

# **QUEENSTOWN LAKES DISTRICT COUNCIL**

**Hearing of Submissions on Stage 3 Proposed District Plan Provisions**

**Report and Recommendations of Independent Commissioners**

**Report 20.6**

**Business Mixed Use Zone and Residential Zone Design Guidelines and  
Related Variations to Chapters 7, 8, 9, 16 and 31**

## **Commissioners**

**Trevor Robinson (Chair)**

**Sarah Dawson**

**Greg Hill**

**Calum Macleod**

**Ian Munro**

**Quentin Smith**

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## **1. PRELIMINARY**

### **1.1 Subject Matter of this Report**

1. This report has been prepared by the Stream 17 Hearing Panel to address submissions and further submissions on two sets of design guidelines that promote particular design matters of interest to it and related to development within the Business Mixed Use and Residential zones. These documents have been prepared so as to be stand-alone documents rather than chapters that would sit within the PDP (such as an Appendix following the Zone provisions).
2. Linkages to the guidelines are proposed in the form of additional text that would sit within the PDP Lower Density Suburban Residential (Chapter 7), Medium Density Residential (Chapter 8), High Density Residential (Chapter 9), Business Mixed Use (Chapter 16) zones, and the district-wide chapter for signs (Chapter 31). This would be in the form of a policy and a restriction of discretion in each of the Chapters that would apply to Activities that are already identified within the Chapters as requiring restricted discretionary activity consent.

### **1.2 Terminology in this Report**

3. We have used the terminology and abbreviations as set out in Introduction Report 20.1.

### **1.3 Relevant Background**

4. This Report needs to be read in conjunction with Report 20.1 which provides background detail on:
  - a) The appointment of commissioners to this Hearing Panel;
  - b) Procedural directions made as part of the hearing process;
  - c) Site visits;
  - d) The hearings;
  - e) The statutory considerations bearing on our recommendations;
  - f) Our approach to issues of scope.
5. We do not therefore repeat those matters although, in the section following, we provide greater detail on statutory considerations specific to the subject matter of this report, by reason of the guidelines we had to consider being ‘incorporated by reference’.

## **2. STATUTORY CONSIDERATIONS**

6. The statutory considerations that we have applied are as explained in our Introductory Report (20.1).
7. As it relates to the proposed Business Mixed Use and Residential Design Guidelines, it is relevant that the Council has proposed to incorporate these documents into the PDP “by reference”. This is a method set out in Part 3 of the Act’s First Schedule.
8. The Council acknowledged to us that it had not properly followed Clause 34 of the First Schedule<sup>1</sup>. It considered that no disadvantage would arise as a result of this shortcoming,

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<sup>1</sup> Section 42A report of Blair Devlin, Design Guidelines for the Business Mixed Use zone and for Residential Zones, including Proposed District Plan Variations, 18 March 2020, paragraph 3.10.

because the Council had presented the guidelines in its Stage 3 PDP notification package in a way that allowed submitters to offer commentary to them by way of submissions, and had assessed the merits of those comments in the same way that it had approached other changes to the PDP text sought by submitters.

9. In his s.42A report to us on the matter, Mr. Devlin on behalf of the Council stated<sup>2</sup>:

*“While the omission of the ‘comments’ stage is unfortunate, Clause 34(5) states that a failure to comply with this clause does not invalidate a proposed plan that incorporates material by reference. A large number of submissions have also been received, generally focusing on the content of the Design Guidelines themselves. The submissions period and the hearing is a formal process to allow the public to provide their views on the variation and Design Guidelines. The Schedule 1 process that has been followed allows for the submissions to be considered by Council and, if supported by the Panel, for appropriate changes to be made to the provisions, which achieves a similar outcome as if Clause 34 requirements had been met.”*

10. We understood the Council to be suggesting that its omission did not fatally imperil our ability to incorporate the guidelines by reference, and the use of the submissions process has allowed appropriate community consultation and input to occur.
11. No submitters objected to the principle of the guidelines being incorporated into the PDP by reference. No objection to the specific clause 34 omission was raised, and in particular no legal submissions or case law was presented that might have argued against the Council’s proposed way forwards.
12. Although unusual, we are satisfied that this approach is acceptable. As will be described in detail below, the standing of the Guidelines as matters that an Applicant must consider in the processing of applications for resource consent, rather than as matters of compliance, has also played a part in our acceptance of the Council’s approach.
13. Ultimately the “by reference” First Schedule process envisages a wide range of documents, usually produced by third parties (and beyond the control of a Council), to be introduced into Plans. In this instance, the documents in question are Council-produced and have an explicit resource management purpose (i.e. they were prepared for use under the RMA, and are not products of a Local Government Act or other Council-controlled but arms-length statute). This situation has meant that the Council has had an unfettered ability to consider issues raised through public submissions and propose changes to the guideline documents that it would not be able to do in the case of, for example, a New Zealand Standard.

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<sup>2</sup> Ibid.

### 3. OVERVIEW.

14. There were limited submissions received on the design guidelines and only one submitter presented expert evidence at the hearing, from Mr. Jeff Brown<sup>3</sup> who is a planner. No submissions were made in full support of the guidelines and planning text as notified; all sought rejection or changes to the guideline content (including some submissions seeking additional matters be addressed).
15. The dominant theme arising from the submissions was a concern that the Council sought, or would seek, to use the guidelines as a means of exercising an inappropriate influence over the detail design of developments based on the preferences of its officers.
16. The Council was very clear to us that this was not its position.
17. In its reply the Council, through its planning witness Mr. Devlin, modified the wording of the proposed PDP policies that would be added to the identified Chapters. This changed the 'goalposts' from seeking to ensure that development in the relevant zones achieved "consistency" with the guidelines in their entirety, to instead seeking that the relevant design elements within the guidelines be "considered". We have accepted that position and recognise that it goes a long way towards the relief that was sought by several of the submitters.
18. However, we have not accepted the Council's proposal to restrict a discretion in this regard. We have determined that if the relevant PDP policy test for applicants is to demonstrate that they have considered the relevant design elements set out within the guidelines, an information requirement rule is the most appropriate method to implement that. We do not see the Council's proposed policy approach as leading to a scenario where the Council would justifiably need to evaluate the merits of such consideration as part of its assessment of a proposal's adverse effects under section s 95A and 95B of the RMA, or overall merit under sections 104 and 104C of the RMA.
19. We have accepted the design guidelines documents as modified by the Council's experts in response to submissions and questions from us through the hearings. These were attached to the Reply Statement of Mr. Devlin, dated 4 September 2020. No submitter called any expert design evidence, and in the absence of any opposing view we see no reason why we should not accept Mr. Compten-Moen's opinion that the content of the guidelines and the design elements presented are the most appropriate.
20. Our proposed Plan text is attached to this report as **Attachment 1**.

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<sup>3</sup> On behalf of Marama Hill Ltd (submission #3280) and Nicholas Cashmore (submission #3203).

## 4. EVIDENCE AND EVALUATION

### 4.1 Summary of evidence presented

21. The Residential Design guidelines and associated PDP text attracted 14 original submissions and 2 further submissions. The Business Mixed Use Design guidelines and associated PDP text attracted 12 original submissions and 6 further submissions.
22. The Council presented a s.42A report prepared by planner Mr. Devlin<sup>4</sup>. Accompanying this was a statement of expert urban design evidence prepared by Mr. Compten-Moen<sup>5</sup>. Mr. Compten-Moen was the consultant who had led the preparation of the guidelines documents, although he had done so in a collaborative manner with Mr. Devlin and Ms. Erin Quin<sup>6</sup>.
23. Mr. Devlin and Mr. Compten Moen responded to the written submissions that had been received and identified a number of changes to the guidelines documents that would be in their opinions appropriate. No changes to the notified text that would sit within the PDP Chapters 7, 8, 9, 16 or 31 were proposed. But overall, Mr. Devlin and Mr. Compten-Moen were of the opinion that the guidelines were properly justified and appropriate.
24. A statement of expert evidence was received from Mr. Brown on behalf of submitters Marama Hill Ltd (submission 3280) and Mr. Nicholas Cashmore (submission 3203)<sup>7</sup>. Mr. Brown's evidence was directed to the Residential Design guideline and changes proposed to the text of Chapter 7. In Mr. Brown's opinion the guideline should be rejected. Among other matters he was concerned that the guideline amounted to creating new de-facto design standards, stating<sup>8</sup>:

*“the variation would have the effect of enabling the Council to decline a resource consent application where the Council considered that the proposal was not consistent with the RDG. This is of particular concern given the RDG includes design elements that are not included as standards in the zone in question. The wording of the varied provisions to include “Consistency with the design outcomes in the Residential Zone Design Guide 2019” as a matter of discretion has the effect of widening the Council’s discretion beyond those determined through the Stage 1 process.”*

25. Mr. Devlin filed a statement of rebuttal evidence<sup>9</sup>, and in it, he provided a response to Mr. Brown's evidence. He disagreed with Mr. Brown's concerns that the proposed design elements might be treated closer to standards or matters to be complied with. He did agree with some of Mr. Brown's other concerns relating to discussion of a “design statement” within the notified guidelines.

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<sup>4</sup> Section 42A report of Blair Devlin, Design Guidelines for the Business Mixed Use zone and for Residential Zones, including Proposed District Plan Variations, 18 March 2020.

<sup>5</sup> Statement of evidence of David Compten-Moen, Design Guides for Business Mixed Use and Residential zones, 18 March 2020.

<sup>6</sup> Ibid, at paragraph 5.3.

<sup>7</sup> Statement of evidence of Jeffrey Andrew Brown, 29 May 2020.

<sup>8</sup> Ibid, at paragraph 3.1.

<sup>9</sup> Statement of rebuttal evidence of Blair Jeffrey Devlin, Design Guidelines for the Business Mixed Use and Residential Zones, Including Proposed District Plan Variations, 12 June 2020.

26. To assist us in our preparation for the hearing, we were provided with a list of sites identified by Mr. Devlin and Mr. Compten-Moen in Queenstown and Wānaka that we could visit and that exhibited some of the design issues that the proposed guidelines sought to influence. We visited these and their neighbourhoods. We could not always ascertain what specific parts of the developments we visited were regarded by the Council staff as successful or unsuccessful, or why. Some of the examples that were identified as successful did not at face value show many of the design elements that were proposed within the guidelines. Ultimately we were not convinced that this exercise helped us.
27. At the hearing, we asked numerous questions of Mr. Devlin and Mr. Compten-Moen relating to the text of each of the design guidelines and the images that were used within them. We were particularly interested in understanding exactly what it was that applicants for resource consent were being asked to do, and what parts of the guideline would be treated as compulsory for applicants to address.
28. One matter discussed within each guideline was a document named a “design statement”, which we understood to be something that an applicant for resource consent might be compelled to produce as a means of explaining and justifying a proposed design and demonstrating the “consistency” that the proposed restrictions of discretion sought. Both Mr. Devlin and Mr. Compten-Moen agreed that this was not intended to be a de-facto information requirement rule, and changes to this wording were proposed to us to make that clearer.
29. We were also very interested in understanding the connection between the key word proposed to be used in the relevant PDP zone policies (proposed as 7.2.1.5, 8.2.2.6, 9.2.2.3, and 16.2.2.10), which was “encourage”, and how that then led to methods that sought to require “consistency” with the guidelines. By way of example, we reproduce notified policy 16.2.2.10:

*“Encourage buildings and development to be consistent with the design outcomes sought by the Business Mixed Use Design Guide 2019.”*
30. We were interested in understanding whether, if the policy test was only to “encourage” consistency, the proposed restrictions of discretion and their intent for outright consistency with the guidelines might be overreaching. This is a matter that Mr. Devlin conceded needed further consideration.
31. We identified a number of other apparent inconsistencies in the guidelines document text and the existing text within the PDP. By way of example, point (e) on page 11 of the notified Business Mixed Use guideline seeks to “encourage” achievement of active street frontages, whereas existing PDP policy 16.2.2.1 uses the word “require” where it discusses buildings positively contributing to streets and public spaces including by providing active building frontages. As we read these, the guideline in that respect sought a lesser design outcome than the PDP already contained. We did not understand these mismatches. Mr. Devlin and Mr. Compten-Moen agreed that these were not intended and that they would further consider the guidelines text in light of the existing zone policies that the documents would relate to.
32. In response to discussion on a matter identified within the guidelines called a “design statement” (which in summary would be a document wherein an applicant explained how it

had arrived at its proposal), we asked Mr. Devlin a number of questions. We did not see any clear rationale or explanation of why the Council would seek to ask applicants such questions, or exactly what it would seek to retain a discretion over. We also expressed some concern at the prospect of the Council's designers seeking to refuse consent to an application because they disagreed with the process of "how" a proposal came to be designed, or because they considered a generally 'better' solution than what had been proposed might be possible. Mr. Devlin advised that the Council was not seeking to start designing developments for people, and that Applicants would remain in control of their own proposals. Mr. Compten-Moen took this line of thought further, describing in response to our questions that the guidelines should be seen more as a document of good ideas and suggestions for consideration, akin to an educational resource, rather than a checklist of specific regulatory solutions that should be aimed for.

33. We were not able to identify the text within either the proposed guidelines or the PDP Chapters 7, 8, 9, 16 or 31 that would ensure this would be the case. In contrast, we identified a possible scenario of the Council's design staff identifying their own preferred design solution and then arguing that a proposal, if not as successful in their opinion as their own preference, did not achieve a satisfactory consistency with the design guidelines. After completing our questioning of the Council's witnesses, we were left with the view that such a scenario could indeed occur.
34. Mr. Brown presented his expert evidence along with Mr. Wayne Foley on behalf of Marama Hill Ltd (submission 3280) and Mr. Cashmore (submission 3203). In Mr. Brown's opinion, it was appropriate for design guidelines to have a regulatory compulsion to them in the context of a recognised historic heritage or built form character quality. But he did not consider the proposed guidelines met this test, being aimed more generally at any developments within the residential and Business Mixed Use zones.
35. Mr. Brown also explained his concerns with the content of the design guidelines becoming de-facto standards or fixed design solutions. We discussed with Mr. Brown whether revisions to the specific restrictions of discretion that might apply could address his concerns. He accepted that if the restrictions of discretion were limited to the specific design element heading titles used within the guidelines, then this would still allow applicants to identify alternative solutions to what was drawn or otherwise shown in the guidelines. But while that would help limit the risk of the guidelines being used inappropriately by the Council, he remained of the opinion that there was no demonstrable need for them, and that they should be rejected.

#### **4.2 Council reply version**

36. We received an updated version of the guidelines documents and proposed PDP text within a statement of reply from Mr. Devlin<sup>10</sup>.
37. Mr. Devlin's updated version proposed a notable change in position of the Council, and we understood that it reflected that the Council was no longer pursuing the guideline documents or the PDP text that was notified.

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<sup>10</sup> Statement of Reply of Blair Jeffrey Devlin, Design Guidelines for the Business Mixed Use Zone and for Residential Zones, Including Proposed District Plan Variations, 4 September 2020.



38. Whereas the notified zone policy approach within Chapters 7, 8, 9 and 16 was to (using Chapter 7, policy 7.2.1.5 as an example) “encourage buildings and development to be consistent with the design outcomes sought by the Residential Zone Design Guide 2019”, the Council’s reply position was that this should instead be “require consideration of the relevant design elements identified in the Residential Zone Design Guide 2019”. We note that proposed policy 31.2.3.3(c) has not been changed to adopt parallel wording.
39. Similar changes to the applicable restrictions of discretion were put forward. Whereas the notified restrictions were based on (using Chapter 7, Rule 7.4.5A restriction (g) as an example) “consistency with the Residential Zone Design Guide 2019”, the Council’s reply position was that this should be “How the proposal responds to the relevant design elements from the Residential Zone Design Guide, 2019”.
40. The change in position, as we understand it:
- a. Substantially changes the proposed policy direction away from seeking to encourage that buildings and development achieve consistency with the outcomes sought by the design guideline, to instead requiring that only consideration of the relevant design elements.
  - b. Substantially changes the restriction of discretion from including the entirety of the guideline documents, to only the “relevant” design elements within each. This significantly narrows the extent of guideline content that would sit within the restriction of discretion.
  - c. Still presents the underlying policy vs. method tension we identified to the Council of the notified text. This is because reply-version Chapter 7, 8, 9 and 16 policies seek to only require “consideration” of the relevant design elements, but the restrictions of discretion used to implement those policies of “consideration” go somewhat further than that (the words “how the proposal responds to...” means in our view something close to “evaluate and determine the merit of...”).

#### **4.3 Summary of PDP text findings**

41. Before we proceed to discuss the submissions, the Council’s reply version of the guidelines documents and PDP text has raised administrative issues that we need to resolve first. This is because the change of approach introduced by the reply statement of Mr. Devlin, and the corresponding changes to the methods that follow the policies, directly relate to the issues raised in submissions, but also to the justifications for our recommendations. We find it is simpler at the outset, and less repetitive, to simply present our headline findings on the PDP text, and then explain how that relates to the submissions.
42. In summary, we accept the changes to PDP policies 7.2.1.5, 8.2.2.6, 9.2.2.3, and 16.2.2.10 as per Mr. Devlin’s reply statement. Policy 31.2.3.3(c) was not changed in Mr. Devlin’s reply statement but as currently worded, we find that it is incompatible with the other revised policies and we have deleted that proposed policy. It has been replaced with a new wording (shown in underline):

*“is consistent with the relevant Council design guidelines, being either the Queenstown Town Centre Special Character Area Design Guidelines 2015, Wanaka Town Centre*

Character Guideline 2011, or the Arrowtown Design Guidelines 2016; or has considered the relevant design elements identified in the Business Mixed Use Design Guide 2019;”

43. Having accepted the Council’s re-focused policy direction and finding it to be the most appropriate, we have then considered whether and the extent to which the proposed methods, being restrictions of discretion across Chapters 7, 8, 9, 16 and 31, properly and otherwise most appropriately implement that direction. We find that the proposed restrictions of discretion do not.
44. We find that “require consideration of” does not reasonably extend to the Council retaining design oversight of specific built form outcomes proposed, or a need for applicants to justify their proposed designs to the Council. We see such as sitting beyond what is reasonably necessary for the Council to execute its duties under the RMA and that, in particular, it is not for the Council to seek to design buildings for applicants.
45. We find that the Council’s proposed policy direction extends only to requiring that applicants for resource consent have properly informed themselves of the design elements and considered them when preparing their proposal.
46. It follows that we do not agree there is a need for the Council to restrict discretion to whether or not applicants have considered the relevant design elements. It would be highly inefficient and ineffective to refuse consent to an application (and we cannot imagine what manner of consent conditions could be justifiably imposed) because the Council did not understand or believe that an Applicant had competently considered the design elements.
47. We unambiguously see the policies proposed by the Council leading to an information requirement rule and this should apply to all restricted discretionary and discretionary activities within the Lower Density Suburban Residential, Medium Density Residential, High Density Residential, and Business Mixed Use zones (including signs within the Business Mixed Use zone). This would require applicants to provide evidence as a part of their resource consent application that they have considered the relevant design elements. Failure to provide this information would lead to the underlying activity status that would normally apply (either a restricted discretionary or discretionary activity) becoming a non complying activity. We find that a non complying activity status is the most appropriate one in this instance because the relevant policy directive is to “require” consideration of the relevant design elements, and it follows that it is a very important outcome to achieve in the scheme of the PDP’s many design-focused objectives and policies.
48. We have identified that these new information requirement rules, which would apply to restricted discretionary and discretionary activities, would not properly sit as part of the existing Chapter “X”.4 activity tables or the Chapter “X”.5 standards (which relate to permitted activities). Because we find the information requirement should apply to restricted discretionary and discretionary activities that are either specified within an activity table or as a consequence of non-compliance with a standard for permitted activities, we have identified a need for additional standards that apply to restricted discretionary and discretionary activities and we have identified these as 7.5A, 8.5A, 9.5A, 16.5A and 31.5A. This is in our finding more effective and efficient than repeating the same rule twice within each chapter (once in Chapter “X”.4 and again in Chapter “X”.5)

49. Our approach also requires consequential amendments to existing rules 7.3.2.2, 8.3.2.2, 9.3.2.2, and 16.3.2.2 so that they refer to standards tables (plural) rather than standard table (singular). No change to the corresponding rule in Chapter 31 is necessary as there is already reference to multiple standards tables.
50. Lastly, we recommend rejecting the notified deletion of the assessment matter within the Business Mixed Use zone at 16.4.4(a) and (b). This did not of itself attract any submissions or further submissions. That deletion was notified on the premise that a like-for-like replacement would occur because consistency with the Business Mixed Use Design Guide was to be introduced as a matter of discretion. Now that this is not to be the case, the deletion of the existing assessment matter would in our view diminish rather than add to the status quo within the PDP for ensuring quality design outcomes are achieved. This would not be appropriate.
51. We therefore recommend deletion of the proposed additional matters of discretion sought by the Council (and rejection of all other changes proposed other than the reply-version policies discussed above and the notified references in Chapters 7 and 8 to the Arrowtown Design Guidelines 2016 and assessment matters 16.4.4(a) and (b)) and replacement with an information requirement rule in each of Chapters 7, 8, 9, 16 and 31. We have detailed these in **Appendix 1**. As specified in greater detail below, submissions are accepted, accepted in part or rejected to the extent that they support the form and substance of the PDP text we have identified as most appropriate, and as summarised in **Appendix 2**.
52. Having considered the above subject to section 32AA of the RMA, our recommended relief:
- a. Directly implements the policy outcomes proposed by the Council in the reply of Mr. Devlin;
  - b. Is considerably more effective and efficient than the retention of restrictions of discretion proposed by the Council;
  - c. Is in line with the role of the guidelines and an information and education resource for applicants rather than a regulatory goal-post or matter of compliance;
  - d. Directly addresses numerous concerns raised by submitters in terms of the scope, role and content of the design guidelines; and
  - e. Will not onerously or unreasonably add time or costs to the design process that applicants would otherwise incur when preparing a consent application.

#### **4.4 Ordering of Issues**

53. We have evaluated the submissions following the order used in Mr. Devlin's s.42A report and in light of the versions of the guidelines documents and PDP text that was presented to us via the Council's reply. The order of topics used in the s.42A report was:
- (i) Preliminary matters;

### Business Mixed Use Design Guidelines

- (a) Topic 1: Rejection of the BMUZ Design Guidelines;
- (b) Topic 2: Scope of BMUZ Design Guidelines;
- (c) Topic 3: Amendments to PDP text relating to BMUZ Design Guidelines;
- (d) Topic 4: Requested text changes to BMUZ Design Guidelines;
- (e) Topic 5: Relationship to Building Act / Building Code;
- (f) Topic 6: Reference to section 104(1)(c) in BMUZ Design Guidelines;
- (g) Topic 7: Reference to permitted activities; and
- (h) Topic 8: Suitability of tree species.

### Residential Design Guidelines

- (a) Topic 9: Rejection of the Residential Design Guidelines;
- (b) Topic 10: Amendments to PDP text relating to Residential Design Guidelines;
- (c) Topic 11: Amendments to text of Residential Design Guidelines;
- (d) Topic 12: How Residential Design Guidelines deal with sloping sites;
- (e) Topic 13: Planting Guide Should Reflect the District;
- (f) Topic 14: Specific Photos and Diagrams;
- (g) Topic 15: Public health related matters; and
- (h) Topic 16: Reference to Section 104(1)(c) in Residential Design Guide.

## **4.5 Preliminary matters**

54. In his s.42A report Mr. Devlin identified a number of submissions that in his opinion should be struck out<sup>11</sup>. These were:

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<sup>11</sup> Section 42A report of Blair Devlin, Design Guidelines for the Business Mixed Use zone and for Residential Zones, including Proposed District Plan Variations, 18 March 2020, paragraphs 3.1 – 3.10.

- a. Eon Fitzwater<sup>12</sup> and Bruce Steenson<sup>13</sup>, and further submitters Nicky Wells<sup>14</sup> and Richard Wells<sup>15</sup>, in relation to changes sought to the zone height limits.
  - b. Brendon Cutt<sup>16</sup>, in relation to ensuring no additional enablement for visitor accommodation activities.
  - c. Roderick McLeod<sup>17</sup>, in relation to cumulative residential development in the Upper Clutha area and minimum density requirements that should apply.
55. We refer to our Introductory Report (20.1) where we have outlined the legal tests for determining whether or not a submission is “on” a Plan Change.
56. Having reviewed the submissions, we accept the advice of Mr. Devlin that they raise issues that are not sufficiently related to the proposed design guidelines and accompanying PDP text that is proposed insofar as it relates to changing the status quo. They are not “on” the Plan Change and we find they are out of scope. These submissions are **struck out**.
57. Elliot Family Trust<sup>18</sup> sought a planning charette or workshop-type process to develop guideline content based on greater neighbourhood consultation. We are satisfied that the process followed by the Council, although not meeting the requirements of Clause 34 of the First Schedule of the RMA as it relates to the process for incorporating documents by reference, has been appropriate. The Council has accepted submissions on the content of the guidelines and proposed a number of changes in response to those. On that basis, the community has not suffered a lack of ability to consider and meaningfully influence the document’s content. On this basis this submission is **rejected**.
58. In reaching the above conclusion, the fact that the Council has re-focused the role of the guidelines as a matter for applicant consideration, rather than for which consistency with the content must be achieved, has been a very relevant factor. The design elements are fairly general matters of design, and within each, a wide variety of specific design solutions could be arrived at. We find it very unlikely that a further process to develop their content would materially change those design elements; most of the concern we heard related to specific design solutions and outcomes shown in the guidelines rather than the higher-level design elements.
59. The notified versions of PDP Chapters 7 and 8 included new rules (at 7.3.2.7, 8.3.2.8) confirming that in Arrowtown the Arrowtown Design Guidelines 2016 would apply rather than the Residential Zone Design Guide 2019. This text attracted no submissions and we accept the suggested change (although we have renumbered the change to Chapter 7 as 7.3.2.9 to accommodate other rules that have been added to the chapter) including the notified s.32 analysis in support of it. We find that Arrowtown has a specific character and the 2016

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<sup>12</sup> Submission #3000.1.

<sup>13</sup> Submission #3031.1.

<sup>14</sup> Further submission #3406.

<sup>15</sup> Further submission #3407.

<sup>16</sup> Submission #3138.1.

<sup>17</sup> Submission #3379.1.

<sup>18</sup> Submission #3264.1.

guidelines developed uniquely for it are better suited than the zone-wide 2019 ones. We see no case as to why it would be effective and/or efficient for both guidelines to apply at the same time in Arrowtown.

#### **4.6 Business Mixed Use Design Guidelines**

##### Topic 1: Rejection of the BMUZ Design Guidelines

60. Wayfare Group Ltd<sup>19</sup>, Roger Moseby<sup>20</sup>, Susan Robertson<sup>21</sup>, and Ken Muir<sup>22</sup> sought the guidelines be rejected in their entirety.
61. We accept the general premise that there is no demonstrable “need” for the proposed guidelines in terms of the ordinary definition of that word.
62. We find that there is no requirement under the RMA for a Plan Change to only proceed if there is an identified “problem” or “need”. We find that a Council is free to promote changes to its District Plan even if only on the basis that it considers the change(s) likely to generally help promote the sustainable management of natural and physical resources within its District.
63. In the case of the design guidelines, we accept the evidence of Mr. Devlin and Mr. Compten-Moen, who explained the goal of helping promote a higher quality of design outcomes by prompting designers and developers to consider matters that they either may not have otherwise done (perhaps less likely, in our view), or consider them in a way that attaches greater importance to them than they may have otherwise done (perhaps more likely, in our view). We agree that this is relevant to the extent that in the residential and the Business Mixed Use zones, there are an extensive number of policies seeking what we will characterise as “good design”. We are also aware that design guidelines are not uncommon across New Zealand and that many districts, in a variety of ways, use design guidelines to help promote better design generally.
64. On that basis, we are satisfied that the proposed guidelines to have a functional linkage to, and are likely to be helpful in implementing, the design-based policies in PDP Chapters 7, 8, 9, 16 and 31.
65. The changes made by the Council to the PDP text has clarified that applicants are only to be required to consider the relevant design elements within the guidelines, and will not have to otherwise subject the detail of their designs and design-related decisions to Council scrutiny. The remainder of the guidelines document will be a general information or educational tool that will be available for members of the community to take in as they see fit.
66. In this respect, we find that the key criticisms of the guidelines raised by the submitters have been materially addressed.

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<sup>19</sup> Submission #3343.5.

<sup>20</sup> Submission #3110.1.

<sup>21</sup> Submission #3143.1.

<sup>22</sup> Submission #3211.3.

67. For these reasons the submissions are **rejected**.

#### Topic 2: Scope of BMUZ Design Guidelines

68. Public Health South<sup>23</sup> sought that the intent of the Business Mixed Use zone design guideline be retained as notified. This submission is **accepted in part** to the extent that while the text of the guideline has been refined, its core purpose and intent remains in-line with the notified version. Similarly, Queenstown Airport Corporation<sup>24</sup> supported the introduction of the Business Mixed Use zone guideline and this submission is **accepted**.
69. FII Holdings Ltd<sup>25</sup> sought that the content and examples included within the guideline should be extended to include other land use outcomes that the Business Mixed Use zone provides for, including retail, yard and storage space, or light industrial use.
70. In his s.42A report, Mr. Devlin described that the guideline had been developed on built form outcomes and that the design elements identified were not activity-based<sup>26</sup>.
71. In light of the simplified requirements that we have found should apply around the guidelines, we accept and prefer Mr. Devlin’s explanation for the purpose of the guideline. The policy direction to require consideration of the relevant design elements will allow applicants to consider those that are or are not relevant to the specific activity or site attributes they are dealing with. We see insufficient value in further adding to the guideline content in this light.
72. This submission is **rejected**.

#### Topic 3: Amendments to PDP text relating to BMUZ Design Guidelines

73. Wayfare Group Ltd<sup>27</sup> sought a change of emphasis within the PDP so as to “encourage” consistency with the guideline rather than to require or ensure it. We accept the concerns of the submitter and acknowledge that in his s.42A report Mr. Devlin also recognised that the notified policy framework was premised on “encouragement” rather than a stronger direction<sup>28</sup>.
74. The changes that have resulted to the proposed policy text, and introduction of our preferred information requirement rule, achieve the outcome sought by the submitter and on that basis it is **accepted in part** to the extent that we have agreed with the issues raised, but determined a different relief to be the most appropriate.
75. FII Holdings Ltd<sup>29</sup> sought that duplication between the controls within the Plan and the guidelines should be removed. This submission is **accepted in part** to the extent that the role

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<sup>23</sup> Submission #3109.23.

<sup>24</sup> Submission #3316.2.

<sup>25</sup> Submissions #3267.1 and #3267.3.

<sup>26</sup> Section 42A report of Blair Devlin, Design Guidelines for the Business Mixed Use zone and for Residential Zones, including Proposed District Plan Variations, 18 March 2020, paragraph 6.2.

<sup>27</sup> Submission #3343.3.

<sup>28</sup> Section 42A report of Blair Devlin, Design Guidelines for the Business Mixed Use zone and for Residential Zones, including Proposed District Plan Variations, 18 March 2020, paragraph 7.2.

<sup>29</sup> Submission 3267.2.

and scope of the guidelines has been clarified and the guideline content will not have a status similar to any of the controls within the Plan.

76. Wayfare Group Ltd<sup>30</sup> also sought simplification of the proposed matters of discretion that would apply on the basis that the combination of those that already exist added to those proposed in this plan change would result in substantial duplication. We agree with Wayfare's observation. However, we consider that the matter has been addressed by the changes that have been proposed by the Council to the PDP policies, and the consequential rule changes we have identified. In this respect, the submission is **accepted in part**.
77. Z Energy Ltd, BP Oil New Zealand Ltd and Mobil Oil New Zealand Ltd ("the Oil Companies")<sup>31</sup> sought that the guidelines should only apply to mixed use or intensive residential activities. In the alternative, they sought recognition of the functional and operational requirements of existing activities and development. In his s.42A report, Mr. Devlin did not support this relief on the basis that the guidelines addressed built form design issues rather than individual activities<sup>32</sup>.
78. We have not been given any compelling evidence why only some signs within the Business Mixed Use zone should be subject to the design guidelines. We also note that the changes proposed to the PDP text by the Council and consequential changes we have made will ensure that considering the relevant design elements will not be an arduous or unreasonable task. Ultimately, the Oil Companies' concern related to being assessed against the outcomes shown in the guideline. The Council has clarified that this is not what is sought and the PDP text we have recommended will ensure that this does not occur.
79. For these reasons the submission is **accepted in part**.

#### Topic 4: Requested text changes to BMUZ Design Guidelines

80. Ngai Tahu Property Ltd<sup>33</sup> sought a number of refinements to the language of the guideline and in his s.42A report Mr. Devlin largely supported (with some minor further refinement) these changes<sup>34</sup>. These were in our view simplifications or explanations that were aimed at helping users understand what the guidelines did or did not promote.
81. In our questioning of Mr. Devlin and Mr. Compton-Moen, a number of other refinements were identified and have been recommended.
82. We accept the changes that have been proposed, including because we received no evidence to the contrary. On this basis, the submission is **accepted in part**.

#### Topic 5: Relationship to Building Act / Building Code

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<sup>30</sup> Submission #3343.5.

<sup>31</sup> Submissions #3383.7 – #3383.10, #3383.24 and #3383.25.

<sup>32</sup> Section 42A report of Blair Devlin, Design Guidelines for the Business Mixed Use zone and for Residential Zones, including Proposed District Plan Variations, 18 March 2020, paragraph 7.7.

<sup>33</sup> Submissions #3215.1 - #3215.4.

<sup>34</sup> Section 42A report of Blair Devlin, Design Guidelines for the Business Mixed Use zone and for Residential Zones, including Proposed District Plan Variations, 18 March 2020, paragraph 8.1 - 8.7.



83. Public Health South<sup>35</sup> sought additional material relating to human health including energy efficiency, insulation, heating, and ventilation. In his s.42A report, Mr. Devlin agreed with some of the relief sought, where it related to built form effects of the sort managed by the PDP, but did not support others that in his opinion fell into other jurisdictions – notably the Building Act<sup>36</sup>.
84. We agree with Mr. Devlin’s concerns that the PDP should not seek to address non-RMA matters. The proposed design guidelines are not intended to address building design and technological matters, including Green Star ratings. We do not see a sufficient policy basis within the PDP that would justify expanding the guidelines in this way.
85. For this reason, the submission is **accepted in part** to the extent that design element 10 does enable consideration of building materials and environmental sustainability generally.

Topic 6: Reference to section 104(1)(c) in BMUZ Design Guidelines

86. Mr. Ken Muir<sup>37</sup> opposed a statement within the guidelines linking consideration of the document to s.104(1)(c) of the RMA. In his s.42A report Mr. Devlin agreed, and the wording of concern has been removed from the reply version we have been making our decisions on<sup>38</sup>.
87. We have no reason not to accept this position, and the submission is **accepted**.

Topic 7: Reference to permitted activities

88. FII Holdings Ltd<sup>39</sup> and Wayfare Group Ltd<sup>40</sup> sought confirmation that the guidelines are not a compulsory consideration for Permitted Activities in Chapter 16.
89. In his s.42A report, Mr. Devlin confirmed that it was not the Council’s intent to require all development, including notionally permitted development, to require a consent so as to allow consideration of the design guidelines<sup>41</sup>. We see no reason why a well-intentioned developer, who wishes to undertake a development as a permitted activity, would not consider the guideline if they wished, and as such accept Mr. Devlin’s analysis that this is appropriate.
90. For this reason the submissions are **accepted**.

Topic 8: Suitability of tree species

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<sup>35</sup> Submissions #3109.14 - #3109.22.

<sup>36</sup> Section 42A report of Blair Devlin, Design Guidelines for the Business Mixed Use zone and for Residential Zones, including Proposed District Plan Variations, 18 March 2020, paragraphs 9.3 and 9.4.

<sup>37</sup> Submission #3211.4.

<sup>38</sup> Section 42A report of Blair Devlin, Design Guidelines for the Business Mixed Use zone and for Residential Zones, including Proposed District Plan Variations, 18 March 2020, paragraph 10.3.

<sup>39</sup> Submission #3267.5.

<sup>40</sup> Submission #3343.4.

<sup>41</sup> Section 42A report of Blair Devlin, Design Guidelines for the Business Mixed Use zone and for Residential Zones, including Proposed District Plan Variations, 18 March 2020, paragraph 11.3.

91. Queenstown Airport Corporation<sup>42</sup> sought that Lemonwood (Tarata), Ornamental Pear, Copper Beech and Marble Leaf be removed from the suggested list of species.
92. In his s.42A report Mr. Devlin supported the relief sought<sup>43</sup> on the basis of advice from Mr. Compten-Moen<sup>44</sup>. We see no reason why we should not accept this advice, although we note that the design guideline does not have the proposed statutory authority to permit or prohibit any particular species from use should a person be so minded. On this basis, the submission is **accepted**.

#### 4.7 Residential Design Guidelines

##### Topic 9: Rejection of the Residential Design Guidelines

93. Wayfare Group Ltd<sup>45</sup>, Silver Creek Ltd<sup>46</sup>, Marama Hill Ltd<sup>47</sup>, Queenstown Views Villas Ltd<sup>48</sup>, and Mr. Cashmore<sup>49</sup> sought the design guidelines to be rejected. Elliot Family Trust<sup>50</sup> separately requested that the guideline be re-written on the basis of a more neighbourhood consultation-based process.
94. While we benefitted from the evidence of Mr. Brown on behalf of Marama Hill Ltd and Mr. Cashmore, these submissions did not raise issues that we have not previously considered in relation to the Business Mixed Use Design Guide (see Topic 1, above). In summary, we are satisfied that there is a reasonable connection between the design-based matters sought to be managed within the Chapter 7, 8, 9, 16 and 31 policy frameworks and the intent of the guidelines to help promote better quality design outcomes.
95. However, it has been very relevant to our decisions that the Council has substantially changed its position over the course of the hearings and now, instead of seeking to encourage consistency with the guidelines, seeks only to require consideration of the relevant design elements. We see this as a notably less onerous and contentious proposition than that with which the submitters expressed concerns.
96. Although we consider the changes made to the PDP text and the guidelines document do go a long way to addressing the concerns raised by the submitters, we remain satisfied that the guidelines should not be rejected.
97. On this basis the submissions are **rejected**.

##### Topic 10: Amendments to PDP text relating to Residential Design Guidelines

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<sup>42</sup> Submitter #3316.

<sup>43</sup> Section 42A report of Blair Devlin, Design Guidelines for the Business Mixed Use zone and for Residential Zones, including Proposed District Plan Variations, 18 March 2020, paragraphs 12.2 – 12.4.

<sup>44</sup> Statement of evidence of David Compten-Moen, Design Guides for Business Mixed Use and Residential zones, 18 March 2020, paragraphs 9.1 and 9.2.

<sup>45</sup> Submitter #3343.3.

<sup>46</sup> Submitter #3347.1.

<sup>47</sup> Submitter #3280.1.

<sup>48</sup> Submitter #3282.1.

<sup>49</sup> Submitter #3203.1

<sup>50</sup> Submitter #3264.1.

98. SkyCity Entertainment Ltd<sup>51</sup> supported the notified approach that required residential development to be consistent with the Residential Zone design guideline and the intent of the restricted discretionary activities that were proposed. We do not agree that the notified approach was properly justified based on the notified policy direction to only “encourage” consistency with the guidelines. Accordingly, for the reasons outlined previously, we have determined that an alternative approach of requiring consideration of the key design elements supported by an information requirement rule to be the most appropriate. On this basis, the submission is **rejected**.
99. Heritage New Zealand<sup>52</sup> requested addition of commentary reminding applicants that where historic heritage exists this must also be taken into account. Related to this, Friends of Wakatipu Gardens and Reserves and Associated Residents<sup>53</sup> sought greater recognition be given to Special Character Areas and residential amenity. We heard evidence from Mr Jay Cassells in support of the latter group.
100. In his s.42A report, Mr. Devlin did not support the relief requested<sup>54</sup>. In Mr. Devlin’s opinion the PDP made appropriate provision for historic heritage (in Chapter 26) and there was no need to duplicate this. In terms of Special Character Areas, there are none under the PDP, and we agree with Mr. Devlin that there is no proper basis to introduce one. We also note Mr Cassells’ acceptance that the position he was advancing was the opposite to the policy direction evident in the NPSUD, discussed in some detail in Report 20.1.
101. For the above reasons, these submissions are **rejected**.
102. Wayfare Group Ltd, FII Holdings Ltd, and the Oil Companies also sought changes to the guidelines text to reflect changes requested in relation to the Business Mixed Use Design Guideline (Topic 3 above). For the same reasons we found in relation to Topic 3, these submissions are **accepted in part** to the extent that the changes made to the PDP text in the Council reply statement of Mr. Devlin and our own evaluation of that will address many of the submitters’ concerns.

#### Topic 11: Amendments to text of Residential Design Guidelines

103. Pia Condren<sup>55</sup> sought retention of the Residential Zone design guidelines as notified. This submission is **accepted in part** to the extent that the revised guidelines that we have found to be most appropriate are generally in keeping with the document that was notified.

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<sup>51</sup> Submissions #3060.2 - #3060.4

<sup>52</sup> Submission #3191.2.

<sup>53</sup> Submissions #3241.1 – #3241.7.

<sup>54</sup> Section 42A report of Blair Devlin, Design Guidelines for the Business Mixed Use zone and for Residential Zones, including Proposed District Plan Variations, 18 March 2020, paragraphs 14.2 – 14.4.

<sup>55</sup> Submissions #3013.2 and #3013.3.

104. Marama Hill Ltd<sup>56</sup> and Queenstown Views Villas Ltd<sup>57</sup> have identified that the notified guideline document contained reference to PDP policies that were not relevant. They requested that such references be removed.
105. In his s.42A report, Mr. Devlin acknowledged that the guideline document did contain a number of incorrect policy references, and these have been corrected in the version provided to us as part of the Council's reply<sup>58</sup>. On this basis, these submissions are **accepted**.
106. Marama Hill Ltd<sup>59</sup>, Queenstown Views Villas Ltd<sup>60</sup>, and Wayfare Group Ltd<sup>61</sup>, sought clarification that the guidelines are not mandatory considerations for permitted activities. We find that the issues raised by the submissions are effectively the same as for Topic 7 and we have reached the same conclusion, for the same reasons.
107. The submissions are **accepted**.
108. Marama Hill Ltd<sup>62</sup> and Queenstown Views Villas Ltd<sup>63</sup> requested that reference to a design statement be removed from the guideline. In his s.42A report, Mr. Devlin recommended the submissions be rejected on the basis that a design statement was an appropriate matter for applicants to consider, and that the guideline wording did not specifically require a design statement to be required<sup>64</sup>.
109. However, by the time of the Council reply, Mr. Devlin had come to prefer a revised wording that did not refer to preparation of a design statement<sup>65</sup>.
110. Given the changes that have occurred to the PDP policy direction through the Council reply of Mr. Devlin, and our own consequential changes to the methods that would implement the policies, there is no likelihood of a design statement being required of applicants by the Council.
111. For the above reasons, the submissions are **accepted**.

Topic 12: How Residential Design Guidelines deal with sloping sites

112. Gillian MacLeod<sup>66</sup> has requested that the guideline provide greater emphasis on sloping sites given how prevalent these are in the District.

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<sup>56</sup> Submission #3280.2.

<sup>57</sup> Submission #3282.2.

<sup>58</sup> Section 42A report of Blair Devlin, Design Guidelines for the Business Mixed Use zone and for Residential Zones, including Proposed District Plan Variations, 18 March 2020, paragraph 15.2.

<sup>59</sup> Submission #3280.3.

<sup>60</sup> Submission #3282.3.

<sup>61</sup> Submission #3343.5.

<sup>62</sup> Submission #3280.3.

<sup>63</sup> Submission #3282.3.

<sup>64</sup> Section 42A report of Blair Devlin, Design Guidelines for the Business Mixed Use zone and for Residential Zones, including Proposed District Plan Variations, 18 March 2020, paragraphs 15.7 – 15.12.

<sup>65</sup> Statement of Reply, Blair Jeffery Devlin, 4 September 2020, Appendix C, Page 5.

<sup>66</sup> Submission #3016.3.

113. In response, Mr. Compten-Moen<sup>67</sup> and Mr. Devlin<sup>68</sup> agreed that although the design elements would remain the same between a flat and a sloping site, it was appropriate for more examples and illustrations of sloped developments be included. An updated version of the guidelines showing this material has been provided to us.
114. We agree with Mr. Devlin that the submission should be **accepted**.

Topic 13: Planting Guide Should Reflect the District

115. Gillian Macleod<sup>69</sup> sought that the planting guide should reflect species best-suited to the District, and discourage weed species.
116. In his s.42A report, Mr. Devlin disagreed with the relief sought<sup>70</sup>. PDP Chapter 34 already manages weed species. In terms of the remainder of the planting guide, Mr. Devlin accepted the evidence of Mr. Compten Moen that the guidelines did not intend to specify the only species that would be acceptable, and that the species that had been identified, while not the only species that might be appropriate within the District, were nonetheless appropriate<sup>71</sup>.
117. We accept the evidence of Mr. Compten-Moen and on that basis the submission is **accepted in part** to the extent that management of weed species is a relevant matter that the PDP should (and does) manage.

Topic 14: Specific Photos and Diagrams

118. Gillian MacLeod<sup>72</sup> raised concerns with four images used in the guideline, and suggested that more successful images could be used. After considering the submission, Mr. Devlin recommended that two of them could be replaced, and an updated version of the design guide has been provided to us on that basis<sup>73</sup>. Mr. Devlin recommended that the submission could be **accepted in part**. We have no reason to not accept that recommendation.

Topic 15: Public health related matters

119. Public Health South<sup>74</sup> sought additional material relating to human health including energy efficiency, insulation, heating, and ventilation. This is effectively the same issue as Topic 5 above, and after considering the submission we have reached the same conclusion. In

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<sup>67</sup> Statement of evidence of David Compten-Moen, Design Guides for Business Mixed Use and Residential zones, 18 March 2020, paragraphs 10.3 and 10.4.

<sup>68</sup> Section 42A report of Blair Devlin, Design Guidelines for the Business Mixed Use zone and for Residential Zones, including Proposed District Plan Variations, 18 March 2020, paragraphs 16.2 – 16.5.

<sup>69</sup> Submissions #3016.5 and #3016.6.

<sup>70</sup> Section 42A report of Blair Devlin, Design Guidelines for the Business Mixed Use zone and for Residential Zones, including Proposed District Plan Variations, 18 March 2020, paragraphs 17.2 – 17.4.

<sup>71</sup> Statement of evidence of David Compten-Moen, Design Guides for Business Mixed Use and Residential zones, 18 March 2020, paragraph 9.3.

<sup>72</sup> Submissions #3016.1, #3016.2 and #3016.4.

<sup>73</sup> Section 42A report of Blair Devlin, Design Guidelines for the Business Mixed Use zone and for Residential Zones, including Proposed District Plan Variations, 18 March 2020, paragraphs 18.2 – 18.4.

<sup>74</sup> Submissions #3109.14 – #3109.22.

summary, we do not accept that it is appropriate for the PDP to comment on matters managed by the Building Act or other Acts. But it is appropriate that some reference generally to environmental sustainability be made such as has been done in design element 10.

120. For the reasons set out in relation to Topic 5, the submission is **accepted in part**.

Topic 16: Reference to Section 104(1)(c) in Residential Design Guide

121. Mr. Cashmore<sup>75</sup> sought removal of a reference made in the guideline to s.104(1)(c) of the RMA. This is effectively the same issue as Topic 6, above, and after considering the submission we have reached the same conclusion. On the basis that the Council has revised the design guide to remove the language of concern, the submission is **accepted**.

#### **4.8 Section 32AA evaluation**

122. In terms of the above findings, we have been mindful of our obligations under s.32AA of the Act. We are satisfied that the changes that have been made to the guidelines documents and PDP text reflect the most appropriate outcomes for the matter. In particular:
- a. The changes proposed by the Council to the policy framework in Chapters 7, 8, 9 and 16, and the changes we have recommended be made to Chapter 31, will make administration and use of the guidelines considerably more efficient than had been notified.
  - b. The changes we have recommended be made to the methods in Chapters 7, 8, 9, 16 and 31 will be more effective and more efficient in implementing the settled policy directions than was originally notified, and will in particular result in less time and cost for applicants.
  - c. The changes that have been proposed by Mr. Compten-Moen and Mr. Devlin to the Business Mixed Use and the Residential Zone Design Guide documents in response to the issues raised by submissions and questions from the Hearings Panel have made them more focused and consistent, and in so doing will make them both more efficient and effective for users.
  - d. We see no material change in the overall social and economic impacts, including in terms of economic development and employment creation, of the design guidelines between what was notified and what we have determined.
  - e. The changes we have identified are otherwise not of a scale, nature or consequence that would give rise to a class of benefits, costs, advantages or disadvantages to those broadly evaluated by the Council in its original s.32 analysis, and the subsequent s.32AA analyses that have been undertaken by its witnesses through the s.42A report and subsequent statements of evidence.

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<sup>75</sup> Submissions #3203.1 and #3203.2.

## 5. OVERALL RECOMMENDATION

123. For all of the foregoing reasons, we recommend that:

- a. The Business Mixed Use and Residential Zone Design Guidelines documents, as attached to the reply statement of Mr. Blair Devlin dated 4 September 2020 be accepted and incorporated into the PDP by way of reference.
- b. We recommend that Chapters 7, 8, 9, 16 and 31 be changed by adding the text we have identified in **Appendix 1**.

124. The submissions of Eاون Fitzwater<sup>76</sup>, Bruce Steenson<sup>77</sup> (and further submitters Nicky Wells<sup>78</sup> and Richard Wells<sup>79</sup>), Brendon Cutt<sup>80</sup>, and Roderick McLeod<sup>81</sup>, are struck out pursuant to section 41D of the RMA as not being on the Plan Change.

125. We also attach as **Appendix 2** to our Report, a summary table setting out our recommendation in relation to each primary submission. We have not listed further submissions as the result in respect of any further submission necessarily follows the recommendation on the primary submission, whether that be supported or opposed.



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**Trevor Robinson**  
**Chair**  
**Stream 17 Hearing Panel**

**Dated: 12 January 2021**

### **Attachments**

**Appendix 1- Recommended Revised Proposed Plan Provisions**

**Appendix 2- Table of Submitter Recommendations**

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<sup>76</sup> Submission #3000.1.

<sup>77</sup> Submission #3031.1.

<sup>78</sup> Further submission #3406.

<sup>79</sup> Further submission #3407.

<sup>80</sup> Submission #3138.1.

<sup>81</sup> Submission #3379.1.

**Appendix 1 – Recommended Revised Plan Provisions**

## Variations to the Proposed District Plan

**Key:**

Underlined text for additions and strike through text for deletions

### Variation to Chapter 7 – Lower Density Suburban Residential Zone:

- a. Add a new policy 7.2.1.5 as follows:

*“Require consideration of the relevant design elements identified in the Residential Zone Design Guide 2019”*

- b. Amend rule 7.3.2.2 as follows:

*“Where an activity does not comply with a Standard listed in the Standards tables, the activity status identified by the Non-Compliance Status column shall apply.”*

- c. Renumber new Rule 7.3.2.7 as 7.3.2.9, but otherwise retain as notified.

- d. Add a new information requirement rule at 7.5A as follows:

***“7.5A Rules – Standards for Restricted Discretionary and Discretionary Activities under Rules 7.4 and 7.5”***

	<b><i><u>Standards for activities in the Lower Density Residential Zone</u></i></b>	<b><i><u>Non-compliance status</u></i></b>
<u>7.5A.1</u>	<i><u>For all restricted discretionary and discretionary activities under Rules 7.4 and 7.5, applications for resource consent shall include a statement confirming that the relevant design elements from the Residential Zone Design Guide 2019 have been considered, including a summary of any particular aspects of the proposal that have resulted from that consideration.</u></i>	<u>NC</u>

- e. Reject all other changes proposed to the zone provisions.



**Variation to Chapter 8 – Medium Density Residential Zone:**

- a. Add a new policy 8.2.2.6 as follows:

*“Require consideration of the relevant design elements identified in the Residential Zone Design Guide 2019”*

- b. Amend rule 8.3.2.2 as follows:

*“Where an activity does not comply with a Standard listed in the Standards tables, the activity status identified by the Non-Compliance Status column shall apply.”*

- c. Retain new rule 8.3.2.8 as notified.

- d. Add a new information requirement rule at 8.5A as follows:

**“8.5A Rules – Standards for Restricted Discretionary and Discretionary Activities under Rules 8.4 and 8.5”**

	<b><u>Standards for activities in the Medium Density Residential Zone</u></b>	<b><u>Non-compliance status</u></b>
<u>8.5A.1</u>	<i><u>For all restricted discretionary and discretionary activities under Rules 8.4 and 8.5, applications for resource consent shall include a statement confirming that the relevant design elements from the Residential Zone Design Guide 2019 have been considered, including a summary of any particular aspects of the proposal that have resulted from that consideration.</u></i>	<u>NC</u>

- e. Reject all other changes proposed to the zone provisions.

**Variation to Chapter 9 – High Density Residential Zone:**

- a. Add a new policy 9.2.2.3 as follows:

*“Require consideration of the relevant design elements identified in the Residential Zone Design Guide 2019”*

- b. Amend rule 9.3.2.2 as follows:

*“Where an activity does not comply with a Standard listed in the Standards tables, the activity status identified by the ‘Non-Compliance Status’ column shall apply”*

- c. Add a new information requirement rule at 9.5A as follows:

***“9.5A Rules – Standards for Restricted Discretionary and Discretionary Activities under Rules 9.4 and 9.5”***

	<b><i><u>Standards for activities in the High Density Residential Zone</u></i></b>	<b><i><u>Non-compliance status</u></i></b>
<u>9.5A.1</u>	<i><u>For all restricted discretionary and discretionary activities under Rules 9.4 and 9.5, applications for resource consent shall include a statement confirming that the relevant design elements from the Residential Zone Design Guide 2019 have been considered, including a summary of any particular aspects of the proposal that have resulted from that consideration.</u></i>	<u>NC</u>

- d. Reject all other changes proposed to the zone provisions.

**Variation to Chapter 16 - Business Mixed Use Zone:**

- a. Add a new policy 16.2.2.10 as follows:

“Require consideration of the relevant design elements identified in the Business Mixed Use Design Guide 2019”

- b. Amend rule 16.3.2.2 as follows:

“Where an activity does not comply with a Standard listed in the Standards tables, the activity status identified by the ‘Non-Compliance Status’ column shall apply unless otherwise specified.”

- c. Retain the existing assessment matters 16.4.4(a) and 16.4.4(b).

- d. Add a new information requirement rule at 16.5A as follows:

**“16.5A Rules – Standards for Restricted Discretionary and Discretionary Activities under Rules 16.4 and 16.5”**

	<b><u>Standards for activities in the Business Mixed Use Zone</u></b>	<b><u>Non-compliance status</u></b>
<u>16.5A.1</u>	<u>For all restricted discretionary and discretionary activities under Rules 16.4 and 16.5, applications for resource consent shall include a statement confirming that the relevant design elements from the Business Mixed Use Design Guide 2019 have been considered, including a summary of any particular aspects of the proposal that have resulted from that consideration.</u>	<u>NC</u>

- e. Reject all other changes proposed to the zone provisions.

## Variation to Chapter 31 - Signs:

- a. Add to policy 31.2.3.3(c) as follows (new text in underline):

*“is consistent with the relevant Council design guidelines, being either the Queenstown Town Centre Special Character Area Design Guidelines 2015, Wānaka Town Centre Character Guideline 2011, or the Arrowtown Design Guidelines 2016; or has considered the relevant design elements identified in the Business Mixed Use Design Guide 2019;”*

- b. Add a new information requirement rule at 31.5A as follows:

**“31.5A Rules – Standards for Restricted Discretionary and Discretionary Activities under Rules 31.4 and 31.5”**

	<b><u>Table 31.5A – District Wide Rules – Standards for Restricted Discretionary and Discretionary Activities</u></b>	<b><u>Non-compliance status</u></b>
<u>31.5A.1</u>	<i><u>For all restricted discretionary and discretionary activities under Rules 31.4 and 31.5 within the Business Mixed Use zone, applications for resource consent shall include a statement confirming that the relevant design elements from the Business Mixed Use Design Guide 2019 have been considered, including a summary of any particular aspects of the proposal that have resulted from that consideration.</u></i>	<u>NC</u>

- c. Reject all other changes proposed to the zone provisions.

## Appendix 2 - Table of Submitter Recommendations

<b>Original Submission No</b>	<b>Submitter Name</b>	<b>Submission Summary</b>	<b>Recommendation</b>	<b>Section where addressed</b>
OS3000.1	Eaon Fitzwater	That the height of buildings is limited to 7 meters throughout the Queenstown Lakes District unless it does not affect anyone else and blends into the landscape.	Strike out	4.5
OS3000.1	Nicky Wells	That the relief sought in submission 3000.1 is supported.	Strike out	4.5
OS3000.1	Richard Wells	That the relief sought in submission 3000.1 is supported.	Strike out	4.5
OS3109.23	Public Health South	That the intent of the Business Mixed Use Zone Design Guidelines be retained as notified.	Accept in part	4.6, Topic 2
OS3109.24	Public Health South	That the core principles of the World Health Organisation Health for All Strategy be addressed.	Accept in part	4.6, Topic 5
OS3109.25	Public Health South	That the impact on health outcomes and protection of the natural environment be considered in policy relating to the built environment.	Accept in part	4.6, Topic 5
OS3110.1	Roger Moseby	That the Business Mixed Use Zone Design Guidelines be rejected.	Reject	4.6, Topic 1
OS3143.1	Susan Robertson	That the Business Mixed Use Design Guidelines be rejected.	Reject	4.6, Topic 1
OS3211.3	Ken Muir	That the provisions of the Business Mixed Use Design Guide be rejected.	Reject	4.6, Topic 1
OS3215.1	Ngai Tahu Property Ltd	That an additional paragraph is included in the "Status of this Guide" section as follows: "The Design Guide complements the provisions of the District Plan. It provides examples of how to achieve good design and outlines the key issues to bear in mind when designing a development. The assessment of proposals against the Design Guide are not intended to be assessed in terms of compliance but rather whether a proposal is consistent with the good design outcomes promoted by the Design Guide. It is acknowledged that there may be suitable alternatives to the examples provided within the Design Guide based upon site specific characteristics and other factors that guide development."	Accept in part	4.6, Topic 4
OS3215.2	Ngai Tahu Property Ltd	That the text "on rare occasions" and "for quieter streets provided the majority of street frontage is for business/commercial use" from paragraph 3 of Section 01 be amended so that it reads: "Residential units at ground floor should be carefully considered along main roads. Ground floor, street facing residential units may be appropriate, however finished floor levels, setbacks and screening will need to be carefully considered so as to provide appropriate levels of privacy for residents."	Accept	4.6, Topic 4
OS3215.3	Ngai Tahu Property Ltd	That the words "to be at least 1.8m wide or greater" are deleted and "of suitable width to cater for pedestrian and universal access commensurate to the anticipated usage of the route" are inserted in its place, in Section 06, paragraph 5.	Accept	4.6, Topic 4

Original Submission No	Submitter Name	Submission Summary	Recommendation	Section where addressed
OS3215.4	Ngai Tahu Property Ltd	That the necessary further, consequential or alternative amendments are made to give effect to this submission and the purpose of the Resource Management Act.	Accept in part	4.6, Topic 4
OS3267.1	FII Holdings Ltd	That there be greater recognition in the Business Mixed Use Design Guidelines of the full range of activities anticipated within the Business Mixed zone.	Rejected	4.6, Topic 2
OS3267.2	FII Holdings Ltd	That within the Business Mixed Use Design Guidelines, any duplication and/or different controls to those already in the Business Mixed Use zone chapter be removed.	Accept in part	4.6, Topic 3
OS3267.3	FII Holdings Ltd	That more flexibility be provided within the Business Mixed Use Design Guidelines to reflect mixed use developments.	Accept in part	4.6, Topic 2
OS3267.5	FII Holdings Ltd	That amendments are made to the text of the Proposed District Plan and the Mixed Use Design Guidelines to ensure that Guidelines do not apply to permitted activities.	Accept	4.6, Topic 7
OS3316.2	Queenstown Airport Corporation	That the introduction of the Business Mixed Use Zone Design Guide is supported.	Accept	4.6, Topic 2
OS3316.3	Queenstown Airport Corporation	That Lemonwood, ornamental pear, copper beech and marble leaf are removed from the list of suggested plant species.	Accept	4.6, Topic 8
OS3343.5	Wayfare Group Ltd)	That the Design Guidelines are deleted, along with reference to them in the District Plan, or: That the respective policies and rules (including assessment matters) to "encourage" consistency (rather than require or ensure it); Remove any duplication between matters contained within the Design Guidelines and provisions already in the text of the PDP, and Standards Clarify that the Design Guidelines do not apply to permitted activities.	Accept in part	4.6, Topic 3
OS3383.7	Z Energy Ltd, BP Oil New Zealand Ltd, and Mobil Oil New Zealand Ltd	That Policy 16.2.2.10 be amended as suggested to recognise that only mixed use and/or intensive residential developments should be consistent with the Business Mixed Use Design Guide.	Accept in part	4.6, Topic 3
OS3383.8	Z Energy Ltd, BP Oil New Zealand Ltd, and Mobil Oil New Zealand Ltd	That Rule 16.4.4 be amended as suggested to recognise that only mixed use and/or intensive residential developments should be consistent with the Business Mixed Use Design Guide; or amend as suggested to recognise that there are existing commercial activities within the zone that have functional and/or operational requirements which impact on their ability to meet the 'typical' urban design outcomes envisaged in the Business Mixed Use Design Guide.	Accept in part	4.6, Topic 3

Original Submission No	Submitter Name	Submission Summary	Recommendation	Section where addressed
OS3383.9	Z Energy Ltd, BP Oil New Zealand Ltd, and Mobil Oil New Zealand Ltd	That Rules 31.2.3.3(c) be amended to recognise that only signage for mixed use and/or intensive residential developments must be consistent with the Business Mixed Use Design Guide.	Accept in part	4.6, Topic 3
OS3383.10	Z Energy Ltd, BP Oil New Zealand Ltd, and Mobil Oil New Zealand Ltd	That the Design Guide be amended to clarify that it relates to residential or mixed-use buildings only; or amend the Medium Density Design Guide as suggested to recognise that there are commercial activities that have functional and/or operational requirements which impact on their ability to meet the 'typical' urban design outcomes envisaged in the Design Guide.	Accept in part	4.6, Topic 3
OS3383.24	Z Energy Ltd, BP Oil New Zealand Ltd, and Mobil Oil New Zealand Ltd	That Rule 31.19.3.7 be amended to recognise that only signage for mixed use and/or intensive residential developments must be consistent with the Business Mixed Use Design Guide.	Accept in part	4.6, Topic 3
OS3383.25	Z Energy Ltd, BP Oil New Zealand Ltd, and Mobil Oil New Zealand Ltd	That Rule 31.19.4.4 be amended to recognise that only signage for mixed use and/or intensive residential developments must be consistent with the Business Mixed Use Design Guide.	Accept in part	4.6, Topic 3
OS3013.2	Pia Condren	That the Lower Density Residential Overview provisions of the Residential Design Guidelines be retained as notified.	Accept in part	4.7, Topic 11
OS3013.3	Pia Condren	That the Variation to Chapter 7 Lower Density Suburban Residential Zone for the Residential Design Guidelines be retained as notified.	Accept in part	4.7, Topic 11
OS3016.1	Gillian Macleod	That the use of photo 2 on page 13 is rejected.	Accept	4.7, Topic 14
OS3016.2	Gillian Macleod	That the use of photo 2 on pg 14 is rejected.	Accept	4.7, Topic 14
OS3016.3	Gillian Macleod	That the Residential Design Guideline is amended to include guidance for sloping sites.	Accept	4.7, Topic 12
OS3016.4	Gillian Macleod	That Photo 2 and Photo 3 on p.18 of the Residential Design Guideline are rejected.	Reject	4.7, Topic 14
OS3016.5	Gillian Macleod	That the Residential Zone Design Guide emphasise the planting of native, low-water need, and appropriate species.	Accept in part	4.7, Topic 13
OS3016.6	Gillian Macleod	That the Residential Zone Design Guide discourage nuisance species such as wilding or asthma causing trees, or inappropriately-scaled species.	Accept in part	4.7, Topic 13
OS3031.1	Bruce Steenson	That building height for flat and sloping sites in Wanaka be limited to no more than 7 metres.	Strike out	4.5
OS3060.2	SkyCity Entertainment Group Ltd	That the intent of Rule 9.4.6 requiring visitor accommodation in the High Density Zone be consistent with the Residential Zone Design Guide 2019 as notified.	Reject	4.7, Topic 10



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OS3060.3	SkyCity Entertainment Group Ltd	That the intent of the RD activities in Standards 9.5.1 - 9.5.8 in the Residential Zone Design Guide 2019 is supported.	Reject	4.7, Topic 10
OS3060.4	SkyCity Entertainment Group Ltd	That the intent of Policy 9.2.2.3 is supported.	Accept	4.7, Topic 10
OS3109.14	Public Health South	That a variety of housing, work and lifestyle options be provided that are economically viable and healthy for people and nature.	Accept in part	4.7, Topic 5
OS3109.15	Public Health South	That the World Health Organisation Sustainable Development Goals (energy efficient housing, increased density, healthy living, lowest possible cost) be considered.	Accept in part	4.7, Topic 5
OS3109.16	Public Health South	That insulation, ventilation, heating, double glazing, accessibility, for people with disabilities, design for disability, elderly, families or flatters, be considered.	Accept in part	4.7, Topic 5
OS3109.17	Public Health South	That eco-design and climate safe house design principles be considered from energywise.govt.nz.	Accept in part	4.7, Topic 5
OS3109.18	Public Health South	That safety, street lighting, and safe low impact (noise, conflicts) aspects be considered.	Accept in part	4.7, Topic 5
OS3109.19	Public Health South	That access to public and active transport links, cycle ways, walking paths suitable for buggies and kids bikes, bike racks, and a focus on low speed pedestrian centric environments be considered.	Accept in part	4.7, Topic 5
OS3109.20	Public Health South	That community connectivity, shared green spaces, picnic/BBQ areas and tables be considered.	Accept in part	4.7, Topic 5
OS3109.21	Public Health South	That elements to promote healthy lifestyles be considered, including playgrounds, pump tracks, skate parks, sports facilities, planting fruit trees, garden allotments, smoke free spaces, drinking fountains, and seating.	Accept in part	4.7, Topic 5
OS3109.22	Public Health South	That the impact on health outcomes and protection of the natural environment be considered in policy relating to the built environment.	Accept in part	4.7, Topic 5
OS3138.1	Brendon Cutt	That no changes are approved that would enable or encourage the establishment of new or extended commercial visitor accommodation developments within Visitor Accommodation Sub- Zones and Low Density [Suburban] residential zones.	Strike out	4.5
OS3138.2	Brendon Cutt	That no changes be made which will permit an increase in the density of visitor accommodation from new or extended commercially-backed developments in Medium and Low Density Zones.	Strike out	4.5
OS3191.2	Heritage New Zealand	That wording is added to the high density, medium density and lower density residential sections of the Residential Design Guide, requiring that designs must not detract from, dominate and/or denigrate the significance or values of recognised heritage items or features and that designs should demonstrate that they are compatible with these values, or words to like effect.	Reject	4.7, Topic 10

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OS3203.1	Wayne Foley	That the notified variation to Chapter 7 Lower Density Suburban Residential Zone as part of the Residential Design Guideline variation be rejected. Alternatively, that the Residential Design Guideline be amended to remove reference to irrelevant policies, remove the statement that the Design Guideline is applicable to permitted activities, and remove the requirement to provide a Design Statement.	Accept in part	4.7, Topic 9
OS3241.1	Friends of Wakatipu Gardens and Reserves and Associated Residents	That the Residential Design Guidelines and/or the associated variations to the residential provisions of Chapters 7, 8, and 9 of the Proposed District Plan be amended to provide greater recognition for Special Character Areas and residential amenity, in particular of the Park Street Special Character Area.	Reject	4.7, Topic 10
OS3241.2	Friends of Wakatipu Gardens and Reserves and Associated Residents	That Special Character Areas be recognised within the Residential Design Guidelines through requirements for building and development to sensitively respond to existing built form within the Special Character Area.	Reject	4.7, Topic 10
OS3241.3	Friends of Wakatipu Gardens and Reserves and Associated Residents	That Special Character Areas be provided for in the Residential Design Guidelines through any building or development adhering to any definition or character statement of a Special Character Area.	Reject	4.7, Topic 10
OS3241.4	Friends of Wakatipu Gardens and Reserves and Associated Residents	That Special Character Areas are provided for within the Residential Design Guideline through the encouragement of design solutions of a high standard which respond to, and reflect, residential character and amenity of the Special Character Area.	Reject	4.7, Topic 10
OS3241.5	Friends of Wakatipu Gardens and Reserves and Associated Residents	That Special Character Areas be provided for within the Residential Design Guidelines through any building and development being required to adhere to any Cultural Plan or Spatial Plan (or similar planning tool) which have been developed for the Special Character Area.	Reject	4.7, Topic 10
OS3241.6	Friends of Wakatipu Gardens and Reserves and Associated Residents	That the Residential Design Guidelines include any further amendments to support rezoning and revised provisions of the Proposed District Plan for the Special Character Area.	Reject	4.7, Topic 10
OS3241.7	Friends of Wakatipu Gardens and Reserves and Associated Residents	That any necessary or required amendments to the text of the residential chapters within the Proposed District Plan are made to reflect the Special Character Area provisions within the Residential Design Guidelines.	Reject	4.7, Topic 10
OS3264.1	Edwin Elliot	That the Residential Design Guidelines be rejected until they can be done properly with ratepayer input.	Reject	4.5
OS3267.4	Fill Holdings Ltd	That amendments be made to the text of the residential chapters, if necessary, to reflect the mixed use character of the Business Mixed Use Zone.	Reject	4.7, Topic 10
OS3280.1	Marama Hill Ltd	That the Chapter 7 provisions relating to the Residential Design Guidelines are deleted.	Accept in part	4.7, Topic 9
OS3280.2	Marama Hill Ltd	That the Residential Design Guide be amended to remove irrelevant policies.	Accept	4.7, Topic 11

Original Submission No	Submitter Name	Submission Summary	Recommendation	Section where addressed
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OS3280.3	Marama Hill Ltd )	That the statement that the Design Guide is applicable to permitted activities is rejected.	Accept	4.7, Topic 11
OS3280.4	Marama Hill Ltd )	That the requirement to provide a Design Statement be removed from the guide.	Accept	4.7, Topic 11
OS3280.5	Marama Hill Ltd )	That any alternative, additional or consequential relief necessary to address the matters raised in this submission occur.	Accept in part	4.7, Topic 11
OS3282.1	Queenstown Views Villas Ltd	That the Chapter 9 provisions relating to the Residential Design Guidelines are deleted.	Reject	4.7, Topic 9
OS3282.2	Queenstown Views Villas Ltd	That if the variation to Chapter 9 is not deleted then the Residential Design Guide be amended to remove the statement that the design guide is applicable to permitted activities.	Accept	4.7, Topic 11
OS3282.3	Queenstown Views Villas Ltd	That if the variation to Chapter 9 is not deleted then the requirement to provide a Design Statement be removed from the guide.	Accept in part	4.7, Topic 11
OS3282.4	Queenstown Views Villas Ltd	That any alternative, additional or consequential relief necessary to address the matters raised in this submission occur.	Accept in part	4.7, Topic 11
OS3316.1	Queenstown Airport Corporation	That the introduction of the Residential Design Guide is supported.	Accept	4.7, Topic 11
OS3316.4	Queenstown Airport Corporation	That Lemonwood, ornamental pear, copper beech and marble leaf are removed from the list of suggested plant species.	Accept	4.7, Topic 13
OS3343.4	Wayfare Group Ltd	That the Design Guidelines are deleted, along with reference to them in the District Plan, or: That the respective policies and rules (including assessment matters) to "encourage" consistency (rather than require or ensure it); Remove any duplication between matters contained within the Design Guidelines and provisions already in the text of the PDP, for example within matters of Restricted Control/Discretion and Standards Clarify that the Design Guidelines do not apply to permitted activities.	Accept in part	4.7, Topic 11
OS3347.1	Silver Creek Ltd	That the Residential Design Guide is rejected.	Reject	4.7, Topic 9
OS3379.1	Roderick Macleod	That a '1 hectare / 80 hectare variation' to mitigate against urban sprawl like now in place in the Wakatipu Basin also be put in place in the Upper Clutha to control development.	Strike out	4.5
OS3383.18	Z Energy Ltd, BP Oil New Zealand Ltd, and Mobil Oil New Zealand Ltd	That the purpose of the design guide is retained as notified insofar as it clarifies that the purpose is to achieve high-amenity built residential developments.	Accept	4.7, Topic 11

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OS3383.19	Z Energy Ltd, BP Oil New Zealand Ltd, and Mobil Oil New Zealand Ltd	That Policy 7.2.1.5 be amended as suggested to clarify that the Residential Zone Design Guide is applicable to residential buildings.	Reject	4.7, Topic 10