

Before the Hearings Panel

In the Matter of the Resource Management Act 1991

And

In the Matter of the Proposed Queenstown Lakes District Plan – Stage 3b

Legal Submissions on behalf of Arthurs Point Trustee Limited as the trustee of the Arthurs Point Land Trust

Dated: 24 July 2020

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INTRODUCTION

1. These legal submissions are presented on behalf of Arthurs Point Land Trustee Limited as trustee of the Arthurs Point Land Trust (**APLT**).
2. APLT lodged a submission on the Queenstown Lakes Proposed District Plan (**Proposed Plan**) – Stage 3b on 2 December 2019 (submitter 31042) (**Submission**).
3. APLT own the land at 182 Arthurs Point Road (**Property**), the legal descriptions of which are detailed in the Submission and the evidence of Emma Louise Ryder dated 29 May 2020.
4. The full extent of the Property is demonstrated by the below image extracted from the Submission:¹

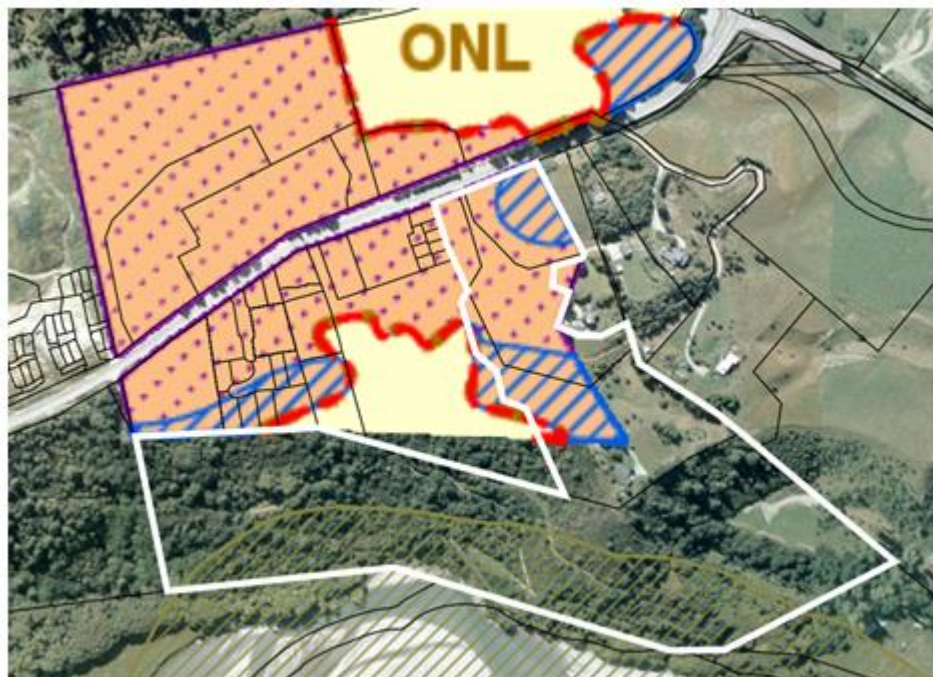


Figure 4 - The Submitter's Sites Relative to PDP – Stage 3 Zoning- Indicated by White Line

5. APLT was also the successor to a submission on the Proposed Plan – Stage 1. The Stage 1 decision zoned the southern portion of the Property Medium Density Residential Zone (**MDRZ**). APLT filed a notice of appeal dated 18 June 2018 in relation to the Stage 1 decision.
6. Stage 3b of the Proposed Plan addresses the upper terrace and the interface with the mid terrace of the Property (with zoning applied in the above image), which I will refer to as the **Site** for the remainder of these submissions. The middle portion of the Property (referred to as the **Mid Terrace**) is subject to Stage 1 appeals.

¹ APLT Submission, Figure 4.

7. These legal submissions serve as a summary to the relief sought by APLT in relation to Stage 3b of the Proposed Plan. The relief sought in relation to Stage 3b is fully addressed in the evidence of Ms Ryder. These submissions focus more specifically on the legal considerations relevant to your decision making regarding the Site.
8. It is APLT's case that (for the most part) the Site is capable of absorbing development to the level anticipated in the High Density Residential Zone (**HDRZ**), on the basis of the existing and legal environment, and that the HDRZ should have objectives, policies and rules (for instance height) targeted at that environment.

SUMMARY OF RELIEF SOUGHT

9. The relief sought by APLT is detailed in full in its Submission and in Ms Ryder's evidence (at paragraph [21]). By way of summary and update to take account of evidence filed on behalf of the Council, APLT seeks:
 - (a) rezoning of the Site to High Density Residential (**HDRZ**);
 - (b) the reduction of Building Restrict Area (**BRA**) 2 as supported by Ms Mellsop and Ms Turner to the western edge of the terrace and amendment to the controls that apply within the BRA;
 - (c) amendments to the controls applying to BRA 3 to better provide for the recommendations of Ms Mellsop (in particular deleting the non complying activity status for buildings);
 - (d) the addition of new objectives and policies in the HDRZ chapter targeted towards specific outcomes in 'Arthurs Point North';
 - (e) amendment to the activity status of visitor accommodation in the HDRZ from restricted discretionary to controlled; and
 - (f) an increase to the maximum building height for sloping sites within 'Arthurs Point North' to 12m.
10. APLT also sought that the neighbourhood currently proposed as Medium Density Residential (**MDRZ**) in the Arthurs Point community be rezoned to HDRZ and be referred to as the Arthurs Point Terrace precinct or neighbourhood. The Council has used the term 'Arthurs Point North', and we adopt that term for these submissions.
11. The area of 'Arthurs Point North' is identified in the Section 42A Report as follows:²

² Section 42A Report of Emma Jane Turner on behalf of Queenstown Lakes District Council, Arthurs Point North Rezoning – Provisions and Mapping, 18 March 2020 (**Section 42A Report**), Figure 5.



Figure 5: Aerial imagery taken 2019 of the area of Arthurs Point North shown outlined by the blue line. Snip taken 19/02/2020.

COUNCIL POSITION

12. The Council has partially accepted APLT's relief as it relates to zoning and the BRAs. In particular:
 - (a) The Council is proposing a mixed zoning for the Site, with HDRZ over the portion of the upper terrace that is flat (excluding BRA 3) and MDRZ over the remainder of the site, the portion that transitions down to the Mid Terrace.
 - (b) BRA 3 is proposed to be retained as notified, but BRA 2 is reduced to more accurately reflect the edge of the terrace.
13. A comparison of the notified zoning and BRAs compared to the Council's recommended zoning and BRAs is as follows:³

³ Section 42A Report, Figures 3 and 9.

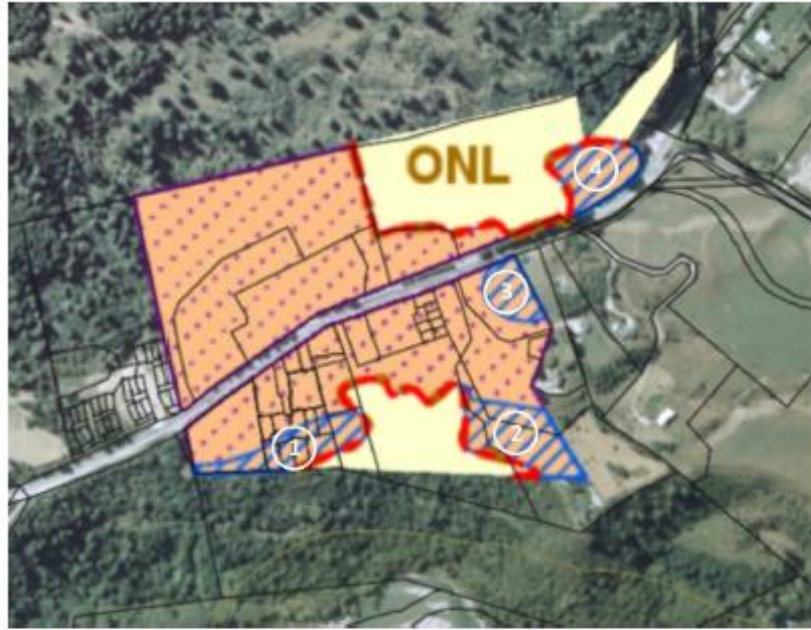


Figure 3: Notified plan map annotated with numbering for each BRA as identified as Figure 1 of Ms Mellsop's evidence.



Figure 9: Recommended mapping (zoning and overlays) of Emma Turner for Arthurs Point North. Snip taken 19/02/2020

14. The Council has accepted the inclusion of one policy, proposed policy 9.2.9.2 (9.2.2.1.X in the section 42A report), promoting a distinct streetscape for the Arthurs Point North neighbourhood that is based upon a shared and integrated public realm.
15. The remainder of the relief sought by APLT is rejected. Specifically:

- (a) The Council is rejecting the proposed targeted objectives and policies for Arthurs Point North on the basis that they are already covered by the HDRZ provisions and the Stage 3b Residential Guidelines. The Council also considered that it is *'more efficient and effective to have plan provisions apply to the whole zone, rather than many bespoke provisions for different areas of the same zone.'*⁴
 - (b) The Council does not consider that the sloping sections of Arthurs Point North are capable of absorbing a height of 12m. Little analysis is provided on this except for the fact that the proposed HDRZ areas are flat in any case and that 10m is more permissive than originally notified.
 - (c) Finally, the Council considers that making visitor accommodation a controlled activity would *'make it more similar to the BMUZ, without other more permissive building heights, retail, and commercial activities.'*⁵ The Council considers that a restricted discretionary activity status better meets the objectives and policies of the PDP HDRZ, specifically by managing adverse effects on residential amenity and traffic safety.
16. Ms Ryder has addressed the evidence of the Council in full. We make two minor submissions in relation to the Council evidence as follows:
- (a) The proposition that in some instances zone wide provisions are more efficient or effective than bespoke provisions is not an effects-based reason to decline APLT's proposed bespoke provisions.
 - (b) Even if efficiency or effectiveness of the Proposed Plan was a valid reason to decline bespoke relief, a zone guides the type of development that might be appropriate in an area; it does not denote the type of landscape of an area. Different landscapes (such as Arthurs Point North and Central Queenstown) can have the same zone (such as HDRZ), meaning bespoke provisions can be required. Ms Turner makes amendments to the HDRZ provisions specific to Arthurs Point North at Appendix 1 of the Section 42A Report, thereby acknowledging the occasional need for bespoke provisions within a zone.
 - (c) If the HDRZ does not have the more permissive building heights, retail and commercial activities it is not similar to the BMUZ, it is simply more enabling of visitor accommodation and that (as we will demonstrate) is appropriate within the legal environment of Arthurs Point North.

⁴ Section 42A Report, at [10.1].

⁵ Section 42A Report, at [10.9].

LEGAL TESTS

17. We have read the opening legal submissions by the Council, in particular the summary of the statutory functions of Councils and the legal tests relating to plan preparation at Appendix 1.
18. We agree with the Council's summary and do not propose to repeat the statutory functions and legal tests.

BACKGROUND – STAGE 1

19. The Mid Terrace of the Property is subject to a Stage 1 appeal and is out of scope for this hearing. The below image demonstrates the Stage 1 zoning of the Mid Terrace in comparison to Helen Mellsop's recommendation for the lower part of the Site:⁶

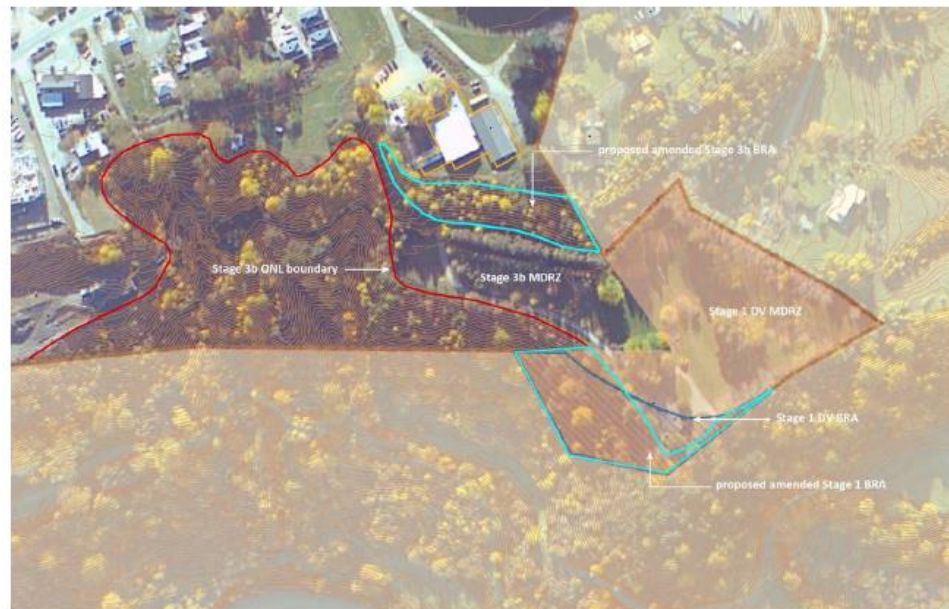


Figure 2: Recommended revised BRAs in south-eastern area of Arthurs Point (base map QLDC GIS with 0.5m LiDar contours).

20. APLT has not submitted on and is not proposing to pursue any relief in relation to the Stage 1 portion of the Property through Stage 3b.
21. In order to establish the receiving environment surrounding the Site, we provide the following background information on APLT's Stage 1 appeal. This background is also pertinent given the relief sought by Arthurs Point Outstanding Natural Landscape Society Incorporated (**APONLSI**) in its Stage 3b submission (submission 31041); particularly the proposed location of the Outstanding Natural Landscape (**ONL**) line along the (current) northern boundary of BRA 2, within APLT's Site.

⁶ Statement of Evidence of Helen Juliet Mellsop dated 18 March 2020 (**Mellsop Evidence**), Figure 2.

22. In the relevant Stage 1 decision, the Stage 1 portion of the Property was zoned MDRZ and the ONL and Urban Growth Boundary (**UGB**) are drawn around the outside of the Property's southern boundary. APLT appealed that decision (as it relates to zoning) and sought that the Stage 1 portion of the Property be zoned Rural Visitor – Arthurs Point or, in the alternative, that it be zoned HDRZ or MDRZ on the basis that it will be notified as Rural Visitor – Arthurs Point in a subsequent stage to the Proposed Plan. APLT did not seek any change to either the ONL or the UGB lines, which are in the same location as the Operative District Plan (**ODP**) Environment Court decision.⁷
23. APLT have spent significant money defending their position through this procedural hearing process, which resulted in the Court entirely adopting their position. The APONLSI is yet again seeking to re-litigate this point through Stage 3b.
24. APONLSI is a section 274 party to a Stage 1 appeal by the Upper Clutha Environmental Society Incorporated (**UCESI**) as well as to APLT's Stage 1 appeal. By way of section 274 notice, APONLSI was seeking amendment to the zoning of the Stage 1 portion of APLT's Property and the ONL/UGB lines at Arthurs Point.
25. In a procedural decision⁸ the Environment Court has determined the scope and jurisdiction available to the Court in relation to the zoning of the Stage 1 portion of APLT's Property, and the location of the ONL and UGB in relation to the Stage 1 portion of APLT's Property. The procedural decision has confirmed:
- (a) There is no scope in the APLT or UCESI appeals to address APONLSI's relief in relation the zoning of the Stage 1 portion of the Property,⁹ or the location of the ONL around the southern boundary of APLT's Property.¹⁰
 - (b) When APLT's appeal (which is limited to the zoning of the Stage 1 portion of the Property) is resolved, the decision will be for either MDRZ (as per the decisions version) or Rural Visitor – Arthurs Point, HDRZ or similar (as per APLT's notice of appeal).¹¹ This is because the existence of APONLSI's section 274 notice cannot expand the scope of APLT's appeal to down-zone the Stage 1 portion of the Property below MDRZ.
26. It is submitted that there is no scope in Stage 3b to amend the location of the ONL line so that it runs through the Site along the (current) northern boundary of BRA 2,

⁷ *Wakatipu Environmental Society Incorporated v Queenstown Lakes District Council (No 8)* EnvC Christchurch C003/02, 22 January 2002.

⁸ *Arthurs Point Trustee Limited as trustee of the Arthurs Point Land Trust & Others v Queenstown Lakes District Council* [2019] NZEnvC 14.

⁹ Above, at [41] – [42].

¹⁰ Above, at [51] – [52].

¹¹ Above, at [42].

because the location of the ONL line around the southern border of APLT's Property is subject to a Stage 1 decision which has not been appealed.

27. Further, and relevant to your Stage 3b decision making, it is submitted that the environment to the south of the Site (i.e. the Stage 1 portion of the Property) will not be Rural ONL but (at minimum) will be MDRZ or, if APLT's appeal is successful, will be HDRZ or similar.

LANDSCAPE

28. There has been multiple landscape assessments carried out in relation to the Site. Ms Ryder's planning evidence in these 3b proceedings relies on the existing and anticipated legal environment (as assessed from a landscape perspective in granted resource consents over the Site) and the landscape evidence provided by Ms Mellsop.
29. Our submission in relation to landscape matters is that the existing and legal environment at Arthurs Point North shows capability to absorb development, which is supported by landscape assessments previously undertaken to determine resource consent applications and the evidence of Ms Mellsop for the Council.

Legal Environment – The Law

30. The ability of the environment to absorb effects anticipated by the relevant zones is central to an assessment as to appropriate zoning under the Proposed Plan.
31. It is well established that the environment to be considered for resource consenting matters is the 'receiving environment'. The receiving environment includes the surrounding area both as it exists, including any permitted and consented activities already being conducted, and as it could potentially exist in the future, including modification by permitted activities and unimplemented resource consents that are likely to be implemented.¹²
32. Where there is a resource consent on the site to which the activity is sought, it can act as a 'consented baseline' so that the effects of the proposal are measured against the effects of the consent.¹³
33. It is acknowledged that this is not a resource consent hearing, but in considering the appropriate zoning for an area the receiving environment and any consented baselines cannot be disregarded. We understand this is the approach taken by the landscape architects who have provided evidence in the Proposed Plan.¹⁴

¹² *Hawthorn Estates v Queenstown Lakes District Council* [2006] NZRMA 424 at [84].

¹³ Above at [63].

¹⁴ In relation to the receiving environment, see for example Ms Mellsop's evidence at [7.19] where she refers to the MDR zoning of the Mid Terrace. For the consented baseline see Ms Mellsop's

34. A “realistic and factually based”¹⁵ assessment must be made to determine the nature of the receiving environment in order to consider its sensitivity to adverse effects. Relevantly, the Environment Court in *Emerald Residential Limited v The North Shore City Council*¹⁶ held:

“what must be considered is the impact of any adverse effects of the proposal on the environment. That environment is to be taken as it exists, with whatever strengths or frailties it may already have, which make it more, or less, able to absorb the effects of the proposal...”

35. Essentially a realistic and factually based assessment must be made to determine the capability of an environment to absorb development, and therefore the appropriate zoning for that environment. Development within the receiving environment or consented baseline will affect an area’s ability to absorb development.

Legal Environment – Consenting History

36. There are two previous resource consents and two current resource consent applications applicable to the Site, which are described in detail in the evidence of Ms Ryder. For the purposes of considering development, outcomes already enabled and considered appropriate on the site are worth summarising:
- (a) RM070900 was granted over the upper terrace of the Site in 2008 providing for 22 residential/visitor accommodation apartments, split across two buildings, with associated retail and commercial recreation facilities.
 - (b) RM180858 was granted over the upper terrace of the Site in 2018 providing for a 12m high, 106 room, hotel with ancillary facilities and 80 serviced apartments to be used for visitor accommodation.
37. RM070900 does not form a consented baseline, and cannot strictly speaking form part of the receiving environment as it has lapsed. RM180858 does form part of the receiving environment however is likely to be replaced by new resource consent application that have been lodged (RM191333 and RM200384).
38. These previous consents, particularly the 2018 consent, form a tangible example of development considered appropriate on the Site because they reflect the ability of the Site to absorb development. The previous consents demonstrate what the Council has previously considered the absorption capacity of the Site is on a landscape basis.

evidence generally where the consented environment is considered in relation to many sites in the area, a specific example is at [7.1].

¹⁵ *Arrigato Investments Ltd v Auckland Regional Council* [2002] 1 NZLR 323, at [36].

¹⁶ *Emerald Residential Limited v The North Shore City Council* A31/2004 at [27].

39. In our submission the absorption capacity of the site is not dictated by the previous zoning but rather by the landscape itself – something that does not change simply due to a proposed change in zoning.
40. Likewise, the offsite environment (the ‘receiving environment’) does not change simply because the zoning of an area changes. Due to longstanding Rural Visitor Accommodation zoning (**RVAZ**), Arthurs Point North is a high density visitor accommodation and residential node within an ONL.¹⁷

RELIEF SOUGHT

41. The relief sought by APLT seeks to zone the Site HDRZ, along with the wider area of ‘Arthurs Point North’ as described above at [11]. APLT also seeks the removal of BRA 2 and 3 as well as bespoke HDRZ provisions for Arthurs Point North, including a height limit of 12m on slopping sites, and a controlled activity status for visitor accommodation.

The Zoning

42. HDRZ is appropriate zoning when considered against existing and legal environment around the Site.
43. The operative RVAZ allowed buildings up to 12m in height¹⁸ and provided for visitor accommodation as a controlled activity.¹⁹ We have submitted that the zoning of a location does not dictate the landscape. However, in this instance, the previous zoning has contributed greatly to the receiving environment of Arthurs Point North because much of the development was undertaken in accordance with these planning controls.
44. It is submitted that whilst the Council is seeking to move away from the more permissive rules in the RVAZ, the receiving environment now reflects what the RVAZ enabled; in many instances 12m heights and controlled visitor accommodation can be absorbed because they are already present – the horse has bolted in relation to the Site.
45. In addition, the landscape of the Site has been assessed as capable of absorbing the level of development proposed by APLT’s relief. Specifically:
- (a) both previous consents involve a high density development of residential and visitor accommodation;

¹⁷ See for instance the landscape evidence of Stephen Russell Skelton dated 29 May 2020 (**Skelton Evidence**), at [26].

¹⁸ Operative District Plan, Chapter 12 Rural Visitor, Rule 12.4.5.2(i).

¹⁹ Above, Rule 12.4.3.2(vi).

- (b) both previous consents approved development within what is proposed to be BRA 2 under Stage 3b; and
- (c) RM180858 approved a visually modern development with a height of 12m.

46. In RM180858 (the 2018 consent), the main concern from the Council's peer review of the landscape report was the modern design of the proposed development – not the scale or height of the building or its ability to be absorbed into an environment adjacent to an ONL.²⁰ The Decision concluded that:²¹

Although it is acknowledged that the buildings are contemporary in nature, the buildings have responded to the landscape and given the large development site area, potential dominance effects are minimised. It is assessed that the effect of the built form on any persons is assessed as less than minor.

47. In our submission the Site remains capable of absorbing the development that APLT's relief would enable, and the offsite environment remains the urban visitor accommodation node established under the RVAZ.

48. There is capability for further high density visitor accommodation and residential development within the current footprint of Arthurs Point North, and it is submitted that that capability should be efficiently utilised to avoid development sprawl into the ONL or other sensitive landscapes within the district.

49. Utilising the Site as HDRZ within the current Arthurs Point North environment:

- (a) enables the Council's function to ensure that there is sufficient development capacity in respect of housing and business land to meet the expected demands of the district under the Resource Management Act 1991 (**RMA**);²²
- (b) complies with the Part 2 of the RMA requirement to protect outstanding natural landscapes from inappropriate subdivision, use and development;²³ and
- (c) helps address Strategic Issue 2 of the Proposed Plan (*Growth pressure impacts on the functioning and sustainability of urban areas, and risks detracting from rural landscapes, particularly its outstanding natural features and outstanding natural landscapes*) by supporting objectives 3.2.2 and 3.2.2.1, relevantly:

²⁰ RM180858 Decision, Appendix 5 – Council's Peer Review of Landscape Report/

²¹ RM180858 Decision, at 4.3.2 page 17.

²² RMA, Section 31(1)(b).

²³ RMA, Section 6(b).

3.2.2 *Urban growth is managed in a strategic and integrated manner.*

3.2.2.1 *Urban development occurs in a logical manner so as to:*

- a. *promote a compact, well designed and integrated urban form;*
- b. *build on historical urban settlement patterns;*
- c. *achieve a built environment that provides desirable, healthy and safe places to live, work and play;*
- ...
- e. *protect the District's rural landscapes from sporadic and sprawling development;*
- ...
- h. *be integrated with existing, and planned future, infrastructure.*

(d) supports additional policies of Chapters 3, including:

3.3.14 *Apply provisions that enable urban development within the UGBs and avoid urban development outside of the UGBs.*

3.3.30x *Avoid adverse effects on the landscape values of the District's Outstanding Natural Features and Outstanding Natural Landscapes from residential subdivision, use and development where there is little capacity to absorb change.*

The BRAs

50. Buildings within a BRA have a non-complying activity status.²⁴

51. Ms Mellsop (for the Council) has provided landscape evidence indicating that BRA 2 and BRA 3 have moderate landscape sensitivity, but have the capacity to absorb sensitively designed development. Ms Mellsop has suggested controls for development within those areas notified as BRA 2 and 3, which Ms Ryder has summarised and applied to her evidence. In particular, Ms Mellsop has indicated that development would need to be subject to the following controls:

- (a) a maximum building height of 8m;
- (b) low overall density of development (through limits on building coverage);
- (c) recessive external building materials; and

²⁴ Section 42A Report, at [3.13].

(d) indigenous landscaping that is sufficient to integrate development.

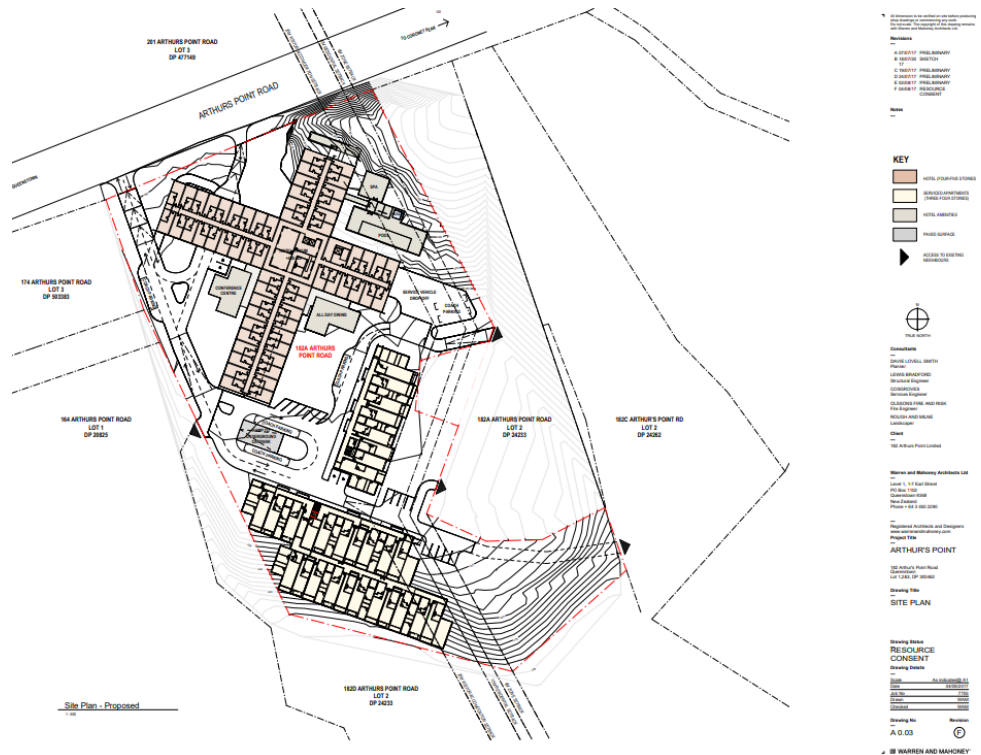
52. Ms Mellsoop has not indicated that the BRAs are the appropriate means of controlling development to ensure that it is sensitively design; in fact she was unaware of the rationale for the BRAs at the time of writing her evidence.²⁵ Ms Mellsoop has however reduced BRA 2 to properly align with the terrace edge.

53. APLT supports the evidence of Ms Mellsoop with regard to the ability to absorb sensitive development and the controls proposed to ensure that sensitivity, and the reduction of BRA 2. However, it is submitted that the non-complying BRA mechanism is not the most appropriate means of ensuring that the development is sensitively designed, and instead acts to sterilise the land – particularly given both BRAs are within the UGB.

54. Ms Ryder supports the partial removal of BRA 2 on the basis of:

- (a) Ms Mellsoop’s evidence that it has some capacity to absorb development that is recessive and well integrated with vegetation;²⁶ and
- (b) the previously consented development across BRA 2.

55. For example the below site plan for RM180858 (the 2018 consent) demonstrates the level of development that has been accepted over BRA 2:



²⁵ Mellsoop Evidence, at [7.1].
²⁶ Mellsoop Evidence, at [7.19].

56. APLT supports the reduced BRA suggested by Ms Mellisop if the provisions applying to the BRAs are amended to give effect to the recommendations of Ms Mellisop.
57. With regard to BRA 3, APLT supports the amendment in size on reliance of Ms Mellisop's assessment that the area had some limited capacity to absorb sensitively designed visitor facility development with appropriate controls. It is also noted that the plan for RM180858 (the 2018 consent) also appears to demonstrate development within BRA 3.
58. The application of the BRAs as notified has the effect of sterilising development within the UGB. Whilst protection of the values of the surrounding ONL is important, it is noteworthy that Policy 3.3.30x requires that avoidance of adverse effects of residential subdivision on the ONL *where there is little capacity to absorb change*. In our submission 'moderate landscape sensitivity' and limited capacity to absorb change do not qualify as limited capacity to absorb change. With the necessary controls in place, an assessment of the adverse effects on ONL values is appropriate at the resource consenting stage.
59. APLT seek the reduction of BRA 2 and amendments to the provisions applying to the BRAs with appropriate controls as suggested by Ms Mellisop. These controls could also appropriately enable low impact activities like retaining wall structures for trails.

Objectives, Policies and Rules

60. In addition, Ms Ryder has addressed her support for the objective and policies proposed by APLT, as well as the height increase and the change in activity status for visitor accommodation in her evidence. In relation to this relief it is submitted that:
- (a) The objectives and policies proposed by APLT support a linkage between the streetscape and buildings to help distinguish the development from the surrounding ONL, therefore assisting in defining the edge of Arthurs Point North without relying solely on the knoll beginning in the north-east corner of the Site.
 - (b) The landscape of Arthurs Point North differs to some other HDRZ landscapes and therefore it is appropriate to have targeted objectives and policies for the specific environment.

- (c) The specific environment of Arthurs Point North, specifically the legacy of the RVAZ and the terraced and sloped topography, makes the sloped environment capable of absorbing an increase in height to 12m.²⁷
- (d) The proposed change in activity status for visitor accommodation to controlled reflects the prior zoning and, more importantly, is supported by strategic objectives and policies. Specifically:

3.2.1.1 The significant socioeconomic benefits of well designed and appropriately located visitor industry places, facilities and services are realised across the District.

3.3.1 Make provision for the visitor industry to maintain and enhance attractions, facilities and services, including supporting infrastructure, within the Queenstown and Wanaka town centre areas and elsewhere in the District's urban areas and settlements at locations where this is consistent with objectives and policies for the relevant zone.

Conclusion on Relief

61. It is submitted that the relief sought by APLT in relation to the Site is the most appropriate way to achieve the purpose of the RMA, in a section 32 sense, because:
- (a) HDRZ across the Site, (with the additional overlay of the BRAs), allows the necessary urban development to be concentrated in an area capable of absorbing it and thereby preventing lower density urban sprawl in the ONL surrounding Arthurs Point North.
 - (b) The most appropriate way to achieve appropriate design for the environment is to provide a bespoke set of policies which, despite not having their own set of rules (except the proposed height), can guide the intention and application of the HDRZ rules at Arthurs Point North. In our submission Arthurs Point North can be distinguished from some of the other areas zoned HDRZ due to its landscape and it is therefore suited to have a bespoke set of provisions.
 - (c) The terraced nature of Arthurs Point North, and particularly the Site, will mean that the flat terraces will assist with absorbing the proposed 12m

²⁷ Skelton Evidence, at [30] – [34].

height on the slopes. Further, landscape evidence indicates that this height can be absorbed.²⁸

- (d) Aside from the longstanding RVAZ, the strategic objectives and policies for Chapter 3, which are now subject to a decision of the Environment Court,²⁹ demonstrate a clear intention to provide for visitor accommodation and for that visitor accommodation to be within town centres and settlements.

REBUTTAL EVIDENCE

62. Ms Ryder has responded to the evidence of Ms Turner and Ms Mellsop where appropriate. We therefore briefly address the issues raised on rebuttal by Ms Turner and Ms Mellsop.
63. Ms Turner has indicated that the BRAs cover areas where if built development occurred, there would be a more than minor impact.³⁰ However, the previous consents demonstrate that previously that landscape has been considered to be capable of absorbing development. Further, Ms Mellsop's assessment is that there is moderate landscape sensitivity with limited capacity to absorb sensitively designed development.³¹ It is submitted that if a landscape is capable of absorbing sensitively designed development then that development would not have a more than minor impact – a BRA with a non-complying activity status is therefore not required.
64. Both Ms Turner and Ms Mellsop both addressed BRA 3 in their rebuttal evidence; both considered that MDRZ on BRA 3 would be inappropriate due to the visibility from the ONL and adjacent areas, particularly rural areas to the east.³²
65. It is submitted that the position of the Site on the western face of the knoll means that some sensitively designed development could be absorbed, as indicated by Ms Mellsop. It is a matter of ensuring appropriate controls on the development, rather than sterilising the sensitive areas with a non-complying activity status. In this regard Ms Mellsop previously indicated potential controls, for instance a maximum building height of 8m, limits on building coverage to ensure a low overall density of development, recessive materials and indigenous landscaping.³³

²⁸ Skelton Evidence, at [30] – [34].

²⁹ *Upper Clutha Environmental Society Incorporated & Others v Queenstown Lakes District Council* [2019] NZEnvC 205.

³⁰ Rebuttal Evidence of Emma Jane Turner on behalf of Queenstown Lakes District Council, Planning: Arthurs Point North Rezoning, 12 June 2020 (**Turner Rebuttal**), at [4.2].

³¹ Mellsop Evidence, Appendix 1: QLDC Rural Visitor Zone Review Landscape Assessment, Helen Mellsop Landscape Architect, June 2019 (**Mellsop Report**), at 3.2.7

³² Turner Rebuttal, at [4.3] and Rebuttal Evidence Of Helen Juliet Mellsop on behalf of Queenstown Lakes District Council, Landscape, 12 June 2020 (**Mellsop Rebuttal**), at [6.2].

³³ Mellsop Report, at 3.2.7.

66. In her rebuttal evidence Ms Mellsop has refined her original assessment, noting that MDRZ density would not be appropriate for BRA 3 and an 8m height would not be appropriate at the eastern edge of BRA 3.³⁴ That does not mean that all development would be inappropriate, as the proposed BRA would suggest, because appropriate controls can address the landscape concerns.
67. Ms Turner and Ms Mellsop also indicated that BRA 3 acts as the 'end' of the Arthurs Point North Area.³⁵ Sensitively designed development on the western face of the knoll is unlikely to affect the knoll's ability to act as the 'end' of Arthurs Point North given the proximity of the knoll to existing and enabled development. Further, development on the knoll can reiterate the urban edge of Arthurs Point North better distinguishing between Arthurs Point North and the ONL.

CONCLUSION

68. It is evident that the intention of Stage 3b, as it relates to Arthurs Point North, is to ensure that future development is more sensitive to the surrounding ONL. This is inline with the requirements of the RMA and is also inline with the strategic direction in Chapters 3 and 6.
69. However, new zoning and provisions cannot wipe the slate clean and erase what may or may not be considered insensitive development – it forms part of the environment.
70. In our submission, it is also consistent with the requirements of the RMA and the strategic direction in Chapters 3, 4 and 6 to concentrate development in areas where development already exists, so as to protect those undeveloped areas – like the ONL surrounding APLT. It is on that basis that APLT's submits that its Site should be zoned HDRZ, and that development in areas with moderate landscape sensitivity adjacent to HDRZ areas is more appropriate than sprawling development into the surrounding ONL. It is also submitted that bespoke provisions can and should be utilised to acknowledge Arthurs Point North is not 'the usual' HDRZ and respond accordingly.
71. With regard to the height increase and visitor accommodation, APLT submits that its relief is supported due to the existing and legal environment of Arthurs Point North.

³⁴ Mellsop Rebuttal, at [6.2].

³⁵ Turner Rebuttal, at [4.2] and Mellsop Rebuttal, at [6.2].

72. For the reasons detailed above, and in particular the submissions at paragraphs 44, 46 – 47 and 49 – 50, it is submitted that APLT's proposed relief is the most appropriate means of achieving the purpose of the RMA.



Joshua Leckie
Council for Arthurs Point Land Trust