

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

Under the Resource Management
Act 1991

In the matter of the Urban
Intensification Variation
to the proposed
Queenstown Lakes
District Plan.

LEGAL SUBMISSIONS ON BEHALF OF

WARWICK & MARIE OSBORNE (SUBMITTER #1258)

8 August 2025

MACTODD LAWYERS

Barristers, Solicitors, Notaries

Level 2, Remarkables House

26 Hawthorne Drive, Frankton

Queenstown 9300

P O Box 653, DX ZP95001, Queenstown 9348

Telephone: (03) 441 0125

Solicitor Acting: Jayne Macdonald

Email: jmacdonald@mactodd.co.nz

Introduction

1. These legal submissions are presented on behalf of Warwick and Marie Osborne, who reside at 33 Suburb Street, Queenstown.¹
2. Mr Osborne has also filed a statement of lay evidence dated 8 July 2025. While not expert evidence, it is unfortunate that it appears to have been given no consideration at all in the Council's rebuttal evidence.

The submission and Mr Osborne's evidence

3. In summary, Mr & Mrs Osborne's submission is that the variation as notified should not be applied to their property, and the other properties in the vicinity of Panorama Terrace.²
4. The Osborne's are concerned that the variation will not deliver the residential housing opportunities in the High Density Residential (**HDR**) zones throughout the district as promoted by the variation, and that visitor accommodation (**VA**) activities will outcompete residential, bringing with them greater adverse effects on amenity which is an unintended consequence of the variation.
5. They see the trend of increased development of VA in the HDR zone continuing and being encouraged and enabled to a greater degree, to the detriment of the provision of a range of housing typologies to meet housing demand. In short, the variation *will not* result in more residential opportunities and more diverse housing choice while supporting housing affordability in the HDR zone.
6. A further concern of significance to the Osborne's are s7(c) amenity effects. The HDR zoning spanning 1 - 17 Panorama Terrace in particular will not maintain or enhance amenity values. 16.5m high buildings in this location on the aptly named dress circle location of **Panorama** Terrace will obliterate views out towards and across the Lake and beyond to the mountains.

¹ Submitter #1257. Their property is located on the corner of Suburb Street and Panorama Terrace.

² The submission identified the properties at 1- 17 Panorama Terrace, 26-34 Suburb Street and 7 – 13 Dublin Street as being downzoned to LDSR from the notified HDR.

7. Quoting from the evidence of Mr Edgar:³

*Policy 6 acknowledges that in achieving the purpose of the NPS the amenity values of existing residents may have to be sacrificed for the greater good and to support and provide for the well-being of the wider community and future generations....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 are achieved.*⁴

8. For the reasons set out in Mr Osbornes evidence,⁵ the edge of the current HDR zone boundary (at the change in elevation between Panorama Terrace and Frankton Road being a natural topographical point demarcating HDR (which in this location is mostly large-scale visitor accommodation fronting Frankton Road) and residential development) remains a logical boundary in this specific location.
9. In this regard, while MDR zoning at 1- 17 Panorama Terrace is not the preferred relief for the Osborne's, a MDR zoning outcome is also an option available to the Panel on the evidence. Mr Wallace responding to a request to upzone the land opposite 1 - 17 and on the other side of Panorama Terrace as HDR gives the opinion that:⁶

*15.32 Submissions 97 and 1077 seek to extend the HDRZ to cover properties located along the northern edge of Panorama Terrace (numbers 4-18 as well as 33 Suburb Street) north-east of the QTC. The primary rationale was having buildings of different heights on opposite sides of the road would result in poor character and amenity outcomes for residents. **This area sits at the edge of the more accessible land identified around the QTC.***

*15.33 Ultimately a line needs to be drawn somewhere and, in my opinion, it is preferable to **utilise natural boundaries** such as roads, parks, streams or **steep topography** as opposed to utilising property boundaries which tends to create issues around recession planes when adjoining lower intensity zones. **Utilising natural boundaries helps to provide for a physical transition in building forms and scale**, and is a common approach adopted across New Zealand planning documents. I note that the enabling framework as they relate to heights does not mandate conformity in building height, as such single storey buildings adjacent to two, three, four of five buildings is not an unanticipated outcome of the zone*

³ Scott Edgar at [64]

⁴ At [64]

⁵ At [37] – [39]

⁶ At [15.32] – [15.33]

framework nor does it give rise to adverse character and amenity outcomes. Rather it is a common and mundane reality of intensifying urban environments. As such, based on the accessibility and demand analysis I have undertaken and the discussion above I do not support the requested relief of Submissions 97 and 1077.

(emphasis added)

10. As is evident from Mr Wallace's evidence, the boundary of the MDR and HDR in this location is not a precise science for intensification planning purposes.⁷ The 'edge of accessibility' is noted in terms of HDR v's MDR. On closer analysis (which does not appear to have occurred in response to Mr Osborne's evidence), a better option if the land at 1 – 17 Panorama Terrace is not to be returned to LDSR, may be a MDR zoning. This outcome, again while not preferred, would undoubtedly go some way to address the Osborne's concerns with amenity so far as the greater enablement of visitor accommodation and height (12m v's 16.5m), noting the MDR zone provides a less enabling regime for visitor accommodation development.
11. The Osborne's submission is that applying the variation in a modified form (change in zoning to LDSR or MDR in this location) will still ensure the variation gives effect to the NPS when read overall in light of both Policy 5, and particularly in the context of the variation generally contributing to significant 'excess policy 2 capacity'.⁸
12. Policy 5 is not rigid in its application to Tier 2 (**T2**) authorities such as QLDC. It provides *flexibility* for the way in which T2's respond to intensifying urban environments commensurate with the greater of accessibility or relative demand. T2 authorities are not under the same obligations as Tier 1 authorities to provide for intensification and are not constrained by the same requirements. The concept of 'qualifying matters' (**QM's**) does not apply to T2 authorities.
13. It is submitted that the obligation to 'give effect' to the NPS is to the instrument as a **whole**, not just to policy 5.

⁷ See also Council's opening submissions at [2.6]

⁸ QLDC Memorandum in response to Minute 4

Policy 2 sets a minimum requirement, not a mandate for excess

14. Policy 2 of the NPS requires local authorities to:

“At all times, provide at least sufficient development capacity to meet expected housing and business land demand over the short, medium, and long term.”

15. This policy establishes a *minimum requirement*, not a directive to provide unlimited or **unnecessary** excess capacity.

16. The evidence as I understand it, is that across the district, the current planning framework already enables a quantum of development capacity that significantly exceeds projected demand, as evidenced in the most recent Housing and Business Development Capacity Assessment (**HBA**). Accordingly, the obligation under Policy 2 is already *fully satisfied*.⁹

Policy 5 requires proportionality, not blanket intensification

17. Policy 5 states:

“Regional policy statements and district plans enable heights and densities of urban form commensurate with the level of accessibility by existing or planned active or public transport or the relative demand for housing and business use in that location.”

18. The key word here is *“commensurate”* — meaning *proportionate or corresponding in scale*.

19. This provision does not create a blanket obligation to intensify across the urban environment. Rather, it requires planning responses to be tailored to local conditions, including in my submission, actual and forecast housing demand and transport accessibility.

⁹ The appears to be acknowledged by the Council in their memorandum of 25 July 2025, where at [25] it is stated that the purpose of the variation is not to respond to a shortfall in overall development capacity in the short, medium or long term under Policy 2.

20. Where development capacity already significantly exceeds demand, and where no material change in accessibility has occurred or is planned, further intensification would not be commensurate with those circumstances. It would go beyond what policy 5 reasonably requires or contemplates. I submit (as others have done) that policy 5 must be read in the overarching context of the NPS, which intends to enable growth by requiring local authorities to ultimately provide sufficient development capacity.
21. In this regard, the NPS creates 3 tiers of local authority which have different levels of prescription applied through the NPS policy framework.
22. These have been canvassed in other submissions, but it is noteworthy to emphasise that T2 authorities have no prescriptive policies around zoning, heights or densities, which does suggest a more flexible approach in implementation of the NPS and policy 5 in particular.
23. The Council's s32 report acknowledges that a range of heights and density options could be suitable to achieve policy 5 of the NPS.
24. The purpose of the NPS is to facilitate well-functioning urban environments, not to require councils to enable supply indiscriminately or in a manner that undermines strategic planning objectives.

A staged and evidence-led approach is consistent with the NPS

25. One approach that does not appear to have been considered is that the NPS does not prevent councils from adopting a staged approach to zoning, where further intensification is only considered once the existing surplus capacity is taken up or becomes demonstrably insufficient.
26. It is submitted that such an approach is entirely consistent with the objectives and policies of the NPS, including the core obligations under policies 2 and 5. In my submission, the directions under policies 2 and 5 must be read together, not separately as the Council has done here. It seems to make little logical sense that we are effectively told to set to one side district plan provisions that provide more than sufficient plan enabled capacity to meet demand in all locations in the District

(and associated infrastructure planning and funding work to service the same), and now go off and embark on a plan change to provide even greater intensification which is directed to enabling long-term patterns of housing.¹⁰

27. In a situation such as this, for a T2 authority, where the current planning framework already provides development capacity that materially exceeds forecast demand, further upzoning or intensification is not required under either policy 2 or policy 5 of the NPS.

28. Following on from this, rather than prematurely upzoning, a staged and evidence-based approach would allow:

- Future capacity to be enabled where it *will actually address affordability*;
- Infrastructure investment and zoning to be aligned; and
- Council to tailor responses to local need (e.g. by using inclusionary zoning, density bonuses, or other tools alongside zoning). This has already worked well in parts of the district, but more targeted measures are required and will be a significant lost opportunity as a consequence of this variation.

29. This approach also aligns with:

- The **purpose of the RMA** (s 5) — enabling people to provide for their wellbeing sustainably;
- **NPS Objectives 1, 2 and 6**; and
- **Policy 1**, which defines a "well-functioning urban environment" as one that:

"Has or enables a variety of homes that meet the needs, in terms of type, price, and location, of different households."

22. It is submitted that further upzoning in this context not only exceeds what the NPS requires, but also risks *foreclosing future opportunities* to enable capacity in a more targeted, deliberate way - in locations and forms that better address housing affordability and community need, *rather than simply housing quantity*. Once additional capacity is enabled, it becomes difficult to reverse or refine. This risks locking in an urban form that is poorly aligned with infrastructure, market

¹⁰ Adopting the terminology from the Council's 25 July Memorandum at paragraph 5.

feasibility, or affordability outcomes, and in my submission goes a long way to undermining the delivery of a well-functioning urban environment, as described in Objective 1 and Policy 1 of the NPS.

Amenity values – s7(c) to maintain or enhance and the unintended consequence of the greater enablement of visitor accommodation

30. s7(c) requires that particular regard shall be given to the maintenance and enhancement of amenity values. Policy 6 of the NPS recognises that the amenity that current residents experience may change. That does not however prevent amenity considerations altogether which in my submission are a component of Objective 1 that *New Zealand has well-functioning urban environments*.

31. While it is accepted that intensification under policy 5 refers to both residential and business land, it is noteworthy that the issues that the variation seeks to address in giving effect to the NPS are focused on enabling the development of a diverse range of housing typologies to provide greater housing choice and affordability.¹¹

32. Here, Mr Edgar’s evidence is particularly relevant in considering policy 6 of the NPS and the balance to be achieved in providing for intensification and amenity values.¹² He opines that the variation significantly alters the nature of the HDR zone without adequately assessing the effects of those changes in terms of achieving the objectives of the variation and the NPS UD itself.¹³

33. A site responsive approach is not out of place in this variation to manage change, while at the same time allowing for housing diversity and without significantly undermining the amenity values that residents enjoy and which befit the aptly named street address of *Panorama Place*. I agree with others who have submitted before me that significant recognition should be given to lay evidence regarding the amenity values that are important, and how those values can be protected.

¹¹ s32 report at Part 5.2

¹² From [22]

¹³ At [34] and [41]

34. The section 32 report explains that the variation is intended to:

- (a) Provide for increased heights and densities, which will encourage the development of smaller and attached housing typologies which typically have a smaller land area;
- (b) Ensure adequate amenity values within intensification areas;
- (c) Ensure that development can be serviced and to mitigate any potential increases in stormwater runoff; and
- (d) Provide greater housing affordability.¹⁴

35. While not the Osborne's preference, a form of modified relief to a MDR zoning in this location could adequately provide for these outcomes, while achieving an appropriate balance with the maintenance of amenity values and the other objectives of the NPS. In this regard a MDR zoning would produce an outcome that:

- (a) Provides for multiple housing typologies within this location;
- (b) Will remove the risk of the unintended consequence of visitor accommodation developments taking up the increased development opportunity;
- (c) Provide the potential for an increase in housing supply which may assist to with housing affordability.

36. The significance of the adverse effect of the variation on the Osborne's amenity, particularly views, are illustrated by the cross sections included with Mr Osborne's evidence. Again, with reference to Mr Edgar's evidence¹⁵ if the provisions of the variation do not give effect to the NPS, then Policy 6 cannot be relied upon to justify the significant changes to residential amenity that are likely to occur as a result of the variation.

37. As Mr Osborne opines, the variation is significantly altering the intended outcomes for the HDR zone and while it is being progressed on the basis that it will enable more residential opportunities and more diverse housing choice while supporting housing affordability, the changes to the HDR zone favour visitor

¹⁴ s32 page 1 and 6

¹⁵ At [62], [64]

accommodation which is highly likely to outcompete residential intensification and have the opposite effect.

38. The variation will result in the very real potential for a substantial VA development on any one or more of the land holdings at 1-17 Panorama Terrace to a height of 16.5m, with no matters of discretion related to residential amenity with respect to increased development capacity. There is no striking of any balance between urban intensification and amenity values in this development scenario.
39. In this context it is submitted that amenity values will be significantly affected beyond any level of change or 'evolution' that might have been anticipated (or justified) by the NPS. The variation, at least so far as the HDR zone is concerned, will not significantly contribute to housing, will not improve competitive land and will have unintended consequences such as the delivery of VA at the expense of residential housing.

Dated 8 August 2025



Jayne Macdonald

Counsel for Warwick and Marie Osborne