1.16 of its Procedural Minute dated 13 November 2023.
- 66.** A one sentence e-mail from Mr Skelton to Mr Milne³⁹ advising that his opinions were unchanged, without any further explanation, has been the sum total of "engagement" and further conferencing on landscape matters⁴⁰.
- 67.** When Mr Skelton appeared before the Panel, he appeared to confirm that the Extension Area could or should be urban in the future, but should not be rezoned at this stage. Bearing in mind Mr Skelton's expertise, it is difficult to

³⁸ His summary of evidence states at para 12: *"I do not support the proposal by Anna Hutchinson Family Trust (AHFT) to extend TPLM Variation to the 'Hutchinson land' from a traffic perspective since this land would be much further away from the proposed TPLM Variation local centre, high school and sports hub. I do not agree with the submitter's proposed public transport proposal since this does not comply with the W2G partners public transport strategy."*

³⁹ On 20 November 2023

⁴⁰ There were of course material issues to be discussed, including the position agreed between Mr Murray and Mr Geddes on the zoning of the lower terrace of the Extension Area

understand what the difference in landscape and visual amenity considerations will be at some unspecified time in the future, that might justify such a view being advanced. Mr Milne’s evidence should, it is submitted, be preferred in all material respects, and the Panel can be reassured that Mr Milne has understood and complied with his obligations in terms of the Code of Conduct and the Panel’s directions.

Relevant case law

- 68.** To an extent, it is submitted that case law regarding rezoning of land in the Wakatipu Basin is of limited guidance for the Panel in determining the appropriateness of the Variation. A Variation in this location and for the purposes that have been advanced by the Council is, at a threshold level, an appropriate planning outcome that gives effect to higher order documents (albeit that it is submitted for the Trust that it can be materially improved).
- 69.** In that respect, it is submitted that an important issue in this case is the extent to which submitters’ relief and the different options before the Panel better achieve the objectives of the Variation. It is accepted that this will also need to be considered through the lens of the strategic aspects of the PDP, as well as the extent to which the Variation gives effect to the NPS-UD and RPS.
- 70.** A recent Environment Court case (*Waterfall Park Developments Limited*)⁴¹ may well assist the Panel, particularly as it relates to the location of the UGB, and the Trust’s request for expansion of the UGB. In that case, a material change to the UGB was sought as one part of a package of relief. The location was close to Arrowtown and therefore triggered consideration of the Arrowtown-specific factors in the PDP but, the Court observed that⁴²:

“... In particular, WPDL did not provide any evidence to help our understanding of how the expansion would:

- (a) assist to manage urban growth “in a strategic and integrated manner” as is specified in the Ch 3 Strategic Directions SO 3.2.2 and SP 3.3.14;
- (b) “manage the growth of urban areas within distinct and defensible urban edges” (Obj 4.2.1);

41 *Waterfall Park Developments Limited v Queenstown Lakes DC* [2023] NZEnvC 207

42 At [29]

- (c) preserve “the existing urban character of Arrowtown” and avoid “urban sprawl into the adjacent rural areas” (Pol 4.2.2.12);
- (d) focus urban development “primarily on land within and adjacent to the existing larger urban areas or within and adjacent to smaller urban towns and rural settlements” (Pol 4.2.1.2);
- (e) minimise significant adverse effects on the values of open rural landscapes (Pol 4.2.1.6);
- (f) address “changing community needs, respond to monitoring evidence, or enable appropriate urban development” (Pol 4.2.1.7);
- (g) preserve the existing urban character of Arrowtown and avoids urban sprawl into the adjacent rural areas (Pol 4.2.2.12); or
- (h) be “based on existing urbanised areas” (Pol 4.2.2.13).

71. It is submitted that the Trust’s evidence has, when considered in the round, provided compelling evidence which appropriately addresses the Extension Area and the associated change to the UGB (so far as is relevant to the circumstances of the relevant land and the Variation).

Summary

72. There is submitted to be no sufficiently weighty reason on the merits to decline Trust’s relief. When the law is properly applied to the facts, there is no disqualifying jurisdictional issue with the Trust’s relief.

73. The Trust has advanced a well-considered and soundly based evidential position and, to the extent that there are differences between its evidence and that of the Council, the Trust’s evidence should be preferred in all material respects.

DATED this 8th day of December 2023



James Winchester
Counsel for the Trust

APPENDIX A – RELEVANT IMAGES SHOWING EXTENT OF LAND SUBJECT TO VARIATION AND CONSIDERED IN PREPARATORY PROCESSES

Images from Council's Masterplan establishment report

 QUEENSTOWN LAKES DISTRICT COUNCIL

Services Do It Online Community Recreation Your Council 

About the project

The Ladies Mile (Te Putahi) Corridor between Shotover River (Kimi-ākau) and Lake Hayes (Te

Whaka-ata a Haki-te-kura) is an area of significance for many locals, often seen as a gateway into Queenstown. It is also an area of major strategic importance for Queenstown and the wider lakes district.

Focus area for the Masterplan

The Masterplan will cover approximately 160 Ha. Located at a key point in the road, trail and river networks, it is largely flat, sunny and hazard free, it is close to the major employment area of Frankton and adjoins Queenstown's largest residential area of Lake Hayes Estate, Shotover Country and the Queenstown Country Club.

The area marked in blue below is the key focus area, however there is a much wider area of influence that must be considered to ensure the Masterplan and Plan Variation delivers the best outcomes for the community.



6 Geographic Scope

6.1 Area of focus and influence

The Area of Focus identifies where the primary focus for most of the initiatives, projects and programmes will be. The Queenstown Country Club has been excluded from the area of focus for the purposes of this Masterplan.

The Area of Influence identifies the area that will have a direct influence on the masterplan process. A Masterplan that doesn't adequately consider the relationship between the



APPENDIX B – CHAPMAN TRIPP LEGAL ADVICE ON SCOPE

**APPENDIX C - LIST OF PERSONS SERVED WITH/GIVEN DIRECT NOTICE OF
TRUST'SUBMISSION**

Spence Road and Lower Shotover Road residents and neighbours

- Dorothy Anne Arnestedt, Hans Johan Arne Arnestedt
- James Raymond Bailey, Daniel Paul Cole-Bailey, Mitzi Melita Cole-Bailey
- Lesley Mary Huckins, Leslie Huckins
- Joy Elizabeth Oakes, Robert Vincent Oakes
- Graeme Harold Rodwell
- Graham Douglas Sim, Lynne Anderson Sim
- Jessica Kathleen Coutts, Mathurin Paul-Laurent Molgat
- Julian Brendon Chisholm, Justin Paul Chisholm
- Grant and Sharyn Stalker

Other submitters/landowners where relief "internal" to the Variation was proposed

- Glenpanel Developments Limited, Flint's Park Limited
- Ladies Mile Landowners Consortium

Key stakeholders/statutory bodies

- Queenstown Lakes Community Housing Trust
- Queenstown Lakes District Council (Parks & Reserves)
- Queenstown Trails Trust
- Kāinga Ora
- Waka Kotahi
- Otago Regional Council
- Aukaha Limited
- Te Ao Marama Inc