

**Before the Hearings Panel appointed by
the Queenstown Lakes District Council**

In the Matter of

the Resource Management Act 1991

And

In the Matter of

a proposed variation to the Proposed
Queenstown Lakes District Plan –
Urban Intensification Variation

**Memorandum of Counsel on behalf of
John O'Shea, Helen Russell, John
Russell and Mary-Louise Stiassny
(Submitter 198)**

Dated: 3 September 2025

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MAY IT PLEASE THE PANEL

1. We appeared at the Queenstown Lakes District Council (**QLDC**) Urban Intensification Variation (**UIV**) hearing on 27 August 2025 for John O'Shea, Helen Russell, John Russell and Mary-Louise Stiassny (**Submitters**).
2. At the conclusion of our presentation, the Panel directed us to file a Memorandum of Counsel that considered other examples where Objective and Policy support from Chapter 3 of the Proposed District Plan (**PDP**) is relied on for a particular rule rather than Objective and Policy support within the relevant zone chapter (in this case Chapter 8). We also briefly provide concluding comments on other examples of groundwater effects being managed by District Plans and lastly legal scope.

Reliance on Chapter 3 for Objective and Policy Framework

3. When asked for the basis of the Objective and Policy support for the relief sought by the Submitters, Counsel referred to Chapter 3, in particular Strategic Policy 3.3.20.
4. The Panel indicated a view at the hearing that *Chapter 8 – Medium Density Residential Zone* of the PDP does not contain policy support for the managing of environmental effects. The Panel therefore have asked for other examples where Objective and Policy support is contained in *Chapter 3 – Strategic Direction*, not Chapter 8 for a relevant rule.
5. We consider that the PDP is structured in a very intentional way that enables Objective and Policy support to be obtained from across the PDP, not just from the relevant zone chapter. The Structure of the PDP states the overarching role of Chapter 3 in the PDP, and the intention for it to “*provide direction for the more detailed provisions related to zones*”.¹
6. Chapter 3 of the PDP has the purpose of setting out “*the over-arching strategic direction for the management of growth, land use and development in a manner that ensures sustainable management*”.² This was confirmed by Judge Hassan in the Stage 1, Topic 1 decision on the QLDC Proposed

¹ Queenstown Lakes Proposed District Plan, Structure of the District Plan, 1.1B.

² Queenstown Lakes Proposed District Plan, Chapter 3, Purpose.

District Plan Review.³ We submit that the effect of Chapter 3 is to provide Objective and Policy support across the PDP.

7. As raised in oral submissions by Counsel, we consider that the following two Strategic Policies from Chapter 3 are squarely relevant to the Submitters' relief and provide policy support for effects on groundwater to be managed:

*Manage subdivision and / or development that may have adverse effects on the natural character and nature conservation values of the District's lakes, rivers, wetlands and their beds and margins so that their life-supporting capacity is safeguarded; and natural character is maintained or enhanced as far as practicable.*⁴

*That subdivision and / or development be designed in accordance with best practice land use management so as to avoid or minimise adverse effects on the water quality of lakes, rivers and wetlands in the District.*⁵

8. We submit that the policies within Chapter 3 provide the Panel with the policy support to recommend the Submitters' proposed relief as it relates to groundwater. The relief sought by the Submitters would enable the PDP to give effect to the National Policy Statement for Freshwater Management (**NPS-FM**) and National Policy Statement on Urban Development (**NPS-UD**).⁶ Both of those documents place obligations on Territorial Authorities including QLDC.
9. The Panel requested examples of other effects to be managed by the District Plan which are not specifically provided with policy support within the specific zone chapters of the District Plan but instead are provided with policy support in the *Chapter 3 - Strategic Direction* District Plan Chapter. There are several examples of this, including:
 - (a) effects on air quality;
 - (b) effects on biodiversity;
 - (c) landscape character; and
 - (d) natural hazards.

³ *Darby Planning Limited v Queenstown Lakes District Council* [2019] NZEnvC 133 at [4].

⁴ Queenstown Lakes Proposed District Plan, Policy 3.3.20.

⁵ Queenstown Lakes Proposed District Plan, Policy 3.3.25.

⁶ National Policy Statement for Freshwater Management, amended October 2024, Policy 3 & 7. National Policy Statement on Urban Development, amended May 2022, at [3.32(1)]. Resource Management Act 1991, Section 75.

10. In regard to effects on air quality and biodiversity, Strategic Policy 3.2.4.1 is relevant:

Development and land uses that sustain or enhance the life-supporting capacity of air, water, soil and ecosystems, and maintain indigenous biodiversity.

11. Within Chapter 8, there is no policy support for the management of effects on air quality or biodiversity. However, there are relevant matters of discretion Rule 8.5.12 within Chapter 8 related to indigenous biodiversity values.⁷ The policy support for that rule is contained in Chapter 3, not Chapter 8.

12. In regard to landscape character and visual amenity, Chapter 3 contains Strategic Policy 3.2.2.1(e):

Urban development occurs in a logical manner so as to:

...

protect the District's rural landscapes from sporadic and sprawling urban development;

13. Within Chapter 8, there is no policy support for the management of effects on landscapes or landscape character. However, there are relevant matters of discretion and rules related to landscape character in Rule 8.5.12 and 8.5.18.⁸ Again, the policy support for these rules is contained in the higher-level Strategic Chapters (Chapters 3 and 6), rather than Chapter 8.

14. As a final example, Chapter 3 contains Strategic Policy 3.2.2.1(d):

Urban development occurs in a logical manner so as to:

...

minimise the natural hazard risk, taking into account the predicted effects of climate change;

15. Additionally, natural hazards objectives and policies are contained in a separate chapter, Chapter 28.

⁷ Queenstown Lakes Proposed District Plan Rule 8.5.12.

⁸ Queenstown Lakes Proposed District Plan Rule 8.5.12, 8.5.18.

16. Within Chapter 8, there is no policy support for the management of natural hazards. However, natural hazards are a relevant matter of discretion within Rule 8.5.12 in Chapter 8.⁹ This example further demonstrates that the structure of the PDP operates in a way where the decision making within zone chapters does not necessarily rely on policy support within the specific zone chapter; the policy support can be obtained from higher level and district-wide chapters of the District Plan.
17. Further to our oral submissions, it is consistent with the structure of the PDP for Chapter 3 to provide the policy support for decision-making under the PDP without specific policy support being required in zone chapters.

Examples from other District Plans around New Zealand

18. Included below are further examples from other territorial authorities who have provided for explicit control over matters relating to groundwater in district planning.
19. Examples from the Subdivision, Development and Earthworks chapter of the Christchurch City Council Plan include:
 - (a) *significant natural and cultural heritage features, sites of Ngāi Tahu cultural significance identified in Schedule 9.5.6.1, and the quality of surface water and groundwater, will be protected;*¹⁰
 - (b) *ensure earthworks do not result in erosion, inundation or siltation, and do not have an adverse effect on surface water or groundwater quality;*¹¹ and
 - (c) *the extent of any potential adverse effects on the quality of groundwater and whether any such can be avoided or mitigated.*¹²
20. Examples from Appendix 1 - District Plan Administration – Matters of Discretion chapter of the Hamilton City Plan include:
 - (a) *Provide for the adequate control of stormwater, cater for natural groundwater flows, and avoid adverse effects from changes to natural water flows and established drainage paths.*¹³

⁹ Queenstown Lakes Proposed District Plan Rule 8.5.12

¹⁰ Christchurch District Plan, Policy 8.2.2.9.

¹¹ Christchurch District Plan, Policy 8.2.4.1.

¹² Christchurch District Plan, Matter of discretion 8.9.4.

¹³ Hamilton City Operative District Plan, Appendix 1, District Plan Administration - Matter of Discretion 1.3.3 F5 (iv).

- (b) *For new stormwater ponds and wetlands, the extent to which adverse effects of the works on adjacent private property are avoided in relation to: Flooding and adverse effects on groundwater levels.*¹⁴

21. We consider QLDC also have an obligation to manage these effects as a part of their responsibilities to manage the effects of use and development of land the RMA.¹⁵

Scope

22. The Panel queried whether the relief sought was within the scope of our submission.
23. The Resource Management Act 1991 (**RMA**) sets out a procedure for the right of submission.¹⁶ Submissions must fall within the ambit of the plan change, and persons directly or potentially directly affected by the additional changes proposed in the submission must have the chance to give an effective response to those additional changes in the plan change process.¹⁷
24. The Submitters' original submission (**Submission**) sought relief related to provisions that affect both the entire Medium Density Residential Zone and Lot 2 DP 18304, Lot 1 DP 18304 and Lot 3 DP 25998 in Wānaka (**Warren St Properties**). Through the evidence and hearing process, the proposed relief was refined to respond to Mr Thomas' technical evidence regarding potential groundwater effects.
25. The Submission squarely raises issues of the adverse effects of development on the Wānaka groundwater table, particularly relating to the lack of direct control over groundwater and the more specific risks to the Wānaka Aquifer from subdivision and development. This is reinforced throughout the relief sought, which expressly sought relief relating to matters of discretion for residential units throughout the whole of Medium Density Residential Zone (**MDRZ**) under Rule 8.4.10.
26. We submit that is that the specific *relief* sought by the original submission that defines the extent of the authority of the decision maker.¹⁸ The relief

¹⁴ Hamilton City Operative District Plan, Appendix 1, District Plan Administration - Matter of Discretion N5 Ruakura Open Space Zone.

¹⁵ Resource Management Act 1991, Section 31(1)(a).

¹⁶ Resource Management Act 1991, Schedule 1, Clause 6.

¹⁷ *Palmerston North City Council v Motor Machinists Ltd* [2014] NZRMA 519 at [82]-[83].

¹⁸ *Romily Properties Limited v Auckland City Council* A95/96, 8 November 1996 at pg 6.

sought in relation to a plan change must propose specific provisions to replace those that are alleged to be defective.¹⁹ Consistent with case law, we submit this specific relief in the Submission gives you scope, rather than general comments in the preface to the relief sought that should guide the Panel on the scope of available relief at hearing.

27. As noted above, the requested relief on Rule 8.4.10 sought additional matters of discretion for residential units are amended relates more widely to the entirety of the MDRZ and provides a more specific scope than the general statements made at paragraph 15 of the original submission which referred to the Warren Street Properties. We consider this provides the Panel with the necessary scope to implement the Submitters' amended relief presented at the hearing.
28. We consider that the proposed relief sought during the Submitters' hearing presentation is a natural progression of the concerns raised in the Submission and could reasonably be foreseen as a result of the submission. As in *Erin Estates Ltd*, the wording of the original submission was sufficiently wide to encompass potential amendment by the Council that went beyond the boundary of the properties.²⁰
29. QLDC specifically recognised the district wide relief sought by the Submitters in their summary of submissions, stating they oppose the following points of the submission:²¹
 - (a) *8.4.10: That the matters of discretion in the determination of resource consent applications for residential units are amended to include: impacts on the groundwater table, land stability, foundation design, earthworks and retaining design, and dewatering.*
 - (b) *That the proposed variations to the Rule does not manage or mitigate for the relevant matter of concern and does not go far enough to recognise the risk to the Aquifer (rather than just stormwater) and therefore avoid significant adverse effects from the development on the groundwater table within the MDR Zone. (our emphasis added)*
30. QLDC's own Summary of Submissions document consistently therefore describes the relief sought in the Submission as relating to the whole of the

¹⁹ *Leith v Auckland City Council* A34/95, 28 April 1995 at pg 11.

²⁰ *Erin Estates Ltd v Dunedin City Council* [2001] ELHNZ 20 at [15].

²¹ Queenstown Lakes District Council, Urban Intensification – Summary of Decisions Requested 16 May 2024, Submitter 198.

MDRZ. This is consistent with our submission made at the hearing that all relief sought during the hearing is in scope with these original points of submission.

31. Potentially affected persons within the MDRZ had an opportunity to comment through the further submissions process on what were express provisions in the “relief sought” section of the original submission.²²
32. Additionally, the submission of Friends of Bullock Creek (Submitter 450) contains broad relief opposing the Intensification Variation as a whole due to concerns about intensification in proximity to Bullock Creek and effects on groundwater.²³.

Dated this 3rd day of September 2025



Joshua Leckie
Counsel for Multiple Queenstown Submitters

²² *Palmerston North City Council v Motor Machinists Ltd* [2014] NZRMA 519 at [91].

²³ Submission, Friends of Bullock Creek dated 5 October 2023 at [4].