

Before the Independent Hearing Panel

Under the Resource Management Act 1991

In the matter of submissions on the Urban Intensification Variation to the
Queenstown Lakes Proposed District Plan

Legal submissions on behalf of Brian Kreft and the Wanaka Trust

Date: 26/08/2025

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May it please the Panel

- 1 These legal submissions are provided on behalf of Brian Kreft (FS1373) and the Wanaka Trust (FS1374) (**Kreft/the Further Submitters**) in relation to the Intensification Variation to the Queenstown Lakes Proposed District Plan (**PDP**) (**UIV/Variation**).

Background

- 2 The Further Submitters have an interest in land zoned Medium Density Residential Zone (**MDRZ**) at the corner of Stratford Terrace and Warren Street, Wānaka (together, **Kreft Properties**).¹ The Kreft Properties are identified on the map attached as **Appendix 1**.
- 3 The Further Submitters support the Variation as notified as it relates to the Kreft Properties.
- 4 The Kreft Properties are not proposed to be rezoned by the Variation but will benefit from the more enabling MDRZ provisions, as follows:

Current PDP provisions	Section 42A report provisions
8.5.1: A maximum height of 7 metres.	8.5.1.4: A maximum height of 11 metres plus an additional 1m for pitched roof forms only.
8.5.5: A maximum density of one residential unit per 250m ² net site area.	No maximum density.
27.6.1: Minimum lot area 250m ² .	27.6.1: Minimum lot area 250m ² (unchanged).
27.7.30: Minimum lot dimensions 12m x 12m.	27.7.30: Minimum lot dimensions 10m x 12m.

- 5 Kreft lodged further submission FS1373 on the Variation.
- 6 After the deadline for lodging further submissions, the Further Submitters became aware that John Joseph O'Shea, Helen Elizabeth Russell, John

¹ Lot 3 Deposited Plan 25998 held in Record of Title OT18A/429 (1311m²), Part Section 2 Block XLII TN OF Wānaka held in Record of Title OT240/91 (559m²), Section 1 Block XLII TN OF Wānaka held in Record of Title OT181/34 (2441m²).

Page Russell and Mary-Louise Stiassny (**Stratford Terrace Submitter**) of 3/61 Stratford Terrace, Wānaka (**Stratford Terrace Property**) had lodged a site-specific submission OS198 opposing the application of the Variation to three properties including one of the Kreft Properties² (together, the **Warren Street Properties**) due to concerns relating to the Wānaka Basin Cardrona Gravel Aquifer. The Warren Street Properties are identified in proximity to the Stratford Terrace Property on the map **attached** as Appendix 2.

- 7 The Stratford Terrace Submitter's concerns are that denser urban development will require intensive dewatering and will cause issues with the groundwater table leading to concerns over land stability.
- 8 The Stratford Terrace submission seeks:
 - (a) That the matters of discretion for residential units in rule 8.4.10 be amended to include:
 - (i) impacts on the groundwater table;
 - (ii) land stability;
 - (iii) foundation design;
 - (iv) earthworks and retaining design; and
 - (v) dewatering.
 - (b) That the matters of discretion for various activities at the Warren Street Properties be amended to include "impacts on the groundwater table, land stability and natural hazard risk";
 - (c) A 7 metre maximum building height for the Warren Street Properties (rule 8.5.1) rather than the Variation notified height of 11 metres plus an additional metre for pitched roof forms;
 - (d) The removal of non-notification rule 8.6.1.1.
- 9 The Wanaka Trust lodged a late further submission FS1374 on the Variation opposing the Stratford Terrace submission. The Panel granted leave for the late filing in its Minute 2 dated 4 June 2025.

² Lot 1 DP 18304 held in Record of Title OT9B/417 (registered owner: Patricia Jane Bylsma, Lynn Barton Stuart, Kathryn Louise Telford); Lot 2 DP 18304 held in Record of Title OT9B/418 (registered owner: Patricia Jane Bylsma, Lynn Barton Stuart, Kathryn Louise Telford); Lot 3 DP 25998 held in Record of Title OT18A/429 (registered owner: Craig Andrew Benington, Brian Patrick Kreft, Nathan John Kreft).

- 10 In the section 42A report dated 6 June 2025, the Council officers recommended the relief sought in the Stratford Terrace submission be rejected and that the relief sought in the Wanaka Trust further submission be accepted.

Executive summary

- 11 The Further Submitters agree with the section 42A report writers that:³

4.136 ... The management of groundwater and effects of development on the Wānaka Basin Cardrona Gravel Aquifer **is a matter for the Otago Regional Council (ORC) to regulate** through its Regional Plan. Noting that ORC has not made a submission on the UIV raising concerns with development in Wānaka.

4.137 In addition, the **PDP has a number of existing provisions that relate to groundwater table, land stability and natural hazard risk**. These are summarised below.

4.138 Notified Rule 8.5.4 within the MDSRZ chapter includes an additional matter of discretion which would enable **stormwater-related effects (including flooding and water nuisance)** to be considered when consent is sought to breach permitted building coverage. Rule 8.4.10 includes a matter of discretion that enables consideration of natural hazards when consent is sought for a multi-unit (4 or more units per site).

4.139 Regarding the natural hazard risk, PDP Rule 27.5.7 for all urban subdivision activities, contains an existing matter of discretion **(e) the adequacy of measures to address the risk of natural hazards' that enables consideration of natural hazard risk**. In addition, PDP Rule 27.4.3.1 acknowledges that all subdivision can be assessed against a significant risk from natural hazard through the provisions of section 106 of the RMA. Section 106 of the RMA enables consent authorities the ability to refuse subdivision consent or grant consent subject to conditions in certain circumstances, if an authority considers that there is a significant risk from natural hazards.

4.140 Additionally, the Chapter 28 - Natural Hazards sets a **policy framework to address land uses and natural hazards** throughout the District. Even

³ Section 42A Report of Corinne Frischknecht on behalf of Queenstown Lakes District Council Chapters 8 and 9 and Lake Hāwea Residential Zones 6 June 2025.

though PDP Chapter 2 - Definitions does not include a definition of 'natural hazard', the following definition in s2 of the RMA applies: natural hazard means any atmospheric or earth or water related occurrence (including earthquake, tsunami, erosion, volcanic and geothermal activity, landslip, subsidence, sedimentation, wind, drought, fire, or flooding) the action of which adversely affects or may adversely affect human life, property, or other aspects of the environment

4.141 In addition, PDP Chapter 28, at provision 28.2 lists known natural hazards in the District, including flooding, inundation and land instability.

4.142 In respect of groundwater, Chapter 25 – Earthworks of the PDP **addresses earthworks that affect an aquifer**, and of particular relevance,

(a) Rule 25.5.20 requires restricted discretionary activity consent for earthworks undertaken below the water table of any aquifer, or that cause artificial drainage of any aquifer;

(b) Matter of discretion 25.8.9.3 Whether the earthworks and final ground levels will adversely affect an aquifer or an overland flow path or increase the potential risk of flooding within the site or surrounding sites;

(c) Advice note at 25.3.3.1d, highlights that earthworks activities that result in the exposure of groundwater aquifers are subject to the Otago Regional Council Regional Plan: Water for Otago 2004.

- 12 The Stratford Terrace Submitter is attempting to revisit matters that were previously resolved under Stages 1 and 2 of the PDP and that are outside the scope of this Variation.
- 13 The site-specific relief sought in the Stratford Terrace submission is inappropriate and not supported by any evidence (including the Stratford Terrace Submitter's own expert evidence).

Groundwater take concerns are a matter for the Otago Regional Council

- 14 The control of the taking, use, damming, and diversion of water, and the control of the quantity, level, and flow of water in any water body is a function of ORC as the regional council.⁴ QLDC cannot grant consents for

⁴ Resource Management Act 1991, s 30(1)(e).

the taking of groundwater that might be associated with any dewatering and development on the Warren Street Properties, only ORC can.

- 15 The leading case on the overlap between regional and territorial authority functions is the Court of Appeal decision in *Canterbury Regional Council v Banks Peninsula DC* [1995] 3 NZLR 189; [1995] NZRMA 452 (CA). The case concerned whether the control of land for the avoidance or mitigation of natural hazards is within the powers of both regional and territorial authorities. The Court declared at page 11:

A regional council may, to the extent allowed under s 68 of the Resource Management Act, include in a regional plan rules which prohibit, regulate or allow activities for the purpose of carrying out its functions under s 30(1)(c) to (h). A territorial authority may, to the extent allowed under s 76, include in a district plan rules which prohibit, regulate or allow activities for the purpose of carrying out its functions under s 31. **Neither a regional council nor a territorial authority has the power to make rules for purposes falling within the functions of the other, except to the extent that they fall within its own functions and for the purpose of carrying out its own functions.** To that extent only both have overlapping rule making powers, but the powers of a territorial authority are also subject to s 75(2).

- 16 Section 75(2) has now been replaced by s 75(4), and provides that a district plan shall not be inconsistent with a regional plan for any matter specified in s 30(1).
- 17 Her Honour Judge Steven's division of the Environment Court considered *Banks Peninsula* in determining appeals in respect of PC8 to the Otago Water Plan (**OWP**) in *Re Otago Regional Council*.⁵ In that case, the planning experts agreed the PDP Chapter 25 and PC8 provisions were not entirely consistent and the submitters contended ORC had "overstepped the mark" given the provisions in Chapter 25 of the PDP existed earlier in time.⁶ The Court found it was not unusual for there to be overlapping provisions in regional and district plans in the management of sediment from residential earthworks. It accepted the evidence of ORC's planner that the provisions complemented each other and that the focus of the OWP was on water (quality) whereas the focus of the PDP was on a wider range of matters.

⁵ *Re Otago Regional Council* [2022] NZEnvC 101.

⁶ At [167].

- 18 The Environment Court in *Telecom New Zealand Ltd v Environmental Protection for Children Trust* [2003] ELHNZ 112 found a territorial authority cannot control the use of land for purposes that are within the jurisdiction of the regional council. It can however exercise control related to its obligations under s 31(1)(b), even if an incidental result falls within the function of the regional council in accordance with the Court of Appeal's decision in *Canterbury Regional Council v Banks Peninsula District Council* [1995] 3NZLR 189 and 195. Section 31(1)(b) provides, relevantly:

...

(b) the control of any actual or potential effects of the use, development, or protection of land, including for the purpose of—

(i) the avoidance or mitigation of natural hazards; and

(ii) *[Repealed]*

(iia) the prevention or mitigation of any adverse effects of the development, subdivision, or use of contaminated land:

(iii) the maintenance of indigenous biological diversity:

...

- 19 ORC has not made a submission on the UIV, and in particular, has not raised concerns regarding the Variation as it relates to groundwater and development in Wānaka. In our submission, it is telling that ORC is not here in support of the Stratford Terrace submission.

The existing matters of discretion are sufficient to address Stiasny's concerns

- 20 It is submitted the concerns and matters of discretion sought in the Stratford Terrace submission are covered sufficiently in the matters of discretion already provided for in the PDP earthworks chapter, including effects on groundwater (**emphasis** added):

25.7.1 For all controlled and restricted discretionary activities except in relation to Rule 25.5.7.3 and 25.5.10A control or discretion shall be restricted to the following matters. These matters may also be applicable to any discretionary or non-complying activity.

25.7.1.1 Soil erosion, generation and run-off of sediment.

25.7.1.2 Landscape and visual amenity values.

25.7.1.3 Effects on infrastructure, **adjacent sites** and public roads.

25.7.1.4 **Land stability.**

25.7.1.5 Effects on **water bodies**, ecosystem services and biodiversity.

25.7.1.6 Cultural, heritage and archaeological sites.

25.7.1.7 **Nuisance effects.**

25.7.1.8 **Natural Hazards.**

25.7.1.9 Functional aspects and positive effects.

- 21 Rule 25.5.20 will capture any activity with an effect on the Wānaka Basin Cardrona Gravel Aquifer:

25.5.20 Earthworks shall not be undertaken **below the water table of any aquifer, or cause artificial drainage of any aquifer.**

Non-compliance: RD

- 22 Any application of scale will trigger the 300m³ maximum volume of earthworks standard in the MDRZ:⁷

25.4.2 Earthworks that do not comply with the standards for the maximum total volume of earthworks in Table 25.2, except for earthworks covered by Rules 25.4.1A and 25.4.1B.

Non-compliance: RD

24.4.3	Medium Density Residential Zone	300m ³
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- 23 Accordingly, the PDP earthworks chapter already provides Council discretion to consider effects on adjacent sites and water bodies, land stability, natural hazards and nuisance effects in determining whether to grant consent and impose conditions.

- 24 The Cardrona Gravel Aquifer is identified in the OWP and the C-series maps.⁸ It is not listed in Schedules 2 (specified restrictions on the exercise

⁷ Earthworks that do not comply with the maximum total volume of earthworks standards are a restricted discretionary activity pursuant to rule 25.4.2.

⁸ Otago Water Plan at 3.3.3 and 3.3.4.

of permits to take surface water) or 4 (allocation and restriction regime for groundwater). However, resource consent is required in circumstances where a take has an adverse effect on the environment and/or another lawful take:

- (a) Any surface water take or use (including from the springs in the vicinity of the Warren Street properties)⁹ for construction that has an adverse effect on the environment and/or another lawful take is not permitted (i.e. requires regional consent) pursuant to rule 12.1.2.5 of the OWP.
- (b) Similarly, groundwater take or use that has an adverse effect on the environment and/or another lawful take is not permitted (i.e. requires regional consent) pursuant to rule 12.2.2.2 of the OWP.

25 Under the OWP earthworks associated with residential development will also trigger requirement for consent, if the conditions in permitted rule 14.5.1.1 are not all satisfied. These include:

- (f) Earthworks do not result in flooding, erosion, land instability, subsidence or property damage at or beyond the boundary of the property where the earthworks occur;

26 Counsel note the Belvedere Apartments referred to in the Stratford Terrace submission and attached as Appendix 1 to the evidence of Neil Thomas on behalf of the Stratford Terrace Submitter required discretionary resource consent pursuant to rule 12.2.4.1 the OWP because the rate and volume exceeded the permitted activity rules.

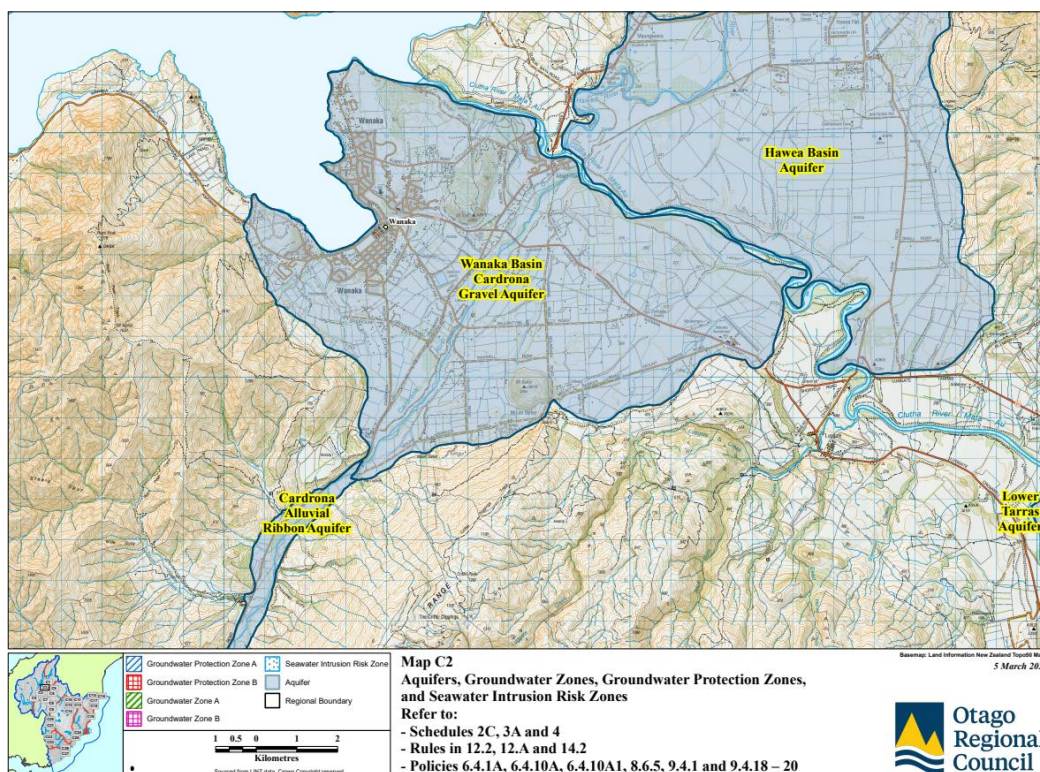
Site specific matter of discretion and bespoke rule will not address the Stratford Terrace Submitter's concerns

27 There is no evidence to suggest that introducing site specific rules and matters of discretion for three properties will have any impact whatsoever on the Wānaka Basin Cardrona Gravel Aquifer.

28 To the contrary, the Wānaka Basin Cardrona Gravel Aquifer extends "from the Clutha River/Mata-Au and Lake Wanaka to the north" to the "Criffel and

⁹ Identified in Table 3 of Water Permit 2006.151 being Appendix 1 to the Statement of Evidence of Neil Thomas.

Mt Alpha ranges to the south and west" as demonstrated on ORC Map C2 reproduced below:¹⁰



29 The Further Submitters respectfully question whether the Stratford Terrace Submitter's concerns actually relate to the Wānaka Basin Cardrona Gravel Aquifer or whether they are primarily concerned with the potential changes to their residential amenity from intensification on the Stratford Terrace property. Counsel note:

- (a) The Warren Street Properties are located immediately north of the Stratford Terrace Property, meaning the introduction of more enabling heights and densities may affect their access to sunlight;
- (b) The Stratford Terrace Submitter has not sought the site specific rules and matters of discretion apply to the Stratford Terrace property itself, or the properties east, south or west of the Stratford Terrace property;
- (c) The Wānaka Basin Cardrona Gravel Aquifer is over 7000ha in area. The Warren Terrace Properties total less than 0.6ha.

¹⁰ Water Permit Application 2006.151 by Warren Street Developments Limited, to divert and take groundwater to permanently dewater a development site, Wānaka 30 August 2006 at 2.7. <https://www.orc.govt.nz/media/11828/c-map-series-c2.pdf>.

Stratford Terrace submitter attempting to revisit previously settled matters that are outside the scope of this Variation

30 The Stratford Terrace Submitter lodged submission #42 on Stage 1 of the PDP seeking, inter alia:

Include in the medium density zone, or another appropriate chapter:

- Objectives and policies raising the presence of the Cardrona Gravel Aquifer and its potential effect on earthworks and residential development.
- A rule requiring specific consideration of earthworks and building with reference to the Cardrona Gravel Aquifer
- The requirement for engineering assessment and notification of any applications involving development in areas likely to be significantly impacted by the Cardrona Gravel Aquifer
- Include a diagram of the Cardrona Gravel Aquifer in the Proposed District Plan (shown on Diagram A4-17 of the Operative District Plan).

31 The section 42A Report writer recommended the above submission points be rejected on the basis that they were outside the scope of Stage 1 and would be included in Stage 2:¹¹

Out of scope not within Stage 1 of the PDP	These matters have been included within Plan Change 49 (Chapter 22 of ODP) which will be included in Stage 2
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32 The Independent Hearing Panel recommended the relief sought in the Stage 1 submission be rejected:¹²

42.2	J, E & ML Russell & Stiassny	Reject	General
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¹¹ Appendix 2 to Section 42A Hearing Report for Hearing commencing: 10 October 2016 – Chapter 8 Medium Density Residential <https://www.qldc.govt.nz/media/xorbz2rn/chapter-8-medium-density-residential-appendix-2.pdf>.

¹² Report and Recommendations of Independent Commissioners Regarding Chapter 7, Chapter 8, Chapter 9, Chapter 10 and Chapter 11 29 March 2018 at 219.

- 33 Council publicly notified the Independent Hearing Panel decision on Stage 1 on 3 May 2018. No appeal was lodged.
- 34 The Stratford Terrace Submitter did not lodge a submission on Stage 2 of the PDP. Council publicly notified the Independent Hearing Panel decision on Stage 2 on 21 March 2019. No appeal was lodged.
- 35 The provisions are now beyond appeal and to be treated as operative in accordance with s 86F. In our submission, the Stratford Terrace Submitter is now attempting to use the UIV to revisit previously settled matters. If the Stratford Terrace Submitter wanted to appeal the MDRZ notification rules, they should have done so as part of Stage 1. Similarly, if they wanted to amend the MDRZ and subdivision rules as they relate to the Cardrona Gravel Aquifer, they should have lodged a submission and presented evidence as part of Stage 2 of the PDP.

Scope

- 36 We refer to and rely on the legal submissions on scope on behalf of Submitters 743, 776, 681 and 1336. In summary, whether a submission is "on" a plan change or variation requires a bipartite approach in accordance with the following test articulated in *Clearwater* and *Motor Machinists*.¹³
- (a) The first limb asks whether the submission addresses the alteration to the status quo entailed in the proposed plan change. This serves as a filter, based on direct connection between the submission and the degree of notified change proposed to the extant plan. One way to assess this is to ask "whether the submission raises matters that should have been addressed in the section 32 evaluation and report". If it does then the submission is unlikely to be "within the ambit of the plan change". Another is to ask whether the management regime for a particular resource (such as a particular lot) is altered by the plan change. If it is not then a submission seeking a new management regime for that resource is unlikely to be "on" the plan change.
- (b) The second limb asks "whether there is a real risk that persons directly or potentially directly affected by the additional changes proposed in the submission" would be denied an effective opportunity to respond to the additional changes in the plan change process if the submission were allowed.

¹³ *Palmerston North City Council v Motor Machinists Ltd* [2013] NZHC 1290, [2014] NZRMA 519 citing *Clearwater Resort Ltd v Christchurch City Council* HC Christchurch AP34/02, 14 March 2003.

- 37 In our submission, the part of the Stratford Terrace submission that seeks a change to the rule on notification does not address the change to the status quo entailed in the Variation. The purpose of the Variation is to give effect to policy 5 of the National Policy Statement on Urban Development (**NPS-UD**) by introducing more enabling heights and densities. It is not to revisit the MDRZ notification provisions or to introduce site specific rules and standards to resolve neighbour disputes relating to amenity effects. We note the following in particular:
- (a) The Stratford Terrace submission seeks the removal of rule 8.6.1.1, which states applications for the following activities will not be limited or publicly notified.
 - (i) Residential units which comply with Rule 8.4.10 and all of the standards in Rule 8.5.
 - (ii) Visitor Accommodation and residential visitor accommodation within the Visitor Accommodation Sub-Zone and Wānaka Town Centre Transition Overlay.
 - (b) The Stratford Terrace submission seeks new matters of discretion for urban subdivision activities in rule 27.5.7 at the Warren Street Properties.
 - (c) Rules 8.6.1.1 and 27.5.7 are not proposed to be amended by the Variation. These submission points do not address the change to the status quo entailed by the Variation.

Site specific relief not appropriate and has no evidential basis

- 38 It is submitted that the site specific relief sought in the Stratford Terrace submission is inappropriate and would effectively amount to an unjustified "spot zoning".
- 39 In *Upper Clutha Environmental Society Inc v Queenstown Lakes District Council*, His Honour Judge Hassan's division of the Environment Court compared site specific rules and standards to "spot zoning" and noted that while they are "permissible within the RMA framework", they are "typically not endorsed as sound planning practice".¹⁴
- 40 The Supreme Court in *King Salmon* observed that spot zoning plan change applications have the potential to "undermine the strategic, regional planning approach that the [New Zealand Coastal Policy Statement]

¹⁴ *Upper Clutha Environmental Society Inc v Queenstown Lakes District Council* [2022] NZEnvC 198 at [63].

requires regional councils to take to planning".¹⁵ In our submission, the same potential exists in relation to the site specific rules proposed by the Stratford Terrace Submitter.

- 41 The relief sought will not achieve the purpose of the Variation, being to meet QLDC's obligations as a Tier 2 local authority under Policy 5 of the NPS-UD.
- 42 Even if site specific rules and matters of discretion were appropriate, there is no evidential basis to support the relief sought in the Stratford Terrace submission.
- 43 The expert groundwater evidence of Neil Thomas on behalf of the Stratford Terrace Submitter is "not solely applicable" to the Stratford Terrace Property or the Warren Street Properties.¹⁶ It is largely focused on the Belvedere Apartments which are not identified in the Stratford Terrace Submission and makes recommendations relating to the wider area around Bullock Creek including that the relief should be extended to a wider buffer zone (100 m on the true right bank and 500 m on the true left bank of Bullock Creek).¹⁷ The Belvedere Apartments are identified in proximity to the Warren Street Properties and the Stratford Terrace Submitter's property on the map **attached** as Appendix 3. There is no evidence to support the position that a different framework should apply for the three Warren Street Properties compared to the wider MDRZ.
- 44 Mr Thomas' evidence is that the existing provisions in the PDP and the proposed Land and Water Regional Plan do not address the issues raised by the Stratford Terrace Submitter.¹⁸ Counsel submit this is incorrect for the reasons outlined at [16] – [25].
- 45 Like Mr Thomas' evidence, the lay evidence of John Page Russell for the Stratford Terrace Submitter also focuses on the Belvedere Apartments in particular and does not provide any evidential basis justifying the site specific relief in their submission. It does not explain why the extra restrictions are needed to protect their property specifically. Nor does it explain why the restrictions they are seeking are limited to sites north of

¹⁵ *Environmental Defence Society Inc v New Zealand King Salmon Co Ltd* [2014] NZSC 38, [2014] 1 NZLR 593 at [139] per Elias CJ, McGrath, Glazebrook and Arnold JJ.

¹⁶ Statement of Evidence of Neil Thomas 4 July 2025 at [6].

¹⁷ At [41].

¹⁸ At [16].

their property, but not their own property or the properties east and west of it.

Conclusion

- 46 The Further Submitter supports the position outlined in the section 42A reports.
- 47 The site-specific relief sought in the Stratford Terrace submission is unnecessary, some of it is outside the scope of the Variation and is not supported by the evidence.

Dated this 26th day of August 2025

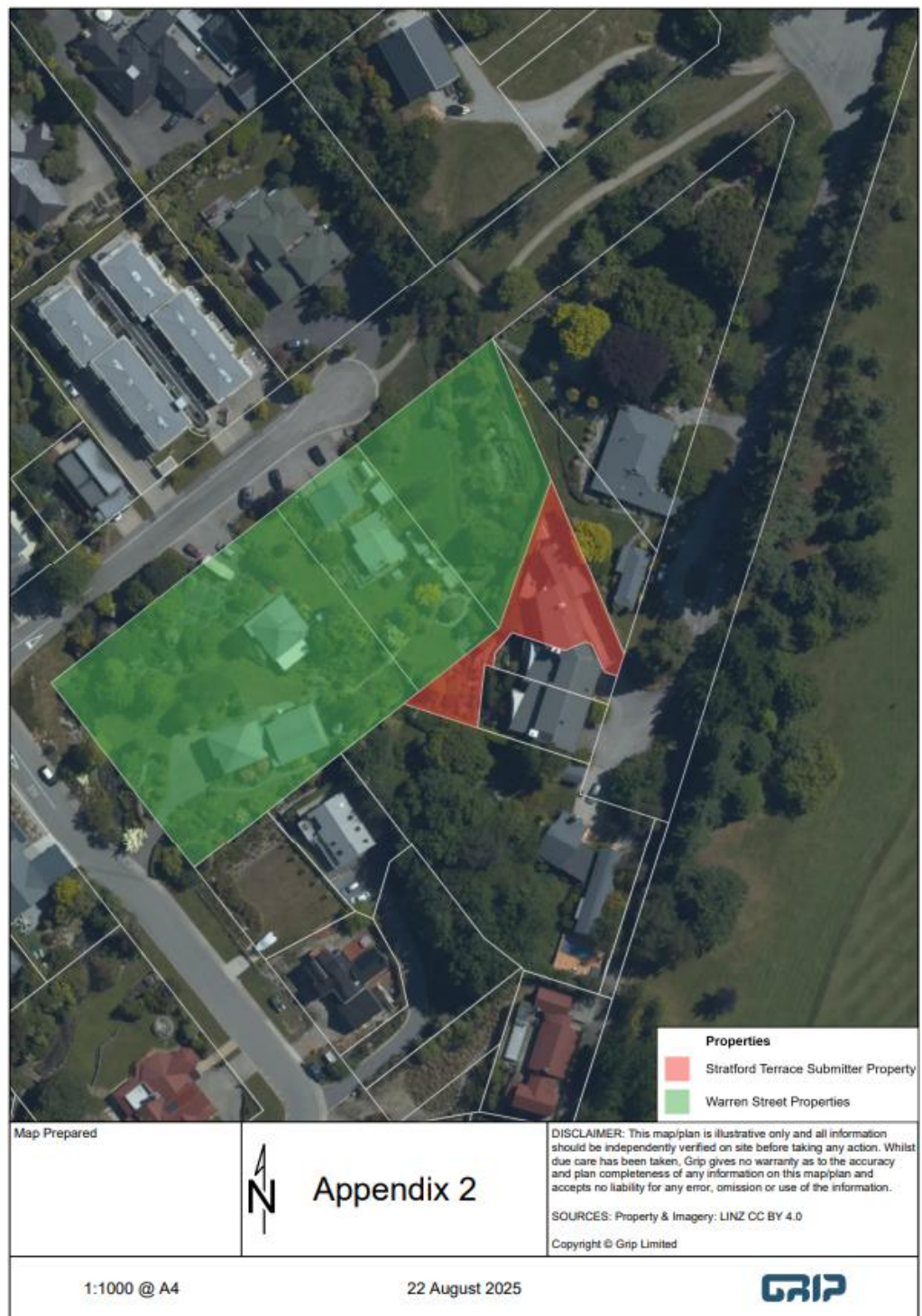
A handwritten signature in black ink, reading "Maree Baker-Galloway". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

Maree Baker-Galloway / Laura McLaughlan
Counsel for the Further Submitter

Appendix 1 – Kreft Properties



Appendix 2 – Warren Street Properties and Stratford Terrace Property



Appendix 3 – Belvedere Apartments

