

**BEFORE THE INDEPENDENT HEARING PANEL
FOR THE QUEENSTOWN LAKES PROPOSED DISTRICT PLAN**

Under the	Resource Management Act 1991
In the matter	of the Urban Intensification Variation to the proposed Queenstown Lakes District Plan

OPENING LEGAL SUBMISSIONS FOR QUEENSTOWN LAKES DISTRICT COUNCIL

Urban Intensification Variation

25 July 2025

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MAY IT PLEASE THE COURT

1. INTRODUCTION

1.1 These opening legal submissions are filed on behalf of Queenstown Lakes District Council (**Council**) in relation to the Urban Intensification Variation to the proposed Queenstown Lakes District Plan (**PDP**) (**Variation** or **UIV**).

1.2 The Variation has been prepared to give effect to Policy 5 of the National Policy Statement on Urban Development 2020 (**NPS-UD**). Policy 5 requires the district plan to enable heights and the density of urban form commensurate with the greater of either the level of accessibility or the relative demand for housing and business use in that location. Policy 5 is the sole reason for the Council notifying the UIV. However, the implementation of the Variation will also assist the Council to achieve the wider objectives of the NPS-UD and Policy 2 (enabling at least sufficient development capacity).

1.3 The Variation proposes to amend the PDP by increasing heights and densities, or removing barriers to achieve existing density in a specific number of zones located in the Urban Environment (text changes) as well as rezoning land (spatial changes) close to the commercial areas in Queenstown, Frankton and Wānaka to enable intensification of development.¹ The text amendments proposed by the Variation are to a limited number of PDP zone chapters:

- (a) Chapter 7 - Lower Density Suburban Residential Zone;
- (b) Chapter 8 – Medium Density Residential Zone;
- (c) Chapter 9 - High Density Residential Zone;
- (d) Chapter 12 - Queenstown Town Centre Zone;
- (e) Chapter 13 - Wānaka Town Centre Zone;
- (f) Chapter 15 – Local Shopping Centre Zone;
- (g) Chapter 16 - Business Mixed Use Zone.

as well as to Chapter 2 – Definitions, Chapter 4 – Urban Development, and Chapter 27 – Subdivision and Development.

¹ Public Notice dated 24 August 2023.

- 1.4** On behalf of Council, several expert witnesses have prepared Section 42A Reports and Statements of Evidence, dated 6 June 2025, and Rebuttal Evidence, dated 24 or 25 July 2025. These are as follows:

Ms Amy Bowbyes:

- (a) Section 42A Report (Strategic);
- (b) Section 42A Report (Text: Arrowtown);
- (c) Section 42A Report (Text: Definitions, Urban Development, Low Density Residential Zone);
- (d) Rebuttal;

Ms Corinne Frischknecht:

- (e) Section 42A Report (Text: Medium and High Density Residential Zones, Hāwea Residential);
- (f) Section 42A Report (Text: Town Centres and Business Zones);
- (g) Section 42A Report (Rezoning: Town Centres and Business, including at Hāwea);
- (h) Rebuttal on Text;
- (i) Rebuttal on Rezoning;

Ms Rachel Morgan:

- (j) Section 42A Report (Rezoning Residential) and Rebuttal;

Mr EJ Matthee:

- (k) Section 42A Report (Subdivision & Development);

Ms Susan Fairgray:

- (l) Evidence in Chief (Economics);

Mr Cam Wallace:

- (m) Evidence in Chief (Urban Design), Joint Witness Statement and Rebuttal;

Mr Richard Powell:

- (n) Evidence in Chief (Infrastructure);

Mr Richard Knott:

- (o) Evidence in Chief (Heritage and Character – Arrowtown and Queenstown Central) and Rebuttal.

1.5 Council's position (following consideration of the section 32 report and various attachments, submissions, expert evidence and lay statements, and Urban Design JWS), is attached to Ms Bowbyes' Rebuttal Evidence at Appendix A, "**Rebuttal Recommended Provisions**". The reasoning and evidential foundation behind Council's position is set out in the various reports and evidence filed on behalf of the Council, along with the section 32 report and associated attachments.

1.6 The matters that require the Panel's recommendations on submissions can generally be allocated into two categories:

- (a) the **text** of the PDP provisions subject to the Variation; and
- (b) the appropriate **spatial** outcomes (eg zoning of urban land subject to the UIV, shown on PDP plan maps).

1.7 To assist the Panel with making its recommendations, these legal submissions address the purpose of the Variation, relevant statutory framework and tests, categories of submissions that are considered to not be on the Variation, and briefly considers some specific issues raised in submissions. These submissions do not address individual sites, or evidence lodged.

2. POLICY 5 OF THE NPS-UD

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

*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.

2.2 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.

2.3 To inform the section 32 evaluation, notified provisions and zone extents, Council sought a significant amount of expert input, which has then been assessed collectively from a planning point of view. In summary, the inputs prior to notification included:

- (a) **Accessibility²** - which looked at “the ability to go places and do things” including how many destinations could be accessed within a given timeframe. This assessment was informed by various data including on the transport network serving an area, and the spatial distribution of activities or destinations, and is explained further in Mr Wallace’s evidence;
- (b) **Demand³** - analysis of several demand indicators to map different levels of demand, or the ‘relative demand’, across the urban environment. Land prices and proximity to amenities were considered together using bivariate spatial analysis to identify areas of higher and lower relative demand. This is also explained in more detail in Mr Wallace’s evidence;
- (c) **Urban Design⁴** – identifying provisions that were already consistent with the NPS-UD’s enabling intent, as well as highlighting potential barriers or conflicts that may require amendment to align with the built form outcomes now anticipated, was assessed;

2 Section 32 Report Appendix 3 - Accessibility and Demand Analysis Method Statement, at section 5.

3 Section 32 Report Appendix 3 - Accessibility and Demand Analysis Method Statement, at section 6.

4 Section 32 Report Appendix 4 – Urban Design Report.

- (d) **Economic modelling and Report**⁵ – considered and advised on the adequacy of different intensification options to help meet the NPS-UD Policy 5 requirements. This included assessing the scale and timing of demand for different housing typologies and sizes in different locations (which identifies the ‘relative demand’ from an economic perspective), modelling the levels of capacity for different types of dwellings by location generated by different intensification scenarios, and then comparing these aspects to understand the alignment of the enabled intensification options with patterns of demand for different types of housing. The assessment also considered the economic effects of the development patterns encouraged by each of the modelled scenarios. Ms Fairgray explains this work in more detail, along with her updated assessments completed since notification.

- 2.4** Collectively these assessments informed the development of the Variation (i.e. the preferred intensification option) which gives effect to the NPS-UD through the notified rezonings and the changes to the PDP provisions.
- 2.5** Through their evidence, Mr Wallace and Ms Fairgray have provided updated assessments as necessary, and consequentially some new rezonings (including upzoning and downzoning) and changes to standards have been recommended by the Council through its s42A and rebuttal.
- 2.6** It is worth emphasising that Mr Wallace’s Accessibility and Demand Analysis Report is not intended to produce a clear ‘in’ or ‘out’ answer as to the spatial extent of zoning (and associated heights and densities) that would apply. Rather it along with other evidence was used to inform the planning assessment.
- 2.7** A line does however need to be drawn somewhere and it would represent poor practice to “pepper pot” various zones / densities based purely on the outputs of the accessibility and demand mapping.

5 Section 32 Report, Appendix 5, Economic Modelling and Report – ME.

2.8 While these assessments, and the evidence of Mr Wallace and Ms Fairgray provides some of the input into Council's recommendations for the Variation, an additional planning lens is put over this when any decisions are made. This is to ensure that the resultant rezonings contribute to a well-functioning urban environment⁶ as per the wider NPS-UD directive. As outlined in Ms Bowbyes evidence⁷ this generally means that the:

- (a) HDRZ is applied across central parts of the Whakatipu and Wānaka wards in areas of highest accessibility and demand;
- (b) MDRZ is applied in central parts of the Whakatipu and Wānaka wards on a more widespread basis in accordance with patterns of accessibility and demand; and
- (c) lower scale opportunity is provided in outer areas, predominantly via the LDSRZ.

3. RELEVANCE OF POLICY 2 / SUFFICIENT DEVELOPMENT CAPACITY TO THE UIV

3.1 In order to give effect to Policy 2 of the NPS-UD, the Council must enable at least sufficient development capacity to meet expected demand for housing and for business over the short, medium and long term, which for this Council, in order to be sufficient, must meet the expected demand plus the appropriate competitiveness margin.

3.2 Policy 2 requires at least sufficient development capacity, but giving effect to Policy 5 requires a nuanced approach so that the level of development opportunity, and correspondingly produced capacity, is in the locations that demand it the most. This includes providing for the typologies demanded. Giving effect to Policy 5 will in turn assist with achieving Policy 2 of the NPS-UD.

6 Meaning: (a) have or enable a variety of homes that: (b) meet the needs, in terms of type, price, and location, of different households; and (c) enable Māori to express their cultural traditions and norms; and (d) have or enable a variety of sites that are suitable for different business sectors in terms of location and site size; and (e) have good accessibility for all people between housing, jobs, community services, natural spaces, and open spaces, including by way of public or active transport; and (f) support, and limit as much as possible adverse impacts on, the competitive operation of land and development markets; and (g) support reductions in greenhouse gas emissions; (h) and are resilient to the likely current and future effects of climate change.

7 At 4.9.

- 3.3** The focus of the modelling undertaken by Ms Fairgray is to understand the NPS-UD Policy 5 effects (and options available) on the alignment between relative demand and level of feasible development opportunity enabled by the provisions across different parts of the urban environment. That should be understood to be different to the overall HBCA. The Council is currently working towards an updated 2025 HBCA, which will be considered by full Council later in 2025.
- 3.4** Ms Fairgray's UIV modelling consequently has greater detail on the development options for intensification, their corresponding levels of demand, how these vary by location, and how the market is likely to respond through the medium to long-term to the UIV. It disaggregates the stages of capacity to distinguish between the effects from different parts of the development process (e.g. planning, infrastructure, feasibility).
- 3.5** Council wishes to make clear that the fact that an updated HBCA will be finalised in the near future, creates no risks in respect of the UIV. The information base required to justify the UIV is available, and Ms Fairgray has carefully provided an update on overall development capacity that will result from the UIV. No evidence has been filed that challenges Ms Fairgray's findings.
- 3.6** The outputs are therefore likely to differ between the models to correspondingly reflect their different purposes and approaches. The UIV and Growth Model outputs will be used collectively as part of the QLD evidence base to inform the different NPS-UD requirements of the 2025 HBA.

4. SUBMISSIONS NOT 'ON' THE VARIATION

- 4.1** A number of submitters have made submissions on the Variation that Council considers are not "on" the UIV. Ms Bowbyes addresses these submissions in section 9 of her Section 42A Report and section 4 of her Rebuttal.
- 4.2** The legal tests relevant to determining what is the scope of a variation are relatively settled, although it is the application of those tests that is usually more contentious.

As Justice Kōs articulated in his decision on *Motor Machinist*⁸, by law, if a submission is not “on” the change, the council has no business considering it.

Two-limb test for determining what is “on” the Variation

4.3 The High Court in *Clearwater Resort Ltd v Christchurch City Council*⁹ and *Palmerston North City Council v Motor Machinists Limited*¹⁰ set out the test to determine whether a submission is “on” a plan change:

- (a) **Limb one:** the submission must reasonably be said to fall within the ambit of the plan change. This involves two aspects: the breadth of the alteration to the status quo entailed in the plan change and whether the submission addressed that alteration; and
- (b) **Limb two:** 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 in the plan change process.

4.4 More details submissions are set out in Appendix 1 of these legal submissions on case law and what has been notified. To focus this section of the submissions, the Council has allocated the relief sought in submissions that is considered to not be “on” the UIV into four categories:

- One:** Submissions seeking changes to Operative District Plan (**ODP**) chapters, and/or the inclusion of that land in the Variation – an example is all of the land zoned by PC50 to the ODP;
- Two:** Amendment to PDP provisions that do not relate to intensification / Policy 5 of the NPS-UD, or are unrelated to the delivery of Policy 5;
- Three:** Submissions seeking rezoning of land that is currently zoned Rural Zone in the PDP, as well as movement of landscape classification and urban growth boundaries so that said land is no longer classified as Outstanding Natural Landscape (**ONL**);
- Four:** Submissions seeking rezoning of PDP land that, while currently zoned an urban zone, is not close to the commercial centres in Queenstown, Frankton and Wānaka.

8 *Palmerston North City Council v Motor Machinists Limited* [2014] NZRMA 519, at [1].

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

10 *Palmerston North City Council v Motor Machinists Ltd* [2014] NZRMA 519 (HC)

Category One – submissions on ODP

4.5 As explained earlier, the Variation is to the PDP. A Variation can only be to a proposed plan. The Variation does not change the status quo for ODP land (spatially) or ODP chapter text. Submissions in Category One are seeking to either make changes to ODP text or to rezone ODP land, but neither of those matters fall within the scope of changes made to the PDP through the UIV.

4.6 The Council’s approach to ODP land is to bring ODP land into the PDP through a comprehensive and specific plan review process – not through the Urban Intensification Variation. This is explained in the Section 32 Report as follows:

ODP

There are a number of smaller urban ‘special zones’ within the ODP as well as an area of land known as Lakeview (PC50) that is zoned Queenstown Town Centre (ODP). These are yet to be reviewed through the District Plan review.

These zones include numerous bespoke provisions which are intended to provide specific outcomes in terms of character or to manage effects upon surrounding or adjacent sensitive environments. **Consequently, these zones need to be reviewed holistically and they have not been included within the review undertaken in response to the NPS-UD.** However, Policy 5 will be a matter of consideration for the review of these ODP zones in the future, when they are brought into the PDP.

4.7 The Section 32 Report also states that the variation is “limited to existing urban areas within the Proposed District Plan”.

4.8 Because ODP land was not notified, it cannot be submitted on. If the Panel accepted a submission on the ODP (and consequentially brought ODP land into the PDP by way of this Variation), Council submits that limb two of the scope test would come into play. This is because a potential submitter would not have been alert to the fact that ODP land could have been affected by the Variation, and the possibility of a ‘submissional side-wind’ is high.

Category Two – submissions on provisions unrelated to intensification

- 4.9** The Section 32 Report and Public Notice make it clear that the Variation amends the PDP by increasing **heights** and **densities** in some zones in the urban environment, and by amending provisions to recognise the **benefits of intensification**; to ensure adequate **amenity** values are provided for within intensification areas; and to ensure that intensification can be **serviced**.
- 4.10** A number of submissions were received on provisions that were not altered by the Variation. In some instances it may be more 'clear cut' that the changes are not in scope of the Variation. For others, it is less clear cut and requires a merits based consideration of the change requested, in terms of whether they are relevant to intensification.
- 4.11** Visitor accommodation is an example of one that is less clear cut. Council's position is that visitor accommodation is only in scope of the Variation insofar as the notified Variation has a bearing on visitor accommodation activities through the proposed changes to heights and densities. Ms Bowbyes addressed this in her Rebuttal, and Ms Frischknecht has considered whether any changes would be appropriate in response to submissions, but has concluded that changes are not required.

Category Three – submissions seeking rezoning of rural land

- 4.12** It is expected that one or two submitters may rely on the decision in *Motor Machinist* to argue that rezoning of their Rural Zoned land may be permissible via a submission on the UIV. Council urges the Panel to carefully consider such legal submissions, particularly where the land in question is currently zoned Rural Zone and is classified as ONL. On that point, Council is firmly of the view that any land that is classified as ONL (and indeed zoned Rural Zone) is not within the scope of the UIV.
- 4.13** As set out in more detail in Appendix 1, the NPS-UD applies to the urban environment. Land zoned Rural Zone is not in the urban environment.

- 4.14** Therefore any rezoning requests of such land, even if directly adjacent to the urban area, should in our submission not be entertained through decisions on the UIV. Not only is the Rural Zone and ONL clearly not subject to *any* change in framework through the UIV, Council submits that the concerns set out in Limb 2 would come into play. No reasonable person who would have seen the notification of the urban focused UIV would have had any reason to consider that it might allow for rezoning of *rural land*.

Category Four – submissions seeking rezoning of urban land that while currently a PDP urban zone, that urban zone is not within the scope of the UIV

- 4.15** This category includes submissions on land that, while located within the UGB and subject to a PDP urban zone, that PDP urban zone is not within the scope of the UIV. Two examples are land currently zoned PDP General Industrial Zone or PDP Large Lot Residential Zone.
- 4.16** No changes were proposed to this category of zones in the notified UIV (so no change in the status quo). None of the documents worked through in Appendix 1 (eg public notice, s32 indicate any suggestion that the zones might be amended by the UIV or rezoned spatially). Any rezoning of land that falls within Category four, in our submission raises a real risk of a natural justice concern as raised in Limb 2, and cannot be considered by the Panel.

5. THE RELEVANT STATUTORY FRAMEWORK AND TESTS

- 5.1** The Variation is a change to the Council's PDP. The relevant statutory tests when assessing the merits of proposed district plan provisions derive from sections 31, 32, and 72 – 76 of the Resource Management Act 1991 (**RMA**).
- 5.2** The framework has been traversed by the Environment Court in various decisions, including leading cases *Long Bay-Okura Great Park Society Incorporated & Ors v North Shore City Council*¹¹ and *Colonial Vineyard Limited v Marlborough District Council*.¹²

¹¹ *Long Bay-Okura Great Park Society Inc & Ors v North Shore City Council* NZEnvC A078/08 at [34].

¹² *Colonial Vineyard Limited v Marlborough District Council* [2014] NZEnvC 55.

- 5.3** In summary, the Panel must consider whether the Variation provisions (and maps):
- (a) are designed to accord with,¹³ and assist the Council to carry out¹⁴ its functions, and to achieve the purpose of the Act;¹⁵
 - (b) are in accordance with any regulations (including national environmental standards);¹⁶
 - (c) give effect to any national policy statements and the New Zealand Coastal Policy Statement;¹⁷
 - (d) give effect to the regional policy statement;¹⁸ and
 - (e) are the most appropriate way to achieve the objectives of the PDP, by considering the matters listed in sections 32(1)(b) and 32(2).

5.4 Additionally, and where the proposed provisions are rules, the Panel must also have regard to the actual and potential effects of activities on the environment.¹⁹

5.5 Of most relevance to the Variation, this includes a requirement that the Council's district plan gives effect to, and is prepared and changed in accordance with, the NPS-UD.²⁰

5.6 The Strategic Evidence of Ms Bowbyes²¹ sets out the overall framework relevant to the NPS-ET, and this has been relied on by other planning experts.

6. DESIGN GUIDELINES

6.1 Several policies and matters of discretion for restricted discretionary activities in the PDP refer to a number of different design guidelines.

6.2 The design guidelines are material incorporated by reference into the PDP and they contain non-statutory guidance on the design of development that is reflective of

¹³ RMA, section 74(1).

¹⁴ RMA, section 31.

¹⁵ RMA, sections 72 and 74(1).

¹⁶ RMA, sections 74(1)(f).

¹⁷ RMA, sections 75(3)(a) and (b).

¹⁸ RMA, section 75(3)(c).

¹⁹ RMA, section 76(3).

²⁰ RMA, section 74(1)(ea) and 75(3)(a).

²¹ At section 5.

the character values of a particular area. An example of a design guideline is the Arrowtown Design Guidelines 2016.

- 6.3** Ms Bowbyes addresses the Council’s approach to various design guides that are referenced in the PDP in section 10 of her Strategic Section 42A. In summary, the Council intends to review the design guidelines after the completion of the Variation, because the Variation will have a bearing on what is contained in the guidelines. This is a chronological way of doing this. The notified provisions included a premature reference to a “2023 version” which Council has recommended be corrected back to the dates of the design guidelines that will continue to apply.

7. ARROWTOWN

- 7.1** You would have seen through pre-reading of Ms Bowbyes’ s42A report, and supported by Mr Knott’s expert evidence on heritage and special character, that Council’s recommendations for Arrowtown are to revise the heights across the LDSRZ and MDRZ, from what was notified. There remains some differences in opinion as to the type of development that may be enabled by Council’s s42A recommendations in the MDRZ, but Mr Knott and Ms Bowbyes have responded to this and consider the standards are enabling of two-storey development only, albeit with more flexibility as to developing at that height.
- 7.2** Essentially, while the NPS-UD does not specify ‘qualifying matters’ for intensification for Tier 2 authorities in the same way it specifies them for Tier 1 authorities, guidance has been taken from 3.32 of the NPS-UD. There is a long history in the ODP and now in the PDP (since Stage 1) that recognises the special circumstances applying to Arrowtown. Council’s recommendations through the s42A evidence recognise the existing policy in the PDP that responds to section 6 (historic heritage) and 7 (character) of the RMA.

7.3 The Panel has asked a number of questions relating to Arrowtown and responses are being filed in a separate Memorandum of Counsel.

DATED this 25th day of July 2025

A handwritten signature in black ink, appearing to read 'Scott', with a stylized flourish at the end.

Sarah Scott / Shanae Richardson
Counsel for Queenstown Lakes District Council

APPENDIX 1

1. FURTHER SUBMISSIONS ON SCOPE

The first legal test – the breadth of the alteration to the status quo entailed in the plan change

- 1.1** The first limb of the legal test involves asking the question of whether the management regime in the PDP for the particular resource in question, 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, unless the change is merely incidental or consequential.
- 1.2** The High Court has held that it can be relevant to look beyond the proposed change or variation itself to assess the breadth of the plan change. This includes consideration of the public notice and whether the submission raises matters that should have been addressed in the section 32 evaluation and report, although the section 32 report will not necessarily be determinative of the matters that will be within the scope of the UIV (particularly if there are matters that should have been addressed but were not).
- 1.3** After determining the change to the status quo advanced by the variation (eg, the UIV ‘scope’), the submission must then be reasonably and fairly “on”, or within the scope of a plan change. This assessment should be approached “in a workable fashion rather than from the perspective of legal nicety.”²²

The Second Legal Test - Natural Justice

- 1.4** If a submission raises matters, or seeks relief, that is beyond the ambit of the plan change or variation, then the risk outlined in the second limb arises. The underlying principle is that procedural fairness should ensure that adequate notice is given to those who may wish to take part in a proceeding,²³ with the Court having no jurisdiction to make amendments if they could impact on those that have not had, or have been deprived of, the opportunity to participate.²⁴

²² *Albany North Landowners v Auckland Council* [2017] NZHC 138, at [115].

²³ *Westfield (New Zealand) Ltd v Hamilton City Council* (2004) 10 ELRNZ 254.

²⁴ *Clearwater*, at [66].

- 1.5** The purpose of the second limb is therefore to ensure that interested parties are not rendered “speechless” if they become aware of a submissional side wind²⁵ (i.e. a submission not anticipated) that extended the proposed amendments in the UIV beyond what was originally notified.²⁶ As expressed in *Motor Machinists*:²⁷

It would be a remarkable proposition that a plan change might so morph that a person not directly affected at one stage (so as not to have received notification initially under cl 5(1A)) might then find themselves directly affected but speechless at a later stage by dint of a third party submission not directly notified as it would have been had it been included in the original instrument.

- 1.6** Overall, the concept of scope (and the tests set out above) applies to ensure that decision-makers exercise appropriate restraint when making decisions.
- 1.7** Council’s view, for reasons that follow, is that the change to the PDP status quo is focused on implementing Policy 5 of the NPS-UD. The NPS-UD only applies to the urban environment.²⁸ The scope of the UIV is expressly limited to the existing urban environment within the PDP. The Variation is a variation to the PDP, it is not a plan change to the ODP or any of the operative zoned land in the ODP that has not yet been subject to the plan review, so it does not apply to any of the ODP zoned land.
- 1.8** The Variation does not propose to extend the existing PDP urban environment by rezoning any non-urban land. The urban environment is located within Urban Growth Boundaries (**UGBs**) shown on the PDP plan maps. The zones that were notified are located in various locations within UGBs across the District (eg, Queenstown, Frankton, Arrowtown, Hawea).
- 1.9** The only rezoning of land proposed by the Variation is identified in the public notice as being land close to the commercial areas in Queenstown, Frankton and Wānaka. This narrows the scope of any rezoning requests to areas that can be characterised as being close to those three commercial areas.

²⁵ *Motor Machinists*, at [82].

²⁶ Refer to *Turners and Growers Horticulture Ltd v Far North District Council* [2017] NZHC 764, at [25].

²⁷ At [77].

²⁸ Clause 1.4 of the NPS-UD defined “Urban Environment” as 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.

- 1.10** In terms of text amendments, as stated in the *Public Notice*²⁹ the Variation seeks to amend the PDP by increasing heights and densities in some zones in the urban environment. The Variation also includes amendments to planning provisions to recognise the benefits of intensification; to ensure adequate amenity values are provided for within intensification areas; and to ensure that intensification can be serviced.
- 1.11** The Public Notice lists the PDP chapters that contained provisions that were proposed to be amended by the Variation. The Public Notice also contains a link to the Council's Variation website that contained the full notified proposal. The proposed changes to the provisions and plan maps were shown by way of marked up changes to the text, and amended plan maps.
- 1.12** The Council prepared several documents to notify and explain the Variation that it uploaded to its website³⁰ for the Variation. This included a Public Notice, a Section 32 Evaluation Report for Implementing Policy 5 of the National Policy Statement on Urban Development – Urban Intensification Variation (**S32 Report**),³¹ a Fact Sheet and Story Map, and the provisions and zone maps themselves. The document that must have the most weight however is the actual notified changes to the PDP (text and plan maps). Together, Council submits that these documents set the scope of the Variation.
- 1.13** The *S32 Report* explains that:
- (a) the scope of the Variation is limited to existing urban areas within the PDP, which meet the requirements of Policy 5 of the NPS-UD in terms of accessibility and/or relative demand and for which changes to the PDP are proposed.³²
 - (b) although the zoning extent of all urban areas has been reviewed, there are many areas where the zoning of land is not proposed to be changed

29 Accessibly online at <<https://www.qldc.govt.nz/media/0wfpozvr/public-notice-urban-intensification-variation-nps-ud-24-aug-2023.pdf>>

30 Accessible online at <https://www.qldc.govt.nz/your-council/district-plan/urban-intensification-variation/>.

31 Accessible online at <<https://www.qldc.govt.nz/your-council/district-plan/urban-intensification-variation/>>.

32 Section 1.

as rezoning is not needed to commensurate with the locations' level of accessibility and relative demand as required by Policy 5 of the NPS-UD.³³

- (c) changes to the standards and provisions changes are also informed by the heights and densities already enabled within the zones and constraints to intensification such as hazards, heritage features, airport noise boundaries, reverse sensitivity effects and landscape values. Based on these considerations, a review of the provisions of certain PDP Urban Environment zones³⁴ was not considered to be warranted in order to give effect to the NPS-UD and Policy 5 specifically.³⁵

1.14 The S32 Report also lists the PDP chapters that had provisions that were being amended as well as attaching summaries of the amendments, and maps showing any rezonings by the Variation.

1.15 The *Fact Sheet*³⁶ lists the chapters that had changes proposed and summarised those changes proposed, as well as why the changes are being made.

1.16 Alongside this explanation, these documents together clearly notified limited changes to the following:

- (a) Changes to provisions within certain PDP Chapters insofar as they relate to the Variation/intensification (eg specific urban chapters).
- (b) Rezoning of land that is already urban zoned in the PDP, which will be located within the UGBs and that is located close to the commercial areas in Queenstown, Frankton and Wānaka. This is shown on the notified maps attached to the S32 Report and only includes areas of land within the following locations:
 - (a) Arrowtown;
 - (b) Arthurs Point;
 - (c) Frankton;

³³ Page 32.

³⁴ These zones include: Arrowtown Town Centre; Arrowtown Residential Historic Management Zone; Jacks Point Zone (Special Zone); Large Lot Residential Zone; Settlements Zone; General Industrial and Services Zone; Coneburn Industrial Zone (Special Zone); Three Parks Business; Three Parks Commercial.

³⁵ Page 33.

³⁶ Accessibly online at <https://www.gldc.govt.nz/media/01cj5u42/gldc_urban-intensification-variation_a4-factsheet_aug23-web.pdf>.

- (d) Hāwea;
- (e) Queenstown-Frankton Road;
- (f) Queenstown Town Centre; and
- (g) Wānaka.

1.17 Council submits that this must define the status quo that has been changed by the notified UIV, and therefore what is in scope for a submitter to seek other changes to.

1.18 If a submission is not “on” the Variation, it means that the Panel does not need to make a finding on it (or should recommend rejecting it).

1.19 If the Panel were to recommend accepting a submission outside of scope of the Variation, Counsel submits that this would bring the second limb into play and create a real risk that persons directly or potentially directly affected by the additional changes proposed in the submission have been denied an effective response.