

**DOBefore Hearings Panel appointed by
The Queenstown Lakes District Council**

Under

the Resource Management Act 1991

And

In the Matter

of the Queenstown Lakes Proposed
District Plan - Urban Intensification
Variation

**Legal Submissions on behalf of
Arthurs Point Land Trust**

Dated: 6 August 2025

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INTRODUCTION

1. These legal submissions are made on behalf of Arthurs Point Land Trust (**Submitter**) on the Proposed District Plan (**PDP**) Urban Intensification Variation (**Intensification Variation**).
2. The Submitter filed Submission **1260** and Further Submission **1338**.
3. Evidence on behalf of the Submitter has been filed by Mr John Edmonds (Planning) and Mr Tony Milne (Landscape).
4. The Submitter largely supports the intent of the Intensification Variation. These legal submissions therefore focus on an outstanding point of disagreement between the Queenstown Lakes District Council (**Council**) section 42A and the Submitter.
5. In terms of the key point of difference between Council and the Submitters' experts, being whether the Mid Terrace should be subject to an 8m height limit as notified, or an 11m plus 1m gable roof height limit as put forward by the Submitter, we accept Mr Milne and Ms Mellsop's evidence that an 8m height limit within 10m of the escarpment edge would be appropriate. We expand further on this below. There remains a point of disagreement regarding the extent of where the 8m height limit should apply to which we anticipate will be explored further at the hearing.
6. The Submitter's owns 14.7 hectares of land at 182 Arthurs Point Road (**Site**). The land is split zoned High Density Residential, Medium Density Residential and Rural.
7. The Submitter has numerous resource consents to develop the land. These include consent for:
 - (a) 296 visitor accommodation units in 13 buildings (Blocks A to E) on the Upper Terrace and part of the Mid Terrace (RM191333). As part of this consent, three buildings at 12m high were approved on the Mid Terrace under the ODP Rural Visitor Zoning;
 - (b) 35 residential units on the balance of the Mid Terrace (RM200384) which were generally in accordance with the 8m height plane;

- (c) a residential unit within the Rural Zone on the Lower Terrace (RM201080); and
 - (d) Helipad – Rural Zone on the Lower Terrace (RM220260).
8. The outstanding point of disagreement between the Submitter and Council is in relation to whether the Mid Terrace of the site should be subject to a height limit of 8m under Proposed Rule 8.5.1.1 or fall under the increased maximum height of 11m plus an addition 1m for pitched roof forms which applies to the majority of the Medium Density Residential Zone.
 9. Mr Edmonds and Mr Milne have considered the rebuttal evidence of Ms Mellsop and Ms Frischknecht, and would support the retention of the 8m height limit within 10m of the escarpment edge, but disagree that a similar provision would be required on the eastern interface with the ONL as suggested by Ms Mellsop.¹
 10. A map showing the Mid Terrace and the area subject to Rule 8.5.1.1 are attached at **Appendix A**.
 11. Maps showing Mr Milne’s proposed area of the Site subject to the 8m height limit within 10m of the escarpment edge and our interpretation of Ms Mellsop’s additional area which she considers should subject to the 8m height limit along the eastern interface with the ONL will be attached to Mr Milne’s summary statement.

LEGAL TESTS

12. We have read the opening legal submissions by the Council, in particular the summary of the statutory functions of Council and the legal responsibilities relating to scope.
13. We particularly agree with Ms Scott’s submissions that giving effect to Policy 5 of the National Policy Statement for Urban Development (**NPS-UD**) will assist in achieving Policy 2² and that visitor accommodation activities are in scope of the Variation in relation to changes to heights and densities.³

¹ Helen Mellsop, *Review of Landscape Evidence of Tony Milne*, dated 3 July 2025 at [14]

² Opening Legal Submissions for Queenstown Lakes District Council dated 25 July 2025 at [3.2].

³ Opening Legal Submissions for Queenstown Lakes District Council dated 25 July 2025 at [4.11].

14. Given that, we adopt the Council's summary of the relevant legal tests and do not propose to repeat the statutory functions and legal tests, except to provide a brief summary of the relevant tests in the NPS-UD.
15. We acknowledge that ONL values are relevant as a section 6 qualifying matter under Clause 3.32 of NPS-UD, however these need to be considered in the context of the Arthurs Point environment where the delineation between urbanisation and the ONL has been extensively litigated and is now settled. We expand on this point further below.

NATIONAL POLICY STATEMENT ON URBAN DEVELOPMENT

16. The NPS-UD has provided highly directive national policies on the development of our towns and cities. As a result, Council have been required to notify a variation to the PDP that implements the NPS-UD. In particular, these changes centre on enacting Policy 5 relating to intensification.
17. Policies 2, 5 and 6 of the NPS-UD are directive policies and should be given effect to by the Intensification Variation.⁴

Policy 2: Tier 1, 2, and 3 local authorities, at all times, provide at least sufficient development capacity to meet expected demand for housing and for business land over the short term, medium term, and long term.

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

(a) the level of accessibility by existing or planned active or public transport to a range of commercial activities and community services; or

(b) relative demand for housing and business use in that location.

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

⁴ National Policy Statement on Urban Development

- (a) *the planned urban built 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 increased 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.*
18. Lower order planning documents have a requirement to give effect to national direction.⁵
 19. The Council Section 42A report notes that the context of the zoning decisions in the Intensification Variation is necessarily forward focused.⁶
 20. The NPS-UD specifically directs decision-makers to have particular regard to the fact that changes due to its effects may detract from amenity values.⁷ This means in areas like the Queenstown Lakes District, the amenity value of certain identified area will be affected by increased and varied density and types. These changes should not be seen, of themselves, as an adverse effect.

⁵ Resource Management Act 1991, Section 75 (3)

⁶ Section 42A Report of Rachel Morgan dated 6 June 2025 at [6.11].

⁷ National Policy Statement on Urban Development 2020, May 2022 Edition, Policy 6

21. In terms of the 'qualifying matters' from Clause 3.32 of the NPS-UD, we agree with Ms Scott that the qualifying matters can be used as guidance for when the NPS-UD could be applied in a more limited manner⁸ but we consider this must be balanced against the directive policies in the NPS-UD.
22. With reference to Council's concern about potential landscape effects on the surrounding ONLs and ONFs (a section 6 matter of national importance),⁹ we consider that the amended relief supported by Mr Edmonds and Mr Milne, being the reduced 8m height limit within 10m of the more prominent escarpment area, addresses this qualifying matter while still retaining the intensification as directed by the NPS-UD over the balance of the Mid Terrace.

PROPOSED RELIEF

23. As covered above, the outstanding point of disagreement between the Submitter and Council is in relation to whether the Mid Terrace of the site should be subject to a reduced height limit of 8m under Proposed Rule 8.5.1.1 or fall under the increased maximum height of 11m plus an addition 1m for pitched roof forms which applies to the majority of the Medium Density Residential Zone.
24. Mr Edmonds and Mr Milne have considered the rebuttal evidence of Ms Mellsop and Ms Frischknecht, and both support the retention of the 8m height limit within 10m of the escarpment edge, but disagree that a similar provision would be required on the eastern interface with the ONL as suggested by Ms Mellsop.¹⁰
25. Mr Edmonds can explore with the Panel any amendments to the wording of Rule 8.5.1 further but we consider it is possible that the wording of Rule 8.5.1 does not need to be amended from the rebuttal evidence version appended to Ms Bowbyes' evidence, with only additional mapping required to demonstrate the 10m setback from the escarpment edge where the 8m height limit will apply.

⁸ Opening Legal Submissions for Queenstown Lakes District Council dated 25 July 2025 at [7.2].

⁹ Section 32 Evaluation Report dated 21 August 2023 at page 38.

¹⁰ Helen Mellsop, *Review of Landscape Evidence of Tony Milne*, dated 3 July 2025 at [14]

26. The overall theme of the objectives contained in the NPS-UD is to promote planning decisions that will enable intensification. The directions it contains are positive and require the Council to take action to implement them.
27. Policy requirements to *enable* (Policy 5) create a strong directive and a firm obligation on territorial authorities to enable heights and density of urban form.¹¹ We refer to the urban design evidence of Mr Wallace for Council who considers that a reduction from the 11m + 1m MDRZ height would unnecessarily reduce design flexibility and would undermine the delivery of common three-storey medium density typologies.¹²
28. The evidence of Mr Wallace demonstrates that the reduction in the 11m + 1m MDRZ height for the Mid Terrace would limit the potential for the enablement of density and height required by the NPS-UD. Furthermore, we consider the height limit of 8m across the Mid Terrace would be inconsistent with the purpose of the MDRZ which is to provide for residential development at a greater density than the LDSRZ. The purpose of the MDRZ also describes building heights as being up to three storeys.¹³
29. We submit that the directive approach provided for in the NPS-UD can outweigh protection of the existing environment and provide for increased height and density where appropriate. The previous ODP zoning of a portion of the Mid Terrace, being Rural Visitor Zone, enabled a 12m height as a permitted activity. This previous zoning demonstrates that the Mid Terrace has been considered to have capacity for 12m high buildings while still maintaining the relevant ONL values.
30. We also consider that the 'receiving environment' and consented baseline are particularly relevant in determining appropriate zoning provisions. The receiving environment includes the surrounding area both as it exists, including any permitted and consented activities already being conducted, and as could potentially exist in the future, including modification by permitted activities and unimplemented resource consents that are likely to be implemented.¹⁴

¹¹ *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd* [2014] 1 NZLR 593, at [77]

¹² Evidence of Cameron Wallace dated 6 June 2025 at 8.7

¹³ Rebuttal Evidence of Amy Bowbyes dated 24 July 2025 at Appendix A

¹⁴ *Hawthorn Estates v Queenstown Lakes District Council* [2006] NZRMA 424 at [84].

31. As set out in the evidence of Mr Edmonds, the Submitter has various approved resource consents across the site, including 35 units approved on the Mid Terrace in four-storey blocks at heights up to 12m. We submit this is a relevant part of the 'receiving environment' and should be given weight by the Panel.
32. As covered above, Mr Edmonds and Mr Milne have considered the ONL and ONF 'qualifying matter' and support the escarpment boundaries as being areas with a lower maximum height limit. This was a proposal which Ms Mellsop, for Council, considered to have merit, although it is noted that Ms Mellsop considers that a similar provision is needed on the eastern interface with the ONL.¹⁵
33. The Environment Court has noted that "the classification of a landscape as outstanding does not mean that development is automatically inappropriate".¹⁶ However, it must be demonstrated that the proposal can protect the identified values that qualify a landscape as an ONL.¹⁷ Mr Milne's evidence is that overall the receiving environment of the Shotover River corridor has a moderate-high level of landscape sensitivity but the Mid Terrace has the capacity to absorb a higher building height primarily due to its overall lower visual significance.¹⁸ To protect the values of the Shotover Landscape Priority Area, Mr Milne recommends the staggering of building heights adjacent to the edge of the escarpment.¹⁹
34. Mr Milne's position on whether the reduced 8m height should apply to the area adjacent to the eastern interface with the ONL is that the eastern edge of the site is not as visually prominent such that it detracts from public or private views of or within ONLs and ONFs as compared to the escarpment edge. Mr Milne will explore this further in his summary statement.
35. We submit that a height setback rule, as proposed by Mr Milne, appropriately considers and addresses the effects on Shotover Landscape Priority Area. We agree with Mr Milne that this is a site-responsive solution that balances

¹⁵ Helen Mellsop, *Review of Landscape Evidence of Tony Milne*, dated 3 July 2025 at [14]

¹⁶ *Wakatipu Environmental Society v Queenstown Lakes District Council* ENC Christchurch C129/2001, 9 August 2001, [2001] ELHNZ 307 at [45].

¹⁷ *Granger v Dunedin City Council* [2018] NZEnvC 250 at [151].

¹⁸ Statement of Evidence, Tony Douglas Milne, 3 July 2025 at [26].

¹⁹ Statement of Evidence, Tony Douglas Milne, 3 July 2025 at [27].

the objectives of the Intensification Variation with the ONL and ONF considerations²⁰ from the qualifying matters at Clause 3.32 of the NPS-UD.

36. In our submission, the relief proposed by the Submitters and supported by Mr Edmonds and Mr Milne will support the growth of development capacity in the short, medium and long term, as directed by the NPS-UD while managing landscape effects on the neighbouring ONL and ONF.

SECTION 32AA

37. For any relief sought which goes beyond that assessed in the s42A Report, the Panel must carry out a s32AA assessment.
38. We confirm that the amendments sought by the Submitters:
- (a) are more efficient and effective than the notified provisions in achieving the intensification objectives of the NPS-UD through increased height on the Mid Terrace; and
 - (b) the proposed amendments have considered the ONL and ONF qualifying matter under Clause 3.32 and as per the evidence of Mr Milne, will not have any materially significant landscape effects than the notified provisions.
39. We consider that Council's position on the height limit for the Mid Terrace adds a barrier to achieve the Policy 5 directives and needs to be further considered by Council in light of the amended height setback relief sought by the Submitters.

CONCLUSION

40. In our submission, the Intensification Variation as notified with blanket 8m height limit across the Mid Terrace does not provide the most appropriate means of meeting the purpose of the NPS-UD and will restrict the Submitter and Council in achieving the intensification directives of the NPS-UD.

²⁰ Evidence of Tony Milne dated 3 July 2025 at [47].

41. By making the targeted changes suggested, we submit that the Intensification Variation will better give effect to the NPS-UD by providing appropriate intensification while balancing effects on the landscape.

Dated this 6th day of August 2025

A handwritten signature in blue ink, appearing to read "Joshua Leckie".

Joshua Leckie / Hayley Mahon

Counsel for the Submitters

Appendix A

Mid Terrace Area:



Area Subject to Rule 8.5.1.1(a)

