

**BEFORE THE HEARINGS PANEL  
FOR THE QUEENSTOWN LAKES PROPOSED DISTRICT PLAN**

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER OF the Urban Intensification Variation to the Queenstown  
Lakes Proposed District Plan

**STATEMENT OF EVIDENCE OF SCOTT SNEDDON EDGAR**

**ON BEHALF OF THE FOLLOWING SUBMITTERS:**

**SCOTT & JOCELYN O'DONNELL (SUBMITTERS #641, #657 AND FURTHER SUBMITTER #1358)**

**4<sup>th</sup> July 2025**

## **Introduction**

1. My name is Scott Sneddon Edgar. I am a Resource Management Planner and hold a Bachelor of Arts Degree (Honours) in Town and Country Planning from Strathclyde University in Glasgow, Scotland. I am an Associate Member of the New Zealand Planning Institute.
2. I am an independent planning consultant based in Wanaka. Prior to my current position I was employed by Southern Land Limited, a Wanaka based survey and planning consultancy, from October 2006 to November 2018. During my time at Southern Land I was involved principally with the preparation of resource consent applications and the presentation of planning evidence at Council hearings. I was also involved in the preparation of submissions and further submissions on Stages 1, 2 and 3 of the Proposed District Plan, participation in the Stage 1 hearings and subsequent appeals and Environment Court proceedings.
3. Prior to relocating to New Zealand in 2005 I worked as a development control planner with various Scottish local authorities in both rural and urban regions.
4. Upon my arrival in New Zealand I was employed as a resource consents planner in the Wanaka office of Civic Corporation Limited before taking up a position with Southern Land Limited. I have a total of 26 years' planning experience, 20 of which have been gained in New Zealand.

## **Code of Conduct**

5. I confirm that I have read the Code of Conduct for Expert Witnesses contained in the Environment Court of New Zealand Practice Note 2023 and I agree to comply with it. In that regard I confirm that this evidence is written within my expertise, except where I state that I am relying on the evidence of another person. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

## **Scope of Evidence**

6. I have been engaged by Scott & Jocelyn O'Donnell (Submitters #641, #657 and Further Submitter #1358) to provide expert planning evidence relating to the Urban Intensification Variation.
7. In preparing this evidence I have read and considered the following documents and information:

- the National Policy Statement on Urban Development;
- the Queenstown Lakes District Proposed District Plan;
- the UIV s32 Report and supporting information;
- the UIV s42A Reports and supporting evidence;
- the Queenstown Lakes District Council’s Business Development Capacity Assessment 2017;
- the Queenstown Lakes District Council’s Housing Development Capacity Assessment 2021; and
- Shundi Queenstown Ltd v QLDC – NZEnvC 25.

8. My brief of evidence is set out as follows:

- Submissions
- Statutory Framework
- National Policy Statement on Urban Development 2020
- Purpose of the Urban Intensification Variation
- Matters of Disagreement
  - Scope – Visitor Accommodation within the HDR Zone
  - Development Outcomes for the HDR Zone
  - Insufficient Information Regarding Visitor Accommodation in the HDR Zone
  - Whether the UIV will improve housing affordability by supporting competitive land and development markets
  - Provision for Infrastructure Capacity
  - Design Guidelines
  - Amenity Values

- Housing Availability and Affordability
  - Evaluation under Section 32(1)(a) and (b)
  - Alternative Options

## **Submissions**

### *Scott & Jocelyn O'Donnell (Submitters #641, #657 and Further Submitter #1358)*

9. In their submission (#641) Scott & Jocelyn O'Donnell oppose the proposed changes to the HDR Zone provisions and the up-zoning of land on Panorama Terrace and Panorama Place from LDSR to HDR and MDR, primarily on the basis that the proposed amendments and upzoning would have significant adverse effects on their views, access to sunlight, privacy and amenity.
10. The O'Donnells raise particular concern with regard to the effect of the UIV on what is enabled in the HDR Zone and specifically on the Copthorne Hotel Site which immediately adjoins the southern boundary of their property.
11. The O'Donnells express concern that the UIV will significantly compromise their views, access to sunlight, privacy and amenity while failing to achieve its stated objective of providing for housing diversity, availability and affordability.
12. In addition to their personal submission I prepared a submission on behalf of the O'Donnells (#657) in which I outline concerns with the proposed provisions and whether the UIV as notified will achieve its intended outcomes. Specifically the submission seeks that, if the land in the vicinity of Panorama Terrace and Panorama Place is rezoned, the height limit for the MDR Zone is reduced (from the notified 12m to 10.5m) and that further amendments are made such that the increased height limit and relaxed recession planes in the HDR Zone apply to residential buildings rather than visitor accommodation buildings.
13. I acknowledge the national policy direction that requires local authorities to enable urban intensification and while I support the concept of urban intensification and agree with Council in many regards I do share the O'Donnell's concerns in terms of whether the UIV will deliver its intended outcomes, particularly in relation to the enablement of infill development in the HDR Zone.

## **Statutory Framework**

14. Sections 72 to 76 of the RMA set out the requirements for district plans. Section 74 sets out matters to be considered by territorial authorities when preparing and changing their district plans. District plans must be prepared and changing in accordance with (among other things):
- the territorial authorities functions under s31 of the Act<sup>1</sup>;
  - the provisions of Part 2 of the Act<sup>2</sup>;
  - the territorial authorities obligations under s32 of the Act<sup>3</sup>; and
  - a national policy statement<sup>4</sup>.

### **National Policy Statement on Urban Development 2020**

15. The UIV seeks to give effect to the NPS-UD and specifically Policy 5. The key objectives of the NPS-UD in relation to the UIV are to ensure that:
- New Zealand has well-functioning urban environments<sup>5</sup>;
  - Housing affordability is improved by supporting competitive land and development markets<sup>6</sup>;
  - District Plans enable more people, businesses and services to live/locate close to centre zones or areas of employment that are well serviced by public transport and/or where there is demand for housing or business land<sup>7</sup>;
  - Urban environments (including their amenity values) evolve over time to respond to the needs of people, communities and future generations<sup>8</sup>;
  - Councils' decisions on urban development that affect urban environments are integrated with infrastructure planning and funding, are strategic over the medium and long term while being responsive to proposals that would supply significant development capacity<sup>9</sup>; and

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<sup>1</sup> s74(1)(a) RMA

<sup>2</sup> s74(1)(b) RMA

<sup>3</sup> s74(1)(d) and (e) RMA

<sup>4</sup> s74(1)(ea) RMA

<sup>5</sup> Objective 1 NPS-UD

<sup>6</sup> Objective 2 NPS-UD

<sup>7</sup> Objective 3 NPS-UD

<sup>8</sup> Objective 4 NPS-UD

<sup>9</sup> Objective 6 NPS-UD

- Councils have robust and frequently updated information about their urban environments that is used to inform planning decisions<sup>10</sup>.

16. The policies of the NPS-UD that are of particular relevance to the UIV are:

- That planning decisions contribute to well-functioning urban environments that enable a variety of housing types, have or enable a variety of sites for different business sectors, have good accessibility, reduce greenhouse gas emissions, are resilient to climate change and supply the competitive operation of land and development markets<sup>11</sup>;
- That Councils provide at least sufficient development capacity for housing and business land<sup>12</sup>;
- That tier 2 and 3 urban environments enable heights and density of urban form commensurate with the level of accessibility by active or public transport to commercial activities and community services **or** the relative demand for housing and business use (whichever is greater)<sup>13</sup>; and
- In making decisions that affect urban environments, decision makers are directed to have particular regard to the built form enabled by the planning documents that give effect to the NPS, and acknowledge that the planned built form may result in significant changes to an area and that those changes may detract from existing amenity values which is not in of itself an adverse effect<sup>14</sup>.

### **Purpose of the Urban Intensification Variation**

17. The purpose of the UIV is to meet Council's obligations under the National Policy Statement on Urban Development (NPS UD), in particular Policy 5 which states:

*Policy 5: Regional policy statements and district plans applying to tier 2 and 3 urban environments enables heights and density of urban form commensurate with the greater of:*

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<sup>10</sup> Objective 7 NPS-UD

<sup>11</sup> Policy 1 NPS-UD

<sup>12</sup> Policy 2 NPS-UD

<sup>13</sup> Policy 5 NPS-UD

<sup>14</sup> Policy 6 NPS-UD

*(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.*

18. The key resource management issues that the NPS UD and the UIV seek to address<sup>15</sup> are:

- That the QLD is not delivering well-functioning urban environments due to the fact that the HDCA has identified a lack of diversity in housing typologies and a shortfall in affordable housing, that low density development around commercial centres and along arterial routes is not providing sufficient population density to commercial centres and does not support investment in public and active transport systems or reductions in greenhouse gas emissions.
- That housing in the QLD is unaffordable.
- That increased traffic generation and lack of choice places pressure on the existing transport network.
- That there are existing transport constraints within the QLD.

19. The UIV seeks to address these issues by providing for intensification around the commercial centres.

20. While intensification required under Policy 5 relates to both residential and business land the resource management issues that the UIV seeks to address in giving effect to the NPS UD are focused on enabling the development of a diverse range of housing typologies to provide greater housing choice and affordability.

### **Matters of Disagreement**

21. The relief sought in the submissions of the O'Donnells is rejected in the s42A reports. Having reviewed the s42A reports and supporting evidence there are a number of matters upon which I disagree with Council's experts. These can be outlined as follows:

#### Scope - Visitor Accommodation in HDR Zone

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<sup>15</sup> Part 5.2 – Issues – s32 Report

22. While the UIV primarily seeks to enable residential development capacity the notified provisions apply more broadly to built development, including within the HDR Zone. As set out in the submission (#657) it is my opinion that under the notified provisions visitor accommodation within the HDR Zone has an easier pathway to consent than residential development. While residential development of the type that the UIV seeks to enable<sup>16</sup> and visitor accommodation both require restricted discretionary activity consents<sup>17</sup> the assessment matters for residential development are broader than those for visitor accommodation and include (among other things):

- The provision of a high level of residential amenity for residents and neighbours;
- Building dominance;
- Whether the proposal promotes sustainability;
- Infrastructure capacity;
- Low impact stormwater design;
- Waste and recycling storage and collection;
- Natural hazards; and
- Consistency with the Residential Zone Design Guideline.

23. In contrast the matters of discretion for visitor accommodation are limited to:

- The location, nature and scale of activities;
- Parking and access;
- Landscaping;
- Noise;
- Hours of operation; and
- External appearance of buildings.

24. I consider that the UIV provisions, which enable increased height and built form generally while seeking to manage the effects of the enabled intensification by adding controls and matters of discretion almost exclusively to residential development creates an imbalance whereby visitor accommodation appears to have been favoured over residential development.

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<sup>16</sup> Four or more residential units per site

<sup>17</sup> Rules 9.4.5 and 9.4.6

25. I consider it appropriate and necessary to apply additional or amended controls to visitor accommodation activities within the HDR Zone in order to manage the effects of the enabled intensification, ensure that the HDR Zone remains primarily residential and achieves the objective of the UIV.
26. In the Strategic s42A report<sup>18</sup>, Ms Bowbyes considers however that, because Policy 5 of the NPS UD focusses on heights and density of urban form, the UIV is not relevant to the visitor accommodation provisions and that submissions seeking changes to those provisions are not within scope. This position is supported/adopted by Ms Frishknecht in her s42A report on Chapters 8 and 9<sup>19</sup>.
27. I do not agree with Ms Bowbyes or Ms Frishknecht in this regard. The changes proposed under the UIV affect a range of activities, including residential and commercial activities, and are not simply limited to height and density provisions. The UIV provides for increased height, reduced recession planes, increased density and a number of other amendments to enable larger buildings. Most of these provisions will provide for a greater scale of residential, commercial, and visitor accommodation activity. The additional provisions in relation to outlook space requirements also apply to both residential and visitor accommodation activities which would appear to contradict the position of Ms. Bowbyes and Ms. Frishknecht that the visitor accommodation provisions are not within scope.
28. It is my opinion that any consequential changes to the provisions of the PDP that are required to achieve the intended outcome of the UIV and give effect to the NPS UD are within scope. While the primary purpose of the UIV is to enable increased housing diversity, availability and affordability the proposed changes to the height and density provisions apply to all enabled activities within each zone and are not limited to residential activities. If amendments to the provisions specific to residential activities are within scope then in my opinion provisions specific to all other enabled activities must also be within scope.

#### Development Outcomes for the HDR Zone

29. Clause 3.35 of the NPS UD relates to development outcomes for zones and states:

*(1) Every tier 1, 2 or 3 territorial authority must ensure that:*

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<sup>18</sup> S42A Report – Strategic Overview, Page 54, Paragraph 9.6

<sup>19</sup> S42A Report – Chapters 8 & 9, Page 88, Paragraph 5.107

- (a) The objectives for every zone in an urban environment in its district describe the development outcomes intended for the zone over the life of the plan and beyond; and*
- (b) The policies and rules in its district plan are individually and cumulatively consistent with the development outcomes described in the objectives of each zone.*

30. The development of outcomes for the HDR Zone are set out in the zone's objectives. As they currently stand the development outcomes for the HDR Zone are to enable high density residential development<sup>20</sup>. The development outcomes also recognise that visitor accommodation is anticipated provided adverse effects on residential amenity values are avoided remedied or mitigated<sup>21</sup>. As such the development objectives for the existing HDR Zone are primarily focused on high density residential development.
31. The development objectives of the HDR Zone are addressed by the Environment Court in *Shundi Queenstown Ltd v QLDC – NZEnvC 25* (the Shundi Decision)(attached as Appendix A to this evidence). The Shundi Decision related to a land use consent for a hotel within the HDR Zone at 53-65 Frankton Road, Queenstown that was declined due to effects on the local road network. Shundi appealed the Council's decision and a number of residential neighbours joined the appeal as s274 parties. The residential neighbours raised concerns about the effect of the hotel on their amenity values, in particular access to sunlight and privacy.
32. The planning and urban design experts suggested to the Court that the permitted baseline for built form in the HDR Zone be applied in relation to effects on the amenity of the residential neighbours. The Court declined to apply the permitted baseline stating:

*[25] We find the application of the s104(2) RMA permitted baseline discretion would offend the intentions of the PDP and, in light of the evidence, be plainly unjust and inequitable.*

*[26] On our reading of the PDP, hotel developments of the kind proposed are not intended by the HDR to be treated as akin to high density residential development. That is especially when considering effects on residential amenity values. In particular:*

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<sup>20</sup> Objectives 9.2.1, 9.2.2 and 9.2.3

<sup>21</sup> Objective 9.2.8

(a) *Obj 9.2.8 on the enablement of visitor accommodation is qualified by the rider “whilst ensuring that adverse effects on residential amenity values and traffic safety are avoided, remedied or mitigated”;*

(b) *Pol 9.2.8.2 is relevantly to the effect that the range of accommodation options, including hotels, positively contribute to residential amenity values by ensuring that adverse effects on residential amenity values are avoided, remedied or mitigated.*

[27] *Importantly, those directions are not framed by reference to PDP recession plane, height, setback or coverage controls. In those terms, they are materially different from Pol 9.2.3.1 on high density residential development.*

[28] *The rationale for that difference in approach, as between visitor accommodation and high density residential development, is not clearly explained in the PDP. However the possible rationale is that interests of equity and fairness differ. In a relative sense, high density residential development is a type of residential usage and the primary intention of the HDR. By contrast, visitor accommodation is not a type of residential usage akin to what is established in relevant neighbourhoods and it is allowed for in the HDR, but on a more qualified basis.*

[29] *That distinction is also reflected in the discretionary activity classification accorded to the Modified Proposal as a type of anticipated visitor accommodation in the HDR.*

[30] *We find that the PDP intends that full and proper account be taken of the evidence concerning how any visitor accommodation proposal of the kind proposed here would impact upon residential amenity values. That is not with the intention of necessarily maintaining or fully protecting those values. Rather, the HDR is a zone of land close to Queenstown and Wānaka CBDs and is designed to allow for materially greater density in development, including residential development, than in other residential zones. However, the HDR recognises that visitor accommodation development, needed as part of a predominantly visitor economy, must occur in an established residential setting and hence duly respect residential amenity values.*

33. Ms Frisknecht recommends<sup>22</sup> the following amendments to Objectives 9.2.1, 9.2.2 and 9.2.3 and Policy 9.2.3.1:

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<sup>22</sup> S42A Report – Chapters 8 and 9

9.2.1 *Objective – High density ~~housing~~ development occurs in urban areas close to town centres, to provide greater housing diversity and respond to expected population growth.*

9.2.2 *Objective – ~~High density residential d~~Development provides a positive contribution to the environment through quality urban design.*

9.2.3 *Objective – ~~High density residential d~~Development maintains an appropriate minimum level of existing amenity values for neighbouring sites as part of positively contributing to the urban amenity values sought within the zone.*

#### *Policies*

9.2.3.1 *Apply recession plane, building height, height setback at upper floors, yard setback and site coverage controls as the primary means of ensuring an appropriate minimum level of neighbours' outlook space, sunshine and light access, and privacy is provided for ~~will be maintained~~, while acknowledging that through an application for land use consent an outcome superior to that likely to result from strict compliance with the controls may well be identified.*

34. The recommended amendments to these provisions in my view significantly alters the intended development outcomes for the HDR Zone and the interaction between residential and visitor accommodation activities. Instead of prioritising residential housing development, it diminishes the distinction between visitor accommodation and other commercial activities and the provision of residential housing which would seem at odds with the objective of the UIV.

35. The recommended amendments to Objectives 9.2.1, 9.2.2 and 9.2.3 and Policy 9.2.3.1 remove the distinction between residential and non-residential development and will further enable visitor accommodation beyond what is currently provided for in the HDR Zone. This creates inconsistency within the HDR Zone's policy framework (which still includes Objective 9.2.8 and it's associated policies) and compromises the development outcome for the zone.

36. I consider that, without provisions in place to prioritise residential development and address the effect of visitor accommodation on residential amenity values, the rules of the HDR Zone are not consistent with the development outcomes set out for the HDR Zone either in their existing form or as amended in Council's s42A position.

Insufficient Information Regarding Visitor Accommodation in the HDR Zone

37. Council do not appear to have undertaken an assessment of business land demand since the Business Development Capacity Assessment 2017 (BDCA). At that time commercial visitor accommodation within the HDR Zone was excluded from the BDCA due to the timings of Stage 2 of the PDP. As such there does not appear to have been any assessment of demand for business land for commercial visitor accommodation in the High Density Residential Zone.
38. Further Ms. Bowbyes notes<sup>23</sup> that no s35 monitoring of the effectiveness and efficiency of the visitor accommodation provisions has been undertaken.
39. It therefore appears that Council does not know the extent of demand for land for visitor accommodation in the HDR Zone or the effectiveness and efficiency of the visitor accommodation provisions that apply within the HDR Zone.
40. The UIV s32 assessment and s42A reports do not explore in any way the interaction between visitor accommodation and residential development within the HDR zone or the effect of the amended development outcomes for the zone, enabling increased visitor accommodation on the availability of residential opportunities within the HDR Zone or the viability and vibrancy of the commercial centres that the HDR Zone is intended to support.
41. I am of the opinion that the UIV significantly alters the nature of the HDR Zone without adequately assessing the effects of those changes in terms of achieving the stated objectives of the variation and the NPS UD.

Whether the UIV will improve housing affordability by supporting competitive land and development markets

42. The proposed amendments to the HDR provisions are likely to further encourage visitor accommodation and may be exploited to out compete residential development. This may

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<sup>23</sup> S42A Report – Strategic Overview, Page 54, Paragraph 9.6

exacerbate existing issues with residential visitor accommodation activities which reduce housing opportunities and result in a loss of residential cohesion.

43. In my opinion the UIV will compromise rather than support competitive land and development markets within the HDR Zone by unreasonably favouring visitor accommodation over residential development.

#### Provision for Infrastructure Capacity

44. In his evidence in chief, Mr. Powell addresses infrastructure matters. In summary Mr. Powell confirms that the increased densities of development enabled by the UIV will put pressure on Council's three waters infrastructure. Mr. Powell explains that Council's infrastructure network is comprised of two main elements, being headworks infrastructure (i.e. water sources, water and wastewater treatment plants and trunk transmission pipelines) and collection and distribution infrastructure (i.e. water and wastewater pipes).
45. Mr. Powell notes that infrastructure upgrades are planned and budgeted for through Council's LTP process, which is reviewed on a three yearly basis. Planned infrastructure upgrades can be reviewed to ensure that they are sized and timed to meet projected demand, taking into account the UIV.
46. Mr. Powell states that infrastructure upgrades could be required sooner as a result of the UIV and that there is not sufficient capacity within the existing wastewater and water supply networks to accommodate the additional development enabled by the UIV. Mr. Powell notes however that not all of the intensification enabled by the UIV will be delivered and that the enabled intensification is likely to occur over the short, medium and long term.
47. With regard to intensification and associated infrastructure capacity within the business zones (being the Town Centre, Business Mixed Use and Local Shopping Centre Zones), Mr. Powell notes that the business zones are geographically constrained and concentrated in specific locations and consequently are easier to plan for infrastructure upgrades.
48. In contrast, the LDSR, MDR and HDR Zones are not generally localised and contained in the same manner. For example the LDSR, MDR and HDR Zones between the Queenstown Town Centre and Frankton cover a land area of approximately 355 hectares and span approximately 5.6km from west to east.

49. With regard to the MDR and HDR Zones Mr. Powell states at paragraph 4.17 of his evidence that:

*“Given the extent of these zones, and that in most cases redevelopment would be required to achieve the anticipated intensification, it is harder to service and plan for three waters infrastructure, without knowing where and when demand would eventuate.”*

50. I agree that intensification within the existing residential zones is likely to be sporadic and ad hoc, requiring the redevelopment of brownfield sites over a wide area to achieve the intended outcomes of the UIV. As Mr. Powell, points out this is likely to create challenges from an infrastructure perspective. It appears that there is no mechanism to effectively plan for collection/distribution infrastructure to accommodate the sporadic infill development that will occur in the LDSR, MDR and HDR zones.

51. The UIV seeks to address these infrastructure challenges by inserting a matter of discretion into Rules 7.4.9, 8.4.10 and 9.4.5 (which relate to residential development in the LDSR, MDR and HDR Zones respectively) that requires the assessment of the capacity of existing or planned infrastructure and servicing.

52. Mr. Powell considers this an important mechanism which will require individual development proposals to address servicing capacity and propose any necessary upgrades.

53. It appears that upgrades to headworks infrastructure can be more easily planned for and scheduled through the LTP process. Mr. Powell notes (paragraph 4.12), however, that the requirement for upgrades to collection and distribution infrastructure is often more acute and triggered by individual developments and that such upgrades should be the responsibility of the developer.

54. Mr. Powell states (paragraph 4.13) that modelling would be required to identify any capacity constraints and upgrades required to accommodate a development proposal.

55. I consider that the requirement for individual development proposals to model infrastructure capacity and upgrades on a case by case basis is unreasonable and impractical. As outlined above, redevelopment in the LDSR, MDR and HDR will occur on a sporadic and ad hoc basis over a wide area and likely may include numerous development proposals being progressed simultaneously within a catchment or relying on specific parts of the collection and distribution network.

56. Modelling in real time with multiple development proposals competing for the available infrastructure capacity would likely be challenging and raises questions of priority. There may also be uncertainty as to when (if at all) a consented development may be implemented and the actual capacity of infrastructure at the time each development is constructed. I consider that the requirement for individual, case by case infrastructure modelling and upgrades is inefficient and will result in increased risk and development costs which may impact the viability of redevelopment and/or housing affordability.
57. I note that in the LDSR Zone Rule 7.4.9 relates to residential development to a density of between 1 residential unit per 450m<sup>2</sup> and 1 residential unit per 300m<sup>2</sup> while in the MDR and HDR Zones Rules 8.4.10 and 9.4.5 relate to developments involving 4 or more residential units per site<sup>24</sup>. The requirement to undertake infrastructure capacity modelling and upgrades on a case by case basis may inhibit the realisation of the UIV outcomes with developers preferring to maintain a density not exceeding 1 residential unit per 450m<sup>2</sup> in the LDSR and constructing 3 larger residential units per site, rather than 4 or more smaller residential units per site in the MDR and HDR zones, thus avoiding the need to address infrastructure capacity while still contributing to infrastructure demand.
58. I also note that in the HDR zone the matter of discretion relating to the capacity of existing or planned infrastructure and servicing has only been added to Rule 9.4.5 which relates to residential development. The requirement to address infrastructure capacity has not been added to Rule 9.4.6 which relates to visitor accommodation. This further favours visitor accommodation developments over residential developments.

#### Design Guidelines

59. I note that the Residential Zone Design Guide relates to residential development only and does not include any guidance on visitor accommodation and whether specific outcomes/objectives should be achieved at the interface of visitor accommodation and residential development.
60. While I understand that the design guidelines are not within the scope of the UIV<sup>25</sup> and will be notified for public comment at some point in the future I am of the opinion that design of visitor accommodation is as important as residential in order to ensure high quality design

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<sup>24</sup> In locations outside of Arrowtown

<sup>25</sup> S42A Report – Strategic Overview – Page 55, Paragraph 10.5

outcomes are achieved. I consider that, when the time comes, it will be important for the design guidelines to address the intended design outcomes for visitor accommodation within the HDR Zone.

#### Amenity Values

61. The development that is sought to be enabled by the UIV is likely to result in a significant loss of sunlight, privacy and outlook for existing residents. Council relies upon Policy 6 of the NPS-UD to justify changes to amenity values that may result from the UIV. Policy 6 is as follows:

*Policy 6: When making planning decisions that affect urban environments, decision-makers have particular regard to the following matters:*

*(a) the planned urban build form anticipated by those RMA planning documents that have given effect to this National Policy Statement*

*(b) that the planned urban built form in those RMA planning documents may involve significant changes to an area, and those changes:*

*(i) may detract from amenity values appreciated by some people but improve amenity values appreciated by other people, communities, and future generations, including by providing increase and varied housing densities and types; and*

*(ii) are not, of themselves, an adverse effect*

*(c) the benefits of urban development that are consistent with well-functioning urban environments (as described in Policy 1)*

*(d) any relevant contribution that will be made to meeting the requirements of this National Policy Statement to provide or realise development capacity*

*(e) the likely current and future effects of climate change.*

62. While Policy 6 directs decision makers to consider the planned urban built form anticipated in the Plan and effectively disregard associated amenity effects on existing residents, in my opinion that direction is qualified by the fact that the Plan must have given effect to the NPS. If the provisions of the Plan do not give effect to the NPS then, in my opinion Policy 6 cannot

be relied on to justify the significant changes to residential amenity values that are likely to occur as a result of the UIV.

63. I have concerns that the UIVs HDR provisions will not give effect to the NPS (in terms of achieving well-functioning urban environments and improving housing affordability by supporting competitive land and development markets).
64. In my opinion Policy 6 acknowledges that in achieving the purpose of the NPS UD the amenity values of existing residents may have to be sacrificed for the greater good and to support and provide for the wellbeing of the wider community and future generations. I generally agree with and support that approach however I consider that, if the amenity values of existing residents are to be sacrificed for the greater good, it is vitally important to ensure that the outcomes of the NPS UD are achieved.
65. Given my concerns as to whether the UIVs HDR Zone provisions will achieve the objective of the UIV and give effect to the NPS UD I do not believe that Policy 6 can be relied upon to dismiss effects on the amenity of existing residents.

#### Housing Availability and Affordability

66. HCA 2021 identifies that the PDP and Spatial Plan has sufficient capacity to accommodate housing growth and that this is more than sufficient to meet the projected demand in all locations of the District in the short, medium and long term. This already meets the requirements of the NPS UD. While there is sufficient capacity, it has been identified that there is a shortfall in the sub-\$500,000 bracket. The UIV seeks to fill that shortfall.
67. It appears that meeting that \$500,000 price point is likely to be extremely challenging anywhere in the district, let alone in high demand locations close to the town centre. The cost of demolition and reconstruction in these locations is likely to deliver visitor accommodation or high end apartments rather than the needed \$500,000 range apartments.
68. I consider that the proposed provisions of the HDR Zone unreasonably favour visitor accommodation over residential development and will not support competitive land and development markets as a means of improving housing affordability. I therefore consider that provisions of the UIV are unlikely to achieve their objective within the HDR Zone.

### **Evaluation under Section 32(1)(a) and (b)**

69. Section 32(1)(a) requires that the extent to which the objectives of the proposal being considered are the most appropriate way to achieve the purpose of the Act. The objective of the UIV is to give effect to the NPS UD and in particular Policy 5 by enabling urban intensification in order to improve housing diversity, availability and affordability in the Queenstown Lakes District. I consider that the objective of the proposal is the most appropriate way to achieve the purpose of the Act.
70. Section 32(1)(b) requires that the provisions of the proposal are assessed in terms of whether the provisions are the most appropriate way of achieving the objective of the proposal. I consider that the proposed provisions of the UIV (including the recommended amendments set out in the s42A reports) as they relate to the HDR Zone are not the most appropriate way of achieving the objective of the proposal.
71. I consider that the provisions, which enable visitor accommodation development to a greater extent than residential development within the HDR Zone are not supported by adequate information in relation to the availability and demand for visitor accommodation land within the HDR Zone and how that demand may impact the delivery of residential intensification within the zone or the vitality and vibrancy of the adjoining town centres and business zones.
72. The UIVs HDR Zone provisions will, in my opinion further allow visitor accommodation to out-compete residential development within the HDR Zone through an easier consent pathway and the lack of any mechanism or requirement to address the impact of visitor accommodation development on infrastructure capacity. The burden of infrastructure modelling and upgrades will fall on residential developments which may compromise the viability of residential intensification and frustrate the intended outcomes of the UIV.
73. I consider that the provisions (as amended in Council's s42A position) fail to acknowledge the difference between residential and visitor accommodation development set out in the Shundi decision and significantly alters the intended development outcomes of the HDR Zone, from a primarily residential zone within which visitor accommodation is anticipated<sup>26</sup> to a zone where visitor accommodation appears to be favoured over residential development.

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<sup>26</sup> provided adverse effects on residential amenity values are avoided, remedied or mitigated

74. Overall I consider that the UIVs HDR Zone provisions:
- will not achieve a well-functioning urban environment;
  - will not improve housing affordability by supporting competitive land and development markets;
  - will compromise amenity values while failing to achieve the objectives of the NPS UD and the UIV;
  - are not sufficiently integrated with infrastructure planning and funding decisions, particularly in relation to collection and distribution infrastructure;
  - will result in sporadic, ad hoc rather than strategic development;
  - are not supported by robust and frequently updated information; and
  - may not significantly contribute to a variety of housing types.
75. I therefore consider that the UIVs HDR Zone provisions are not the most appropriate way to achieve the objective of the UIV, do not meet Objectives 1, 2, 3, 6 and 7 and Policy 1 of the NPS UD and do not achieve the purpose of the Act.

#### **Alternative Options**

76. When considering whether the provisions of a proposal are the most appropriate way of achieving the objective of the proposal s32(1)(b) requires the identification of other reasonably practical options for achieving the objectives.
77. Other reasonably practical options would, in my opinion include maintaining the status quo (i.e. the HDR Zone provisions as they currently are) or amending the provisions to better achieve the objective of the UIV.
78. I consider there is insufficient information upon which to make a decision on the UIV as it relates to the HDR Zone and consequently I consider that there is significant risk that, if applied to the HDR Zone in its current form, the UIV will fail to achieve its objective while resulting in significant cost to existing residents. Rather than achieving increased housing diversity, availability and affordability I consider that the UIV may compromise competitive land and development markets by favouring visitor accommodation over residential development.

79. I consider that maintaining the status quo would however come at a cost of not fully realising the development potential of the HDR Zone and the contribution it could make to housing capacity albeit that I note that Council's evidence is that there is sufficient development capacity for housing in the short, medium and long term.
80. I consider that if visitor accommodation is not in scope then the UIV as it relates to the HDR Zone should be rejected and the status quo maintained.
81. If visitor accommodation is within scope of the UIV I consider the following amendments to the provisions are appropriate, necessary and should be adopted:
- That the recommended amendments to Objectives 9.2.1, 9.2.2 and 9.2.3 are rejected;
  - That Objective 9.2.8 and Policies 9.2.8.1 to 9.2.8.4 are retained as notified (i.e. no change from the current PDP);
  - That additional matters of discretion are added to Rule 9.4.6 as set out in Appendix B to this evidence;
  - That the amendments set out in submission #657 and included in Appendix B to this evidence are adopted and incorporated into the PDP under 9.3.2 and Rules 9.5.1, 9.5.1, 9.5.6 and 9.5.7
82. Further, if it is deemed appropriate to address infrastructure capacity through case by case assessment and modelling, I consider that the assessment matter included in Rule 9.4.5 is replicated in Rule 9.4.6.



Scott Sneddon Edgar

4<sup>th</sup> July 2025

**IN THE ENVIRONMENT COURT  
AT CHRISTCHURCH  
I TE KŌTI TAIAO O AOTEAROA  
KI ŌTAUTAHI**

**Decision No. [2024] NZEnvC 25**

IN THE MATTER

of the Resource Management Act 1991

AND

an appeal under s120 of the Act

BETWEEN

SHUNDI QUEENSTOWN  
LIMITED

(ENV-2020-CHC-85)

Appellant

AND

QUEENSTOWN LAKES DISTRICT  
COUNCIL

Respondent

Court: Environment Judge J J M Hassan  
Environment Commissioner J T Baines

Hearing: 14 July 2021 in Queenstown

Appearances: J M G Leckie & M J J Turner for Appellant  
J Wilson & J G Robertson for the Respondent  
D Ng and R Yang (s274 parties)  
J and P French (s274 parties)  
S Kooy and J Gavin (s274 parties)  
M Holden (s274 party)

Last case event: 24 November 2023

Date of Decision: 29 February 2024

Date of Issue: 29 February 2024

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**DETERMINATION OF THE ENVIRONMENT COURT  
BY CONSENT**

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SHUNDI QUEENSTOWN LTD v QLDC

- A. The Modified Proposal satisfies all RMA requirements for consent.
- B. Timetable directions are made for the purposes of a further and final decision effecting grant of consent to the Modified Proposal.
- C. There will be no order as to costs, these are to lie where they fall.

## REASONS

### Introduction

[1] Shundi Queenstown Limited (“Shundi”)<sup>1</sup> appealed against a decision of the Queenstown Lakes District Council (“QLDC”) to decline land use consent for a hotel proposal at 53-65 Frankton Road, Queenstown (“Site”).<sup>2</sup> A number of submitters to the first instance hearing joined as parties to the appeal. Those include people who own residential properties in the neighbourhood and who took active part in the hearing.<sup>3</sup>

[2] Following the conclusion of the hearing, parties filed a joint memorandum

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<sup>1</sup> Shundi Queenstown Ltd is a New Zealand company incorporated in 2017. We are informed that its ultimate shareholder is Yi Shao, through a holding company Landa NZ Trustee Ltd. We are also informed that the Shao family have been instrumental in the development of “high-quality apartment buildings and hotels in Shanghai and the Eastern Regions of China since 1996”: opening submissions for Shundi, dated 14 July 2021, at [1]-[2].

<sup>2</sup> The QLDC decision specifies the legal description of the Site as Lot 2 Deposited Plan 15118 and Section 6-8 Block XLI Town of Queenstown held in Record of Title OT12D/547; and Section 9 Block XLI Town of Queenstown held in Record of Title OT17D/357.

<sup>3</sup> Those s274 parties who participated in the hearing were John Gavin and Sonja Kooy, Denise Linda Ng and Yang Chin Ping (Robert Yang), Pamela Maxwell French and John Gibson French, Miles Holden. Lynda Maree Wright-Sear remained as a s274 party but did not participate. She informed the court that she would not pursue her outstanding issues. On inquiry from the court in light of the filing of a joint memorandum by other parties, she reiterated that she opposed the grant of consent but did not wish to comment on the proposal: email of L Wright-Sear to the Registry (24 November 2023). New Zealand Transport Agency (Waka Kotahi) and Kirsty Sinclair filed s274 notices but subsequently withdrew from the proceeding before the commencement of the hearing: Memorandum of counsel for New Zealand Transport Agency withdrawing s274 interest dated 18 February 2021 and email of K Sinclair to the Registry (1 June 2021).

recording their agreement to the effect that consent can be granted to the modified hotel proposal ('Modified Proposal') subject to specified conditions. On the evidence, we find that it would accord with the relevant RMA<sup>4</sup> requirements to grant consent to the Modified Proposal subject to the conditions in Annexure 2.

### **The Site and environs and zoning**

[3] The Site is bare land on the southern (lakeward) side of Frankton Road ('SH6A') between Suburb and Adelaide Streets on the approaches to downtown Queenstown. It is some 4700 m<sup>2</sup> in area and relatively flat. Immediately to its west is the Paddy Burton Memorial Park.<sup>5</sup> Along Frankton Road in the vicinity of the Site, there is a predominance of visitor accommodation uses. Those include the Alexis Motel (at 69 Frankton Road) to the immediate east and the Millennium, Ramada Queenstown Central and the Copthorne Hotel and Resort.

[4] From the southern boundary of the Site down to Lake Whakatipu/Wakatipu,<sup>6</sup> between Suburb Street and Adelaide Street (east and west of the Site), the land is predominantly residential in character. The s274 parties who participated in the hearing own dwellings there, some on Suburb Street and another on Adelaide Street.

[5] The Site as well as the various Suburb Street and Adelaide Street properties of the s274 parties are within the High Density Residential ('HDR') zone under the proposed district plan ('PDP') (and this area is similarly zoned under the operative district plan).<sup>7</sup> The HDR standards and other controls enable "taller buildings" than are anticipated in other residential zones, but "subject to high design quality" and a further proviso that "adverse effects on the residential

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<sup>4</sup> Resource Management Act 1991.

<sup>5</sup> The Paddy Burton Memorial Park incorporates a water pump station and is subject to designation (reference 35 – Leary's Gully Water Pump Station).

<sup>6</sup> Note, the official name is subject to review pending consideration of the name change request by Ngāi Tahu filed with the New Zealand Geographic Board.

<sup>7</sup> The HDR zone is assigned to land close to the town centres of Queenstown and Wānaka.

amenity values of nearby residents” are “avoided, remedied or mitigated”.<sup>8</sup> This is backed by HDR policies, activity standards and other controls. The HDR is primarily designed to provide for “high density housing development ... close to town centres, to provide greater housing diversity and respond to expected population growth” (PDP Obj 9.2.1). However, it also provides for hotels and other forms of “visitor accommodation” as activities for which consent can be sought. That is in order to “respond to projected growth in visitor numbers”.<sup>9</sup>

[6] In terms of landform, Queenstown Hill is a dominant presence north-east of the Site. It significantly limits sunlight access, especially during the winter months, for the residential dwellings in the area including those along Suburb Street and Adelaide Street. In those terms, these dwellings have a significant advantage at present in the fact that the Site is greenfields, hence allowing for significantly greater relative sunlight access. Development of the Site as proposed will change those conditions significantly, especially during the winter months. The evidence reveals that is particularly the case for 8 and 12 Suburb Street.

[7] On the other hand, the fact that the Site is on an elevated and relatively flat terrace allows for a hotel design that can offer superior unobstructed views across Lake Whakatipu/Wakatipu to the Remarkables, Walter Peak and beyond.

### **Original proposal declined consent at first instance**

[8] Shundi’s original application was for land use consent for an 82 room, 4 suite hotel, including a restaurant, bar and meeting rooms, and associated basement parking for 58 vehicles (and associated earthworks and landscaping). The proposal then was for access to be left in/left out from Frankton Road.<sup>10</sup>

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<sup>8</sup> 9.1 Zone Purpose, PDP.

<sup>9</sup> 9.1 Zone Purpose, PDP. Provision 2.1, definitions, PDP defines ‘visitor accommodation’ to mean ‘the use of land or buildings to provide accommodation for paying guests where the length of stay for any guest is less than 90 nights’ and to include, amongst other things, hotels.

<sup>10</sup> QLDC decision RM190113, dated 15 May 2020, at [5]-[6].

That access arrangement was necessitated by the then configuration of Frankton Road. It meant the transport management arrangements for the hotel relied on the usage of local side streets by visiting coaches and other vehicles. For the first instance hearing, Shundi proposed some adjustments to that proposal in response to concerns raised by submitters and QLDC officers. Those included:<sup>11</sup>

- (a) reduction in building height to be mostly under 15m, some changes in articulation and a reduction in the overall scale of the building such that it was then proposed to accommodate 77 rooms and 5 suites;
- (b) some changes to carpark design and coach access and Site access design.

[9] However, the independent commissioners declined consent primarily in view of their concerns about how the proposal would impact on the local road network (in essence as a consequence of the left in/left out access to Frankton Road, necessitating additional traffic movement along local side streets). The commissioners summarised their reasons as follows:<sup>12</sup>

207. In exercising our delegation under sections 34 and 34A of the Act, and having regard to the matters discussed above under sections 104D and 104(1), we have determined that resource consent to the non-complying activity application by Shundi Queenstown Limited to establish a hotel **be refused**, as the application, while it can meet the Section 104D gateway tests, has not taken sufficient steps to *minimise* its impacts on the local road network in accordance with Section 104(1). This conclusion is made on the basis of potential adverse effects on the adjacent local road network, being effects that cannot be controlled or mitigated.

208. Reasons for the decision are:

- (a) The proposed building design (including height, façade length and articulation and massing) while generating effects on the existing

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<sup>11</sup> QLDC decision RM190113, dated 15 May 2020, at [7].

<sup>12</sup> QLDC decision RM190113, dated 15 May 2020.

environment, is appropriate within the context of the High Density Residential zoning of the site and surrounds.

- (b) The proposed activity may generate adverse effects that are more than minor on the safety and amenity of the adjacent local road network. These are effects that cannot be avoided or mitigated. The design of the building and layout of the site will mean that reliance has to be placed on the local road network providing safe access into and out of the site for some manoeuvres, no matter how the hotel is operated and what type of guests it attracts.

## **The Modified Proposal**

### *Traffic design and operational management changes*

[10] Fortuitously in time for pre-hearing mediation and expert conferencing, funding was secured for a major upgrade to Frankton Road and parts of the local road network. That project, being undertaken jointly by the NZ Transport Agency ('Waka Kotahi') and QLDC, is now substantially complete. With the upgrade came the opportunity to redesign access arrangements for the hotel, in particular to address the key findings at first instance that resulted in decline of consent.

[11] Full agreement was reached between the transportation engineers, Stephen Hewett and Mike Smith, on a modified access design and operational management conditions.<sup>13</sup> Similarly, agreement in support of the proposal so modified was reached between the urban design and planning experts for Shundi and QLDC.<sup>14</sup> In light of those developments, QLDC changed its position to one of support for the grant of consent on those agreed conditions.<sup>15</sup>

[12] However, several residents (as s274 parties) remained opposed to the

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<sup>13</sup> Joint witness statement ('JWS') of Stephen Hewett and Mike Smith, transportation engineers, dated 12 March 2021 (JWS – Transport).

<sup>14</sup> JWS dated 12 March 2021, Ashley Muir, Garth Falconer and Paula Costello (JWS – Urban Design); JWS dated 23 March 2021, John Edmonds and Katrina Ellis (JWS – Planning).

<sup>15</sup> QLDC memorandum dated 25 May 2021.

proposal as modified.

***The Court's preliminary observations following testing of evidence***

[13] A number of the s274 parties gave evidence of their concerns, which we come to shortly. The expert and other witnesses for Shundi and QLDC were called and tested in cross-examination by the s274 parties and questioned by the court. At that stage of the hearing, the court made it clear that it did not fully accept the experts' opinions, particularly as to the amenity values of neighbouring residential land. As is recorded in Annexure 1, we noted that we had particular concerns about the extent of loss of sunlight access during winter for 8 and 12 Suburb Street. We signalled that unless our concerns could be satisfactorily addressed, Shundi could anticipate that consent would be declined. We allowed Shundi leave to reconsider its proposal, in anticipation that this would be the subject of scrutiny at a resumed hearing.

[14] By memorandum dated 21 December 2021, Shundi proposed changes to the design of the hotel building intended to mitigate the loss of sunlight access to 8 and 12 Suburb Street.<sup>16</sup> Jurisdictional scope to make the modifications was not a matter of contention and we are satisfied that, in all respects, the Modified Proposal can be considered within scope.

***The Modified Proposal the subject of this determination***

[15] The Modified Proposal, therefore, includes the agreed modifications to both the traffic and access design and operational management arrangements and modifications to the design and scale of the hotel. What is now proposed is a 75 room/4 suite hotel. With a view to mitigating sunlight access issues for affected dwellings, built form changes include reductions to:

- (a) the floor area of level 5 on the south façade by 50% and

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<sup>16</sup> Shundi memorandum dated 21 December 2021.

- consequentially the width of the roof terrace on level 6;
- (b) the height of the south edge of the roof of the hotel at level 5 to largely lie under the PDP's applicable 12m height plane standard; and
  - (c) the built form by replacing the roof at level 5 with a flat roof with a matching flat ceiling inside the guest rooms.

[16] The lengths of balconies on levels 1, 2 and 4 are also reduced. There is no change in relation to setbacks, site coverage, building length, earthworks or transport related matters.<sup>17</sup> These modifications are as depicted in updated plans referenced in revised and updated proposed consent conditions.

[17] As we find on the evidence that the Modified Proposal satisfies all RMA requirements for consent, we make directions for the filing for our approval of an updated resource consent document, including a clean set of consent conditions and a complete set of referenced plans. At this stage, for reference, we refer to the copies of plans and the updated conditions as provided by Shundi for its closing submissions and which are reproduced in Annexure 2.

### **Statutory framework and principles**

[18] Although this determination is made in light of the agreement reached between parties following the hearing, we record that we make it according to the statutory framework we now outline.

#### ***The Modified Proposal is to be assessed as a discretionary activity***

[19] As John Edmonds, the planning witness called by Shundi explains, aspects of the Modified Proposal are classed as restricted discretionary and other aspects discretionary.<sup>18</sup> Therefore, we consider the bundle of activities that comprise the Modified Proposal as a discretionary activity for the purposes of our

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<sup>17</sup> Edmonds affidavit 21 December 2021 at [16].

<sup>18</sup> Edmonds affidavit 21 December 2021 at [20].

determination.

[20] At first instance, the proposal was assessed as a non-complying activity because of the uncertainty at that time as to whether construction would contravene the PDP's construction vibration rule (r 36.5.9). We accept the planning witnesses' agreed opinion that changes to proposed consent conditions overcome that uncertainty, effectively rendering the Modified Proposal a discretionary activity.

[21] Therefore, we may grant or refuse the land use consent sought. We may grant consent subject to conditions.<sup>19</sup>

***General powers, duties and discretion***

[22] We have the same power, duty and discretion as QLDC's independent hearing commissioners had concerning the appealed decision.<sup>20</sup> We are to consider the Modified Proposal subject to pt 2 RMA, according to the various matters set out in s104. Of particular significance are:

- (a) any actual and potential effects on the environment of allowing the activity;<sup>21</sup> and
- (b) any relevant provisions of the PDP.<sup>22</sup>

***The 'permitted baseline' should not be applied to residential amenity impacts***

[23] We decline to apply the permitted baseline discretion in s104(2), RMA. Hence, we do not accept the opinions of the urban design and planning experts

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<sup>19</sup> RMA, ss 104B and 108.

<sup>20</sup> RMA, s290.

<sup>21</sup> RMA, ss 290, 104(1)(a).

<sup>22</sup> RMA, ss 290, 104(1)(b)(vi).

that we should do so.

[24] Those experts effectively invited us to set aside the concerns raised by residents about sunlight access loss by virtue of what the HDR would permit, in terms of height, bulk and site coverage, for any high density residential development on the Site. Notwithstanding the harsh consequences of that, the experts maintained that applying the permitted baseline discretion in this way was duly in accord with the PDP's objectives and policies.<sup>23</sup> Shundi's opening submissions were to similar effect.<sup>24</sup>

[25] We find the application of the s104(2) RMA permitted baseline discretion would offend the intentions of the PDP and, in light of the evidence, be plainly unjust and inequitable.

[26] On our reading of the PDP, hotel developments of the kind proposed are not intended by the HDR to be treated as akin to high density residential development. That is especially when considering effects on residential amenity values. In particular:

- (a) Obj 9.2.8 on the enablement of visitor accommodation is qualified by the rider "whilst ensuring that adverse effects on residential amenity values and traffic safety are avoided, remedied or mitigated";
- (b) Pol 9.2.8.2 is relevantly to the effect that the range of accommodation options, including hotels, positively contribute to residential amenity values by ensuring that adverse effects on residential amenity values are avoided, remedied or mitigated.

[27] Importantly, those directions are not framed by reference to PDP recession plane, height, setback or coverage controls. In those terms, they are materially

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<sup>23</sup> Edmonds evidence, dated 4 May 2021, at [39]-[41]; Falconer evidence, dated 30 April 2021, at [30]; Ellis evidence, dated 21 May 2021, at [3.2] and [3.3].

<sup>24</sup> Opening submissions for Shundi, dated 14 July 2021, at [35]-[42].

different from Pol 9.2.3.1 on high density residential development.

[28] The rationale for that difference in approach, as between visitor accommodation and high density residential development, is not clearly explained in the PDP. However, a possible rationale is that interests of equity and fairness differ. In a relative sense, high density residential development is a type of residential usage and the primary intention of the HDR. By contrast, visitor accommodation is not a type of residential usage akin to what is established in relevant neighbourhoods and it is allowed for in the HDR, but on a more qualified basis.

[29] That distinction is also reflected in the discretionary activity classification accorded to the Modified Proposal as a type of anticipated visitor accommodation in the HDR.

[30] We find that the PDP intends that full and proper account be taken of the evidence concerning how any visitor accommodation proposal of the kind proposed here would impact upon residential amenity values. That is not with the intention of necessarily maintaining or fully protecting those values. Rather, the HDR is a zone for land close to Queenstown and Wānaka CBDs and is designed to allow for materially greater density in development, including residential development, than in other residential zones. However, the HDR recognises that visitor accommodation development, needed as part of a predominantly visitor economy, must occur in an established residential setting and hence duly respect residential amenity values.

[31] Furthermore, the evidence we heard from affected residents plainly reveals that the approach those experts argued for would result in significant unfairness and disenfranchisement. In essence, s274 parties who would suffer a material reduction in their amenity values would not have had their cases fairly heard or their interests fairly weighed and addressed in our determination of the appeal. That is particularly in light of the evidence as to the present amenity value of

sunlight access and, to a lesser extent, privacy, for the most affected; namely 8 and 12 Suburb Street.

***The PDP is the predominant planning instrument***

[32] As is directed by s104, we have had regard to relevant provisions of the various RMA planning and policy instruments.

[33] As was the consensus of the planning experts, we give most weight to the PDP as the predominant instrument in terms of the direction it offers for how we approach consideration of the Modified Proposal. The HDR objectives and policies that we have already discussed are particularly significant in terms of our consideration of competing factors.

[34] As the PDP is beyond challenge in relevant respects, we do not give significant weight to the ODP.<sup>25</sup> That was the consensus opinion of the planning experts and we concur.<sup>26</sup>

[35] Hence, we do not give the ODP significant weight. We are satisfied that the PDP already gives relevant effect to the partially operative Otago Regional Policy Statement 2019, its predecessor the Regional Policy Statement for Otago 1998 and the proposed Otago Regional Policy Statement 2021. Therefore, we do not give significant further weight to those instruments. The only relevant national policy statement is the National Policy Statement – Urban Development 2020. We accept Mr Edmonds’ opinion that there is no material inconsistency with this instrument.<sup>27</sup>

[36] For the purposes of the resumed hearing, we were invited by Shundi to consider a then recently notified proposed Urban Intensification variation to the

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<sup>25</sup> That includes the provisions of PDP Ch 9 (High Density Residential), Ch 25 (Earthworks), Ch 29 (Transport), Ch 31 (Signs) and Ch 36 (Noise).

<sup>26</sup> JWS – Planning dated 23 March 2021, signed by John Edmonds and Katrina Ellis.

<sup>27</sup> Edmonds evidence dated 4 May 2021, at [114].

PDP.<sup>28</sup> The variation was at that stage open to submissions. As we then signalled to parties, we do not accord it significant weight given that it is only in the early stages of QLDC's consideration.<sup>29</sup>

***Other relevant matters***

[37] We are also directed to have regard to any other matter that we consider relevant and reasonably necessary to determine the application.<sup>30</sup> All relevant matters are as reported in our findings in this determination.

**The evidence**

***Observations as to the court's approach to evaluation***

[38] Although this determination is made in light of the agreement reached between the parties, we record that it is on the basis of our findings on the evidence. As we have noted, that includes both expert evidence in various disciplines called by Shundi and QLDC, and lay evidence called by various s274 parties as to their concerns.

[39] We are satisfied that all experts offered their opinions in due accordance with the Code of Conduct in the court's Practice Note.<sup>31</sup> The experts were cross-examined by s274 parties, notwithstanding that none of them called expert evidence in these matters. A number of the experts were also questioned by the court.

[40] In material terms, the experts support the grant of consent to the Modified Proposal. That is particularly as expressed in the various JWS produced following

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<sup>28</sup> Memorandum of counsel for Shundi dated 28 August 2023.

<sup>29</sup> Minute dated 31 August 2023.

<sup>30</sup> Sections 290, 104(1)(c), RMA.

<sup>31</sup> [Practice-Note-2023-.pdf \(environmentcourt.govt.nz\)](#).

court-directed conferencing.

[41] However, as we have noted, the urban design and planning witnesses for Shundi and QLDC undertook their evaluations on the mistaken premise of applying a permitted baseline approach to their consideration of the effects of the Modified Proposal on residential amenity values. On that basis, they did not properly account for the evidence heard by the court on these matters from the following s274 parties, all of whom own dwellings in the neighbourhood of the Site. While that impacts on how we weigh that evidence, it does not impede our capacity to determine the appeal as we are able to make all necessary judgments on all the evidence before us (notably including the evidence of the s274 parties).

### ***Site visits***

[42] To assist our evaluation of the evidence, the court undertook site visits of the Site and various localities (including 8 and 12 Suburb Street) according to the parties' recommended itinerary. We reported our observations back to the parties during the hearing.

## **Evaluation**

### ***Urban design***

[43] The urban design experts agree with the appropriateness of the Modified Proposal in relevant respects, and this was not contested by the s274 parties other than in terms of residential amenity values as we address shortly. We accept the urban design evidence in finding that the proposed hotel building will contribute positively to the Frankton Road streetscape. The design of the building form and landscape treatment will assist in those terms, particularly in softening and breaking up the building mass. On the evidence, we find that the building's southern façade, facing residential properties, will not appear dominant. The building overall is well articulated. Together with landscape treatment, this will provide for a quality urban design outcome.

*Transportation and road network effects including safety*

[44] Notwithstanding the endorsement of the modified transportation design and operational arrangements, John and Pamela French remained concerned about these matters.<sup>32</sup>

[45] They own a holiday home in Adelaide Street that has been enjoyed by their family for many years. They did not call expert evidence but predominantly focused on traffic and parking matters in their evidence to us. Mr French considers that, despite the modified arrangements, there will be “a confused bottleneck” on an already congested road.<sup>33</sup>

[46] The court is well familiar with the congestion frustrations that Mr French describes. Frankton Road is part of the State highway network (as SH6A) and serves as the principal arterial route in and out of Queenstown CBD. It is usually busy and, at peak times, highly congested. That is particularly so in the vicinity of the Site and closer to the CBD, as those seeking to access the amenities there compete with those seeking to move to and from the many local side roads and hotels and other commercial activities that line it on each side. Pedestrian refuges are provided but it can be a challenging exercise to use them. The major upgrade project now underway is intended to help address these safety and efficiency issues, but it would be naïve to presume this will bring an enduring solution to the problems Mr French describes.

[47] However, the road network in the vicinity exists to serve the community of users who rely on it, and congestion issues of the kind described are in essence a consequence of that usage. That includes usage by existing and future hotels and

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<sup>32</sup> Mr Hewett and Mr Smith signalled some confined differences concerning the specifications for a so-termed ‘Ongoing Transport Management Plan’ (OTMP) intended to be instituted through a consent condition (condition 63). In the JWS – Planning, the planning experts propose a variation to proposed condition 63 to address that difference. We are satisfied the matter is duly addressed in the final version conditions for the Modified Proposal in Annexure 2.

<sup>33</sup> French evidence, dated 9 April 2021, at [22].

other commercial and residential activities in the vicinity.

[48] Primarily, the impact that the proposal would have had on local side streets led the commissioners at first instance to find it contrary to relevant PDP objectives and policies and to decline consent.

[49] That particular feature of the proposal is addressed in the modified access arrangements and associated proposed conditions. Matters of functionality of the road network involve questions of judgement through the informed eyes of traffic engineers. We give significant weight to the fact that the modified arrangements were developed with the assistance of Messrs Hewett and Smith and have their full endorsement. Furthermore, in its capacity as the local road controlling authority, QLDC finds the modified arrangements suitable and appropriate (Waka Kotahi, as the State highway agency, having withdrawn as noted). We find these modified arrangements align appropriately with the functionalities of Frankton Road and local roads in the network such as to not be contrary to relevant PDP objectives and policies. We find on the evidence that the issues that led to decline of consent at first instance are satisfactorily and sufficiently addressed.

***Overview of the evidence from residents on their amenity values***

[50] The focus of other evidence and representations on behalf of the s274 parties who attended the hearing was primarily on residential amenity values, especially in terms of loss of sunlight access. Privacy and some other concerns were also raised. The evidence and representations on those matters was mainly from parties who own or reside in residential dwellings in Suburb Street.

[51] The Suburb Street sections are mostly generously proportioned and the dwellings on them generally relatively small, old and tired. No. 8 Suburb Street includes a typical 3 bedroom mid-19<sup>th</sup> century dwelling. No. 12 Suburb Street, which is the closest to the Site, includes a small, somewhat dilapidated, bungalow. Like several other houses in the locality, both properties present development opportunities in accordance with their HDR zoning.

[52] The owners of 12 Suburb Street, Sonja Kooy and John Gavin, explained their concerns that development of the Site would cause loss of sunlight access and privacy. They also challenged the accuracy of the shading diagrams offered by Shundi in evidence. At the initial hearing, Mr Gavin explained that his elderly mother lived in the dwelling. He updated us prior to the close of the hearing that his mother had now moved out. He explained that he and Ms Kooy do not have plans to develop the property, instead intending at this stage to pass it on to their children, whether in its present state or as bare land.<sup>34</sup>

[53] The owners of 8 Suburb Street, Denise Ng and Yang Chin Ping purchased it in 2010, as an investment property. Ms Ng explained that this was particularly because of the sunlight access it enjoyed and its close proximity to the Queenstown CBD.<sup>35</sup> In their evidence, Ms Ng and Mr Yang emphasised the value they place on the amenity of sunshine, light, thermal gain and warmth from sun access. That is in terms of enjoyment and comfort and the economics associated with keeping their holiday home warm and well lit.<sup>36</sup> Ms Ng told us that, during the winter months, the best sun access enjoyed in the existing dwelling is between 11 am and 2 pm – 3 pm.

[54] Ms Ng and Mr Yang acknowledge that, given that the Site is presently vacant, any new building on it would increase shading effects for their property. However, they seek to ensure any hotel design enables 8 Suburb St (as well as No. 12) to get a “minimum of three hours of sun in the specific key living areas” of their dwelling. They also express concerns as to the reliability of Shundi’s related evidence, including its shading analysis.<sup>37</sup>

[55] Miles Holden does not claim that his property at 5 Suburb Street would itself be significantly impacted. That is an appropriate position to take in that his

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<sup>34</sup> Transcript 1 September 2023, p 60, l 27-p 61, l 5.

<sup>35</sup> Transcript, July 2021, p 208, l 21-30.

<sup>36</sup> Ng & Yang evidence, dated 28 March 2022.

<sup>37</sup> Ng & Yang evidence, dated 28 March 2022.

property is some distance further downhill and on the opposite side of the road from the Site. However, as someone who has lived for many years in this street, he is mindful of the interests of his neighbours. As he explained it:<sup>38</sup>

Sunshine is an amenity our community values and to have this so dramatically taken away by this Hotel is unfair. We are zoned residential and this needs to be taken into account when allowing a non-complying activity next to us. The amount of shading this hotel creates over our street contradicts the definition of the District Plan.

[56] Mr Holden applied his skills as a professional photographer. He challenged the accuracy of Shundi's shading diagrams and related evidence.

## **Evaluation**

### ***Sunlight access***

#### *Introduction*

[57] Our preliminary observations on the evidence as tested are set out in Annexure 1. As to sunlight access, the court was not satisfied that the effects on 8 and 12 Suburb Street were appropriate. We recognised that morning sunlight access would be difficult to maintain under any realistic development scenario. However, in regard to sunlight access during the afternoon, particularly during the winter months either side of winter solstice, we expressed a lack of confidence in the reliability of the estimates offered on behalf of Shundi. We observed that we did not then have confidence that we could make sound findings on both the extent of loss of sunlight access that would result and whether or not this is satisfactory and what could be achieved by design change. We signalled that, unless Shundi elected to seek to remedy those deficiencies (leave being given for those purposes), the decision in due course would be to decline consent. We

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<sup>38</sup> Holden evidence, dated 10 April 2021, at [11].

encouraged Shundi to rectify the evidential deficiencies, discuss matters with residents and “[make] every attempt to get a modified proposal to achieve solstice re three hours’ minimum for 8 & 12 Suburb Street”. Our intention in those remarks was to achieve that outcome during the winter solstice. We emphasised, however, that we did not make at that stage any “final determination about whether that is sufficient”.

[58] As we have noted, Shundi elected to make the design changes we have described as part of what we call the Modified Proposal. Shundi’s architect, Ashley Muir, explained how these were made with a view to mitigating shading impacts for residents. Shundi tendered supplementary evidence, including by surveyor Kurt Bowen, as to shade modelling and associated prediction.

[59] As Shundi’s supplementary evidence explains, the mitigation achieved in terms of sunlight access on the walls of the existing dwellings at 8 and 12 Suburb Street at the winter solstice is predicted as follows:

	<i>As initially proposed</i>	<i>With the Modified Proposal</i>	<i>Increase and % improvement</i>
<i>8 Suburb Street</i>	3 hrs 14 mins	3 hrs 39 mins	25 mins (19%)
<i>12 Suburb Street</i>	1 hr, 13 mins	2 hrs, 13 mins	1 hr (82%)

[60] As can be observed, the achieved mitigation for 8 Suburb Street was significantly more than three hours but for 12 Suburb Street (the closer of the two to the Site) it was significantly less than that.

*The methodology applied is sufficiently reliable and fit for purpose*

#### Shundi’s evidence

[61] Shundi’s initial shading analysis, which we expressed lack of confidence in, was undertaken by Mr Muir’s architectural consultancy, Mason & Wales. To seek to respond to the court’s preliminary observations in Annexure 1, Shundi engaged

Mr Bowen, a surveyor, to do a comparative “Shadow Analysis Study” (“SAS”). Mr Bowen gave evidence on this work when the hearing resumed concerning the Modified Proposal. The court also received supplementary evidence from Mr Muir as to his testing of accuracy of his predictions pertaining to the architectural plans he prepared of the Modified Proposal.

[62] As Mr Bowen’s affidavit explains, the SAS used the winter solstice on 21 June 2021 as an “existing base site sunshine baseline” (“baseline date”). That baseline date was chosen as being the date when there are the least daylight hours available due to the sun being at its lowest annual elevation. Mr Bowen explained that his team (at Paterson Pitts) modelled “the entire Queenstown Basin” in order to “fully assess the shading effects” of the Modified Proposal at the Site. The modelling involved:<sup>39</sup>

- (a) use of “12d software” to model the before and after scenarios, for every hour across the daylight hours on the baseline date, with additional analysis at the 30-minute marks around the time of sunrise and sunset on the subject site;
- (b) analysis in the Mt Nicholas 2000 coordinate system and the Dunedin 1958 height system, both of which are standard datums used commonly in the Queenstown region;
- (c) use of four sources of data for the 3D existing surface modelling, namely:
  - (i) Land Information New Zealand (“LINZ”) 2021 Lidar Digital Surface Model (“DSM”) data to create an “existing surface model” that includes vegetation and rooftops in the relevant environs of the Site (the LINZ data being accurate to +/- 0.2m vertically and +/- 1.0m horizontally, which is consistent with the tolerance stated by LINZ in the metadata associated with this dataset);

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<sup>39</sup> Bowen affidavit, dated 21 December 2021, at [6]-[13].

- (ii) 3D contours for the broader region sourced from LINZ Data Services website to create a model of ground surface for the wider Queenstown Basin (comparison with the more accurate DSM data at several locations outside the Queenstown Basin showing this data is accurate to +/- 5m in the vertical dimension, or in terms of differences in sunlight time, a 5m height difference on the Fernhill ridge 4.4km away results in less than 1 minute difference in sunset time); and
- (iii) a model of the Modified Proposal, as supplied by Mason & Wales, which the team under Mr Bowen's supervision incorporated into their shade modelling at the position and level in relation to Site boundaries (as proposed by Mason & Wales).

[63] Mr Bowen explained that his team also ran data checks and undertook ground truthing to verify that the modelling was producing accurate results. That included:

- (a) comparing the NZ Topo derived contour surface to the Lidar data "at several peripheral locations" around the Queenstown Basin. He explained that the assessed accuracy of the data is +/- 5m;
- (b) checking the DSM data against field survey information, this showing that the spot-by-spot accuracy of that data is frequently better than its stipulated accuracy (i.e. +/- 0.2m vertically and +/- 1.0m horizontally at the 95% confidence);
- (c) undertaking field measurements of the extent of clear shading by distinct features to compare modelled with actual shading at the specific time and day of the survey (i.e. 3 pm on 13 September and 12.26 pm on 14 September), this confirming "that the modelled shading is consistent with the measured shadow"; and
- (d) undertaking further ground truthing, this revealing a three minute margin of accuracy as between the calculated sunset time for the Site on 23 September (5.21 pm) and the period observed by staff in the

field (i.e. between 5.23 pm and 5.24 pm). Mr Bowen considers this difference to be “an accurate reflection” of the various data tolerances that are associated with the modelling calculations.

[64] In his affidavit, Mr Bowen reports the outcomes of the SAS, including in the various plans illustrating predictions. He also explains that he and members of his team met with the s274 parties to explain the SAS and its predictions. He reports on the discussion that occurred at that time.

[65] Mr Bowen is satisfied that the SAS and shading data presented in evidence provide a reliable prediction of two key matters:<sup>40</sup>

- (a) the extent to which the land south and downhill of the Site is currently affected by shading; and
- (b) how that land would be affected by the revised hotel design under the Modified Proposal.

[66] As we have noted, the modelling undertaken by Mr Bowen and his team underpins the predictions in the table at [60] concerning sunlight access on the walls of the existing dwellings at 8 and 12 Suburb Street as at the winter solstice. That prediction is with respect to the existing dwellings there. As we have noted, the existing dwellings are relatively small and tired and the HDR facilitates their development, particularly for residential purposes. The court asked Mr Muir to comment, with respect to 12 Suburb Street, on whether a new dwelling could be designed so as to have good afternoon sun in living areas and good thermal qualities. He answered:<sup>41</sup>

the first point is that the north is up the hill so to speak away from the view and the adverse of that is that the view is to the south, so that immediately gives us some clues to the plan of the house. It has to be in my terms, double-sided. You

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<sup>40</sup> Bowen affidavit, dated 21 December 2021, at [29]-[31].

<sup>41</sup> Transcript, 1 September 2023, at p 49, l 29-p 50, l 19.

need to be able to have the sun come in from the north and we need to be able to look out to the south and that takes me to a plan of single roomed decks and we have designed many houses like that in the Queenstown area and it also applies in Wanaka.

Just simply because where the views are relative to where land is available to build on and they could be very good plans so the first point is that it will be a single room width for the living areas. ... bedrooms ... have different characteristics, where the sun comes in from the north and the view is to the south. The other factor that is induced relative to having a hotel to the north is illustrated by the existing house on number 8 where they have got roof lights letting sun into the house. Now it could be that a single storied house on number 12 had roof lights of some description. I am not a great fan of roof lights, I don't think they are nice things to live under but so then the alternative to that is that you might choose to design the house on two levels. The upper level would be living with opportunities for the entry of sun simply because of the elevation of that level with bedrooms below it but as you will know there are arguments for and against living above the ground level. It might be decided for a particular client they choose to balance those and in fact live on the ground. It's, the variables here are to do with the plan in two dimensions and the elevation, being the third dimension.

[67] We took from that answer a somewhat qualified view that material further enhancement to sunlight access is achievable by design, depending on the client's priorities and recognising there would be significant trade-offs needed.

#### Mr Holden's evidence

[68] Mr Holden is concerned about the accuracy of the SAS and shading data as provided in evidence. In his written evidence, he explains his opinion that it significantly underestimates the extent of loss of sunlight access that the Modified Proposal would cause during the six or seven weeks either side of the winter solstice.

[69] By contrast to Mr Bowen, Mr Holden did not undertake a shading analysis or related modelling. Instead, he used a 12m pole and an iPhone "app" called

“Photopils” to calculate when the proposed hotel building would shade lower land at relevant times. Photopils is a well-known app used by photographers, for example to assist their determination of the relative position of the sun at particular dates and times, to aid their photography. Mr Holden explained that the pole positions demonstrated “approximately where the [hotel’s] ... intended southern wall will be” and the Photopils’ screenshot overlays were used to show the sun’s path “on the shortest day” (i.e. on 19 June 2022).<sup>42</sup> By this method he concluded that around the winter solstice, the Modified Proposal would give rise to almost “a black-out on a majority of 12 Suburb Street”.<sup>43</sup>

### Evaluation

[70] Any method of predicting sunlight access or shading consequences involves a degree of imprecision. In essence, any model involves input assumptions and is a predictive representation. It cannot be anything more. An app, such as Photopils, is informed according to its algorithm and other programming elements that have their own prediction accuracy limitations. Added to that, using a pole as a calculation marker involves inherent accuracy limitations and associated requirements for sound interpretative judgements to be made.

[71] Hence, subjectivity overlays each methodology, calling for us to make associated evaluative judgments as to reliability.

[72] Of the two prediction methodologies, we prefer that of Mr Bowen as more reliable. In part, that is because it relies on reliable input data, from various noted and reputable sources, and ground truthing to test initial modelling assumptions and predictions. Those engaged in this predictive analysis are professionally qualified and experienced. In particular, we refer to Mr Bowen whom we are satisfied has undertaken and supervised this work according to his responsibilities as an expert witness. According to those responsibilities, he has duly reported on

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<sup>42</sup> Holden evidence, dated 27 March 2022, attached method statement.

<sup>43</sup> Holden evidence, dated 27 March 2022.

the inputs to, and assumptions made, in undertaking the assessment and making the associated predictions.

[73] We also find Mr Bowen to be a duly qualified, highly experienced and reliable witness who abided by the Code of Conduct for Expert Witnesses.

[74] We mean no disrespect to Mr Holden in observing that he undertook his assessment work as an interested and inherently biased party, not as an expert. We acknowledge and appreciate his representations, mindful of the interests of his neighbours. We have found his evidence of significant assistance in those terms. But that also means he cannot offer impartial opinion. Also with respect, we are not in a position to interrogate the accuracy of his underpinning Photopils app (in terms of fitness for our purposes) or the accuracy or otherwise of his choice of location of the single pole he used as a point of reference for his predictions. We accept his explanation for why he used only one pole. However, it is at best a very crude representation of what is proposed by way of the hotel building and we have no way of knowing whether he positioned it with due accuracy.

[75] For those reasons, we prefer the evidence of Mr Bowen and find it sufficient for our purposes.

*Predicted sunlight access or shading effects*

[76] The table at [60] sets out the predicted sunlight access effects of the Modified Proposal as given in Shundi's evidence

[77] In his written evidence, Mr Holden expresses the opinion that, around the winter solstice, the Modified Proposal would give rise to almost "a black-out on a majority of 12 Suburb Street".<sup>44</sup> In questioning, he commented:<sup>45</sup>

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<sup>44</sup> Holden evidence, dated 27 March 2022.

<sup>45</sup> Transcript, July 2021, p 54, l 28-34.

I almost feel like the shade from it later and earlier is going to have more sweeping effect on the area around us, like it, we are on a total south-facing street, even on a mild winters we battle the shade and permafrost ... . The shade from that I believe will be pretty extreme and yeah and that there is not really anything else to compare it to because it is literally right in front of something that is dead south-facing.

[78] However, in answer to questions from the court, Mr Holden put his position in somewhat clearer terms. He understands that Suburb Street now gets 4.5-6 hours' of sunshine during the six to seven weeks either side of the solstice.<sup>46</sup> He expects that the Modified Proposal would reduce sunlight access by an hour or so on the shortest day.<sup>47</sup> However, he did not offer a more precise opinion concerning the likely consequences for 8 and 12 Suburb Street.

[79] We prefer the evidence of Mr Bowen and Mr Muir on these matters for the reasons we have given. Hence, we accept and rely on the predicted sunlight access consequences as summarised in the table.

*Is the predicted loss of sunlight access reasonable and appropriate?*

[80] That leaves us to determine whether those predicted consequences are reasonable and appropriate and in keeping with the PDP's intentions.

[81] In his evidence, Mr Holden characterised the issue concerning sunlight access as being one of fairness.<sup>48</sup> We find that a helpful construct in terms of the core intentions of the PDP, as expressed through the objectives and policies we have identified. They do not direct that residential amenity values necessarily must be maintained in all circumstances. As we have noted, the HDR zone is designed to allow for high density residential development. As such, it would be unrealistic to try to couple that with a direction that amenity values necessarily be maintained

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<sup>46</sup> Transcript, July 2021, p 58, l 2-p 59, l 35.

<sup>47</sup> Transcript, July 2021, p 58, l 2-p 59, l 35.

<sup>48</sup> Holden evidence, dated 10 April 2021, at [11].

insofar as existing residential dwellings are concerned.

[82] Rather, the directions are expressed in the alternative, namely as to avoiding, remedying or mitigating adverse effects on residential amenity values. Hence, the intention is to examine each proposal in its relevant context for how it would impact on residential amenity values and what should be done in those terms. In some circumstances, avoidance of any loss of amenity values may be called for. In other circumstances, mitigation may be adjudged the proper course and then there could be degrees of mitigation to evaluate. The competing interests of proponent and affected party each come into consideration. Inherently, evaluation calls for informed application of principles of equity and fairness.

[83] The evidence satisfies us that, in terms of the interests of the s274 parties, the focus is appropriately on 8 and 12 Suburb Street. Number 5 Suburb Street is significantly further distant and downhill such that, on the evidence we are satisfied there will not be a material change to the status quo.

[84] Whilst we appreciate that Mr Holden has offered concerns for his unrepresented neighbours, none of them are parties before us. We can infer that, for those dwellings in closer proximity to 8 and 12 Suburb Street, there will be similar physical outcomes. However, we do not give material weight to any associated amenity value outcomes because we have no evidence directly about them and none of the relevant owners has sought to join as a party to the appeal.

[85] We consider the position for 8 and 12 Suburb Street with regard to both their current configuration and their future development potential. That is as part of predicting the future state of their environments when the Modified Proposal is implemented and the hotel is established. That includes accounting for the potential for development of each of these residential properties, in terms of what is anticipated under the HDR zone. We accept Mr Muir's albeit equivocal answer to us in finding there could be some potential to enhance sunlight access to

relevant dwelling areas with a new build on these sites.<sup>49</sup>

[86] Some of the s274 parties pointed out that the predicted sunlight access outcomes for the Modified Proposal would not precisely align with the court's preliminary observations concerning expectations. That is the case for 8 Suburb Street at least prior to any development of it that involves replacement of the existing dwelling.

[87] However, those observations were plainly preliminary, rather than given as directions or findings or as a pre-judgment of what is appropriate in all the circumstances.

[88] The lie of the land inevitably means that any development of the Site, even of a much smaller scale, will significantly reduce sunlight access for 8 and 12 Suburb Street. The Site is a greenfields site and the HDR zone anticipates its development. High density residential development is anticipated as is visitor accommodation such as with a hotel.

[89] On matters of sunlight access, we find that the appropriate balance to be struck as between the competing interests of Shundi and the interests of residents in this case, so as to reflect the PDP's intentions, is as now reflected in the Modified Proposal. That is because the Modified Proposal is duly informed by its residential setting, and allows for a quality hotel build that takes fair advantage of its superior unobstructed views whilst providing for reasonable access to afternoon sunlight for 8 and 12 Suburb Street during the winter solstice. As to what is 'reasonable', that is of course fundamentally a matter of informed judgment in the particular context. Noting that the sunlight access outcomes are predicted to be different for 8 and 12 Suburb Street, what informs our judgment that those outcomes are reasonable are:

- (a) the intention of the HDR to enable and encourage high density

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<sup>49</sup> Transcript, 1 September 2023, p 49, l 13 and following.

development of the scale of the proposal, including on each of the impacted Sites;

- (b) the significant improvements to winter solstice afternoon sunlight access achieved by Shundi's more considered design from what was originally proposed; and
- (c) the potential, under a single dwelling redevelopment scenario, to improve on the sunlight access position predicted for the existing dwellings, accepting however that this would involve a need to consider trade-offs for what was sought overall in any single dwelling development on each impacted site.

[90] We add that there is a paucity of planning guidance on acceptable benchmarks of acceptability for sunlight access as a discrete residential amenity value. Nevertheless, the sunlight access outcomes we find appropriate for 8 and 12 Suburb Street would not appear to be inconsistent with the planning guidance where it does exist.<sup>50</sup>

[91] Therefore, we find the reduced extent of development under the Modified Proposal strikes an appropriate balance so as to be mitigation to the extent anticipated by the PDP. By contrast, we find declining consent to the Modified Proposal would be a disproportionate outcome in terms of the intentions of the PDP. That is, in terms of the scale of judgment allowed for in the objectives and policies, the circumstances do not warrant avoiding any loss of sunlight access as presently available for 8 and 12 Suburb Street largely as a result of the greenfields state of the Site.

### ***Privacy concerns***

[92] On the evidence, we find that the Modified Proposal will be effective in respecting residential privacy. Whilst the Site is on a higher elevation, the hotel

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<sup>50</sup> Auckland Design Manual, produced by Auckland Council, 2024, Residential Design Guide, Wellington City Council, 2014.

building itself is reasonably well set back from the residential property dwellings and the natural orientation of views would not be down on the dwellings. Rather, as can be expected, the hotel design is intended to allow occupants to take in the grand views over the lake, for example to the Remarkables and Walter Peak.

[93] In terms of their current configurations, the dwellings and outdoor living areas of 8 and 12 Suburb Street are not particularly exposed to views from where the hotel building would be sited. Under any redevelopment scenario, there is opportunity in each case to achieve different outcomes as may be preferred. No such issues arise for 5 Suburb Street, given the distance to it or for the property owned by Mr and Mrs French in Adelaide Street.

### ***Noise and vibration***

[94] In their evidence, the s274 parties did not signal any particular concerns regarding noise and vibration. However, as we have noted, the non-complying status accorded to the proposal at first instance was by reason of potential contravention of the PDP construction vibration rule (r 36.5.9).

[95] As part of the Modified Proposal, Shundi proposes construction and operational noise and vibration conditions designed to ensure relevant PDP permitted activity standards are complied with. For example:

- (a) any earthworks on the site are limited to between 8 am and 6 pm on weekdays and between 9 am and midday on Saturdays only, which is more stringent than is recommended by NZS: 6803: 1999 on construction noise and PDP r 36.5.12;<sup>51</sup>
- (b) proposed conditions also require a Neighbour Communication Plan to be certified prior to the commencement of any works, as a means for ensuring the neighbouring residents are aware of the timing of any earthworks and construction activities and any potential nuisances

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<sup>51</sup> Proposed consent conditions 37, 46-52, JWS – Planning at [7], [9].

they may cause, and have a clear complaints procedure available to them;<sup>52</sup>

- (c) proposed conditions also restrict usage of outdoor areas, limit the sound levels of plant and equipment, and include a requirement to manage effects on neighbouring property owners and occupiers. Those include an Operational Communication Liaison Plan as a mechanism by which residential neighbours can make complaints and detailed training protocols exist for staff to deal with any noise issues and any complaints received.<sup>53</sup> The planners inform us that this specification is additional to current consent requirements elsewhere in the district.<sup>54</sup>

[96] Damian Ellerton, an acoustics expert called by Shundi, told us about the careful analysis that underpins these proposed conditions. He assured the court that it means that both in construction and operation, the proposal will comply with relevant PDP noise and vibration permitted activity standards.<sup>55</sup> His evidence was not challenged.

[97] We accept his evidence, and the related planning evidence, in finding that noise and vibration will be properly managed according to the intentions of the PDP.

### ***Other matters***

[98] The Modified Proposal would assist to achieve the intentions of the PDP of assisting to meet needs for visitor accommodation as part of helping to support the District's predominantly visitor economy. That is both in terms of adding bed numbers and adding to the existing complement in the market with a quality 5 star

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<sup>52</sup> Proposed conditions 26-27.

<sup>53</sup> Proposed conditions 53-59.

<sup>54</sup> JWS – Planning at [10], [11].

<sup>55</sup> Ellerton evidence, dated 30 April 2021 at [17], [21]-[30].

– 6 star hotel. That will assist to enable the wellbeing of people and communities. The architectural and landscape treatment of the Site as will be implemented in the Modified Proposal will also be an urban design enhancement to this important entry point to Queenstown’s CBD.

[99] In view of our other findings, therefore, we find that granting consent will assist to achieve the PDP’s intentions and hence the sustainable management purpose of the RMA.

### **Conclusions**

[100] For those reasons, we find that it is in accordance with the RMA (including as reflected in the relevant provisions of the PDP as we have discussed) to grant consent to the Modified Proposal.

[101] We find Shundi’s final proposed conditions as set out in Annexure 2 to be sound and appropriate. Subject to one matter, we find the associated plan set suitable for consenting purposes, as referenced in various proposed conditions. We note there would appear to be some discrepancy on one point of design detail. Counsel for Shundi explains that the Modified Proposal would no longer include a pergola on the southern façade of the proposed building (with this being replaced by three gable features above particular hotel rooms). However, the plans for the Modified Proposal appear to continue to show the pergola.

[102] It is directed:

- (a) Shundi, in consultation with QLDC, will file a land use consent in QLDC’s preferred format including a clean set of conditions and complete set of referenced plans to give effect to our findings herein;
- (b) Shundi will file a memorandum of counsel addressing, and if necessary explaining any correction to the noted apparent discrepancy in the plans;
- (c) the timetable for those steps will be as proposed by Shundi in a

memorandum to be filed within 15 working days of this decision, subject to any further timetable directions made.

[103] Parties can anticipate that the court will issue a final decision effective in granting consent in due course, subject to satisfactory compliance with those directions.

[104] On the signalled indication in the joint memorandum that the parties do not seek an order as to costs, these lie where they fall.

For the court



**J J M Hassan**  
**Environment Judge**



## Appendix B – Recommended Provisions

### 9.3.2 Interpreting and Applying the Rules

9.3.2.7 The existence of a residential building either permitted or approved by resource consent shall not be considered the permitted baseline for non-residential development within the High Density Residential Zone.

### 9.4 Rules – Activities

	<b>Activities located in the High Density Residential Zone</b>	<b>Activity Status</b>
9.4.6	<p>Visitor Accommodation including licensed premises within a visitor accommodation development</p> <p>Discretion is restricted to:</p> <ul style="list-style-type: none"> <li>a. The location, nature and scale or activities;</li> <li>b. <u>Whether the built form provides a high level of residential amenity to neighbouring residential properties;</u></li> <li>c.</li> <li>d. Parking and access;</li> <li>e. Landscaping;</li> <li>f. Noise;</li> <li>g. Hours of operation, including in respect of ancillary activities; and</li> <li>h. <u>The location, external appearance, site layout and design of buildings and fences and how the development addresses its context to contribute positively to the character of the area;</u></li> <li>i. <u>Building dominance relative to neighbouring properties and public spaces including roads;</u></li> <li>j. <u>How the design promotes sustainability either through construction methods, design or function;</u></li> <li>k. <u>The privacy of occupants of neighbouring residential sites;</u></li> <li>l. <u>Capacity of existing or planned infrastructure/servicing;</u></li> <li>m. <u>Low impact stormwater design;</u></li> <li>n. <u>Waste and recycling storage space and collection;</u></li> </ul>	RD

	<p><i>o. <u>Natural hazards;</u></i></p> <p><i>p. <u>Consistency with the Residential Zone Design Guide [to be updated to address design outcomes for visitor accommodation developments and how the interface with residential development]</u></i></p>	
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	<b>Standards for activities located in the High Density Residential Zone</b>		<b>Non-compliance Status</b>
9.5.1	<i>Building Height – <u>Residential Buildings</u></i>		
	9.5.1.1	<i>A height of 16.5 metres, including at Frankton North, except where specified in Rules 9.5.1.2, 9.5.1.3 or 9.5.1.4</i>	<p><i>RD</i></p> <p><i>Discretion is restricted to:</i></p> <p><i>a. building design and appearance, including roof form articulation and the avoidance of large, monolithic building forms;</i></p> <p><i>b. building dominance and sunlight access relative to neighbouring properties and public spaces including roads;</i></p> <p><i>c. how the design advances housing diversity, including size and typology;</i></p> <p><i>d. promotion of sustainability either through construction methods, design or function;</i></p> <p><i>e. privacy and outlook for occupants of the subject site and neighbouring sites;</i></p> <p><i>f. effects on significant public views (based on an assessment of public views undertaken at the time of the</i></p>

			<p><i>proposal, in addition to any specified significant public views identified within the District Plan);</i></p> <p><i>g. the positive effects of enabling additional development intensity within close proximity to town centres.</i></p>
	9.5.1.2	<p><i>In the High Density Residential Zone immediately west of the Kawarau Falls Bridge the maximum building height shall be 10m provided that in addition no building shall protrude above a horizontal line orientated due north commencing 7m above any given point along the required boundary setbacks at the southern zone boundary.</i></p>	D
	9.5.1.3	<p><i>Within the area specified on the District Plan web mapping application on the south side of Frankton Road (SH6A), the highest point of any building shall not exceed the height above sea level of the nearest point of the road carriageway centreline.</i></p>	D
	9.5.1.4	<p><i>In Wānaka the maximum building height shall be 12m.</i></p>	D

	9.5.1.5	<i>Frankton North the maximum building height shall be 20m.</i>	NC
9.5.2	<u><i>Building Height – Visitor Accommodation Buildings</i></u>		
	9.5.2.1	<u><i>In all locations the maximum height for visitor accommodation developments shall be 12m</i></u>	NC
9.5.6	<i>Recession plane (applicable to all residential buildings, including accessory buildings)</i>		
	9.5.6.1	<p><i>From 8 metres above ground level a 60 degree recession plan applies to all boundaries, other than the southern boundary of the site where a 45 degree recession plan applies.</i></p> <p><i>Exclusions:</i></p> <p><i>a. gable end roofs may penetrate the building recession plane by no more than one third of the gable height;</i></p> <p><i>b. recession planes do not apply to site boundaries adjoining a Town Centre Zone, Business Mixed Use Zone, fronting a road, or</i></p>	<p><i>RD – for boundaries where the High Density Residential zone applies on each side of the boundary.</i></p> <p><i>Discretion is restricted to:</i></p> <p><i>a. any sunlight, shading or privacy effects created by the proposal on adjacent sites and/or their occupants;</i></p> <p><i>b. effects on any significant public views (based on an assessment of public views undertaken at the time of the proposal, in addition to any specified significant public views identified within the District Plan);</i></p> <p><i>c. external appearance, location and visual dominance of the building(s) as viewed from the streets and adjacent properties.</i></p>

		<p>adjoining a park of reserve.</p>	<p>d. where Electricity Sub-transmission Infrastructure or Significant Electricity Distribution Infrastructure is shown on the District Plan web mapping application is located within the adjacent road and any proposed building is located within 9.5 metres of the road boundary, any adverse effects on that infrastructure.</p> <p>NC – for boundaries where there is a change of zone other than as specified in the exclusions.</p>
9.5.7	<p><u>Recession plane – Non-Residential Buildings</u></p>		
	9.5.7.1	<p><u>From 2.5 metres above ground level a 45 degree recession plane applies to all boundaries, other than the southern boundary of the site where a 45 degree recession plane applies.</u></p> <p><u>Exclusions:</u></p> <p>a. <u>gable end roofs may penetrate the building recession plane by no more than one third of the gable height;</u></p>	<p><u>RD – for boundaries where the High Density Residential zone applies on each side of the boundary.</u></p> <p><u>Discretion is restricted to:</u></p> <p>e. <u>any sunlight, shading or privacy effects created by the proposal on adjacent sites and/or their occupants;</u></p> <p>f. <u>effects on any significant public views (based on an assessment of public views undertaken at the time of the proposal, in addition to any specified significant public views identified within the District Plan);</u></p>

		<p>b. <u>recession planes do not apply to site boundaries adjoining a Town Centre Zone, Business Mixed Use Zone, fronting a road, or adjoining a park of reserve.</u></p>	<p>g. <u>external appearance, location and visual dominance of the building(s) as viewed from the streets and adjacent properties.</u></p> <p>h. <u>where Electricity Sub-transmission Infrastructure or Significant Electricity Distribution Infrastructure is shown on the District Plan web mapping application is located within the adjacent road and any proposed building is located within 9.5 metres of the road boundary, any adverse effects on that infrastructure.</u></p> <p><u>NC – for boundaries where there is a change of zone other than as specified in the exclusions.</u></p>
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