

**BEFORE THE HEARINGS PANEL
FOR THE QUEENSTOWN LAKES PROPOSED DISTRICT PLAN**

IN THE MATTER of the Resource
Management Act 1991

AND

IN THE MATTER of Hearing Stream 06
– Residential chapters

**REPLY OF KIMBERLEY ANNE BANKS
ON BEHALF OF QUEENSTOWN LAKES DISTRICT COUNCIL**

9 HIGH DENSITY RESIDENTIAL ZONE CHAPTER

11 November 2016

 **Simpson Grierson**
Barristers & Solicitors

S J Scott
Telephone: +64-3-968 4018
Facsimile: +64-3-379 5023
Email: sarah.scott@simpsongrierson.com
PO Box 874
SOLICITORS
CHRISTCHURCH 8140

TABLE OF CONTENTS

1. INTRODUCTION.....	1
2. THE EXTENT OF THE HDRZ	2
3. HEIGHT IN THE WANAKA HDRZ	5
4. HEIGHT IN THE QUEENSTOWN HDRZ AND REFERENCE TO 'STOREYS'	6
5. MATTERS OF DISCRETION FOR BUILDING HEIGHT (NOTIFIED RULE 9.5.1 AND REDRAFT RULE 9.5.3).....	7
6. HEIGHT ABOVE FRANKTON ROAD.....	8
7. MEANING OF 'STREET' IN THE CONTEXT OF NOTIFIED POLICIES 9.2.2.1 TO 9.2.2.3 AND APPLICATION TO LANEWAYS	9
8. DEFINITION OF FLAT AND SLOPING SITES.....	11
9. HOME OCCUPATION	12
10. NON COMPLYING 'NON-COMPLIANCE' ACTIVITY STATUS.....	12
11. POUNAMU APARTMENTS.....	14
12. OTHER POSSIBLE CHANGES LIMITED BY SCOPE.....	18
13. CONCLUSION	22

Appendix 1 - Recommended revised chapter

Appendix 2 – Section 32AA evaluation

Appendix 3 – Accept/ Reject recommendation

Appendix 4 - Proposed District Plan Maps 31a, 32 and 37 showing the Frankton Road height restriction

1. INTRODUCTION

- 1.1 My name is Kimberley Anne Banks. I prepared the section 42A report for the High Density Residential Zone (**HDRZ**) chapter of the Proposed District Plan (**PDP**). My qualifications and experience are listed in that s42A report dated 14 September 2016.
- 1.2 I have reviewed the evidence filed by other expert witnesses on behalf of submitters, attended part of the hearing on the 10 October and 27 October 2016, and have been provided with information from submitters and counsel at the hearing, including reports of what has taken place at the hearing each day.
- 1.3 This reply evidence covers the following issues:
- (a) the extent of the HDRZ;
 - (b) height in the Wanaka HDRZ;
 - (c) height in the Queenstown HDRZ and reference to 'storeys';
 - (d) matters of discretion for Building Height (notified Rules 9.5.1 and redraft Rule 9.5.3 (notified Rule 9.5.2));
 - (e) height above Frankton Road;
 - (f) meaning of 'street' in the context of notified Policies 9.2.2.1 to 9.2.2.3 and its application to laneways;
 - (g) definition of 'flat' and 'sloping' sites;
 - (h) home occupation;
 - (i) non-compliance activity status; and
 - (j) Pounamu Apartments.
- 1.4 I also address the following other changes that I consider appropriate on the merits, but cannot recommend as I have no scope:
- (a) outdoor storage; and
 - (b) definition of 'site'.
- 1.5 Where I am recommending changes to the provisions as a consequence of the Hearing evidence, I have included these in **Appendix 1 (Revised Chapter)**. Where the change is of substance I have evaluated the change under section 32AA in **Appendix 2**. I

have revised my 'accept/reject' recommendation in **Appendix 3**, and provided updated planning maps within **Appendix 4** related to the recommended change to redraft Rules 9.5.1 and 9.5.3.

1.6 I refer to and adopt Ms Amanda Leith's right of reply statement for the Low Density Residential Zone where she sets out a summary of the character of the HDRZ.¹

1.7 I have also read and considered the economic review of the Medium Density Residential Zone (**MDRZ**) provisions by Philip Osborne, attached as Appendix 4 to the reply of Ms Leith for Chapter 8.

2. THE EXTENT OF THE HDRZ

2.1 The Panel queried whether the extent of HDRZ in Queenstown is large enough, and requested that in this reply I consider identifying additional locations where the zone may be appropriately located. I note that no specific evidence was presented to the Panel that the zone did not provide enough capacity, but I understand this question was general in nature, and related to a separate query that the zone has the highest premium for residential development and may not provide for the lower end of the market.²

2.2 I am of the view that should new locations be considered, a more thorough evaluation of costs and benefits would be required, in addition to consultation with the community and consideration of infrastructure. Further expanding the zone at this time may be premature, given that the refinement of the Council's dwelling capacity model (on the PDP zonings) is not yet complete.

2.3 An updated DCM, accounting for refined demand analysis and feasibility factors, is anticipated to be completed by April 2017. This will provide useful information to requests for rezonings to be heard through the mapping hearing stream. Additionally, the Wakatipu Basin Study is currently underway, with outcomes expected by end of January 2017. Following these streams of work a greater

¹ Section 2, Reply of Amanda Jane Leith for the Low Density Residential Zone, 11 November 2016.

² Reflected in the Panels questioning of Mr Phillip Osborne at the Council opening of 10 October 2016.

understanding of plan enabled capacity will be available. I also note that to expand the zone is not within the scope of submissions for this hearing or (except to a limited extent) the mapping hearing and would therefore require a variation. Consequently, I have not recommended any expansion to the zone at this time.

- 2.4** At the Strategic Directions hearing, the Reply of Mr Matthew Paetz outlined the Dwelling Capacity estimated to be enabled by the PDP. Mr Paetz stated at paragraph 7.3 that an additional 'realistic' capacity of 4,973 dwellings is enabled under the PDP within urban growth boundaries. The table below is extracted from Page 24 of Mr Paetz' Right of Reply, and identifies additional estimated capacity provided by the PDP for the Residential Zones. These estimates were made prior to the recommendations on submissions for each of these chapters, and may be affected by any changes to zone standards recommended through the hearings process.

Zone	ODP Capacity	PDP Capacity	Additional Capacity (over and above ODP-enabled capacity)
High Residential Density			887
Mixed Use			848
Medium Residential Density			1466
Low Residential Density			1772
TOTAL			4,973

Figure 1 – Additional 'realistic' capacity enabled by the PDP over and above the ODP, in urban areas (extract from page 24 of the Reply of Matthew David Paetz for the Strategic Directions and Urban Development Chapters).

- 2.5** Specific to the HDRZ, it was estimated that the PDP would provide for an additional 887 dwellings, over and above the capacity of 257 under the ODP. In close proximity to the Queenstown HDRZ the new Business Mixed Use Zone provides for a possible height of 6 storeys (as notified) and is estimated to provide a similar development yield to the HDRZ, providing "*an additional 887 dwellings over and above the capacity of 257 of the ODP*".³

³ Reply of Matthew Paetz, Strategic Direction and Urban Development chapters, dated 7 April 2016 at paragraph 7.17.

- 2.6** The findings presented at the Strategic Directions Hearing Stream 1B and through that Right of Reply reflect the nature of demand at a point in time. I also note that the recently approved NPS-UDC⁴ places responsibility on councils to continuously revise demand predictions and development capacity, and respond by enabling additional capacity if needed. As such, where the analysis of development capacity completed in order to comply with the NPS-UDC is determined to be insufficient, the PDP may need to be revised to provide additional capacity.
- 2.7** Also of relevance to the provision of additional capacity is the recent extension to Housing Accords and Special Housing Areas Act 2016 to provide for the acceptance of Special Housing Areas (**SHA**) for an additional three years (to 16 September 2019). Whilst external to the PDP, SHAs are anticipated to provide additional development capacity to that enabled by the PDP. At its November meeting, Council will consider revising the Lead Policy (which guides the requirements to be met for SHA proposals) to be more strategic by nominating locations where SHA proposals will be accepted by the Council.
- 2.8** For the reasons outlined, I consider the extent of the HDRZ to be appropriate at this point in time. Limited extensions to the HDRZ can be considered at the mapping hearing stream, within the scope of relief sought by submissions.
- 2.9** Upon reflection of this query, and hearing the Panel's questions to Mr Philip Osborne for the Council, and the submissions of Mr Antony Stokes (575), who owns land within the HDRZ at 3 Turner Street, there is a possibility that refinements to height limits (such as through the application of height precincts in targeted locations) could provide an alternative solution to increase capacity. A possible location is the area west of Ballarat Street to Gorge Road. From a preliminary desktop analysis, this area may present more commercially viable redevelopment opportunities with a considerable number of properties having low improvement values to land value. I note

4 National Policy Statement on Urban Development Capacity 2016

however that further analysis of this area would be necessary, and likely require a variation to make this change.

- 2.10** Generally, I consider that any new areas of HDRZ should also have, or be likely to have, efficient connection to town centres, places of employment, community, social and recreation facilities. A key aspect providing for this connectivity and supporting higher density housing, if at increasing distances from a town centre, is efficient and effective public transport routes. I note that there are possible locations at increasing distances from the Queenstown Town Centre that may have the beginning of these elements, and could realise lower price points. Examples are the smaller local centres of Arthurs Point, Fern Hill, or areas in Frankton outside the airport noise boundaries. However, further planning and analysis would be necessary before intensification in these areas.

3. HEIGHT IN THE WANAKA HDRZ

- 3.1** The Panel queried the application of height limits in the Wanaka HDRZ under s42A Rule 9.5.2 (part of notified Rule 9.5.1) and whether the Wanaka HDRZ was better suited to a medium density zoning.
- 3.2** I acknowledge that the height limit of 8m for flat sites in the Wanaka HDRZ may appear to be more akin with the Medium Density Residential Zone (**MDRZ**). However this lower limit (as compared to Queenstown) is applied to flat sites in recognition of the possible adverse impacts that may be experienced from development at this scale, particularly from the higher elevations of this zone at Lismore Street, and recognising the proximity of this zone to the lakefront and views of the lake experienced from Lismore Park. Lower elevations of the zone at Lakeside Road would be defined as sloping sites, and are therefore able to excavate into the hill slope to achieve 3 storeys or more, consistent with the expected form of development in the HDRZ, and as evident from existing land use. As such, the permitted height limit of 8m for flat sites in Wanaka is recommended to be retained.

3.3 I do recommend that a tiered approach should also apply to building height on flat sites in Wanaka, as redrafted Rule 9.5.2 is currently limited in its ability to consider minor height breaches or potential designs that are able to mitigate effects. I recommend that the non-compliance status in Wanaka is amended to 10m as an restricted discretionary (**RD**) activity, and non-complying (**NC**) activity for heights over 10m. RD activity status is considered appropriate for height in Wanaka, as it provides clarity over the resource management matters to be considered by applications, and amenity values of views and outlook are specified as one of these matters of discretion. This change is recommended in **Appendix 1** and analysed in **Appendix 2** in terms of s32AA of the RMA. Scope for this change is provided by the submission of NZIA (238) that sought scope for height increases in Wanaka "*...height limits of 10 to 15 m in Queenstown, and 8 to 12 m in Wanaka, with discretionary status over 10m height with approval by Urban Design Panel*".

4. HEIGHT IN THE QUEENSTOWN HDRZ AND REFERENCE TO 'STOREYS'

4.1 The Panel queried reference to 'storeys' within the HDRZ height provisions, and what the anticipated outcome would be if a development complied with the height limit, but not the required numbers of storeys.

4.2 I consider that reference to 'storeys' is unnecessary, and provided a development meets the permitted height limits, or can demonstrate compliance with the matters of discretion for restricted discretionary (**RD**) height limits, then these should be sufficient to address the design, bulk and dominance effects of building height.

4.3 As identified in the Reply of Ms Amanda Leith for the Low Density Residential Zone (**LDRZ**), the HDRZ is the most intensive of the Residential Zones, provided for predominantly by greater height limits and associated opportunities for increased development yield in close proximity to town centres. Therefore I consider reference to 2 to 3 storeys to conflict with the intensive nature of the zone, and is not aligned with the opportunities provided within the developable envelope. Furthermore, limiting the number of storeys may

encourage developers to build larger units rather than a greater number of smaller units spread across more levels. I therefore support removing reference to 'storeys' throughout the Chapter, and reverting to pure height. This affects the following notified provisions:

- (a) Purpose statement;
- (b) Policy 9.2.1.1; and
- (c) Rule 9.5.1.

4.4 I consider that submissions that sought increases to height limits⁵ provide the scope for removal of the word 'storeys' as well as other consequential amendments, as the increases to height limit sought by these submitters sought pure height limits (in metres) and would not have assumed these would be limited to a specified number of storeys. I have therefore recommended changes to the above provisions as identified in **Appendix 1**, and analysed under section 32AA in **Appendix 2**.

5. MATTERS OF DISCRETION FOR BUILDING HEIGHT (NOTIFIED RULE 9.5.1 AND REDRAFT RULE 9.5.3)

5.1 I note that as a consequential amendment to the recommended 15m RD height limit for flat sites, and 10m for sloping sites, I consider that changes are necessary to the matters of discretion for building height because they are currently drafted to reflect minor 'infringements'. As a result, they do not adequately address proposals for buildings that may be wholly or substantially at increased heights, as opposed to a minor 'infringement' to the permitted heights. Additionally, I note that the provisions are drafted as assessment matters rather than matters of discretion, and I recommend changes to this effect. This is consistent with the recommended changes of Ms Amanda Leith as outlined in the s42A report for the MDRZ.

5.2 Recommended changes are identified in **Appendix 1**, and analysed in **Appendix 2**. I consider these changes to be within the scope of

⁵ Alps Investment Limited (410), Erna Spijkerbosch (FS1059), Mount Crystal Limited (FS1331) , NZIA (238), Dato Tan Chin Nam (FS1260)

submissions which sought increases to height limits⁶ and also the scope of Submission 208 (PBCC) which sought reflection of the Urban Design Assessment Criteria of the ODP (Chapter 7 - 7.7.2(xiii)) for development of four or more units per site. Notwithstanding that the submission point of PBCC sought the Urban Design Assessment Criteria under Rule 9.4.4 (and not for Building Height), I consider that the theme of their submission is seeking more stringent consideration to urban design, and that this is supported by the proposed amendment to the matters of Discretion for building height under notified Rule 9.5.1 and redraft Rule 9.5.3.

- 5.3** I note that should Residential Design Guidelines be developed, these should also be included within the matters of discretion for building height, however I have not made this amendment as this time, as I understand a variation would be necessary to incorporate any new design guidelines within the HDRZ chapter.

6. HEIGHT ABOVE FRANKTON ROAD

- 6.1** I understand that at the Council opening, Ms Amanda Leith was questioned over her recommended wording of s42A Rule 7.5.16 in the LDRZ, which relates to the location in which additional height restrictions apply along Frankton Road. Appendix 1 of Ms Leith's s42A report, at Rule 7.5.16 stated that "*...this Rule applies to those properties from Cecil Road (Paper Road) to, and including, Lot 1 DP 12665*". Specifically, the Panel requested that the sites that are subject to the rule be identified on the planning maps rather than for plan users to have to locate the extent of the area.
- 6.2** As also discussed in the Right of Reply for the LDRZ, upon mapping of these sites it has become apparent that they are all proposed to be zoned HDRZ under the PDP. As a consequence, the recommended s42A Rule 7.5.16 is not required within the LDRZ chapter and these provisions have accordingly been removed. I have however recommended this be revised in the HDRZ under redraft Rules 9.5.1 and 9.5.3. Updated maps 31A, 32 and 37 are attached as **Appendix**

⁶ Alps Investment Limited (410), Erna Spijkerbosch (FS1059), Mount Crystal Limited (FS1331) , NZIA (238), Dato Tan Chin Nam (FS1260).

4 of this reply. This change is considered to be a minor clarification amendment.

7. MEANING OF 'STREET' IN THE CONTEXT OF NOTIFIED POLICIES 9.2.2.1 TO 9.2.2.3 AND APPLICATION TO LANEWAYS

7.1 I was questioned whether notified Policies 9.2.2.1 to 9.2.2.3, which require 'street activation' and that limit the dominance of garage and parking, should apply to service lanes, laneways and right of ways. At the hearing I responded that it is anticipated that street activation is desired for where developments adjoin public spaces, and that it was not intended that private spaces or private access would require street activation. To further clarify, I consider that such design outcomes should be considered for any road of a type that is or may be for public use; and that this would include "accessways", "right of way", "road" and "service lane". Examples of where this may be relevant include:

- (a) Service lanes – some service lanes exist which provide primary access prior to vehicles accessing the state highway. These service lanes are visible from the public realm, and the service lane may also be the effective road frontage. Therefore I consider 'activation' of this area would be desirable in this situation;
- (b) Right of Ways – a right of way is to be developed through Bridesdale Farm on land retained by the developer but provides public access along the river. Whilst no buildings are proposed to abut this right of way, if they were to in future, my view is that the public nature of this right of way would warrant consideration to activation of building frontages; and
- (c) Shoreline Road at Frankton beach provides another obvious example. Shoreline Road provides private access to properties fronting the lake, yet has a strong connection to the public realm, trails and reserves along the lakefront. The facades of the buildings in this area contribute to the

amenity experienced by people accessing the adjacent public space.

- 7.2** With regards to the dominance of garages and parking, I consider that it may not be possible to limit this for road types such as "accessways" or "service lanes", as these are generally established as a result of an access constraint. I note that these road types are also excluded from the definition of "road boundary", and as such a site frontage to a laneway would be considered as an 'internal boundary', and may be reflective of the lower usage levels anticipated for these road types. I therefore recommend that notified Policy 9.2.2.2 is limited to the 'road boundary', which is defined by the PDP as below.

Road Boundary – Means any boundary of a site abutting a legal road (other than an accessway or service land) or contiguous to a boundary of a road designation. Frontage or road frontage shall have the same meaning as road boundary.

Note: also see definitions of BOUNDARY and INTERNAL BOUNDARY.

- 7.3** Whilst activation of these types of 'streets' and avoiding the dominance of parking is desirable as a first principle, it is also acknowledged that this may not be practical or beneficial in all circumstances, such as where the design of buildings warrants ground floor garages with direct entry from the street, or a right of way, or dual road frontages exist. Notified Policy 9.2.2.3 intends to capture this circumstance. In light of this specific query, I acknowledge that Policy 9.2.2.3 does not specifically apply to consideration of secondary road classifications such as right of ways, "accessways", "right of way", "road" and "service lane". However, I do not believe it is necessary to specify this, as the policy wording provides scope to consider this issue through use of "such as..."
- 7.4** However I recommend deleting the words 'street activation' from this policy, and instead linking it with the redrafted wording of Policies 9.2.2.1 and 9.2.2.2. These changes are set out below and have the effect that Policy 9.2.2.3 applies not only to the 'activation' of public

places and roads, but also to the dominance of car parking at the road frontage. This will allow consideration of circumstances and constraints where garaging must be located at the road frontage (such as dual road frontages). The changes recommended are set out below, reflected in **Appendix 1** and analysed under section 32AA in **Appendix 2**.

- 9.2.2.1 *Buildings shall address ~~streets and other public spaces places and public roads (including service lanes, accessways, and right of ways)~~ with active edges ~~with and~~ limited presentation of blank and unarticulated walls or facades.*
- 9.2.2.2 *~~Street edges Road boundary/boundaries~~ shall not be dominated by garaging, parking and accessways.*
- 9.2.2.3 *Where ~~street activation compliance with Policies 9.2.2.1 and 9.2.2.2~~ is not practical due to considerations or constraints such as slope, multiple road frontages, solar orientation, aspect and privacy, as a minimum buildings shall provide some form of visual connection with the street (such as through the inclusion of windows, outdoor living areas, low profile fencing or landscaping).*

8. DEFINITION OF FLAT AND SLOPING SITES

- 8.1 At the hearing NZIA (238) highlighted an error in the definition of 'flat site' and 'sloping sites' within my s42A report and Appendix 1 of that report, in that the recommended definitions specified that the rules would apply over every separate building elevation, which would result in different height rules applying to each building elevation within a site. This is not desired, nor practical, for developments comprising several separate buildings.
- 8.2 I acknowledge that this is an error, and the definitions of flat and sloping sites and their application through rules was intended to be consistent with the ODP. Consistent with the ODP, it is intended that rules applicable for sloping sites would apply to the overall site, where any single elevation of a building has a ground slope greater than 6 degrees. Conversely, the rules applicable to flat sites only apply where all elevations indicate a ground slope of less than 6 degrees. I have revised the definitions accordingly and this is reflected in **Appendix 1** and analysed under section 32AA in **Appendix 2**.

9. HOME OCCUPATION

9.1 For the LDRZ (Chapter 7 of the PDP) the Panel questioned whether the standards in the notified Rule 7.4.14 applying to 'Home Occupation' should be included in the 'Standards Table' instead of within the 'Activity Table'. I consider that this question is also of relevance in relation to notified Rule 9.4.5 of the HDRZ, as there are currently no standards specified within the Chapter for Home Occupation. Consequently, I have applied a consistent approach to that outlined in paragraph 15.1 of the LDRZ right of reply, and have included standards within redraft Rule 9.5.12.

10. NON COMPLYING 'NON-COMPLIANCE' ACTIVITY STATUS

10.1 At the hearing, I understand that the Panel questioned Ms Amanda Leith on the reasoning for use of the NC 'non-compliance' status throughout the standards applying to the MDRZ. On a related theme, I was also questioned on the use of NC 'non-compliance' status for height, and whether this was appropriate considering the 'enabling' notified Policy 9.2.2.7. Specifically I was asked whether it is appropriate for an enabling policy to be implemented by a restrictive rule.

10.2 With regard to the latter, I consider the approach in notified Policy 9.2.2.7 is appropriate. Rules are provided as one method of implementing the policies. In this instance, the policy specifies the positive effects of development that are expected for a non-complying development (that is breaching height limits) to comply with the policy. The NC status of redraft Rule 9.4.2 is not intended to prohibit heights above 15m, rather noting that these may be appropriate where the policies and objectives can be met (in accordance with the s104D 'gateway test'), including that of Policy 9.2.2.7, which seeks quality and sustainable design.

10.3 Policy 9.2.2.7 could alternatively be phrased in a more restrictive manner as:

~~9.2.2.7 Incentivise greater building height where development is~~
Restrict building heights above 15m, unless development is of
quality urban design, designed to achieves a high environmental
performance, and effects can be avoided, remedied or mitigated.

- 10.4** However, I consider that rephrasing in this manner, whilst seeking the same outcome, reads more restrictive in intent. This may compromise the flexibility to consider a range of design outcomes, and lead to a perception that it is more difficult for applications to comply with the policy. My view is that drafting in this manner is at odds with the desire for the PDP to be more enabling of development. I therefore do not recommend any changes to Policy 9.2.2.7.
- 10.5** I do however consider that it is useful to review the NC 'non-compliance' status for other standards, in light of the recommendations of Ms Amanda Leith, as outlined in her Right of Reply for the MDRZ, and in recognition of questioning by the Panel as to whether the HDRZ "has gone far enough".
- 10.6** In relation to Building Height in Queenstown, I consider it appropriate to retain the NC status for buildings over 15m in height (flat sites) and over 10m (sloping sites). This is because, as discussed above, I consider that buildings above these limits (potentially 5 or more storeys on flat sites, assuming a 3m floor to floor height) warrant a higher level of consideration to the objectives and policies of the plan, the benefits they provide for housing diversity, and methods to mitigate effects. Furthermore, as recession planes do not apply to flat sites, I consider that a more stringent test is necessary for heights over 10m.
- 10.7** As discussed previously, I do recommend that a tiered approach should apply to building heights in Wanaka, as redraft Rule 9.5.2 (previously part of notified Rule 9.5.1) is currently limited in its ability to consider minor height breaches or potential designs that are able to mitigate effects. I recommend that the non-compliance status in Wanaka is amended to 10m as a discretionary activity, and NC for heights over 10m. Discretionary activity status is considered appropriate for height in Wanaka, as opposed to a RD status, due to

recognising the possible effects to views and outlook from Lismore Park. This change is identified in **Appendix 1** and analysed under section 32AA in **Appendix 2**. Scope for this change is provided by the submission of NZIA (238) which sought "*...height limits of 10 to 15 m in Queenstown, and 8 to 12 m in Wanaka, with discretionary status over 10m height with approval by Urban Design Panel*".

- 10.8** I do not recommend any further changes to the non-compliance status in the standards table. This is because the HDRZ is the most enabling of the zones, allowing 70% site coverage, 2m boundary setbacks, and more lenient recession planes in combination with significantly higher heights than other residential zones. Recognising the height limits, any further breach of these other standards, on a widespread basis, may go too far in tipping the balance away from 'reasonable protection of amenity', towards intensification at the expense of amenity. With this in mind, I consider that a different approach to activity status between the two zones is justified because the MDRZ is limited to only 8m in height (noting that Ms Leith does not recommend changing the non-compliance status for height). As such, breaches to other standards in the context of the MDRZ may be less significant than breaches at heights of 15m or more.

11. POUNAMU APARTMENTS

- 11.1** I wish to respond to the evidence of Mr Tim Walsh (dated 25 October 2016) and legal submissions of Ms Rebecca Wolt (dated 20 October 2016) filed in response to the submission of the PBCC and Panorama Body Corporate (208, FS1148). Overall, I continue to hold the view that bespoke provisions for the land to the rear of and immediately adjoining the Pounamu Apartments (Lot 5 DP 351561) are unnecessary, and that the HDRZ provisions, as revised in my Right of Reply Appendix 1, have appropriate scope to consider urban design elements.
- 11.2** Without limiting the specific details of the submission, in summary, the submission and evidence of PBCC and Panorama Body Corporate (208, FS1148) seeks greater emphasis on urban design considerations through the HDRZ provisions, and the inclusion of

specific controls via a structure plan for Lot 5. The evidence of Mr Tim Walsh presents a possible framework for the structure plan.

- 11.3** Mr Walsh and Ms Wolt refer to the need for “striking the right balance in the proposed plan between enabling and encouraging residential intensification, and the need to ensure a high level of quality and amenity, so that higher density residential neighbourhoods are attractive living environments for existing and future residents”⁷. Ms Wolt further considers that the submitters have concerns that the proposed HDRZ provisions are “skewed too far toward residential intensification, at the expense of residential amenity”.
- 11.4** The HDRZ does not dispense with urban design or amenity, rather seeks to enable change and intensification within the zone with appropriate consideration to these matters. I have previously noted Council's intention to develop urban design guidelines, which will provide greater support and specificity to the implementation of such provisions.
- 11.5** I wish to reiterate Goal 3.2.2 and Objective 3.2.2.1 of the strategic directions chapter which seek a “*compact, well designed, and integrated urban form*”. From a strategic perspective, and in light of the economic evidence and questioning of Mr Philip Osborne, I consider that what would result in a watering down of the HDRZ provisions for a vacant, undeveloped site, significant in scale, would conflict with and would not achieve the strategic directions of the PDP, and undermine the intent for the HDRZ as a whole. I further note that Mr Osborne in his review of the density standards⁸ notes the low viability of high density product and that building heights should be increased within the zone, beyond 7 and 12m, to make the product more feasible.
- 11.6** I reiterate that any building of significant scale developed on this site would be assessed via a consenting pathway due to exceeding the 3 units (under Redraft Rule 9.4.4), during which urban design matters

⁷ Legal Submissions for Pounamu Body Corporate Committee and Panorama Body Corporate, paragraph 5

⁸ Attached as Appendix 4 to Amanda Leith's Right of Reply for Chapter 8, dated 11 November 2016

and effects on neighbouring sites can be considered in detail. I note that in response to PBCC's submissions I have made revisions to the Rule 9.4.4 to include 'sunshine and light access' within matters of discretion under Rule 9.5.1 to limit building height on the southern side of Frankton Road, and in this reply have revised the matters of discretion under Rule 9.5.1 which also partly gives relief to the submitter.

11.7 I address other specific matters of the evidence below.

Acknowledgement of errors and inconsistencies

11.8 I refer to the comments of Ms Wolt that my analysis of the PBCC submission has been "narrow" and "oversimplified", and only considers the loss of outdoor living space. I consider that Ms Wolt has taken this comment out of context, and I wish to confirm that in drafting the s42A report, I have considered the entire scope of PBCC's submission and that submission has provided the basis for some of my recommended changes to improve urban design outcomes generally through improved matters of discretion within the HDRZ provisions.

11.9 Ms Wolt in her submissions refers to the effects of the HDRZ provisions, including increased building heights and the lack of recession plane controls because the site would be defined as 'sloping'. I acknowledge that my assessment of the site as a 'flat' site within my s42A report is inaccurate, and I understand that the site would be considered as 'sloping'. As such, I concur that no recession planes would apply to future development on Lot 5. However, I wish to highlight that because of this, lower height limits apply to sloping sites under Redrafted Rule 9.5.3 (building height – sloping sites) being 7m as a permitted activity, and 10m as a restricted discretionary activity. The 7m height limit for sloping sites is consistent with the ODP provisions.

11.10 Ms Wolt also refers to the comments of my summary of evidence in which I stated that the right of way/easement through the site could be used for the provision of outdoor living. I accept that this may not be possible, within the current terms and conditions of the easement.

However, I maintain that its existence, and effective restriction from any building in this location, will provide a degree of separation to the Panorama Apartments at the rear of Lot 5.

Structure plan

11.11 The evidence of Mr Walsh presented a possible structure plan for Lot 5, which was revised after the hearing of 25 October to reduce setbacks of 4.5m at the western area of the site.

11.12 I consider the structure plan to be unnecessary for the following reasons, because:

- (a) It identifies building height consistent with the permitted limit for sloping sites;
- (b) No evidence exists that the comparable difference between the setbacks proposed (3m and 4.5m), leads to an adverse effect that is substantially more than and those that are currently enabled (2m under Redraft Rule 9.5.8);
- (c) The 2m setbacks enabled by Redraft Rule 9.5.8 should be considered in addition to those required of adjoining sites, therefore creating a 4m or more effective separation to adjoining buildings;
- (d) As evident in my s42A Appendix 1, Redraft Rule 9.5.8 identifies setbacks adjoining the State Highway as 4.5m, and therefore this setback need not be identified by a structure plan;
- (e) The irregular shape of the allotment, in addition to the central easement is likely to practically limit the shape and scale of built form, including limiting continuous building length; and
- (f) Urban design and effects on neighbouring sites (specifically provided under Redraft Rule 9.4.4 matters of discretion) will be assessed under a consenting pathway for any proposal more than 4 units. The urban design panel will provide an avenue for urban design assessment, in addition to any future design guidelines. Any breaches to standards triggering a NC status must meet the s104D gateway test

(noting that I have not recommended in this reply to reduce the use of non-complying status for breaches to Standards).

Pounamu Apartments

11.13 The submissions and evidence of Ms Wolt and Mr Walsh place some focus on the dual key configuration of the Pounamu Apartments, which have the effect that when operated independently, the rear of the apartments are north facing and without views of the lake. I consider that in this instance, amenity values, while not derived by views, are otherwise derived from the locational aspect of the zone. The site is situated in close proximity to town, and with access to the lake within walking distance. These features will continue to contribute to the amenity experienced from residents or visitors of these apartments.

Panorama Apartments

11.14 Relating to impacts on the Panorama Apartments, Ms Wolt notes the submitter's concerns that low cost worker accommodation may be developed on Lot 5. While the HDRZ provisions do not distinguish who the residents of any building should be, and this type of development could certainly be realised, of more relevance is that the same level of design controls apply regardless of the intended use of the building. I further note however the responses of Mr Osborne that the location of the zone is unlikely to provide for the lower end of the market.

12. OTHER POSSIBLE CHANGES LIMITED BY SCOPE

12.1 In this section I address changes to the chapter that I consider have merit, but there isn't any scope in submissions to recommend the changes.

Outdoor Storage

- 12.2** During the Council opening the Panel queried the intended regulation of 'Outdoor Storage' in relation to domestic storage (such as for firewood).
- 12.3** The inclusion of "bulk outdoor storage" or "outdoor storage" as a Prohibited Activity within the activity table of the notified Residential Chapters was intended to capture 'bulk' scale storage activities not anticipated or desired in a residential area, such as landscape materials, building supplies, machinery, equipment and wastes of an industrial nature. However, upon review of the definitions of the PDP, these activities are otherwise captured by other separate definitions of the PDP, such as "Rural Industrial Activity", "Industrial Activity", "Service Activity", "Yard Based Industrial Activity". The activity status of these uses, if occurring in a residential zone, would be governed by the default status of the activity table (being NC for each of the Residential Zones).
- 12.4** It is not intended that this definition or the PDP would prohibit minor domestic scale storage that is expected within a residential zone, such as the storage of firewood. I do not consider it necessary to amend the definition for this scenario as such an activity is unlikely to give rise to adverse effects to warrant specific regulation or exclusion.
- 12.5** It is my view that 'outdoor storage' should be deleted as an 'activity' in the 'activity table' and is otherwise managed by either the non-compliance status of the activity table or the use that it is associated with (eg. Residential Activity, Industrial Activity). The related storage element of residential activity (such as the location and size spaces for the storage of household goods and equipment) should however be considered as a matter of discretion under notified Rule 9.4.4 for three or more units.

Definition Of 'Site'

- 12.6** In my summary of evidence for the HDRZ, at pages 9 and 10 I considered the definition of "site" as it applies to cross lease, company lease, unit titles, and strata titles. At the hearing, the Panel queried this definition further as it relates to developments occurring

across more than one lot, and the intended application to cross lease, company lease, unit titles, and strata titles.

- 12.7** The definition was submitted on by Patterson Pitts Group (370) who sought amendments to reflect "*replacement Acts*", or "*or Unit Titles Act 2010*". I do not believe this submission provides the scope to amend the definition in any other manner, as the submission is specific in its relief sought and does not seek wider changes to its meaning. Nonetheless I set out my considerations on the merits of this definition and I maintain that it may be more appropriate for this to be re-considered at the Definitions hearing stream.
- 12.8** I first discuss the application of the definition to cross lease, company lease, unit titles, and strata titles. The definition of site for these tenure types are set out under the 'exceptions' listed under i to iii of the definition. My understanding is that items i to iii are applied in practice, in the determination of landowners and for consideration to neighbours or affected persons under the RMA. The application of these exceptions to rules of the PDP which apply to a 'site' (such as boundary setbacks or site coverage) however is unclear. The desired result however is that for these tenure types, the 'site' relates to the lot as it was pre-development, or prior to the creation of the separate legal instruments. The effect of this would be that if there is an established unit development, that the overall site coverage (for example) applies, and not for each unit to effectively have its own rules and its own site coverage. The reverse would result in the ongoing diminishment of remaining site coverage if each separate unit were able to develop to its own site coverage.
- 12.9** It is my view that the definitions of the PDP need not govern administration matters of the RMA such as the determination of who is a landowner and who is an adjoining or potentially affected person, and that this may otherwise be detailed through non statutory guidance material.
- 12.10** In regards to the query that developments crossing more than one lot (or more than one 'site') would be subject to rules applying to each lot, and require multiple setbacks etc, I noted at the hearing that the

definition has not been changed and is the same as the ODP. I understand that currently in consent processing this is considered as a 'technical breach', and conditions are applied to consents requiring the amalgamation of lots prior to the consent being given effect to. I note that amalgamation of lots is defined as 'subdivision' under the RMA as it requires the issue of a separate certificate of title. Therefore, amalgamation of lots would require the necessary consent under the rules of the Subdivision chapter.

- 12.11** Additionally, the application of notified Rule 9.4.3 of the HDRZ *could* also give landowners the opportunity to undermine the intent of the rule by developing 'cookie cutter' developments of three units per site, multiple times, to avoid a resource consent process. In reality I consider it unlikely that a willing developer seeking a comprehensive development would take this approach, as it may not be efficient for construction costs.
- 12.12** I have considered the possibility of reverting to bulk and location controls only, however without a limit on development scale via numbers of units there would be limited opportunity to assess the design of what could be considerably large buildings.
- 12.13** To address all of these matters, and simplify the definition of 'site' a possible revision to the definition is set out below. I maintain however that this should be reconsidered at the Definitions hearing, or addressed via a variation.

Site – *Any land on which an activity is carried out or is proposed to be carried out, whether such land comprises the whole or part of a legally defined parcel of land and held in a single Certificate of Title; or more than one legally defined parcel of land where these are contiguous.*

13. CONCLUSION

- 13.1** Overall, I consider that the revised chapter as recommended in **Appendix 1** is the most appropriate way to meet the purpose of the RMA.



Kimberley Banks
Senior Planner
11 November 2016