

Before the Queenstown Lakes District Council

In the matter of the Resource Management Act 1991

And the Queenstown Lakes District proposed District Plan Topic 13 - Queenstown Mapping (Group 1C Queenstown Urban, Central, West and Arthurs Point)

LEGAL SUBMISSIONS FOR

DJ and EJ Cassels, the Bulling Family, the Bennett Family, and M Lynch (#503)

Friends of the Wakatipu Gardens and Reserves (#506)

Dated 5th September 2017

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MAY IT PLEASE THE PANEL

Introduction

- 1 These legal submissions are presented on behalf of DJ and EJ Cassells, the Bulling Family, the Bennett Family, and M Lynch (#503) and Friends of Wakatipu Gardens and Reserves (#506) (**Submitters**) in respect of Topic 13, Queenstown rezoning, of the Proposed District Plan (**PDP**).
- 2 The Submitters presented legal Submissions in respect of Topics 01B (strategic direction and urban development), Topic 03 (Heritage), and Topic 06 (Medium Density Residential). For the assistance of the Panel, and recognising that current Topic 13 Panel members have not heard the full Submitters' case in this PDP, each of those earlier legal submissions are attached as **Appendix 4**.
- 3 The Submitters' case is focused on protecting the special residential and amenity character of the area bounded by Park Street/Frankton Road and Hobart Street, and intersected by Brisbane Street (**Park Street special character area** or **special character area**) as indicated on the planning map within Ms Farminer's appraisal, page 1.
- 4 The Submitters were informed prior to Topic 06 that their submissions were considered a rezoning matter to be heard in Topic 13. The Submitters elected to also provide submissions on Topic 06 in respect of the MDR provisions generally and as a fall-back position to the primary relief sought, being to attain a special character zoning which reflects the status quo of the area in the Operative District Plan (**ODP**).
- 5 The Submissions sought broad relief ranging between identifying a special character overlay, retaining the ODP equivalent provisions and zoning, and providing bespoke planning provisions within the PDP zoning to reflect special character. Consequential and alternative relief is also sought in the Submissions meaning that many options are available for granting the outcomes sought.

Executive Summary

- 6 The special character area has important amenity and residential values and exhibits character which warrants a level of recognition and protection beyond that provided through the MDR chapter.
- 7 The special and distinctive character of the area is driven by the combination of small-scale, residential homes that have grown organically since the area was first settled in the 1870s.
- 8 The special character area holds a distinctive residential amenity that ultimately generates a strong sense of place for many of the residents who live there and

call Queenstown their home. Part of its key distinctiveness and charm is that it is not wholly or obviously homogenous.

- 9 The important values of the area should be better protected both at the strategic level, by acknowledgement generally of the worth of those values, and at the operational level, by providing residential provisions that give appropriate weight to protection of those values and character.
- 10 The Friends of Wakatipu Gardens and Reserves ("**FOWGR**") is the pre-eminent community representative group which acts as a voice for the Wakatipu gardens and reserves areas. Protection of the character of the Gardens also requires consideration of protecting the amenity of the immediate surrounds of the Gardens.
- 11 Quality urban design, built form, and amenity, are relevant factors to be provided for through Part 2 of the Act and are recognised in the higher order provisions of the PDP. A special character overlay should not just be viewed as an economic inhibitor by way of less yield being able to be realised. Economic considerations are broader than this, and include the potential economic benefits of creating a cultural overlay or node close to the Town Centre and Gardens which are frequented by international and domestic visitors.
- 12 Increased densification of residential zones should not be provided for at the cost of adverse impacts on amenity and special character, which cannot otherwise be replicated or replaced. It is vital that unique character neighbourhoods are protected and that increased development is focused only in areas which are capable of absorbing the effects of such development.
- 13 These Submissions attach relief sought to amend provisions within Chapter 8 specifically recognising for the special character area (**Appendix 2**) and a supporting definition which will assist the consideration of appropriateness of future subdivision and development against the special character area qualities and characteristics (**Appendix 3**). These provisions together fit within the PDP framework and better achieve the purpose of the higher order PDP provisions and Part 2 of the Act, as evidenced in the section 32AA analysis (**Appendix 1**).

Overview of relief sought and scope

- 14 Upon consideration of the most appropriate and efficient way to achieve the relief sought by the submitters, and how to fit this into the PDP framework, Counsel has elected to provide the following structure (see **Appendices 2 and 3**):
 - (a) A specific new objective and policy suite in Chapter 8 (MDR) which recognises the special character area and seeks to ensure that future subdivision and development complements and responds sensitively to the

area's special character, and is of a form and design which maintains that character;

- (b) Specific policy considerations for urban design are set out, including scale, materials, built form, and use;
- (c) That policy and objective suite are then given support by additional site specific standards for the special character area which seek to essentially provide for the status quo as under the ODP, this includes:
 - (i) More onerous activity status for non-compliance in maximum building coverage over 70%;
 - (ii) More onerous activity status for non-compliance of in maximum site density;
 - (iii) Retention of ODP boundary setback and recession plane requirements and associated non-compliance status;
 - (iv) Retention of minimum site landscaping requirements;
 - (v) Maximum building length requirements;
 - (vi) Fencing restrictions;
 - (vii) Retention of the minimum allotment size in the subdivision chapter;
 - (viii) Additional matters of discretion for consideration of the special character area in respect of application of the standards.

15 The above additions to Chapter 8 are then intended to be complimented by the new proposed definition (**Appendix 3**) for the Park Street Special Character Area. This definition provides a character area statement and description of the area, as well as setting out a summary of the key values which contribute to that special character. The proposed definition states that an assessment of proposals for development ad modifications to buildings will be considered against that definition and references in the PDP to 'the area's special character' has a corresponding meaning to the definition.

16 This framework is modelled on special character areas scheduled within the Auckland Unitary Plan, and which are supported by character statements. The intent of this is that specific matters of discretion and associated objectives and policies which reference special character are assessed against the definition and provide certainty and guidance to future decision makers. This also reflects a similar framework to that of the Arrowtown Design Guidelines and associated PDP provisions. For the Park Street Area however, the proposed definition is a

simpler version of the Guidelines and does not require additional material to be incorporated or additional decision making steps, but instead guides consent applicants and decision makers towards additional character and amenity considerations.

- 17 Counsel appreciates that the proposed definition is relatively long when compared to other definitions in the PDP, and provides extensive direction. If the Panel considers that this would be more appropriate as an advisory note, additional standard, or some other mechanism within Chapter 8 itself, that would also be acceptable to the Submitters.
- 18 Regarding scope for the above amendments, both the Friends and the FOWGR submissions sought very broad relief, including to:

'Recognise the special and heritage character of the area and relationship with the Wakatipu Gardens by adding a special character overlay over the area and specific reference to the area in Chapter 26 as a "Area of Special Character"...

Remove the application of the proposed Medium Density Zone, chapter 8 and replace with the current applicable provisions from the Operative District Plan...

In the alternative, remove application of the proposed Medium density Zone, chapter 8 from the area, and replace with provisions that have the same effect as the proposed chapter 10 for the Arrowtown Residential Historic Management Zone.

- 19 It is clear from the combination of the above extracts, and the entirety of the submissions, that the relief now being sought in this hearing is entirely consistent with the objectives to recognise special character (be that within the heritage chapter or somewhere else), and retain the status quo of rules under the ODP. The appended amendments do not intend to go further than the Submissions provide. Amendments to Chapter 8 and chapter 27 (Subdivision) would clearly be contemplated further to the objectives of the submissions, and it is clear that those submissions seek to protect character which is not restricted to 'historic heritage'.

The Submitters' evidence

- 20 Evidence from Residents
- (a) Two residents from the special character area have provided evidence and rebuttal evidence for this hearing. Mr Cassells' evidence provides an overview and summary of the residential amenity which is unique to this special character area from the residents' point of view. Included in this summary, are particular concerns about increased parking pressures from

the intensification of zoning, and other parallel planning processes for Queenstown, and the concern for loss of amenity through changes to setbacks, recession planes, aggregation of land, and streetscape effects as proposed in the PDP.

- (b) This evidence also provides a summary of some particularly unique characteristics of the area, at para 37, including 'classic' protected heritage features, the relationship of the area to the Town Centre, lake, pedestrian access points, trees and planting amenity, the residential nature of the area, and perhaps most importantly, a reflection on previous examples of character or heritage protection within the Queenstown District which were, similar to this rezoning proposal, not initially met with entire approval or understanding.
- (c) Mr Bulling's rebuttal evidence comments on the evidence for submitter Mahon (628) which seeks HDR zoning over part of the Special character Area. Mr Bulling considers that the evidence for Mahon does not consider the existing dominance and presence of residential use of this area, particularly owned and inhabited by families. Mr Bulling considers HDR would be out of character with existing development of the area, and this does not take into account the strategic PDP provisions requiring consideration of quality built environments and character of individual communities.
- (d) Each of these resident views are shared by other joint submitters in the area. These views are representative of people who have cared for and looked after this area in the hope that it would continue to be an important remnant area of historical Queenstown residential use for both residents and visitors to appreciate in coming generations. The idea of creating a cultural overlay or node stems from interest in international practices to provide residents and visitors with an opportunity to see a living community which has a story to tell, and exhibits amenity within which people wish to engage. These are potential economic benefits of the proposal.
- (e) This evidence is testament to the notion that once you have lost heritage or and unique special character, you have lost it forever.

21 Evidence on special character

- (a) Ms Farminer has provided an appraisal of the special character area and supporting evidence, which concludes:

The small residential area enclosed by Park Street, Hobart Street and the lake is one of the last surviving parts of Queenstown where the residential development and pre-commercialised heritage character of

the town remains tangible to its residents and visitors alike. As such it provides a level of amenity and social value through its production of a distinctive sense of place for the Park Street area that is vitally important to respect and sustain into the future.

Overall, it is a zone of unique character being evocative of the various stages of residential development of the original central Queenstown settlement, being contiguous with the Queenstown Gardens and the Queenstown Bay, and in deriving much of its character as a location of special value for the CBD and the wider district.

- (b) Ms Farminer's appended appraisal not only assesses the area's classic 'heritage' features which are protected, but also the wider special character elements, including:
- (i) The enclosure and streetscape of the area – being clearly demarcated by natural features and topography of the Lake and Gardens, and exhibiting a buffer from adjacent noise and activity;
 - (ii) Residential character – being the combination of low scale residential development over decades resulting in a highly individual sense of place reflecting 140 years of Queenstown development;
 - (iii) Greening and enclosure – extensive greening and natural spaces in the area having provided for an intermediate zone of character housing and gardens contributing to the Gardens' broader amenity and landscape values.
- 22 Overall, Ms Farminer's evidence provides a compelling evidentiary basis for special character within this area which is a recognised resource management matter, and which in my submission, warrants recognition and protection in this District Plan process. The following section addresses the Council's case for retaining the notified MDR regime with no recognition for special character. This does not recognise this planning process as a once in potentially 20 year opportunity to protect and recognise that character. This is a lost opportunity which cannot be regained.

The Council's case

- 23 Ms Devlin's section 42a report considers that a 'spot zone' recognising special character would result in a loss of development capacity as a result of a downzone, and that this would be inconsistent with higher order provisions seeking a compact urban form that maximises infrastructure and enables increased densities close to town centres (para 25.6).

- 24 This evidence does not recognise key objectives in those higher order chapters, or within chapter 8 which also seek to recognise and protect quality built form and urban design which is reflective of cultural aspects and neighbourhood context (refer section 32AA analysis below).
- 25 The s42a report also broadly states that 'downzoning' would result in economic disbenefits which would not outweigh any likely benefits such as onsite amenity (para 25.7).
- 26 I submit that this is not accurate or compelling evidence for the following reasons:
- (a) Council's own dwelling capacity modeling evidence states there is significant undeveloped and zoned capacity for residential and commercial development in the District. Also of note, is the recently up-zoned 'PC50' land which is close to town and ready for significant further development, as well as the soon to be vacated Wakatipu High School site. There is therefore no demonstrable **need** for additional density in this area of special character which cannot otherwise be replicated or replaced elsewhere in the District;
 - (b) This rezoning should not be referred to as a downzoning, but rather considered as a retention of the ODP status quo – that is essentially the outcome achieved through the suggested Character Overlay;
 - (c) There is no quantification of the loss that would result from not recognising special character and amenity (even though the existence of this is recognised in that evidence) in accordance with section 5, 7(b), 7(c), and 7(g) of the Act.
 - (d) Conversely, there are potential economic benefits of creating the overlay which will accrue from protecting and preserving special character, particularly when one considers the area as being the interface of critical tourism attractions being the Gardens and Town Centre. If visitors see a living community and protected amenity and character, they may wish to engage in that and this will contribute to their overall visitor experience.
- 27 In her rebuttal evidence, Ms Devlin, refers to and relies on the Council's case put forward in Hearing Stream 03 (heritage chapter) which considered that it would be inefficient to provide another layer of heritage rules / categorisation into the PDP, and that Mr Knott's heritage evidence states there was no cohesive character (of the Are) therefore the Submitter's relief was rejected.
- 28 It is appreciated that this rebuttal was formulated without the assistance of a specific planning framework put forward by the submitters (and which is now assessed and appended to these submissions). However, even so, that rebuttal

evidence fundamentally misses the point of the Submitters' case and its evidence in chief which is about special and residential character, a matter which is broader than just historic heritage, and which is a legitimate section 7 consideration (referring to Counsel's legal submissions in respect of Topic 03 and 08).

29 I submit this reasoning should also be questioned on the following basis:

- (a) Counsel has reviewed again Mr Knott's evidence presented in Topic 03 and cannot find a conclusive statement that the special character area does not exhibit a cohesive character (as relied on by Ms Jones in Topic 03);
- (b) Even if that statement were made by Mr Knott, this misses the point of the Submitters' case, that:
 - (i) The area is not purely about historic heritage, but a broader concept of special character and residential amenity, which are section 7 matters for consideration; and
 - (ii) This finding is not based upon 'cohesive' or homogenous character of the area, but rather the collection of unique elements of amenity and design which result in a unique sense of character as a whole.

30 Conversely, Council has elected not to present urban design, or additional special character evidence in respect of this rezoning hearing. I therefore submit the evidence before the Panel from the residents and Ms Farminer, concluding that the area exhibits special character worthy of recognition and protection, should be given significant weight as it is not opposed by any other equivalent expertise.

31 I submit that in light of this, and the section 32AA assessment contained in these submissions, concluding the Submitters' relief is an efficient and effective way to achieve the PDP objectives and in turn, the purpose of the Act, there is no reason for the Panel not to support this rezoning request.

Dated this 5th day of September 2017



Mare Baker-Galloway / Rosie Hill
Counsel for the Submitters

Appendix 1 – Section 32AA Analysis

32 The following sections constitute a section 32AA evaluation in accordance with the Act to supplement the proposed changes to Chapter 8 and the Planning Maps as discussed in the above submissions. S32AA requires that a further evaluation under section 32(1) – (4) is necessary for any changes that have been made to the proposal since the evaluation report for the proposal was completed. In accordance with s32AA(1)(c) this evaluation corresponds with the scale and significance of the changes requested.

The extent to which the objectives are the most appropriate way to achieve the purpose of the Act – s32(1)(a)

33 The proposed Park Street Special Character Area overlay introduces one new specific objective into Chapter 8, which seeks to ensure that future development in the area responds sensitively to, or compliments, the Area's special character (as proposed by the new special character area definition).

34 This change is consistent with the strategic direction objectives to ensure urban development occurs in a logical manner that promotes compact, well designed, and integrated urban form (Obj 3.2.2.1); that ensures a built environment and urban areas are desirable and safe places to live, work, and play (Obj 3.2.3.1); that ensures development is sympathetic to the District's cultural heritage values (Obj 3.2.3.2); ensuring safe and healthy communities through good quality subdivision and design (Obj 3.2.6.). This change is also consistent with and achieves the key Chapter 8 MDR objective 8.2.2: Development contributes to the planned medium density character of the area through quality urban design solutions which positively responds to the site, neighbourhood and wider context.

35 In turn, those objectives, and the new Special Character objective seek to achieve section 7(b) of the Act being an efficient use of this land resource, given that special characteristics evident here cannot be replicated again in new development areas. Section 7(c) of the Act being the maintenance of amenity values, given that the amenity of this area has been defined and recognised in evidence and the new provisions seek to protect this. Section 7(g) providing for finite characteristics- given that the existence of historic and special character in this area is finite, as it is elsewhere in the District.

36 This in turn achieves the sustainable management purpose of providing for people and communities social, economic, and cultural wellbeing and for their health and safety.

Identification of other practicable options – s32(1)(b)(i)

37 The reasonably practicable options for the Special Character Area include:

- (a) Retention of the status quo in the PDP with no recognition for special character in future subdivision and development;
 - (b) Amend the provisions in the PDP to reflect the existence of special character and ensure its recognition and protection in the future.
- 38 Retaining the notified Chapter 8 of this area results in an increased potential level of development than that which was provided for in the ODP. This would allow for different and more intensive forms of development in the Special Character Area with no specific recognition of the existing and historic character as discussed in evidence. This option would not align with the strategic direction objectives relating to quality built form and urban amenity.
- 39 Amending the Chapter 8 provisions to provide for the Special Character Area overlay would ensure that those special characteristics are provided for in future development, would ensure this historic area of Queenstown reflected its origins, and would ensure that visitors and residents to Town can enjoy a residential entrance to the Town centre and the Gardens. The proposed overlay still achieves objectives to ensure that compact urban development is achieved within the Queenstown Urban Growth Boundary, while also protecting and recognising special character.

Efficiency and effectiveness – s32(2)(a)

- 40 The proposed overlay is a method of implementing key chapter 8 objective 8.2.2, and strategic direction objective 3.2.2.1, because it is efficient use of existing special character resources to ensure those are recognised and protected for future generations. The proposed overlay is a better framework to ensure that this area is protected and retained than compared to the existing Chapter 8 provisions for general MDR development, and which do not reflect different character areas.
- 41 The costs of the overlay are:
- (a) **Economic** – retention of the ODP development rights would lead to a potential loss in additional density and development being created in this area, and a preference for future residential rather than commercial development. This should however be considered in the context of the Council's dwelling capacity modelling which shows a current sufficient supply of residential and commercially zoned land. This however needs to be considered in light of broader potential economic benefits from the overlay by creating a cultural node close to the Town Centre and Gardens which contribute a very large part of the local economy from visitors and tourism.

- (b) **Environmental** – No environmental costs are identified.
- (c) **Social and cultural** – the overlay could be perceived as inhibiting more intensive forms of development and increased opportunities for new housing development or visitor accommodation. This however needs to be considered in the context of existing social and cultural influences in the area which would be enhanced through the overlay, as well as the Council's dwelling capacity modelling evidencing there is no need for this area to be densified further.

Summary of proposed provisions – S32(1)(b)(iii)

- 42 The changes sought to include the Special character Area overlay provide the most appropriate way of achieving the relevant objectives of the PDP because:
- (a) It provides for finite amenity values which cannot otherwise be replicated or replaced elsewhere in the District;
 - (b) It reflects the core Chapter 8 objective to ensure that Development contributes to the planned medium density character of the area through quality urban design solutions which positively responds to the site, neighbourhood and wider context.
 - (c) It provides certainty for future planning decisions by ensuring those are considered against the definition and explanation of special character;
 - (d) It will result in a framework which more appropriately ensures positive outcomes from the effects of future development on urban and residential amenity and within an important entrance to Queenstown and the Gardens for both residents and visitors.

Appendix 2 – Revised Special Character Area Provisions

MEDIUM DENSITY RESIDENTIAL 8

Key:

Recommended changes to notified chapter are shown in red underlined text for additions and ~~red strike-through~~ text for deletions; Park Street Special Character Area additions.

Changes shown in orange reflect the provisions that the Hearings Panel has deferred to the hearings on mapping. The recommendations made within the Appendix 1 to the s42A report are retained.

Recommended changes to notified chapter are shown in underlined text for additions and ~~strike through~~ text for deletions. Appendix 1 to section 42A report, dated 14 September 2016.

Changes shown in ~~blue strikethrough~~ and underline are amendments which relate to Variation 1 – Arrowtown Design Guidelines, notified 20 July 2016.

Note: The provisions relating to Visitor Accommodation, which were withdrawn from the PDP by resolution of Council on 23 October 2015, are not shown in this Revised Chapter.

8 Medium Density Residential

8.1 Zone Purpose

The Medium Density Residential Zone has the purpose to provide land for residential development at increased densities. In conjunction with the High Density Residential Zone and Low Density Residential Zone, the zone will play a key role in minimising urban sprawl and increasing housing supply. The zone will primarily accommodate residential land uses, but may also support limited non-residential activities where these enhance residential amenity or support an adjoining Town Centre, and do not impact on the primary role of the zone to provide housing supply.

The zone is situated in locations in Queenstown, Frankton, Arrowtown and Wanaka that are within identified urban growth boundaries, and easily accessible to local shopping zones, town centres or schools by public transport, cycling or walking. The Medium Density Residential Zone provides for an increased density of housing in locations that are supported by adequate existing or planned infrastructure.

The zone will enable a greater supply of diverse housing options for the District. The main forms of residential development anticipated are terrace housing, semi-detached housing and detached townhouses on smaller sites. The zone will realise changes to density and character over time to provide for the social, economic, cultural and environmental wellbeing of the District. In particular, the zone will provide a greater diversity of housing options for smaller households including single persons, couples, small young families and older people seeking to downsize. It will also enable more rental accommodation for the growing population of transient workers in the District.

While providing for a higher density of development than is possible in the Low Density Residential Zone, the zone utilises development controls to ensure reasonable amenity protection is maintained. Importantly, building height will be generally limited to two storeys.

Development will be required to achieve high standards of urban design, providing site responsive built forms and utilising opportunities to create vibrant public spaces and active transport connections (walking and cycling). In Arrowtown and in the Park Street Special Character Area, particular consideration will need to be given to the ~~town's area's~~ special character, and in Arrowtown, the design criteria identified by the Arrowtown Design Guidelines 2016.

Community activities are anticipated given the need for such activities within residential areas and the high degree of accessibility of the zone.

Pursuant to Section 86(b)(3) of the RMA, Rule 8.5.13 has immediate legal effect.

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8.2 Objectives and Policies

8.2.1 Objective - Medium density development occurs close to employment centres which encourages travel via non-vehicular modes of transport or via public transport.

Policies

8.2.1.1 Provide opportunities for medium density housing close to town centres, local shopping zones, activity centres and public transport routes

8.2.1. Provide for compact development forms that encourage a diverse housing supply and contribute toward containing the outward spread of residential growth away from employment centres.

8.2.1.3 Enable increased densities where they are located within easy walking distance of employment centres and public transport routes.

8.2.2 Objective - Development contributes to the planned medium density character of the area through quality urban design solutions which positively responds to the site, neighbourhood and wider context

Policies

8.2.2.1 Ensure buildings address streets, with limited presentation of unarticulated blank walls or facades to the street.

8.2.2.2 Require visual connection with the street through the inclusion of windows, outdoor living areas, low profile fencing or landscaping.

8.2.2.3 Ensure street frontages are not dominated by garaging-through consideration of their width, design and proximity to the street boundary.

8.2.2.4 Ensure developments reduce visual dominance effects through variation in facades and materials, roof form, building separation and recessions or other techniques.

8.2.2.5 Ensure landscaped areas are well designed and integrated into the design of developments, providing high amenity spaces for outdoor living purposes and to soften the visual impact of development, with particular regard to the street frontage of developments.

8.2.2.6 Ensure natural site features (such as topography, geology, vegetation, waterways and creeks) are incorporated into the site layout and design.

8.2.2.7 Enable medium density development of varied building typologies including terrace, semi-detached, duplex, townhouse and small lot detached housing.

8.2.3 Objective - Development provides high quality living environments for residents and provides reasonable protection of the amenity of adjoining sites taking into account the planned medium density character of the area.

Policies

8.2.3.1 Apply recession plane, building height, setbacks and site coverage controls as the primary means of ensuring reasonable protection of neighbours' access to sunlight, privacy and amenity values.

MEDIUM DENSITY RESIDENTIAL 8

- 8.2.3.2 Ensure built form achieves an acceptable level of privacy for the subject site and neighbouring residential units through the application of setbacks, offsetting of habitable room windows, screening or other means.
- 8.2.3.3 Ensure building heights along the western side of Designation 270 do not prevent access to views from the formed walkway to the west toward Lake Wanaka and beyond.
- 8.2.3.4 Ensure developments of increased density take into account the amenity of existing developments on adjoining sites acknowledging the anticipated future amenity and character of the zone.

Policies

- 8.2.4 Objective - In Arrowtown medium density development responds sensitively to the town's character.**

Policies

- 8.2.4.1 Notwithstanding the higher density of development anticipated in the zone, ensure development is of a form that is sympathetic to the character of Arrowtown in accordance with the Arrowtown Design Guidelines 2006-2016, with particular regard given to:

- i. Building design and form;
- ii. Scale, layout and relationship of buildings to the street; and
- iii. Materials and landscape responses.

- 8.2.4.2 Flat roofed housing forms are avoided.

- 8.2.4.3 Medium density housing development responds sensitively to the street and public spaces through the inclusion of landscaping (including hedges along the street boundary, small trees and shrubs) to soften increased building mass.

- 8.2.5 Objective - In the Park Street Special Character Area medium density development complements and responds sensitively to the area's special character.**

Policies

- 8.2.5.1 Ensure development is of a form that maintains the special character and residential amenity of the area, with particular regard given to:

- i. Building design and form which is consistent or complementary to existing and historical development;
- ii. Scale, layout and relationship of buildings to the street, adjacent buildings, and the Queenstown Gardens;
- iii. The impact of increased parking requirements from new developments;
- iv. The impact of visitor accommodation and commercial activities on residential character and amenity values; and
- v. Materials and landscape responses.

- 8.2.4.2 Flat roofed housing forms are avoided and lower buildings heights are encouraged.

- 8.2.4.3 Medium density housing development responds sensitively to street amenity and public spaces, in particular the Queenstown Gardens, through the inclusion of landscaping (including hedges along the street boundary, small trees and shrubs) to soften building mass.

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8.2.4.4 Require supporting information for any development proposal which demonstrates Consistency with, or ability to complement, the area's existing residential amenity and special character

8.2.65 **Objective - medium density development efficiently utilises existing infrastructure**

Policies

8.2.56.1 Ensure development connects to existing or planned adjacent public transport linkages, trail/track networks and infrastructure, networks and maintains the safety, efficiency and functionality of those networks.

8.2.56.2 Access and parking is located and designed to maintain the efficiency and safety of the transportation network and minimise adverse effects to on-street parking.

8.2.56.3 Encourage low impact approaches to storm water management, including on-site treatment and storage / dispersal to limit demands on public infrastructure networks.

8.2.76 **Objective - Community activities are generally best located in a residential environment close to residents.**

Policies

8.2.76.1 Enable the establishment of community activities where adverse effects on residential amenity in terms of noise, traffic, hours of operation, lighting, glare and visual impact can be suitably avoided or mitigated.

8.2.76.2 Ensure any community activities are of a design, scale and appearance compatible with a residential context.

8.2.87 **Objective - Small-scale commercial activities are provided for where they:**

- **contribute to a diverse residential environment;**
- **maintain residential character and amenity; and**
- **do not compromise the primary purpose of the zone for residential use.**

Policies

8.2.87.1 Support commercial activities that directly serve the day-to-day needs of local residents, or enhance social connection and vibrancy of the residential environment, provided these do not undermine residential amenity, the viability of the zone or a nearby Town Centre.

8.2.77.2 Ensure any commercial development is of low scale and intensity and generates small volumes of traffic.

8.2.87.3 Mitigate the adverse noise effects generated by commercial activities.

8.2.87.4 Ensure commercial activities are suitably located and designed to maximise or encourage walking, cycling and public transport patronage.

8.2.87.5 Locate commercial activities at ground floor level and provide a quality built form which activates the street, and adds visual interest to the urban environment.

8.2.87.6 Ensure any commercial development is of a design, scale and appearance compatible with its surrounding residential context.

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| 8.2.~~87~~.7 Encourage walking and cycling to and from the business through provision of bicycle parking and, where appropriate for the scale of activity, end-of-trip facilities (shower cubicles and lockers) for use by staff, guests or customers of non-residential activities.

| 8.2.~~87~~.8 Protect public health and safety through design methods for non-residential developments to increase passive surveillance and discourage crime, such as through the provision of security lighting, avoidance of long blank facades, corridors and walkways; and good signage.

| 8.2.~~98~~ **Objective - The development of land fronting State Highway 6 (between Hansen Road and Ferry Hill Drive) provides a high quality residential environment which is sensitive to its location at the entrance to Queenstown, minimises traffic impacts to the State Highway network, and is appropriately serviced.**

Policies

| 8.2.~~98~~.2 Encourage low impact stormwater design that utilises on-site treatment and storage / dispersal approaches, and avoids impacts on the State Highway network.

| 8.2.~~98~~.3 Provide a planting buffer along the road frontage to soften the view of buildings from the State Highway network.

| 8.2.~~98~~.4 Provide for safe and legible transport connections that avoid any new access to the State Highway, and integrates with the road network and public transport routes on the southern side of State Highway 6.

Note: Attention is drawn to the need to consult with the New Zealand Transport Agency (NZTA) prior to determining an internal and external road network design under this policy.

Note: Attention is drawn to the need to obtain a Section 93 notice from the NZ Transport Agency for all subdivisions on State Highways which are declared Limited Access Roads. The NZ Transport Agency should be consulted and a request made for a notice under Section 93 of the Government Roading Powers Act 1989.

| 8.2.~~98~~.5 Require that the design of any road or vehicular access within individual properties is of a form and standard that accounts for long term traffic demands for the area between Hansen Road and Ferry Hill Drive, and does not require the need for subsequent retrofitting or upgrade.

| 8.2.~~98~~.6 Provide a safe and legible walking and cycle environment that links to other internal and external pedestrian and cycling networks and destinations on the southern side of State Highway 6 along the safest, most direct and convenient routes and is of a form and layout that encourages walking and cycling.

| 8.2.~~98~~.7 Provide an internal road network that ensures road frontages are not dominated by vehicular access and parking.

| 8.2.~~109~~ **Objective –Non-residential development forms which support the role of the Town Centre and are sensitive to the transition with residential uses are located within the Wanaka Town Centre Transition Overlay.**

Policies

| 8.2.~~109~~.1 Enable non-residential uses to establish in a discrete area of residential-zoned land adjoining the Wanaka Town Centre, where these activities suitably integrate with and support the role of the Town Centre.

| 8.2.~~109~~.2 Require non-residential and mixed use activities provide a quality built form which activates the street, minimises the visual dominance of parking and adds visual interest to the urban environment.

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8.2.109.3 Ensure the amenity of adjoining residential properties outside of the Wanaka Town Centre Transition Overlay is protected through design and application of setbacks and to mitigate dominance, overshadowing and privacy effects.

8.2.110 Objective – Manage the development of land within noise affected environments to ensure mitigation of noise and reverse sensitivity effects.

Policies

8.2.110.1 Require, as necessary all new and altered buildings for activities sensitive to road noise located within 80 m of the State Highway be designed to provide protection from sleep disturbance and maintain appropriate amenity

8.2.110.2 Encourage all new and altered buildings containing an Activity Sensitive to Aircraft Noise (ASAN) located within the flight paths of the Queenstown Airport (identified by Figure 1 - Airport Approach and Protection Measures) to be designed and built to achieve an internal design sound level of 40 dB Ldn.

8.3 Other Provisions and Rules

8.3.1 District Wide

Attention is drawn to the following District Wide chapters. All provisions referred to are within Stage 1 of the Proposed District Plan, unless marked as Operative District Plan (ODP).

| | | |
|---|---|---|
| 1 Introduction | 2 Definitions | 3 Strategic Direction |
| 4 Urban Development | 5 Tangata Whenua | 6 Landscapes |
| 24-Signs (18 <u>Operative DP</u>) | 25-Earthworks (22 <u>Operative DP</u>) | 26 Historic Heritage |
| 27 Subdivision | 28 Natural Hazards | 29—Transport (14 <u>Operative DP</u>) |
| 30 <u>Energy and Utilities and Renewable Energy</u> | 34—Hazardous Substances (16 <u>Operative DP</u>) | 32 Protected Trees |
| 33 Indigenous Vegetation | 34 Wilding Exotic Trees | 35 Temporary Activities and Relocated Buildings |
| 36 Noise | 37 Designations | Planning Maps |

8.3.2 Clarification

Advice Notes

8.3.2.1 A permitted activity must comply with all the rules listed in the activity and standards tables, and any relevant district wide rules.

8.3.2.2 Where an activity does not comply with a Standard listed in the Standards table, the activity status identified by the Non-Compliance Status column shall apply. Where an activity breaches more than one Standard, the most restrictive status shall apply to the Activity.

8.3.2.3 The following abbreviations are used within this Chapter.

| | | | |
|----|--------------------------|---|---------------|
| P | Permitted | C | Controlled |
| RD | Restricted Discretionary | D | Discretionary |

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| | | | |
|----|---------------|----|------------|
| NC | Non Complying | PR | Prohibited |
|----|---------------|----|------------|

General Rules

- 8.3.2.4 The 'Additional Rules for Activities in the Wanaka Town Centre Transition Overlay' apply in addition to the 'Rules for Activities in the Medium Density Residential Zone' and shall override these to the extent of any inconsistency.
- 8.3.2.5 Development resulting in more than one (1) residential unit per lot shall show each residential unit contained within the net site area. For the purposes of this rule net site area means an area of land shown on a plan with defined boundaries (legally defined or otherwise), less any area for shared access or any strip of land less than 6m in width.

8.4 Rules - Activities

| | Activities located in the Medium Density Residential Zone | Activity status |
|--|---|-----------------|
| 8.4.1 | Activities which are not listed in this table | NC |
| Rules for Activities in the Medium Density Residential Zone generally | | |
| 8.4.2 | Informal airports for emergency landings, rescues and fire fighting | P |
| 8.4.3 | Airports not otherwise defined | PR |
| 8.4.4 | Building Restriction Area Where a building restriction area is shown on the District Plan Maps, no building shall be located within the restricted area | NC |
| 8.4.5 | Bulk material storage | PR |
| 8.4.6 | Commercial Activities in Queenstown, Frankton or Wanaka, comprising no more than 100m ² of gross floor area | D |
| 8.4.7 | Commercial Activities (not otherwise identified) | NC |
| 8.4.8 | Commercial Recreation | D |
| 8.4.9 | Community activities | D |
| 8.4.10 | <p>Residential Unit</p> <p>8.4.10.1 One (1) per site in Arrowtown, except within the Arrowtown Historic Management Transition Overlay Area</p> <p>8.4.10.2 For all other locations, three (3) or less per site</p> <p>Note – Additional rates and development contributions may apply for multiple units located on one site.</p> | P |
| 8.4.11 | <p>Residential Unit</p> <p>8.4.11.1 One (1) or more per site within the Arrowtown Historic Management Transition Overlay Area</p> <p><u>8.4.11.2</u> Two (2) or more per site in Arrowtown</p> | RD |

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| | Activities located in the Medium Density Residential Zone | Activity status |
|---------------|---|-----------------|
| | <p><u>8.4.11.3</u> For all other locations, four (4) or more per site</p> <p>Discretion is restricted to all of the following:</p> <ul style="list-style-type: none"> ◦ location, external appearance, site layout and design and how the development addresses its context and contributes positively to the residential character and amenity of the ◦ street activation ◦ visual privacy of adjoining properties ◦ housing diversity and sustainability through construction methods, design or function ◦ <u>In Arrowtown, consistency with Arrowtown’s character, utilising the Arrowtown Design Guidelines 2016 as a guide</u> ◦ <u>In the Park Street Special Character Area, consistency with or ability to complement the area’s existing residential amenity and special character</u> ◦ For land fronting State Highway 6 between Hansen Road and the Shotover River <ul style="list-style-type: none"> ◦ safety and effective functioning of the State Highway network; ◦ Integration with other access points through the zone to link up to Hansen Road, the Eastern Access Road Roundabout and/or Ferry Hill Drive; ◦ Integration with public transport networks ◦ Integration with pedestrian and cycling networks, including to those across the State Highway. ◦ building <u>dominance</u> on neighbouring properties and the public realm ◦ Design of parking and access ◦ Design and integration of landscaping ◦ Natural hazards where the proposal results in an increase in gross floor area <p>Assessment matters relating to natural hazards:</p> <ul style="list-style-type: none"> ◦ the nature and degree of risk the hazard(s) pose to people and property, ◦ whether the proposal will alter the risk to any site, and ◦ whether such risk can be avoided or sufficiently reduced. <p>Note – Additional rates and development contributions may apply for multiple units located on one site.</p> | |
| 8.4.12 | Factory Farming | PR |

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| | Activities located in the Medium Density Residential Zone | Activity status |
|---|--|-----------------|
| 8.4.13 | Fish or meat processing | PR |
| 8.4.14 | Forestry | PR |
| 8.4.15 | Home occupation | P |
| 8.4.16 | Manufacturing and/or product assembling activities | PR |
| 8.4.17 | Mining | PR |
| 8.4.18 | Panel beating, spray painting, motor vehicle repair or dismantling, fibre glassing, sheet metal work, bottle or scrap storage, motor body building. | PR |
| 8.4.19 | Retirement village | D |
| 8.4.20 | Any activity requiring an Offensive Trade Licence under the Health Act 1956 | PR |
| Additional Rules for Activities in the Wanaka Town Centre Transition Overlay | | |
| 8.4.21 | <p>Buildings</p> <p>Discretion is restricted to consideration of all of the following: external appearance, materials, signage platform, lighting, impact on the street, and natural hazards to ensure that:</p> <ul style="list-style-type: none"> • The design of the building blends well with and its contributes to an integrated built form • The external appearance of the building is sympathetic to the surrounding natural and built environment. The use of stone, schist, plaster or natural timber is encouraged • Maintenance of the visual privacy of adjoining properties • The building facade provides an active interface to open space on to which it fronts, and the detail of the facade is sympathetic to other buildings in the vicinity, having regard to: <ul style="list-style-type: none"> - Building materials - Glazing treatment - Symmetry - External appearance - Human scale - Vertical and horizontal emphasis. • Storage areas are appropriately located and screened • Natural hazards where the proposal results in an increase in gross floor area | RD |

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| | Activities located in the Medium Density Residential Zone | Activity status |
|--------|---|-----------------|
| | <p>Assessment matters relating to natural hazards:</p> <ul style="list-style-type: none"> • the nature and degree of risk the hazard(s) pose to people and property, • whether the proposal will alter the risk to any site, and • whether such risk can be avoided or sufficiently-reduced- | |
| 8.4.22 | Commercial activities | P |
| 8.4.23 | Community activities | P |
| 8.4.24 | <p>Licenced Premises for the consumption of alcohol on the premises between the hours of 8am and 11pm, and also to:</p> <ul style="list-style-type: none"> • any person who is residing (permanently or temporarily) on the premises. • any person who is present on the premises for the purpose of dining up until 12am. | P |

8.5 Rules - Standards

| | Standards for activities located in the Medium Density Residential Zone | Non-compliance status |
|-------|--|-----------------------|
| 8.5.1 | <p>Building Height (for flat and sloping sites)</p> <p>8.5.1.1 Wanaka and Arrowtown: A maximum of 7 metres</p> <p>8.5.1.2 All other locations: A maximum of 8 metres.</p> <p>Note: Refer to Definition for interpretation of building height.</p> | NC |
| 8.5.2 | <p>Sound insulation and mechanical ventilation</p> <p>8.5.2.1 For buildings located within 80 m of a State Highway</p> <p>Any residential buildings, or buildings containing activity sensitive to road noise, and located within 80 m of the road boundary of a State Highway shall be designed to achieve an Indoor Design Sound Level of 40 dB $L_{Aeq(24h)}$.</p> <p>Compliance with this rule can be demonstrated by submitting a certificate to Council from a person suitably qualified in acoustics stating that the proposed construction will achieve the internal design sound level.</p> | NC |
| 8.5.3 | <p>Development on land fronting State Highway 6 between Hansen Road and Ferry Hill Drive shall provide the following:</p> <p>8.5.3.1 Transport, parking and access design that:</p> <p>a. Ensures connections to the State Highway network are only via Hansen Road, the Eastern Access Road</p> | NC |

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| | Standards for activities located in the Medium Density Residential Zone | Non-compliance status |
|-------|--|--|
| | <p style="text-align: center;">Roundabout, and/or Ferry Hill Drive</p> <p>b. There is no new vehicular access to the State Highway Network.</p> <p>8.5.3.2 Landscaping which provides a planting buffer fronting State Highway 6 as follows</p> <p>a. A density of two plants per square metre located within 4m of the State Highway 6 road boundary selected from the following species:</p> <ul style="list-style-type: none"> • <u>Ribbonwood (Plagianthus regius)</u> • <u>Corokia cotoneaster</u> • <u>Pittosporum tenuifolium</u> • <u>Grisilinea</u> • <u>Coprosma propinqua</u> • <u>Olearia dartonii</u> <p>Once planted these plants are to be maintained in perpetuity.</p> | |
| 8.5.4 | <p>Building Coverage</p> <p>A maximum of 45%.</p> <p>Discretion is restricted to the following:</p> <ul style="list-style-type: none"> • External appearance, location and visual dominance of the buildings as viewed from both the street and adjacent properties • Impact upon the character of the surrounding area • External amenity for the future occupants of the residential units • Impacts upon access to views, sunlight and shading of adjacent properties • Access and parking • <u>In Arrowtown, consistency with Arrowtown's character, utilising the Arrowtown Design Guidelines 2016 as a guide</u> • <u>In the Park Street Special Character Area, consistency with or ability to complement the area's existing residential amenity and special character</u> • Natural hazards where the proposal results in an increase in gross floor area <p>Assessment matters relating to natural hazards:</p> <ul style="list-style-type: none"> • the nature and degree of risk the hazard(s) pose to people and property, • whether the proposal will alter the risk to any site, and • <u>whether such risk can be avoided or sufficiently reduced.</u> | <p>RD</p> <p><u>(NC for a maximum coverage over 70% within the park Street Special Character Area)</u></p> |

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| | Standards for activities located in the Medium Density Residential Zone | Non-compliance status |
|---------------------|--|----------------------------|
| | <p><u>Building Footprint</u></p> <p><u>Within the Park Street Special Character Area, a maximum of 300m²</u></p> | |
| <p>8.5.5</p> | <p>Density</p> <p>8.5.5.1 The maximum site density shall be one residential unit per 250m² net site area.</p> <p><u>8.5.5.2 The maximum site density in the Park Street Special Character area shall be one residential unit per 250m² net site area.</u></p> <p>Discretion is restricted to the following:</p> <ul style="list-style-type: none"> • Proximity to employment centres and public transport routes • Internal and external amenity for the future occupants of the residential units • Impacts upon adjacent properties in respect of dominance, outlook and privacy • External appearance, building bulk and dominance effects upon the streetscape • Traffic, parking and access • Noise • Rubbish storage and collection • Natural hazards where the proposal results in an increase in gross floor area <p>Assessment matters relating to natural hazards:</p> <ul style="list-style-type: none"> • the nature and degree of risk the hazard(s) pose to people and property, • whether the proposal will alter the risk to any site, and • whether such risk can be avoided or sufficiently reduced. | <p>RD</p> <p><u>NC</u></p> |
| <p>8.5.6</p> | <p>Recession plane</p> <p><u>8.5.6.1 (applicable to flat sites only, and for accessory buildings on flat and sloping sites)</u></p> <ul style="list-style-type: none"> • Northern Boundary: 2.5m and 55 degrees. • Western and Eastern Boundaries: 2.5m and 45 degrees. • Southern Boundaries: 2.5m and 35 degrees. • Gable end roofs may penetrate the building recession plane by no | <p>RD</p> |

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| | Standards for activities located in the Medium Density Residential Zone | Non-compliance status |
|---------------------|--|----------------------------|
| | <p>more than one third of the gable height.</p> <ul style="list-style-type: none"> Recession planes do not apply to site boundaries adjoining a town centre zone, fronting the road, or a park or reserve. <p>Note - Refer to Definitions for detail of the interpretation of recession planes.</p> <p>Discretion is restricted to the following:</p> <ul style="list-style-type: none"> Privacy effects Access to sunlight and the impacts of shading Effects upon access to views of significance Visual dominance and external appearance In Arrowtown, consistency with Arrowtown's character, utilising the Arrowtown Design Guidelines 2016 as a guide <p><u>8.5.6.2 Within the Park Street Special Character Area:</u></p> <ul style="list-style-type: none"> <u>All boundaries: 2.5m and 25 degrees.</u> | <p><u>NC</u></p> |
| <p>8.5.7</p> | <p>Landscaped permeable surface</p> <p><u>8.5.7.1</u> At least 25% of site area shall comprise landscaped permeable surface.</p> <p>Where a proposal does not provide 25%, discretion is restricted to the following:</p> <ul style="list-style-type: none"> The effects of any reduced landscape provision on the visual appearance or dominance of the site and buildings from adjacent sites and the public realm; The ability for adequate on-site stormwater disposal In Arrowtown, consistency with Arrowtown's character, utilising the Arrowtown Design Guidelines 2016 as a guide <p><u>8.5.7.2 Within the Park Street Special Character Area, at least 40% of site area shall comprise landscaped permeable surface.</u></p> <p><u>Where a proposal does not provide 40%, discretion is restricted to the following:</u></p> <ul style="list-style-type: none"> <u>The effects of any reduced landscape provision on the visual appearance or dominance of the site and buildings from adjacent sites and the public realm;</u> <u>Consistency with or ability to complement the area's existing residential amenity and special character</u> | <p>RD</p> <p><u>RD</u></p> |
| <p>8.5.8</p> | <p>Minimum Boundary Setback</p> <p>.1.1.1 Road boundary setback: 3m, except for:</p> <p>a. State Highway boundaries where the setback shall be</p> | <p>RD</p> |

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| | Standards for activities located in the Medium Density Residential Zone | Non-compliance status |
|--------------|--|-----------------------|
| | <p style="text-align: center;">4.5m</p> <p style="text-align: center;">b. Garages which shall be setback 4.5m</p> <p>All other boundaries: 1.5m</p> <p><u>.1.1.2 Road boundary setback in the Park Street Special Character Area: 4.5m, except for:</u></p> <p style="padding-left: 20px;"><u>a. Front Site One setback of 4.5m and all other setbacks 2m.</u></p> <p style="padding-left: 20px;"><u>b. Rear Sites Two setbacks of 4.5m and all remaining setbacks to be 2m.</u></p> <p>.1.1.2 <u>Where two or more buildings are located on a single lot within the Park Street Special Character Area, the mutual setback requirements will apply as if an internal boundary exists to separate the building</u></p> <p>.1.1.3 Discretion is restricted to the following:</p> <ul style="list-style-type: none"> • External appearance and visual dominance of the building as viewed from the street and adjacent properties • Amenity and character of the streetscape • Access to sunlight, shading and privacy of adjoining properties • Access to views of significance • On-site parking • In Arrowtown, consistency with Arrowtown's character, utilising the Arrowtown Design Guidelines 2016 as a guide • <u>In the Park Street Special Character Area, consistency with or ability to complement the area's existing residential amenity and historic character</u> <p>Exceptions to side and rear boundary setbacks include:</p> <p>Accessory buildings for residential activities may be located within the set back distances, where they do not exceed 7.5m in length, there are no windows or openings (other than for carports) along any walls within 1.5m of an internal boundary, and comply with rules for Building Height and Recession Plane.</p> | RD |
| 8.5.9 | <p>Building Length</p> <p><u>8.5.9.1</u> The length of any building facade above ground floor level shall not exceed 24m.</p> <p>Where a proposal exceeds this length, discretion is restricted to all of the following:</p> | RD |

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| | Standards for activities located in the Medium Density Residential Zone | Non-compliance status |
|----------------------|--|-----------------------|
| | <ul style="list-style-type: none"> • Building dominance • Building design, materials and appearance • In Arrowtown, consistency with Arrowtown's character, utilising the Arrowtown Design Guidelines 2016 as a guide <p style="color: red;"><u>8.5.9.2 Within the Park Street Special Character Area, the length of any building facade above ground floor level shall not exceed 16m.</u></p> <p style="color: red;"><u>Where a proposal exceeds this length, discretion is restricted to all of the following:</u></p> <ul style="list-style-type: none"> • <u>Building dominance</u> • <u>Building design, materials and appearance</u> • <u>In the Park Street Special Character Area, consistency with or ability to complement the area's existing residential amenity and historic character</u> | |
| <p>8.5.10</p> | <p>Waste and Recycling Storage Space</p> <p>8.5.10.1 Residential activities shall provide, as a minimum, space for a 120 litre residential wheelie bin and 240 litres recycling wheelie bin per residential unit.</p> <p>8.5.10.2 All developments shall suitably screen waste and recycling storage space from neighbours, a road or public space, in keeping with the building development or provide space within the development that can be easily accessed by waste and recycling collections.</p> | <p>NC</p> |
| <p>8.5.11</p> | <p>Glare</p> <p>8.5.11.1 All exterior lighting shall be directed away from the adjacent sites and roads and downward to limit effects on the night sky.</p> <p>8.5.11.2_ No activity on any site shall result in greater than a 3.0 lux spill (horizontal or vertical) of lights onto any other site measured at any point inside the boundary of the other site.</p> | <p>NC</p> |
| <p>8.5.12</p> | <p>Setback of buildings from water bodies</p> <p>The minimum setback of any building from the bed of a river, lake or wetland shall be 7m.</p> <p>Discretion is restricted to all of the following:</p> <ul style="list-style-type: none"> • indigenous biodiversity values • Visual amenity values • Landscape character • Open space and the interaction of the development with the water | <p>RD</p> |

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| | Standards for activities located in the Medium Density Residential Zone | Non-compliance status |
|---------------|---|-----------------------|
| | <p>body</p> <ul style="list-style-type: none"> • Environmental protection measures (including landscaping and stormwater management) • Whether the waterbody is subject to flooding or natural hazards and any mitigation to manage the location of the building | |
| 8.5.13 | <p>Setbacks from electricity transmission infrastructure</p> <p>National Grid Sensitive Activities are located outside of the National Grid Yard.</p> | NC |
| 8.5.14 | <p>Dominance of Garages</p> <p>Garage doors and their supporting structures (measured parallel to the road) are not to exceed 50% of the width of the front elevation of the building which is visible from the street.</p> | D |
| 8.5.15 | <p>Height Restrictions for Land Adjoining Designation 270</p> <p>No building or building element on the western side of Designation 270 shall rise greater than 1.5m above the nearest point of the formed walkway path within Designation 270.</p> <p>Discretion is restricted to the following:</p> <ul style="list-style-type: none"> • Access to views to the west toward Lake Wanaka and the mountains beyond from the walkway within Designation 270 | RD |
| 8.5.16 | <p>Home Occupation</p> <p>8.5.16.1 No more than one full time equivalent person from outside the household shall be employed in the home occupation activity.</p> <p>8.5.16.2 The maximum number of vehicle trips* shall be:</p> <ol style="list-style-type: none"> a. Heavy Vehicles: none permitted b. Other vehicles: 10 per day. <p>8.5.16.3 Maximum net floor area of 60m².</p> <p>8.5.16.4 Activities and the storage of materials shall be indoors.</p> <p>*A vehicle trip is two movements, generally to and from a site.</p> | D |
| 8.5.17 | <p>Fences</p> <p><u>Within the park Street Special Character Area, no Visually Opaque Fence constructed within the Road Setback shall exceed 1.2m in height above ground level.</u></p> <p><u>Discretion is restricted to the following:</u></p> <ul style="list-style-type: none"> • <u>The creation of pedestrian amenity</u> • <u>The degree to which a higher fence undercuts the visual relationship between the public and private realms; and</u> | <u>RD</u> |

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| | Standards for activities located in the Medium Density Residential Zone | Non-compliance status |
|--|---|-----------------------|
| | <ul style="list-style-type: none"><li data-bbox="405 315 1182 344">• <u>The necessity of the increased fence in terms of public safety</u><li data-bbox="405 374 1262 434">• <u>consistency with or ability to complement the area's existing residential amenity and historic character</u> | |

8.6 Rules - Non-Notification of Applications

8.6.1 The following Restricted Discretionary activities shall not require the written consent of other persons and shall not be notified or limited-notified:

8.6.1.1 Residential units which comply with rule 8.4.11 and all of the Standards in 8.5

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Chapter 27 – Subdivision and Development

27.6.1 No lots to be created by subdivision, including balance lots, shall have a net site area or where specified, average, less than the minimum specified.

| Zone | | Minimum Lot Area |
|--------------------|--|-------------------------|
| Residential | Medium Density Residential | 250m ² |
| <u>Residential</u> | <u>Medium Density Residential (Park Street Special Character Area)</u> | <u>450m²</u> |

Appendix 3 – New Definition – Park Street Special Character Area

Chapter 2 - New Definition – Park Street Special Character Area

Park Street Special Character Area – the overlay area is enclosed by Park Street, Brisbane Street and Hobart Street. It embodies a combination of small-scale, discrete residential homes and gardens whose heterogeneous character represents the area's earliest period of development at the end of the 19th century through to the 20th century. The area integrates a number of vernacular historic dwellings and larger green spaces; a variety of house styles and forms; houses are generally set back from the pavement and feature front gardens and screening that enhance the sense of privacy. The area's values listed below, combine to produce a distinctive, heterogeneous residential character that reflects 140 years of settlement in Queenstown and embodies examples of architecture from most decades since the late 19th century to the present. A summary of its values include:

- **Historical and cultural** - the area collectively is representative of a long and significant period and pattern of organic community development within the District, presenting elements of its historical and cultural evolution;
- **Physical and visual qualities** – the area's physical and visual qualities are significant because its remaining built fabric and forms exemplify an older residential area of Queenstown, embodying a mixture of building materials including historic stone, timber and corrugated iron juxtaposed with more modern timber, brick and block. These are interspersed with attractive greening provided by the mature gardens and other plantings.
- **Scale of development** – the area is typically low density development and buildings are generally single or two storeyed with generous, irregular setbacks and road frontages. Dwellings are predominantly self-contained residential units and there is very limited visitor accommodation and commercial activity.
- **Streetscape** – the character of the street is determined by the human-scale, residential built form and its relationship to the street, gardens, and fencing, as well as the layout and design of the street itself. Predominantly, front yards are separated from the street with mostly low fences, hedges, walls or planting. The area provides a buffer from the noise and activity of medium density development further to the north and east. The attractive and mutual interface along Park Street between the edge of the area and the Queenstown Gardens, provides particular amenity for residents and visitors.

*Note 1 – An assessment of proposals for development and modifications to buildings within the special character area will be considered against this definition. The values identified in this definition identify the overall notable and distinctive aesthetic, physical and visual qualities of the area. Requiring assessment against this definition is intended to retain and manage the character of traditional town centres and residential neighbourhoods by maintaining or enhancing existing traditional buildings, retaining intact groups of character buildings, and designing compatible new building infill and additions that reinforce the predominant streetscape character.

**Note 2 – Reference within the District Plan to 'the area's special character' shall have a corresponding meaning.

Appendix 4 – Submitters' previous legal submissions, Topics 01B, 03, and 06

**BEFORE THE QUEENSTOWN LAKES
DISTRICT COUNCIL**

IN THE MATTER of the Resource Management Act 1991 (the "Act")

AND

IN THE MATTER of the Queenstown Lakes District Proposed District Plan

LEGAL SUBMISSIONS FOR:

DJ and EJ Cassells, the Bulling Family, the Bennett Family, and M Lynch
(#503)

Friends of Wakatipu Gardens and Reserves
(#506)

Hearing Stream 1 (Chapter 3- Strategic Direction, chapter 4- Urban
Development, Chapter 6- Landscapes)
22March 2016

ANDERSON LLOYD
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QUEENSTOWN

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1. Introduction

1.1 This submission addresses district wide provisions of the Proposed District Plan ("**PDP**") and compliments the relief sought by the following entities:

(a) DJ and EJ Cassells, the Bulling Family, the Bennett Family, and M Lynch (#503)

(b) Friends of Wakatipu Gardens and Reserves (#506)

1.2 These legal submissions are presented on the basis that scope is determined by the full range of Submissions lodged to the DPR, not each individual Submission; *Simons Hill Station Ltd v Royal Forest & Bird Protection Society of New Zealand Inc*¹.

1.3 The Panel is entitled to consider optimum solutions and changes to the PDP to address issues raised by all submitters, within the scope established by the PDP as notified, and all the submissions. Each submitter may present solutions within these very wide parameters. Judge Harland in *The Church of Jesus Christ of Latter Day Saints Trust Board v Hamilton City Council* [2015] NZEnvC 160 confirmed;

"the test is not about determining whether the policy is named in the submission or appeal documents, but whether the amendments sought are reasonably and fairly raised in the course of the submissions".[40]

2. Background

2.1 The submitters' key themes and issues in relation to the higher order chapters of the PDP, in particular chapters 3 and 4 are:

(a) The block bounded by the Hobart and Park Streets has important heritage values and special character;

(b) The block plays an important role, being adjacent to the Wakatipu Gardens, and in close proximity to the CBD is very popular with visitors;

¹ *Simons Hill Station Ltd v Royal Forest & Bird Protection Society of New Zealand Inc* [2014] NZHC 1362.

- (c) The important values of the area in question should be better protected both at the strategic level, by acknowledgement generally of the worth of those values, and at the operational level, by providing residential provisions that give appropriate weight to protection of those values and character.
- 2.2 Friends of Wakatipu Gardens and Reserves ("**FOGR**") is the pre-eminent community representative group which acts as a voice for the Wakatipu gardens and reserves areas. FOGR has been actively involved in the recognition and preservation of the special character of the gardens and reserves in the past, including substantial involvement in the Queenstown Bay Reserve Management Plan Review (2015).
- 2.3 DJ and EJ Cassells, the Bulling Family, the Bennett Family, and M Lynch are residents of the area, and have similar interests to FOGR. They wish to see the area protected for its current values, and consider that the densification provisions in particular would undermine that character in a manner that fails to achieve the purpose of the Act. They are also concerned more generally that the plans for densification are not accompanied by an assessment of the traffic and other infrastructure demands that will arise, and this will also have flow on adverse effects to the Park Street area (particularly in terms of parking).
- 2.4 The submissions on the PDP to be presented at future hearings therefore will be seeking to introduce a special character overlay or heritage precinct area within the land adjacent to the Wakatipu Gardens and within the two blocks bounded by Hobart and Park Streets. That area exhibits high quality heritage and special character qualities which provides an important entrance to the Gardens and CBD for visitors and residents.
- 2.5 The intent of that relief is to ensure that the Wakatipu Gardens and its surrounds are appropriately recognised and protected for their community and historical worth, and for the benefit of future generations.
- 2.6 At the very least, the submitters will be seeking that the densification provisions do not apply to this area, and that instead the status quo remain.

- 2.7 These matters of detail will be addressed at the hearing in August, and are provided by way of background. In respect of this hearing, the issue is the relevant and consequential relief at the strategic level, flowing from the above specific concerns.

3. Policy and planning framework

- 3.1 Chapter 3 is a higher order chapter to the remaining chapters of the PDP. The submitters support this role as a strong strategic direction chapter is considered to facilitate good planning outcomes should there be issues of inconsistency or interpretation of lower order planning provisions in the future; (*Powell v Dunedin City Council* [2005] NZRMA 174).
- 3.2 To achieve the full potential of this chapter it should be ensured that it adequately addresses all of the District's resource management and planning issues which are currently being faced, and which could be contemplated within the next 'two generations of growth' (*Christchurch Regional Council v Christchurch City Council* EnvC Christchurch C217/2001, 6 December 2001 at 18).
- 3.3 A number of provisions of Chapter 3 currently seek maintain and protect the management of landscapes and rural areas of the District. Whilst some provisions do anticipate the protection of built environment and character of urban areas², those are not necessarily balanced and do not take into account the specific nature of some of those areas in the way that has been done for the natural environment.
- 3.4 It is acknowledged that the natural environment of the District is generally outstanding and this contributes significantly to the identity and economy of the District. However the built environment is particularly unique and special in areas as well, and is equally recognised under Part 2 of the Act, in particular;

Section 5(2)(a) *sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*

Section 7(c) *the maintenance and enhancement of amenity values*

² Referring to policy suite 3.2.3

Section 7(f) *maintenance and enhancement of the quality of the environment*

Section 7(g) *Any finite characteristics of natural and physical resources*

3.5 There is currently a gap in the policy framework which provides for Goal 3.2.3 *"A quality built environment taking into account the character of individual communities"*.

3.6 Related Objective 3.2.3.2 states;

"Protect the District's cultural heritage values and ensure development is sympathetic to them."

3.7 The only policy giving effect to that Objective, is Policy 3.2.3.2.1;

"Identify heritage items and ensure they are protected from inappropriate development"

3.8 Heritage items are not defined in the PDP, and it is assumed that protection of the *'District's cultural heritage values'* is a broader term than just heritage items. The current single policy sitting under objective 3.2.3.2 and Goal 3.2.3 is not considered to give effect to those higher provisions and should be amended to take into account the broader aspects of cultural heritage than just heritage items.

3.9 **Relief sought:** the following amendments are sought to add to policy suite 3.2.3.2 a new policy;

"Identify special character and heritage areas and ensure they are protected from inappropriate development."

3.10 There is scope for this addition not only due to the fact it is a consequential change arising from the relief sought in FOGR and Cassell's submissions, but also from the submission of the NZIA Southern and Architecture + Women Southern submissions (#238) suggesting additions to the same policy suite to achieve comprehensive urban design principles.

4. **Quality urban design and built form**

4.1 The submitters seek to ensure that quality outcomes for built areas and urban design are achieved through the strategic directions of the PDP.

4.2 Council's Section 42a report for the Urban Growth Chapter states;

" the general growth management principles proposed by Chapter 4 of the Proposed District Plan are consistent with the direction of the RPS, and its high level goals to ensure that urban development does not materially impact on the qualities and features of the District's natural environment that make it an attractive place to work, live and visit, and which contribute to its distinct and special character".

4.3 That reasoning for the provision of urban growth subject to impacts on the natural environment is equally relevant for the built environment in my submission, and should be recognised in the urban growth chapter.

4.4 Community values and special areas must be protected where those areas are highly valued and cannot absorb the effects of future development. The provisions in Chapter 4 enabling intensified urban growth within the Queenstown UGBs and land adjacent to the UGB is concerning as this does not provide an appropriate qualification on where development might be inappropriate.

4.5 Those provisions which constrain inappropriate development within the Arrowtown UGB could equally apply to the area of land adjacent to the Gardens which exhibits important historical and cultural attributes and provides for an important entrance into the CBD which should be maintained and enhanced in the future.

4.6 The only provision which currently touches on this type of recognition within the Queenstown UGB is at 4.2.4.2 which states;

Ensure that development within the Queenstown Urban Growth Boundary:

...

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

..."

4.7 The remaining bullet points under that policy are focused on landscape, infrastructure, transport and providing for a range of uses. There is no mention of the importance of protecting existing heritage and character

values. It is submitted that at the strategic level there needs to be this direction.

- 4.8 **Relief sought:** Insert the following new bullet point into policy suite 4.2.4.2;

Ensure that development within the Queenstown Urban Growth Boundary

...

Protects and enhances the special character and identity of urban settings.

...

- 4.9 There is scope for the above change derived not only from the FOGR and Cassell's submissions, but also the submission of NZIA Southern and Architecture + Women Southern submissions (#238) which seeks amendments to policy suite 4.2.4.2 including the addition of the following bullet point;

"Achieves a high quality urban environment responsive to the context of its surroundings"

5. **Traffic and transport issues – providing for integrated management**

- 5.1 The section 42A reports states that;

"The District's landscapes are particularly valued, and an integrated approach to urban growth management with a focus on urban intensification can help reduce the risks to amenity values (s 7c RMA) and landscape values (s 6b) posed by dispersal of urban growth"³.

- 5.2 Amenity values in section 7(c) are not just derived from natural landscape characteristics but also from the built form and as such should be recognised in setting urban growth policies.
- 5.3 It is unclear how the provisions notified in stage 1 achieve the intent of integrated management as the split of stage 1 and 2 issues makes it

³ S 42A report Chapter 3, Appendix 3 (referring to section 32 reports) page 14

impossible for submitters on the PDP to have a full picture of the planning regime at hand. The section 42A report also states;

Consistent with the intent of Section 31, the proposed provisions enable an integrated approach to the multiple effects associated with urban development, and integrated mechanisms for addressing these effects through the hierarchy of the District Plan. Section 31 reinforces the Council's proposed multi-faceted approach to urban development, which is based upon the establishment of defined urban limits, integrating land use and infrastructure, promoting density in strategic locations, and protecting the District's landscapes⁴.

- 5.4 It is questionable whether section 31 of the Act is complied with in the setting of the strategic direction and urban development chapters when a significant issue related to urban growth is infrastructure and traffic. Provisions relevant to those topics have not yet been notified and may not be until after decisions have been made on these Stage 1 provisions. That may lead to inconsistent and incoherent drafting provisions which do not give effect to the purpose of sustainable management and do not achieve the section 31 duty of integrated management.



R E Hill

Counsel for DJ and EJ Cassells, Friends of Wakatipu Gardens and Reserves
22 March 2016

⁴ Ibid, at page 3

**BEFORE THE QUEENSTOWN LAKES
DISTRICT COUNCIL**

IN THE MATTER of the Resource Management Act 1991 (the "Act")

AND

IN THE MATTER of the Queenstown Lakes District Proposed District Plan

SYNOPSIS OF LEGAL SUBMISSIONS FOR:

DJ and EJ Cassells, the Bulling Family, the Bennett Family, and M Lynch
(#503)
Friends of Wakatipu Gardens and Reserves
(#506)

Hearing Stream 03- Historic Heritage and Protected Trees- Chapters 26 and 32

28 June 2016

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1. Introduction

- 1.1 These legal submissions are presented on behalf of DJ and EJ Cassells, the Bulling Family, the Bennett Family, and M Lynch (#503) and Friends of Wakatipu Gardens and Reserves (#506) (the "**Submitters**") in respect of Chapter 26 of the Proposed District Plan ("**PDP**").
- 1.2 The Submitters were included in the submitter list for Hearing Stream 03 due to the relief sought in their original submissions to include the land area bounded by Park Street/Frankton Road and Hobart Street, and intersected by Brisbane Street (the "**Special Character Area**") as an area of special character within Chapter 26.
- 1.3 Upon review of Council's evidence and officer reports prepared in support of Hearing Stream 03, the Submitters wish to clarify their relief sought through chapter 26 and provide an overview of its intended relief to be sought in the upcoming residential and rezoning hearings.

2. Background and overview of the Submitters' case

- 2.1 The Submitters presented before the Hearings Panel in Hearing Stream 01B of the PDP. For the benefit of those Commissioners who were not present for that hearing, a summary of the case is as follows:
 - (a) The Special Character Area has important residential heritage values and exhibits special character which warrants a level of recognition and protection beyond that provided through the Medium Density Residential ("**MDR**") chapter.
 - (b) The distinctive character of the Area is driven by the combination of small-scale, residential homes that have grown organically since the area was first settled in the 1870s. In combination with low storey heights, smaller masses and naturally offset footprints and boundaries, the built character of the Park and Brisbane Street area reflects a lengthy development heritage that has almost vanished from Queenstown.
 - (c) The Special Character Area holds a distinctive residential character built on its surviving historic heritage that ultimately generates a strong sense of place for many of the residents who live there and call Queenstown their home.

- (d) The important values of the area should be better protected both at the strategic level, by acknowledgement generally of the worth of those values, and at the operational level, by providing residential provisions that give appropriate weight to protection of those values and character.
 - (e) The Friends of Wakatipu Gardens and Reserves ("**FOWGR**") is the pre-eminent community representative group which acts as a voice for the Wakatipu gardens and reserves areas.
 - (f) The PDP should provide for protection of its built environment as well as its natural environment so that sound planning outcomes are achieved across all rural, residential and other living zone chapters of the Plan. Quality urban design and built form are relevant factors to be provided for through Part 2 of the Act.
 - (g) It is unclear how the provisions notified in stage 1 of the PDP achieve the intent of integrated management as the split of stage 1 and 2 issues makes it impossible for submitters on the PDP to have a full picture of the planning regime at hand. Council has not addressed infrastructure and traffic implications as part of its proposed (significant) increases to densification which is of major concern to the Submitters.
- 2.2 The above summary can be read in further detail by considering the legal submissions on behalf of the Submitters dated 22 March 2016.
- 2.3 The Submitters sought wide relief in their original submissions to achieve the intended objective of appropriate recognition and protection of the Area of Special Character through the PDP. At the time of making those submissions, it was not anticipated that the hearings would be split into discreet hearing streams with separate commissioners and in particular, separate rezoning hearings.
- 2.4 The result of this process is that the Submitters have had to make a choice as to when to present a full suite of expert evidence to support their case. On that basis, heritage, planning, and other evidence is intended to be put before the Panel in the course of the residential Hearing Streams rather than in this Hearing.

3. **Identification of Special Character overlay within Chapter 26**

- 3.1 The original submissions of the Submitters sought the recognition of a Special Character Area as an overlay within Chapter 26 (Heritage) in order to protect the townscape/ landmark values of the area.
- 3.2 The Section 42A report prepared by Ms Jones in preparation for this Hearing identifies the potential ambiguity of that submission in light of the historic heritage precinct provisions in the chapter, at Rule 26.8.¹
- 3.3 The Submitters wish to clarify their intention is to provide for a special character area in some form through the PDP. One mechanism to do that might be through the Heritage Chapter, although it is acknowledged that a 'special character area' is not a term or feature which is currently provided in the current structure of Chapter 26.
- 3.4 Another mechanism would be to provide a special character overlap from within the residential provisions themselves.

4. **Structure of the PDP - Character of individual communities**

- 4.1 Goal 3.2.3 of the PDP states:

"A quality built environment taking into account the character of Individual communities".

- 4.2 Related Objective 3.2.3.2 states:

"Development is sympathetic to the District's cultural heritage values"

- 4.3 The only policy giving effect to that Objective, is Policy 3.2.3.2.1:

"Identify heritage items and ensure they are protected from inappropriate development"

- 4.4 In Hearing Stream 01B the Submitters sought the following policy to be inserted to the above suite of provisions:

"Identify special character and heritage areas and ensure they are protected from inappropriate development."

¹ Para 15.7 Section 42A report, Historic Heritage, 02 June 2016

- 4.5 The above has not been accepted in the Council's right of reply for Hearing Stream 01B and this presents an obvious gap in the policy framework. Goal 3.2.3 provides an overarching desired environmental outcome which is broader than historic heritage. It seeks to achieve an outcome of character and individualism which identifies communities. Lower order chapters do not provide for this Goal either, as evidenced by the Heritage Chapter which is predicated on the historic heritage definition in s2 RMA, rather than character.
- 4.6 Although it is acknowledged that the intent of Council is that 'goals' will not have a regulatory effect in the PDP, it is submitted that they must serve some legitimate purpose as a desired end state of affairs, or environmental outcome. At the residential hearings yet to come, the Submitters intend to further show that its 'Special Character' will fit well within the plan providing this (skeleton) policy framework already.

5. **Providing for historic heritage- s6(f) and 7(a)**

- 5.1 For the Commissioners assistance, the following analysis is provided on the jurisdiction of the RMA (and planning instruments prepared under the RMA) to provide for historic heritage.
- 5.2 *New Zealand Heavy Haulage Association Inc v Auckland Council* [2013] NZEnvC 145 provided an analysis on the overlap of sections 6(f) and 7 amenity and character within the heritage provisions of a change to the Auckland City District Plan: Isthmus Section. The Environment Court considered that the provisions in question which provided for special character and streetscape were predicated upon section 7 amenity values rather than a strict application of section 6(f) historic heritage.

"We make it very clear that special character recognised in PC163 derives from the streetscape, that is, the street view that one obtains of the relationship of the buildings to one another, and in terms of their subdivision pattern, shape, and like. A high quality replica building which was entirely in keeping with the original building style would provide the same character input, at least from a streetscape point of view. If it is in better condition than the original (i.e. not

rotting), then it may contribute to a higher level of amenity, accepting that the patina of age can also contribute to character".²

...

"We do not understand PC163 to be concerned with the internal integrity of a building or its originality. It is simply concerned with the contribution of the part of the building visible from the street to the special character and amenity of that area."³

- 5.3 In this case, the experts were in agreement that there had been significant changes in the inner city area through the continued upgrading of home values, and that the plan change was not about historic heritage, but was about maintaining amenity values by preserving character.⁴ The overall purpose of the plan change was to 'achieve the City's built legacy of pre-1940 buildings'; and sought to retain the special character of Auckland's older inner suburbs that are part of the city's legacy but not necessarily part of its historic heritage.
- 5.4 Upon considering the above broader aspects of the character to be provided for in the Isthmus section, the Court elected to amend terms such as heritage and historic and replace them with terms such as 'legacy', 'old' and 'built'.⁵ This it intended, would clarify that section 6(f) matters were not at play.
- 5.5 The above provides a useful analogy to the relief sought by the Submitters in the PDP. Goal 3.2.3 obviously provides for matters broader than historic heritage.

6. Conclusion

- 6.1 Queenstown is recognised as an international tourist destination and has been the focus of much recent commercial and investment development. It however increasingly lacks such a sense of place and has struggled to retain its built heritage that is a fundamental part of its historic story.

² *New Zealand Heavy Haulage Association Inc v Auckland Council* [2013] NZEnvC 145 at [60]

³ *Ibid*, at [64]

⁴ *Ibid*, at [23] – [24]

⁵ *Ibid*, at [84]

6.2 The Special Character Area adjacent to the gardens still retains some of that heritage built fabric. This provides a strong sense of place for its residents and those who pass through. Residents and visitors are able to benefit from and enjoy the ambiances and environmental amenity that the heritage character of the residential area brings. No area can or should remain static, as Park Street has demonstrated itself, but retaining areas with an identifiable character and broader heritage value is essential if Queenstown is to have any story to tell in the future.

A handwritten signature in black ink, appearing to read 'M A Baker Galloway/ R E Hill'. The signature is fluid and cursive, with a large initial 'M' and 'A'.

M A Baker Galloway/ R E Hill

Counsel for DJ and EJ Cassells, Friends of Wakatipu Gardens and Reserves
28th June 2016

Before Queenstown Lakes District Council

In the matter of the Resource Management Act 1991

And

In the matter of The Queenstown Lakes District Proposed District Plan Topic 06
Residential

Legal Submissions

Dated 27 October 2016

DJ and EJ Cassells, the Bulling Family, the Bennett Family, and M Lynch (#503)

Friends of Wakatipu Gardens and Reserves (#506)

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lloyd.**

1 Introduction

- (a) These legal submissions are presented on behalf of DJ and EJ Cassells, the Bulling Family, the Bennett Family, and M Lynch (#503) and Friends of Wakatipu Gardens and Reserves (#506) (the "**Submitters**") in respect of Chapter 8 ("**MDR**") of the Proposed District Plan ("**PDP**").
- (b) The Submitters presented legal Submissions in respect of Topics 01B (strategic direction and urban development) and Topic 03 (Heritage).
- (c) The Submitters' case is focused on protecting the special residential and amenity character of the area bounded by Park Street/Frankton Road and Hobart Street, and intersected by Brisbane Street (the "**special character area**").
- (d) Although the Submissions have been identified as being a 'rezoning' matter, appropriate of being transferred to the mapping hearings of the PDP, the Submitters consider that critical aspects of their case are important to bring to the attention of the Commissioners making recommendations on the wider MDR chapter.
- (e) The Submissions sought broad relief ranging between identifying a special character overlay, retaining the operative plan ("**ODP**") provisions and zoning, and providing bespoke planning provisions within the PDP zoning to reflect special character. Consequential and alternative relief is also sought in the Submissions meaning that many options are available for granting the outcomes sought.
- (f) The Submitters wish to clarify that the focus of their case at the mapping hearings next year will be to retain the ODP zoning equivalent, rather than providing for a bespoke special character overlay. These submissions primarily focus on amendments to wider MDR chapter, should a rezoning of the special character area not be successful.

2 Executive Summary

- (a) The special character area has important amenity values and exhibits character which warrants a level of recognition and protection beyond that provided through the MDR chapter.
- (b) The special and distinctive character of the area is driven by the combination of small-scale, residential homes that have grown organically since the area was first settled in the 1870s.
- (c) The special character area holds a distinctive residential amenity that ultimately generates a strong sense of place for many of the residents who

live there and call Queenstown their home. Part of its key distinctiveness and charm is that it is not wholly or obviously homogenous.

- (d) The important values of the area should be better protected both at the strategic level, by acknowledgement generally of the worth of those values, and at the operational level, by providing residential provisions that give appropriate weight to protection of those values and character.
- (e) The Friends of Wakatipu Gardens and Reserves ("**FOWGR**") is the pre-eminent community representative group which acts as a voice for the Wakatipu gardens and reserves areas. Protection of the character of the Gardens also requires consideration of protecting the amenity of the immediate surrounds of the Gardens.
- (f) Quality urban design, built form, and residential amenity are relevant factors to be provided for through Part 2 of the Act.
- (g) Increased densification of residential zones should not be provided for at the cost of adverse impacts on residential amenity. It is vital that unique character neighbourhoods are protected and that increased development is focused only in areas which are capable of absorbing the effects of such development.
- (h) The residents of the area have crafted a statement of significance for the purposes of working towards the mapping hearings. Although the statement will likely be subject to some further refinement, it is included here for the benefit of the Commissioners' understanding of the full case:

Area of special character

"A precinct of unique character being evocative of the various stages of residential development of the original central Queenstown settlement and town and, being contiguous with the Gardens Reserve and the Queenstown Bay - in and delivering must of its character from - a location of special value for the CBD and District."

3 Strategic Direction of the PDP

- (a) The section 42a report for Chapter 8 MDR identifies a number of submissions which generally oppose the notified MDR Chapter but which are also predominantly concerned with the application of that Zone in a particular locality. The Submitters are identified in this category and acknowledge that its submissions have been deferred until mapping hearings for consideration.

- (b) The key aspect of the relief sought by the Submitters was to essentially 'rezone' the land in a manner that protects its special character. This could be achieved several ways: by identifying a special character overlay; retaining the operative plan provisions and zoning; or providing bespoke planning provisions within the PDP zoning to reflect special character. The Submitters are focusing their attention on ways to retain the ODP status quo through zoning, rather than now seeking a bespoke character overlay. This matter will be discussed in further detail in the mapping hearings.
- (c) In addition to this focus, the Submissions also seek general relief that the PDP provide an integrated and strategic framework for ensuring that the District's built environment is maintained to a high quality, and that residential and amenity values are maintained and protected where appropriate.
- (d) These aspects follow on from a number of key higher order provisions of the PDP which establish the framework for protection of the built environment, including:

Goal 3.2.3 *"A quality built environment taking into account the character of individual communities".*

- (e) Goal 3.2.3 provides an overarching desired environmental outcome which is broader than historic heritage. It seeks to achieve an outcome of character and individualism which identifies communities. Lower order chapters of the PDP, including Chapter 8 should consider how best to give effect to this goal.

4 **An urban design-led approach to planning**

- (a) As submitted above, the remainder of these submissions focuses predominantly on provisions or concepts of the MDR which are appropriate to achieve sustainable management and accord with the higher order provisions of the PDP. This is an important alternative position for the Submitters, should their rezoning case be unsuccessful.
- (b) It is important that special character of communities and neighbourhoods is retained through design-led approaches to planning. A number of existing provisions in the PDP already provide for this key aspect, and are supported to be retained.

- (c) These include the following (as amended in the section 42a report):

8.2.2 Objective - *Developments contribute to the environment through quality urban design solutions which positively responds to the site, neighbourhood and wider context*

8.2.2.4 Policy - *Ensure developments reduce visual dominance effects through variation in facades and materials, roof form, building separation and recessions or other techniques*

8.2.3 Objective - *Development provides high quality living environments for residents and maintains the amenity of adjoining sites.*

8.2.2.6 Policy – *Require development take account of any Council adopted design guide or urban design strategy applicable to the area*

- (d) The Submitters consider the above provisions as amended through the section 42a report provide stronger and more appropriate principles to guide design-led development. These amendments also accord with section 7(c) of the RMA, which requires maintenance and enhancement of amenity values.
- (e) As discussed in the legal submissions presented in Topic 03, the Environment Court has considered that section 7(c) in an urban planning context extends to 'special character, streetscape, street views, and the relationship of buildings to one another'.¹
- (f) The evidence of Mr Falconer, which suggests stronger use of design guidelines to assist medium density development, is also supported by the Submitters. Ensuring that development occurs in accordance with best practice guidance will provide an effective mechanism for ensuring amenity values and the quality of the environment are maintained, whilst not providing an overly prescriptive process in the PDP itself.
- (g) This approach however is reliant on keeping those principles up to date, and similar to the PDP process, ensuring that they are developed in a manner which reflects the character of individual neighbourhoods and the residents' considerations. If any MDR guideline were to be introduced by Council in the future it is important that it reflect the existing characters and values of different areas of the MDR Zone.
- (h) Mr Falconer's evidence also suggests that another method of achieving design review is to require development proposals to be assessed by an

¹ *New Zealand Heavy Haulage Association Inc v Auckland Council* [2013] NZEnvC 145 at [60]

urban design panel of suitably qualified experts. The Submitters agree that such an approach could be useful, in principle; however this approach will not achieve sound planning outcomes where there are no clear and objective guidance criteria in place. Use of an urban design panel should only be in addition to the use of guidelines discussed above rather than relied on in isolation. Reliance only on an expert panel could otherwise result in ad-hoc and inconsistent decision making.

- (i) To this end, it is vital that Policy 8.2.2.6 be retained, along with associated urban design policies identified above. The above concepts introduced by Mr Falconer may also be appropriate to explore within other residential chapters of the PDP.

5 MDR densification

- (a) The purpose of the MDR Zone is as follows:

***Medium Density:** to provide for a greater supply of diverse housing options for the District whilst still ensuring that housing forms are well designed and located to provide residential amenity. The zone may incorporate small scale commercial activities where these enhance residential amenity or support the town centre and do not undermine the ability of the zone to provide housing supply. Community activities may also be located within the zone;*²

- (b) This purpose clearly articulates a balance to be achieved between providing an increase in densification, while retaining character and amenity values and the quality of the built environment. This summary assures plan users that development will only be appropriate where the receiving environment is capable of absorbing the effects of such development.
- (c) Some provisions of the MDR Chapter however do not match this stated purpose, in that they appear to provide for blanket densification, for example:

***8.2.1 Objective** - Medium density development occurs close to town centres, local shopping zones, activity centres, public transport routes and non-vehicular trails*

- (d) The associated policies for Objective 8.2.1 similarly provide a presumption for densification close to town centres to avoid urban sprawl.

² Para 6.1 section 42a report Ms Leith (Chapter 8)

It is submitted that these provisions could be more helpfully framed so as to accord with the general purpose statement above, and instead provide policy guidance as to where densification will be appropriate.

6 Remove home star rule

- (a) If the submitter is unsuccessful in its rezoning hearing, and the MDR zoning is retained, a key aspect of the MDR zoning is opposed. That is the ability to get a "bonus" density allocation if a 6 star Homestar Rating is achieved.
- (b) The Submitters consider that it is suitable that the PDP encourage appropriate uses of innovative housing technologies to provide for sustainable development. However it is not appropriate that such provisions provide a bonus system which could otherwise result in breaches to important density restrictions and therefore compromise amenity and quality.
- (c) Removal of the Homestar tool provisions is therefore supported, as outlined in para 9.34 of Ms Leith's section 42a report.

Dated this 27th day of October 2016



Rosie Hill

Counsel for DJ and EJ Cassells, the Bulling Family, the Bennett Family, and M Lynch (#503) and the Friends of Wakatipu Gardens and Reserves (#506)