

**BEFORE THE HEARINGS PANEL
FOR THE QUEENSTOWN LAKES DISTRICT COUNCIL**

UNDER the Resource Management Act 1991

IN THE MATTER of a variation to the QLDC Proposed
District Plan – Urban intensification

BY **COHERENT HOTEL LIMITED**

Submitter 773 / Submitter 1263

AND **FURTHER SUBMITTERS**

1348 / 1349 / 1350/ 1351

SUBMITTERS' OPENING LEGAL SUBMISSIONS

Dated: 7 August 2025

MAY IT PLEASE THE COMMISSIONERS:

- [1] These submissions are presented on behalf of Coherent Hotel Limited (**Coherent**) and further submitters S Haines and M Spencer (Further Submitter S1348); D and M Columb (Further Submitter 1349) and S and R Millar (Further Submitter 1350) in relation to the urban intensification variation to the Queenstown Lakes District Council Proposed District Plan (**PDP**) (**Variation**).

Submitter's land and relief sought

- [2] Coherent and the other further submitters, own the following land subject to the Variation and seeks the following relief:
- (a) 90, 92, and 94 Thompson Street (Coherent land) and 98, 101, 108A and 110 Thompson Street. The relief collectively sought is to rezone contiguous landholdings to High Density Residential (**HDR**) (**Thompson Street Site**).
- [3] Coherent also owns land as set out below and seeks relief in relation to:
- (a) 139 Fernhill Road, 10-18 Richards Park Lane, and 18-22 Aspen Grove (**Fernhill Road Site**) – rezone contiguous landholdings to Medium Density Residential (**MDR**) and apply Visitor Accommodation Sub-Zone (**VA Zub-Zone**).
- [4] Both of the above have slightly different legal scope issues which are addressed in these submissions.

The Thompson Street Sites

- [5] In respect of the Thompson Street Sites, the submitters seek to create a more efficient and effective zoning pattern by rezoning from MDR to HDR to align with the objectives and policies of the NPS-UD and the PDP. The basis for the rezoning request is supported by:
- (a) The sites' easy accessibility and proximity to the Queenstown Town Centre.¹

¹ Evidence of Ms Clouston, at [22].

- (b) The ability to provide for a more coherent and logical zoning pattern on the ground, rather than the current status, which is a zoning boundary that does not differentiate or delineate between any clear planning or topographical change.²
 - (c) The requested HDR rezoning extension at the western ends of Thompson Street and Lomond Crescent will be consistent with policy 5, policy 1, and the intent of the NPS-UD.
- [6] There is a potential question of scope in terms of how explicit the submission and further submissions are in seeking this overall zoning extension, and the consideration of whether the further submissions expand or go beyond the scope of the original submission.
- [7] Furthermore, Ms Scott's opening submissions also note that the 'fourth category' of potential scope issues is: Submissions seeking rezoning of PDP land that, while currently zoned an urban zone, is not close to the commercial centres in Queenstown, Frankton and Wānaka.
- [8] The further submitters lodged a further submission to OS200 of Evan Keating on behalf of Waka Kotahi, NZ Transport Agency. The summary of decisions requested notes the following in respect of this submission:
- That more sites are identified in Queenstown and Frankton for intensification and for greater levels of intensification in the areas identified for upzoning than were notified in the proposed variation.
- That all areas within walking distance of the Queenstown Town Centre should be up-zoned to High Density Residential unless constrained by other factors.³
- [9] Further submissions 1348, 1349, 1350, and 1351 all lodged a further submission generally in support of submission 200, noting in each case that the further submitter owned land within the areas referenced in the original submission and that the relief in respect of the variation as a whole, including rezoning and chapter 9 (HDR) were supported.

² Evidence of Ms Clouston, at [26].

³ Found at: <https://www.gldc.govt.nz/media/kstidij/final-uiv-summary-of-decisions-requested-16-may-2024.pdf>

Scope for assessing what is raised within a submission and further submission

[10] The leading authorities for determining whether relief pursued within a submission and further submission are set out below. In summary of those, this requires an assessment in a workable fashion rather than a narrow or overly legalistic one. It requires examination of the context of the Variation as well as the whole of the submission.

(a) In *Countdown Properties (Northlands) Ltd* the High Court stated:⁴

Adopting the standpoint of the informed and reasonable owner is only one test of deciding whether the amendment lies fairly and reasonably within the submissions filed. In our view, it would neither be correct nor helpful to elevate the 'reasonable appreciation' test to an independent or isolated test. The local authority or Tribunal must consider whether any amendment made to the plan change as notified goes beyond what is reasonably and fairly raised in submissions on the plan change. In effect, that is what the Tribunal did on this occasion. It will usually be a question of degree to be judged by the terms of the proposed change and of the content of the submissions.

(b) In *Power*, the High Court cautioned against adopting an "unduly narrow" approach:⁵

[30] ... But care must be exercised on appeal to ensure that the objectives of the legislature in limiting appeal rights to those fairly raised by the reference are not subverted by an unduly narrow approach. That was emphasised by Fisher J in *Westfield (New Zealand) Ltd v Hamilton City Council* [2004] NZRMA 556 at 574-595, where it was said:

[73] On the other hand I think it implicit in the legislation that the jurisdiction to change a plan conferred by a reference is not limited to the express words of the reference. In my view it is sufficient if the changes directed by the Environment Court can fairly be said to be

⁴ *Countdown Properties (Northlands) Ltd v Dunedin City Council* [1994] NZRMA 145 at 166.

⁵ *Power v Whakatane District Council & Ors* HC Tauranga, CIV-2008-470-456, 30 October 2009, Allan J, at [30] citing *Westfield (New Zealand) Ltd v Hamilton City Council* [2004] NZRMA 556 at 574-595.

foreseeable consequences of any changes directly proposed in the reference.

[74] Ultimately, it is a question of procedural fairness. Procedural fairness extends to the public as well as to the submitter and the territorial authority. Adequate notice must be given to those who seek to take an active part in the hearing before the Environment Court if they know or ought to foresee what the Environment Court may do as a result of the reference. This is implicit in sections 292 and 293. The effect of those provisions is to provide an opportunity for others to join the hearing if proposed changes would not have been within the reasonable contemplation of those who saw the scope of the original reference.

- (c) In *General Distributors Limited*, the High Court stated:⁶

[56] There is of course a practical difficulty. As was noted in *Countdown Properties* at 165, councils customarily face multiple submissions, often conflicting, and often prepared by persons without professional help. Both councils, and the Environment Court on appeal, need scope to deal with the realities of the situation. To take a legalistic view and hold that a council, or the Environment Court on appeal, can only accept or reject the relief sought in any given submission would be unreal.

[emphasis added]

- (d) Similarly, in *Royal Forest and Bird Protection Society Inc* Panckhurst J observed:⁷

The process of public notification, submissions, and hearing before the Council is quite involved. Issues commonly emerge as a result of the participation of diverse interests and the thinking in relation to such issues frequently evolves in the light of competing arguments. Thereafter the Council must determine whether changes to the Plan are appropriate in response to the public's contribution. Against this background it is important that the assessment of whether any amendment was reasonably and fairly raised in the course of submissions, should be approached in a realistic workable fashion rather than from the perspective of legal nicety.

⁶ *General Distributors Limited v Waipa District Council* (2008) 15ELRNZ 59 (HC).

⁷ *Royal Forest and Bird Protection Society Inc v Southland District Council* [1997] NZRMA 408 at 413 per Panckhurst J.

[emphasis added]

- [11] Submission 200 is not exact in terms of where it specifically seeks upzoning. It generally refers to more sites being added for upzoning in Queenstown than originally notified, and that all areas within walking distance of the town centre should be upzoned to HDR unless otherwise constrained.
- [12] The further submissions on that relief do not expand the original relief sought. They further particularise it by relating specifically to further submitter sites. For the reasons set out by Ms Clouston, those sites are all walkable, are in close proximity to Queenstown, and are on the edge of existing HDR zoning. The extension of HDR zoning to these sites does not create issues of procedural fairness to other landowners, submitters, or the Council, given the breadth and intent of submission 200. Submission 200 is framed intentionally in broad terms, the generality of it however is clear in that it seeks for more intensity in proximate and suitable locations.
- [13] For these same reasons, the relief sought does not fall foul of Ms Scott's fourth category of scope issues. In this regard, she notes:
- The only rezoning of land proposed by the Variation is identified in the public notice as being land close to the commercial areas in Queenstown, Frankton and Wānaka. This narrows the scope of any rezoning requests to areas that can be characterised as being close to those three commercial areas.
- [14] The context of the site as described by Ms Clouston is 'close' which is inherently undefined and a matter that is subject to evidence. Upzoning from MDR to HDR in this location is reasonably foreseeable.
- [15] PDP zoning was reviewed as part of the s 32 assessment, with rezoning possible where this met the purpose of Policy 5 of the NPS-UD. Recommendations were made to rezone areas where commercial nodes are strengthened through surrounding upzoning and / or transport corridors are also improved.⁸ Evidence for the Council has been

⁸ Section 32 assessment, at p. 32.

supportive of the relief sought by Coherent and the further submitters, subject to any matters of scope being addressed.

- [16] This land is located firmly within the 'urban environment' defined by the NPS-UD. It is also influenced by a degree of change simply based on the uplift already between the MDR provisions under the PDP as compared to the Variation uplift. In this regard, a significant change to this area requested for rezoning is already under consideration. As such, the Variation is an appropriate opportunity for Coherent to examine current zoning and whether this continues to be appropriate given the context of the NPS-UD.
- [17] The western end of Thompson Street forms an isolated area of MDR zoning, located near the Queenstown Town Centre. As such, the relief sought by Coherent and other further submitters could be seen as reasonably anticipated outcome and is not a 'submissional side wind.'

Evidence for Thompson Street rezoning

- [18] The Thompson Street Site has been assessed as performing well in terms of relative demand and the accessibility of the area is considered to improve overtime.⁹ HDR is accepted to be more commensurate to the level of relative demand / accessibility.¹⁰
- [19] In their evidence, Mr Cameron Wallace and Ms Rachel Morgan support rezoning the Thompson Street Site.¹¹
- [20] Furthermore, as outlined in the evidence of Ms Charlotte Clouston, the Thompson Street Site is close to the extent of the town centre of Queenstown.¹²

⁹ Rebuttal Evidence of Mr Cameron Wallace at [9.2]; Rebuttal Evidence of Ms Rachel Morgan at [5.4].

¹⁰ Rebuttal Evidence of Ms Rachel Morgan at [5.4].

¹¹ Rebuttal Evidence of Mr Cameron Wallace at [9]; Rebuttal Evidence of Ms Rachel Morgan at [5].

¹² Evidence of Ms Charlotte Clouston at [22].

Coherent Fernhill Road Site

Scope issues – Whether the submission for rezoning is within scope of the Variation

- [21] The general principles of case law are set out in **Appendix 1** of these legal submissions. These principles have now been traversed the Panel on many occasions and Counsel does not repeat these points. These have been applied to the Fernhill Road Site below.
- [22] Of the categories identified in Ms Scott's opening legal submissions, the Fernhill Road Site sits in Category Two and Category Four; however, Ms Scott for the Council acknowledges that whether Visitor Accommodation is within scope of the Variation is not clear cut.¹³

First Limb – Whether the submission addresses change to the status quo

- [23] An overall approach to Limb 1 of the scope tests is to consider whether the submission raises matters that should have been addressed in the s 32 evaluation and report (not simply whether the s 32 report did, or did not, address it).¹⁴ For instance, the omission of Visitor Accommodation from the s 32 evaluation does not exclude it from being within scope. Similarly, any s 32 report or notice seeking to preclude a right of submissions seeking to change the extent of an urban environment and extend urban zoning is not determinative of the issue of scope.¹⁵
- [24] Enabling the Coherent Land to be unified in terms of zoning provides a practical approach to the landholdings which form part of an integrated visitor accommodation grouping.¹⁶ Rezoning from LDR to MDR is not considered to give rise to any inappropriate urban design effects.¹⁷
- [25] Visitor Accommodation is anticipated within defined areas of the residential zones of the PDP identified by the VA Sub-Zone. It is submitted that the Visitor Accommodation provisions are within scope of the Variation. The Variation is intended to give effect to Policy 5 of the

¹³ At [4.11].

¹⁴ *Bluehaven Management Ltd v Western Bay of Plenty District Council* [2016] NZEnvC 191 at [39].

¹⁵ *Burdon* at [57b].

¹⁶ Evidence of Ms Rachel Morgan (Rezoning Residential – s 42A) at [8.6]; Evidence of Ms Susan Fairgray at [8.44]-[8.45]; Evidence of Mr Cameron Wallace at [15.53].

¹⁷ Evidence of Mr Cameron Wallace at [15.53].

NPS-UD, which must be read within the overarching policy objectives of the NPS-UD, including policy 1 to create well-functioning urban environments that provide for all aspects of the community. Objectives of the NPS-UD include enabling business services to be located in accessible areas or areas of high demand, with Policy 5 enabling heights and density of urban form commensurate to accessibility / relative demand for business use. 'Business land' is defined broadly in the NPS-UD as including (but not limited to) any zones to the extent it allows business uses. The VA Sub-Zone falls within this definition of 'business land' as it delineates an area where commercial / business activity is anticipated within residential zones.

- [26] This requires a broad range of amendments to the PDP provisions and zoning. Amendments to the PDP are not solely restricted to heights / density.¹⁸ Amendments proposed by the Variation are broad and comprise increasing development options and capacity, affecting a range of residential and commercial activities.
- [27] The consequential effects of increased height and density will include allowing for greater scale of VA activities within VA Sub-Zones. It will also change the nature of many suburbs within the urban environment, and in this way, raises the subject of appropriate amounts and spatial location of the existing VA subzones.
- [28] Given that VA subzones also sit within other urban zones, the s32 documentation listing particular zones the subject of the Variation, does not preclude the subzones as being within scope.

Second Limb – Issues of procedural fairness

- [29] It could be reasonably anticipated that the Variation, which seeks rezonings within the urban environment and a significant uplift in density and heights, that submissions would seek further VA rezoning where this responds to the overarching NPS-UD policy intention of enabling growth, density, development opportunity, and sufficient development capacity (subject to site specific evidence of constraints).

¹⁸ See Evidence of Ms Amy Bowbyes (Strategic – s 42A) at [9.6] and Rebuttal Evidence of Ms Amy Bowbyes at [4.2].

[30] Visitor Accommodation is also anticipated within the residential zones of the PDP and within the Fernhill Road Site.¹⁹ As such, it can be reasonably anticipated that submissions would seek to amend aspects of these provisions and / or the application of the VA Sub-Zone in accordance with the objectives of NPS-UD.

[31] The relief sought is limited to a small portion of land owned by the Coherent, which would align zoning within the Sites and extend the VA Sub-Zone across the Fernhill Road Site to create a coherent and contiguous zoning pattern.

Dated: 7 August 2025

R E M Hill
Counsel for the Submitter

¹⁹ See purpose statement of PDP Chapters 7, 8, and 9.

Appendix 1: Further Legal Submissions on Scope

[1] The principles as to whether a submission is ‘on’ a plan change, proposed plan, or variation to a proposed plan are relatively well established. The commonly referred to authority is that of the High Court in *Motor Machinists Limited*²⁰ in which the Court endorsed a following two-limb test established in *Clearwater Resort Limited*:²¹

- (a) **First Limb** – Whether the relief sought in the submission falls within the plan change made to the status quo by the Variation; and
- (b) **Second Limb** – Whether there is a real risk that people directly or potentially affected by the Variation (if modified in response to the submission) would be denied an effective opportunity to participate in the process.

[2] The application of each of these limbs is discussed further below.

First Limb – Addressing change to the status quo

[3] The first limb acts as a filter, considering the connection between the submission and the degree of change to the existing plan proposed in the notified plan change. In itself, this involves two aspects:²²

- (a) The breadth of alteration to the status quo entailed in the plan change; and
- (b) Whether the submission addresses that alteration.

[4] The High Court in *Motor Machinists* suggests that this can be determined by contextual analysis, looking beyond the proposed plan change itself. For example, by considering whether the submission raises matters that should have been addressed in the s 32 evaluation and report or whether the management regime for the resource (e.g. a particular lot) is altered by the plan change.

²⁰ *Palmerston North City Council v Motor Machinists Ltd* [2013] NZHC 1290.

²¹ *Clearwater Resort Ltd v Christchurch City Council* HC Christchurch AP34/02, 14 March 2003.

²² *Motor Machinists* at [80].

- [5] Zoning extensions are not completely ruled out by the *Motor Machinists* test. Consequential or incidental extensions to a notified zoning are permissible, provided that no further substantial s 32 analysis is required.²³ The High Court in *Motor Machinists* held that in relation to rezoning relief, submitters are not necessarily confined to the land that has been notified to be rezoned. In that case, the applicant sought to include a small area of land within the plan change for rezoning.
- [6] Furthermore, land that is adjacent to an area proposed to be rezoned may fall within this exception.²⁴ This is particularly relevant for submitters in this Variation seeking to extend urban zoning onto adjacent PDP Rural zoned land, where such land is directly influenced and affected by the Variation changes to the urban zoned land.
- [7] Although each case needs to be considered on its own facts, these legal principles cannot be applied in a vacuum. There are also local examples of land falling outside a notified plan change area being included in a variation as relief sought in submissions.
- (a) For example, a substantial area of land was rezoned by the Te Putahi Ladies Mile Variation after submissions requesting its rezoning, despite that land not being included in the notified version of that variation. While not binding, the Panel's approach to that determination is of some assistance in considering the scope of the notification and s 32 report, the matters that should have been considered as part of the same (particularly as guided by the overall purpose and intent of the Variation).
- (b) Similarly, in the recent landscape scheduled variation process, the Environment Court disagreed with submissions for the Council that submissions seeking to amend the extent of notified priority area boundaries were out of scope, despite s 32 documentation and public notices attempting to preclude such submissions.²⁵

²³ At [81].

²⁴ *Tussock Rise Ltd v Queenstown Lakes District Council* [2019] NZEnvC 111 at [69]-[90].

²⁵ *Burdon and others v Queenstown Lakes District Council* [2025] NZEnvC 122.

Second Limb – Creating issues of procedural fairness

- [8] The underlying principle of the second limb is procedural fairness. It considers whether potential submitters have been given fair and adequate notice of the relief proposed in the submission, or whether their right to participate in the process has been removed.²⁶
- [9] This limb seeks to decrease the risk of left field or submissional side winds.²⁷
- [10] An important question is whether there is a real risk that persons directly or potentially affected by the additional changes proposed in the submission have been denied an effective response to those additional changes.²⁸ The nature of PDP Rural zoned land is important in that it was the subject of review almost a decade ago, has had limited options for a plan change process, and would be able to be efficiently varied as part of the Council's current intensification Variation to the PDP.

The purpose and scope of the Variation

- [11] The Council provided several statutory and non-statutory documents to explain the purpose and effect of the Variation:
- (a) Statutory documents included the public notice, section 32 evaluation report (and supporting appendices), and amended PDP provisions.
 - (b) A suite of non-statutory documents was also produced by the Council, including a fact sheet and story map providing a side-by-side comparison of current / proposed zoning.
- [12] Collectively, the detailed content of the Council's notification and s 32 documents suggest the Variation is intended to be a substantial plan change to the PDP, creating significant changes to the intensity of urban environments across the PDP zones of the District and increasing development options and capacity.

²⁶ *Motor Machinists* at [77].

²⁷ *Clearwater* at [69].

²⁸ *Motor Machinists* at [82].

[13] These documents outline that the Variation seeks to give effect to Policy 5 of the NPS-UD. Policy 5 of the NPS-UD and related definitions provide:

- (a) Policy 5: Regional policy statements and district plans **applying to tier 2 and 3 urban environments** enable heights and density of urban form commensurate with the greater of: the level of accessibility by existing or planned active or public transport to a range of commercial activities and community services; or relative demand for housing and business use in that location.
- (b) **Urban environment** means any area of land (regardless of size, and irrespective of local authority or statistical boundaries) that: is, or is intended to be, predominantly urban in character; and is, or is intended to be, part of a housing and labour market of at least 10,000 people.
- (c) **Business land** means land that is zoned, or identified in an FDS or similar strategy or plan, for business uses in urban environments, including but not limited to land in the following: any industrial zone; the commercial zone; the large format retail zone; any centre zone, to the extent it allows business uses the mixed use zone; to the extent it allows business uses any special purpose zone, to the extent it allows business uses.

[14] Policy 5 of the NPS-UD seeks to ensure intensification of plans applying to Tier 2 urban environments. Central to the NPS-UD intensification provisions is enabling intensification in desirable and suitable locations to support well-functioning urban environments and improve housing affordability. Expected outcomes include:²⁹

- (a) people living and working in parts of urban areas that are in or around city centres, or other locations with good access to jobs;
- (b) people have good accessibility to public transport in areas that are zoned for higher densities;

²⁹ Ministry for the Environment, *Understanding and implementing intensification provisions for the National Policy Statement on Urban Development*, p. 10. Accessed at: <https://environment.govt.nz/assets/Publications/Files/Understanding-and-implementing-intensification-provisions-for-NPS-UD.pdf>.

- (c) there are limited constraints / barriers on development in areas where demand and accessibility are high;
- (d) there is enough development capacity to support growth in parts of urban areas where demand is high; and
- (e) well-functioning urban environments that are dynamic and respond to the diverse and changing needs of communities.

- [15] The Ministry for the Environment notes that the intensification provisions of the NPS-UD are particularly important where they apply in areas close to current or planned rapid transit and frequent public transport services, as well as places where people can access many opportunities within walking distance.³⁰
- [16] Submissions proposing an alternative way that achieves the intent and purpose of Policy 5 and the NPS-UD may be considered to be on the Variation, depending on their location, context, and the extent of further s 32 analysis required (or the degree of change).
- [17] In the context of the HBA assessment and the enabling framework of the NPS-UD, where PDP zoned land might be foreseeably extended into the urban environment and indicated for intensification, this would be an appropriate way to achieve the intent of the Variation and should therefore be subject to consideration.
- [18] Each case for rezoning extension on PDP zoned land in this Variation will be fact specific, it may depend on matters such as the degree of change to the status quo of that land, the degree to which substantial further s 32 analysis would be required, and to what extent the change might create broader interests of natural justice and fairness, as opposed to a more insular zoning outcome.

³⁰ Ibid, at p. 10.