BEFORE THE INDEPENDENT HEARING COMMISSIONERS AT QUEENSTOWN

Under	the Resource Management Act 1991
In the Matter	of the hearing of submissions on the Inclusionary Housing Variation to the Queenstown Lakes Proposed District plan

Synopsis of legal submissions for **Trojan Helmet Limited and Boxer Hill Trust** (Submitters 181) and **Gibbston Valley Station** Limited (Submitter 168)

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MAY IT PLEASE THE PANEL

INTRODUCTION

1. These submissions are made on behalf of Boxer Hill Trust, Trojan Helmet Limited, (Submitters 181) and Gibbston Valley Station Limited (Submitter 168), (together the **Submitters**).

Scope of these submissions

2. The Submitters have had the benefit of reviewing the original and/or legal submissions filed by various other developer submitters, including MetlifeCare, Willowridge, Universal Developments, the Anderson Lloyd parties, Kingston Flyer, Winton, Fulton Hogan, Submitters 112, 113, 114, 115, and 118, which address in a very comprehensive manner the important matters of the legality of the proposed variation, its potential significant costs as compared with possible unquantified (but low-modest at best) benefits, the relevance of the High Court's decision in the *Infinity* case, and the (in)adequacy of the section 32 analysis. The Submitters fully endorse the arguments advanced on these points, accepting that they correctly state the applicable law and accurately summarise the relevant evidence and the weight that should be afforded. For efficiency, rather than repeat the points made, the Submitters adopt the arguments advanced by these submitters in all respects.

3. These submissions will focus on the key points not addressed by others arising in relation to the Submitters' specific submission points.

Submitters' Position in Summary

4. The Submitters' position, in summary, and in very straightforward terms, is that:

   (a) Housing affordability is a profound issue for this District, and nationally. The Council's endeavour to take steps to address it is commendable in an idealistic sense, however the Variation is misguided, misdirected, and a wholly inappropriate way to address this important issue.

   (b) The Variation wrongly seeks to tax the very sector, residential developers, that contribute to solving the housing affordability problem. Residential

developers build houses. Building houses increases housing supply. Increasing supply does not lead to housing becoming affordable; it has the contrary effect.

(c) Various factors are at play in the affordability equation, some of which are acknowledged in the Proposed Chapter 40 purpose statement and include high rates of residential visitor accommodation and holiday homes, allowing visitor accommodation developments in residential areas, and the desire to protect valued landscapes leading to geographic constraints on urban growth. Building houses to increase housing supply is not a factor. This is acknowledged by Mr Mead[1] and all the economic witnesses.[2]

(d) Taxing those (residential developers) who contribute to solving the affordability problem will only drive house prices up as the tax is passed on to purchasers, or developers look to develop in areas outside the District with less transaction costs which will impact housing supply. Less supply will lead to increased house prices, not improved affordability.

(a) Taxing residential developers and no other sector is not only misguided, but it is also unfair. Housing affordability is a community problem. The entire community should be called on to solve (or contribute to solving) it. Residential developers should not be singled out because they are perceived as having deep pockets or because they are the most lucrative source of funding, but these appear to be the underlying if not only reasons they are targeted by the Variation while no other sector is.

(b) There is no sufficient connection (causal nexus), and indeed no connection at all between the problem - housing affordability, and the proposed solution - taxing those who build houses.

(c) There is a multitude of alternative, more appropriate (and equitable) ways the affordability issue could be tackled. The Council has given alternative methods only cursory consideration at best and certainly not

[1] Mr Mead largely acknowledges this in his section 32 Report where he states, at para 11.36, that "*building houses does not, of itself, add to affordability issues*".
[2] See paras 6 and 7 of the JWS where the economists list the causes of the housing affordability issue.

serious or proper consideration,[3] particularly taking account of the scale and significance of the potential costs of the Variation, which Mr Colgrave says could be as high as -$253 million over 30 years, and at any level will almost certainly[4] impact the entire community through increased house prices, excepting only the lucky few assisted by the QLCHT.[5]

(d) Rates are an obvious viable alternative to the Variation. Mr Whittington has largely accepted this, acknowledging that the rating tool is one of the options that the Hearing Panel must consider, in essence stating (in response to questions) that while he cannot proffer a rating solution on the hoof, there is likely a rating mechanism could be applied.[6] The Council has however discounted the rating option on the apparent sole basis that the QLDC Councillors have no appetite to increase rates. It is unclear whether Councillors have been provided advice about or considered a targeted rate, which targets properties used for residential visitor accommodation for example, as opposed to (or in conjunction with) a general rate that would apply district wide. Certainty, there is no considered examination in the Council's reporting of whether a targeted rate could be an alternative means by which to address the affordability issue. In any case, "no political appetite" to consider the rating alternative does not equate with "not reasonably practicable" in terms of section 32(1)(b)(i).

(e) The Council has manifestly understated the potential costs of the variation and overstated the potential benefits. Costs have in essence been downplayed on the basis that they are overstated by developers who are simply fearmongering in an attempt circumvent the Variation. But the numerous evidence presented by the various developer submitters who oppose the Variation, including the numerous expert planning and economic evidence is overwhelming consistent on these points and cannot be dismissed simply because it is inconvenient to the

[3] Mr Eaqub acknowledged, in questions from the Hearings Panel (27 Feb 2024) that the only options he has considered are the Variation in its notified form, or taking no action at all to address housing affordability.
[4] See JWS of the economists at para 24a, where Mr Colgrave and Mr Osborne share this view.
[5] Mr Colgrave's evidence, dated 21 December, at para 154.
[6] In answers to questions from the Panel, 27 Feb 2024, hearing day 1.

Council's case. The submitter evidence raises serious and valid concerns and issues that must be given very careful consideration in any decision on the Variation.

(f) The Council plainly needs to do more work, including investigating the *causes* of housing affordability and considering measures that can target those causes in a direct, clear and transparent way. With more than a quarter of the District's housing stock in short term rental use, Residential Visitor Accommodation is the obvious starting point.

(g) Overall, this Variation is poorly conceived and poorly justified. It does not survive scrutiny under section 32 RMA. In all the circumstances, the only proper decision available to the Hearings Panel is to reject the Variation.

(h) If that is not accepted, then non-urban (resort) and rural/rural residential land (WBLP) should be excluded from the Variation's ambit. The Council has produced no cogent evidence to support the inclusion of these areas within the Variation's net and there are compelling reasons for excluding them, notably because this is necessary to ensure a consistent and coherent District Plan.

2. Evidently, the Submitters' primary position is that it would be inappropriate to accept the Variation, which the Submitters say should be rejected outright for all the reasons stated in their submissions, Mr Gidden's and Mr Colgrave's evidence, and in evidence and legal arguments of the numerous other developer submitters who have made submissions raising the same, similar or complementary points to those of the Submitters, as are summarised in short form above.

3. Without derogating from this primary position, should the Panel find that the Variation is appropriate, whether in Mr Mead's preferred or some modified form, the Submitters' position is that there are valid reasons for exempting additional land from its ambit, specifically resort and rural zoned land. The exemptions will be the focus of these submissions.

Gibbston Valley Station Limited

4. Gibbston Valley Station Ltd (**GVS**) owns approximately 330 hectares (**ha**) of land in Gibbston, known as Gibbston Valley Station, which includes Gibbston Valley

Winery, Gibbston Valley Lodge and accommodation. The Gibbston Valley Winery complex is a key feature within the station and represents well established focal development node in the valley which currently contains vineyards, a large winery complex with associated cellar door sales, restaurant/café, cheesery, gift store, bike hire, wine cave, administration offices, function buildings, storage buildings, staff accommodation, visitor accommodation and a lodge/spa building - all within the surrounds of a working vineyard. The wider station is also partly used for pastoral farming.

5. The majority of the land on which the complex is sited is zoned Gibbston Valley Resort (**GVRZ**), but it also includes some smaller areas that are zoned Gibbston Character Zone (**GCZ**), Rural Zone, and Gibbston Rural Visitor Zone (**GRVA**).

6. The GVRZ was confirmed in 2020 via a consent order of the Environment Court in 2022, following an appeal by GVS on Stage 3 of the PDP. The Council and GVS presented joint evidence in support of the consent order, which the Court scrutinised before granting the order to ensure the GVRZ was appropriate in terms of section 32 and an appropriate fit within the scheme of the District Plan.

7. The GVRZ has been implemented with large scale infrastructure in place, internal roading and construction of dwellings, and other buildings underway.

8. Similarly to the Hills Resort Zone (which is addressed next), the GVRZ includes a structure plan[7] which identifies a number of 'activity areas' where specified development can be established, subject to bespoke consenting requirements. Of these activities areas, approximately half of the resort is consented for visitor accommodation, commercial recreation (golf course), viticulture and residential activity. The commercial precinct has yet to be established. Activity Area 8 includes a large area for worker accommodation.

Trojan Helmet Limited

9. Trojan Helmet Limited (**THL**) owns approximately 162 hectares of land located between McDonnell, Arrowtown Lake Hayes and Hogans Gully Roads. The land is zoned Hills Resort Zone (**HRZ**) which is a bespoke zone that, in a similar vein to the GVRZ, principally provides for onsite visitor activities, visitor accommodation,

[7] PDP Chapter 45, GVRZ, cl 45.7.

and a limited amount of residential activity (up to 66 units), plus accommodation for resort workers.

10. The HRZ framework was confirmed by the Environment Court in 2021 through a consent order granted following the presentation of a joint section 32 analysis by the Council and THL and joint expert planning and landscape evidence, which the Court scrutinised in the same manner as the GVRZ.

11. The HRZ framework is contained in Chapter 47 of the PDP and includes an objective and a comprehensive suite of policies and rules, in conjunction with a structure plan[8] that identifies areas where specified development can be located, which together govern development outcomes for the resort.

12. A key tenet of the HRZ is ensuring that development is sited where the landscape can absorb it, with the majority of the site - over 95% - to be retained as open space.

13. Presently the resort comprises golf courses, including a championship 18-hole course, a clubhouse, and associated maintenance activities. Construction of the visitor accommodation and residential components of the resort has not yet commenced although the planning work for these components is underway.

14. When the HRZ is fully implemented, it will contain the golf courses, a golf driving range and training facility, a spa, gym, sculpture park, restaurant, café, possibly a deli and small scale conference facilities, plus visitor and residential accommodation, associated maintenance facilities, and onsite staff accommodation. It is anticipated that due to the size and location of the zone, onsite infrastructure solutions will be provided.

Boxer Hill Trust

15. Boxer Hill Trust (**BHT**) owns approximately 8.4ha of Wakatipu Basin Lifestyle Precinct (**WBLP**) zoned land located immediately adjacent to the HRZ and the Arrowtown Retirement Village.

[8] PDP Chapter 47, HRZ, cl 47.7.

16. The WBLP zoning was recently confirmed by the Environment Court[9] and provides for the establishment of up to 8 dwellings at a density of 1 dwelling per hectare, subject to a restricted discretionary consent being obtained for the subdivision to create the rural residential lots, with a subsequent consenting process then required to establish a dwelling.

17. A key focus of the WBLP consenting process is landscape impacts, such that residential development on the site is not a foregone conclusion.

18. The site is currently bare and used as a driving range in association with golf activities within the adjacent HRZ.

Evidence

19. Expert economic evidence has been prepared by Mr Colgrave on behalf of the THL, BHT and several other parties. Mr Colgrave's evidence is not specific to his clients' interests but examines the fundamentals of the Variation at a broader level and raises serious concerns about the logic of the Variation and its likely costs to the wider community.

20. Mr Giddens has prepared expert planning evidence for the Submitters which also identifies serious issues with the Variation, including in so far as it does not find support from and fails to achieve the higher order statutory planning documents (the NPS-UD in particular), and is not a neat fit with and indeed runs counter to the theme and strategic direction of the Proposed District Plan. Mr Giddens' evidence addresses in some detail the exemptions sought by the Submitters (in the event the Panel finds the Variation is lawful and should in some form be approved), finding the exemptions are necessary to address, at least in part, some of the issues he has identified.

Resorts and Rural land – No Analysis

21. The Special Zones within the Proposed District Plan include the Resort Zones and the Rural Visitor Zones (including the Gibbston Rural Visitor Zone). These are non-urban zones located outside Urban Growth Boundaries (**UGBs**) to which the Variation as notified proposes to apply.

[9] *E Hanan v QLDC* [2023] NZEnvC 273, 21 December 2023.

22. For these non-urban zones, residential subdivision that creates more than one additional lot must pay a money contribution to the Council equal to 1% of the estimated sales value of the additional lot created[10], or where that is not paid, a contribution equal to $75 per sqm of residential floor space.[11] The same regime would apply to some rural zones[12], while other rural zones would not be caught by the Variation.[13]

23. The international examples of inclusionary housing from which the Council's evaluation of the Variation heavily draws and says is evidence that the regime can and will be successful here do not include non-urban or rural residential development examples. The Council has not advanced any other evidence that demonstrates the regime is workable and appropriate in these areas. There is no feasibility analysis of the application of the regime to this land for example, notwithstanding that non-urban and rural land generally contains larger lots that are not serviced by council infrastructure and is typically considerably more costly to develop than serviced land within the urban confines.

24. Mr Mead's section 32 evaluation says little of this, although he does appear to (indirectly) acknowledge that development within non-urban and rural areas is typically not serviced by Council trunk infrastructure and seemingly for this reason recommends a lesser contribution to the QLCHT from residential development in these areas (1% of serviced lot value) as compared with the contribution required from development within urban areas (5% of serviced lot value).[14] The rationale for the lesser contribution is not, however, overtly stated, and if it is tied to infrastructure provision (as Mr Mead's evidence suggests), it is unclear how or why this corresponds with the obligation to contribute to affordable housing (at any percentage). Mr Mead says a contribution from this land is appropriate as residential developments in these areas also influence house prices and supply of affordable dwellings,[15] although he does not clearly explain in his section 32 evaluation how this influence occurs.

[10] Proposed Rule 40.6.1.1b
[11] Proposed Rule 40.1.6.2.b. Although, as Mr Giddens will detail at the hearing, the ambit of this rule is unclear.
[12] For example, the Wakatipu Basin Lifestyle Precinct.
[13] The Rural Lifestyle Zone and Wakatipu Rural Amenity Zone, for example.
[14] Section 32, para 11.40
[15] Ibid.

25. Table 9 of Mr Mead's section 32 report[16] is entitled "Zone analysis" and purports to list the "*range of zones that provide for residential activities in the District and assesses whether they should be subject to an affordable housing levy*"[17]. Despite how it is described, the table does not provide any detailed reasoning as to why some zones are subject to the levy and others not and for a number of zones, including the listed resort zones, it gives no reasons at all. The table incudes the WBLP but not its parent zone, the WBRAZ, despite the WBRAZ and WBLP being subject to mostly the same set of objectives, policies and rules. The table omits to consider other zones in their entirety, including the Gibbston Valley Resort Zone, the Gibbston Rural Character Zone and the Rural Visitor Zones, yet the Variation is proposed to apply to these zones.[18]

26. Mr Mead's section 32 evaluation does not otherwise examine the appropriateness of or provide reasons for applying the regime to non-urban and (some) rural zones. In so far as the Variation is proposed to apply to these zones, the Council's section 32 analysis is wholly inadequate. This point is elaborated upon shortly.

Rural and Resort Zones Not Urban

27. Mr Giddens' planning evidence is that the NPS-UD applies to urban land only and not to non-urban or rural land, and hence provides no foundation for the Variation to include non-urban and rural land within its net.

28. The Council's position on the NPS-UD is unclear. Mr Mead in his section 42A Report suggests that the NPS-UD does not assist (or provide a basis for) addressing housing affordability other than through increasing supply. He therefore draws on Section 5 of the RMA to justify the Variation.[19] In contrast, Mr Whittington, in his legal submissions cites[20] a passage from *King Salmon* where it was said *"[s]ection 5 was not intended to be an operative provision, in*

[16] Section 32 report, pages 44 – 46,
[17] Section 32 report, para 11.41.
[18] See for example, Mr Mead's section 42A Report, page 32, para 8.14 and footnote 10, although it is unclear whether the Variation intends to capture the Gibbston Character Zone: para 8.15 of his section 42A Report refers broadly to the 'Gibbston Valley zones' but does not identify these zones by name. This created uncertainty as to the intended ambit of the Variation. Mr Giddens will address this further at the hearing.
[19] See for exmapl,e S42A Report, paras 4.13 and 4.14.
[20] QLDC"s Legal Submisison dated 23 February 2024 at para 6.1.

the sense that it is not a section under which particular planning decisions are made, rather, it sets out the RMA's overall objective". Mr Whittington analyses the NPS-UD in some detail and contrary to Mr Mead's position argues that it provides direct support for, if not mandates the Variation. The Council's position on this important matter appears confused and contradictory.

29. When Mr Giddens' position was put to Mr Mead at the hearing[21] his response echoed a view expressed in his section 42A report, namely that there are nodes of development in rural areas that have "*urban characteristics (in terms of infrastructure, density and housing) where residents access services, amenities and workplaces in the wider area*"[22] which he described as "urban-like",[23] the apparent inference being that because they are "urban like" they are addressed by the NPS-UD (departing from the view expressed in his section 42A Report as to the scope of the NPS-UD) and should be caught by the Variation's net.

30. There is nothing controversial about Mr Giddens' interpretation of the NPS-UD, which does not require a strained reading of this statutory planning documents, whereas Mr Mead's position does. Mr Giddens addresses this at length in his evidence.

31. As well as requiring a strained (and contrived) interpretation of the NPS-UD, Mr Mead's position is fundamentally at odds with the scheme Proposed District Plan, as I now address.

Resorts

32. The Proposed District Plan defines resorts as "*an integrated and planned development involving low average density of residential development (as a proportion of the developed area) principally providing temporary visitor accommodation and forming part of an overall development focused on onsite visitor activities."*

33. Urban development is defined as "*development which is not of a rural character and is differentiated from rural development by its scale, intensity, visual character and the dominance of built structures. Urban development may also be*

[21] Hearing day 1, 27 February 2024, in questions to Mr Mead from the Hearing Panel.
[22] Mr Mead, Rebuttal, at para 5.1.
[23] In response to questions from the Panel, on 27 Feb 2024.

characterised by a reliance on reticulated services such as water supply, wastewater and stormwater and by its cumulative generation of traffic. ***For the avoidance of doubt, a resort development in an otherwise rural area does not constitute urban development***, *nor does the provision of regionally significant infrastructure within rural areas*." (my emphasis)

34. The District Plan is express that resorts are not urban development. They can be differentiated from urban development due to their visual character (often in a park-like or recreational setting with swathes of open space), density of development (low average density as a proportion of the overall area), the dominance (or lack thereof) of built structures (generally sensitively sited due to their rural locations and landscape sensitivities), and by a lack of reliance on reticulated services and infrastructure, amongst other reasons. These differentiating characteristics are not acknowledged by Mr Mead, albeit that they plainly come to bear and are significant in the context of Chapter 3 of the Proposed District Plan (**PDP**).

35. Chapter 3 of the PDP sets out "*the over-arching strategic direction for the management of growth, land use and development in a manner that ensures sustainable management of the Queenstown Lakes District's special qualities*"[24]. Strategic Policy 3.3.15 requires urban development to be located within urban growth boundaries (**UGBs**) and avoided outside UGBs.[25]

36. Chapter 4 of the PDP deals with urban development at a strategic level. Objective 4.2.1 seeks to "*manage the growth of urban areas within the distinct and defendable urban edges*". Policy 4.2.2.12 seeks to focus urban development "*primarily on land within and adjacent to the existing larger urban areas or within and adjacent to smaller urban towns and rural settlements*."

37. Resorts, none of which are located within or adjacent to UGBs, would fall foul of these strategic provisions if construed as "urban development". Indeed, the GVRZ and the HRZ have been established under and assessed against the framework of the PDP and found by the Environment Court to stack up against and achieve these and other important strategic objectives and policies.

[24] PDP, Chpater 3, cl 3.1 Purpose statement (page 3-15).
[25] Pol 3.3.15: "Apply provisions that enable urban development within the UGBs and avoid urban development outside of the UGBs"

38. Serious plan integrity and coherence issues would arise if resorts were to be construed as urban development for the purposes of Proposed Chapter 40 but not otherwise, including in terms of the PDP's strategic direction in Chapter 3 and Chapter 4. Plan integrity and coherence are matters the Environment Court has found are relevant to and encompassed within the consideration of "appropriateness" under section 32 and they are matters with which it has been particularly concerned when resolving appeals on the provisions of the Proposed District Plan.[26]

39. Similarly, it would lack any consistency or coherence, and would be unreasonable and improper for the Council to treat resorts as non-urban development for the purposes of plan administration (or formulation of other parts of the PDP, including the resorts zones themselves), but as urban development for the purposes of the formulation of this Variation, which is in essence the position that Mr Mead has adopted.

40. In any case, the NPS-UD does not apply to "urban like " areas, which is how Mr Mead has described resorts and some rural zones, but to *urban environments,* which under the NPS-UD are:

    (a) areas that are or intended to be predominantly urban in character; and

    (b) are or are intended to be part of a housing and labour market of at least 10,000 people.[27]

41. While the second limb of the definition may be met on a Basin-wide approach, in terms of the first limb, resorts are plainly not urban in character for the reasons just outlined,[28] with the lack of reliance on Council supplied infrastructure of particular relevance. Mr Giddens expands on this in his evidence.

42. The same rationale applies to the WBLP, Gibbston Character and Gibbston Rural Visitor Zones, and to the extent that Mr Mead suggests that residential

[26] See for example, Decision 2.1 [2019] NZEnvC 160, Decision 2.2 [2019] NZEnvC 205, and Decision 2.6 [2020] NZEnvC 159, and *Barhhill Corporate Trustee Ltd v QLDC* [2022] NZEnvC 58, see para [16(a)] which addresses the importance of plan integrity and coherence and also references all previous decisions where these matters were a focus of the Court's evaluation under section 32 and its decision making.
[27] NPS-UD, cl 1.4, Interpretation.
[28] Refer para 34, above.

development within these zones is "urban" or "urban like", his position is simply untenable. I expand on this point below.

Other Non-Urban and Rural land

43. The Variation applies to some but not all rural land. Drawing from Mr Mead's evidence, which rural land is 'in' and which is 'out' appears to relate to the degree to which residential development is anticipated within the relevant zone.[29] It is, however, unclear from Mr Mead's evidence whether this is tied to the applicable rule framework (i.e. activity status/degree of enablement within the zone) or the potential residential density outcomes as Mr Mead's analysis contains no discussion or scrutiny of these matters.

44. Table 9 of Mr Mead's section 32 report indicates that the WBLP is included in the Variation because "*lower density residential type development is possible*"[30] within the Precinct. The table does not address the WBLP's parent zone, the WBRAZ, where residential development is also possible albeit at lower densities than within the WBLP subzone.

45. As described earlier, the WBLP is a subzone of the WBRAZ. The WBRAZ and WBLP share mostly the same objectives, policies and rules, which are contained in Chapter 24 of the PDP. The Zone's primary objective, which applies to both the WBRAZ and the WBLP, seeks that *"[l]andscape character and visual amenity values in the Wakatipu Basin are maintained or enhanced*"[31]. The zone's purpose statement repeats this and states that the zone's purpose is to "*maintain and enhance the character and amenity of the Wakatipu Basin, while providing for rural living and other activities*". For the WBLP specifically, the zone purpose statement explains that "*sympathetically located and well-designed rural living development, which achieves minimum and average lot sizes, is anticipated, <u>while still achieving the overall objectives</u> of the Rural Amenity Zone*." (my emphasis)

46. Within the WBLP, residential subdivision is a restricted discretionary activity, provided a 6000m^2 minimum and 1 ha average lot size is achieved across the entire subdivision, net any roads required for access. The matters to which the

[29] Refer section 32 report, Table 9.
[30] Section 32 Report, page 45.
[31] PDP Objective 24.2.1.

Council's discretion is restricted are set out in Chapter 27, Subdivision, at 27.9.3.3. They are wide ranging and include subdivision design and landscape; the use of covenants or consent notices to ensure enduring outcomes; the extent to which the development affects the values of any adjoining ONFLs; the extent to which the development could be visually prominent on escarpments, river cliff features and ridgelines; road setbacks and whether views to the surrounding ONFLs will be maintained if setbacks are reduced; the use of bonds or consent notices to ensure necessary mitigation elements are achieved; the use of covenants or consent notices to ensure retention of open space; access and connectivity; infrastructure and services; nature conservation and cultural values; hazards; and Lakes Hayes water quality. The overall primary focus of the Council's discretion is on landscape protection, which reflects the key objective of the zone.

47. As a restricted discretionary activity, where the Council has wide ranging discretion to grant or decline any residential subdivision proposal, residential development within the WBLP is by no means a foregone conclusion. Mr Giddens addresses this further in his evidence.

48. And, at 6000m^2 minimum and 1 ha minimum average lot size, the WBLP zone framework and resulting development outcomes are plainly not urban, nor "urban like". The zone simply does not allow development that could, due to its location, scale, intensity, visual character and built form outcomes be considered "urban" per the PDP definition of that term.

49. The purpose of the WBLP was scrutinised by the Environment Court in *Wakaitpu Equities Ltd and Ors v QLDC*[32] which was a decision concerning declaration proceedings as to whether the National Policy Statement – Highly Productive Land (**NPS-HPL**) applied to PDP zoning appeals within the Wakatipu Basin.

50. In that case, the Council argued that for the purposes of the NPS-HPL, the WBRAZ and WBLP were separate and different zones, where the WBRAZ provided

[32] [2023] NZEnvC 188, 5 September 2023.

predominantly for primary production, while the WBLP provided predominantly for residential lifestyle activities.[33]

51. After analysing in detail the purpose and structure of the zone, the Environment Court squarely rejected these arguments. The Court found that for the purposes of the NPS-HPL, the WBRAZ and WBLP were not separate zones but a single zone[34] with the primary purpose of maintaining or enhancing landscape character and visual amenity values within the Wakatipu Basin[35]. In other words, the WBRAZ, including the WBLP subzone, is a landscape protection zone.

52. While the *Wakatipu Equities* decision concerned the proper interpretation of the NPS-HPL, the Court's findings as to the purpose of the WBRAZ and its subzone the WBLP are of direct relevance presently.

53. The landscape protection purpose of the WBLP is pertinent to Table 9 of Mr Mead's section 32 report.[36] As explained earlier, Table 9 purports to list the zones within the District that provide for residential activities and assess whether they should be subject to the affordable housing tax. The Rural Lifestyle Zone is assessed in Row 10 of the Table, where it is stated that the zone should not be subject to the levy because its "main purpose" is "landscape protection".

54. The Rural Lifestyle zone applies outside of the Wakatipu Basin, but it has a similar purpose and structure to the WBLP. The key objective for the zone is to enable rural living opportunities "*in areas that can absorb development, on the basis that the density, scale and form of development: a. Protects the landscape values of the District's Outstanding Natural Features and Outstanding Natural Landscapes; b. Maintains the landscape character and maintains or enhances the visual amenity values of the District's Rural Character Landscapes."*[37] Residential subdivision is a restricted discretionary activity within the Rural Lifestyle Zone, with the Council's discretion restricted to a range of matters including the location and size of building platforms in respect of landscape character and

[33] The upshot of the Council's argument was that land within the WBRAZ that appellants sought for inclusion within the WBLP would be caught by the NPS-HPL and its restrictive provisions concerning productive land if classified as LCU 1, 2 or 3 land within the NZLRI.
[34] *Wakatipu Equities Ltd and Ors v QLDC,* [30] – [35].
[35] Ibid, para [66].
[36] Section 32, pages 44 – 46.
[37] PDP Chapter 22, Obj 22.2.1.

visual amenity; subdivision design; roading and access; esplanade provision; hazards; infrastructure; open space and recreation; ecological and natural values, and historic heritage. [38]

55. The similarities between the Rural Lifestyle Zone and the WBLP are obvious, although the WBLP has a much stronger focus on landscape protection than the Rural Lifestyle zone, through both the policy framework and the zone provisions. Indeed, the Environment Court has found that the primary purpose of the WBLP is landscape protection. While Mr Mead acknowledges this primary purpose for the Rural Lifestyle zone and opines that for this reason that zone should be excluded from the Variation's reach, he fails to do so for the WBLP, despite the obvious similarities between the two zones and the Environment Court's finding. Absent any reasoning for the different approaches to these two landscape focused zones, Mr Mead's evidence lacks consistency and cogency.

56. Mr Giddens evidence is that not only is the WBLP a landscape focussed zone, but so too is the Rural Visitor Zone and the Gibbston Character Zone.[39] Applying Mr Mead's reasoning consistently, these zones should also be excluded from the Variation's ambit.

57. Examining these zones further, the Gibbston Rural Visitor Zone[40] is a *rural* zone, which the name of the zone itself makes clear. The zone sits in Part 4 of the PDP, which addresses the "Rural Environment". The RVZ provides for visitor industry activities at a small scale and low intensity within the District's significant landscapes, primarily in remote locations, on the proviso that landscape character and visual amenity values are maintained or enhanced and ONFL values are protected. This is to be achieved by integrating buildings into the landscape and ensuring they are not visually dominant, for example.[41] Residential activity within the zone is not provided for but is to be *avoided* unless it is worker accommodation ancillary to a visitor accommodation activity.[42]

58. The Gibbston Character Zone, which also sits within Part 4 of the PDP (Rural Environment), has a stated primary purpose of providing for viticulture and

[38] Chapter 27, Subdivision, Rule 27.5.8.a.
[39] Mr Giddens will address this at the hearing.
[40] PDP Chapter 46.
[41] PDP, Chapter 46, cl 46.1, Zone Purpose statement.
[42] PDP Chapter 46, Objective 46.2.1.5m, and Rule 46.4.15.

commercial activities with an affiliation to viticulture. Viticulture, as primary production, is a *rural* activity. New residential development within the GCZ requires at least discretionary resource consent, including due to the zone's distinctive landscape character.[43]

59. While the RVZ and GCZ can be considered landscape zones and, to ensure a more consistent and coherent Plan should be excluded from the Variation's reach, it is unclear why they are captured by the Variation at all given the Council's intention to apply the Variation to residentially zoned land within the District, which is plainly not primary function or purpose of these zones.

60. In sum, the WBLP, Rural Visitor and Gibbston Character Zones have all been formulated under the framework and to sit within the context of the PDP, which does not mandate but strongly discourages urban development outside the UGBs. These zones do not enable or anticipate urban development. For the same reasons advanced for resorts, it would fly in the face of the scheme of the PDP and give rise to serious plan integrity and coherence issues for these zones be considered as "urban" or urban-like" for the purposes of this variation, but not otherwise, including for the formulation and administration of other parts of the PDP.

61. Examining Table 9 of the Council's section 32 evaluation of the Variation highlights not only the inconsistency and lack of coherence in the notified Variation, but also the paucity of information and analysis that underpins it and the irrationality of its application to some but not other land within the District.

Worker Accommodation

62. Mr Giddens has provided an overview of the GVRZ and HRZ zone framework in his evidence.[44] A summary is also provided earlier in these submissions.

63. To recap, the GVRZ and the HRZ provide for onsite visitor activities and visitor accommodation, and for limited residential activity, which by definition[45] and

[43] PDP Chapter 23, see the zone purpose statement, for example.
[44] See for example paras 7.3 – 7.12 of Mr Giddens' evidence.
[45] Resort the PDP 'Resort' definition.

zone design[46] must be of low average density as compared with the resort development overall.

64. When the GVRZ and HRZ were formulated, both GVS and THL recognised the shortage of affordable accommodation within the District and saw fit to ensure they took steps to address it.

65. Accordingly, both the GVRZ and the HRZ contain Activity Areas which are shown on the structure plan and by virtue of the zone provisions are dedicated to the provision of worker accommodation.[47]

66. GVRZ Policy 45.2.1.30 addresses Activity Area 8 specifically and identifies that the Area is to provide for medium-density residential activity principally for worker accommodation, where activities that would diminish the principal role of this area for worker accommodation are to be avoided. To implement this policy, Rule 45.5.1 provides that development that does not accord with the Structure Plan is a non-complying activity, while Rule 45.5.15 limits the number of bedrooms within the Activity Area to 90. While this limit is a landscape driven restriction, it reflects and accords with the Activity Area's purpose, being to provide for worker accommodation, not standalone residential activity.

67. The HRZ approaches the provision of worker accommodation a little differently. As noted earlier, worker accommodation is provided for in Activity Areas S1 and S2, being areas that solely provide for staff accommodation and services that support the ongoing operation and maintenance of the resort.[48] Rule 47.4.10 specifically limits residential activities in these Activity Areas to staff accommodation and requires that this accommodation is maintained in the same ownership as the core resort activity (Activity Areas C and G) and is not subdivided, titled, or otherwise separated. The intention of this rule is to ensure that the worker accommodation provision is "locked in". Rule 47.5.19 limits the number of bedrooms in this area to 50, which has been calculated as sufficient to meet the staffing needs of the resort.

[46] Refer GVRZ 45.2.1.24 and HRZ Policy 47.2.1.7.
[47] For the GVRZ, Activity Area 8, and for the HRZ, Activity Areas S1 and S2, as shown on the Structure Plans for the zones.
[48] HRZ cl 47.1.2.d, Rule 47.4.10, Rule 47.4.21 and 47.4.36.

68. These provisions together ensure that the GVRZ and HRZ provide onsite solutions to the housing affordability issue.

69. Mr Mead has not considered the GVRZ and HRZ worker accommodation provisions. Instead, he has opined that "*the very nature of the [resort] development means that unaffordable living options are not provided within the development".*[49] Plainly this is factually incorrect. It suggests that Mr Mead is not familiar with the resort zone framework nor the substance of the points raised by the resort Submitters. His evidence and recommendations on these points should be given no weight in the circumstances.

70. When addressing submissions on worker accommodation more generally, Mr Mead expresses a view that worker accommodation facilities could be converted permanent accommodation, and that monitoring and enforcement to ensure the ongoing use of the facilities for worker accommodation would be need to subject to strict monitoring and would be very complex.[50] His positon is that worker accommodation should not be exempted from the Variation for these reasons.

71. It is unclear from Mr Mead's evidence why he considers monitoring the use of worker accommodation to be so fraught with difficulty, as compared with the monitoring required to ensure adherence to any consent condition or the rules and standards of the District Plan more generally (regarding noise emissions, for example). His evidence on this point is lacks cogency.

72. In any case, the issues he identifies do not arise for the resorts. As just detailed, the GVRZ contains a strong policy directive that permanent (non-worker) accommodation with GVRZ Activity Area 8 is to be avoided, while the HRZ contains rules to ensure that worker accommodation in Activity Areas S1 and S2 is locked in and not alienated from the golf course ownership, which could be the case if the areas were to be used for permanent accommodation. These provisions work to ensure that worker accommodation within these areas is firstly provided and secondly retained. Moreover, these resorts have a vested interest in ensuring their staff have a suitable and secure place to live – the success of the resorts depend on it.

[49] Section 42A Report, para 8.10.
[50] Section 42A Report, para 8.20.

73. Elsewhere in his evidence Mr Mead records that there are some business that are providing accommodation for workers (although he provides no examples) which he says "*is an indication that business activities are likely to respond to stretched housing resources affecting key workers (i.e. they will mitigate some of the impacts on housing resources from their growth)*.[51] This statement is made in the context of justifying the application of the Variation to residential but not business or non-residential land.

74. Mr Mead expressed a similar view when addressing the Hearing Panel's question as to why the Variation did not target commercial and business land.[52] He explained that this was because businesses were "incentivised" to address the affordability issue because it affected them directly through providing for a more stable workforce, while residential developers had no such incentive and were generally happy to "ride on the coat tails" of others.

75. If Mead is to be consistent in his views, resort zones that provide worker accommodation should be excluded from the Variation for the same reasons that business and commercial land is excluded.

76. Mr Colgrave addresses the worker accommodation solution.[53] His evidence is that the introduction of planning provisions and other related measures that make it easier to provide dedicated worker accommodation would contribute to addressing the housing affordability and related accommodation issue. His evidence is that because resort zones already provide for worker accommodation, they should be exempted from the Variation. Mr Colgrave's evidence is reasoned, logical, thorough, and compelling.

77. Given the above, there is no proper basis to include within the Variation's ambit resort zones that provide for worker accommodation, and to do so would once again give rise to the very relevant and significant issues of plan integrity and coherence.

78. More fundamentally, resorts that provide worker accommodation should be excluded because if they are not, they will be subject to a duplication of

[51] Section 42A report, para 3.19.
[52] Hearing day 1, 27 Feb 2024.
[53] Mr Colgrave's evidence dated 21 December 2023, paras 126 – 128.

regulation in so far as housing affordability is concerned. The duplication has not been justified on any cogent basis and it is unfair and inappropriate in all the circumstances.

Basis for targeting non-urban and rural land and the Variation's fundamental problems

79. What is the basis for applying the Variation to non-urban and rural land, or residential developers more generally? Mr Mead's section 42A assessment provides insight to the Council's rationale here.

80. At paragraph 8.15 he sets out that when the resort zones and other rural zones (such as the WBLP and Gibbston valley zones) are accounted for, there is capacity for an estimated 721 additional dwellings within the rural / rural living areas of the Wakatipu Ward.

81. In his section 32 evaluation he reasons that business and commercial land should be excluded from the Variation's reach because seeking contributions from "*the residential sector will be more effective than … from business activities [due to] the greater certainty over level of contributions given residential growth patterns (compared to more variable business development cycles);….*"[54]

82. It readily can be inferred from these and numerous other statements within the Council's reporting that the Variation targets the residential sector, including the non-urban and rural areas where there is development capacity for no other reason than they are a potentially lucrative source of additional funding for QLCHT due to this future capacity. While on face value this would achieve the Variation's objective in so far as it would mean more money is funnelled to the QLCHT (which appears to be the conclusion reached by Mr Mead), section 32 requires a much deeper and more considered analysis, taking account of:

    (a) The appropriateness of the provisions, which encompasses considerations of plan integrity and coherence;

    (b) Reasonably practicable alternatives, including the rates option;

    (c) The efficiency and effectiveness of the proposed provisions;

[54] Section 32 Report, para 11.38.

(d) The benefits and costs, which should be quantified, if practicable, but here have not; and

(e) The risk of acting or not acting where, as here, there is uncertain or insufficient information.

83. The Council's evaluation of the Variation fails to examine any of these matters in sufficient detail or with sufficient scrutiny, which gives rise to material and very substantive flaws in its case for the Variation, particularly given the scale and significance of the potential social and economic costs of the proposal, as described in the evidence of Mr Colgrave and others.

84. In addition, the Council has failed to identify a sufficient link, or any link at all, between residential development (building houses) and housing affordability, as is required before conditions can be imposed on a resource consent under section 108(1). The Council's position appears to be that no link is required, and that provided the purposes of the contribution are specified and the level of the contribution is determined in the manner prescribed in the District Plan, the requirement for a financial contribution in the circumstances of any residential development will be valid. However, this is wrong at law.

85. As a condition on a resource consent, the requirement for a contribution must still satisfy the *Newbury* tests. The Council has not demonstrated how or whether this can be achieved. Nor could it, when building houses so as to increase housing supply (as residential developers do) has the recognised effect of improving housing affordability,[55] not exacerbating it.

86. Moreover, for non-urban and rural development, including the land of concern to the Submitters, where a monetary contribution would be required which would be used to provide affordable housing offsite, elsewhere in the district, possibility (and quite probably) quite some distance from the development that triggered the contribution, establishing the necessary or indeed any nexus between the development and the requirement for and use of the contribution is even more fraught. There is simply no connection.

[55] The NPS-UD recognises increasing housing supply as the primary method for addressing housing affability, as discussed in the evidence of Mr Giddens.

87. These deficiencies have not been remedied by the evidence or argument that the Council has presented during the course of the hearing to date, where it has by and large repeated the position stated in the section 32 and s42A reports and has not seriously engaged with the highly relevant and very serious issues raised by Submitters in the numerous detailed submissions and extensive expert evidence lodged.

88. The deficiencies are in any case so significant that they could not be remedied 'on the hoof' (e.g. through Reply or other evidence), at least not unless submitters are provided a reasonable opportunity to consider, take advice on and respond to any new information that the Council make seek to produce in an endeavour to patch up its case.

89. While housing affordability is a live and very present issue confronting this District, the Council has taken a myopic view to resolving it. When formulating this variation it has looked no further than residential developers for a solution, who it sees as a lucrative funding source for the QLCHT. It has not examined the scheme of the District plan and how its proposal fits within that. It has not considered the workings of the various zones to which it proposes the Variation apply. It has not considered the strategic goals of the PDP. The PDP seeks to encourage residential development within areas zoned for that purpose not discourage it, which is the effect of the variation in so far as it proposes that residential development is *avoided* unless a contribution of specified quantum is paid.

90. Not only is the Variation at odds with the scheme of the PDP, but to the extent that it *discourages* residential development, it fails to achieve its own objective. It has the potential to be ineffective.

91. Overall, the Variation is inappropriate as well as unfair. The burden of solving the community wide social issue of affordable housing should be spread across the whole community, particularly if, as the Council's evidence suggests, it will benefit the whole community. It should target, in particular, those groups who on the evidence now before the Hearing Panel indisputably *do* contribute directly to the affordability problem (e.g. owners of residential visitor accommodation). The residential developers of the Queenstown Lakes District should not solely bear the cost of this novel test case proposal.

92. Building houses does not make house unaffordable; there is simply no logic to the Variation equation. This variation is misguided and on any measure does not stack up against section 32. In short, the Council needs to go back to the drawing board. If it wishes to persist, and if the Hearing Panel finds cause to accept the Variation, then it should be in a form that excludes the non-urban and rural land from the Variation's ambit, or excludes at least the GVRZ, HRZ, WBLP, RVZ and GCZ land, this being necessary to ensure a more consistent and coherent District Plan.

Dated this 5th day of March 2024

R Wolt

Counsel THL, BHT and GVS