

Before an Independent Hearings Panel
Appointed by Queenstown Lakes District Council

under: the Resource Management Act 1991

in the matter of: Submissions and further submissions on Queenstown
Lakes Proposed District Plan 2023

and: Urban Intensification Variation

and: **Bush Creek Investments Limited**
(Submitter 777 and Further Submitter 1342)

Legal Submission of Bush Creek Investments Limited

Dated: 23 August 2025

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LEGAL SUBMISSIONS OF BUSH CREEK INVESTMENTS LIMITED

- 1 We represent Bush Creek Investments Limited (*BCIL*)¹ in relation to its submission on the Proposed Queenstown Lakes District Plan (*PDP*): Urban Intensification Variation (*Variation*).
- 2 BCIL has interests in the block of land at 11 – 31 Bush Creek Road, Arrowtown (*BCIL Land*). The BCIL Land is zoned General Industrial and Service (GIS) Zone in the PDP. The PDP zoning is not subject to appeals; therefore, the PDP objectives, policies and rules are deemed operative for the BCIL Land.
- 3 BCIL's original submission sought to have the BCIL Land included in the Medium Density Residential (*MDR*) Zone at Arrowtown (as amended by the Variation). However, **Mrs Clouston's** planning evidence considers that Business Mixed Use (*BMU*) would be more appropriate. This alternative relief remains within the scope of the original submission and further submission and the relief requested in them (*Submissions*).²
- 4 Planning evidence to support the relief sought is provided by **Mrs Clouston**. These legal submissions largely focus on addressing whether the relief sought is within the scope of the Variation.
- 5 Counsel recently addressed the Panel on the issue of the scope of the Variation when appearing for Carter Group Limited/Centuria Limited in relation to the Queenstown PC50. Accordingly, these submissions do not repeat that legal and policy analysis. Instead, these submissions refer to and rely upon the relevant aspects of those earlier submissions insofar as they pertain to the specific factual context of the BCIL Submissions. matter. For ease of reference those submissions are reattached as Appendix A and Appendix B.

THE QUEENSTOWN INTENSIFICATION VARIATION & THE BCIL LAND

- 6 The purpose of the Variation is discussed in **Appendix A** at paragraphs [7] – [10]. The QLDC has stated that the focus of the Variation is on giving effect to Policy 5 of the NPS-UD by enabling intensification in suitable locations within the urban environment.³

¹ Submitter 743 and Further Submission 1362.

² Original Submission states: "*BCIL seeks the following decision from the local authority: That the Variation be amended as requested in the submission, together with any alternative, additional, or consequential relief necessary or appropriate to give effect to the matters raised in this submission and/or the relief requested.*"

³ Opening legal Submissions for Queenstown Lakes District Council, Urban Intensification Variation (25 July 2025) at [2.1].

- 7 The Public Notice for the Variation notes that:⁴

"This proposal seeks to amend the PDP by increasing heights and densities in some zones in the Urban environment as well as rezoning land close to the commercial areas in Queenstown, Frankton and Wānaka to enable intensification of development. The proposed variation also includes amendments to planning provisions to recognise the benefits of intensification; to ensure adequate amenity values are provided for within intensification areas; and to ensure that intensification can be serviced."

- 8 Paragraph [1.16] of Appendix 1 of the Council's Opening Legal submissions further notes that the urban areas of rezoning include areas of land within Arrowtown.
- 9 **Ms Clouston** discusses the site context in paragraphs 7-14 of her evidence. She notes that the BCIL Land is well located and adjoined by residential townhouses to the south (Essex Avenue) and numerous established small businesses along Bush Creek Road.
- 10 There appears to be no dispute that the BCIL Land falls within the Queenstown Tier 2 'urban environment' as defined under the NPS-UD. In the Section 42A Report, **Ms Bowbyes** observes that the NPS-UD applies to 'urban' areas.⁵ Noting that the term 'urban environment' is defined as 'part of a housing or business market of 10,000 people or more', which effectively results in Arrowtown (along with much of the District) being treated as a suburb of the Queenstown 'urban environment'.
- 11 As noted by **Ms Clouston**, the GIS zone provisions are contained within 'Part Three: Urban Environment' of the PDP.⁶ Other zones within the PDP that fall under the 'urban environment' include the 'Arrowtown Town Centre Zone' and the 'Business Mixed Use Zone'.
- 12 Accordingly, there is no apparent disagreement between BCIL and the Council that the relief sought by BCIL in its Submissions pertains to an urban area within the Tier 2 'urban environment' and seeks rezoning from one urban zone to another.

ALIGNMENT OF THE SUBMISSION WITH THE PURPOSE OF THE VARIATION

- 13 The statutory and policy framework relevant to the purpose of the Variation is discussed in **Appendix A** in paragraphs [16] – [47].

⁴ Public Notice dated 24 August 2023.

⁵ Section 42A Report of Ms Clouston at [51] – [52]

⁶ Evidence of Ms Charlotte Clouston dated 22 August 2025 at [23].

- 14 The Original Submission explicitly addresses the issue of scope with particular reference to Policy 5 of the NPS-UD and the Spatial Plan which promotes a compact urban form and increased densities.
- 15 As now suggested by **Ms Clouston**, the BMU zoning would appropriately provide for a mixture of residential and non-residential uses, in close proximity to Arrowtown Centre and the existing commercial activities within the Bush Creek area.⁷

National Policy Statement of Urban Development 2020

- 16 It is necessary to consider the appropriate zoning of all land within the urban environment, including the BCIL Land, in the implementation of Policy 5 of the NPS-UD.
- 17 The Arrowtown community is currently grappling with the most appropriate means of implementing Policy 5. The relief sought in the Submissions provide an opportunity to achieve the community's aspirations to manage the scale and density of development within existing residential neighbourhoods, whilst still providing for intensification of land for principally residential purposes. This approach seeks to balance the need for increased housing supply with the preservation of Arrowtown's established character.
- 18 The BCIL Land is not appropriate for industrial development as directed under the alternative option of the notified PDP zoning. This is due to its proximity to residential uses (which would require significant setbacks) and its location within the Arrowtown Village, making residential intensification a more suitable and contextually appropriate outcome.

Policy 5 of the NPS-UD

- 19 Policy 5 of the NPS-UD requires that Tier 2 Urban Environments enable heights and density of urban form commensurate with the greater of the legal accessibility or relative demand for housing and business use in that location.
- 20 The Accessibility and Demand Analysis⁸ (ADA) commissioned for the Variation included a review of the accessibility of the land within the Urban Growth Boundaries (UGB). It recommended the option of commercial centres (including Arrowtown Town Centre) being strengthened through the upzoning of the land surrounding the centre. This is also what is reflected in the public notice.
- 21 With regard to accessibility, while the ADA conducted in May 2023 initially concluded that Arrowtown did not have good access to a wide range of employment opportunities within a 45-minute journey by walking, cycling, or public transport, there have since been

⁷ Evidence of Ms Charlotte Clouston dated 22 August 2025 at [26] – [28].

⁸ *Method Statement – Accessibility & Demand Analysis – NPSUD Policy 5* (Barker and Associates Limited, 16 May 2023).

significant improvements in local land use and transport infrastructure that have enhanced accessibility.

- 22 As noted by **Ms Clouston**⁹ it is now well-connected to Arrowtown and nearby centres by improved public transport, walking and cycling paths, and road access. Recent additions of local businesses and a nearby bus stop have increased employment opportunities and accessibility, making the area more suitable for development than previously assessed. Overall, these changes enhance the BCIL Land's connectivity and support its potential for more intensive land use.
- 23 Regarding demand, the ADA indicates that removing development barriers, such as increasing building heights, can boost land values and redevelopment feasibility. The BCIL Land has a high land value to capital value ratio, signalling strong potential for intensification.¹⁰ Recent additions of local businesses and improved transport links, which were not considered in the original analysis, further increase demand and accessibility in the area. The mixed-use nature of Bush Creek Road creates a local centre offering amenities and employment close to residents.
- 24 While there are community concerns about increased density within existing residential zones, the BCIL Land is well-suited for higher-density development, such as duplexes or apartments, due to its location and existing nearby high-density housing, without compromising the character of established residential areas.
- 25 **Ms Clouston** considers the BMU as the most suitable zone for the BCIL Land,¹¹ as it would support greater intensification in line with nearby residential and commercial activities. The site can accommodate increased building height and density without impacting the character of existing residential zones, addressing community concerns. Such zoning would enable more diverse housing types and support a well-functioning urban environment. The BCIL Land's location and current context make it appropriate for BMU rezoning, and there are no known constraints preventing this change.

The Spatial Plan

- 26 The Spatial Plan promotes a compact urban form, and the BCIL land is geographically connected to other urban-zoned land in Arrowtown, particularly in the Bush Creek and Butel Park neighbourhoods. The BCIL Land represents a logical, incidental, and consequential extension of the existing urban area.

⁹ Evidence of Ms Charlotte Clouston at [31] – [42].

¹⁰ Evidence of Ms Charlotte Clouston at [43] – [48].

¹¹ Evidence of Ms Charlotte Clouston at [49] – [55].

- 27 Granting the relief sought in the Submissions will 'unlock' significant residential potential, consistent with the objectives of the Variation. The land is appropriately located to support growth without exacerbating urban sprawl. Its close proximity to existing communities provides opportunities for more efficient public transport and the effective use of existing reticulated infrastructure.
- 28 In summary, the proposed rezoning of the BCIL Land aligns with Policy 5 of the NPS-UD and its broader directive for managed intensification and the Spatial Plan's vision for a compact, connected urban form. Rezoning the BCIL Land supports the purpose of the Variation.

THE SUBMISSION WITHIN 'SCOPE' OF THE VARIATION

- 29 The legal framework related to 'scope' is discussed in **Appendix A** in paragraphs [48] – [53] with further relevant case law outlined in **Appendix B**.
- 30 We generally agree with the summary of legal principles in the Council's opening legal submissions as to whether a submission is "on" a plan change.¹² However we disagree with the Council's application of those principles to the BCIL Land.
- 31 The Council has stated that even though the Submissions relate to land which is within the UGB and already subject to a PDP urban zone, the IGS zone (including the BCIL Land) is not within the scope of the Variation, as no changes were proposed to this zone (so no change can occur to the status quo).¹³
- 32 This assessment incorrectly applies the relevant caselaw and fails to make an assessment of scope in the context of the Variation, including relevant changes (i.e. since the ADA was conducted in 2023). It is essential to record that the answer to the scope question is required to be evaluated in the particular circumstances of the Variation and the Submissions.
- 33 In the S42A Report **Ms Bowbyes** also comments that the BCIL Land is outside the scope of the Variation, as the zoning was reviewed during Stage 2 of the PDP and previous attempts to rezone it for mixed use were unsuccessful. However an appeal process relating to an earlier, now-settled plan change cannot be relevant to determining the legal scope of the current Variation.

¹² Opening legal Submissions for Queenstown Lakes District Council, Urban Intensification Variation (25 July 2025) at [4.3] and Appendix 1.

¹³ Opening legal Submissions for Queenstown Lakes District Council, Urban Intensification Variation (25 July 2025) at [4.15-4.16].

The first limb – the Submission falls within the ambit of the Variation

- 34 As noted in paragraphs [54] – [67] of **Appendix A** the purpose of the Variation is broad and it seeks to facilitate greater intensification and a more responsive urban planning framework.
- 35 Given this broad purpose of the Variation, submissions that propose reasonable and appropriate methods to achieve these objectives—such as the rezoning of the BCIL Land to BMU—are well within the scope of the Variation.
- 36 As noted above, the relief sought by BCIL in its Submissions pertains to an urban area within the PDP, specifically within the Tier 2 ‘urban environment’, and seeks rezoning from one urban zone to another. Enabling greater intensification is squarely in alignment with Policy 5 of the NPS-UD.
- 37 Contrary to what has been suggested by the Council, it would be inappropriate to limit the scope of the Variation to what was expressly notified (i.e. the status quo), as this would restrict the ability of submitters to suggest alternative and potentially more effective ways of implementing the Variation’s objectives. To this end, case law has established a presumption that where the purpose of the RMA and the objective and policies ‘*can be met by a less restrictive regime, that regime should be adopted*’.¹⁴
- 38 The rezoning of the BCIL Land to BMU is both consistent with the intent of the Variation and supported by planning principles on which the Variation is based.

Section 32 Assessment

- 39 The Council’s Section 32 assessment included the BCIL Land in its review of Arrowtown, as this land is within the PDP urban area, but did not consider rezoning options for this site or nearby areas due to the conclusions within the ADA discussed above.
- 40 Given recent changes and increased development potential since 2023, the omission of a rezoning assessment for the BCIL Land was a deficiency in the Section 32 assessment that should have been addressed.
- 41 Processing of the Variation has brought to light additional relevant information. As is customary, both the hearing process and the requirements of section 32AA of the RMA will further supplement and refine the current section 32 assessment. Within her evidence,

¹⁴ Wakatipu Environmental Society Inc v Queenstown Lakes District Council ENC Christchurch C153/2004, 21 October 2004 at [56]. In 2017, the Environment Court confirmed that this remains the correct approach following amendments to s 32 of the Resource Management Act 1991 in Royal.

Ms Clouston has made further comments with respect to Section 32AA matters.¹⁵

The second limb – potential prejudice to other parties

- 42 The second limb is discussed in paragraphs [68] – [74] of **Appendix A**.
- 43 There is no material risk of prejudice in considering the Submissions seeking the rezoning of the BCIL Land as being 'on' the Variation. Spatially, the Submissions concern land already located within the existing urban area identified in the PDP, and the BCIL land meets the requirements of Policy 5 of the NPS-UD with respect to accessibility and demand.
- 44 The public notice and associated documentation for the Variation clearly identified the potential for rezoning land within Arrowtown, and the BCIL Original Submission was specifically referenced in the Council's summary of submissions. As a result, potentially affected parties would have been reasonably alerted to the prospect of the BCIL Land being considered for urban rezoning through the Variation to give effect to the NPS-UD.
- 45 While the relief now requested differs from that initially sought, the alternative relief remains within the scope of the Original submission.
- 46 The requested zoning changes for the BCIL Land are consistent with the zoning pattern promoted under the Variation, and there are no significant constraints, such as overlays or servicing issues, affecting the site. Accordingly, the inclusion of the BCIL Land is reasonably foreseeable and amounts to an incidental or consequential extension, rather than a 'submissional side-wind'.
- 47 This approach aligns with established case law, which recognises that previous planning exercises are relevant in determining the scope of changes that can reasonably be anticipated through a variation process of this nature.

Conclusion

- 48 We thank the Panel for the opportunity to provide these submissions.

JM Appleyard/Tallulah Parker

¹⁵ Evidence of Ms Charlotte Clouston at [59] – [61.1-61.8].

