Kimberley Banks for QLDC – Summary of evidence and response to additional submissions on Subdivision provisions, 7 October 2016
Chapter 9 High Density Residential Zone – Hearing Stream 06

1. The purpose of the High Density Residential zone (**HDRZ**) is to provide for more intensive use of land within close proximity to town centres. Together with the Medium Density Residential zone (**MDRZ**), the HDRZ will play a key role in minimising urban sprawl and consolidating growth in existing urban areas.

2. Some changes have been recommended to the notified HDRZ provisions relating to urban design provisions and standards, building heights, and reflection of the proximity of the State Highway. This summary of evidence also provides a response (in **Appendix 1 and 2**) to the Panel's Minutes dated 22 September 2016 relating to QAC (433) and Mount Crystal Limited (150), and an addendum to the Accept / Reject table showing my recommendations on the missing submission points in **Appendix 3**.

3. Some submitters sought mandatory use of the Urban Design Panel (**UD Panel**), and more explicit provisions for quality urban design. I recommend the UD Panel continues on a non mandatory basis. My view, as supported by Mr Garth Falconer, is that the recommended provisions will support good urban design outcomes, within the context of an intensifying zone; and that, as referenced by Mr Philip Osborne, the opportunities of the zone should provide for efficient use of the District's limited high density land resource.

4. I do recommend some changes which I believe may better balance urban design (such as reference to 'quality' urban design (redrafted Objective 9.2.2), privacy (redrafted Policy 9.2.3.3 and Rule 9.4.4), and sunshine and light access (redrafted Rules 9.4.4, 9.5.1)). Also of relevance is that Council officers are considering developing Residential Design Guidelines as a variation to Stage 1 of the PDP. My s42A report highlights some concerns with the subjective nature of guidelines that may compromise mandated compliance; however I acknowledge that their development may supplement the urban design provisions.

5. The submission of Pounamu Body Corporate Committee (**PBCC**) (208) and evidence of Mr Timothy Walsh seeks greater emphasis on urban design and a structure plan for Lot 5. I maintain that recommended standards, in addition to the location of the access easement and lower elevation of Lot 5 will be sufficient to achieve separation with the Pounamu Apartments, without unduly limiting the opportunities of Lot 5. I understand that approved plans for the site (**Appendix 4**) identified this easement for landscaping/amenity purposes.[1] I do see merit in the removal of 'reasonable' from notified (and redraft) Objective 9.2.3 and Policy 9.2.3.1. However, I also acknowledge that these provisions should also not become too far weighted to amenity protection. Design Guidelines, if developed and notified in Stage 2, may also go some way to addressing the concerns of PBCC, although in the interim I consider the provisions adequate.

6. Many submissions sought changes to building heights for both flat and sloping sites. Some were opposed to the Homestar/Green Star height incentive included in the notified chapter. I recommend that the Homestar/Green Star height incentive be removed, and translated into a restricted discretionary (**RD**) height limit of 15m for flat sites. The consequence of this recommendation is that the 15m height is no longer possible on a permitted basis, and requires consideration through the application for a resource consent. For sloping sites, only reformatting and changes to the exclusions and matters of discretion have been recommended. I have recommended deleting the floor area ratio (**FAR**) rule for flat sites (notified Rule 9.5.5) due to possible unintended outcomes, and instead relying on pure building height controls.

7. I have considered the evidence of Mr Williams and Mr Dent on behalf of Mount Crystal Limited (150), and see some merit in the use of a 9m + 2m 'roof bonus' for sloping sites. I consider this may provide for articulation of roof forms, and may mitigate effects of building bulk to neighbours where recession planes do not apply. However, I consider that additional technical evidence is needed on this matter, to address possible unintended consequences, such as:

   (a) the possibility of mono-pitched designs taking advantage of an increased 11m height envelope without providing greater articulation,

[1] *Pounamu Hotel Nominees Limited v Queenstown Lakes District Council* ENV-2007-CHC-191

leading to a possible need for separate, reduced height standards for gable and mono-pitched roofs;

(b) recognising (a), this may unintentionally discourage mono-pitch forms which can provide good design outcomes and maintain an 'alpine' appearance;

(c) with excavation, the notified 10m RD height envelope (measured from 'ground level') can still allow 3 or more storeys and a variety of roof forms; and

(d) a resource consent would be required for RD height limits regardless, and any minor breaches to height to achieve a gable roof, if necessary to achieve better design outcomes, may be considered favourably.

8. An alternative solution may be to retain the 10m RD height limit, with allowance for minor breaches for a 'roof bonus' as a discretionary activity, rather than the current non-complying activity status. I also accept removal of the word "adequately" from notified Policy 9.2.3.2 and consider reference to "mitigated" alone will achieve the same intent.

9. Reflecting the proximity of State Highway 6A, new rules for sound insulation of buildings,[2] increased setbacks[3] and notification requirements to the NZ Transport Agency (**NZTA**) have been recommended.[4] I also acknowledge the evidence of Mr Anthony MacColl on behalf of NZTA which seeks changes to the wording of notified Rules 9.6.1 and 9.6.2. Removal of the term "direct" access is unclear in relation to right of ways and easements. Also, NZTA may not always give full "approval" to developments. Therefore I consider that the terminology should be consistent with the Resource Management Act 1991 and refer to "notification".

[2] Objective 9.2.7, Policy 9.2.7.1, Rule 9.5.11.
[3] Rule 9.5.8.
[4] Rules 9.6.1 and 9.6.2

Appendix 1

Response to 'Minute Concerning Mount Crystal Ltd Submission (#150)' dated 22 September 2016

1. The Panel received a Memorandum from counsel for Mount Crystal Limited (**MCL**) requesting confirmation that all issues relating to MCL's submission be deferred until the mapping hearings in 2017. MCL's submission sought that its land at Frankton Road[5] be rezoned, and sought consequent amendments to heights in the MDRZ and HDRZ. In relation to the HDRZ, MCL submitted to amend notified Rules 9.5.2 and 9.5.3 (RD building height for sloping sites) by replacing reference to a 10m height, with 12m.

2. The Panel issued a Minute in response on 22 September 2016, confirming that the submission points made on matters related to heights of the HDRZ apply to the zone generally and are not limited to the submitter's land holdings. As such, the Panel considered that the submission on the HDRZ height limits should be considered in the Residential Hearing Stream. I note that in my s42A report for the HDRZ, the submission point of MCL (150.4) relating to heights of the HDRZ was deferred, on the assumption that the submission was specifically related to the rezoning request. Following the Panel's Minute I accept this assumption was incorrect and I now address this submission point (in addition to the pre-lodged evidence of Mr Williams and Mr Dent on behalf of MCL) which provides further context to the submission.

3. My s42A report at paragraphs 9.11 to 9.16 discusses the issue of building heights for sloping sites. In addition to MCL, a number of other submitters sought increases to height limits for sloping sites. I maintain my view as set out in the report, that a permitted height limit of 7m is appropriate for a sloping site; and increasing heights beyond this may result in unintended consequences to built form outcomes whereby the amenity of internal and external sites may be compromised. I do however accept there may be site specific circumstances in which increased height may be appropriate; and the RD status of 10m under notified 9.5.2 (redrafted Rule 9.5.3) provides the opportunity for a case by case analysis through a resource consent process.

[5] Pt Lot 1 DP 9121, 634 Frankton Road.

4. I consider that increasing this RD height to 12m as sought by the original submission of MCL would be excessive, recognising the lack of recession planes and the ability to excavate to achieve more floors. As developments on sloping sites often require excavation, and permitted heights for sloping sites are measured from "ground level"[6] prior to any earthworks; sloping sites are better able to absorb vertical height. Within the 7m-10m building height range there is the ability to step the building up the slope yet present limited scale and bulk at street level. I consider that the RD height limit of 10m provides suitable opportunities for 3 or more storeys (assuming 3m floor height, with excavation); provided the design demonstrates this height is appropriate through a resource consent process.

5. I note that the evidence of Mr Williams and Mr Dent on behalf of MCL also proposes an alternative of 9m + 2m 'roof bonus'. I have addressed this option in my summary of evidence, however at this time I recommend the notified height limits of 7m (permitted) and 10m (RD) for sloping sites are retained in notified Rule 9.5.2 (redrafted 9.5.3).

[6] PDP Chapter 2 - Definitions, definition of “Ground Level”.

Appendix 2

Response to 'Minute Concerning Submissions by Queenstown Airport Corporation Regarding Lot Sizes and Density' dated 22 September 2016

1. The Panel received a Memorandum from counsel for Queenstown Airport Corporation (**QAC**) advising that, although the Panel had deferred QAC's submissions concerning minimum lot sizes in residential zones from the Subdivision Hearing Stream to the Residential stream, the submissions have not been dealt with in the s42A Reports prepared by Council officers. The Panel therefore directed Council officers to provide their opinions and advice on these submissions when the s42A Reports are presented to the Panel.

2. It is understood that the provisions deferred at the Subdivision Hearing Stream, to be addressed in this hearing stream include redrafted rules 27.6.1 (notified 27.5.1), 27.7.13 (notified 27.5.2), 27.7.14 (notified 27.5.3) and 27.7.12.2 (notified 27.5.1.2). A response to these submissions as they relate to the HDRZ is provided below, and an addendum to Appendix 2 of the s42A report has also been provided (in **Appendix 3**) responding to these additional submission points. Submission points relating to 27.7.12.2 (notified 27.5.1.2) are addressed in the evidence of Ms Amanda Leith for the MDRZ and LLR.

3. I also address the definition of "site" as it applies to unit title, strata title and cross lease subdivisions.

Minimum Lot Area – Notified Rule 27.5.1 (Redraft 27.6.1)[7]

4. PBCC (208) submit in support of the notified 450m^2 minimum lot area for the HDRZ; the Robertson Family Trust (275) submit that the minimum lot area should be less than for the medium and low density zones; and Aurum Survey Consultants (166) consider there should be no minimum lot area for the HDRZ.

5. The issue of the minimum lot area for the HDRZ is discussed at paragraphs 14.1 to 14.5 of my s42A Report. There I set out that the HDRZ has a larger minimum lot area than the MDRZ because additional land area is necessary to support higher density more intensive land uses. The retention of larger land

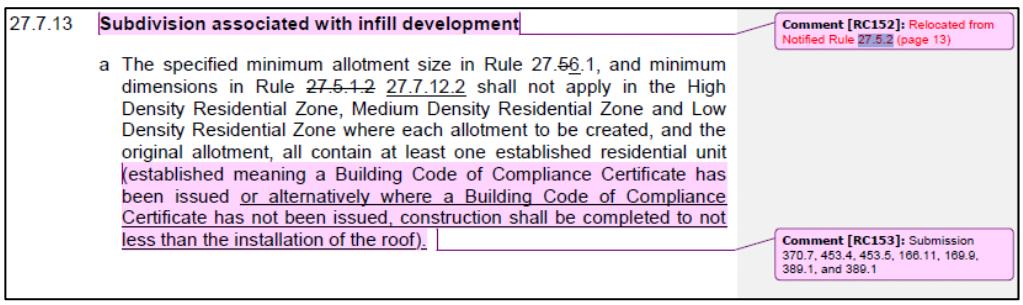
[7] In Nigel Bryce's right of reply, Appendix 1, page 28.

holdings will better support the purpose of the zone to support larger integrated development forms, as opposed to a proliferation of smaller fee simple lots. For these reasons, I have acknowledged (as identified by the evidence of Mr Falconer) that the minimum lot area for the HDRZ should preferably be increased to 1000m^2. However I do not believe the nature of these submissions provides the scope to do so, as they seek reductions to the minimum lot area. I therefore reject each of these submissions and recommend that the notified minimum lot area of 450m^2 (notified Rule 27.5.1) is retained in redraft Rule 27.6.1 in the Subdivision chapter.

Subdivision associated with infill development – Notified Rule 27.5.2 (Redraft 27.7.13)[8]

6. A number of submitters seek modifications to Notified Rule 27.5.2. Survey Consultants (166), Tim Proctor (169), Body Corporate 22362 (389), and Sean and Jane McLeod (391) seek clarification over reference to "established meaning a Building Code of Compliance Certificate has been issued"; QAC (433) and PBCC (208) seek that the rule be deleted; and Patterson Pits Group (370), Paterson Pitts Partners (Wanaka) Ltd (453), J D Familton and Sons Trust (586), H R and D A Familton (775), and H R Familton (803) support the rule and seek that it is retained.

7. These submissions were initially addressed through Hearing Stream 4 (Subdivision – Chapter 27), whereby the reference to established residential unit was clarified; as copied directly below;[9] and discussed within paragraphs 15.1 to 15.6 of the s42A Hearing Report (Chapter 27 Subdivision and Development, dated 29 June 2016).


27.7.13 **Subdivision associated with infill development**

a The specified minimum allotment size in Rule 27.~~5~~6.1, and minimum dimensions in Rule ~~27.5.1.2~~ 27.7.12.2 shall not apply in the High Density Residential Zone, Medium Density Residential Zone and Low Density Residential Zone where each allotment to be created, and the original allotment, all contain at least one established residential unit (established meaning a Building Code of Compliance Certificate has been issued or alternatively where a Building Code of Compliance Certificate has not been issued, construction shall be completed to not less than the installation of the roof).

Comment [RC152]: Relocated from Notified Rule 27.5.2 (page 13)

Comment [RC153]: Submission 370.7, 453.4, 453.5, 166.11, 169.9, 389.1, and 389.1

[8] In Nigel Bryce's right of reply, Appendix 1, page 41.
[9] In Nigel Bryce's right of reply, Appendix 1, page 41.

8. While redraft 27.7.13 has been recommended to be amended through Hearing Stream 4, the merits of this Rule have not been addressed in relation to those residential zones to which it applies, and in response to those submissions that seek it be deleted (being PBCC, QAC). I therefore present my views on this provision as it relates to the HDRZ.

9. Redraft Rule 27.7.13 provides for subdivision associated with infill development to be exempted from the minimum lot area and dimensions for the zone. I understand the purpose of this rule was to allow for the subdivision of land use which would otherwise be permitted, and for which effects had already been assessed or established; by way of either resource consent or land use rules that allowed the land use to occur without consent. The rule assumes that the lot size and dimensions are irrelevant because the development already forms part of the existing or consented environment, and so the rule attempts to allow the subdivision of land during or after construction has occurred, rather than the need to resolve this prior.

10. While I acknowledge the rule may provide some benefits to the economics of subdivision, I consider for the HDRZ that the risks of unintended consequences are greater than the benefits to be gained by having the exemption. In the context of the HDRZ, I have concerns that this rule has the potential for land owners to establish permitted development (acknowledging there is no density control in the HDRZ) and separate dwellings off into very small fee simple land holdings. As discussed in relation to the minimum lot size for the zone, this is undesirable for the HDRZ; first because small lots are less able to support integrated and intensive development; and second because over time, the dispersal of land holdings in the zone could occur, making land acquisitions to support larger developments more difficult for developers.

11. However, I acknowledge that this rule is partly useful in the context of unit title, strata title or cross lease subdivisions; as it is not practical to require compliance with minimum lot size and dimensions. I note that rules for unit title, strata title and cross lease subdivision were considered through Hearing Stream 4 (Subdivision – Chapter 27), and Mr Bryce recommended a new rule providing for unit title, strata title or cross lease subdivisions as a Controlled

Activity.[10] I consider that redraft Rule 27.7.13 (notified 27.5.2) should apply to the HDRZ where limited to unit title, strata title or cross lease subdivisions. I therefore recommend the following changes to redraft Rule 27.7.13 (my changes in red font):

> ***27.7.13 Subdivision associated with infill development***
>
> *The specified minimum allotment size in Rule 27.~~5~~6.1, and minimum dimensions in Rule ~~27.5.1.2~~ 27.7.12.2 shall not apply in the: ~~High Density Residential Zone, Medium Density Residential Zone and Low Density Residential Zone~~*
>
> *(a) High Density Residential Zone (limited to unit title, strata title or cross lease subdivisions);*
> *(b) Medium Density Residential Zone; and*
> *(c) Low Density Residential Zone;*
>
> *where each allotment to be created, and the original allotment, all contain at least one established residential unit (established meaning a Building Code of Compliance Certificate has been issued or alternatively where a building code of compliance certificate has not been issued, construction shall be completed to not less than the installation of the roof).*

Definition of "Site"

12. The definition of "site" was addressed in the Subdivision Hearing Stream, in response to the submission of Patterson Pits Group (370). No other submissions have been received on this definition. In relation to my recommendations above for redrafted Rule 27.7.13, I consider that some amendments to the definition may be necessary as it applies to unit title, strata title and cross lease subdivisions; and in particular how site standards of the PDP apply to these subdivision types.

13. The notified definition of "site" under the PDP is the same as the definition in "site" in the ODP. The exceptions listed under i to iii of the definition address cross lease, company lease, unit titles, and strata titles. These are relevant in identifying that under these arrangements, the boundaries of the "site" have been affected by the relevant legal instrument. With the exception of strata titles (under iii) the apparent effect of these exceptions to the Definition is that the "boundary" of the "site" then becomes the boundary of the relevant legal instrument (incorporating any common areas and accessory units).

[10] Recommended redraft (new) Rule 27.5.5, Appendix 1, Reply of Nigel Bryce on behalf of Queenstown Lakes District Council, 27 Subdivision and Development Chapter, 26 August 2016

14. The knock on effect of these exceptions is that any relevant site standards (such as setbacks, lot size and dimensions) consequently apply to the boundary of the cross lease, company lease or unit title. My view is that this is unintended, and it is not expected that these subdivision types would comply with site standards. However, the land use or subdivision consent over the parent lot, which resulted in the development of the building (being made up of its separate units), would be subject to any relevant site standards. This is provided for in relation to strata titles, under exception iii of the definition, which states "*site shall mean the underlying certificate of title of the entire land containing the strata titles, immediately prior to subdivision*".

15. I consider that the items i to iii of the definition of site could be combined, so that the wording of iii applies not only to strata title, but to all unit title, strata title and cross lease subdivisions. This would support my recommended changes to redrafted rule 27.7.13 (discussed above). However, I note that the definition of "site" is wide in application under the PDP, and adequate time is necessary to consider the consequential effects of any changes. My view is that this could be re-addressed in the Definitions hearing stream, where its plan-wide effects can be appropriately assessed.

Appendix 3

Addendum to Accept / Reject table

Original Point No	Further Submission No	Submitter	Lowest Clause	Submitter Position	Submission Summary	Planner Recommendation	Deferred	Issue Reference
208.38		Pounamu Body Corporate Committee	27.5 Rules - Standards for Subdivision Activities	Support	Retain the rule (Minimum lot size of 450m2 for high density and low density zones)	Accept		Rule or min lot size has not been amended for the HDR, however evidence of Garth Falconer recommends increasing the minimum lot size. Issue addressed in HDR s42A (Para. 14.1 to 14.5)
166.10		Aurum Survey Consultants	27.5.1	Oppose	Amend the minimum lot sizes: High Density - no minimum Low Density Residential - 300m² Large Lot Residential - 2000m² across the zone Rural Lifestyle - reject capping average calculations at 4 hectares.	Reject		Issue addressed in HDR s42A (Para. 14.1 to 14.5)
275.2		Robertson Family Trust	27.5.1	Oppose	That the rule be changed so that the minimum lot area for the High Density Residential Zone would be less than for the Medium and Low Density Zones.	Reject		Reject. Issue addressed in HDR s42A (Para. 14.1 to 14.5)
717.18		The Jandel Trust	27.5.1	Support	Retain Rule 27.5.1 – Standards for Subdivision	Accept		Accept (in relation to the HDR).
717.18	FS1029.24	Universal Developments Limited	27.5.1	Oppose	Universal seeks that the entire submission be disallowed	Reject		Reject (in relation to the HDR)
847.17		FII Holdings Limited	27.5.1	Support	Retain Rule 27.5.1 – Standards for Subdivision	Accept		Accept (in relation to the HDR).
166.11		Aurum Survey Consultants	27.5.2 Subdivision associated with infill development	Support	Remove reference to code of compliance and simply make reference to roof installation. ie 'For the purposes of this rule, an established residential unit is one that has been constructed to not less than the installation of the roof'. Enabling subdivision in this situation improves funding opportunity and facilitates the completion of the development. Code of compliance should not included and is a potential barrier to subdivision and the efficient completion of projects.	Addressed in Subdivision Hearing Stream		Addressed in Subdivision Hearing Stream

169.9		Tim Proctor	27.5.2 Subdivision associated with infill development	Other	Amend Rule 27.5.2.1 as follows: 27.5.2.1 The specified minimum allotment size in Rule 27.5.1, and minimum dimensions in Rule 27.5.1.2 shall not apply in the High Density Residential Zone, Medium Density Residential Zone and Low Density Residential Zone where each allotment to be created, and the original allotment, all contain at least one established residential unit, whereby a unit is deemed to be 'established' once construction has been completed to not less than the installation of the roof. I support the intention of Rule 27.5.2.1 but seek that it is clarified that an 'established residential unit' means that the installation of the roof has occurred. as drafted the rule seems to confuse.	Addressed in Subdivision Hearing Stream		Addressed in Subdivision Hearing Stream
208.40		Pounamu Body Corporate Committee	27.5.2 Subdivision associated with infill development	Oppose	Delete the rule 27.5.2 Lot size exemption	Reject		Refer Summary of Evidence for Hearing Stream 6 Residential (HDRZ)
275.3		Robertson Family Trust	27.5.2 Subdivision associated with infill development	Other	The wording should be changed so that in the High Density Residential Zone the minimum lot size need not apply to any lots being created which contain a residential unit provided that any vacant lots also being created do meet the minimum lot size	Accept in part		Refer Summary of Evidence for Hearing Stream 6 Residential (HDRZ)
370.7		Paterson Pitts Group	27.5.2 Subdivision associated with infill development	Support	Supports the provisions.	Accept in part		Refer Summary of Evidence for Hearing Stream 6 Residential (HDRZ)
389.10		Body Corporate 22362	27.5.2 Subdivision associated with infill development	Other	That all cases where the words 'established meaning a Building Code of Compliance Certificate has been issued' are removed Support the rule in general but the wording '(established meaning a Building Code of Compliance Certificate has been issued) ' be removed. Code of compliance certificates have only been in effect since July 1992. Residential Units constructed earlier will have established residential use but will not have a CCC, others built after July 1992 may only have a certificate of acceptance when consenting authorities were closed down due to not being able to obtain insurance.	Addressed in Subdivision Hearing Stream		Addressed in Subdivision Hearing Stream
453.4		Paterson Pitts Partners (Wanaka) Ltd	27.5.2 Subdivision associated with infill development	Support	This rule is supported.	Accept in part		Refer Summary of Evidence for Hearing Stream 6 Residential (HDRZ)
391.14		Sean & Jane McLeod	27.5.2.1	Other	That we generally Support the subdivision rules but the wording '(established meaning a Building Code of Compliance Certificate has been issued)' should be removed. Code of compliance certificates have only been in effect since July 1992. Residential Units constructed earlier will have established residential use but will not have a CCC, others built after July 1992 may only have a certificate of acceptance when consenting authorities were closed down due to not being able to obtain insurance. Using CCC as a means of establishing residential use is not very fair for the above reasons nor even accurate as a building can have a CCC and can be used for	Addressed in Subdivision Hearing Stream		Addressed in Subdivision Hearing Stream

					something else and may never have residential use established. ie any new commercial building.			
586.7		J D Familton and Sons Trust	27.5.2.1	Support	Retain 27.5.2.1	Accept in part		Refer Summary of Evidence for Hearing Stream 6 Residential (HDRZ)
775.7		H R & D A Familton	27.5.2.1	Support	Retain 27.5.2.1	Accept in part		Refer Summary of Evidence for Hearing Stream 6 Residential (HDRZ)
803.7		H R Familton	27.5.2.1	Support	Retain 27.5.2.1	Accept in part		Refer Summary of Evidence for Hearing Stream 6 Residential (HDRZ)
150.4		Mount Crystal Limited	9.5.2	Support	Amend Rule 9.5.2 by deleting '10 metres' and inserting '12 metres'	Reject		Refer Summary of Evidence for Hearing Stream 6 Residential (HDRZ) & s42A Report HDRZ (para 9.11 to 9.16)
150.4	FS1148.3	Pounamu Body Corporate Committee	9.5.2	Oppose	That this submission point be rejected. The Body Corporate opposes this submission. The effect of the amendment sought by the submitter is to allow buildings between 7 metres and 12 metres as a restricted discretionary activity, which is inappropriate as it would further enable development while failing to ensure amenity, privacy, views and outlook of nearby and neighbouring sites are maintained. Buildings of this height also have the potential to be overbearing, dominant, restrict access to sunlight and cause shading problems for nearby and neighbouring sites, especially in winter, and would be out of character with the existing surrounding environment. As stated in its original submission, the Body Corporate considers that the height restrictions in the Operative Queenstown Lakes District Plan, which require non-complying resource consent to be obtained for buildings exceeding a height of 7 metres (sloping sites) and 8 metres (flat sites), are appropriate.	Accept		Refer Summary of Evidence for Hearing Stream 6 Residential (HDRZ) & s42A Report HDRZ (para 9.11 to 9.16)

Appendix 4

Approved Landscape Masterplan by Consent Order, ENV-2007-CHC-191 (*Pounamu Hotel Nominees Limited v Queenstown Lakes District Council*)