

**BEFORE THE HEARINGS PANEL  
APPOINTED BY THE QUEENSTOWN  
LAKES DISTRICT COUNCIL**

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**Under** the Resource Management Act 1991

**In the matter of:** the Inclusionary Zoning Variation to the Propose  
Queenstown Lakes District Plan

**and** **Trojan Helmet Ltd, Boxer Hill Trust  
(Submitters 181) and Gibbston Valley Station  
Ltd (Submitter 168)**

Planning Evidence of Brett James Giddens

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21 December 2023



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1. **INTRODUCTION**

- 1.1 My full name is Brett James Giddens.
- 1.2 I am the Managing Director of Town Planning Group (NZ) Limited, a resource management and planning consultancy established in 2006 that provides planning and resource development advice to private clients, local authorities and government agencies New Zealand-wide.
- 1.3 I hold a Bachelor of Science in Geology from the University of Canterbury and a Master of Applied Science in Environmental Management from Lincoln University. I am an Associate of the New Zealand Planning Institute, a member of the New Zealand Resource Management Law Association, and a member of the Urban Design Forum of New Zealand.
- 1.4 I have over 21 years' experience as a practicing planner in New Zealand, with a focus on statutory planning, environmental assessment, policy development and analysis, and consenting. I am regularly engaged as an expert planning witness before Council hearings and the Courts. I have been involved in numerous district and regional plan change processes throughout New Zealand, in addition to large scale rezoning and consenting for urban development.
- 1.5 I have a working knowledge of the Queenstown Lakes Proposed District Plan (**PDP**) and have worked extensively in the district through my planning career. Some examples of relevant project experience include:
- (a) Numerous plan changes/variations to the former Operative Queenstown Lakes District Plan, including Plan Change 24 (Affordable Housing) as well as Stages 1, 2 and 3 of the PDP (and its variations, including more recently Ladies Mile, Urban Intensification and the Landscape Schedules);
  - (b) A large number of site evaluations and designations around New Zealand for the Ministry of Education since 2011, of note is that these projects include detailed evaluation of urban

areas and growth patterns as part of building the options business case for new schools in (mostly) urban areas;

- (c) Gibbston Valley Resort, including the development of the zoning through the PDP review and appeals process, through to consenting and implementation of land use and subdivision developments;
- (d) Plan Change 14 to the Central Otago District Plan, a plan change to enable a rural residential development of around 160 lots in Cromwell;
- (e) Silver Creek subdivision on Queenstown Hill, an urban subdivision that is under development that will provide for around 700 households;
- (f) Land Use Recovery Plan Action 21 to amend the Waimakariri District Plan relating to the establishment of papakāinga housing at Māori Reserve 873 at Tuahiwi;
- (g) Plan Change 60 to the Operative Christchurch District Plan (Spreydon Lodge) to rezone around 180ha of rural land to urban; and
- (h) The review of the Christchurch District Plan for numerous landowners and developers post-earthquake, and subsequent Plan Changes 4 (Short Term Accommodation), 5 (Commercial), 13 (Heritage) and 14 (Urban Intensification).

## 2. **CODE OF CONDUCT**

- 2.1 Although this is not an Environment Court hearing, I confirm that I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2023 and have complied with it in preparing my evidence. I confirm that the issues addressed in this statement of evidence are within my area of expertise, except where I state that I am relying on the opinion or evidence of other witnesses. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

### 3. **SCOPE OF EVIDENCE**

3.1 I have been asked by Trojan Helmet Ltd, Boxer Hill Trust and Gibbston Valley Station Ltd (collectively referred to as **the Submitters**) to provide planning evidence with respect to the Inclusionary Zoning Variation to the PDP (**Variation**).

3.2 As set out in their respective submissions, the Submitters oppose the Variation. A copy of the submissions are contained in my **Annexure A**.

#### Trojan Helmet Limited

3.3 Trojan Helmet Limited (**THL**) owns approximately 162 hectares of land located between McDonnell, Arrowtown Lake Hayes and Hogans Gully Roads. The land is zoned 'Hills Resort Zone' (**HRZ**) which is a bespoke zone that principally provides for onsite visitor activities and visitor accommodation, along with a limited amount of residential activity (up to 66 units), plus accommodation for resort workers. The HRZ framework was confirmed by the Environment Court in 2021. The zone framework is contained in Chapter 47 of the PDP and includes an objective and a comprehensive suite of policies and rules which together govern development outcomes for the resort. Presently the resort comprises golf courses, including a championship 18-hole course, a clubhouse and associated maintenance activities. Construction of the visitor accommodation and residential components of the resort has not yet occurred, although I understand that the planning work for these components is underway.

#### Boxer Hill Trust

3.4 Boxer Hill Trust (**BHT**) owns approximately 8.4ha of Wakatipu Basin Lifestyle Precinct (**WBLP**) zoned land located immediately adjacent to the HRZ and the Arrowtown Retirement Village. The WBLP zoning was recently confirmed by the Environment Court ([2023] NZEnvC 200) and provides for the establishment of up to 8 dwellings (at a density of 1 dwelling per hectare), subject to a restricted discretionary consent being obtained for the subdivision to create the residential lots, with a subsequent consenting process then

required in order to establish a dwelling. A focus of the WBLP consenting process is landscape impacts, such that residential development on the site is not a foregone conclusion. The site is currently bare and used as a driving range in association with golf activities within the adjacent HRZ. BHT also owns approximately 19.6 ha of land on the corner of Arrowtown Lake Hayes and Hogans Gully Roads. This land is presently zoned Wakatipu Basin Rural Amenity Zone (**WBRAZ**). While the WBRAZ is not captured by the Variation as notified, BHT has a live appeal on the PDP through which it seeks a WBLP zoning. The WBLP is captured by the Variation as notified. This land is also currently bare (bar a haybarn) and is used for some limited farming activities.

- 3.5 THL and BHT have made a submission (Submitter 181) and further submission on the Variation, in which they oppose the Variation in its entirety. As alternative, secondary relief, they seek that resort zones and rural zones, including the WBLP, are excluded from the Variation.

#### Gibbston Valley Station Ltd

- 3.6 Gibbston Valley Station Ltd (**GVS**) own a large 330 hectare landholding in Gibbston known as Gibbston Valley Station, and includes Gibbston Valley Winery, Gibbston Valley Lodge and accommodation.
- 3.7 The Gibbston Valley Winery complex is a key feature within the station and represents well established focal development node in the valley which currently contains vineyards, a large winery complex with associated cellar door sales, restaurant/café, cheesery, gift store, bike hire, wine cave, administration offices, function buildings, storage buildings, staff accommodation, visitor accommodation and a lodge/spa building - all within the surrounds of a working vineyard. The wider station is also partly used for pastoral farming.
- 3.8 The majority of the land is zoned Gibbston Valley Resort (**GVRZ**), and to a lesser degree, Gibbston Character Zone (**GCZ**), Rural Zone, and Gibbston Rural Visitor Zone.

- 3.9 The GVRZ was confirmed in 2020 via consent order of the Environment Court and the Gibbston Rural Visitor Zone was confirmed in decisions of Stage 3 of the PDP in 2022.
- 3.10 The GVRS has been implemented with large scale infrastructure in place, internal roading and construction of dwellings and other buildings underway.
- 3.11 Similarly to the HRZ, the zone is separated into a number of 'activity areas'. Of these activities areas, approximately half of the resort is consented for visitor accommodation, commercial recreation (golf course), viticulture and residential activity. The commercial precinct has yet to be established. Activity Area 8 includes a large area for workers accommodation.

#### Structure of my Evidence

- 3.12 My evidence addresses:
- (a) the statutory framework for the formulation of district plans, including in particular the requirement under section 75(3)(a) to give effect to the National Policy Statement for Urban Development 2022 (**NPS-UD**);
  - (b) Section 32 of the RMA, including an evaluation of reasonably practicable options and alternatives for achieving the objectives, the efficiency and effectiveness of the options, the costs and benefits of the options, and whether the objectives of the Inclusionary Zoning Variation are the most appropriate way to achieve the purpose of the RMA;
  - (c) the Council's evidence on the submissions;
  - (d) an evaluation of the Variation in terms of section 32AA of the RMA.
- 3.13 I have read the economic evidence of Mr Fraser Colegrave on behalf of a number of submitters and rely on his findings. I will further comment on this throughout my evidence.

3.14 I have also read the reports and evidence prepared for the Council in support of the Variation<sup>1</sup>. The statutory planning documents I have relied on are outlined in **Annexure B**.

#### 4. **EXECUTIVE SUMMARY**

4.1 I do not have any doubt that the key issue the Variation is seeking to address, the need for affordable housing, is a real and profound issue in the district and New Zealand in general. Taking into account the evidence of Mr Colegrave, the proposal put forward by the Council will in my opinion have a greater negative impact on housing affordability than positive by making new housing more expensive. The risk of acting (i.e. accepting the Variation into the PDP) is high.

4.2 The Variation fails to fully consider all alternatives that are available, and the assessment of alternatives that was undertaken, was cursory and high level. The proposed Zone Purpose at 40.1 clearly states that Residential Visitor Accommodation and Visitor Accommodation are a significant cause of the housing affordability problem in the district, which this sentiment echoed in the evidence of Mr Colegrave, yet the Variation does not consider any means to address these activities in the PDP as a method or alternative.

4.3 The provision of housing is essentially enabled as a positive activity in urban zones in the PDP, taking direction from the higher order planning documents, in particular the NPS-UD. Proposed Chapter 40 however frames housing as the problem. The proposed Objectives, Policies and Rules of the Variation are conclusionary in that if one had to embarked on a discretionary activity resource consent to not provide a financial contribution, the framework in my opinion would likely lead to a refused consent.

4.4 The implications of proposed Chapter 40 are far-reaching and will likely have the effect of compromising or contradicting other chapters of the PDP and what is directed in those chapters through the objectives and policies. This has the potential to give rise to plan coherence issues.

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<sup>1</sup> Reports contained at <https://www.qldc.govt.nz/your-council/district-plan/inclusionary-housing-variation/> and evidence of Mr D Mead, Ms A Bowbyes, Ms C Lee and Mr S Equb.

4.5 In my opinion, this can – in part – be assisted by removing non-urban zones from the Variation, which is effectively the relief I have suggested. That aside, I still do not consider this overcomes the hurdles that the Variation faces in the statutory planning context.

4.6 I do not consider that the provisions of the proposed Variation are the most appropriate way to achieve the purpose of the RMA. The provisions will not be effective or efficient. I consider that the Variation does not sit comfortably with the PDP and its role as a regulatory tool, does not give effects to the NPS-US and ultimately does not achieve Part 2 of the RMA.

## 5. **STATUTORY FRAMEWORK**

5.1 The Variation seeks to introduce objectives, policies and rules into the PDP requiring a financial contribution payable at subdivision or upon construction of a dwelling at building consent that is to be put towards delivering affordable housing in the district. Section 108 of the RMA provides for the imposition of resource consent conditions requiring a financial contribution. Section 77E(1) enables district plan rules requiring a financial contribution for any class of activity except for prohibited activities.

5.2 A “financial contribution” may be<sup>2</sup> a contribution of:

(a) money; or

(b) land; or

(c) a combination of money and land.

5.3 As acknowledged by Mr David Mead for the Council, financial contributions must be in accordance with the purposes specified in the district plan (section 77E of the RMA which may include “include the purpose of ensuring positive effects on the environment to offset any adverse effect.”<sup>3</sup> As Mr Mead notes<sup>4</sup> a financial contribution must still meet the tests of section 32.

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<sup>2</sup> Section 108 (9) of the RMA

<sup>3</sup> [4.17] of section 42A report

<sup>4</sup> [4.18] pf section 42A report

5.4 Statutory tests are to be applied when considering the most appropriate provisions for the District Plan. The tests are summarised as follows:

- (a) whether the proposed provisions accord with and assist the Council in carrying out its functions and achieve the purpose of the Act (s74(1) of the Act);
- (b) whether the provisions accord with Part 2 of the Act (s74(1)(b));
- (c) whether the provisions give effect to the regional policy statement (s75(3)(c)) and have regard to any proposed regional policy statement (s74(2));
- (d) whether the provisions give effect to a national policy statement (s75(3)(a));
- (e) whether the provisions [policies and rules] have regard to the actual or potential effects on the environment, including, in particular, any adverse effect (s76(3));
- (f) the extent to which the objectives are the most appropriate way to achieve the purpose of the Act (s32(1)(a));
- (g) whether the policies and methods are the most appropriate way to achieve the objectives, having regard to their efficiency and effectiveness (s32(1)(b)) and taking into account (under s32(2):
- (h) the benefits and costs of the proposed policies and methods; and
- (i) the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules of other methods.

5.5 I will circle back to these matters at the conclusion of my evidence.

National Policy Statement for Urban Development 2022

- 5.6 Section 75(3)(1) of the RMA requires the Variation to “give effect” to the NPS-UD.

*Non-Urban and Rural Land*

- 5.7 I consider it important to firstly consider the scope of the NPS-UD. The NPS-UD recognises the importance of well-functioning urban environments and seeks to ensure there is sufficient development capacity to meet community business and housing needs. The NPS-UD applies to all local authorities that have all or part of an urban environment<sup>5</sup> in their district or region and to planning decisions by these local authorities that affect an urban environment<sup>6</sup>.

- 5.8 The NPS-UD therefore concerns urban environments. It does not engage with or address non-urban or rural environments<sup>7</sup>. This scope is important within the context of the Variation which addresses not only urban land, but also non-urban and rural land, including land zoned for rural living, which includes land owned by and of concern to the Submitters.

- 5.9 Where the Variation affects non-urban and rural zoned land, it does not garner support from or give effect to the NPS-UD. I therefore do not agree with Mr Mead’s opinion<sup>8</sup> that in so far it concerns non-urban and rural land, the Variation is a method to implement the NPS-UD. This is of particular relevance to the Submitters that I am providing evidence on behalf of.

*Urban Land*

- 5.10 With regards to urban land, I agree with Mr Mead that Objectives 1 and 2 of the NPS-UD are the key objectives. I consider that Objective 3 is also important, particularly in so far as it directs district and

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<sup>5</sup> The NPS-UD defines an “urban environment” as “any area of land (regardless of size, and irrespective of local authority or statistical boundaries) that:  
(a) is, or is intended to be, predominantly urban in character; and  
(b) is, or is intended to be, part of a housing and labour market of at least 10,000 people

<sup>6</sup> NPS-UD, clause 1.3

<sup>7</sup> Unless there is a relevant proposal to rezone land so that it comes within the urban environment, at which point there could be a case to make that the land “is intended to be” urban in character.

<sup>8</sup> [4.10] of Mead evidence

regional plans to “enable more people to live in ... areas of an urban environment” which effectively requires the zoning of more land for urban activities.

5.11 These objectives are as follows:

**Objective 1:** New Zealand has well-functioning urban environments that enable all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future.

**Objective 2:** Planning decisions improve housing affordability by supporting competitive land and development markets.

**Objective 3:** Regional policy statements and district plans enable more people to live in, and more businesses and community services to be located in, areas of an urban environment in which one or more of the following apply:

- (a) the area is in or near a centre zone or other area with many employment opportunities
- (b) the area is well-serviced by existing or planned public transport
- (c) there is high demand for housing or for business land in the area, relative to other areas within the urban environment

*NPS-UD: Objective 1*

5.12 The NPS-UD, Objective 1 in particular, is not in my opinion designed or intended to be used as a means to include financial contribution rules levied from allotment creation and home construction. The overarching theme of the Regulatory Impact Statement<sup>9</sup> and section 32 evaluation report for the NPS-UD is that the design and intent of the NPS-UD is to address the fundamentals of land supply, development capacity and infrastructure; this is synthesised into Objective 1.

5.13 Objective 1 recognises the importance for local authorities to provide for better wellbeing outcomes for people and communities by requiring well-functioning and liveable urban environments, however I do not consider the objective contemplates or can be relied on to justify further transaction and development costs through measures such as financial contribution requirements levied against residential development to provide affordable housing. As set out in the evidence of Mr Colegrave, the Community Housing Trust (**CHT**) serves only a very small component of the housing market, such that

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<sup>9</sup> <https://environment.govt.nz/assets/Publications/national-policy-statement-urban-development-regulatory-impact-statement.pdf>

for the vast majority of the community the costs of housing will increase under the Variation which will dis-enable, rather than enable wellbeing for this majority group. It is my opinion that where the proposed financial contribution negatively affects affordability, as Mr Colegraves' evidence states will result under the Variation, the proposal must inevitably be at odds with Objective 1.

*NPS-UD: Objective 2*

- 5.14 The section 32 evaluation report behind NPS-UD Objective 2 is focused on local authorities being required to provide sufficient development capacity to support competitive land and development markets. The NPS-UD section 32 evaluation does not contemplate local authorities implementing Objective 2 by imposing rules on affordable housing. Rather, the potential costs of Objective 2 identified were on the ability of local authorities to ensure sufficient and appropriate capacity of urban development land, including undertaking the related housing capacity assessments, plan changes and providing the necessary infrastructure to ensure short-term development capacity is plan enabled and infrastructure ready.
- 5.15 While Objective 2 addresses 'housing affordability', the section 32 evaluation of the Variation does not thoroughly explore how inclusionary zoning rules alone will support competitive land and development markets, as required by the Objective. The Variation for example, proposes to remove 5% of lots in urban areas from the general market by allocating them to a CHT, and essentially apply an additional financial levy on new builds and subdivision, neither of which appear to support competitive land and development markets. This leads me to a conclusion that the proposal does not give effect to but is at odds with NPS-UD Objective 2.
- 5.16 I have included the excerpt of the s32 evaluation of Objective 1 and Objective 2 of the NPS-UD in my **Annexure C**.
- 5.17 In essence, the NPS-UD focuses on land supply to go 'out' (i.e., increased supply), and flexibility by buildings going 'up' (i.e., intensification) as the primary means of achieving Objectives 1 and 2.

- 5.18 Mr Mead acknowledges that that increasing supply and flexibility are the means by which the NPS-UD contemplates improving affordability in paragraph [4.13] of his section 42A report, where he states *"it is clear that the NPS-UD has a focus on increasing housing supply opportunities so as to help contribute to more affordable housing."* Later in the same paragraph he infers that there is already more than sufficient plan enabled supply over the next 30 years.
- 5.19 At paragraph [4.14] he opines that reference to Part 2 of the RMA is necessary where increasing housing supply is not the complete 'answer' to affordability. I take these statements to be an acknowledgment by Mr Mead that the NPS-UD contemplates addressing affordability by increasing supply and intensifying urban land use, which is consistent with the views I have expressed earlier and my assessment is that the NPS-UD does not contemplate the use of financial contributions as proposed by the Variation.
- 5.20 Mr Mead's solution to the NPS-UD not providing clear direction is to draw assistance from Part 2 of the RMA. I consider this approach tenuous and to be inconsistent with his earlier statements, including where he states at [4.10] that the Variation has been notified *"in response to the NPS-UD"* and as an *"additional (and complementary) method to implement the NPS-UD"*.
- 5.21 More particularly, I do not agree that Part 2, in particular section 5, provides a planning pathway for the Variation and consider that Mr Mead has overlooked that while the Variation may assist a select few into home ownership (being those who qualify for CHT assistance), it will disadvantage the vast majority of the community by increasing house prices thus impacting affordability and decreasing supply (relying on Mr Colegraves' evidence), and correspondingly decreasing economic and social enablement for this part of the community.
- 5.22 Overall, I consider that the NPS-UD provides no support for the Variation in so far as it impacts non-urban and rural land because the NPS-UD does not address this land. Nor does the NPS-UD provide any support for the Variation in so far as it concerns urban land, because the NPS-UD plainly contemplates affordability in urban

areas being addressed by increasing supply, whereas the likely consequence of the Variation will be to decrease overall supply.

6. **SECTION 32 OF THE RMA**

Evaluation of reasonably practicable options and alternatives

- 6.1 The Council's section 32 report evaluates the efficiency and effectiveness of a range of alternative broad level methods and more detailed methods to implement the Variations objectives using a 'supply plus intervention approach'. The evaluation concludes that the proposed (notified) approach will be more efficient and effective than a voluntary approach to affordable housing<sup>10</sup> and that while maintaining adequate supply of land for housing is important, it is not by itself a sufficient strategy to ensure a supply of affordable houses.
- 6.2 I consider the Council's evaluation gives insufficient consideration to how the increased housing supply will be realised, and the evaluation relies too heavily on what the Council hopes will happen through the Urban Intensification and Ladies Mile Variations to the PDP. In my opinion the outcome of these processes should be understood before this Variation is progressed given that both Variations are seeking to implement the NPS-UD by providing more urban land and increase intensification of urban development.
- 6.3 The Council's section 32 report discusses alternatives and refers to Appendix 3C to the section 32 report<sup>11</sup> which is a memorandum prepared by Meredith Connell lawyers which considers alternative mechanisms for addressing housing affordability issues within the District. The memorandum identifies a range of options to address affordable housing being District Plan rules, general or targeted rates, and development contributions.
- 6.4 The memorandum identifies that rating is an available mechanism, including using revenue from rates to fund community housing and notes that rates are by far the dominant income stream for local

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<sup>10</sup> Section 32 report, section 11

<sup>11</sup> <https://www.gldc.govt.nz/your-council/district-plan/inclusionary-housing-variation/>  
(REFER APPENDIX 3C)

authorities and the one that local authorities have the most control and certainty over. The memorandum identifies that either a general or targeted rate could be levied. I am of the view that apportioning the costs of affordable housing provision across the district and across all sectors or the local economy through a general or targeted rate is a preferable and far more equitable outcome, as opposed to imposing all costs on developers, being the sector that delivers residential housing.

6.5 I note that the Meredith Connell memorandum also identifies that Council could use a proportion of its general rates to build, or to subsidise developers through contracts to build, housing in the affordable price bracket to ensure that housing typologies that meet the needs of the district are built. In relation to this matter, I note that the ability to develop smaller sites which naturally result in smaller dwellings can assist with the issue identified (that is the delivery of a more affordable housing typology), which could be facilitated through provisions within the District Plan that enable smaller lots and increased site coverage and building heights (for example) in appropriate locations – similar to the approach adopted by Council to implement the Housing Accords and Special Housing Areas Act 2013.

6.6 The Meredith Connell memorandum concludes that the best option available is inclusionary zoning as it would help implement the NPS-UD, and considers that the direction provided by the NPS-UD makes taking an inclusionary zoning approach the best of all options, stating<sup>12</sup>:

Our view is that the NPS-UD appears to expressly authorise, and perhaps even require, a planning approach that ensures houses are built with certain typology or price (ie affordable) characteristics and which target different household needs. Inclusionary zoning can be used as a tool to provide homes of different types and prices. So inclusionary zoning can be seen as a mechanism for giving effect to the NPS-UD.

6.7 The memorandum does not contain a section 32 evaluation and the basis upon which this conclusion has been drawn is unclear. I further

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<sup>12</sup> Ibid at [22].

note that there has been no assessment of 'build to rent' options of housing in any of the Council Variation documentation. I consider that this stems from the Variation placing a focus on affordable home ownership rather than providing for a range of affordable living options, which must include renting. Build-to-rent developments are a significant focus overseas, are now becoming more prevalent in New Zealand.

- 6.8 An example of this is Simplicity<sup>13</sup>, a Kiwisaver fund which invests in a wholesale property fund that holds shares in Simplicity Living Ltd, a developer and operator of high-quality build to rent homes. Simplicity Living started in Auckland and its long-term aim is to build, own and operate over 10,000 quality rental homes across New Zealand.
- 6.9 I have been involved in the Ladies Mile Variation and this form of development is going to be a focus for at least one of the major landowners on Ladies Mile that I am aware of. These types of development can be initiated under the existing planning framework without the need for further changes to the PDP as they are directly supported by higher density planning regimes that support residential use as a permitted activity, outcomes sought by the Ladies Miles Variation and the Urban Intensification Variation that are currently in process.
- 6.10 I also note that the Council has not considered any regulation on visitor accommodation and residential visitor accommodation. Given that this is cited in the Variation documentation including the proposed Zone Purpose statement at 40.1 as one of the contributing issues to housing unaffordability, this should have been afforded more attention, in my view as an alternative means through which to address the affordability issue.
- 6.11 In my view, the section 32 evaluation gives only cursory consideration to alternatives and instead takes a conclusionary approach to determination of the preferred approach, which is the Variation as notified. As identified by Mr Colegrave, the costs of the

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<sup>13</sup> <https://simplicity.kiwi/build-to-rent/>

preferred approach have been understated in the Council's evaluation. This is a significant flaw of the section 32 evaluation, in my opinion.

The most appropriate methods to achieve the Objectives

6.12 The proposed objectives of the Variation are:

**Proposed Strategic Objective 3.2.1.10**

Affordable housing choices for low to moderate income households are provided in new residential developments so that a diverse and economically resilient community representative of all income groups is maintained into the future.

**Proposed Objective 40.2.1**

Provision of affordable housing for low to moderate income households in a way and at a rate that assists with providing a range of house types and prices in different locations so as to support social and economic well-being and manage natural and physical resources, in an integrated way.

6.13 The provisions and methods to achieve the objectives are the Variation's financial contribution rules and related implementation methods set out in proposed Chapter 40. I do not consider the section 32 evaluation properly considers the potential costs of the financial contribution, and as identified in Mr Colegraves' evidence, the increased financial costs that this will bring to the housing market in the district.

6.14 I interpret the Council's economic evidence and its support for the Variation to be in part because the financial contribution levy would be applied in what it considers is a fair and consistent way, with the cost spread relatively evenly throughout the district user base. I consider that these assumptions are not well founded.

6.15 The rules in proposed Chapter 40 work through a development achieving permitted activity status if it complies with the standards in section 40.6, requiring a financial contribution or handing over of land. Where these standards are not met, a Discretionary Activity resource consent is required (Rule 40.5.2). While the provisions are framed in a way that seemingly provides a discretionary consent pathway, I have significant doubts as to the utility of this given that the clear policy intent and direction of the Variation is for a (full) contribution to be provided by all developments to which the provisions apply.

- 6.16 Policy 40.2.1.3 is a key policy to guide a discretionary resource consent application and is set out below:

Ensure that residential subdivision and development set out in Policy 4.2.1.1 and 4.2.1.2 provides a financial contribution for affordable housing. **Avoid** subdivision or development for residential activities that does not provide a contribution, or otherwise does not make appropriate provision to help meet the affordable housing needs of the District.

(my emphasis)

- 6.17 The policy requires development that does not provide a contribution or does not make 'appropriate' provision to address affordable housing contribution is to be *avoided*. Avoid suggests 'not allow'. The meaning of 'appropriate' is not defined and is open to interpretation. While assessment matters for resource consent proposal are provided (40.7.1.1), these provide little clear direction and require subjective assessments of what is likely to be commercially sensitive information, such as whether requiring the full contribution will impose a 'significant financial burden' on the development/developer. Whether a development is viable likely will depend on factors such as the level of borrowing required to fund the development, the credit rating of the developer, the terms of construction contracts, and so forth, this being information that clause 40.7.1.1 expects will be provided to the Council on an 'open book' basis. The likelihood of a developer being willing to disclose such information is in my view dubious, and nature of Council's discretion under 40.7.1.1 suggests that the exercise of the discretion and outcome of the consenting process will be unpredictable and highly variable, dependant on the developer's personal circumstances rather than any clear environmental effect. This is neither efficient nor effective, in my view.
- 6.18 The conclusions reached in the section 32 evaluation<sup>14</sup> and section 42A report (after considering submissions) are that there are no better alternatives to what is proposed in the Variation. I do not see what utility a discretionary activity consent path would provide when the Council has already reached this conclusion.

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<sup>14</sup> Drawing from the Merrideth Connel Lawyers assessment in Appendix 3C.

6.19 Put simply, in my opinion, the proposed consenting framework is conclusionary: if one went down a discretionary path, the consent would likely be refused. I therefore consider that the rules of the Variation are inefficient. The rules are not effective in so far that the costs are high and as noted by Mr Colegrave, will likely discourage development and further reduce housing supply and affordability.

6.20 Irrespective as to whether the rules are legal, their practical application is not well suited to an effects-based planning regime.

6.21 I consider that the Variation does not sit comfortably with the PDP and its role as a regulatory tool to achieve Part 2 of the RMA because:

(a) the provision of housing is provided for in the PDP as an enabling, positive activity in urban zones, subject to adverse effects on the environment being appropriate (which are typically managed by rules in the respective zone chapters); and

(b) the Variation provisions turn this concept on its head by rendering housing an adverse effect, with the avoidance, remediation or mitigation of adverse effects being alleviated through a financial contribution.

6.22 This is evident in paragraph 2 of the proposed Zone purpose at 40.1:

**The combination of multiple demands on housing resources (including proportionately high rates of residential visitor accommodation and holiday home ownership, along with visitor accommodation developments in residential areas); geographic constraints on urban growth and the need to protect valued landscape resources for their intrinsic and scenic values,** means that the District's housing market cannot function efficiently. This has long term consequences for low to moderate income households needing access to affordable housing. In turn, this has adverse outcomes for the integrated and sustainable management of natural and physical resources, including pressure for additional urban expansion, displacement of lower income households to outlying settlements, and reduction of social and economic wellbeing.

(emphasis added)

6.23 The emphasised text in the zone purpose statement above outlines the factors leading to / causing the housing affordability problem. These factors arise by operation of the District Plan. More particularly:

- (a) Residential Visitor Accommodation (**RVA**) is permitted or controlled in most urban zones, and Visitor Accommodation (**VA**) is provided for in high density urban zones, yet it is identified as an issue contributing to housing affordability; and
- (b) Geographic and Landscape constraints are reflected in the location of urban zonings have no direct bearing on housing affordability provided enough urban zonings are established in the district (which the evidence from the Council is that there is enough zoning to satisfy the demand).

6.24 I have seen no evidence that the Council has evaluated further controls on RVA and VA as a means to address housing affordability, despite this being stated in the proposed Zone Purpose statement and throughout the documentation supporting the Variation as one of the key issues contributing to housing unaffordability.

6.25 As I see it, the District Plan is a regulatory document that in the case of the Variation is being used as a blunt tool to correct what the Council identifies as a broader market failure<sup>15</sup>. This is not the most appropriate way to achieve the purpose of the RMA.

#### Costs and Benefits

6.26 At paragraphs [4.19] and [4.20], Mr Mead summarises the costs and benefits of the Variation. In my opinion, the costs have been understated and the benefits overstated. This has been addressed in the economic evidence of Mr Colegrave in detail, and I prefer and rely on his expert opinion in this regard.

6.27 What concerns me about the stated benefits of the Variation is that they are highly speculative. While one relatively small faction of the community may well get improved access to affordable housing with possible flow on improved social and economic outcomes, the remaining segment of the community, which is by and large the

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<sup>15</sup> Evidence of Shamubeel Equb for QLDC on Inclusionary Housing Variation, 14 November 2023 [at 2.2].

majority, will be penalised by higher housing and land costs as a result of the Variation.

- 6.28 I do not understand that the point at paragraph [4.20] made by Mr Mead that more effective use of "scarce urban land" will arise from the Variation. The Variation does not seek to zone any new land, as that is being advanced under other processes. The comment is at odds with his earlier statements that there is ample plan enabled capacity of (urban) residentially zoned land for the next 30 years<sup>16</sup>.
- 6.29 Also at [4.20] Mr Mead notes, as a possible benefit of the Variation, that there will be reduced rates of displacement of low to medium income households to other settlements, citing Kingston and Cromwell as examples. Kingston is part of the Queenstown Lakes District and people moving there should not be seen as a negative displacement, in my view. My understanding is that Kingston includes a considerable area of additional land available in the near future (I understand around 700 sections). Kingston has typically been a more affordable location in the district for people to move to, and I would see the growth of Kingston from low to medium income households as a positive, not negative effect, as it contributes to the economic and social wellbeing of that township.
- 6.30 Regarding the costs of the financial contribution being passed on to buyers, the evidence from the Council considers that this would be temporary and over time extra costs will be absorbed into land values. As far as I am aware there is no evidence to support this conclusion and this presents as a high risk. Mr Colegrave also expresses concern on this point and I share his views.
- 6.31 In paragraph [4.26], Mr Mead considers that the costs of the additional burden arising from the financial contribution can be easily determined as part of development feasibility investigations. In my experience dealing with development contributions and land swaps is that these processes are often complicated by competing land valuations. What Mr Mead appears to also overlook is that in practice, the cost will be factored into the sale price or will otherwise

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<sup>16</sup> [4.13] of Mead evidence

impact development profit/viability and disincentivise further development in the district. Mr Colegrave addresses this in his evidence, with which I agree.

- 6.32 In paragraph [4.28], Mr Mead refers to the economic evidence of Mr Equb, who notes that the “largest benefit from the application of financial contributions” is from improved labour market outcomes and stability, meaning reduced turnover, which adds an estimated \$27 to \$53 million of economic benefits over 30 years. However, there has been no analysis as to whether other options, such as build-to-rent development would also create positive effects that could be the same or greater than what is suggested here. Moreover, as Mr Colegrave notes, the improved labour market outcomes would inevitably benefit sectors other than land developers, effectively resulting in a transfer of wealth from developers to other businesses within the district. This is inequitable in my view and does not sit well against the purpose of the RMA.

## 7. **THE COUNCIL’S EVIDENCE ON THE SUBMISSIONS**

- 7.1 From my reading, the Council has provided little evidence in the section 42A report regarding the concerns raised by the Submitter I have prepared evidence for. This section of my evidence provides some further comment on the issues as it relates to the Variation and the Submitters concerns as set out in their respective submissions.
- 7.2 As referred to earlier regarding Strategic Chapters 3 and 4 of the PDP, non urban zones are not intended for residential development and Chapter 40 has a clear disjoint with the strategic objectives and policies of the PDP, which could only be overcome by the exclusions as I suggest in **Annexure D**.

### Resort Zones

- 7.3 The Gibbston Valley Resort Zone was the first to be ratified under the PDP review process. I was involved in that process from start to finish, from establishing the plan framework for resorts considering the then ‘new’ resort definition through to mediating the rule framework that was eventually used as the basis for the other resorts

under the PDP. A resort zone is, by definition, not an urban<sup>17</sup> nor residential zone<sup>18</sup>. Resorts are integrated developments that are essentially standalone from other areas within the district and, per the 'urban development' definition are not urban development nor located within urban growth boundaries. The reality of how the resort is implemented is that aspects like infrastructure and roading are designed primarily for that resort development itself and not integrated into the wider district infrastructure. These are all very relevant factors when considering the urban growth requirements under the NPS-UD, which is very directive as to where urban growth should be located and the synergies with that growth to existing and planned infrastructure upgrades within a district.

- 7.4 Furthermore, the resort zones are not modelled or predicated on providing high levels of residential housing, but rather, by definition must involve only a low density of residential development. Their primary purpose is for visitor accommodation and visitor activities.
- 7.5 Using the GVRZ and HRZ as examples, both are subject to a structure plan and bespoke zone provisions (objectives, polices and rules) that govern development outcomes and activities within the structure plan area. Both the GVRZ and the HRZ structure plan identify 'activity areas' which are areas where some level of development (of specified type) is enabled, while the remainder and majority of the structure plan area is in open space with a focus on providing for onsite visitor activities. Relevantly, both structure plans identify areas for 'worker accommodation'.
- 7.6 When examining many of the rationales provided by Mr Mead, he cites the benefits of affordable housing for the worker supply. This is also echoed in the Council's economic evidence. In my opinion, this issue is moot when it comes to the GVRZ and HRZ simply

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<sup>17</sup> Under the PDP 'urban development' *Means development which is not of a rural character and is differentiated from rural development by its scale, intensity, visual character and the dominance of built structures. Urban development may also be characterised by a reliance on reticulated services such as water supply, wastewater and stormwater and by its cumulative generation of traffic. **For the avoidance of doubt, a resort development in an otherwise rural area does not constitute urban development**, nor does the provision of regionally significant infrastructure within rural areas'.*

<sup>18</sup> Under the PDP 'Resort' *Means an integrated and planned development involving low average density of residential development (as a proportion of the developed area) principally providing temporary visitor accommodation and forming part of an overall development focused on onsite visitor activities.*

because, by virtue of their design, they include and provide for the worker demand that they are creating. I address this in more detail below.

#### *GVRZ*

- 7.7 With regard to the Gibbston Valley Resort Zone, the zone purpose is very clear that residential activity will be provided at a limited scale with low average density as a proportion of the developed site. Which echoes the 'resort' definition I have cited earlier. Notably, the zone also offers short and long-term accommodation for those working at the resort and in the wider Gibbston community, as set out in 45.1 of the Zone Purpose.
- 7.8 Policy 45.2.1.24 provides for the establishment of visitor accommodation and limited residential activity within appropriate locations in the zone, in general accordance with the structure plan, as a method of providing for the needs of visitors, residents, and workers.
- 7.9 Policy 45.2.1.30, specific to Activity Area 8, directs the provision of a node of medium-density residential activity, principally for worker accommodation, and to avoid activities that would diminish the principal role of this area for accommodation.

#### *HRZ*

- 7.10 Turning to Chapter 47 for the HRZ, these provisions are very similar. Policy 47.2.1.7 directs that residential activity is limited to maintain a low average density of residential development across the zone. Residential activity is provided for at a low density across the c.160ha site, and it is capped at 66 units excluding worker accommodation (Rule 47.5.16). Worker accommodation is provided for in Activity Areas S1 and S2, being areas that provide for staff on-site facilities and staff accommodation and services that support the ongoing operation and maintenance of the resort (47.1.2.d), while Rule 47.4.10 specifically limits residential activities to staff accommodation in these activity areas and requires that it is maintained in the same ownership as the resort (Activity Areas C and G) and is not subdivided, titled, or otherwise separated.

- 7.11 There is nothing in the objectives and policies of either of these resort zones that would indicate that they are designed as residential zones.
- 7.12 In my opinion, these resort zones already provides their own solution to affordable housing and worker accommodation within the resort zone confines. To then apply a financial levy on the limited residential activity enabled within the zones would make a nonsense of the mechanics of the zone and, in my opinion, would duplicate regulation of this issue which would in inefficient, inappropriate, and unable to be justified under section 32.

#### Rural Zones

- 7.13 While submissions such as BHT's and others seek to exempt the Wakatipu Basin Lifestyle Precinct (**WBLP**) and some special zones (such as resort zones, which I have addressed above) from the ambit of the Variation, Mr Mead's section 42A report does not appear to contain any evaluation of such submissions, nor provide and reasons for his recommendations in Appendix 2 of his report that such submission be rejected. GVS specifically sought that Gibbston Character Zone, the Rural Visitor Zone and Rural zone are excluded from the Variation.
- 7.14 As it stands, the notified Variation applies to some but not other rural/rural living zones, absent any explanation for the different treatment. For example, the notified regime would apply to the WBLP, which is a zone within which all new residential activity requires at least a restricted discretionary activity (**RDA**) (under Chapter 27 – Subdivision), subject to a strict assessment on landscape and various other matters, and where development to a density of no less than 1 dwelling per hectare is anticipated (as an RDA). The notified Variation would not apply however to the Rural Lifestyle zone, which is in effect an equivalent zone to the WBLP but applies outside the Wakatipu Basin, in which residential activity to a density of 1-2 dwellings per hectare is anticipated, also as an RDA and subject to landscape and other assessment matters. As above, despite the obvious similarities between the two zones, there is no explanation in either the section 32 evaluation or Mr Mead's s42A

reporting for the different treatment of the two zones. In my view, excluding some but not all rural/rural living zones from the ambit of the Variation gives rise to plan coherence and integrity issues which will inevitably bear on the effectiveness of the Variation as a whole.

- 7.15 In addition, as I have set out above, the NPS-UD does not provide any policy support for financial contributions on non-urban or rural land. On this basis alone, I consider there is a firm justification for having a clear exclusion of all rural zones and non-urban (e.g. resort) land from the Variation.
- 7.16 This brings me to my consideration of the pertinent strategic chapters of the PDP.

#### Strategic Direction in the PDP

- 7.17 The objectives and policies in Strategic Chapters 2 (Strategic Directions) and 3 (Urban Development) of the PDP are clear that urban areas specifically *provide for* urban development. The strategic direction is that urban development is to be contained within the Urban Growth Boundaries and avoided outside of those boundaries (SP 4.2.1.3).
- 7.18 SO 3.2.2.1 directs where and how urban development is to occur:

3.2.2.1 - Urban development occurs in a logical manner so as to:

- i. promote a compact, well designed and integrated urban form;
- ii. **build on historical urban settlement patterns;**
- iii. achieve a built environment that provides desirable, healthy and safe places to live, work and play;
- iv. minimise the natural hazard risk, taking into account the predicted effects of climate change;
- v. protect the District's rural landscapes from sporadic and sprawling urban development;
- vi. ensure a mix of housing opportunities including access to housing that is more affordable for residents to live in;
- vii. contain a high quality network of open spaces and community facilities; and
- viii. **be integrated with existing, and proposed infrastructure and appropriately manage effects on that infrastructure.**

(Emphasis added)

- 7.19 Many of these outcomes would have difficulty being achieved in any areas other than urban zones, simply because the infrastructure does not exist, they sit outside of historical urban settlement patterns,

they are not supported by the public transportation network or community facilities, and so on.

7.20 The distinction between urban and non-urban land is further identified in SP 3.3.14 and 3.3.15:

3.3.14 Apply Urban Growth Boundaries (UGBs) around the urban areas in the Wakatipu Basin (including Queenstown, Frankton, Jack's Point and Arrowtown), Wānaka and where required around other settlements.

3.3.15 Apply provisions that enable urban development within the UGBs and avoid urban development outside of the UGBs.

7.21 Furthermore, SP 4.2.2.22 is relevant insofar it is directive as to when urban development can occur outside an UGB:

SP 4.2.2.22 Rural land outside of the Urban Growth Boundaries is not used for urban development until a change to the Plan amends the Urban Growth Boundary and zones additional land for urban development purposes.

7.22 In essence, the PDP anticipates urban growth in urban areas and in my opinion, this is where any affordance housing framework should be focussed.

7.23 Turning to the proposed provisions of the Variation, Policy 40.2.1.1 is a good example of the confusion around the target areas within the district. It refers to land within urban growth boundaries or where a plan change or resource consent to establish urban scale development exists. 'Urban scale development' is not defined and it is unclear what is being referred to in the policy. In my view, the policy needs to be amended to clarify that it only relates to urban land within urban growth boundaries. If an urban growth boundary is expanded in the future, then the objectives and policies of this chapter would apply at that time.

7.24 Policy 40.2.1.2 requires residential development that "indirectly" influences housing choices for low to moderate income households and provides the example of development in special and settlement zones and residential subdivisions. It is unclear what is meant by how such development 'indirectly influences' housing choice, and given this ambiguity, it is likely to give rise to interpretation challenges through resource consent processes and be a cause of further complications through a consenting process. In my opinion,

if a special zone is not a residential urban zone, then it should be excluded. This links to my prior comments regarding the resort zones and rural visitor zones. Also, regarding rural residential subdivisions, it should be made explicitly clear that all of the rural zones in the plan are excluded.

- 7.25 To make this chapter much more efficient and clearer for users, I consider that Policy 40.2.1.4 should be amended to specifically exclude certain zones in the District Plan from being applicable to inclusionary housing.
- 7.26 Regarding Policy 40.2.1.7, which requires that financial contributions received by the Council must be used for the purposes of providing affordable housing for low to moderate income households, I query how this policy can be implemented within the context of the District Plan, in particular how the Council can be compelled to comply with or achieve it if it is not proposing to undertake development itself (and thus trigger the Chapter 40 provisions). Moreover, I assume that the housing trust model operates with overheads, and that the financial contributions received by the Council and provided to the housing trust(s) would be put towards these overheads. I am uncertain whether funding a CHTs overheads through financial contributions equates to providing for affordable housing but consider it likely does not. I also consider an issue potentially arises in so far as a CHTs overheads cannot be controlled by the Council, which conceivably could be to the detriment of delivering affordable housing. For example, the Council will have no control over a housing trust's staffing numbers, staff salary packages, premises, and associated overheads, which themselves could equate to hundreds of thousands of dollars or more. Neither the section 32 evaluation nor Mr Mead's evidence consider these issues. These are significant oversights, in my view, and give rise to considerable uncertainty as to whether the Variation will in fact deliver on its affordable housing objectives.
- 7.27 I note that a degree of distrust is prevalent throughout Mr Mead's evidence, in particular his assessment of submitter relief. For example, at paragraph [8.19] of his evidence Mr Mead conjectures that RVA should be subject to the affordable housing levy because

the rules could otherwise easily be circumvented. At paragraph [8.20] Mr Mead discusses worker accommodation which he considers should also be subject to the levy, again because it would otherwise be easy for providers of worker accommodation to circumvent the rules, inferring that the Council would have real difficulties with enforcement. Mr Mead does not explain the basis for his assumptions that providers of RVA or worker accommodation will in all instances seek to circumvent the financial contributions rules, or that the Council will be unable to enforce its District Plan or any applicable resource consents. Mr Mead's opinions on these matters are without any foundation in my view. Mr Mead does not otherwise assess the merits of including (or not including) RVA or worker accommodation within the ambit of the Variation. Nor does he address submissions, such as those of GVS, THL and BHT, that seek that resort and rural living zones are excluded from the Variation.

#### Amended Provisions

7.28 I have included in **Annexure D** my suggested amendments to the Objectives and Policies of the Variation. The thrust of my amendments relates to the addition of clear exclusions in the policy that the financial contributions only apply to urban zones within the urban growth boundaries, and exclude non-urban, rural, resort and special zones located outside an UGB.

7.29 While my suggested relief focusses on the concerns raised by the submitters, this relief should not be taken that I agree that the Variation is necessary or would assist the Council in carrying out its functions in order to achieve the purpose of the RMA.

#### **8. SECTION 32AA**

8.1 Section 32AA(1)(a) of the RMA requires a further evaluation in respect of the amendments sought to the existing proposal since the section 32 evaluation was completed. In this context:

- (a) The 'existing proposal' is applying the Council's notified IZ provisions and amendments to the PDP; and

- (b) The 'amending proposal' is not amending the PDP to include the Variation Provisions, and new Chapter 3 Strategic Direction objective and PDP Chapter 4 policy (i.e. effectively rejecting the Variation); or the alternative relief I detail in **Annexure D** which is a modified form of the policy provisions relating to the issues raised by the Submitters.
- 8.2 I consider that the NPS-UD does not provide support for the Variation to cover non urban land, and that this view is supported through the objectives and policies of Strategic Chapters 3 and 4 of the PDP (which give effect to the Otago RPS). My amendments would go some way to addressing that issue but they would not solve the greater issues around the Variation affecting the urban zones of the district.
- 8.3 My evaluation of the Variation, including the section 32 report and the Council's evidence has identified that the potential alternative methods have not been sufficiently evaluated and it is more likely that the costs of the Variation outweigh the benefits. This position is informed and supported by Mr Colegraves' economic evidence. It is my primary view that the Variation cannot be supported under section 32 as the provisions do not accord with and assist the Council to carry out its functions and achieve the purpose of the RMA.
- 8.4 For the reasons I have identified above, I do not consider the Variation and its objectives to be the most appropriate way to achieve Part 2 of the RMA, and will not give effect to the NPS-UD and RPS.
- 8.5 I consider that the Variation provisions would result in greater costs than benefits, and there is a greater risk of acting than not acting. Despite the large amount of information provided by the Council it is somewhat conclusionary, and in my view, does not address, or seek to clearly identify the costs.
- 8.6 The most appropriate option in my opinion is to retain the status quo and consider other options that sit outside of the PDP, such as a general or targeted rate or 'build to rent' models, and to pause until the effects of the various plan changes being advanced by the

Council are better understood and realised (e.g. the Ladies Mile and Urban Intensification Variations to the PDP).

Dated: 21 December 2023

A handwritten signature in black ink, appearing to be 'Brett James Giddens', written in a cursive style.

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Brett James Giddens