

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

UNDER	the Resource Management Act 1991
IN THE MATTER	of a variation to the QLDC Proposed District Plan – Urban intensification
BY	FRIENDS OF ARROWTOWN VILLAGE Various Submitters

SUBMITTERS' REPLY LEGAL SUBMISSIONS

Dated: 25 August 2025

MAY IT PLEASE THE COMMISSIONERS:

Outline of submissions

- [1] These reply submissions are presented on behalf of the Friends of Arrowtown Village submitters (**FOAV**) in relation to questions from the Panel arising from the hearing appearance on 31 July 2025.
- [2] A succinct reply is provided; however, Counsel is happy to reappear in the final hearing week and address the Panel orally on these matters if it assists.

Question 1 – Does Policy 5 of the NPS-UD allow an approach by which amenity stops intensification, as compared to intensification subject to appropriate amenity outcomes?

- [3] The FOAV consider Policy 5 allows for either of these outcomes. Policy 5 is an enabling policy. For Tier 2 environments it does not set a minimum 'floor' for intensification outcomes in order to achieve the policy. In this way, it is a facilitative, not prescriptive, approach. Councils are required to create capacity but are not mandated to apply maximum intensification universally. The MfE guidance on implementing Policy 5 explains the direction to provide commensurate urban form with accessibility requires:¹

Local authorities need **to link** height/density limits with accessibility, by allowing for greater density in areas where people can easily access many jobs, services and amenities.

- [4] There is no prescription in the guidance, or in the NPS-UD itself, which would preclude an outcome where in certain locations or areas (such as Arrowtown) it may be more appropriate to not intensify altogether, on the basis of evidence as to resulting adverse effects.
- [5] As noted in oral submissions, Tier 2 authorities have comparatively more flexibility in intensification than a Tier 1 authority. Unlike Tier 1 councils, there are no mandated minimum height and density outcomes within certain areas. Tier 1 authorities are able to address qualifying matters

¹ At p. 15. Accessed at: <https://environment.govt.nz/assets/Publications/Files/Understanding-and-implementing-intensification-provisions-for-NPS-UD.pdf>.

such that certain mandated areas can opt-out of minimum density requirements. Relevantly, this includes 'other' qualifying matters, which the guidance accepts would include issues such as special character and viewshafts. In this regard the guidance states:²

... in the case of 'other' matters, it does not mean local authorities cannot have viewshafts or special character, for example. These can be retained where evidence supports their need. The qualifying matters simply provide the scope for local authorities to modify the level of intensification if it is required to protect the specific matter.

- [6] The guidance goes on to note that the result of a qualifying matter assessment could result in an appropriate outcome being no intensification at all (although that response is considered to be an exception). Policy 4 would also however be relevant to any such consideration; providing that for tier 1 authorities, modifications to heights and density requirements are only to the extent necessary to accommodate a qualifying matter. Again, no such policy guidance exists relative to Tier 2 / Policy 5 planning.
- [7] It follows clearly that, if Tier 1 authorities have a pathway to address qualifying matters (including 'other' special character considerations) and not intensify some areas at all, Tier 2 authorities must equally be able to determine such outcomes. Tier 2 authorities do not have to work through the prescriptive process of qualifying matters to opt-out of density in certain accessible areas, or areas with relatively high demand. They are not constrained by the list of qualifying matters, nor the additional analysis process associated with the same.
- [8] In this way, Policy 5 clearly applies across all of the urban environment, not to individual parts of the urban environment. It allows for some *unders and overs*, and case-by-case assessment as to appropriate urban form. To not provide for intensification in some locations due to adverse environmental effects, while still ensuring that Policy 1 and 2 are achieved overall, will be consistent with the NPS-UD.

² Ibid, at p. 43.

- [9] Recent higher court case law has examined the meaning of *enable* in various planning instruments.³ The underlying theme across these cases is that any policy directive such as ‘to enable’ must be read in the context of the whole of the planning instrument in question rather than in isolation. When looking at the direction of Policy 5 to enable commensurate heights and densities, it is submitted this is comparatively less directive than remaining policies and objectives of the NPS-UD which provide more concrete bottom lines or outcomes, such as the provision of at least sufficient development capacity at all times (Policy 2), or specific height modifications (Policy 3 and 4), or minimum housing bottom lines (Policy 7).
- [10] In this context, Policy 5 is not a strong planning directive akin to the context of ‘enable’ discussed in the regional policy statement (**RPS**) under consideration in *Southern Cross Healthcare*. In that case, the RPS provided a directive that enabled social facilities in specified locations. The High Court in *Southern Cross Healthcare* acknowledged the more directive use of the term ‘enable’ in the RPS policy framework under consideration than compared to other cases analysing the same verb, including *Equus Trust*.⁴ This included its site-specific aspect of enabling intensive use and development of existing social facility services.
- [11] In the NPS-UD, where Policy 5 seeks to enable heights and densities in Tier 2 environments with:
- (a) no minimum requirements,
 - (b) no specific ‘opt out’ qualifying matters, and
 - (c) under the umbrella of ensuring overall capacity and housing bottom lines are provided for,
- [12] it is submitted that it is inherently less directive than use of the term enable in the *Southern Cross* case above and therefore allows a decision maker to weigh and balance competing considerations from Part 2 in a section 32 evaluative framework. This was noted in Counsel’s

³ See *Southern Cross Healthcare Ltd v Eden Epsom Residential Protection Society Inc* [2023] NZHC 948 and *Equus Trust v Christchurch City Council* [2017] NZHC 224.

⁴ *Southern Cross Healthcare*, at [122].

opening submissions, where it was observed that one option considered in the QLDC s32 report to implement Policy 5 of the NPS-UD was to not provide for intensification of LDR zoned areas. This exemplifies the nature of Policy 5 as not setting a hard 'fail' outcome for where Councils may elect to enable commensurate height and density.

- [13] In the circumstances of the QLDC PDP, the MDR and LDR chapters specifically carve out Arrowtown because of its unique and special character and heritage values. There is no identification of a preference for increased density or particular typologies in certain areas of Arrowtown. Rather, it is explicit in ensuring that new and infill low and medium density development maintains existing character.

To what extent can s6(f) matters override the NPS-UD requirements and, if there is a tension, how can the former trump the latter?

- [14] As noted above, the NPS-UD does not set a requirement to be overridden. The NPS-UD has already implemented Part 2 of the Act including section 6(f). It has done so by prescribing a qualifying matter process (including for matters of historic heritage) in Tier 1 urban environments. It has set a comparatively more flexible exercise for Tier 2 urban environments to encourage density uplift where appropriate.
- [15] To this end, an evaluation of evidence as to adverse effects on s6(f) matters (or other s7 matters as addressed further below) will be an economic cost in terms of any s32 analysis on the options for intensification. In this way, the Panel may find that the most appropriate planning response is no increase, or a more modest increase in density than has been applied elsewhere across the urban environment. As QLDC's opening case acknowledged, intensification under Policy 5 requires planning judgements to be made, and context is particularly important. Accessibility and relative demand does not correlate to a precise standard of uplift across the board.
- [16] For example, the s32 analysis for the Variation at page 33 sets out a number of zones of the PDP that were not included in the Variation uplift despite those forming part of the urban environment. Reasons include where there are existing densities already enabled to a degree, or other constraints exist such as hazards, heritage, airport noise boundaries,

reverse sensitivity effects, and landscape values. Many of those listed constraints are not Tier 1 qualifying matters, nor is there a particularly clear explanation as to the costs for leaving those out of the Variation *vis a vis* Policy 5. This demonstrates the flexibility inherent in Council's response to Policy 5 across the District's urban environment.

[17] It is noted that the differences between Jacks Point and Arrowtown are also not particularly well explained given that both are relatively poor performers in terms of accessibility; however, Jacks Point was simply excluded from any uplift.

[18] In terms of the assessment of relative demand, as noted in Counsel's opening, it seems the application to Arrowtown is narrow in respect of identifying uplift as a response to only one typology of long-term demand shortfall.

To what extent can the Panel consider amenity values in light of Objective 4 and Policy 6 of the NPS-UD? Section 7 read literally could be a reference to existing amenity values to be maintained but the NPS-UD signals those may change and directed towards future value expectations, how can this be reconciled?

[19] Amenity can be expressed through special character values or through internal considerations (i.e. sunlight and views, etc.) and in an existing or future state. The FOAV submit that Objective 4 and Policy 6 do not prevent a consideration of existing amenity (as special character or internal considerations).

[20] The provisions provide:

Objective 4: New Zealand's urban environments, including their amenity values, develop and change over time in response to the diverse and changing needs of people, communities, and future generations.

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

(a) ...

(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.

- [21] The statements as to changing amenity values in the provisions quoted above appear, in Counsel's submission, to be more directed at internal amenity matters (for example, sunlight and views for individuals) rather than the context of a special character area or township, and nor do they reference historic heritage in terms of s6(f).
- [22] The provisions are not clear directives that amenity values, special character, or heritage values are precluded from consideration or decision making when implementing the NPS-UD. That is clear in the acknowledgement that special character may be a form of qualifying matter for Tier 1 authorities to opt out of density standards.
- [23] As noted by Ms Lutz in the hearing, the special character of Arrowtown is more than simply a s7 amenity value, but rather, is closely intertwined with heritage values (s6(f)) throughout its urban fabric. It is not easy to delineate where heritage values, amenity values, and special character stop or start. A number of district plans have retained special character areas or overlays since the implementation of these amenity provisions in the NPS-UD and no contradiction is considered. In this way, the collective result of Arrowtown-specific objectives, policies, bespoke rules, and the design guidelines, work together to form an effectively bespoke planning framework that is akin to a special character overlay or area – applying to the entire town.
- [24] MfE's recommendation and decision report on the NPS-UD supports the interpretation that Objective 4 and Policy 6 are more directed at internal or individual amenity considerations rather than to the wider urban environment, and the acceptance of the importance of district plans

which have already provided clear direction on urban outcome expectations.⁵

Officials consider strengthening and clarifying the amenity policy would address the point raised through submissions that a more prescriptive and detailed approach was needed to ensure the provisions have the desired effect. It would provide direction and clarity to decision-makers to recognise that amenity values extend beyond the generally considered built form and built character of an existing environment, can vary between individuals and communities (including different groups within communities) and change over time.

This is consistent with the panel's view that the main problems with amenity were practice issues resulting from a narrow interpretation of the 'maintain and enhance' requirement in section 7(c) of the Resource Management Act 1991 (RMA), which had led to a disproportionate emphasis on existing amenity values. The panel considered the NPS-UD could provide useful direction to decision-makers to take a wider or more holistic interpretation of section 7(c). Decision-makers should be given clear direction that intensification is good for well-functioning urban environments and that existing urban environments will necessarily change as a result of intensification.

Officials consider that requiring decision-makers to have regard to anticipated urban form outcomes would help **deliver decisions on amenity that were aligned with the overall intended vision for a zone. To do so, decision-makers should draw from the relevant zone descriptions, objectives, policies and rules contained in council plans.** This avoids adopting a national 'one-size-fits-all' approach to amenity but, due to the public consultation involved in RMA plan-making, allows decisions on amenity values **to reflect the views and needs of the wider community rather than just those of selected individuals.** This recommendation is consistent with feedback received from Kāinga Ora and discussions with the panel that decisions on amenity should be aligned with the overall anticipated urban form outcomes of an area.

(emphasis added).

⁵ <https://environment.govt.nz/assets/Publications/Files/Recommendations-and-decisions-report-NPS-UD-final.pdf> at p. 46.

- [25] While Counsel considers Objective 4 and Policy 6 as relating predominantly to internal amenity matters (as set out above), it is important to also note that these NPS-UD provisions are about amenity effects on a *planned* urban built form. Policy 6 is forward-looking to a future planned urban built form that has given effect to the NPS-UD, which has not yet been established. These provisions do not prohibit the Panel from undertaking a comparative assessment of amenity effects arising from each of the various intensification options. As such, the Panel is able to consider and compare the amenity effects of each intensification option and take this into account in decision making.⁶ For clarity, options also include maintaining the status quo / no intensification.
- [26] In this respect, the Variation has not elected to seek changes to the Arrowtown-specific objectives and policies. These provisions set a very clear expectation that development should be compatible with the existing character of the township.
- [27] While many submitters did express more individual concerns as to amenity values changing, the FOAV case overall has focused on the expert evidence from Ms Lutz as to the special character and heritage fabric of the town as a whole. Mr Knott's evidence also aligns with this.
- [28] The QLDC s32 report for the Variation is also aligned with this submission where it states:⁷

Policy 5 does not stand in isolation and is to be read together with the other objectives and policies in the NPS-UD, particularly, the policies that provide direction for achieving a well-functioning urban environment. The proposed provisions therefore aim to not just enable intensification, but to also ensure adequate amenity values within intensification areas, that development can be serviced and to mitigate any potential increase in stormwater runoff.

⁶ This approach was adopted by the Independent Hearings Panel on Christchurch City Council's Plan Change 14, which gave effect to the NPS-UD. See: <https://chch2023.ihp.govt.nz/assets/IHP-Report/IHP-Recommendations-Report-Part-1-29-July-2024.pdf> from [294].

⁷ https://www.qldc.govt.nz/media/nuonhza2/s32_urban-intensification-variation-npsud-policy-5-plan-variation-final-for-notification-lhs.pdf

Is Arrowtown being part of the urban environment contested or is there a binding decision on this? Could there be scope to change or address that in this process?

[29] Arrowtown has been defined as part of the urban environment in PDP Chapter 4. This was also addressed in the hearing process for stage 1 of the PDP and has not been contested since then.

[30] The NPS-UD provides the following definition:

urban environment means any area of land (regardless of size, and irrespective of local authority or statistical boundaries) that:

is, or is intended to be, predominantly urban in character; and

is, or is intended to be, part of a housing and labour market of at least 10,000 people.

[31] There is no expert evidence available to dispute the Council's economic modelling that Arrowtown is part of a housing and labour market of at least 10,000 people – being the wider Queenstown urban environment (albeit physically disconnected). This is supported by its poor performance in terms of accessibility, given most Arrowtown residents travel to employment.

If there are offending provisions in the PDP (say Arrowtown objectives and policies), is there any avenue to change those if they are in conflict with achieving the directives of the NPS-UD?

[32] The Variation as notified only recommended changes to the rules of the PDP and rezoning, not objectives and policies for Arrowtown. Given the former implements the latter, rather than the other way around, there are likely to be scope issues in terms of retrofitting policies and objectives for Arrowtown that further ease the planning pathway for intensification. The Arrowtown LDR and MDR zone-specific provisions around maintenance of existing character are fundamental provisions in the PDP that the Council did not propose to be changed, nor has any submitter requested such an outcome, that Counsel has seen.

[33] It is suggested that further amendments to Arrowtown objectives and policies in order to implement intensification through the rules, would require re-notification.

Is there a standard we could use to assist in retaining appropriate sunlight access?

[34] If some form of intensification is to be applied to Arrowtown, it would be appropriate to provide a direction for experts and other suitably qualified submitters to conference on an appropriate sunlight access provisions (or other urban design considerations in response).

[35] For instance, Justin and Louise Wright outlined that two-storey development pushed to the permitted limits of height and setbacks / coverage across the entirety of a site can have poor outcomes for neighbouring properties and an uncharacteristically-Arrowtown design. In response, they have suggested volumetric controls and that the area of a second storey could be limited to, for example, one third of the ground floor area.

Other points in reply

Accessibility

[36] As noted in Counsel's opening submission, Arrowtown performed relatively poorly in terms of accessibility in QLDC's modelling.

[37] In relation to transport constraints, the section 32 analysis stated:⁸

- (a) Intensification in appropriate locations means people can live close to where they work, shop or recreate or go to school. This can provide additional travel options and reduce private vehicle trips. Businesses can also access more potential workers, customers and other businesses.
- (b) The Arthurs Point bridge limits growth within the Arthurs Point area (north of the bridge) and half of the Arrowtown area.

⁸ At p. 29.

- (c) The Shotover Bridge limits growth in half of the Arrowtown area as well as the eastern urban areas of Queenstown (Eastern Corridor and Outer Wakatipu).

[38] When the Variation was first notified, it was justified by reference to hosting a **Supermarket, Public Transport and a Medical Centre**. Arrowtown is very light in respect of all of these facilities, and while public transport bus services have increased since notification, the medical centre is to be relocated to Frankton. Moreover, the Four Square is more in the nature of a convenience superette.

Proportion of commercial to residential zoning in Arrowtown

[39] In accordance with Policy 5, height and density is enabled to be commensurate with the level of accessibility to a range of commercial activities and services for a well-functioning urban environment. As submitted in opening submissions, commensurate means proportional or linked with, hence housing capacity enabled should be proportional to commercial activities.

[40] In order to ascertain that proportionality, the evidence required for Policy 5(a) assessment should provide an understanding of:

- (a) What is the Gross Floor Area (**GFA**) capacity of the commercial zoned land in Arrowtown.
- (b) What is the proportion of commercial to residential Activity for a well-functioning urban environment.
- (c) What is the GFA of residential building commensurate with the commercial zoned land in Arrowtown.

[41] As tabled by Justin and Louise Wright in the course of the hearing, this level of analysis has simply not been completed. The level of any additional further commercial and business capacity in the Town Centre Overlay is significantly curtailed and this has not been factored in when considering accessibility for any uplift in residential zones.⁹

⁹ Referencing plans tabled by the Wright's demonstrating residential houses in the Town Centre Overlay (not currently in commercial tenancy).


Variation outcomes

- [42] While the Variation is a direct response to Policy 5, it also is in pursuit of an overarching objective to achieve more affordable housing:¹⁰

The M.E modelling has identified that the proposal provides for a mix of housing typologies as well as providing for an increase in the commercial feasible capacity relating to attached, terrace and apartment housing compared to the status quo. This type of housing is generally more affordable (due to its smaller size and/or land size) and therefore is anticipated to go some way to providing greater housing affordability in the District.

- [43] There is simply no evidence in relation to Arrowtown that the density being increased will serve those intentions of generally more affordable housing outcomes. To the contrary, many submitters observed the outcomes of increased pricing of denser sections recently brought to market. If the statement above is to be applied across the urban environment as a trickle-down effect, rather than location specific, then the corollary is that density should equally be applied across an urban environment – as submitted above.

Dated: 25 August 2025



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¹⁰ QLDC s32 Evaluation Report at p. 89. Accessed at:
https://www.qldc.govt.nz/media/nuonhza2/s32_urban-intensification-variation-npsud-policy-5-plan-variation-final-for-notification-lhs.pdf