



APPENDIX A: SCOPE OF THE VARIATION AND THE INCORPORATION OF THE PC 50 LAND

INTRODUCTION

- 1 This memorandum addresses whether the submissions (*Submissions*) made by Centuria Property Holdco Limited (*Centuria*)¹ and Carter Queenstown 2015 Limited (*Carter Group*)² have legal scope in that they are 'on' the variation to the Proposed Queenstown Lakes District Plan (*PDP*): Urban Intensification Variation (*Variation*).
- 2 The Submissions seek that the notified Queenstown Town Centre Zone (*QTC*) in the Variation be extended to include the land that is zoned QTC under the Queenstown Lakes Operative District Plan (*ODP*) (*PC 50 Land*), which became operative in July 2016. PC 50 rezoned approximately 14.5 hectares of land from the High-Density Residential Zone to the QTC.
- 3 This memorandum addresses whether the Submissions are within the legal scope of the Variation, rather than the more specific relief sought by Centuria and Carter Group.

EXECUTIVE SUMMARY

- 4 In summary, the Submissions satisfy both limbs of the legal test for scope: they are directly connected to the purpose and content of the Variation, and their inclusion does not create any procedural unfairness. Further, the requested inclusion of the PC 50 Land is necessary to meet statutory obligations, is supported by planning evidence, and will promote a well-functioning, sustainable urban environment in accordance with the RMA and relevant policy directives.
- 5 We generally agree with the summary of legal principles in the QLDC's opening legal submissions as to whether a submission is 'on' a plan change.³ However, we further note that it is important to record that the answer to scope questions is required to be evaluated in the particular circumstances of the Variation and the Submissions. We outline further relevant case law in the **Appendix B** to assist in assessing the specific facts and circumstances of the Submissions.
- 6 In applying the legal framework, we note:
 - 6.1 The Variation's purpose is to give effect to Policy 5 of the NPS-UD, which requires greater urban intensification in areas of high accessibility and demand. The PC 50 Land forms part of the Queenstown Lakes "urban environment" and has been identified in the Council's strategic planning documents, including the ADA, HDCA, and the Spatial Plan, as suitable for intensification. The Council's own analysis and modelling, which formed the

¹ Submitter 743 and Further Submission 1362.

² Submitter 776 and Further Submission 1337.

³ Opening legal Submissions for Queenstown Lakes District Council, Urban Intensification Variation (25 July 2025) at [4.3] and Appendix 1.



basis of the Variation, considered the QTC (including PC 50 Land) as a whole, confirming its appropriateness for inclusion. The Submissions therefore directly address the scope and intent of the Variation and are not a departure from its purpose.

- 6.2 The inclusion of the PC 50 Land has been signalled in prior planning processes and is consistent with the zoning patterns promoted in the Variation. The relief sought by the Submissions is a logical and foreseeable extension, not a novel or unexpected change, and has been subject to full public consultation and submissions and further submissions. There is no material risk of procedural unfairness, as affected parties have had the opportunity to participate and would reasonably have anticipated the possibility of this land being included.
- 6.3 Including the PC 50 Land is necessary to fully implement the NPS-UD, as well as give effect to the ORPS and pRPS. Excluding the land would undermine these statutory instruments and result in fragmented, inefficient planning for the QTC.
- 6.4 Incorporating the PC 50 Land within the Variation will streamline the planning process, avoid unnecessary duplication, and ensure a coordinated, integrated approach to urban development in the QTC. It is consistent with:
 - (a) Section 31 of the RMA, which requires territorial authorities to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources; and
 - (b) Part 2 of the RMA specifically promotes the sustainable management of natural and physical resources.

THE QUEENSTOWN INTENSIFICATION VARIATION

- 7 The purpose of the Variation is to meet the Council's obligations as a Tier 2 local authority to give effect to the National Policy Statement on Urban Development 2020 (*NPS-UD*).
- 8 The particular focus of the notification of this Variation is on giving effect to Policy 5 by enabling intensification in suitable locations within the urban environment.⁴ The opening legal submissions of the Queenstown Lakes District Council (*QLDC*) states that:⁵

"The Notification of this 'intensification variation' is mandatory for all Tier 2 authorities under Policy 5 of the NPS-UD:

⁴ *Queenstown Lakes District Proposed District Plan: Section 32 Evaluation Report* (16 May 2023) at 14.

⁵ Opening legal Submissions for Queenstown Lakes District Council, Urban Intensification Variation (25 July 2025) at [2.1].



*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**:*

- a) **the level of accessibility** by existing or planned active or public transport to a range of commercial activities and community services; or*
- b) **relative demand** for housing and business use in that location.*

In its simplest form, the UIV introduces a number of changes to the spatial extent and development standards in parts of the urban environment, by focusing the greatest development opportunities in locations of highest accessibility and demand, and establishing a logical continuum of zoning intensity in accordance with Policy 5.”

- 9 The Section 32 Report further appropriately records that the Variation must also give effect to the broader directive of the NPS-UD, ensuring a well-functioning urban environment that meets the evolving needs of diverse communities and future generations. The Variation is also required to give effect to the Otago Regional Policy Statement 2019 (*ORPS*) and have regard to the Proposed Otago Regional Policy Statement 2021 (*pRPS*).⁶
- 10 The proposed Variation also marks the implementation of Outcome 1 of the Queenstown Lakes Spatial Plan 2021 (*Spatial Plan*) to ensure that future growth happens in the right areas and is serviced by the right public infrastructure.

PC 50 Land and the relationship with the Variation

- 11 The PDP has been reviewed in Stages since 2015. To date, the Council has notified three Stages. Stage 1 of the PDP was notified in August 2015 and included the Queenstown Town Centre Zone. The Stage 1 notified planning maps did not include the land that was rezoned Queenstown Town Centre as part of PC 50. This was because the PC 50 ODP process was not complete by the time notification of Stage 1 of the PDP occurred.
- 12 Subsequent stages have also failed to integrate the land rezoned as Queenstown Town Centre under PC 50 into the PDP. The Section 32 Report notes that 98% of the Queenstown Lakes District (*District*) is now included in the PDP. It is a significant anomaly that part of the remaining 2% is located in the heart of the largest and arguably the most economically crucial urban area in the District—Queenstown’s Town Centre.⁷ This anomaly becomes even more apparent when viewed in the context of the Council’s broader review processes. The PC 50 Land is clearly envisaged as part of the future QTC and forms part of the ‘urban environment’ under the NPS-UD.

⁶ Queenstown Lakes District Proposed District Plan: Section 32 Evaluation Report (16 May 2023) at [6].

⁷ Queenstown Lakes District Proposed District Plan: Section 32 Evaluation Report (26 May 2023) at 14.



- 13 The Section 32 Report has stated that in relation to the ODP, there are numerous bespoke provisions which are intended to provide specific outcomes in terms of character or to manage the effects upon the surrounding environment – which is why it has not been incorporated. **Ms Charlotte Clouston** has expressed disagreement with this statement as it relates to the PC 50 Land and further stated that any existing bespoke provisions and/or perceived sensitivity can be adequately managed through the Variation process.⁸
- 14 The Section 32 Report further indicates that the ODP areas will be reviewed with Policy 5 of the NPS-UD, a relevant matter for consideration in the future.⁹ However, no timing is provided. As outlined in the expert planning evidence of **Ms Clouston**,¹⁰ it is both logical and efficient to include the PC 50 Land within the scope of the Variation. Doing so would streamline the planning process and ensure alignment with the requirements of the NPS-UD. Excluding the PC 50 Land from the Variation would necessitate a separate future assessment against the same NPS-UD provisions, particularly Policy 5, leading to unnecessary duplication. The QTC should be considered as a whole to create a dynamic and vibrant centre with activities for both residents and visitors.
- 15 The evidence of **Mr Dave Compton-Moen** supports this position, demonstrating that the PC 50 Land is well-connected, highly accessible, and is already developing a town centre character.¹¹

THE ALIGNMENT OF THE SUBMISSIONS WITH THE PURPOSE OF THE VARIATION

- 16 The Submissions address the statutory and policy framework relevant to the purpose of the Variation, with particular reference to the NPS-UD, ORPS and the pRPS.
- 17 The following sections outline the key legislative requirements and policy directives that must inform the Council's decision-making, including the need to give effect to the NPS-UD, and to ensure that urban development is planned and managed in a strategic, coordinated, and integrated manner. The analysis demonstrates that the inclusion of the PC 50 Land within the Variation is necessary to achieve the purpose of the Variation, consistency with these statutory instruments, and to promote well-functioning, sustainable urban environments in accordance with the Resource Management Act 1991 (*RMA*).
- 18 Under the RMA, section 31 requires territorial authorities to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources. At the same time, sections 32 and 32AA

⁸ Statement of Evidence of Charlotte Clouston, dated 4 July 2025 at [28]-[29].

⁹ Queenstown Lakes District Proposed District Plan: Section 32 Evaluation Report (26 May 2023) at 18.

¹⁰ Statement of Evidence of Charlotte Clouston, dated 4 July 2025 at [25] – [31].

¹¹ Statement of Evidence of Dave Compton-Moen, dated 4 July 2025 at [17] – [19].



require an evaluation of the appropriateness, efficiency and effectiveness of proposed provisions, including reasonable alternatives.

National Policy Statement of Urban Development 2020

- 19 Section 55 of the RMA requires local authorities to amend a proposed plan, plan or variation if a National Policy Statement directs so, to include or give effect to objectives and policies in that statement. Further, section 75(3)(a) of the RMA requires that district plans must 'give effect' to a National Policy Statement. Case law has established that the words "give effect to" means to implement, which is a strong directive, creating a firm obligation on the part of those subject to it.¹²
- 20 The NPS-UD sets out the Government's objectives and policies for urban development under the RMA. Its overall purpose is to ensure New Zealand's urban areas are planned and developed in a way that enables well-functioning urban environments, meets the needs of communities, and supports housing affordability and choice.
- 21 The enabling intent of the NPS-UD has been acknowledged in *Middle Hill Ltd v Auckland Council*,¹³ where the Environment Court stated (our emphasis added):

[33] ... The NPS-UD has the broad objective of ensuring that New Zealand's towns and cities are well-functioning urban environments that meet the changing needs of New Zealand's diverse communities. Its emphasis is to direct local authorities to enable greater land supply and ensure that planning is responsive to changes in demand, while seeking to ensure that new development capacity enabled by councils is of a form and in locations that meet the diverse needs of communities and encourage well-functioning, liveable urban environments. It also requires councils to remove overly restrictive rules that affect urban development outcomes in New Zealand cities..

- 22 In terms of the broader objectives and policies of the NPS-UD, the Section 32 Report assessment addresses the relevant provisions of the NPS-UD.¹⁴ There appears to be no disagreement that the QTC (inclusive of the PC 50 Land) forms part of the Queenstown Lakes 'urban environment' under the NPS-UD.¹⁵ Consideration of the PC 50 Land is therefore included within the Section 32 Report and Section 42A Reports consideration of the Queenstown Lakes 'urban environment'.
- 23 A holistic approach to the QTC is required to properly implement the broader objectives of the NPS-UD. Treating intensification in a fragmented manner will not deliver the outcomes necessary to enable a 'well-functioning urban environment'. If parts of the QTC are excluded from the Variation, there is a significant risk that opportunities for intensification in an area with high accessibility and strong demand will be lost. As a result, the full benefits of intensification in this urban setting will

¹² *Environmental Defence Society Inc v New Zealand King Salmon Co Ltd* [2014] NZSC 38; [2014] 1 NZLR 593 at [77].

¹³ *Middle Hill Ltd v Auckland Council* [2022] NZEnvC 162.

¹⁴ Queenstown Lakes District Proposed District Plan: Section 32 Evaluation Report (26 May 2023) at 6-8.

¹⁵ Noting the inclusion of the PC 50 Land within the ADA, HDCA and Spatial Plan.



not be achieved, which is inconsistent with the intent and policies of the NPS-UD to enable greater intensification.

- 24 **Ms Clouston** has expressed her agreement, stating that the inclusion of the PC 50 Land is appropriate for achieving the purpose of the RMA and the objectives and purpose of the NPS-UD.¹⁶

Policy 5 of the NPS-UD

- 25 Notification of this 'intensification variation' is mandatory for all Tier 2 authorities under Policy 5 of the NPS-UD. The Variation as notified fails to give effect to Policy 5. By applying a compartmentalised approach, it has not enabled heights and density of urban form commensurate with the level of accessibility and relative demand in the QTC and the Queenstown Lakes 'urban environment'.
- 26 In that regard, it is noted that the Council's modelling and assessment work provided in association with the Section 32 Report to support the Variation addresses the level of accessibility and the relative demand for housing and business use in the QTC (including the PC 50 Land). This modelling indicates that the QTC as a whole is suitable for intensification in terms of the direction outlined in Policy 5. It also confirms increased height, and density is appropriate across that whole area.

The Accessibility and Demand Analysis

- 27 The Accessibility and Demand Analysis¹⁷ (ADA) commissioned for the Variation included a review of the accessibility of the land within the Urban Growth Boundaries. It recommended the option of commercial nodes being strengthened through the upzoning of the land surrounding the nodes.
- 28 The QTC (including the PC 50 Land) sits within the Urban Growth Boundaries and was assessed as an urban environment area as part of the ADA.¹⁸ The QTC is also shown as an area with high levels of accessibility¹⁹ and the ADA found that the QTC performed at the highest level of accessibility across the urban environment.²⁰ Similarly, the QTC is shown as having high levels of demand, identifying this area as one of the primary demand nodes within the urban environment.²¹
- 29 As noted by **Ms Clouston**,²² the ADA recognises that the PC 50 Land is intended to form part of the QTC and will facilitate access to a wide range of goods and services.

¹⁶ Statement of Evidence of Charlotte Clouston, dated 4 July 2025 at [33].

¹⁷ *Method Statement – Accessibility & Demand Analysis – NPSUD Policy 5* (Barker and Associates Limited, 16 May 2023).

¹⁸ *Method Statement – Accessibility & Demand Analysis – NPSUD Policy 5* (Barker and Associates Limited, 16 May 2023) at 3.

¹⁹ *Method Statement – Accessibility & Demand Analysis – NPSUD Policy 5* (Barker and Associates Limited, 16 May 2023) at 26.

²⁰ *Method Statement – Accessibility & Demand Analysis – NPSUD Policy 5* (Barker and Associates Limited, 16 May 2023) at 26-27.

²¹ *Method Statement – Accessibility & Demand Analysis – NPSUD Policy 5* (Barker and Associates Limited, 16 May 2023) at 28-29.

²² Statement of Evidence of Charlotte Clouston, dated 4 July 2025 at [34].



Although the proposed roads traversing the PC 50 Land were not included in the accessibility analysis, it is anticipated that these roads will offer higher levels of accessibility. The spatial implications are addressed in the ADA as follows:²³

"The accessibility and demand analysis indicates that the spatial extent of areas where more intensive residential activities can occur could be expanded in accordance with the requirements of the NPSUD. In particular, higher levels of intensification in Queenstown around the edges of the town centre (including parts of the PC50 area), Frankton and around the edges of the Wānaka Town Centre are likely to be suitable."

2021 Housing Development Capacity Assessment and Spatial Plan

- 30 The Section 32 Report was also informed by the 2021 Housing Development Capacity Assessment (HDCA) and the Spatial Plan.²⁴ As noted earlier, in addition to the implementation of Policy 5 of the NPS-UD, the Variation seeks to align and implement the Spatial Plan.
- 31 The HDCA was prepared to assess the demand for housing land in urban environments, and the development capacity that is sufficient to meet that demand in the District in the short, medium, and long term.²⁵ QTC as a whole was identified as an area with high long-term urban demand.²⁶ The Spatial Plan recommended a review of the district plan to accommodate these longer-term needs.²⁷ This recommendation is not limited to provisions of the PDP, and therefore should be considered together with those for the ODP.
- 32 In addition, the Spatial Plan provides a long-term vision for how and where communities within the district can grow and develop to ensure social, cultural, environmental and economic prosperity out to 2050. One of the key outcomes sought by the Spatial Plan is consolidated growth and more housing choices. This outcome is to be achieved through various strategies, including increasing density in appropriate locations. To achieve these strategies, the Spatial Plan identifies priority development areas, which include the PC 50 Land within the Queenstown Town Centre to Frankton Corridor.²⁸
- 33 The Section 32 Report found that the entirety of the QTC (including the PC 50 Land) had high levels of accessibility and demand. It recommended that increased heights and density of development should be enabled in line with the NPS-UD.

²³ *Method Statement – Accessibility & Demand Analysis – NPSUD Policy 5* (Barker and Associates Limited, 16 May 2023) at 28-29.

²⁴ Along with district plan review processes and other relevant matters including resource consent and Ministry for the Environment monitoring, master plan and plan change processes, Council's Long Term Plan and Infrastructure Strategy and Iwi Management Plans.

²⁵ *Housing Development Capacity Assessment Queenstown Lakes District* (Market Economics, 15 September 2021).

²⁶ *Housing Development Capacity Assessment Queenstown Lakes District* (Market Economics, 15 September 2021) at 2.

²⁷ *Queenstown Lakes Spatial Plan* (July 2021) at 78 and 115.

²⁸ *Queenstown Lakes Spatial Plan* (July 2021) at 65-68.



NPS-UD timeframes for implementation

- 34 The inclusion of the PC 50 Land is further supported by the timeframe requirements set out in the NPS-UD. Clause 4.1 of the NPS-UD prescribes that Tier 2 local authorities, such as the Council, must amend their district plans to give effect to the NPS-UD “as soon as practicable”. In addition to this general obligation, clause 4.1(2) imposes a more specific requirement that Tier 2 local authorities must notify a plan change to implement Policy 5 no later than two years after the commencement date—a deadline which has now passed. Moreover, Clause 1.3(1) provides that the NPS-UD applies to all planning decisions made by local authorities that affect an ‘urban environment.’
- 35 The High Court has recently emphasised the mandatory nature of these obligations. In *Southern Cross Healthcare*,²⁹ the High Court overturned an Environment Court decision that had deferred giving effect to the NPS-UD in the context of a private plan change. The Court found that, since the Environment Court was required to decide on the plan change request, it was therefore practicable for the Court to amend the district plan to give effect to the NPS-UD at that time, as required by clause 4.1(1). Importantly, the High Court rejected the Environment Court’s reasoning that a separate process by the Council to give effect to the NPS-UD justified the deferral.
- 36 The directive nature of these provisions is particularly relevant in this instance. The relief sought by Centuria and Carter Group is both necessary to give effect to the NPS-UD and practicable to implement through the current Variation. Taking this step will ensure the Council fulfils its statutory obligations. This is especially significant given that more than a year has elapsed since the statutory deadline for giving effect to Policy 5.

Regional Policy directives

- 37 Both the ORPS and the pRPS are integral to the consideration of the Variation. The RMA requires the Council to have regard to the pRPS and to give effect to the ORPS when preparing or changing a district plan. These documents provide important direction on the sustainable management of natural and physical resources, and ensure that district-level planning is consistent with broader regional objectives and policies.
- 38 Accordingly, the purpose and content of the Variation must also be assessed in light of both the operative and proposed regional planning frameworks to ensure alignment with statutory obligations and regional planning outcomes.

Operative Otago Regional Policy Statement 2019

- 39 Section 75(3)(c) of the RMA requires that district plans must “give effect” to any regional policy statement. As such, Council must also implement the provisions of

²⁹ *Southern Cross Healthcare Ltd v Eden Epsom Residential Protection Society Inc* [2023] NZHC 948, see discussion from paragraph [74].



the ORPS through the Variation.³⁰ Since the Section 32 Report, the ORSP 2019 became fully operative on 4 March 2024.

- 40 As with the NPS-UD, the Section 32 Report reasoning generally in terms of the OPRs can be applied equally to the PC 50 Land. It is emphasised that Objective 4.5 of the ORPS requires that urban growth and development is well designed, occurs in a strategic and coordinated way, and integrates effectively with adjoining urban and rural environments.
- 41 Excluding areas within the QTC from the Variation fails to give effect to these directions. The current Variation is not a “strategic or coordinated approach” to urban development. Rather, it is an ad hoc approach that will not properly integrate the QTC urban environment. Restricting intensification to certain areas within the QTC will not promote the efficient use of land. Sites outside the Variation area may develop before greater heights and density are enabled, failing to maximise opportunities for QTC’s intensification. In conjunction, development decisions may be unnecessarily and inappropriately delayed, leading to market distortions. Further, the current approach risks uncoordinated and inefficient infrastructure decisions.
- 42 Policy 4.5.3 of the ORPS addresses urban development design expectations. It directs that new urban development should be designed with regard to, “(b) *A built form that relates well to its surrounding environment.*” It is submitted that the Variation will not be able to achieve that direction in enabling 20-24m buildings directly adjoining an ‘island’ of land with only 12m height expectations.
- 43 It is noted that the current planning regime seeks to achieve much better built form outcomes by directing that the height of buildings be controlled to “*provide a reasonable degree of certainty in terms of potential building height.*”³¹ Many landowners (including Centuria and Carter Group) have developed their own properties or obtained consents to do so, in reliance on that statement. They currently have a reasonable expectation of a future environment that generally accords with the height limits in the ODP and PDP. A significant departure from those height limits as proposed by the Variation could not have been anticipated. Therefore, built forms established under the Variation height limits are highly unlikely to relate well to the surrounding environment.

Proposed Otago Regional Policy Statement 2021

- 44 Section 74(2)(a)(i) of the RMA requires a territorial authority to have regard to any proposed regional policy statement in preparing and changing its district plan. Therefore, the Council must have regard to the pRPS, giving genuine thought and attention to its objectives and policies.

³⁰ The relevant provisions are summarised at section 5.1.1 of the Section 32 Assessment. The fuller provisions are detailed in Appendix 2A-2B of the Section 32 assessment.

³¹ Queenstown Lakes District Proposed District Plan, Chapter 12 at 12.2.2.3.



- 45 As with other sections of the Section 32 Report, the analysis provided on the pRPS also applies to an assessment of the QTC (including the PC 50 Land).³² The Section 32 Report states that, in particular, the Objectives UFD-01 - UFD-03 and Objective UFD-05 of the pRPS are of the most direct relevance.³³
- 46 Objective UFD-02 of the pRPS seeks that the development and change of the regions' urban areas *"delivers good urban design outcomes and improves liveability; results in sustainable and efficient use of water, energy, land, and infrastructure; and Achieves consolidated, well designed and located, and sustainable development in and around existing urban areas as the primary focus for accommodating the region's urban growth and change."*
- 47 The Variation as notified will compromise good urban design outcomes. It will potentially impact on the efficient provision of infrastructure. It will not enable consolidated, well-designed, and sustainable development.

THE SUBMISSIONS WITHIN 'SCOPE' OF THE VARIATION

- 48 The Variation has been publicly notified for submissions using the process prescribed by Schedule 1 of the RMA.
- 49 Under clause 6 of Schedule 1, once a proposed policy statement or plan is publicly notified under clause 5, that person may make a submission 'on' it to the relevant local authority. A submission that is not 'on' the plan change will be out of scope then, as the Council has no jurisdiction to consider or make a decision on it.
- 50 Whether a submission is 'on' a plan change for any particular plan change is nuanced and highly dependent on the context of the particular plan change in question. The Court has provided guidance on this matter.
- 51 We generally agree with the summary of legal principles in the QLDC's opening legal submissions as to whether a submission is "on" a plan change.³⁴ However, it is important to record that the answer to scope question is required to be evaluated in the particular circumstances of the Variation and the Submissions. As noted in *Clearwater Resort Ltd v Christchurch City Council*,³⁵ whether a submission is "on" a variation *"poses a question of apparently irreducible simplicity but which may not necessarily be easy to answer in a specific case."* Questions of scope should not be looked at narrowly.

³² Queenstown Lakes District Proposed District Plan: Section 32 Evaluation Report (26 May 2023) at 11-12.

³³ Queenstown Lakes District Proposed District Plan: Section 32 Evaluation Report (26 May 2023) at 12.

³⁴ Opening legal Submissions for Queenstown Lakes District Council, Urban Intensification Variation (25 July 2025) at [4.3] and Appendix 1.

³⁵ *Clearwater Resort Ltd v Christchurch City Council* HC Christchurch AP34/02, 14 March 2003 at [56]:



- 52 We note that the High Court in *Palmerston North City Council v Motor Machinists Ltd*³⁶ affirmed and expanded on the Clearwater 'bipartite' test for scope. Cases since then have further refined the approach to be taken. Importantly, the factual context of the Variation is important. A number of the cases have viewed *Motor Machinists* as a relatively discreet plan change scenario, which limited the opportunity to expand the notified approach. Other plan changes and variations may have a wider remit.
- 53 We outline further relevant case law in the **Appendix B** to assist in assessing the particular facts and circumstances of the Submissions. Key considerations informing whether the Submissions are on the Variation include:
- 53.1 The extent to which the Variation changes the pre-existing status quo. This assessment involves assessing the full context of the Variation - its policy and purpose, the background and the scale and degree of change that the Variation brings about;
- 53.2 What the Variation's Section 32 Report assessed and/or should have assessed and the nature and degree of any further assessment required to support the Submission;
- 53.3 The nature of submissions and further submissions received on the Variation, including the Submissions and consideration of whether the Submissions are incidental, consequential or directly connected to the Variation (i.e. out of left field); and
- 53.4 The potential for procedural fairness issues from the Submissions in terms of directly affected parties and the likelihood that they would (or would not) have been sufficiently aware of the changes sought in the submission.
- The first limb – the Submissions fall within the ambit of the Variation**
- 54 The Section 42A Report and the Section 32 Report address the purpose, policies and background to the Variation, which is also touched on above and also commented on in the Submissions.
- 55 The purpose of the Variation is not narrow. It proposes significant amendments to the parts of the District that relate to the urban environment, which has been spatially defined to include the PC 50 Land.
- 56 The Variation is considerably further along the continuum than the traditional *Clearwater*-type scenario. It does so in light of a clear direction from Parliament under the NPS-UD to enable greater intensification. The changes contemplated by Variation permeate through almost all of the chapters of the District Plan. In that context, a narrow interpretation of whether a submission is 'on' the Variation is not appropriate.

³⁶ *Palmerston North City Council v Motor Machinists Ltd* [2013] NZHC 1290 at [54]-[56].



- 57 The purpose of the Variation is to implement Policy 5 of the NPS-UD and give effect to other provisions of the NPS-UD and other relevant provisions (including the ORPS). To this end, it is clear that:
- 57.1 Submissions proposing a reasonable and appropriate method to give effect to this purpose can reasonably be considered to be "on" the Variation and does not represent an alteration to the status quo.
- 57.2 The overarching purpose of implementing Policy 5 of the NPS-UD should be the focus, not the notified version of the Variation. The Section 32 Report covers the incorporation of the PC 50 Land and justifies its incorporation relative to "the level of accessibility" and "relative demand".
- 57.3 Accordingly, if the relief proposed in the Submissions can be shown to meet the requirements of the purpose of the Variation, the relief sought will be within scope and 'on' the Variation.
- 57.4 In other words, the Submissions must be on a matter which the Council was legally entitled to include in giving effect to Policy 5 for the NPS-UD. This could include, for example, requests for new residential zones provided these are within the urban environment.
- 58 To restrict the scope of submissions to supporting or being less than matters that were notified in the Variation would unduly restrict submitters' ability to participate in the process and inform the Panel of how the Variation might better implement Policy 5 of the NPS-UD and give effect to other provisions of the NPS-UD and other relevant provisions (including the ORPS). A submitter might be prevented from bringing to the attention of the Panel a matter which the Panel might otherwise have reached on their own. This is the antithesis of the statutory purpose, and the function of the process prescribed by Schedule 1 of the RMA.
- 59 It is highly unlikely that in every instance a Council will have correctly and most efficiently notified its Variation to give effect to the intent and purposes of the legislation. There are so many variables, and submissions and hearings are the way of testing the appropriateness of what the Council proposes. It would not be appropriate for submitters to be precluded from bringing alternative means and methods of achieving these just because the Council itself might have failed to consider or include these when notifying its Variation. This includes the incorporation of the PC 50 Land within the Variation.
- 60 To this end, case law has established:
- 60.1 a presumption that where the purpose of the RMA and objectives and policies *"can be met by a less restrictive regime that regime should be adopted"*;³⁷ and

³⁷ *Wakatipu Environmental Society Inc v Queenstown Lakes District Council* ENC Christchurch C153/2004, 21 October 2004 at [56]. In 2017 the Environment Court confirmed that this remains the correct approach following amendments to s 32 of the Resource Management Act 1991 in *Royal*



60.2 that there is no legal presumption that proposals advanced by the Council are to be preferred to the alternatives being promoted by other participants in the process.³⁸

- 61 The Submissions have set out how it aligns with the purpose and objectives of the Variation and the broader policy context, and there is nothing that obviously offends these objectives.

Section 32 assessment of the PC 50 Land

- 62 Council has undertaken an evaluation of the Variation against section 32 of the RMA. While the Section 32 Report does not explicitly address the inclusion of the PC 50 Land, much of the analysis and modelling underpinning the assessment considered the QTC as a whole (as discussed above) and has justified its incorporation in alignment with Policy 5 of the NPS-UD.
- 63 While the Section 32 Report does not address the PC 50 Land in particular, it is our submission that the Section 32 Report “should have” assessed the PC 50 Land and included it in the Variation, given the above-mentioned contextual factors.
- 64 The assessment work leading up to the Variation included a review of the district plan zoning extent and provisions to determine whether they could better achieve and implement Policy 5 of the NPS-UD. This work included the ADA, which was undertaken to identify areas with sufficient development capacity to meet demand for housing and business land over the short term, medium term and long term. The modelling found that the entirety of the QTC had high levels of accessibility³⁹ and demand.⁴⁰ It recommended that increased heights and density of development should be enabled.⁴¹ The ADA also concluded that the extent of areas where more intensive residential activities could occur could be expanded, in particular in Queenstown around the edges of the town centre (including parts of the PC50 area).⁴²
- 65 In light of the above, the Section 32 Report should have undertaken a more comprehensive evaluation of the remaining areas within the QTC. Nevertheless, the underlying rationale and analysis that support the Variation are equally applicable to the proposed relief.

Forest and Bird Protection Society of New Zealand Inc v Whakatane District Council [2017] NZEnvC 51 at [59].

³⁸ *Federated Farmers of New Zealand Inc v Bay of Plenty Regional Council* [2019] NZEnvC 136, [2020] NZRMA 55 at [41].

³⁹ *Method Statement – Accessibility & Demand Analysis – NPSUD Policy 5* (Barker and Associates, 16 May 2023) at 27.

⁴⁰ *Method Statement – Accessibility & Demand Analysis – NPSUD Policy 5* (Barker and Associates, 16 May 2023) at 28-29.

⁴¹ *Method Statement – Accessibility & Demand Analysis – NPSUD Policy 5* (Barker and Associates, 16 May 2023) at 29.

⁴² *Method Statement – Accessibility & Demand Analysis – NPSUD Policy 5* (Barker and Associates, 16 May 2023) at 29.



66 In the context of the Section 32 Report and broader background work leading up to the Variation (several years and multiple assessments), the additional work is relatively “insubstantial”. The Council experts would be able to readily supplement the broader work they have already undertaken to assess the Submissions. None of the experts has suggested that they would be unable to fully assess the merits of the Submissions and incorporation of the PC 50 Land in the Variation.

67 The further submissions process has brought to light additional potentially relevant information.⁴³ As is customary, both the hearing process and the requirements of section 32AA of the RMA will further supplement and refine the current section 32 assessment. Within her evidence, **Ms Clouston** has made further comments with respect to Section 32AA matters regarding the incorporation of the PC 50 Land to the Variation (and QTC).⁴⁴

The second limb - potential prejudice to other parties

68 Turning to the second limb of the *Clearwater* test, there is no dispute that the public should be provided with a real opportunity to participate where they are potentially affected.

69 The Council, in its opening legal submission, contends that the second limb of the scope test is engaged in respect of the Submissions, on the basis that a potential submitter would not have been alert to the possibility that ODP land could have been affected by the Variation. The Council submits that this creates a significant risk of a ‘submissional side-wind’.⁴⁵

70 This proposition is not accepted in relation to the PC 50 Land as there is no material risk of prejudice arising if the Submissions are considered as being ‘on’ the Variation. We have been advised that the Submissions were delivered to neighbouring properties at the time of the original submission. Additionally, the Council’s summary of submissions also refers to the relief sought by the Submissions.

71 The PC 50 Land is immediately adjacent to (and to an extent surrounded by) the Variation. The exhaustive review and background to the Variation and the PC 50 Land would have engaged potentially affected parties to the possibility of the zone boundaries being extended to incorporate the PC 50 Land.

72 Interest in the Variation, and specifically the inclusion of the PC 50 Land (and the ODP), has been widespread and well-known amongst Queenstown landowners, residents, and local operators. A number of submissions⁴⁶ sought to include the ODP land (inclusive of PC 50) in the Variation. Incorporation of the PC 50 land was also supported by seven further submissions.⁴⁷ The requested zoning changes are

⁴³ Statement of Evidence of Charlotte Clouston, dated 4 July 2025 at [17]-[20] and [52] – [70].

⁴⁴ Statement of Evidence of Charlotte Clouston, dated 4 July 2025 at [38].

⁴⁵ Opening legal Submissions for Queenstown Lakes District Council, Urban Intensification Variation (25 July 2025) at [4.8].

⁴⁶ Including submissions 191, 200, 298, 679, 743, 767, 776, 1041, 1252.

⁴⁷ These include Further Submissions 1267, 1335, 1337, 1361.



consistent with the zoning patterns promoted on the neighbouring land under the Variation, and there are no significant constraints, such as special overlays or infrastructure and servicing issues, affecting these areas.

- 73 The PC 50 Land is expressly identified as a priority development area in the Spatial Plan. It has been considered more broadly as part of the QTC within the Section 32 Report. Council has also expressly identified the PC 50 Land to be considered for implementation of the NPS-UD in future. The purpose of the Variation is also widely framed. Therefore, seeking to include and intensify the PC 50 Land should be reasonably anticipated by neighbouring landowners and certainly does not come out of “left field”.
- 74 In this context, the possibility of extending the QTC zone boundaries to incorporate the PC 50 Land as part of the Variation was reasonably foreseeable and is considered a “incidental or consequential” extension. Submissions seeking to rezone directly adjoining land, such as the PC 50 Land, are not unusual in the context of plan variations of this nature. Established case law confirms that previous planning processes, including spatial planning exercises, are relevant when determining the nature and scope of changes that can reasonably be anticipated through a subsequent variation such as this.

Conclusion

- 75 We thank the Panel for the opportunity to provide these submissions. As set out at the outset of this memorandum, we intended to go on to apply this analysis to each of our clients' relief and positions.