

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 MacFarlane Investments Limited

Date: 07/08/2025

Submitters' solicitors:

Maree Baker-Galloway | Laura McLaughlan

Anderson Lloyd

Level 2, 13 Camp Street, Queenstown 9300

PO Box 201, Queenstown 9348

p + 64 3 450 0700

maree.baker-galloway@al.nz | laura.mclaughlan@al.nz

**anderson
lloyd.**

May it please the Panel

- 1 These legal submissions are provided on behalf of MacFarlane Investments Limited (**MIL/Submitter**) in relation to the Urban Intensification Variation to the Queenstown Lakes Proposed District Plan (**PDP**) (**UIV** or **Variation**).

Background

- 2 The Submitter owns 2, 4 and 8 Isle Street, 19 Brecon Street and 5, 7, 11 and 15 Man Street (**Submitter Land**) identified in pink shading on the map **attached** as Appendix 1. The Submitter Land was rezoned from High Density Residential Zone to Town Centre zone in 2016 through Plan Change 50 (**PC 50**) to the Operative District Plan (**ODP**). The PC 50 land has a high level of accessibility being located within the Queenstown commercial centre and is arguably more "infrastructure-ready" than other parts of Queenstown proposed to be affected by the Variation, In particular:
 - (a) The water supply capacity for this area is "relatively large" and proposed to be upgraded as part of the Two Mile Supply Upgrade;¹ and
 - (b) There is a project to provide significant additional wastewater capacity to this area due for completion by 2028.²
- 3 The Submitter Land and the wider PC 50 area has not yet been included in the staged District Plan Review. However, the Submitter Land is sandwiched between land proposed to be affected by the Variation including:
 - (a) The permitted height limit for the land immediately north of the Submitter Land is proposed to increase from 12 metres to 16 metres; and
 - (b) The permitted height limit for the land immediately south of the Submitter Land is proposed to increase from 332.20 masl to 24 metres.
- 4 The Submitter Land is in proximity to land included in the Variation is shown on the plan **attached** as Appendix 2.

¹ Richard Powell Infrastructure evidence at 5.1.

² Richard Powell Infrastructure evidence at 5.3.

- 5 Queenstown Lakes District Council's (**QLDC** or **Council**) position is that the PC 50 land is outside the scope of the UIV.
- 6 The Submitter Land currently accommodates a temporary carpark facility (Wilson Parking), a residential dwelling and backpacker accommodation (Southern Laughter Backpackers).

Executive summary

- 7 The Submitter seeks the Submitter Land be included in the Variation. In particular, it seeks the height limit for the block of land bound by Brecon, Isle, Camp and Man Streets be increased to 24 metres to bring it in line with the buildings on the southern side of Man Street along with the upper floor setback.
- 8 It is submitted that including the Submitter Land and the wider PC 50 area (with the exception of the Lakeview Precinct owned by QLDC) will enable QLDC to better meet its obligations under the National Policy Statement on Urban Development (**NPS-UD**). In particular, including the PC 50 Land in the Variation will:
 - (a) Contribute to a well-functioning and cohesive urban environment;
 - (b) Provide plan enabled and infrastructure-ready development capacity in the short and medium term;
 - (c) Enable heights and densities commensurate with the high level of accessibility of the PC 50 area;
 - (d) Disincentivize land banking within the PC 50 area.
- 9 There is scope to include the PC 50 area in the Variation.
- 10 Including the PC 50 Area in the Variation will provide a buffer to address any shortfall in development capacity as a result of Council's Housing and Business Development Capacity Assessment (**HBA**) being overdue for review.

Purpose of the Variation

- 11 The purpose of the Variation is to "give effect to" Policy 5 of the NPS-UD and the wider NPS-UD to "ensure a well-functioning urban environment that responds to the diverse and changing needs of people, communities, and future generations".³ Policy 5 provides:

³ Section 42A Report Strategic Evidence Amy Bowbyes at 4.1.

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 or community services; or

b) Relative demand for housing and business use in that location

- 12 In our submission, including the PC 50 area in the UIV is the most efficient and effective way for QLDC to meet its obligations under the NPS-UD. The area has a high level of accessibility, being located within the Queenstown commercial centre. It is "infrastructure-ready" contrary to other areas proposed to be affected by the Variation including Kelvin Heights, where no funding has been allocated to address the constraints.⁴ The Submitters Land is undeveloped and will enable greater potential for housing and business land as a greenfield site.
- 13 Excluding the PC 50 land will lead to unnecessary duplication and incentivise land banking. This is particularly the case if the government's imminent changes to the RMA⁵ to stop plan changes slows down the review of the PC50 land to bring it into the proposed district plan.

Merits of relief sought

- 14 The planning evidence of Charlotte Clouston dated 4 July 2025 sets out why it is appropriate the Submitter Land and the wider PC 50 area should be included in the Variation. In summary:
- (a) There will be unnecessary duplication of process if the PC 50 area is to wait until a future stage of PDP review to undertake assessment of the NPS-UD and Policy 5 requirements.
 - (b) It is more efficient to incorporate the PC50 Land into the Variation now. The Queenstown Town Centre includes both PDP and ODP zoned land. There is a geographical connection to the PDP zoning and the underlying intent of the ODP zoning.
 - (c) The MIL Land is appropriately located to absorb additional height, pursuant to Policy 5 of the NPS-UD. The demand and accessibility assessment undertaken in the section 32 reporting included PC50

⁴ Richard Powell evidence at [5.29 and 30].

⁵ Amendment Paper expected for the Resource Management (Consenting and Other System Changes) Amendment Bill.

and indicated higher levels of intensification on the edges of the town centre are likely to be suitable.

- 15 The Statement of Evidence of David Compton-Moen dated 4 July 2025 sets out the urban design reasons why including the Submitter Land and the wider PC 50 area in the Variation is appropriate. In summary:
- (a) Compared to the surrounding sites, the PC 50 sites are noticeable for their lack of potential built form;
 - (b) There is a notable terracing of development up the hill to create an 'amphitheatre' like appearance, with buildings stepping down to the Lakefront. The proposed height increase at the 12-26 Man Street (i.e. the site of the Man Street Carpark / Hotel) disrupts the amphitheatre with the southern side of the proposed building sitting well above and extending forward of the sites to either side.
 - (c) Bringing the PC 50 sites up to 24m in height, with an Upper Floor setback, would continue the 'amphitheatre' like character and allow for greater intensification without adversely affecting adjoining properties.

Scope of the Variation

Case law

- 16 Whether a submission is "on" a plan change or variation generally requires a bipartite approach in accordance with the following test articulated in *Clearwater* and *Motor Machinists*:⁶
- (a) The first "legality" limb asks whether the submission addresses the alteration to the status quo promoted in the variation. 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 is to ask whether the management regime for a particular resource (such as a particular site) 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 "fairness" 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

⁶ *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.

opportunity to respond to the additional changes in the plan change process if the submission were allowed.

- 17 Importantly, the High Court has departed from the *Clearwater* approach in the context of a full plan review. In *Albany North Landowners v Auckland Council*, the High Court described the scope for submissions being "on" the plan review as "very wide".⁷ It found that the panel's test of scope, which it referred to as the reasonably foreseen logical consequence test, and panel's integrated approach, largely conformed to the "orthodoxy" of RMA case authority:

[97] The effect of all of this is exemplified in the following passage taken from the IHP's report to the Auckland Council on the Rural Urban Boundary, Rezoning and Precincts:

"A particular concern of the Panel in deciding whether to recommend rezoning and precincts has been the reasonableness of that to persons who were not active submitters and who might have become active had they appreciated that such was a possible consequence.

Where the matter could reasonably have been foreseen as a direct or otherwise logical consequence of a submission point the Panel has found that to be within scope. Where submitters, such as Generation Zero, have provided very wide scope for change the Panel has been guided by other principles — such as walkability; access to multi-modal transport; proximity to centres; and so forth — in finessing such change."

[98] For ease of reference I refer to the IHP test for scope as the reasonably foreseen logical consequence test.

...

[115] The reasonably foreseen logical consequence test also largely conforms to the orthodox "reasonably and fairly raised" test laid down by the High Court in *Countdown* and subsequently applied by the authorities specifically dealing with the issue of whether a Council decision was authorised by the scope of submissions. This orthodoxy was

⁷ *Albany North Landowners v Auckland Council* [2017] NZHC 138. The Environment Court applied *Albany* in *Hawke's Bay Fish and Game Council v Hawke's Bay Regional Council* [2017] NZEnvC 187 and *Federated Farmers of New Zealand (Inc) v Mackenzie District Council* [2017] NZEnvC 187.

canvassed in some detail in the IHP overview report, which I largely adopt. A Council must consider whether any amendment made to a proposed plan or plan change as notified goes beyond what is reasonably and fairly raised in submissions on the proposed plan or plan change. To this end, the Council must be satisfied that the proposed changes are appropriate in response to the public's contribution. 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.¹³¹ The "workable" approach requires the local authority to take into account the whole relief package detailed in each submission when considering whether the relief sought had been reasonably and fairly raised in the submissions.¹³² It is sufficient if the changes made can fairly be said to be foreseeable consequences of any changes directly proposed in the reference.¹³³

...

[135] In accordance with relevant statutory obligations, the IHP correctly adopted a multilayered approach to assessing scope, having regard to numerous considerations, including context and scale (a 30 year plan review for the entire Auckland region), preceding statutory instruments (including the Auckland Plan), the s 32 reportage, the PAUP, the full gamut of submissions, the participatory scheme of the RMA and Part 4, the statutory requirement to achieve integrated management and case law as it relates to scope. This culminated in an approach to consequential changes premised on a reasonably foreseen logical consequence test which accords with the longstanding Countdown "reasonably and fairly raised" orthodoxy and adequately responds to the natural justice concerns raised by William Young J in *Clearwater* and *Kós J* in *Motor Machinists*.

[Emphasis original].

Council's position

- 18 Council's position is that submissions seeking changes to ODP chapters and/or the inclusion of PC 50 land in the Variation is not on the Variation.⁸ In particular, Council submits the second "fairness" limb of the *Clearwater*

⁸ Opening legal submissions for Queenstown Lakes District Council 25 July 2025 at 8.

test would "come into play" and that "the possibility of a 'submissional side-wind' is high".⁹

Submitter's position

- 19 It is submitted that the UIV is far removed from the discrete variations and plan changes examined in *Clearwater* and *Motor Machinists* and that the scope for submissions being on this Variation is very wide. The *Clearwater* case concerned whether a submission seeking to amend the noise contour boundaries was on a discrete variation to amend the noise contour policies of the proposed plan. Similarly, *Motor Machinists* concerned whether a submission seeking rezoning to outer business zone was on a discrete plan change to the provisions of the inner and outer business zone which was located 10 lots away from the submitter's site. By way of contrast, this Variation proposes district-wide changes to most urban zones across 10 PDP chapters including:
- (a) Introducing more enabling heights and densities for the Queenstown and Wanaka Town Centre Zones;
 - (b) Increasing the permitted height limit for the land immediately north of the Submitter Land from 12 metres to 16 metres; and
 - (c) Increasing the permitted height limit for the land immediately south of the Submitter Land from 332.20 masl to 24 metres.
- 20 Applying the test articulated in *Albany*, it is submitted that it is "fair and reasonable" for the Submitter to seek its land in the Queenstown town centre land be included in a district-wide variation affecting the Queenstown Town Centre Zone.
- 21 If the Panel determines the Variation is discrete, and that the two-limbed *Clearwater* test does apply, it is submitted that submissions seeking the PC 50 land be included in the Variation are still "on" the Variation because:
- (a) The Variation proposes to alter the status quo by introducing more enabling heights and standards to give effect to Policy 5 of the NPS-UD. This alters the management regime for the residential, town centre and local shopping centre zones on a district-wide scale. Submissions on the PC 50 land address this alteration to the status quo because the PC 50 land is located within the Queenstown town centre, and in the case of the Submitter Land, is sandwiched between land affected by the Variation. The Panel's decision on the

⁹ Opening legal submissions for Queenstown Lakes District Council 25 July 2025 at 9.

management regime for these zones will directly affect the outcome for the PC 50 land. It follows that persons with an interest in the PC 50 land should be allowed to participate and seek their land be included.

- (b) There is a very low risk that affected people will be denied an opportunity to respond to the inclusion of the PC 50 land. The map **attached** as Appendix 1 shows more than half of the PC 50 land is already the subject of submissions on the Variation. The Variation has been well-publicised and attracted a "large number of submissions" according to Ms Bowbyes.¹⁰
- 22 It is helpful to compare this scenario with Te Pūtahi Ladies Mile Plan Variation, where the Independent Hearing Panel (comprising David Allen, Judith Makinson, Gillian Crowcroft, Hoani Langsbury and Ian Munro), determined there was scope to extend the notified Masterplan boundary and the Urban Growth Boundary to include an "extension area". Regarding the second limb of the *Clearwater* test, the Panel determined:¹¹
- (a) Directly affected neighbours and some key stakeholders were given prior notice of the relevant submission;
 - (b) The extension area was identified in the relevant documents such that those interested in urban development of the general area would have been aware of the potential for the Masterplan Site to be sought to extend to the west;
 - (c) Council's summary of submissions clearly identified that the submission sought the inclusion of the extension area;
 - (d) Affected people were adequately informed of the potential for additional land to be included and were able to make a submission if they wished;
- 23 Counsel has had the benefit of reading the legal submissions for Centuria Property Holdco Limited, Carter Queenstown 2015 Limited and Passion Developments Limited and agrees with the following submission points regarding scope in particular:
- (a) The inclusion of the PC 50 land is "necessary to meet statutory obligations, is supported by planning evidence, and will promote a

¹⁰ At [2.6].

¹¹ Ladies Mile Final Report and Recommendations 29 April 2024 at 4.45 – 4.48.

well-functioning, sustainable urban environment in accordance with the RMA and relevant policy directives".¹²

- (b) Including the PC 50 land is "a logical and foreseeable extension, not a novel or unexpected change, and has been subject to public consultation 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."¹³
- (c) Excluding the PC 50 land would undermine the NPS-UD and the Otago Regional Policy Statements "and result in fragmented, inefficient planning" for the Queenstown Town Centre.¹⁴
- (d) There are local examples, namely the Ladies Mile and Landscape Schedules variations, of rezoning or boundary changes being within the scope of a variation despite not being notified as part of that variation.¹⁵

Housing and Business Capacity Assessment (HBA)

- 24 The NPS-UD requires QLDC to prepare, and make publicly available, a HBA every three years, in time to inform the relevant local authority's next long-term plan.
- 25 The purpose of the HBA is to:¹⁶
 - (a) provide information on the demand and supply of housing and of business land in the relevant tier 1 or tier 2 urban environment, and the impact of planning and infrastructure decisions of the relevant local authorities on that demand and supply; and
 - (b) inform RMA planning documents, [Future Development Strategies (**FDS**)], and long-term plans; and
 - (c) quantify the development capacity that is sufficient to meet expected demand for housing and for business land in the short term, medium term, and long term.

¹² Legal submissions on behalf of Carter Queenstown 2015 Limited at [8].

¹³ Legal submissions on behalf of Carter Queenstown 2015 Limited at [10.2].

¹⁴ Legal submissions on behalf of Carter Queenstown 2015 Limited at [10.3].

¹⁵ Legal submissions on behalf of Passion Developments Limited Appendix 1.

¹⁶ NPS-UD clause 3.20.

- 26 The 2021 HBA was adopted and published in October 2021. QLDC and Otago Regional Council (**ORC**) began procurement for an addendum to build on the 2021 HBA in October 2022. It is understood this project did not proceed, and that QLDC had to transition towards a full HBA review, because:¹⁷
- (a) In 2022 a decision was made not to reassess the HBA because the data was considered sufficient. Based on recent information, the data is now no longer considered robust enough and a new HBA is required. This will take time that was not programmed.
 - (b) In addition, because the original HBA was outsourced, the data cannot be extracted to enable the model to be re-run.
- 27 The new HBA was due in October 2024. In September 2024, QLDC indicated the 2024/25 HBA was expected to be adopted in February 2025.¹⁸ Ms Fairgray's evidence on the UIV states she is "currently assisting" QLDC in preparing the 2025 HBA but that it was "not finalised" and she had "not received the finalised QLDC growth model outputs to be used in the assessment" at the time of finalising her evidence.¹⁹
- 28 This means the 2025 HBA was not available in time to achieve its purpose under the NPS-UD in relation to the 2024-2034 Long Term Plan or this Variation, being to:
- (a) provide information on the demand and supply of housing and business land and the impact of planning and infrastructure decisions on that demand and supply;
 - (b) inform RMA planning documents, FDSs and long-term plans; and
 - (c) quantify the development capacity that is sufficient to meet expected demand for housing and for business land in the short term, medium term, and long term.
- 29 Accordingly, it may be that the Panel has insufficient, outdated or inaccurate information regarding the demand and supply of housing and business land and the development capacity that is sufficient to meet that demand.

¹⁷ Council Agenda Queenstown Lakes Future Development Strategy: Delay to Programme Report No. SPS2329 Activity: Governance Report Author: Patricia McLean, Senior Policy Analyst Urban Development Endorsed by: Anita Dawe, General Manager Policy and Science Date: 22 November 2023.

¹⁸ Queenstown Lakes District Council let's talk website, Spatial Plan 2024 Gen 2.0 – Call for urban growth sites. <https://letstalk.qldc.govt.nz/spatial-plan-2024-gen-2>

¹⁹ Susan Fairgray evidence at [1.5].

- 30 It is submitted that providing additional development capacity by including the PC 50 area in the Variation will provide a buffer in terms of addressing any shortfall in terms of development capacity as required under the NPS-UD.

Conclusion

- 31 Including the PC 50 area in the Variation is the most appropriate and efficient way for QLDC to meet its obligations under the NPS-UD. This approach is within the scope of the Variation and consistent with the approach followed in the Ladies Mile variation.

Dated this 7th day of August 2025

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

Maree Baker-Galloway / Laura McLaughlan
Counsel for MacFarlane Investments Limited

Appendix 1 – PC 50 Land (Submitter Land indicated in pink)



Submitters	
<div></div>	767 - MacFarlane Investments Limited and John Thompson
<div></div>	743 - Centuria Property Holdco Limited
<div></div>	1335 - Upper Village Holdings 3 Limited
<div></div>	1337 - Carter Queenstown 2015 Limited
<div></div>	166 - Safari Reviews Limited
<div></div>	991 Well Smart Investments
<div></div>	1274 - Alan Watts
<div></div>	1304 - SD Tremain Development Trust
<div></div>	1324 - Elain and Mahmoud Ashourian
<div></div>	QLDC

Map Prepared



UIV PC50 Submitters

DISCLAIMER: This map/plan is illustrative only and all information should be independently verified on site before taking any action. Whilst due care has been taken, Grip gives no warranty as to the accuracy and plan completeness of any information on this map/plan and accepts no liability for any error, omission or use of the information.

SOURCES: Property & Imagery: LINZ CC BY 4.0

Copyright © Grip Limited

Appendix 2 – Submitter Land in proximity to land proposed to be affected by the Variation

