

APPENDIX B

QUEENSTOWN LAKES DISTRICT COUNCIL

Hearing of Submissions on Proposed District Plan

Report 11

Report and Recommendations of Independent Commissioners Regarding  
Chapter 12, Chapter 13, Chapter 14, Chapter 15, Chapter 16 and Chapter 17

Commissioners

Denis Nugent (Chair)

Paul Rogers

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precincts previously discussed, Ms Jones accepted this recession rule was more appropriately relocated to, as it then was, notified Rule 12.5.9, as she considered that the breach of the rule would be more appropriately dealt with as a restricted discretionary activity.<sup>513</sup> We agree for the reasons she advanced and recommend adoption. The rule has been re-numbered as Rule 12.5.8.5.

#### Precinct 6

621. Notified Precinct 6 included the triangular parcel of land bound by Duke, Man, Brecon and Shotover Streets. Notified Rule 12.5.10 applied a height limit of 12m, subject to horizontal and recession plane conditions.
622. This represented no change from the ODP and did not attract any submissions.
623. Accordingly we recommend the notified Rule 12.5.10.5 applying to Precinct 6 be adopted as renumbered Rule 12.5.9.5 a.

#### Precinct 7 and the surrounding Precinct 1 land within the Man Street Block

##### *The Plans and the Precincts*

624. Notified Precinct 7 included the majority of the land bound by Man, Brecon, Hay, and Shotover Streets (the Man Street Block) and notified Rule 12.5.10.4 applied a range of site specific height rules to this block. The maximum height limit proposed was 11 m above 327.1 masl, except that the two view shafts identified on the Height Precinct Map imposed a limit of 4 m above 321.7 masl.
625. No recession rules were proposed for Precinct 7.
626. This precinct would apply to the Man Street car park and all of the land in the Man Street Block fronting Shotover Street. The existing Man Street car park we generally refer to as the northern area, and that area fronting Shotover Street we refer to as the southern area.
627. Under the ODP the permitted height provided was up to 8 m above ground level and up to the height allowed on any adjacent sites. Sites below the Man Street car park fronting Shotover Street could be 1.5 m above the Man Street car park. The outcome was a height of 9.5 m. Thereafter, exceedance was non-complying.
628. Under the ODP, on the sites either side of Precinct 7 (fronting Hay and Brecon Streets), buildings up to 8 m were permitted and up to the maximum height permitted on any adjacent site and non-complying thereafter. Sites on the Shotover Street frontage<sup>514</sup> were permitted to 12 m and no more than 1.5 m above Man Street and non-complying thereafter. On other sites, height was permitted to 12 m and no more than 4 m above the level of Man Street and non-complying thereafter.
629. Within the Man Street Block there were, as well, two separate areas of Precinct 1, one to the east and one to the west. To help orientate, 10 Man Street, 10 and 14 Brecon Street and the Language School were located within Precinct 1 at the eastern end of Precinct 7, adjacent the Brecon Street steps. 30 Man Street was within the other area of Precinct 1 at the western end.
630. As notified, Precinct 1, applying notified Rules 12.5.9 and 12.5.10, provided for permitted height of up to 12 m, restricted discretionary between 12m and 14m, and non-complying

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<sup>513</sup> V Jones, Summary of Evidence at [6(b)].

<sup>514</sup> Secs 23-26 The Lofts and Hamilton Extension



thereafter. Horizontal plane requirements were not imposed in Precinct 1 as it applied to the Man Street Block.

*The Man Street Block and Issues*

631. The Man Street Block slopes downhill from Man Street to Shotover Street. It is understood the slope is not uniform over the whole block. The properties in the block are in different ownership.
632. The issues, as we see them in relation to this area, revolve around determining what the appropriate building heights are for the various parts of the block, and how those heights interrelate to each other and height levels beyond the block.
633. First, there is the northern part of the block, the area above the existing Man Street car park, which includes the two view shafts. The issues for this part of the block include determining height levels that are appropriate given the Man Street streetscape and the need to ensure views via the view shafts are appropriate.
634. The two Precinct 1 areas on the western and eastern end of the Man Street Block had their own separate issues, though both areas step down the slope from Man Street.
635. On the eastern end, or the Language School site, the issues related to what was the appropriate height levels given the sloping nature of the site, the sites' relationship with the adjacent Brecon Street Steps and the adjoining Sofitel Hotel site. The heights selected also needed to relate well to the heights for the balance of the block.
636. For the western end, 30 Man Street, height relative to adjoining surrounding buildings and their height was the issue. Again linkage back to the balance of the block was important.
637. On the remaining part of the block, the southern side, being the area fronting Shotover Street, the issues were: height relative to building heights on the Man Street car park; effect of height on shading Shotover Street; and the impact of differing natural ground levels on how to determine appropriate heights.
638. The first issue we deal with is, we think, a relatively minor one. QLDC<sup>515</sup> requested that the topographical error in notified rule 12.5.10.4 be amended such that the reference to 321.7 masl is changed to 327.1 masl. While this was opposed, we agree with Ms Jones that this was an error which needs correction.<sup>516</sup> Accordingly we recommend accepting that submission.

*Submissions on the PDP*

639. Dealing with height limits (notified Rule 12.5.10.4) for Precinct 7, Mr Boyle<sup>517</sup> requested that the maximum building heights be no greater than in the ODP and any other related, consequential or alternate relief.
640. In relation to the view shafts above the Man Street car park, Man Street Properties Limited ("MSP")<sup>518</sup> supported the notified height for Precinct 7 at 11 m but requested the view shafts on the site be confirmed or moved so that the Western most view shaft was repositioned to correspond with section 26 Block IX Town of Queenstown.

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<sup>515</sup> Submission 383, opposed by FS1274

<sup>516</sup> V Jones, Section 42A Report, Appendix 1 at p12-19.

<sup>517</sup> Submission 417, opposed by FS1107, FS1226, FS1234, FS1239, FS1241, FS1248 and FS1249

<sup>518</sup> Submission 398, opposed by FS1274

641. In relation to the two Precinct 1 sites, MSP sought that those sites also be subject to the rules which imposed a maximum height based on specified reduced levels or RLs rather than simply allowing 12 m above ground level.
642. For 30 Man Street, at the western end within Precinct 1, MSP sought height controls alternative to those notified.
643. On the eastern end of Precinct 7, within the Language School site, Maximum Mojo Holdings Limited<sup>519</sup> sought that the building height limit for that site (10 Man Street) be the same as the height limit for Precinct 7.

*Ms Jones' Section 42A Report*

644. Ms Jones advised she relied on the submission of Mr Cowie<sup>520</sup> to provide scope to recommend the amended heights, which may be higher than those achievable under the ODP or the PDP on some parts of the Man Street Block.<sup>521</sup> She also relied on the NZIA submission<sup>522</sup> to provide extra height in some areas of the Man Street car park site in lieu of lowering it on the view shafts and other parts so they could serve as open space and potentially as linkages through the site.<sup>523</sup> We note that we return to scope later.
645. Mr Cowie<sup>524</sup> sought that all areas should have significantly higher property heights, especially towards the centre of Queenstown, and far greater density with buildings of 4 to 5 storeys as the norm with hotels being higher.
646. NZIA<sup>525</sup> sought relief under the zone wide height rules and suggested that there could be incentives within the rules such as an additional height in exchange for linkages offered in desired areas.
647. Ms Jones pointed out<sup>526</sup>, and we agree with her, that enabling buildings on the Man Street Block to extend up to heights of 14 m above original ground level, including on relatively elevated rear parts of their sites, without corresponding horizontal plane rules, would result in adverse effects on views, visual amenity, mass and bulk. Doing so would also impact on the overall quality of the resultant architectural and urban design outcomes particularly in relation to the Shotover Street frontage.
648. To address the site issues identified above, Ms Jones requested Mr Church to assess a redraft of the notified Rule 12.5.10.4 using modelled outcomes to assist in understanding the effects of those drafted rules on the matters referred to in the immediate preceding paragraphs.<sup>527</sup> The modelled outcome of these rules was detailed in Appendix A of Mr Church's evidence.

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<sup>519</sup> Submission 548, supported/opposed by FS1117  
<sup>520</sup> Submission 20  
<sup>521</sup> V Jones, Section 42A Report at [10.82].  
<sup>522</sup> Submission 238  
<sup>523</sup> V Jones, Section 42A Report at [10.82].  
<sup>524</sup> Submission 20.  
<sup>525</sup> Submission 238  
<sup>526</sup> V Jones, Section 42A Report at [10.83].  
<sup>527</sup> T Church, EIC at [12.8]

649. In Ms Jones' view, while the redrafts were worded differently to those suggested by MSP<sup>528</sup>, the outcome was not dissimilar to the relief sought, and in Ms Jones' opinion, was the appropriate way of addressing the submitter's key issues as well as achieving the objectives of the PDP.<sup>529</sup>
650. Ms Jones<sup>530</sup> explained the outcome of the different height rules as they applied to labelled areas of Precinct 7 (Areas A, B, C and D) and Precinct 1. Ms Jones included a plan illustrating these areas in her Section 42A Report.<sup>531</sup> She recommended the plan set out in her Section 42A Report be included within Rule 12.5.10 so as to aid clarity.<sup>532</sup> We agree that showing the height areas would aid understanding the Rule.
651. For Precinct 7 Area A, being east of the central view shaft labelled D, buildings could extend to 11m above the known height of the concrete slab, in Area B to the west of the central view shaft labelled D, buildings could be 14m above the concrete slab. Ms Jones recommended Area D, the view shaft, be moved further west as sought by MSP for the reasons set out in that submission. We discuss this point further below. Ms Jones recommended that Area C, which is the eastern view shaft, have no buildings within it. For, Area D, which is the central view shaft, she recommended a maximum 3m building height.
652. This outcome, she said, would provide for two discrete building forms to be constructed of varying levels separated by view shafts/open plazas of approximately 12 m and 16 m width on this northern part of the site.<sup>533</sup>
653. In Ms Jones' opinion, this outcome would prevent a long horizontal built form stretching across this highly visible site and enable an extra floor of development in the western block<sup>534</sup>. This would result, she said, in more consistency with surrounding properties while still providing for three floors with uninterrupted views to the south.<sup>535</sup> Also, it would provide for a better streetscape along Man Street, with the buildings on the eastern block extending between approximately 7.5 m and 11 m above street level.
654. By comparison, Ms Jones pointed out that the notified PDP rules would result in the building at the western end of the site protruding between 4.5 m and 9 m above the street, which she considered would appear something of an anomaly.<sup>536</sup>
655. We acknowledge that evidence<sup>537</sup> promoted a different approach, proposing to remove the view shafts and, instead, promoting a comprehensive development plan rule. This evidence raised scope issues which we address subsequently. We also note the issue of the view shafts was canvassed fully in Ms Jones' Reply Statement after consideration of the submitter evidence. We will return to the matter of the view shafts subsequently.

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528 Submission 398

529 V Jones, Section 42A Report at [10.83].

530 Ibid at [10.86].

531 Ibid at p43.

532 Ibid at [10.84].

533 Ibid at [10.86].

534 Ibid at [10.86(b)].

535 Ibid.

536 V Jones, Section 42A Report at [10.86(b)].

537 J Edmonds, EIC.

656. As to a height within the balance area of Precinct 7, being the southern area fronting Shotover Street, Ms Jones recommended adding a new rule and a height map which effectively was a redraft of notified Rule 12.5.10.4.<sup>538</sup> She labelled these southern areas of the site fronting Shotover Street as Area E and Area F.
657. The redraft would enable buildings to extend to 12 m above (rolling) ground level. Also, it would require that within Area E, they be no more than 17 m above the level of Shotover Street adjacent to the respective site. In addition, buildings in Area F would be no more than 14 m above the level of Shotover Street adjacent to the respective site. Finally, the redraft would require buildings to comply with a 45° recession plane commencing at 10 m, which is a similar control to that within Precinct 4. She also recommended Precinct 7 be slightly expanded. She set out in detail in her report the beneficial outcomes of this redraft as she saw them<sup>539</sup>.
658. This recommendation was challenged in submitter evidence and subsequently addressed by Ms Jones in two memoranda we received dated 8 and 18 November 2016 and in her Reply Statement. We address this matter further below.
659. Finally, in terms of the remaining sites to the east and west of the Man Street car park, Ms Jones' recommendation<sup>540</sup> was to retain them within Precinct 1, enabling buildings to be built to 12 m or potentially 14 m in height, as a restricted discretionary activity.
660. Ms Jones acknowledged these were higher than the heights allowed on the car park site. She did not consider those heights would be significantly inconsistent with the carpark heights or those enabled on the opposite side of Man Street under the ODP as amended by Plan Change 50.<sup>541</sup>
661. Ms Jones undertook a Section 32AA assessment of her recommended redraft to notified Rule 12.5.10, which we have carefully considered. The southern part of the site, fronting Shotover Street, was also the subject of challenge and submitter evidence. The issues were the appropriate maximum height level allowed in front of the Man Street car park site, including the horizontal plane level, and the use of the district wide rolling plane height. Finally, whether or not there should be a discretionary height allowance between 12 m and 14 m as per Precinct 1.

*Changes in the Officer Recommendations*

662. We observe here that as the hearing advanced, Ms Jones and Mr Church re-evaluated what they considered to be the appropriate rule response to this challenging site. While, within the Section 42A Report and expert evidence presented at the commencement of the hearings, we received recommendations as to the rules, these recommendations were altered and modified as further modelling was undertaken as a consequence of some oversights in the original modelling. Also some mapping errors were addressed.
663. Before touching on the relevant submitter evidence we record two memoranda were issued by the Council. The first, which we earlier referred to, was dated 8 November 2016. The purpose of this memorandum was to provide the Panel and submitters with updated versions of the height map that replaced those provided in the recommended Chapter 12 in Appendix

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<sup>538</sup> V Jones, Section 42A Report at [10.87].

<sup>539</sup> Ibid at [10.87(a)-(g)].

<sup>540</sup> Ibid at [10.88].

<sup>541</sup> V Jones, Section 42A Report at [10.88]

1 of the Section 42A Report. This version of the height precinct map showed Precinct 7 as extending down to the southern part of the site, to include the majority of the Man/Hay/Shotover/Brecon Street block within Precinct 7.

664. The second memoranda was dated 18 November 2016 and this provided us with:
- a. updated versions of Figures 2, 11 and 20 in Appendix A to the statement of evidence of Mr Church; and
  - b. updated recommendations to the Queenstown Town Centre chapter in Appendix 1 of the Section 42A Report for Chapter 12.
665. This information was provided prior to the hearing to “allow submitters an opportunity to consider the updated figures and recommendations in advance of the hearing”.<sup>542</sup>
666. This memorandum made it clear that Ms Jones supported Mr Church’s updated Figure 20<sup>543</sup> and the updated version of re-drafted Rule 12.5.10.4 as included in Appendix 2 to that memorandum. It was explained to us that, when using the Council’s shading model to undertake further assessments, both Ms Jones and Mr Church became aware that, with respect to Precinct 7, the model did not accurately represent all of the recommended rules.<sup>544</sup>
667. In particular, the original Figure 20 did not accurately reflect the fact that redraft rules 12.5.10.4 (e) and 12.5.10.4 (f) required the buildings to be no more than 12 m above ground level. In the case of areas E and F, that meant 12 m was a rolling height plane relative to the sloping ground level rather than a flat horizontal plane as was originally modelled.<sup>545</sup> This was rectified in Mr Church’s updated Figure 20.
668. Further changes resulting from a review of the model resulted in Ms Jones updating her recommendations. In particular, Ms Jones considered it unnecessary from a shading perspective, or for any other reason, to impose a recession plane height on Precinct 7, particularly for the southern part.<sup>546</sup> It was apparent on review of the model that removing the recession plane rule did not result in any greater shading of the opposite side of Shotover Street than resulted with the recession plane. This effectively reversed her recommendation contained within the Section 42A Report<sup>547</sup>.
669. Consequently, Ms Jones recommended further amending Rule 12.5.10.4 in order to enable a 12 m building height at the Shotover Street boundary. This provided for the same building height at the street facade as would be enabled under notified Rule 12.5.9, being 12m as permitted, 12m-14m as restricted discretionary, and above 14m as non-complying. It was pointed out to us<sup>548</sup> that no submitter specifically sought the reintroduction of the recession plane rule but rather the general submission by Mr Boyle<sup>549</sup> was being relied on to recommend this change.
670. Finally, upon further investigation of the reduced levels (RLs) along the Shotover Street frontage of Precinct 7, Ms Jones advised that the levels vary across the block to a greater

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<sup>542</sup> Memorandum of Counsel on behalf of QLDC dated 18 November 2016 at [2]

<sup>543</sup> Figure 20 illustrates an indicative height envelope of the Man Street block.

<sup>544</sup> Memorandum of Counsel on behalf of QLDC dated 18 November 2016 at [6]

<sup>545</sup> Ibid.

<sup>546</sup> Ibid at [7a], V Jones, Reply Statement at [6.10].

<sup>547</sup> V Jones, Section 42A Report at [10.87].

<sup>548</sup> Ibid at [10.54].

<sup>549</sup> Submission 417, opposed by FS1107, FS1226, FS1234, FS1239, FS1241, FS1248 and FS1249

extent than first thought.<sup>550</sup> The result was that the built outcome enabled by redraft rules 12.5.10.4 (e) and 12.5.10.4 (f) would be reasonably uncertain.

671. Ms Jones recommended that those rules be further amended so as to ensure that the buildings would not protrude above the car park level slab in Area F, and protrude no more than 3 m in area E.<sup>551</sup>
672. The diagrams attached to the 18 November 2016 memoranda provided us with a model view of the Section 42A Report recommended PDP height precincts. This was identified as Figure 2. Figure 11 provided us with a photograph showing the existing circumstances for Shotover Street in terms of street shading. That photograph was accompanied by a diagram which showed the ODP 12 m/45° height recession plane modelled at 11 August 2017 at 12:30 PM, compared with the PDP recommended 12 m height again modelled at the same time. A comparison of the two modelled results showed very little difference.
673. Mr Church's updated Figure 20 provided us with a model of the recommended Precinct 7 height controls from both a south east view and a north west view. Figure 21 related to the Man Street view shafts. The first figure was a photograph of the existing Man Street car park alongside which were human figures illustrating the recommended eastern view shaft and recommended western view shaft. We found these figures to be very helpful in both understanding perspective and evaluating the options.
674. Ms Jones confirmed at the hearing on 25 November her support for the amendments conveyed to us in both memoranda.<sup>552</sup>

Submitter Evidence

675. Mr Ben Farrell, a planning consultant, appeared for Well Smart Investments Limited<sup>553</sup>. The submitter has property interests in numbers 51 to 67 Shotover Street, within Area E of the diagram utilised by Ms Jones for notified height standard 12.5.10.4.
676. His evidence recorded many areas of agreement with Ms Jones' Section 42A Report.<sup>554</sup>
677. He disagreed with her recommendations as to height, opining that the permitted height standard should increase from 12 m to 15m, that the activity status for breaching the 10 m +45° height recession plane standard should change from non-complying to discretionary and the proposed 17 m height restriction above Shotover Street should be deleted. Mr Farrell outlined his rationale for this opinion as:<sup>555</sup>
- a. The Sofitel Hotel, Crown Plaza Hotel and Hamilton Building all exceed 17m above the height of Shotover Street;
  - b. Sites within area E, in his view, could absorb additional building height without creating significant adverse effects;
  - c. There should be a level of certainty as to the height of buildings that could be constructed without the need for public notification; and
  - d. There were no special or unique characteristics associated with the frontage of Shotover Street to justify discouraging building heights above 12m.

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<sup>550</sup> Memorandum of Counsel on behalf of QLDC dated 18 November 2016 at [7c].

<sup>551</sup> Ibid.

<sup>552</sup> V Jones, Summary of Evidence at [4].

<sup>553</sup> Submission 308

<sup>554</sup> Mr Farrell, EIC at [7].

<sup>555</sup> Ibid at [11].

678. Mr Williams, providing planning evidence for MSP<sup>556</sup>, agreed that retaining a specific set of height controls for the Man Street Block was the most efficient and effective way to provide certainty to landowners and the building form outcomes given the challenges around understanding of the original ground levels for this block.<sup>557</sup>
679. However, he considered that additional height on the southern side of Man Street over and above that recommended by Ms Jones should be provided.<sup>558</sup> He was also of the view that because of the interrelationship between development on Man Street and properties fronting Shotover Street, they should be considered together given the influence the development on Shotover Street would have on the building form outcomes and views from development on Man Street.<sup>559</sup>

*Ms Jones Reply - Southern Part of Man Street Block/Areas E and F*

680. We do note Ms Jones was clearly alive to the need to address the interrelationship between the two parts of the site but she was of the view, as expressed in her Reply Statement, which we agree with, that the matter of views from Man Street should not trump good urban design outcomes for the entire site particularly the Shotover Street frontage.<sup>560</sup>
681. In her Reply<sup>561</sup>, Ms Jones responded to Mr Farrell's evidence and questions, by recommending that Areas E and F (as shown in notified Figure 2) be removed from Precinct 7 and replaced with Precinct 1, and consequential changes be made to Rules 12.5.10.4 and 12.5.10.1. These consequential changes included adding a rule to 12.5.10.1 that no building exceed a horizontal plane at 271.1/ 330.1 masl. The recommended rules in Appendix 1 to her Reply Statement would have the effect of providing the restricted discretionary activity status to buildings between 12 and 14m above ground level as in the rest of Precinct 1, while ensuring that anything above either 14m above ground level or 271/ 330 masl respectively would be non-complying. She considered this to be more efficient and effective than redraft Rules 12.5.10.4(e) and 12.5.10.4(f) that applied to this area in the version attached to the Section 42A Report.
682. Ms Jones explained that including the 330 masl building height, as opposed by MSP<sup>562</sup>, would be very similar to that which existed in the ODP and that which was determined through a mediated agreement of all affected parties during the resolution of appeals on submissions to the ODP.<sup>563</sup>
683. Ms Jones also pointed out that Mr Farrell agreed it was not unreasonably difficult to determine ground level and, from that, the permitted height for Areas E and F.<sup>564</sup> She also observed that the rule she promoted resulted in an outcome that was relatively consistent with the approach taken for the Ballarat Street car park site, namely notified Rule 12.5.10.1.<sup>565</sup>

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<sup>556</sup> Submission 398

<sup>557</sup> T Williams, EIC at [17].

<sup>558</sup> Ibid at [19].

<sup>559</sup> Ibid at [18].

<sup>560</sup> V Jones, Reply Statement at [6.12a].

<sup>561</sup> V Jones, Reply Statement at [6.10] page 11.

<sup>562</sup> Submitter 398

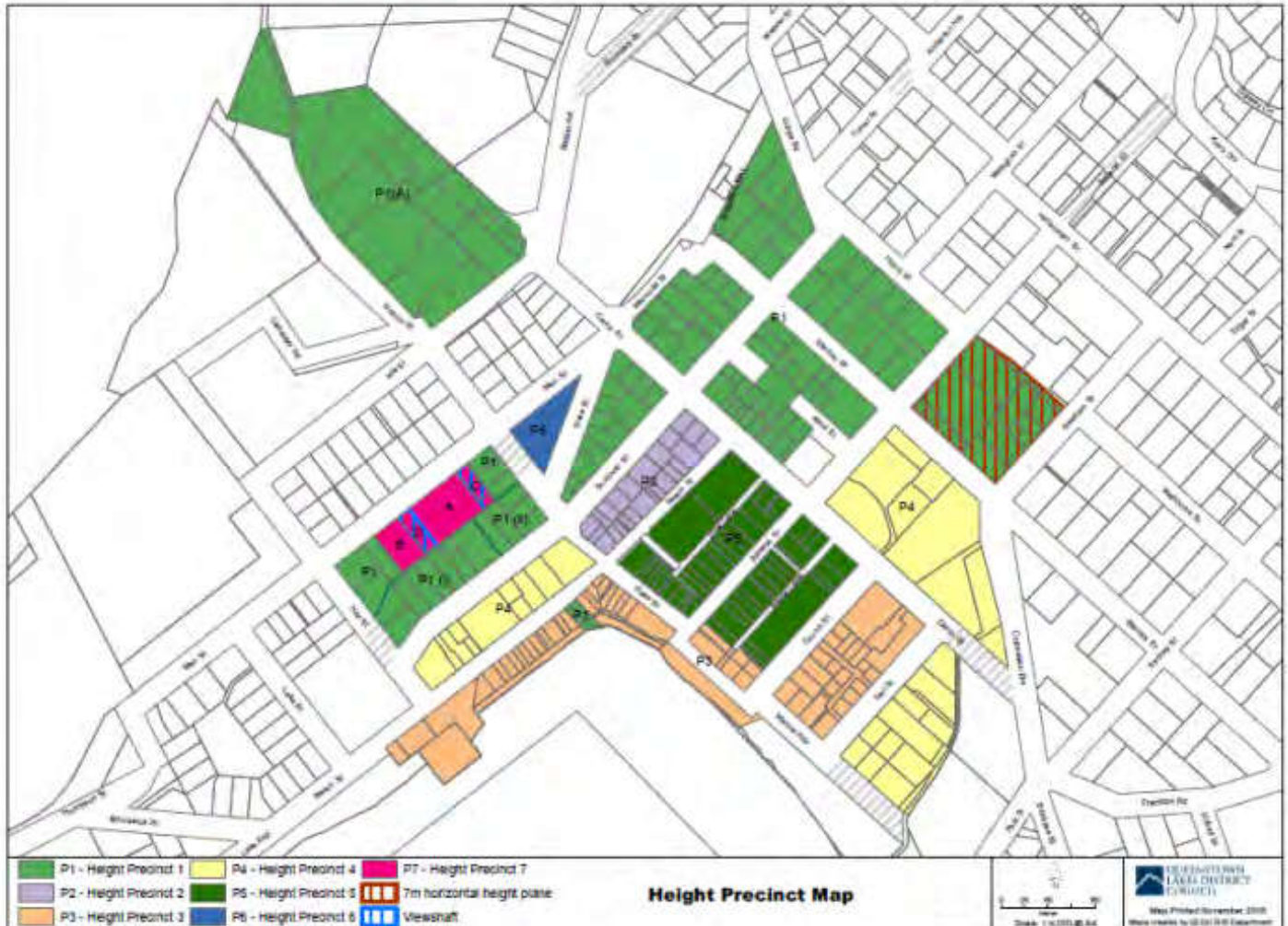
<sup>563</sup> V Jones, Reply Statement at [6.12a].

<sup>564</sup> Ibid at [6.12b].

<sup>565</sup> Ibid at [6.12c].

Reply Figure 2

684. Included in Ms Jones' Reply Statement was her final recommended Figure 2 (Reply Figure 2). We include this below in order to aid in understanding the recommendations that follow. Reply Figure 2 is also included in our recommended Chapter 12 set out in Appendix 1.



Recommendation on Southern Parts of the Man Street Block/Areas E and F

685. Having carefully considered the evidence of Mr Farrell, the opinions of Mr Church, and in particular Mr Church's amended Figure 20<sup>566</sup>, and the reasons advanced by Ms Jones, particularly within her Reply evidence to support her amendments to the rules relating to areas E and F, we agree with her reasoning and accept the opinions of Mr Church.
686. We have paid careful attention to Ms Jones' Section 32AA evaluation which set out the costs and benefits of adopting her recommended amendments in relation to adopting Precinct 1 rules with sub-set precincts P (i) and P (ii) providing for horizontal plane requirements. These requirements were included in re-drafted rule 12.5.10.1 d. We also agree with her assessment under Section 32AA.
687. Our recommendation relating to the Southern Parts of the Man Street Block/ Areas E and F is that the Council accept the recommended rules as redrafted by Ms Jones, including removing areas E and F from Height Precinct 7 and placing them within Precinct 1 with a permitted

<sup>566</sup> Included in Appendix 2 of the Council's Memorandum dated 18 November 2016.



building height at 12m, 12m -14m being restricted discretionary and above 14m being non-complying.

688. We also recommend the inclusion of horizontal plane requirements, with breach of them being a non-complying activity.

Ms Jones' Reply Man Street Car Park Portion

689. As to building heights for the Man Street car park, after considering Mr Todd's legal submissions and Mr Williams's evidence, Ms Jones remained of the view that her recommendations in relation to height on the Man Street car park should remain as recommended in her Section 42A Report<sup>567</sup>.

690. Ms Jones' Section 32AA report reflected this position. Her recommended amendments were, we considered, non-substantive as they updated the reference within the rule to Reply Figure 2. The remaining recommendation was to include the RL reference. We recommend both amendments be adopted.

691. We agree with Ms Jones' reasoning for her recommended changes<sup>568</sup> and adopt it as supporting our recommendation that the wording of renumbered Rule 12.5.9.4, relating to the height of the Man Street carpark in Precinct 7, be as we have as set out in Appendix 1.

Ms Jones Reply on the View Shafts

692. The remaining issue with the Man Street car park related to the view shafts. MSP<sup>569</sup> supported the notified height rules and sought that the position of the view shafts and figure to be confirmed to ensure the western view shaft was located to align with Section 26 Block IX Town of Queenstown. However, the legal submissions and evidence presented at the hearing promoted a different approach, seeking to remove the view shafts and support a comprehensive development rule.

693. Ms Scott<sup>570</sup> submitted that MSP's submission did not seek removal of the second (Western) view shaft and accordingly there was no scope to do so. Ms Scott also pointed out that there were no other submitters who had sought removal of the second view shaft. We agree. Therefore, both Mr Todd's legal submissions and the evidence presented by Mr Williams in regard to the second view shaft was beyond scope and requires no consideration by us.

694. We record that Ms Jones, after considering the legal submissions from Mr Todd and the evidence of Mr Williams, advised us that her opinion on the view shafts remained unchanged. Accordingly, she maintained, it was appropriate to show both the view shafts on Reply Figure 2, as well as applying the zone wide coverage and comprehensive development rule to the site.<sup>571</sup>

695. Within her Reply Statement, Ms Jones also identified the possible consequences if the key western view shaft were not identified on a planning map to compliment Rule 12.5.1 and to provide greater certainty.<sup>572</sup>

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<sup>567</sup> At paragraph 10.86.

<sup>568</sup> *ibid*

<sup>569</sup> Submission 398.

<sup>570</sup> Submissions in Reply of Ms Scott at [5.6].

<sup>571</sup> V Jones, Reply Statement at [6.14].

<sup>572</sup> *Ibid* at [6.15].

Our Recommendation on View Shafts

696. We agree with Ms Jones and accept that, on this relatively large site, both view shafts serve numerous purposes and are a very important determinant of the eventual built form, effectively breaking up the site into discrete component parts, which we consider advantageous.
697. For these reasons, and the reasons Ms Jones advanced, including her Section 32AA evaluation, and for the reasons advanced by Mr Church in his evidence<sup>573</sup>, we recommend the adoption of Rule 12.5.9.4 as set out in Appendix 1.
698. The final issue with the view shafts related to queries we raised during the hearing about whether the view shafts should be movable or their shape able to be altered. Ms Jones was of the view that she did not consider this to be necessary as the eastern view shaft was set, and she reminded us that there were limited alternate locations for the western view shaft. Overall, she preferred fixing their position on Reply Figure 2.
699. Ms Jones did, however, reconsider the recommended location of the western view shaft (Area D), which she had moved to the location specifically sought in MSP's submission<sup>574</sup>. After taking into account Mr Williams's evidence, she recommended<sup>575</sup> that the western view shaft be repositioned approximately 13 m to the west to avoid the lean to roof form that Mr Williams referred to in paragraph 11 of his evidence summary.
700. The consequence of this was that recommended Area B was reduced in size and, due to the rising level of Man Street, the height enabled in the view shaft could be raised by 0.5 m without impeding on views from the street. This has the added benefit of enabling more design flexibility for the first floor beneath.
701. We agree with the evidence of Mr Williams and Ms Jones on this point and accept Ms Jones' reasoning for the change in the location of the western view shaft. We recommend adoption of this change as shown on Reply Figure 2.

The Language School

702. The last issue to address is the Language School building heights. The first matter to address is one of jurisdiction. Mr Goldsmith presented legal submissions on behalf of John Thompson and MacFarlane Investments Ltd<sup>576</sup> (John Thompson). As a general matter, he expressed concern that the height rules in his view repeated earlier mistakes and that they referred to a range of differing measurement criteria.<sup>577</sup>
703. Mr Goldsmith contended that the process by which Council had identified jurisdiction to increase height limits within the Man Street block was questionable and could present a *vires* issue.<sup>578</sup> After setting out a range of Court authorities he submitted that for submitters to be put on notice of the issues sought to be raised, a submission must sufficiently identify issues with due particularity including the relief sought.<sup>579</sup>

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<sup>573</sup> particularly at paragraph 12.12

<sup>574</sup> Submission 398

<sup>575</sup> V Jones, Reply Statement at [6.19].

<sup>576</sup> Further Submission 1274

<sup>577</sup> Amended Legal Submissions of Mr Goldsmith at [10].

<sup>578</sup> Legal Submissions of Mr Goldsmith at [11].

<sup>579</sup> Ibid at [12-15, particularly 13].

704. He noted the Council relied upon the Cowie submission<sup>580</sup> for jurisdiction to increase heights on the Man Street Block. He identified for us that part of the Cowie submission that he considered related to a request for relief relating to height. He submitted that the relief sought by Cowie could provide jurisdiction to increase height limits anywhere in the district by an unspecified amount. He then queried whether or not the relief sought met the relevant tests within the case law he referred us to. It was his submission that it was questionable whether Mr Cowie’s submission could be relied upon as fairly and reasonably putting submitters on notice of this potential change to increase height.
705. In his Reply, Ms Scott referred directly to Mr Goldsmith’s legal submissions.<sup>581</sup> We here observe that Mr Goldsmith filed these submissions on behalf of the submitter before the hearing in accordance with our Procedural Minute. He then subsequently replaced them with amended submissions at the hearing on 1 December 2016. We took from this that the earlier submissions in which this jurisdictional issue was raised had been formally replaced.
706. Like Ms Scott, we have assumed the question of whether Mr Cowie’s submission provides scope for increased height limits in the QTC was not being pursued given those submissions were replaced. However, Ms Scott addressed this issue of jurisdiction in her Reply.
707. Essentially, Ms Scott pointed to the fact that the legal submissions of Mr Todd for MSP disclosed that both MSP and NZIA had made further submissions to the Cowie submission on the very matter of increased height within the QTC.<sup>582</sup> Ms Scott submitted, and we agree with her, that the existence of further submitters to Mr Cowie submission strongly supports the proposition that the matter of increased height limits in the QTC was a reasonably foreseeable outcome of Mr Cowie’s submission.<sup>583</sup>
708. We agree and accept Council has jurisdiction to increase in height for the Man Street Block.
709. In her reply, Ms Jones accepted some of Mr Goldsmith’s suggestions such as consistent use of the term RL throughout the rules and a removal of all references to the Otago datum level in brackets.<sup>584</sup> These amendments have been included within our recommended rules.
710. Mr John Edmonds, on behalf of John Thompson<sup>585</sup>, presented his opinion on the appropriate approaches to height limits for the Language School site in pre-lodged evidence filed before the hearing. His evidence responded to Ms Jones’ Section 42A Report and the pre-circulated urban design evidence of Mr Church. His evidence related to the properties located at 10 Man Street, 14 Brecon Street and 10 Brecon Street, collectively referred to as the “*Language School*.”
711. Mr Edmonds raised several issues relating to the Language School. He was concerned about the practicality of using a sloping height limit on the Language School site.<sup>586</sup> He had concerns relating to the uncertainty of the original ground level which would be the basis of the height limit applicable to the Language School site.<sup>587</sup> Mr Edmonds considered that there would be

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<sup>580</sup> Submission 20  
<sup>581</sup> Submissions in Reply of Ms Scott at [5.1].  
<sup>582</sup> Ibid at [5.2].  
<sup>583</sup> Ibid.  
<sup>584</sup> V Jones, Reply Statement at [2.3].  
<sup>585</sup> J Edmonds, EiC  
<sup>586</sup> Ibid at [10].  
<sup>587</sup> Ibid at [11].

significant urban design issues in relation to both Brecon Street and the Man Street frontage.<sup>588</sup> Finally, he was concerned about the very real potential for conflict arising from a contested consent application.<sup>589</sup>

712. Mr Edmonds evidence set out in a proposed alternative approach for the Language School site to address the issues he had identified. He contended his proposed alternative provided a more appropriate method for implementing Objectives 12.2.2 and accorded with Policies 12.2.2.2 and 12.2.2.3.
713. Essentially his alternative approach was that the recommended maximum height limit applicable to the Language School site change from a sloping height limit above original ground level to a flat plane height limit being a specified RL or a masl level.<sup>590</sup>
714. Mr Edmonds contended adopting this approach to determining a height limit for the Language School would be more logical and rational particularly having regard to the context of having the Sofitel Hotel with its height to the north-east and the car park to the south-west.<sup>591</sup>
715. Additionally Mr Edmonds requested that area P1 in redraft Rule 10.5.10.4 be changed to Area G. He also considered that an additional sub clause be added to Rule 10.5.10.4 specifying the maximum height in Area G. In his view, the height in this Area G should be determined by Rule 12.5.10.4 rather than Rule 12.5.10.1.
716. Mr Edmonds considered that his suggested approach generally aligned with the relief sought by MSP, except with regard to the RL for the carpark building.<sup>592</sup>
717. Mr Williams, on behalf of MSP<sup>593</sup>, in his pre-circulated evidence addressed the Man/Hay/Shotover/Brecon Street block controls. He addressed these controls further in his evidence summary presented at the hearing. He detailed the agreed position between submitters MSP and Mr Thompson.<sup>594</sup> He set out his opinion supporting, but with some exceptions, the approach recommended in the Council Memorandum dated 18 November.
718. The main exceptions were the cut of plane should avoid buildings above the Man Street Car Park Podium 327.1masl.<sup>595</sup> Also he still preferred the use of a height cut of plane and recession plane to manage the built form in relation to Shotover Street because of uncertainty around determining ground levels.<sup>596</sup>
719. Ms Jones<sup>597</sup>, with the assistance of Mr Church, assessed this evidence and the alternate proposed approaches contained within it. She noted that there were three sites which comprise the Language School site and the site appeared to be in two separate ownerships, neither of whom had submitted on the height rules in the PDP.<sup>598</sup> The only submission on the

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<sup>588</sup> Ibid at [13].

<sup>589</sup> Ibid at [14].

<sup>590</sup> Ibid at [15a].

<sup>591</sup> Ibid at [19c].

<sup>592</sup> Ibid at [15a].

<sup>593</sup> Submission 398

<sup>594</sup> T Williams, Summary of Evidence at [2] and Appendix A.

<sup>595</sup> Ibid at [6].

<sup>596</sup> Ibid at [10].

<sup>597</sup> V Jones, Reply Statement at [6.20 to 6.31]

<sup>598</sup> Ibid at [6.22].

height of the Language School site she identified for us was from Maximum Mojo Holdings limited<sup>599</sup>. The relief sought in that submission was that the height on 10 Man Street be amended to be the same as on the Man Street car park site.

720. When considering Mr Williams and Mr Edmonds' evidence, Ms Jones' conclusions were that it was likely that less development would be enabled on the Language School site under Mr Williams and Mr Edmonds' suggestions, than under the PDP rules.<sup>600</sup>
721. It was her view that following Mr Williams' and Mr Edmonds' rules, the site would have significantly lesser views of the lake due to the level plane allowed over the three lots<sup>601</sup>, and the site would be likely to need to be excavated below the Man Street level to achieve a well-designed two storey development along Man Street.<sup>602</sup>
722. Turning to considering which rules would best achieve an acceptable outcome on Man Street and the Brecon Street steps, Ms Jones was of the view that it was not a sound assumption that the PDP provisions would result in a 14m high building on the street frontage of the Language School site<sup>603</sup>. She noted that, in any event, Rule 12.5.9 included discretion over urban form and specifically in relation to whether the building would respond sensitively to different heights on adjacent sites and the effect on amenity of the street.<sup>604</sup>
723. In respect of the Man Street landscape, Ms Jones did not consider that, given the Language School site was a stand-alone site with view shafts either side, consistency in height with the adjacent buildings, such as the Man Street car park, when viewed from on the street, to be the most critical issue.<sup>605</sup> Rather, she considered the rule should enable quality building design and quality relationship between the Language School site and Man Street.<sup>606</sup>
724. Ms Jones considered the 7 m height limit on Man Street proposed by Mr Williams and Mr Edmonds to be too low, particularly in the context of the development enabled on the Man Street car park block and on the opposite side of the road enabled to by Plan Change 50.<sup>607</sup> She agreed that a high building on the Language School site would be likely to be similar in effect to the Sofitel Hotel.<sup>608</sup> However, she considered that the western end of the hotel was something of an anomaly and should not, in her view, lead future built form along this street edge.<sup>609</sup>
725. In terms of effects on the Brecon Street steps, Ms Jones noted that the Sofitel Hotel stepped down three times from Man Street to the narrow corner with Duke Street. She referred to this as an example of the sort of built form that can be achieved through a rule that applied a rolling height plane coupled with a horizontal high plane.<sup>610</sup> In her view it was important that

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<sup>599</sup> Submission 548. This submitter owned 19 Man St and sought that height on 10 Man Street be amended to be the same as on the carpark site.

<sup>600</sup> V Jones, Reply Statement at [6.24].

<sup>601</sup> 10 Man, 10 Brecon and 14 Brecon Streets.

<sup>602</sup> V Jones, Reply Statement at [6.24].

<sup>603</sup> Ibid at [6.25(a)]

<sup>604</sup> Ibid at [6.25a].

<sup>605</sup> Ibid at [6.25b].

<sup>606</sup> Ibid.

<sup>607</sup> Ibid at [6.25c].

<sup>608</sup> Ibid.

<sup>609</sup> Ibid.

<sup>610</sup> Ibid at [6.25d].

both sides of the Brecon Street steps bear some relationship to one another.<sup>611</sup> Stepping the built form down the Brecon Street steps would result, she thought, in an appropriate outcome.<sup>612</sup>

726. Ms Jones' primary concern with the rules proposed by Mr Edmonds and Mr Williams was that the allowed height above Brecon Street at the mid-block would be some 21.55 m above the street level.<sup>613</sup> She considered that to be too high, and that it would potentially create adverse visual dominance effects over Brecon Street.<sup>614</sup> She pointed out that such an outcome did not correspond with the step in the Sofitel Hotel built form, and provided some graphics to illustrate that point<sup>615</sup>. Overall, it was Ms Jones' opinion that a consistent height plane across all three properties fronting Brecon Street as supported by Mr Edmonds and Mr Williams, would result in a building that was too low on Man Street to contribute positively to the streetscape.<sup>616</sup> Also it would be an inefficient use of 10 Man Street and would potentially be visually dominating on Brecon Street. She did not support such an approach.
727. We note that having conferred with Mr Church, Ms Jones confirmed the view that the application of Precinct 1 to the Language School site and sloping height plane rules for the site was appropriate.
728. Ms Jones did propose the option of a lower height plane over the two uppermost sites, 10 Man Street and 14 Brecon Street, to 335.1 masl, although this was not her preference.<sup>617</sup> This would provide, she said, a consistent 3 m step between each building height limit and to some extent would match the hotel on the opposite side of Brecon Street.<sup>618</sup> However, she considered 8 m would restrict the building height to two low stories which was not the most appropriate outcome.<sup>619</sup>

Our Recommendations on 30 Man Street

729. Submitter evidence challenged Ms Jones' recommendation in relation to the appropriate heights for the Language School site, but as we understood the evidence, there was no challenge in relation to 30 Man Street. We agree with and adopt Ms Jones' recommendations in regard to 30 Man Street.

Our Recommendations on the Language School Site

730. Overall, having considered the various options presented to us by Mr Williams, Mr Edmonds and Ms Jones, we have concluded that applying the Precinct 1 height rules to this site and the adjoining two on Brecon Street would provide the most appropriate outcome. While the graphics included in Ms Jones' Reply Statement show the potential for a building on 10 Man Street to loom over any building on the adjoining 14 Brecon Street, we consider the stepped height regime of permitted, restricted discretionary and non-complying would enable a satisfactory urban design outcome along this portion of Brecon Street. Finally, we see no reason to limit the development potential of 10 Man Street solely to protect private views from another commercial property.

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<sup>611</sup> ibid at [6.25d].

<sup>612</sup> ibid.

<sup>613</sup> ibid at [6.26].

<sup>614</sup> ibid.

<sup>615</sup> ibid at p17-18.

<sup>616</sup> ibid at [6.28].

<sup>617</sup> ibid at [6.29].

<sup>618</sup> ibid.

<sup>619</sup> ibid.

731. For these reasons, and for the reasons advanced by Ms Jones, we recommend that the relevant rule version we have set out below be adopted.

*Recommended wording of rule 12.5.9 and 12.5.10*

732. It is clear that height in the QTCZ is a key issue. These rules attracted many submissions and further submissions and much analysis in particular by Ms Jones and Mr Church.

733. We wish to thank Ms Jones and Mr Church for their input and analysis which enabled us to determine the rule wording which we consider achieves the objectives and policies and ultimately supports the zone purpose as set out earlier in this decision.

734. We recommend these rules be renumbered as Rule 12.58 and Rule 12.5.9, and be adopted with the wording set out in Appendix 1. This wording incorporates necessary consequential changes resulting from the revisions we have discussed above. We also recommend including as Figure 2 the Height Precinct Plan shown as Reply Figure 2 above.

**7.17. Rule 12.5.11 Noise**

735. As notified, this rule set out the standards for activities in the QTCZ regarding noise. In the PDP, the noise limits were increased slightly throughout the QTC (other than in the TCTZ). The noise rules included a newly identified TCEP where a higher level of noise was allowed in order to encourage noisier venues to locate in the most central part of town, where they would have the least effect on residential zones (within which acoustic insulation is not required).

736. The issues raised by submitters relating to noise focused on:

- a. the appropriateness of the noise levels particularly the more enabling limits relating to music, voices and loud speakers and if those new limits applied to the TCTZ;
- b. establishing the Town Centre Entertainment Precinct and its possible expansion;
- c. determining if the noise limits applied to commercial motorised water based craft was a further issue.

Town Centre Entertainment Precinct (TCEP)

737. Turning first to the issue of whether the TCEP should be established and, if so, expanded.

738. Various submitters<sup>620</sup> opposed both the TCEP concept and its rules, requesting it be deleted and the whole of the QTC be subject to lower noise standards. Imperium Group<sup>621</sup> specifically requested that all consequential amendments necessary be made to remove the TCEP from the chapter.

739. The PDP introduced changes to noise limits resulting in a range of submitters<sup>622</sup> requesting that noise limits be lowered through the town centre. They requested the reinstatement of the ODP rules or the deletion of the exclusion of sound from the sources specified in notified Rules 12.5.11.3, 12.5.11.4, 12.5.11.1 and 12.5.11.2. Consequently, the second key issue was the appropriateness of the noise limits within the proposed rules.

740. Submitters opposing the proposed noise rules contended that raising the limits would increase adverse effects on residents and visitors staying in and around the town centre, users of the gardens and detract from amenity values generally.

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<sup>620</sup> Submissions 599, 151 and FS1318), 654 (supported by FS1043 and FS1063)

<sup>621</sup> Submission 151.

<sup>622</sup> Submissions 151, 503, 506, 654, 302, 474 and 217





### Height Precinct Map

- P1 - Height Precinct 1
- P2 - Height Precinct 2
- P3 - Height Precinct 3
- P4 - Height Precinct 4
- P5 - Height Precinct 5
- P6 - Height Precinct 6
- P7 - Height Precinct 7
- 7m horizontal height plane
- Viewshaft