

## **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 Woods Limited Partnership****

Dated: 24 July 2020

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## INTRODUCTION

1. These legal submissions are presented on behalf of Arthurs Point Woods Limited Partnership (**APWLP**).
2. APWLP lodged a submission on the Queenstown Lakes Proposed District Plan (**PDP**) – Stage 3b on 2 December 2019 (submitter 31031) (**Submission**).
3. APWLP owns the land at 155 Arthurs Point Road, the legal descriptions of which is Lot 3 DP 331294. I will refer to APWLP's property as the **Site** for the remainder of these submissions. The Site is fully described in the Submission and the evidence of Mr Freeman and Mr Skelton, both dated 29 May 2020.

## SUMMARY OF RELIEF SOUGHT

4. The Site has been zoned Medium Density Residential Zone (**MDRZ**) with a Visitor Accommodation Sub-Zone (**VASZ**) in the PDP. APWLP support this zoning and seek minor amendments to the MDRZ as follows:
  - (a) amendment to Rule 8.5.1.2 to maintain a permitted height of 8m at Arthurs Point but to include a restricted discretionary height of 8 – 12m at Arthurs Point; and
  - (b) amendment to Rule 8.5.5 in the MDRZ to allow development of one residential unit per site for sites that are less than 250m<sup>2</sup>.
5. The relief sought by APWLP is bespoke to the extent that it applies to 'Arthurs Point' rather than to the Site of MDRZ more generally. In that regard the relief is to apply to what the Queenstown Lakes District Council (**Council**) is referring to as 'Arthurs Point North', and on that basis we refer to 'Arthurs Point North' throughout these submissions.
6. For completeness, we have extracted the following diagram from the Section 42A Report which demonstrates the extent of 'Arthurs Point North':



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

7. The Council has declined APWLP's relief. The Council has not specifically addressed the relief sought by APWLP, but simply indicates that more permissive rules for Arthurs Point North are not appropriate or required, and 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 zone.'*<sup>1</sup>
8. Mr Freeman has addressed the Council's position in relation to APWLP's relief, and has pointed to various bespoke provisions within the MDRZ for specific areas of the zone.
9. In addition to Mr Freeman's comments on the Council's position, it is submitted that 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 Arrowtown) can have the same zone (such as MDRZ), 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.

<sup>1</sup> 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**), at [11.2].

10. In our submission, if a bespoke set of controls is the most appropriate then they should be provided for.
11. In relation to the relief by APONLSI, the Council has rejected APONLSI's relief that the Site should be rezoned to Rural.<sup>2</sup> Ms Mellsop has indicated in her evidence that the ONL can be protected without rezoning the Site (and others notified MDRZ) to Rural.<sup>3</sup> Ms Turner has recorded that the location of the MDRZ adjacent to an ONL is appropriate in the context of an alpine village,<sup>4</sup> and this is supported by Mr Skelton.<sup>5</sup>
12. The Council has also addressed APONLSI's relief in relation to the ONL and, as indicated previously in these submissions, records that *'the APONLS submission as to the ONL (and UGB) boundary go well beyond the scope of the notified ONL/UGB, to incorporate the entire Arthurs Point area, which were subject to review and zoning in Stage 1.'*<sup>6</sup> In relation to the part of APONLSI's submission which is in scope, the Council supports the notified version (including the location of the ONL along the eastern boundary of the Site).<sup>7</sup>
13. APWLP support the Council's position in relation to APONLSI's relief.

## LEGAL TESTS

14. 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.
15. We agree with the Council's summary and do not propose to repeat the statutory functions and legal tests.

## LEGAL ENVIRONMENT

16. The ability of the Arthurs Point North environment to absorb effects from development on the Site is central to an assessment as to appropriate zoning provisions under the PDP.
17. 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

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<sup>2</sup> Section 42A Report, at [4.7]

<sup>3</sup> Statement of Evidence Of Helen Juliet Mellsop on behalf of Queenstown Lakes District Council, Landscape, 18 March 2020, at [7.16].

<sup>4</sup> Section 42A Report, at [3.11].

<sup>5</sup> Evidence of Stephen Russell Skelton dated 29 May 2020 (**Skelton Evidence**), at [37].

<sup>6</sup> Section 42A Report, at [3.9].

<sup>7</sup> Section 42A Report, at [3.8] and [3.10].

the future, including modification by permitted activities and unimplemented resource consents that are likely to be implemented.<sup>8</sup>

18. 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 a proposal are measured against the effects of the pre-existing resource consent.<sup>9</sup>
19. It is acknowledged that this is not a resource consent hearing, but in considering the appropriate zone provisions for an area the receiving environment and any consented baselines cannot be disregarded. We understand this is the approach taken by the planners and landscape architects who have provided evidence in the PDP.
20. In the instance that a plan does ignore aspects of a receiving environment or consented baseline this can result in anomalies that may effect plan integrity, as in the public's confidence in consistent administration of the plan and the district.
21. The zone provisions should therefore reflect the receiving environment. A "realistic and factually based"<sup>10</sup> 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*<sup>11</sup> 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..."*

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

## Receiving Environment

23. Due to longstanding Rural Visitor zoning (**RVZ**), the Arthurs Point North receiving environment is a high density visitor accommodation and residential node within an ONL. As recorded by Mr Skelton in his evidence, the surrounding environment has developed pursuant to the RVZ which provided for more intensive

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<sup>8</sup> *Hawthorn Estates v Queenstown Lakes District Council* [2006] NZRMA 424 at [84].

<sup>9</sup> Above at [63].

<sup>10</sup> *Arrigato Investments Ltd v Auckland Regional Council* [2002] 1 NZLR 323, at [36].

<sup>11</sup> A31/2004 at [27].

development.<sup>12</sup> The built form legacy from the RVAS is obvious, and Mr Skelton notes that it is the context of (and adjacent to) that built form that the Site is viewed – with RVZ development in the foreground.<sup>13</sup>

24. Despite the more intensive immediate receiving environment, Mr Skelton specifically records that the ‘urban settlement’ has not degraded the wider ONL – the features of which remain dominant.<sup>14</sup>

### **Consented Baseline**

25. Two recent consents over the Site act as a consented baseline for additional development, and form part of the receiving environment. One of the consents in particular is relevant to the assessment of the permitted density standard, being RM190926.
26. RM190926 was granted in April this year and it subdivides the Site into 34 allotments, one of which is an access allotment. Eight lots, Lots 1 – 12, are under 250m<sup>2</sup> net site area. All of the lots are subject to strict controls, of relevance Lots 1 – 12 are restricted to one residential unit per site.
27. An eight year land use consent has been issued authorising the right to build one residential unit on each of Lots 1 – 12, given Rule 8.5.5 does not permit that development.
28. However, as identified in the Submission and Mr Freeman’s evidence, if a purchaser of Lots 1 – 12 does prior to the consent lapsing (which might be due to various reasons that do not need to be assessed here) then they will lose the ‘right to build’. This is not an issue specific to the Site, it could apply to another consented development or it could even apply to a pre-existing lot less than 250m<sup>2</sup>.

### **RELIEF SOUGHT – HEIGHT**

29. As notified, the permitted height standard (Rule 8.5.1.2) in the MDRZ is 8m for both flat and sloping sites. Non-compliance with the standard requires resource consent on a non-complying basis.
30. APWLP supports that permitted height standard, but seeks that non-compliance between 8 – 12m requires resource consent on a restricted discretionary basis, with resource consent on a non-complying basis required for anything over 12. The restricted discretionary regime would only apply on land 20m or more away

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<sup>12</sup> Skelton Evidence, at [26].

<sup>13</sup> Skelton Evidence, at [20].

<sup>14</sup> Skelton Evidence, at [22] – [23].

from the ONL boundary, and the matters of discretion would relate to building design, appearance, sunlight, amenity (including visual) and privacy effects.

31. This is appropriate relief when considered against the existing and legal environment on and around the Site.
32. In our submission, the absolute height limit of 8m does not reflect the receiving environment of Arthurs Point North, which is capable of absorbing additional height. The notified height limit is not the most appropriate way of achieving the purpose of the Act, or the strategic direction provisions which have been the subject of an Environment Court decision. In our submission the most appropriate means of achieving the purposes of the Act and the higher order provisions is to allow for a restricted discretionary height limit of 8 – 12m to enable additional height where it can be demonstrated that the effects of that can be appropriately assessed.

### **Height in the MDRZ**

33. The RVZ allowed buildings up to 12m in height.<sup>15</sup> It is submitted that whilst the Council is seeking to move away from the more permissive rules in the RVZ, the receiving environment now reflects what the RVZ enabled; in many instances 12m heights can be absorbed because they are already present – the ship has sailed.
34. Mr Skelton has also provided detailed landscape evidence as to why the Site is capable of absorbing heights of up to 12m that are set back at least 20m from the ONL. Specifically:
  - (a) The steep slope allows the height to be visually absorbed.<sup>16</sup>
  - (b) The planned high stature beech revegetation will buffer and screen any development on the Site from the adjoining property to the north.<sup>17</sup>
  - (c) The landform and vegetation to the east and west of the site will mitigate against ridge and skyline breaches.<sup>18</sup> View from these vantage points are of mountains and gorge to the south and these views will not be affected.<sup>19</sup>
  - (d) A hard edge interface of dense urban areas against natural areas creates a clear, defensible boundary and highlights the natural values of the ONL.<sup>20</sup> This is already evident at Arthurs Point North and the 20m setback

<sup>15</sup> Operative District Plan, Chapter 12 Rural Visitor, Rule 12.4.5.2(i).

<sup>16</sup> Skelton Evidence, at [30].

<sup>17</sup> Skelton Evidence, at [32].

<sup>18</sup> Above.

<sup>19</sup> Skelton Evidence, at [32].

<sup>20</sup> Skelton Evidence, at [25].

is likely to ensure that any 12m buildings sit within that defensible boundary.

- (e) The height it unlikely to add to shading effects on the winter midday and afternoon sun as it is already largely shaded by the northern mountain slopes.<sup>21</sup>
  - (f) The 20m setback from the northern boundary will reduce any screening effect future buildings may have on the natural values of the adjacent ONL.
  - (g) The proposed matters of discretion give Council the appropriate control at the time of consenting, especially given they include visual amenity effects.<sup>22</sup>
35. Overall, Mr Skelton considered that a 12m building height on the Site would not detract from the landscape character or visual amenity values.<sup>23</sup>
36. It is submitted that the specific environment of Arthurs Point North, specifically the legacy of the RVZ and the terraced and sloped topography amidst the vast and dominant ONL, makes the environment capable of absorbing an increase in height to 12m.
37. The terraced nature of Arthurs Point North will mean that the flat terraces will assist with absorbing the proposed 12m height on the slopes. Development on the terraces of Arthurs Point North will increase, even more so if the High Density Residential zoning (as recommended by Ms Turner and Ms Mellsop and supported by both Mr Freeman and Mr Skelton) is accepted. The HDRZ has a permitted height of 12m on flat land and up to 15m as a restricted discretionary activity. Development within the proposed HDRZ areas will therefore assist with absorbing height of up to 12m on the Site when viewed from Arthurs Point Road, and will mean that the height is not out of place when viewed from the vantage points further afield (of which there are very few).
38. The relief proposed by APWLP and supported by Mr Skelton should be granted because it enables the Site (which is capable of absorbing such development from a landscape perspective) to be utilised to provide a greater level of urban development within an area already dedicated to urban development. Enabling a greater MDRZ height at the Site:
- (a) enables the Council's function to ensure that there is sufficient development capacity in respect of housing and business land to meet the

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<sup>21</sup> Skelton Evidence, at [33].

<sup>22</sup> Skelton Evidence, at [34].

<sup>23</sup> Skelton Evidence, at [34].



expected demands of the district under the Resource Management Act 1991 (RMA);<sup>24</sup>

- (b) complies with the Part 2 of the RMA requirement to protect outstanding natural landscapes from inappropriate subdivision, use and development;<sup>25</sup> 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:

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*

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<sup>24</sup> RMA, Section 31(1)(b).

<sup>25</sup> RMA, Section 6(b).

*Natural Landscapes from residential subdivision, use and development where there is little capacity to absorb change.*

- (e) allows greater design flexibility, meaning that the focus will be on achieving the best design outcomes for the Site and surrounding environment rather than addressing height requirements; and
  - (f) retains the Council's power to reject an application that has adverse effects relating to building design, appearance, sunlight, amenity (including visual) or privacy.
39. It is submitted that the addition of a restricted discretionary height of 8 – 12m, at least 20m from the ONL is the most appropriate way to achieve the purpose of the Act because it balances the need to protect ONL values with the need to meet urban demand.

### **Rebuttal Evidence**

40. Mr Freeman and Mr Skelton have addressed the section 42A report and the landscape evidence as it relates to the Site and the proposed increase in height at Arthurs Point North.
41. Ms Mellsop, Landscape Architect for the Council, also provided rebuttal evidence in relation to Mr Skelton's evidence. Ms Mellsop does not consider that height over 8m can be absorbed into the environment because:
- (a) the Site forms part of the lower slopes of Mt Dewar and but for the resource consents and the MDRZ (and presumably then the previous RVZ) the Site would form part of the ONL;
  - (b) the ONL surrounds the Site on three sides;
  - (c) the Site is highly visible from surrounding areas;
  - (d) wildling conifers cannot be relied on to mitigate development when they will be removed;
  - (e) the height increase, even as a restricted discretionary activity, would increase the bulk and dominance;
  - (f) the increased bulk would not be screened or integrated; and
  - (g) the steep slope and beech reforestation do not offer sufficient mitigation.

42. Ms Mellsop's expert opinion is contrary to Mr Skelton's expert opinion, which is that up to 12m can be absorbed in the context of the steep slopes and the urban settlement receiving environment.
43. It is submitted that Ms Mellsop's evidence also fails to consider the effect of setting back any development over 8m at least 20m from the ONL.
44. Whilst Mr Skelton does not rely on wildling conifers to mitigate development, it is submitted that the wildling conifers do in fact form part of the receiving environment until there is some firm action to address them identified and which is likely to be implemented.
45. It is further submitted that Ms Mellsop's evidence fails to provide adequate weight to the receiving environment of the landscape. In particular Ms Mellsop does not consider the fact that where the Site is visible, it is visible in the context of the urban settlement, often with development in the foreground. The urban foreground, or the urban node when viewed from further afield, is clearly demonstrated by the photographs attached to Mr Skelton's evidence.
46. The photographs from further afield are also useful to demonstrate Mr Skelton's assessment that '*Where the site is visible, it is dominated by the surrounding visible and natural landscape with particular regard to the Shotover River, Bowen Peak and the Harris Mountains.*'<sup>26</sup> In other words, where the site is visible the development will be absorbed into the surrounding urban development, which is dominated by the vast natural landscape surrounding it.

## RELIEF SOUGHT – DENSITY

47. As notified, the permitted density standard (Rule 8.5.5) is for one residential unit per 250m<sup>2</sup> net site area. Non-compliance with the standard requires resource consent on a restricted discretionary basis.
48. APWLP does not object to the permitted standard of one residential unit per 250m<sup>2</sup> net site area, but seeks that sites of less than 250m<sup>2</sup> are also entitled to a permitted density of one residential unit per site. Specifically, APWLP seek the following (underlined) amendment:

*The maximum site density shall be one residential unit per 250m<sup>2</sup> net site area, or one residential unit per site for any sites less than 250m<sup>2</sup> net site area.*

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<sup>26</sup> Skelton Evidence, at [23].

## Subdivision and Dwellings

49. In our submission, the principle feature of subdivision is that it produces a framework of land ownership which provides the basis for controls (for example height to boundary mechanisms) and expectations relating to future land use. Subdivision and land use are therefore intrinsically connected.
50. The expectations of subdivided land are its use for subsequent dwellings. As a subdivision consent forms part of the legal environment, the use for subsequent dwellings forms part of the legal environment; which has been recognised by the Environment Court in *Blueskin Bay Forest Heights Ltd v Dunedin City Council*.<sup>27</sup>

*But rather straightforward is the proposition that the subdivision is now part of the existing environment. (see Queenstown Lakes DC v Hawthorn Estate Ltd [2006] NZRMA 424). If it is part of the existing environment, then the effects of the now implemented subdivision consent, with the twelve lots and covenant, on the environment forms part of the background against which we will assess the effects of the land use consent. Therefore, we consider it is part of the existing environment under section 104(1)(a).*

51. As a subdivision consent forms part of the existing environment, the effects of that subdivision consent form part of exiting environment. The effects of a subdivision consent include the acceptance that some form of development is appropriate on the subdivided site given the “inevitable effects” of the future land use of a dwelling are considered at the time of the subdivision consent.<sup>28</sup>
52. In subdivision consent RM190926, the Council (as the decision maker) expressly addressed the size of the allotments adjacent to the ONL. The decision states:

*In total, 14 allotments are proposed adjacent to the rural zone/ONL. While these lots have a limited land area, the applicant has demonstrated that buildings are able to be feasibly designed to fit on these allotments ...*

53. In granting resource consent RM190926 the Council also consider that there were no adverse effects on the ONL. The decision for RM190926 states:<sup>29</sup>

*In this instance, the land to the north is identified as an ONL. The applicant has proposed a range of controls with regard to built form on the allotments that are adjacent to this ONL to ensure effects on the ONL are minimised. There is no evidence feature that separates the ONL from the subject site where future buildings are proposed. As such, it [is] assessed*

<sup>27</sup> *Blueskin Bay Forest Heights Ltd v Dunedin City Council* [2010] NZEnvC 177 at [15].

<sup>28</sup> *Kircher v Marlborough District Council* C090/09 at [52]

<sup>29</sup> RM190926, at 6.1 page 17.

*that potential effects on landscape have been mitigated to an appropriate degree. ... given the design controls proposed by the applicant to be put as a consent notice on the allotments [particularly Lots 1 – 12] and the distance between these allotments and public places, it is assessed that the ONL will not be unduly affected.*

## **Density in the MDRZ**

54. The PDP recognises the intrinsic connection between subdivision and residential land use by permitting residential units in various circumstances. However, the lack of a permitted density standard for existing sites under 250m<sup>2</sup> creates a gap which is particularly significant for APWLP in light of the consented baseline on the Site, which provides for eight (out of 34) lots that are under 250m<sup>2</sup>.
55. The rationale behind Rule 8.5.5 is clear; there is no intention for there to be lots under 250m<sup>2</sup> in the MDRZ. Subdivision within the MDRZ is a restricted discretionary activity,<sup>30</sup> and the minimum lot size for subdivision is 250m<sup>2</sup>.<sup>31</sup> Subdivision creating an allotment less than 250m<sup>2</sup> in the MDRZ is non-complying.<sup>32</sup>
56. However, there are situations where there are already consented lots smaller than 250m<sup>2</sup> – such as is the case at the Site.
57. In addition, the fact subdivision resulting in allotments less than 250m<sup>2</sup> is non-complying does not mean that there will never be a subdivision resulting in an allotment or allotments less than 250m<sup>2</sup>; rather, it means that an application resulting in an allotment or allotments less than 250m<sup>2</sup> will need to pass the section 104D gateway test as well as the section 104 effects assessment. That assessment will have included consideration of the effects of a dwelling.<sup>33</sup> For a potential purchaser to then be required to get their own non-complying resource consent to build on their lots seems costly and inefficient.
58. In our submission, there is a gap in the density standard which is evidenced by the historic subdivision consents; it does not provide for existing legally created sites. Rule 8.5.5 therefore cannot represent the most appropriate means of achieving the purpose of the Act. Provision for a residential unit for Sites under 250m<sup>2</sup>, as proposed by APWLP, would fill the gap and resolving the issues raised.

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<sup>30</sup> PDP, Chapter 27 Subdivision, Rule 27.5.7.

<sup>31</sup> PDP, Chapter 27 Subdivision, Rule 27.6.1.

<sup>32</sup> PDP, Chapter 27 Subdivision, Rule 27.5.19.

<sup>33</sup> *Kircher v Marlborough District Council* C090/09 at [52]

## APONLSI SUBMISSION AND FURTHER SUBMISSION

59. Arthurs Point Outstanding Natural Landscape Society Incorporated (**APONLSI**) lodged a submission in relation to Arthurs Point North, and also made a further submission on APWLP's Submission. Of relevance, APONLSI sought that the Site be zoned Rural and that the Outstanding Natural Landscape (**ONL**) line be amended as shown in the below image:



Figure 2: Location of ONL boundaries as proposed by Arthurs Point Outstanding Natural Landscape Incorporated (Figure 2 of their submission).

60. The relief proposed by APONLSI moves ONL line from around the outside of the eastern, northern and western boundaries of the Site to include the Site (with the exception of the access) within the ONL.
61. Amendment to the ONL on the western and northern boundary of the Site is out of scope because it is subject to a decision in Stage 1 of the PDP. The image below shows that only the ONL on the eastern boundary of APWLP's Site is relevant to Stage 3b:



Figure 1: Notified PDP Zoning of Arthurs Point North as part of 3b of the Proposed District Plan. Snip taken 02/03/2020

62. With regard to the ONL line on the eastern boundary of the Site, Mr Skelton has provided evidence that the ONL as notified (above in Figure 1) is appropriate.<sup>34</sup> With regard to APONSLI's further submission regarding zoning, APWLP support the notified zoning of MDRZ and VASZ, and seek two (more enabling) amendments. The more enabling amendments are supported by Mr Skelton as detailed in these submissions and his evidence.
63. It is therefore submitted that the notified location of the ONL along the eastern boundary of the Site should be retained, and that any amendment to the ONL line along the western and northern boundaries of the Site is out of scope. It is also submitted that the notified zoning of MDRZ and VASZ should be retained.

## CONCLUSION

64. 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.

<sup>34</sup> Skelton Evidence, at [21] and [37].

65. Mr Skelton's evidence is that the height of up to 12m can be absorbed on the steep slopes of the Site due to the 20m setback and the surrounding urban settlement that the Site sits within. The restricted discretionary activity status sought would ensure that the Council retains appropriate control to assess the effects of that height.
66. Further, as Mr Skelton describes, when viewed from afar the development at Arthurs Point North is dominated by the vast ONL. It is therefore submitted that in a situation where the landscape is capable of absorbing an increased height, as sought in APWLP's relief, that increased height is the most appropriate means of achieving the purpose of the Act because it balances the need for residential development with the protection of the ONL values.
67. With regard to the density rule, the relief sought is about filling a gap to ensure that the PDP can be effectively administered. It is inefficient that previously consented allotments anticipating residential development can lose their development rights.



Joshua Leckie

Council for Arthurs Point Woods Limited Partnership