

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

<b>UNDER</b>	the Resource Management Act 1991
<b>IN THE MATTER</b>	of a variation to the QLDC Proposed District Plan – Urban intensification
<b>BY</b>	<b>PASSION DEVELOPMENT LIMITED</b>  Submitter 681

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**SYNOPSIS OF LEGAL SUBMISSIONS**

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Dated: 1 August 2025

## MAY IT PLEASE THE COMMISSIONERS:

### INTRODUCTION

- [1] These submissions are presented on behalf Passion Development Limited (**Passion**) in relation to the urban intensification variation to the Queenstown Lakes District Council Proposed District Plan (**PDP**) (**Variation**).

#### Introduction / summary

- [2] The Submitter owns land in Fernhill (Lot 1 DP 20613 (**Site**)) and seeks to extend the adjacent residential zoning to a small portion of this Site, achieving a modest infill rezoning of either MDRZ or LDSRZ with a Visitor Accommodation Sub-Zone overlay<sup>1</sup>.
- [3] Images demonstrating the location of the proposed urban infill areas are included in the appendices to Mr Kemp's evidence. The zoning extension areas are effectively small pockets of rural zoned land which are in-between, and at a lower topography, than the existing upper urban edge of Fernhill.
- [4] As set out in Mr Kemp's evidence, the Site is currently within the Rural Zone of the PDP, part of a much wider ONL, and within the priority area landscape schedule overlay. The landscape schedules however recognise the key influence and adjacency of urban development.<sup>2</sup>
- [5] By way of background, the Submitter has recently participated for aligned rezoning outcomes through the following processes:
- (a) **The Spatial Plan Gen 2.0 process** – the Submitter lodged an expression of interest with Council to be identified as an area for future development under this spatial plan exercise. Unfortunately,

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<sup>1</sup> Alternative relief addressed at page 11 of Mr Kemp's evidence.

<sup>2</sup> Schedule 21.22.12 Western Whakatipu Basin Agreed Amendments Land use patterns and values – clause 34; *The UGB associated with Queenstown and the Fernhill/Sunshine Bay suburban area which adjoins the southern edges of the PA, and the Arthurs Point UGB which adjoins the north-western margins of the PA.* and 35: *Other neighbouring land uses which have an influence on the landscape character of the area due to their scale, character, and/or proximity include: the urban residential and commercial development adjoining the southern edges of the PA (taking in Sunshine Bay*

the process has stalled for a considerable time pending updates to the Council's anticipated review of the Housing and Business Capacity Assessment.

- (b) **Priority area landscape schedule variation** – the Submitter lodged submissions and appeals in this variation, and participated in a jurisdictional determination based upon scope for whether submissions on that variation were within scope when seeking to amend boundaries of notified priority area landscape schedules. The Environment Court ultimately agreed with Passion and other submitters that the Variation did allow scope for such outcomes. Passion ultimately however did not pursue such a boundary change, instead participating further in mediation of the text of the relevant priority area.

- [6] Through these processes, the Submitter has invested extensively in preparation of consultant reports supporting an appropriate urban extension into part of its Site.

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

- [7] It is well-established that if a submission is not 'on' a plan change, then the Panel does not have jurisdiction to consider the submission. I agree with Counsel for QLDC that the relevant authorities on scope issues are relatively well established, however their application on the facts of a particular case are more nuanced / contentious.

- [8] Applying the High Court's two stage assessment from *Motor Machinists Limited*<sup>3</sup> and *Clearwater Resort Limited*<sup>4</sup> provides a useful framework to step through in this process.

- (a) **First Limb** – Whether the relief sought in the submission falls within the plan change made by the Variation; and

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<sup>3</sup> *Palmerston North City Council v Motor Machinists Ltd* [2013] NZHC 1290.

<sup>4</sup> *Clearwater Resort Ltd v Christchurch City Council* HC Christchurch AP34/02, 14 March 2003.

- (b) **Second Limb** – Whether there is a real risk that people directly or potentially affected by the Variation (if modified in response to the submission) would be denied an effective opportunity to participate in the process.

[9] These limbs have also essentially been applied (and further expanded or modified) in recent Environment Court cases:

- (a) *Bluehaven Management Ltd v Western Bay of Plenty District Council* [2016] NZEnvC 191.
- (b) *Paterson Pitts Limited Partnership v Dunedin City Council* [2022] NZEnvC 234.
- (c) *Burdon and others v Queenstown Lakes District Council* [2025] NZEnvC 122.

[10] The questions on whether submissions are on the plan change or not are highly context and fact specific. Each case requires a close assessment of the purpose and policy direction of the Variation, the section 32 analysis and related notification process, the extent of the change being sought through submissions relative to any further s32 assessment, the facts and evidence in relation to the change sought, and the public participatory process.

[11] More details are set out in **Appendix 1** of these legal submissions on general case law principles and the Variation as notified. A summary of those specific to Passion Developments are set out below.

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

[12] The Submitter's position is that relief seeking to extend urban zoning to infill parts of its Site is within the scope of the Variation and the Panel's jurisdiction because:

- (a) The Variation alters the 'status quo' in respect of the Site because the Site is directly aligned with the existing urban areas to be upzoned. This urban adjacency has an important impact on values and character of small pockets of the Site itself and is an intrinsically related effect. Upzoning the land immediately adjacent

to the Site affects the status quo of the Site through its changed context and environment where both are part of the PDP. Submissions on the change to that status quo (particularly parts of the Site in infill areas between the 'saw tooth' urban extent) are within scope to be changed.

- (b) The Variation is an appropriate and efficient opportunity for PDP landowners to engage in examination of the edges of the existing urban environment, and whether those continue to be defensible and appropriate. If such land does not exhibit qualities and characteristics defining a section 6 landscape status, then this process is an appropriate opportunity to examine that.
- (c) Council's consultation and notification processes, and the related s32 notification material is broad in describing what the areas of the urban environment are within the Variation. Any section 32 report or notice seeking to preclude a right of submissions seeking to change the extent of an urban environment and extend urban zoning is not determinative of the issue of scope.<sup>5</sup>

[13] An overall approach to Limb 1 is to consider whether the submission raises matters that should have been addressed in the s32 evaluation and report (not simply whether the s32 report did or did not address it).<sup>6</sup>

[14] Given the Variation process seeks to implement commensurate increased density with accessible or high demand pursuant to policy 5, The s32 evaluation should have considered suitable urban extensions adjacent to existing urban development where that would:

- (a) Address the likely more affordable outcomes from greenfield development opportunity.
- (b) Create an outcome of a well-functioning urban environment.

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<sup>5</sup> Burdon, at [57b].

<sup>6</sup> *Bluehaven Management Ltd v Western Bay of Plenty District Council* [2016] NZEnvC 191, at [39].

- (c) Serve to implement the intentions of a range of housing typologies and affordable housing outcomes.
- (d) Be consistent with zoning and density patterning that performs well in terms of accessibility and addresses relative demand.
- (e) Be consistent with achieving a 'well functioning urban environment' and serving the policy intent of the NPS-UD as a whole.

[15] Small infill urban extension in the Passion Development location is reasonably anticipated and foreseeable through this Variation, because those areas already part of the PDP, do not exhibit ONL s6 values, they are isolated pockets of remnant rural land that do not have a high degree of public presence or importance, and the logical accessibility and additional capacity that the areas would add without inappropriate adverse effects.

## **Second Limb – Issues of procedural fairness**

[16] A number of submissions have sought to achieve urban extensions where PDP zoned land is contiguous with an urban environment proposed to be densified.

[17] It could be reasonably anticipated from the Variation, which seeks both rezonings already (within urban environments) and significant uplift in density and heights, that such outcomes would be pursued for PDP zoned land particularly where:

- (i) Sites are directly influenced by the adjacency of those changes;
- (ii) in the context of urban edges which are not particularly landscape based or defensible;
- (iii) in the context of the PDP zoning which is now almost a decade since notification; and
- (iv) in the context of a Variation which is responding to the NPS-UD policy intention of generally enabling growth, density, development opportunity and sufficient capacity.

- [18] As stated in the *Burdon* case, an approach to this Limb 2 very much calls for bespoke contextual assessment.<sup>7</sup> That is both in terms of the site in question and its environmental factors and any effects of the relief sought, as well as the context of the Variation proposal.
- [19] Public had the opportunity to read the Passion submission and elect whether to make a further submission opposing aspects of the submitter's relief. The Passion relief is limited to a small portion of its own Site that is not highly visible, does not exhibit wider s6 values and character, and would read entirely as infill development below a landscape line that is cadastral based.
- [20] It is acknowledged that the *Burdon* case did not consider consequential changes to ONL/F mapping to be within scope (despite allowing for changes to priority area boundaries), but the situation in this case is respectfully different:
- (a) The Site in contention for rezoning was never effectively examined in the PDP process since 2015. It was not the subject of submissions nor any appeal process and was an adoption of the existing urban extent of Fernhill. It therefore does not undermine participation in those landscape determinations through the PDP initial stages of review.
  - (b) Where there is a clear evidential basis to support land as not being suitably identified as s6b landscapes and where the change to the status quo through intensification directly affects such land values and character as well, it can reasonably be anticipated that such boundaries may require further examination.
  - (c) The Passion Site is unique in that it is looking at an irregular cadastral edge of urban zoning which just into the adjacent ONL. It is acknowledged that infill within those areas could be anticipated.
- [21] Relevantly, as set out in the appendices to Mr Kemp's evidence, landscape evidence supporting the infill rezoning for the Site confirms

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<sup>7</sup> At [31].

that this would create a more logical and defensible landscape (and therefore urban) boundary.

[22] Mr Kemp will discuss the s32 evaluation he has undertaken relative to the Site, including in particular his assessment of the relative demand and accessibility factors that would support rezoning relief sought.

**Dated: 1 August 2025**

**R E M Hill**  
**Counsel for the Submitter**



## Appendix 1: Further Legal Submissions on Scope

[1] The principles as to whether a submission is 'on' a plan change, proposed plan, or variation to a proposed plan are relatively well established. The commonly referred to authority is that of the High Court in *Motor Machinists Limited*<sup>8</sup> in which the Court endorsed a following two-limb test established in *Clearwater Resort Limited*:<sup>9</sup>

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

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

### *First Limb – Addressing change to the status quo*

[3] The first limb acts as a filter, considering the connection between the submission and the degree of change to the existing plan proposed in the notified plan change. In itself, this involves two aspects:<sup>10</sup>

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

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

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<sup>8</sup> *Palmerston North City Council v Motor Machinists Ltd* [2013] NZHC 1290.

<sup>9</sup> *Clearwater Resort Ltd v Christchurch City Council* HC Christchurch AP34/02, 14 March 2003.

<sup>10</sup> *Motor Machinists* at [80].

- [5] Zoning extensions are not completely ruled out by the *Motor Machinists* test. Consequential or incidental extensions to a notified zoning are permissible, provided that no further substantial s 32 analysis is required.<sup>11</sup> In relation to rezoning relief, submitters are not necessarily confined to the land that has been notified to be rezoned. In that case, the applicant sought to include a small area of land within the plan change for rezoning.
- [6] Furthermore, land that is adjacent to an area proposed to be rezoned may fall within this exception.<sup>12</sup> This is particularly relevant for submitters in this Variation seeking to extend urban zoning onto adjacent PDP Rural Zoned land, where such land is directly influenced and affected by the Variation changes to the urban zoned land.
- [7] Although each case needs to be considered on its own facts, these legal principles cannot be applied in a vacuum. There are also local examples of land falling outside a notified plan change or variation area being included in a variation as relief sought in submissions.
- (a) For example, a substantial area of land was rezoned by the Te Putahi Ladies Mile Variation after submissions requesting its rezoning, despite that land not being included in the notified version of that variation. While not binding, the Panel's approach to that determination is of some assistance in considering the scope of the notification and s32 report, the matters that should have been considered as part of the same (particularly as guided by the overall purpose and intent of the variation).
- (b) Similarly, in the recent landscape schedules variation process, the Environment Court disagreed with submissions for the QLDC that submissions seeking to amend the extent of notified priority area boundaries were out of scope, despite s32 documentation and public notices attempting to preclude such submissions.<sup>13</sup>

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<sup>11</sup> At [81].

<sup>12</sup> *Tussock Rise Ltd v Queenstown Lakes District Council* [2019] NZEnvC 111 at [69].

<sup>13</sup> *Burdon and others v Queenstown Lakes District Council* [2025] NZEnvC 122

### *Second Limb – Creating issues of procedural fairness*

- [8] The underlying principle of the second limb is procedural fairness. It considers whether potential submitters have been given fair and adequate notice of the relief proposed in the submission, or whether their right to participate in the process has been removed.<sup>14</sup>
- [9] The limb seeks to decrease the risk of left field or submissional side winds.<sup>15</sup>
- [10] An important question is whether there is a real risk that persons directly or potentially affected by the additional changes proposed in the submission have been denied an effective response to those additional changes.<sup>16</sup> The nature of PDP rural zoned land here is important in that it was the subject of review almost ten years ago, has had limited options for a plan change process, and would be able to be efficiently varied as part of the Council's intensification variation to the PDP.

### *The purpose and scope of the Variation*

- [11] Policy 5 of the NPS-UD and related definitions provide:

**Policy 5:** Regional policy statements and district plans **applying to tier 2 and 3 urban environments** enable heights and density of urban form commensurate with the greater of: the level of accessibility by existing or planned active or public transport to a range of commercial activities and community services; or relative demand for housing and business use in that location.

**urban environment** means any area of land (regardless of size, and irrespective of local authority or statistical boundaries) that: is, or is intended to be, predominantly urban in character; and is, or is intended to be, part of a housing and labour market of at least 10,000 people

- [12] Policy 5 refers to intensification of plans applying the tier 2 urban environments. It does not explicitly state that such intensification must only be within the urban environment as defined. It does not preclude assessment therefore of consideration where adjacent areas outside of

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<sup>14</sup> *Motor Machinists* at [77].

<sup>15</sup> *Clearwater* at [69].

<sup>16</sup> *Motor Machinists* at [82].

the urban environment as defined could be considered in terms of accessibility and demand suitability, to be included for intensification.

- [13] That would be particularly the case where the inclusion of that land achieves the overall intent of the NPS-UD and a well-functioning urban environment.
- [14] Submissions proposing an alternative way that achieves the intent and purpose of policy 5 and the NPSUD may be considered to be on the variation depending on their location, context, and the extent of further s32 analysis required (or the degree of change).
- [15] In the context of the pending HBA assessment, the enabling framework of the NPS-UD, where PDP zoned land might be foreseeable extended into the urban environment and indicated for intensification, this would be an appropriate way to achieve the intent of the Variation and should therefore be the subject of consideration.
- [16] Collectively, the detailed content of the Council's s32 documents suggest the Variation is intended to be a substantial plan change to the PDP, creating significant changes to the intensity of urban environments across the District and increasing development options and capacity.
- [17] Each case for rezoning extension in this Variation will be fact specific, it may depend on matters such as the degree of change to the status quo of that land, the degree to which substantial further s32 analysis would be required, and to what extent the change might create broader interests of natural justice and fairness, as opposed to a more insular zoning outcome.