

**BEFORE THE INDEPENDENT HEARING PANEL APPOINTED BY THE  
QUEENSTOWN LAKES DISTRICT COUNCIL**

**UNDER** the Resource Management Act 1991 (RMA)  
**IN THE MATTER** of the Te Pūtahi Ladies Mile Plan Variation in accordance  
with section 80B and 80C, and Part 5 of Schedule 1 of the  
Resource Management Act 1991.

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**REPLY LEGAL SUBMISSIONS ON BEHALF OF QUEENSTOWN LAKES  
DISTRICT COUNCIL**

**26 January 2024**

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**Table of Contents:**

<b>INTRODUCTION</b>	<b>2</b>
<b>Scope of legal submissions</b>	<b>2</b>
<b>HIGH LEVEL THEMES</b>	<b>3</b>
<b>Uncertainty, triggers and the role of staging</b>	<b>3</b>
<b>The role of the intended schools</b>	<b>7</b>
<b>Application of the legal framework</b>	<b>9</b>
<b>Amenity Access Area</b>	<b>13</b>
<b>Other overarching themes</b>	<b>16</b>
<b>JURISDICTIONAL ISSUES</b>	<b>17</b>
<b>Mr and Mrs Dobb's Submission</b>	<b>17</b>
<b>Anna Hutchinson Family Trust</b>	<b>18</b>
<b>Whether relief sought is within scope</b>	<b>27</b>
<b>OTHER DISCRETE LEGAL ISSUES</b>	<b>32</b>
<b>Stormwater – Reference to Code of Practice</b>	<b>32</b>
<b>References to Structure Plan – ‘consistent with’,     ‘generally consistent with’ and ‘in accordance with’</b>	<b>33</b>
<b>Defendable edges</b>	<b>35</b>
<b>Parking</b>	<b>37</b>
<b>Threepwood</b>	<b>37</b>
<b>CONCLUSION</b>	<b>38</b>
<b>Appendix A - Correspondence from the Ministry of Education</b>	
<b>Appendix B - Correspondence regarding Amenity Access Area</b>	

## **MAY IT PLEASE THE HEARING PANEL**

### **INTRODUCTION**

- 1 These submissions are presented on behalf of Queenstown Lakes District Council (**QLDC** or **Council**) in respect of the proposed Te Pūtahi Ladies Mile Variation (**TPLM Variation**) to the Council's Proposed District Plan (**PDP**).
- 2 Along with Mr Brown's s42A reply report and the Council witnesses' reply statements, these submissions represent QLDC's right of reply, and address specific legal issues that were raised during the course of the hearing.
- 3 Over the course of the streamlined planning process (**SPP**), the active and helpful engagement of all those involved in the process has allowed for significant consensus to be reached. The collaborative approach that has been undertaken has strengthened the TPLM Variation provisions recommended by Mr Brown. It is submitted that there are few remaining areas of material disagreement in terms of legal issues; which these submissions will address.
- 4 Mr Brown's s42A reply report and updated version of the TPLM Variation provisions (along with the relevant section 32AA analysis) will be filed next week. Responses from some of the Council witnesses are filed alongside these submissions. These statements only respond to specific questions raised by the Hearing Panel or where a submitter witness introduced new evidence when giving their evidence. Where any relevant remaining questions of the Hearing Panel have not been addressed within these submissions, they will be addressed within Mr Brown's s42A reply report.

### **Scope of legal submissions**

- 5 These submissions are intended to assist the Hearing Panel with specific issues that arose during the hearing. As such, they respond to the following matters:
  - (a) High level themes:
    - (i) Uncertainty, triggers and staging;
    - (ii) The role of the intended schools;

- (iii) Application of the legal framework;
- (iv) Amenity access area and QLDC's different 'hats';
- (b) Jurisdictional issues; and
- (c) Other discrete legal issues.

## HIGH LEVEL THEMES

- 6 Before addressing some of the specific legal issues, there are several high-level themes, addressed as follows, that warrant mention.

### Uncertainty, triggers and the role of staging

- 7 At the outset, the Council wishes to acknowledge that some aspects of the TPLM Variation are aspirational. The aspirational nature of the TPLM Variation is responsive to, and reflective of, the receiving environment and pressing demands that the Queenstown Lakes District (**District**) faces. The majority of developers engaged in this process all acknowledged the crippling housing pressures the District is under, and provided overall support to the TPLM Variation. For matters such as the mode share target, while acknowledged by witnesses such as Mr Smith for Waka Kotahi as being aspirational, it is important that such statements are not taken out of the overall context of the TPLM Variation transport provisions, and how traffic matters have been assessed by the Council and its experts.<sup>1</sup> It is also worth reiterating that “aspirational” is not the same as “unrealistic” or “unachievable”.
- 8 The Council also acknowledges that there are uncertainties associated with the TPLM Variation. These include uncertainty in relation to the provision and funding of infrastructure, the provision of the schools that are intended to occur in TPLM and the staging and roll out of development enabled by the TPLM Variation. However, for the reasons addressed as follows, these uncertainties do not represent a reason not to proceed with the TPLM Variation.

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<sup>1</sup> For example, in relation to mode share, the evidence of Mr Shields explains that the transportation model is based on a AM and PM peak bus mode share of 21% to 22%. Mr Shields considers this to be an underestimate of the expected non car mode share at TPLM since it does not take into account mode shift arising for example, from the proposed TPLM Variation and W2G partners active mode, Travel Behaviour Change or TDM measures. The model indicates that even with this lower PT mode share, that there will be limited capacity issues on the adjacent road network (refer Mr Shields's Response to Hearing Panel Minute: Pre-Hearing Questions dated 4 December 2023, para 25).

*Transport infrastructure provision and funding*

- 9 The key focus in terms of the provision of infrastructure have been related to the transportation issues and stormwater.
- 10 In relation to the transportation issues, the experts all acknowledge that certain transportation infrastructure needs to be in place prior to certain aspects of the development within the TPLM Variation occurring.
- 11 Mr Smith for Waka Kotahi in his presentation to the Hearing Panel, proposed that a number of additional transportation triggers be added to the provisions. Mr Shields has responded to Mr Smith's updated position, accepting that some, but not all, of the additional triggers are necessary.
- 12 Of particular note are the new triggers requiring Stalker Road bus priority works and the works under the New Zealand Upgrade Programme (**NZUP**) package west of Shotover Bridge to be in place prior to substantial parts of the TPLM Variation development. We have addressed the scope to make the further changes to the triggers at paragraphs 98-102 below.
- 13 Relevantly, there was very limited pushback during the course of the hearing from submitters in relation to the various transport triggers,<sup>2</sup> indicative of the consensus of the transport experts of the need for the various triggers. None of the transport experts appearing after Mr Smith at the hearing took issue with his additional triggers in presenting their evidence to the Hearing Panel.
- 14 Whilst the triggers are effective in ensuring that development will not be able to proceed in the absence of the necessary infrastructure upgrades, there does remain an acknowledged interdependency of the TPLM Variation and the investment required by the Way 2 Go Partners within Queenstown. A clear concern of the Hearing Panel has been what will happen if the Way 2 Go investment and initiatives do not happen, and indeed what the risks of this are.

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<sup>2</sup> Of the transport experts that appeared at the hearing, only Mr Barlett for Glenpanel noted that some development should proceed ahead of the transport infrastructure trigger (refer paragraph 11 of his summary). Mr Finlin was the only lay submitter that raised some concerns with transport triggers and this was only in relation to Sub-Areas F and G.

- (a) First, the Hearing Panel can take considerable assurance from the evidence of both Mr Smith for Waka Kotahi and Mr Pickard and Mr Shields for QLDC that a range of the processes required to finalise the Way 2 Go investment and initiatives are occurring in tandem with the TPLM Variation (rather than it necessarily being a chicken and egg situation). In particular, Mr Smith confirmed that the first stage of the NZUP SH6 works have been confirmed and will start delivery in early 2024. Waka Kotahi is also committed to deliver the full NZUP Queenstown package however the timing of implementation is uncertain.<sup>3</sup> Mr Pickard confirmed various traffic demand management initiatives provided by QLDC, that are of relevance to Ladies Mile and the District as a whole, are being delivered in 2024. Also, the Queenstown Public Transport Business Case, being led by Otago Regional Council (**ORC**) was due to be completed to the draft stage by December 2023, and has reached an emerging preferred option.<sup>4</sup> The tandem processes reflect the complex and interrelated nature of land use and transportation planning, which occur under separate statutes.
- (b) As is noted in Council's opening legal submissions, uncertainty of funding for infrastructure is not a basis to refuse to rezone land.<sup>5</sup> Reiterating the opening legal submissions, if QLDC is not able to comprehensively plan for future urbanisation within its District through a plan change or variation unless wider infrastructure projects were guaranteed, QLDC would not be able to fulfil its functions under the Act.<sup>6</sup>
- (c) Finally, if the Way 2 Go investment in transport infrastructure does not happen, then it would be open to individual developers to fund the transport infrastructure prescribed by the triggers. It is recognised developers cannot provide the anticipated increased and more frequent public transport services to TPLM, as that is the function of ORC. However, Mr Pickard, Mr Shields and Mr Smith all acknowledged during hearing that the TPLM Variation will give

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<sup>3</sup> Response to questions by Mr Smith for Waka Kotahi dated 14 December 2023.

<sup>4</sup> Summary of Mr Pickard, dated 5 December 2023.

<sup>5</sup> See opening legal submissions at paragraphs 115 and 116; *High Quality Ltd v Auckland Council* [2022] NZEnvC 117. The relevant parts of this case that deal with the infrastructure funding issue specifically are [30]-[35], [68]-[76] and [117].

<sup>6</sup> Resource Management Act 1991, section 31(1).

certainty of the level of development in the Eastern corridor which will assist the Way 2 Go partners to deliver their wider programmes, including ORC's anticipated increased and more frequent public transport services.

- 15 Taking all of the above into account, if the Hearing Panel were minded to recommend approving the TPLM Variation, it is submitted there is very little (to no) risk that the Way 2 Go investment and initiatives will not happen.

*Staging more generally*

- 16 At the hearing, the Panel raised several questions regarding staging and whether any staging mechanisms are necessary. As Mr Brown has previously indicated, no staging rules are proposed as such rules may be inequitable given some landowners/developers are ready to go now, and others are not. The Structure Plan is key in terms of ensuring that the various "pieces of the puzzle" fit together.<sup>7</sup> Other plan provisions such as the infrastructure triggers and stormwater provisions also play a critical role in terms of ensuring that the jigsaw comes together as required.
- 17 As a sub-set of staging, there was also considerable focus on the role of development within the commercial precinct. The economic evidence clearly supports the commercial precinct being able to develop as soon as possible, as the sooner it can develop, the sooner it can assist in changing travel patterns for existing and new residents in the wider trade catchment.<sup>8</sup>
- 18 Mr Brown will recommend some relaxation on the controls applying to any supermarket, in response to the evidence presented at the Hearing which highlighted the importance of enabling this to develop as soon as the market can deliver it. In particular, Mr Shields and Mr Brown both consider that the infrastructure triggers for any supermarket can be limited to the signalisation of the SH6/Howards Drive intersection and that a specific minimum parking rate for the supermarket be included.

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<sup>7</sup> Mr Brown, summary of evidence and response to written questions, paragraph 22.

<sup>8</sup> Ms Hampson summary of evidence and response to written questions, paragraph 25

### The role of the intended schools

- 19 During the hearing, a number of questions were raised about the role of the intended schools within the TPLM Variation Area.
- 20 The Council's evidence on the schools highlighted that:
- (a) From an urban design perspective, the provision of new schools is an important component in creating walkable higher density neighbourhoods that will positively contribute to a well-functioning urban environment.<sup>9</sup> It is envisaged that the anticipated schools would become important centres for the community.<sup>10</sup>
  - (b) From a transport perspective, the provision of a high school (in particular) at TPLM would mean a large reduction in the amount of car trips associated with school travel with these being replaced with shorter distance walk and cycle trips to an anticipated high school at TPLM.<sup>11</sup> Accordingly, there would likely be transportation implications if the schools (and also commercial developments) do not occur, or if there are significant delays in these occurring. In particular, this would likely exacerbate the existing problems on SH6, particularly at the Shotover Bridge. However, both Mr Shields and Waka Kotahi acknowledge that if this were to occur this would increase the need for the 'wider initiatives' (including the Way 2 Go partners network wide active mode and public transport and Transport Demand Management measures) to be implemented which may assist in prioritising them with regard to funding.<sup>12</sup>
- 21 The Council has given further careful consideration to whether it would be appropriate for an additional rule to be included that requires confirmation of a High School proceeding in the TPLM Zone before certain residential development can proceed. To assist with this process, the Council engaged with the Ministry of Education (**MoE**) to

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<sup>9</sup> Evidence of Chief of Mr Dun dated 29 September 2023, paragraphs 35(a) and (f), and 76. Also refer to Evidence in Chief of Mr Lowe dated 29 September 2023, paragraph 98(b) and Mr Lowe's oral answers to questions.

<sup>10</sup> Evidence of Chief of Mr Dun dated 29 September 2023, 76.

<sup>11</sup> Evidence in Chief of Mr Shields dated 29 September 2023, paragraph 74.

<sup>12</sup> Appendix A to Mr Shield's summary dated 4 December 2023 (Responses to Hearing Panel Minute: Pre-Hearing Questions), paragraphs 18 – 19.

understand its position on such a rule. The MoE has sent the Council a letter setting out its views and this is attached as **Appendix A**.

- 22 The MoE has confirmed its clear interest and commitment to the provision of educational facilities along Ladies Mile, but is yet to confirm any land acquisition (however engagement with landowner(s) is continuing). The MoE is not supportive of the inclusion of a trigger rule for a High School as it questions the effectiveness and efficiency of such a rule given possible uncertainty/delay in a school being delivered. The MoE noted it is open to exploring the use of the land proposed to be zoned Open Space Precinct (owned by the Council) as an option if the Council was interested. However, the Council is not interested in using this land for a school.
- 23 The Council is also conscious of the legal risks that including such a rule in the TPLM Variation provisions at this late stage may pose. The rule may lack the required certainty given the absence of confirmed information on the timing and delivery of a High School within TPLM. The possible consequential delay to development at TPLM as a result of such a rule may also not be the most appropriate way to achieve the objectives of the TPLM Variation under ss32 and 32AA of the RMA.
- 24 Taking all of the above into account, the Council does not consider it is appropriate to include such a rule in the TPLM Variation provisions.
- 25 To address any uncertainty about the schools establishing in TPLM, Mr Shields and Mr Brown have discussed and agree on some further amendments to the provisions, including a further assessment matter to ensure that transport to and from existing (and planned) schools are considered at the resource consent stage. This is discussed in the statement of Mr Shields and will be addressed in Mr Brown's s42A reply report.

*Stormwater implications of schools being designated*

- 26 A related question posed by the Panel at the hearing was a hypothetical question of whether, if the Minister for Education (**Minister**) for example, happened to be the first 'cab off the rank' and designated its school site in the TPLM Variation Area, what effect this would have on an integrated stormwater solution. Overall, Council is of the view that should any land be designated within the TPLM Variation Area there is low concern that this would disrupt an integrated stormwater solution.

- 27 Should any notice of requirement (**NOR**) be lodged, similar to a resource consent, there would be consideration of notification of the NOR, including either public or limited notification. Limited notification would notify any 'affected persons' or customary rights groups, who would then get directly notified of the NOR. This assessment of 'affected persons' involves an assessment of whether the adverse effects on the person are minor or more than minor (disregarding an effect if a rule permits the activity).<sup>13</sup> It is highly likely that any relevant landowners within the TPLM Variation Area would fall within this 'affected persons' category and be directly notified, allowing opportunity to submit on and be engaged in the NOR process and any stormwater management component.<sup>14</sup>
- 28 Further, QLDC as the territorial authority, in making its recommendation on the NOR, subject to Part 2, has to consider the effects on the environment of allowing the NOR having particular regard to any relevant provisions of a plan or proposed plan.<sup>15</sup> This would include consideration of the full suite of stormwater provisions in the TPLM Variation. There is an element of risk in that the Minister may reject or modify any recommendation (within constraints and providing reasons) by QLDC on conditions for the designation, however there is an appeal process as well as judicial review options.<sup>16</sup> Overall, Counsel is satisfied that should any designations be lodged in the TPLM Variation Area, it would not frustrate the integrated stormwater system.

### **Application of the legal framework**

- 29 It appears from the legal submissions filed on behalf of the various submitters that there are no material differences in terms of the legal framework that the Hearing Panel's decision must be made under (although there are difference in terms of the application of the framework). The jurisdictional matters are addressed further below.

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<sup>13</sup> Resource Management Act 1991, section 169, section 149ZCF.

<sup>14</sup> We note that the 8 December 2023 version of the TPLM Variation provisions (Rule 49.6, Rule 27.10) require the written approval of Kāi Tahu for resource consent applications, in relation to this we consider that notification may still occur depending on the assessed impacts on Kāi Tahu values as a result of the NOR and stormwater proposal)

<sup>15</sup> Resource Management Act 1991, s 171(1)(a)(iv). There is case law that has noted that this is a stronger direction that 'have regard to' under section 104 of the RMA (see for example *New Zealand Transport Agency v Architectural Centre Inc* [2015] NZHC 1991 at [64]).

<sup>16</sup> Resource Management Act 1991, s 172(1), s 174.

Accordingly, there are only three points that I wish to address in relation to this:

- (a) The Minister's Statement of Expectations;
- (b) The role of section 32; and
- (c) National Policy Statement on Urban Development (**NPS-UD**) and the Anna Hutchison Family Trust (**AHFT**) focus on the RTS.

*Minister's statement of expectations*

- 30 As was set out in the Council's opening legal submissions, clause 82 of Schedule 1 of the RMA requires the Council to comply with all terms of the Direction for the SPP, including the Statement of Expectations (**SOE**), and Council was also required to have regard to the SOE when preparing the TPLM Variation. Clearly the SOE remain relevant to the Hearing Panel's recommendations to the Minister.
- 31 The Council and its witnesses have clearly given consideration to these in making final recommendations to the Hearing Panel on the TPLM Variation. Relevantly:
- (a) The expectation to maximise opportunities to enable housing, particular of typologies for housing suitable for older householders, smaller households and lower and lower-middle income households has been relevant to the recommendation in relation to housing density and affordability.
  - (b) The expectation which requires recognition of the limitations of the existing transport work have been relevant to the transportation related provisions, and particularly the transport infrastructure triggers (for example the new trigger relating to the NZUP bus lanes west of Shotover Bridge) which also have the effect of supporting emissions reduction through public and/or active transport provision.
  - (c) The further amendments to the stormwater provisions, both which address the impacts of climate change (for example through the reference to RCP8.5) and also ensures that future development will be undertaken in a manner that recognises and protects sensitive receiving environments, in particular Waiwhakaata Lake Hayes.

*A comment on section 32*

- 32 It is trite that section 32 is fundamental to the recommendations on the TPLM Variation and the submissions and further submissions made on it.
- 33 Section 32 considerations have featured in some of the legal submissions that you heard. In particular, counsel for Ladies Mile Property Syndicate Limited noted that when assessing whether proposed provisions are the most appropriate way to achieve the objectives that the analysis must adopt a real world lens. The Hearing Panel was also encouraged to favour the use of enabling terminology given the ultimate aim of the planning exercise is to encourage and facilitate the creation of a well-functioning urban environment.<sup>17</sup>
- 34 It is helpful for us to be cognisant of three points with respect of the application of s32 (and s32AA):
- (a) The test is of what is most appropriate. The 2003 change to section 32 has made it easier for a local authority to assume a proactive, rather than reactive role.<sup>18</sup>
  - (b) The “most appropriate” method does not need to be the superior method. Section 32 requires a value judgment as to what, on balance, is the most appropriate when measured against the relevant objectives. “Appropriate” means suitable. There is no need to place a gloss upon the word by incorporating that it be superior.<sup>19</sup>
  - (c) A “holistic” approach should be taken rather than a more focused, vertical or “silo” approach to objectives, policies and methods.<sup>20</sup>

*The NPS-UD*

- 35 The objectives and policies in the NPS-UD will be of critical importance to the Hearing Panel’s consideration of the TPLM Variation. This is

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<sup>17</sup> Legal submissions for Ladies Mile Property Syndicate Limited dated 7 December 2023, paragraph 9.

<sup>18</sup> *Gisborne District Council v Eldamos Investments Ltd* 26/10/05, Harrison J, HC Gisborne CIV-2005-485-1241) at [34].

<sup>19</sup> *Rational Transport Soc Inc v New Zealand Transport Agency* [2012] NZRMA 298 (HC)

<sup>20</sup> *Art Deco Soc (Auckland) Inc v Auckland Council* [2012] NZEnvC 125, [2012] NZRMA 451.

plain, given the requirement for the Variation to give effect to the NPS-UD and the various directions contained in it.

- 36 The NPS-UD and the question of whether the proposed enhancements to the public transport infrastructure and services needed to support development at Ladies Mile, are a “rapid transit service” (**RTS**) as defined in the NPS-UD have received a considerable amount of attention in the context of the AHFT’s requested rezoning.
- 37 The relevance of this relates to the obligations under Policy 5 of the NPS-UD which requires (relevantly) district plans applying to Tier 2 urban environments to enable heights and density of urban form commensurate with the level of accessibility by existing or planned active or public transport to a range of commercial activities. AHFT say because there is a planned RTS along the Ladies Mile corridor that, on the merits, the urban rezoning of the Extension Area and its integration with the transport network is not optional.<sup>21</sup>
- 38 The focus on the RTS definition does appear to be somewhat of a moot point given that the specific obligations under Policy 3 that require building heights of at least 6 storeys within at least a walkable catchment of existing and planned rapid transit stops only applies to tier 1 urban environments (and the Queenstown District is only a Tier 2 urban environment). Clearly, Policy 5 of the NPS-UD regarding heights and density of urban form to be enabled in certain circumstances will be highly relevant but this is not tied to the question of whether it is an RTS or not.
- 39 In this regard, Mr Shields’ evidence regarding the accessibility of the Extension Area to the planned public transport services is an important consideration in terms of the merits of the rezoning (albeit recognising that Mr Shields’ accepts the Extension Area does offer some benefits in terms of accessibility to active travel networks via the Old Lower Shotover Bridge). The admission of the traffic experts for AHFT that the impacts of the proposed rezoning on the traffic network had not been modelled will need to be weighed up in addressing the competing evidence on these matters (but only if the Hearing Panel did decide that the AHFT submission was ‘on’ the TPLM Variation).

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<sup>21</sup>

Legal submissions on behalf of the AHFT dated 11 December 2023, paragraph 55.

40 Irrespective, in terms of the RTS question, it is submitted that it is clear that the proposed public transport infrastructure and services do not comprise an RTS. While the planned infrastructure involves the provision of bus lanes both east of, and west of the Shotover Bridge buses will still be required to use Shotover Bridge which is a significant constraint in terms of the route being able to be considered an RTS. Further the Government's Policy Statement on Land Transport, which is relevant in terms of funding in the national land transport programme, while using a similar definition of the RTS for the definition of a rapid transit does not identify any works within Queenstown (or indeed any Tier 2 local authority) as being rapid transit (and therefore an RTS).<sup>22</sup>

### **Amenity Access Area**

- 41 During the course of the hearing, the Panel raised a number of questions regarding the Council's intentions in relation to the treatment and ownership of the Amenity Access Area (**AAA**). The Hearing Panel also had related questions regarding how the Council manages its various regulatory functions with respect to Open Space and Recreation facilities, including consenting, vesting and development contributions.
- 42 In light of the various questions raised at the hearing, the Council's team gave further consideration to its proposal for the AAA and provided these (being an updated cross section, two new plans (a tree spacing plan and long elevation) and amended provisions) to the submitters prior to the Christmas break to provide any comment on. Several submitters took up the opportunity to provide a response. The Council's updated proposal for the AAA and the submitters responses are included as **Appendix B** to these submissions.
- 43 In terms of the final recommendations on the size and treatment of the AAA, including matters such as setback size, tree species etc, these will be addressed in Mr Brown's section 42A reply report.
- 44 However, the submitters responses to the material provided by the Council raised legal issues in terms of the Council's preference for the

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<sup>22</sup> [Government Policy Statement on land transport 2021/22-2030/31](#): rapid transit is defined as "A quick, frequent, reliable and high-capacity public transport service that operates on a permanent route (road or rail) that is largely separated from other traffic." The draft 2024 Government Policy Statement on land transport uses similar definitions.

AAA to be vested in the Council as Local Purpose – Connection Reserve. The legal issues associated with the ownership considerations and preference for vesting are addressed in the following part of these submissions.

- 45 As addressed by Ms Galavazi's there are a number of ways that the Council currently manages active trail connections within the District.<sup>23</sup>
- 46 The Council's preferred method for managing trails on private land is that they vest in the Council as Local Purpose – Connection Reserve, which typically occurs through a subdivision consenting process. Other options that occur elsewhere in the District include:
- (a) Trails being formed in road reserve or the state highway corridor; and
  - (b) Trails being formed on private land and public access being provided through an easement in favour of QLDC.<sup>24</sup>
- 47 The legal basis for such a vesting arises from section 239 of the RMA. This provides for land shown on a survey plan as reserve to be vested in a territorial authority for that purpose, subject to the Reserves Act 1977. The vesting of a reserve by a developer under this process is voluntarily. The Council's Vesting of Roads and Reserves Policy provides guidelines for the transfer of land into Council's ownership as road or reserve.
- 48 Generally, to acquire large open spaces such as local and community parks that are vested in the Council, the Council collects reserve land contributions from developers in cash to purchase these spaces under its Development Contributions Policy 2021. Under the Council's Future Parks Provisions Plan 2021 (**Future Parks Plan**), the developer who provides the community park can offset their reserve land contribution that would otherwise be made in cash.
- 49 However, the Future Parks Plan *does not* allow a developer to offset their reserve land contribution by providing a Connections Reserve (i.e. a developer is not entitled to a reserve land contribution offset by vesting

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<sup>23</sup> Ms Galavazi's Summary of Evidence dated 4 December 2023, Appendix A at paragraphs 3-4.

<sup>24</sup> Ms Galavazi's Summary of Evidence dated 4 December 2023, Appendix A at paragraphs 3.

the AAA in the Council).<sup>25</sup> Accordingly, the Council typically relies on trails being vested at a developer's discretion rather than purchasing connection reserves.<sup>26</sup> In cases where a trail is not vested as Connection Reserve, the Council negotiates a public access easement in its favour to facilitate a public trail.

- 50 In correspondence with the parties on this matter, Glenpanel Development Ltd, Ladies Mile Pet Lodge, and Maryhill Limited have raised concerns with the lawfulness of vesting their land (shown as AAA) as Local Purpose Reserve (Connection) without being eligible for reserve land development contribution credits, and are of the view that this land must be acquired under a Public Works Act 1981 process (refer Appendix B). Counsel reiterates that the Council is not empowered to require land to be vested under section 239 RMA and is not seeking that this is required under the TPLM provisions. While vesting of reserve is Council's preference, negotiating a public access easement remains an option.
- 51 Counsel submits it is not fundamental that the AAA is vested in Council in order for it to be developed and managed successfully. There are several examples across the District where public trails of varying nature have been formed and managed through easements in favour of the Council (including at Remarkables Park Limited and at Frankton Flats). Rather, the critical point is that the AAA is shown in the TPLM Structure Plan, where a departure from developing the AAA requires a non-complying resource consent.
- 52 In the s 42A reply report, Mr Brown will recommend an additional matter of discretion for Subdivision of land within the TPLM Zone at 27.7.28.1:
- j. the design and ownership / management of the Amenity Access Area and the active travel link on the south side of State Highway 6. The preference is for the Amenity Access Area is to be formed and vested in the Council as Local Purpose Reserve (Connection).
- 53 Counsel submits that the proposed matter of discretion at 27.7.28.j. is lawful on the basis that it simply records Council's preference for trails on private land are vested as Local Purpose – Connection Reserve,

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<sup>25</sup> There are exceptions to this if prior agreement is reached between a developer and the Council's Parks and Reserves team. Refer to Council's Future Parks Plan at page 28.

<sup>26</sup> While the Council cannot require a reserve to be vested under s 239 RMA, where there is policy support in the PDP for a trail connection, the vesting of a Local Purpose – Connection Reserve has been included as a condition of a subdivision consent.

rather than requiring a vesting. While this matter of discretion is consistent with the Council's Development Contributions Policy 2021 and Future Parks Plan, in no way does it cut across this separate process nor expressly require that a development vests land to the Council.

- 54 In terms of managing various regulatory functions with respect to Open Space and Recreation facilities, including consenting, vesting and development contributions, the Council is guided by its Development Contributions Policy, Parks and Open Spaces Strategy, and Future Parks Plan, which set out the provision need and acquisition method (i.e. development contributions regime) for each public open space type. While this is ultimately separate to the RMA, this guides the use of reserve land at a consenting process. For example, as set out in Ms Galavazi's evidence in chief, while a Community Park must be 1.5 – 2 ha in size to achieve the community park purpose, should stormwater infrastructure be required within this space, then the reserve size needs to be increased to accommodate both.<sup>27</sup>
- 55 Ultimately the future decisions required by the Council in relation to the management of open spaces (and also in relation to other matters such as infrastructure provisions) are future decisions, made under separately regulatory functions (such as those under the Reserves Act 1977, or Local Government Act 2002 in relation to development contributions). The Hearing Panel's ability to influence those future decisions is constrained to the recommendations it makes in relation to the TPLM Variation and submissions and further submissions on the Variation in relation to the RMA considerations alone.

#### **Other overarching themes**

- 56 There are a range of other 'themes' or issues that could have been addressed here and which will undoubtedly be highly relevant to the Hearing Panel's recommendations. These include the very real concerns expressed by a number of local residents regarding the impact of the TPLM Variation, particularly in relation to the operation of the

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<sup>27</sup> Statement of evidence of Jeannie Ellen Galavazi dated 28 September 2023 at paragraph 55.

transport network, and the potential impact of enabling the TPLM Variation on Waiwhakaata Lake Hayes.

- 57 However, ultimately these issues are planning issues and will require planning judgment in forming a recommendation on the submissions and further submissions before you. Accordingly, it is more appropriate that these are addressed by Mr Brown in his s42A reply report. The fact that an issue has not been further addressed here should not be taken as an indication of the importance of that issue to the Hearing Panel's task.

## **JURISDICTIONAL ISSUES**

- 58 Two strands of jurisdictional issues remain outstanding, being whether certain submissions are 'on' the TPLM Variation, and, separately, whether certain relief contemplated/sought is within scope. The legal principles behind these two scope issues are described in **Appendix B** to Council's opening legal submissions, which we will not repeat here, other than where necessary to respond to matters raised by the submitters.

### **Mr and Mrs Dobb's Submission**

- 59 The jurisdictional issue with respect to Mr and Mrs Dobb's submission is whether the submission is 'on' the TPLM Variation.
- 60 Mr Devlin in his expert summary, noted that the Dobb's land (13 Ada Place), is now partially covered by annotations on the amended Structure Plan with an indicate road and roundabout annotation.<sup>28</sup>
- 61 Upon further reflection of the matters raised by Mr Devlin on behalf of Mr and Mrs Dobb, and ensuring that Council does not take an unduly narrow approach to scope, Council no longer considers that the Dobb's submission is not 'on' the TPLM Variation. This is on the basis that the caselaw, including *Motor Machinists*, recognises that zoning amendments that be reasonably be viewed as an incidental or consequential extension to the Variation can be considered
- 62 In this case, the Dobb's land is zoned rural zone (being the same as the Doolittle site and some of the Queenstown Country Club land); is also covered by annotations on the amended Structure Plan; is a comparatively small size of the parcel of land to be rezoned (9903m<sup>2</sup>);

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<sup>28</sup> Summary of Evidence – Blair Jeffrey Devlin – on behalf of J & M Dobb, at page 2.

and is geographically proximate being on the same terrace as the Council's 516 site, accordingly the Council considers its zoning can substantively be considered.<sup>29</sup> The merits of rezoning the Dobb's land will be addressed by Mr Brown.

### **Anna Hutchinson Family Trust**

- 63 The question of whether the submission made by the AHFT seeking rezoning of land north and west of the Lower Shotover Road, remains a key legal issue to be determined by the Hearing Panel (referred to as the "Extension Land" for consistency with AHFT). The Chapman Tripp memorandum provides a helpful summary of Environment Court cases applying the *Motor Machinists* test. Likewise with Counsel for AHFT, we do not differ on the law. However, there are several points raised by both Counsel for AHFT and in the Chapman Tripp memorandum that need to be addressed. These concern:
- (a) The relevance of prior communications with the Council about the AHFT land;
  - (b) The context of the Variation and the relevance of the prior Spatial Planning exercise and the case law on this addressed in the Chapman Tripp memorandum;
  - (c) The assertions regarding the AHFT land sought to be rezoned being physically part of the Ladies Mile corridor; and
  - (d) The potential prejudice to affected parties and the relevance of the Shotover Outstanding Natural Feature (**ONF**).

#### *Prior communication with the Council and AHFT involvement in prior processes*

- 64 Counsel for AHFT at the hearing indicated that Council and its experts have not been responsive to representatives from the AHFT throughout the TPLM Masterplan and TPLM Variation process. AHFT have also indicated that the boundaries of the zone and land under consideration have changed and there has been material fluidity about the land being considered.<sup>30</sup> These matters are addressed as follows:

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<sup>29</sup> Statement of Evidence of Blair Jeffrey Devlin on behalf of Jo and Matt Dobb, dated 19 October 2023 at paragraph 15.

<sup>30</sup> Legal submissions on behalf of the Anna Hutchinson Family dated 12 December 2023, at paragraph 19.

- (a) First, in terms of the Masterplan process that preceded the TPLM Variation, AHFT was not a submitter in relation to that process and no online feedback was provided. Mr Brown, who was involved throughout the Masterplan, will outline the extent of his knowledge of any engagement by the AHFT.
- (b) Counsel understands that the planner for AHFT did approach Council staff members in July and August 2022 to discuss whether the AHFT land could be included in the TPLM Masterplan. However, this was after the Council adopted the amended Masterplan, the Variation provisions, and gave approval to make an application to the Minister to undertake a Streamlined Planning Process for the Variation (which occurred at a full Council meeting on 30 June 2022).
- (c) It is acknowledged that AHFT did lodge a submission on the Spatial Plan in 2021. However, importantly the Spatial Plan does not include the AHFT land.<sup>31</sup> The relevance of the Spatial Plan in terms of the scope issue is also addressed further below.
- (d) In terms of the position about their being material fluidity about the Masterplan area of interest, the TPLM Masterplan boundaries, while including the Threepwood land, showed this land as not being developed for residential purposes. Further the Queenstown Country Club (**QCC**) land was also shown on relevant plans, albeit outside the Structure Plan in some instances.<sup>32</sup> The QCC land was subsequently included in the TMPL Variation in response to submissions on the Masterplan. The suggestion of their being fluidity between the Masterplan and the TPLM Variation is therefore refuted.
- (e) Counsel is unaware of any desire to engage with Council or its experts prior to the notification of the TPLM Variation. After receiving submissions, the planner of AHFT contacted Brown and Company to see if there was information supporting their

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<sup>31</sup> Acknowledging the scale of the plans, indicates that the Cemetery and potentially a small part of the AHFT land may be included on some of the plans.

<sup>32</sup> For example see the Design Response, page 69, Masterplan that accompanied the request to the Minister to use the SPP.

submission to inform the s42A Report assessment, however the sharing of information did not eventuate.

- 65 The essential point, however, is that the above does not mitigate or remedy the position of the AHFT Submission in terms of the *Motor Machinists* test. The key question for the first limb of the *Motor Machinists* test is whether the submission is said to fall within the ambit of the plan variation with one way of analysing this being assessing whether the submission raises matters that should have been addressed in the s 32 report.<sup>33</sup>
- 66 Whilst Counsel agrees that the inclusion of the Extension Area within the s 32 Report assessment is not determinative, the Chapman Tripp memorandum loses sight of the purpose of a s 32 Report. It is not just whether or not “further assessment” is required (which feeds into the merits assessment), but for the purpose of *informing* the public on the comparative merits of a proposal *to inform their submissions on the matter*. The vast amount of supporting information provided by the AHFT in evidence does not remedy the fact that the public at large could not be sufficiently informed of and be aided by the comparative merits of a proposal. As is stated in *Motor Machinists* with specific regard to zoning extensions:
- ...yet, the *Clearwater* approach does not exclude altogether zoning extension by submission. Incidental or consequential changes proposed in a plan change are permissible, **provided that no substantial s 32 analysis is required to inform affected persons of the comparative merits of that change**. Such consequential modifications are permitted to be made by decision makers under schedule 1, clause 10(2). Logically they may also be the subject of submission.
- 67 The evidence and now ecology report provided by AHFT is helpful in assessing the merits of the request, however, it does not remedy the issue of scope. The public was unable to assess the comparative merits of the submission at the time of notification – the further information was provided from November onwards, when participation rights in the process were already cut off.
- 68 Council is also conscious of, and alive to, caselaw that notes that care needs to be taken in assessing the validity of a submission depending

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*Palmerston North City Council v Motor Machinists* [2013] NZHC 1290 at [81].

on the contents of s 32 report.<sup>34</sup> That is, being alive to the risk that a s 32 report could be seen as ‘self-fulfilling’ by not assessing a certain matter that it should have to ‘cut-off’ submissions.

- 69 The most recent High Court decision applying *Motor Machinists, Mackenzie v Tasman District Council*, noted that the Environment Court Judge in making his decision on scope had been “alive to and expressly noted the concern that a rigid application of the legal tests might give local authorities the opportunity to stifle debate through a narrow s 32 report”.<sup>35</sup> In *Mackenzie v Tasman District Council*, the High Court Judge noted with regards to the s 32 report faced before it that:<sup>36</sup>

...the evaluation report did not need to canvas the alternatives relating to that resource which was in a separate zone than the zones targeted by PC60.

- 70 Council submits that not assessing the AHFT was because no Wakatipu Basin Lifestyle Precinct zoned land was being assessed or proposed to be rezoned. Further, caselaw recognises that were the objective of a plan change is by nature, site specific, it may be sufficient for the analysis of reasonably practical alternatives for the obligations to be limited to considering the benefits and costs of a proposed rezoning to be compared with the benefits and costs of the operative zoning of the same area.<sup>37</sup>

*The degree of change of the status quo and relevance of the prior planning exercises*

- 71 In assessing the first limb of *Motor Machinists*, the Chapman Tripp memorandum also suggests that the Variation is not a narrow change of the discreet nature of the proposed plan change in *Clearwater* and *Motor Machinists*, representing a substantial departure from the status quo.<sup>38</sup>

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<sup>34</sup> *Bluehaven Management v Ltd v Western Bay of Plenty District Council* [2016] NZEnvC 191, at [34].

<sup>35</sup> *Mackenzie v Tasman District Council* [2018] NZHC at [100]; This comment was built upon concerns raised in Environment Court cases including *Bluehaven Management v* where Smith EJ and Kirkpatrick EJ (sitting together) noted that care needs to be taken with the s 32 analysis.

<sup>36</sup> *Mackenzie v Tasman District Council* [2018] NZHC 2304 at [102]; noting that this was not a zoning extension case, but a submission on subdivision rules under a zone not covered by the plan change.

<sup>37</sup> *Southern Cross Healthcare Ltd v Eden Epsom Residential Protection Society Inc* [2023] NZHC 948, (2023) 24 ELRNZ 722, acknowledging that this was a private plan change request.

<sup>38</sup> Legal submissions on behalf of the Anna Hutchinson Family dated 12 December 2023, Appendix A, at paragraph 18.

72 I respectfully differ in my opinion from Chapman Tripp’s position. In my submission their opinion blurs a key distinction that has been made in case law, being the difference in approach to scope for a *full plan review* compared to a *plan variation*. *Motor Machinists* itself was a case of a focused variation on a relatively discrete issue. In contrast, cases like *Albany North*, *Well Smart* and *Calcutta Farms* were decided within the context of plan reviews, not variations. The small extract of the *Albany North Landowners* decision cited in the Chapman Tripp Memorandum<sup>39</sup> is better understood within its whole context, describing the Auckland Unitary Plan Review:<sup>40</sup>

Returning to the present case, the Auckland Unitary Plan planning process is far removed from the relatively discrete variations or plan changes under examination in *Clearwater*, *Option 5*, and *Motor Machinists*. The notified PAUP encompassed the entire Auckland region (except the Hauraki Gulf) and purported to set the frame for resource management for the region for the next 30 years. Presumptively, every aspect of the status quo in planning terms was addressed by the PAUP. Unlike the cases just mentioned, there was **no express limit to the areal extent of the PAUP (in terms of the Auckland urban conurbation). The issues as framed by the s 32 report, particularly relating to urban growth, also signal the potential for create change to the urban landscape. The scope for a coherent submission being “on” the PAUP in the sense used by William Young J was therefore very wide.**

73 The TPLM Variation is focused on a discrete area of land, with a clear aerial extent limit (the assertions that the Extension Area are factually part of Ladies Mile are addressed separately below), supported by a clearly defined Structure Plan extent that builds upon the earlier Masterplan extent.

74 As is recognised in *Calcutta Farms*, full reviews of plans (even if in a staged manner), as required under section 79 of the RMA, shades the scope assessment.<sup>41</sup> Section 79(3) of the RMA enables interested parties to make submissions on the proposed retention of the status quo, if the Council decides not to change a provision [or management regime].<sup>42</sup> Likewise, *Calcutta Farms* and *Well Smart* are both part of full plan reviews, occurring in stages.<sup>43</sup>

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<sup>39</sup> Legal submissions on behalf of the Anna Hutchinson Family Trust dated 12 December 2023, Appendix A, at paragraph 12.

<sup>40</sup> *Albany North Landowners v Auckland Council* [2017] NZHC 138 at [129].

<sup>41</sup> *Calcutta Farms Ltd v Matamata-Piako District Council* [2018] NZEnvC 187 at [4] to [6], and [87].

<sup>42</sup> *Calcutta Farms Ltd v Matamata-Piako District Council* [2018] NZEnvC 187 at [6].

<sup>43</sup> *Calcutta Farms Ltd v Matamata-Piako District Council* [2018] NZEnvC 187 at [4].

- 75 To further elaborate, in *Calcutta Farms*, the appeal was related to Plan Change 47 (**PC47**), which is part of the Matamata-Piako district’s rolling plan review.<sup>44</sup> Calcutta’s appeal sought re-zoning of parts of its property in Matamata to Residential Zone in part, and Future Residential Policy Area (**FRPA**). The Council, together with section 274 parties, argued that Calcutta’s submission on and appeal against PC47 were not “on” the plan change.
- 76 PC47, as part of the rolling district plan review, was designed to address the planning controls and zonings for Matamata, Morrinsville and Te Aroha in relation to the provision of new housing and new business industrial activities.<sup>45</sup> The Environment Court applied *Motor Machinists*, and held that with regards to the first limb PC47 did change the status quo, stating:<sup>46</sup>
- In my view, **PC47 did involve changes to the management regime for residential activity and areas to be designated as future residential activity areas**, so that it was open to Calcutta Farms to lodge a submission seeking an alternative position on the areas proposed in PC47 to either be Residential Zones or Future Residential Policy Areas, which is what it did. It did therefore address in its submission the extent to which PC47 changes the existing status quo.
- 77 The Judge went on to highlight a novel factual situation specific to *Calcutta Farms*, where whilst the Council was arguing that Calcutta’s submission was not *on* the plan change, the Hearings Report and Hearing Decisions proceeded to provide for a separate new Residential Zone in the Banks Road area, and adopted a Future Residential Policy Area in the Banks Road location, rather than Tower Road location as proposed under PC47, including a portion of Calcutta Farm’s land, but excluding the remainder.<sup>47</sup> The Judge explained this, stating:<sup>48</sup>
- ...One must ask how this new Residential Zone and new Future Residential Policy Area are within scope, but the remainder of what was sought by Calcutta Farms is not.
- 78 In comparison, Ladies Mile has always been a discrete area, the ‘Ladies Mile’ that is being rezoned. Other processes, such as QLDC’s spatial plan process or PDP process, in contrast are more similar to *Calcutta Farms*, whereby it is about safe guarding future areas for development.

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<sup>44</sup> *Calcutta Farms Ltd v Matamata-Piako District Council* [2018] NZEnvC 187 at [4].

<sup>45</sup> *Calcutta Farms Ltd v Matamata-Piako District Council* [2018] NZEnvC 187 at [75].

<sup>46</sup> *Calcutta Farms Ltd v Matamata-Piako District Council* [2018] NZEnvC 187 at [81].

<sup>47</sup> *Calcutta Farms Ltd v Matamata-Piako District Council* [2018] NZEnvC 187 at [75].

<sup>48</sup> *Calcutta Farms Ltd v Matamata-Piako District Council* [2018] NZEnvC 187 at [82].

In contrast, a discrete area, albeit neighbouring, is not a comparable process, differentiating *Calcutta Farms*. However, a streamlined planning process, focused on a specific area of land with no relevant appeal rights does not bring in the same shade to the *Motor Machinists* test as promulgated by the AHFT.

- 79 In terms of the application of other factual matters to the law, relevantly:
- (a) AHFT have not addressed the fact that the management regime for the Wakatipu Basin Lifestyle Precinct Zone was not being altered by the TPLM Variation. As noted in *Motor Machinists*, the first limb can also be assessed by asking whether the management regime in a district plan for a particular resource is altered by the plan change.<sup>49</sup> The Public Notice for the TPLM Variation quite clearly states "The proposal seeks to rezone an area of land from a mix of Rural, Rural Lifestyle and Large Lot Residential under the Proposed District Plan (PDP), into a new Special Purpose Zone, the Te Pūtahi Ladies Mile Zone". The fact sheet referred to in Counsel's submissions<sup>50</sup> shows land on QLDC's cemetery as being within the Urban Growth Boundary extension, but does not suggest any rezoning of the land to the west of Lower Shotover Road. This is not Council taking an unduly narrow approach, such as assessing whether the particular *lot* had its specific management regime altered, but assessing whether *any* land with the Wakatipu Basin Lifestyle Precinct Zone was being altered, which it is not.
  - (b) While in *Calcutta Farms* the previous spatial planning exercise was of relevance given that the Banks Road option was clearly in the public arena. In the context of the TPLM Variation this is less clear. Whilst a small part of the AHFT land was in the notified Spatial Plan in 2021, it was not included in either the final Spatial Plan or the Masterplan documentation. Further, as set out above, no submission was lodged by AHFT on the Master Plan about this land. Accordingly, it is difficult to see how potentially affected

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<sup>49</sup> *Palmerston North City Council v Motor Machinists Ltd* [2013] NZHC 1290, at [81].

<sup>50</sup> Legal submissions on behalf of the Anna Hutchinson Family Trust dated 8 December 2023, at paragraph 18.

parties would have thought that the option of rezoning the AHFT land was “clearly in the public arena”.

- (c) The contention that some of the supporting appendices in the section 32 assessment included maps showing the land as potential future urban zoning overstates the section 32 assessment.<sup>51</sup> The plan referenced by Chapman Tripp as including the part of the extension area as Urban Zoning is a plan from the Transport Strategy. All of the plans in the Transport Strategy, other than this single plan, show the urban boundary stopping at the QLDC Cemetery (for example see Figures 2 to 6). Page 26 of the Transport Strategy referenced in Chapman Tripp’s memorandum is a map showing public transport and active travel networks. It shows part of the land as future urban (presumably as it was taken from the draft Spatial Plan). It would be a long bow to draw to suggest that this might alert would be submitters to the potential rezoning of the AHFT land.

*Is the AHFT land part of the Ladies Mile corridor?*

- 80 Counsel and experts for the AHFT have made several statements that factually the AHFT land is part of the Ladies Mile corridor.<sup>52</sup> In my submission whether the AHFT is in fact part of what is known as “Ladies Mile” is relevant when assessing the potential prejudice and the application of the second limb of *Motor Machinists* as it goes to the issue of whether or not there would be prejudice to people interested and whether the submission is effectively a *submissional side-wind*.<sup>53</sup>
- 81 Counsel for the further submitters, Mr Todd, made a compelling submission about what area of land people actually consider to be the Ladies Mile. This was corroborated by the further information filed by the submitters in relation to submission 107 which contends that Spence Road and Lower Shotover Road is not and never has been considered Ladies Mile.<sup>54</sup>

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<sup>51</sup> Legal submissions on behalf of the Anna Hutchinson Family Trust, appendix A, at paragraph 8.5 and 30.

<sup>52</sup> For example, the Chapman Tripp memorandum states that the Extension Area is as a matter of fact, part of the Ladies Mile corridor, paragraph 8.4.

<sup>53</sup> *Palmerston North City Council v Motor Machinists Ltd* [2013] NZHC 1290, at [82].

<sup>54</sup> Letter from Mitzi Cole-Bailey in support of Submission 107 dated 28 December.

- 82 When questioned about this at the Hearing, Mr Church responded that the term 'Ladies Mile' did refer to the stretch of straight highway on the upper terrace within Waiwhakaata Lake Hayes and Shotover River.<sup>55</sup> Mr Church did however go on to explain that, in his opinion 'Ladies Mile' has evolved to cover the whole geographically linked area between Waiwhakaata Lake Hayes, the Shotover River and the Kawarau River.<sup>56</sup> It is unclear on what basis Mr Church considers that this change in what "Ladies Mile" actually is has come about on.
- 83 Relevantly, the stormwater experts (including Mr Ladbrooke) agreed that these are physically different catchments<sup>57</sup> and the Extension area is also in a different LCU as was addressed by Mr Skelton.

*Prejudice to affected parties*

- 84 Council accepts that AHFT serving notice on neighbouring landowners helps to alleviate some concerns under the second limb of the *Motor Machinists* test. However, Council reiterates that this does not dispose of the concerns for the wider public in general. The AHFT submission, being an increase in 1/5<sup>th</sup> of the land of the original TPLM Variation, could have wide ranging effects on the wider public of the Dalefield / Shotover / Quail Rise general public. We restate that the concern and focus of the *Motor Machinists* test is to the public at large.<sup>58</sup>
- 85 The Chapman Tripp memorandum emphasises the geographic similarities between the TPLM Variation Area and the Extension Area, noting that:<sup>59</sup>

The Extension Area is also in that context. It is immediately adjacent to the Variation area on the north side. The area adjoins SH6 and has rural residential properties to the north and the Shotover River to the west. It also accesses the Variation area via Lower Shotover Road. It is similarly unaffected by special features or overlaps. It is factually and geographically part of the Ladies Mile corridor.

- 86 This overlooks the location of the AHFT land which is in a different landscape schedule and is located adjacent to the Shotover ONF. In

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<sup>55</sup> Minutes of TPLM Hearing, 13 December 2023, Recording 2.

<sup>56</sup> Minutes of TPLM Hearing, 13 December 2023, Recording 2.

<sup>57</sup> Joint Witness Statement of Stormwater and Infrastructure Experts dated 2 November 2023, Attachment A, Issue 5.

<sup>58</sup> *Palmerston North City Council v Motor Machinists Ltd* [2013] NZHC 1290 at [77], [82]; *Well Smart Investment Holding (ZQN) Ltd v Queenstown Lakes District Council* [2015] NZEnvC 214 at [38].

<sup>59</sup> Legal submissions on behalf of the Anna Hutchinson Family Trust dated 12 December 2023, Appendix A, at paragraph 32,

that regard, the users of the Shotover ONF, for example, along with residents of Quail Rise remain relevant considerations.

*Conclusion on AHFT scope issues and scope for additional commercial precinct*

- 87 For all of the reasons above, the Council maintains its view that the AFHT submission is not on the TPLM Variation. Like Counsel for the further submitters, the Council agrees that if the Hearing Panel found that parts of the submission were consequential or incidental to the notified TPLM Variation zoning, the Panel would be entitled to form that view, however the Council also agrees that there is no evidence as to what that might look like. It is also difficult to see how the Panel might reach that view given the clear delineation between the Extension Area and the TPML Variation (demarcated by the cemetery, typography and Lower Shotver Road boundary – the very reasons why the extent of the TPLM Variation was determined to be where it was).
- 88 For completeness, Counsel has also considered the matter of the consequential commercial zoning that the experts agree would be appropriate if the Hearing Panel determined there was scope to include the Extension Area and that it was appropriate to do so on the merits. Counsel for AHFT has helpfully addressed this in his legal submissions.<sup>60</sup> The Council agrees that there is no clear scope to include this proposed rezoning, but irrespective agrees that it would still be achievable through a resource consent process.

**Whether relief sought is within scope**

- 89 As set out in **Appendix B** to Council's opening legal submissions, the Hearing Panel should only make recommendations in its report to the Minister for the Environment that are within scope.<sup>61</sup>
- 90 Case law has established that for an amendment to be considered within the scope of a submission, the amendment must be fairly and reasonably within the general scope of:<sup>62</sup>
- (a) An original submission; or

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<sup>60</sup> AHFT legal submissions dated 12 December 2023, paragraphs 33 to 36.

<sup>61</sup> See Opening legal submissions of QLDC dated 24 November 2023, Appendix B, at paragraphs 71 – 77.

<sup>62</sup> *Re Vivid Holdings Ltd* (1999) 5 ELRNZ 264 at [19].

- (b) The proposed change as notified; or
- (c) Somewhere in between.

- 91 The question of whether an amendment goes beyond what is reasonably and fairly raised in submissions will usually be a question of degree, to be judged by the terms of the proposed change and the content of submissions.<sup>63</sup>
- 92 This should be approached in a realistic and workable fashion rather than from the perspective of legal nicety,<sup>64</sup> with consideration of the whole relief package detailed in submissions.<sup>65</sup>
- 93 The potential relief that can be provided to a submitter (and therefore amendments that can be made to the TPLM Variation) is not confined purely to the words used or suggested by a submitter – the important consideration is the intent of the submission, and whether the proposed amendment is reasonably and fairly raised by the submission itself.
- 94 Changes that are considered to be incidental or consequential to other changes are also allowed.<sup>66</sup> Consequential changes can flow downwards, for example, if a submission requesting amendment is accepted on an objective or policy, but there is a subsequent method or rule that would then be incompatible with the amended objective or policy such that it also requires amendment.

#### *Doolytle and Sons*

- 95 At the Hearing, the Panel were interested in whether the Commercial Precinct within the TPLM Zone was appropriate for the types of activities sought by the submitter for the site, or whether some sort of PDP zoning for the size would enable a “neighbourhood centre” would be more appropriate. The primary relief sought by Doolytle in their initial submission was that their site be included in the Variation, and within the

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<sup>63</sup> *Countdown Properties (Northlands) Ltd v Dunedin City Council* [1994] NZRMA 145 (HC).

<sup>64</sup> *Royal Forest and Bird Protection Society Incorporated v Southland District Council* [1997] NZRMA 408 at 413.

<sup>65</sup> *General Distributors Ltd v Waipa District Council* (2008) 15 ELRNZ 59 at [58]-[60].

<sup>66</sup> *Well Smart Holding (NZQN) Limited v Queenstown Lakes District Council* [2015] NZEnvC 214 at [16]; *Palmerston North City Council v Motor Machinists Ltd* [2013] NZHC 1290 at [91].

Commercial Precinct.<sup>67</sup> If commercial zoning was not accepted, Doolittle sought in the alternative, it be zoned High Density Residential.

- 96 Whilst it remains Council's position on the merits that this land should not be zoned Commercial Precinct, as sought by the submitter,<sup>68</sup> Council accepts that rezoning to a 'neighbourhood centre' would be within scope of the relief originally sought in the Doolittle submission. As noted by Doolittle's legal counsel, on an effects based approach, a "neighbourhood centre" would have less effects than Commercial Precinct, being lower in the 'continuum'. It is therefore Council's position that the above relief would be within scope.

#### *Koko Ridge*

- 97 Koko Ridge seeks that their land, retain the Low Density Residential Precinct (Sub-Area H2) zoning, but provide for pockets of Medium Density on certain lots (referred to as LDR+ Version).<sup>69</sup> Koko Ridge in its original submission sought that there be either 'no maximum residential density standard or alternatively that the maximum residential standard is 350m<sup>2</sup> per residential unit' (as opposed to 450m<sup>2</sup> as notified).<sup>70</sup> As such, Council is of the view that increasing the density of certain pockets of Koko Ridge's land is within the scope of their original submission, when approached from a realistic perspective.

#### *Waka Kotahi*

- 98 At the hearing, Mr Smith's summary identified a number of matters he considered still needed to be addressed. Part of this, was an amended table provided by Mr Smith of infrastructure upgrades that must be included as triggers and delivered prior to the development of the different Sub-Areas within the TPLM Variation. Mr Shields response on behalf of Council has addressed these new triggers.<sup>71</sup>

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<sup>67</sup> Submission of Doolittle and Sons Limited dated 9 June 2023; Summary of Decisions Requested OS81.2.

<sup>68</sup> As Ms Hampson has addressed in her appendix that accompanies Mr Brown's report (paragraph 22), if the Hearing Panel were minded to provide some type of 'neighbourhood centre', her opinion is that the PDP Local Shopping Centre Zone (LSCZ) would be the most appropriate zoning, although it remains her opinion that the land should not be rezoned commercial.

<sup>69</sup> Vivan + Espie Correspondence, dated 15 December 2023.

<sup>70</sup> Submission of Koko Ridge Limited. Summary of Decisions requested, OS80.15.

<sup>71</sup> Reply statement of Mr Shields dated 25 January 2024, table 1.

- 99 Waka Kotahi's initial submission did not include some of these infrastructure upgrades now proposed, therefore it does not provide specific scope for the relief now sought.
- 100 However, various submissions emphasised and sought specifically that the TPLM Variation either be withdrawn or rejected due to traffic constraints and issues, or not occur until infrastructure and capacity along SH6 and Ladies Mile has been implemented.<sup>72</sup>
- 101 Infrastructure triggers serve the purpose of not enabling development until the traffic concerns raised by these submitters are able to be adequately addressed. As such, Council is of the view that providing additional traffic infrastructure triggers falls into the 'continuum' between the relief sought (withdrawing or rejecting the Variation due to traffic issues) and the provisions as now proposed (applying the case law outlined in the Council's opening submissions).<sup>73</sup>
- 102 This approach, of 'general' submissions seeking broad relief as providing scope for amendments 'in the middle' still has the outstanding consideration of whether the amendment proposed is reasonably and fairly raised in the submissions. If the Panel considers that a proposed amendment is not reasonably and fairly raised in a submission (and therefore would not have been an anticipated result of making that submission), this will tend to suggest that there is limited to no scope for that particular amendment.

*Glenpanel Homestead – amendments to provisions*

- 103 Several amendments have been proposed to the provisions in order to address impacts of the TPLM Variation (and the relaxation in controls sought by Glenpanel Development Limited (**Glenpanel**) in its submission. Some of these amendments are consequential upon the amendments sought by Glenpanel. In particular, Glenpanel's submission sought to increase building height to 17m within the Glenpanel Precinct (from the notified height limit of 8m).<sup>74</sup> It is

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<sup>72</sup> See for example Submitter 13, J G Newson, '...that the local authority solves the existing traffic problems before adding to them'; Submitter 18 'TPLM Variation should not be allowed to proceed until such time as road capacity along SH6 and Ladies Mile have been significantly increased to support this significant increase in vehicular traffic... Ladies Mile Variation NOT to proceed until implementation has occurred / works complete'.

<sup>73</sup> Appendix B of Council's opening legal submissions for an outline of the case law.

<sup>74</sup> Glenpanel Development Ltd submission at page 9.

considered that Mr Miller's proposed amendments regarding the restriction on the height limit between 40m and 80/100m back from the Homestead are consequential upon this relief in order to manage the effects of increased building height.

- 104 Further, in its submission, Glenpanel Development Ltd supported the zone purpose for the TPLM, which included:

The Glenpanel Precinct provides for commercial activities where these are compatible with the heritage values of the Glenpanel Homestead and supports open space and a sense of community;...

- 105 Whilst Counsel have not been able to located any caselaw that confirms section 6 matters directly influence the approach to scope, Council considers that the recommended relief for a Glenpanel Precinct Plan (as agreed by Glenpanel), falls within this general support submission point and is therefore within scope of Glenpanel's submission for this aspect too.

#### *Stormwater*

- 106 There has been the refinement and revision of the stormwater provisions for the TPLM Variation. The TPLM Masterplan originally proposed a centralised system that would be shown on the Structure Plan with two devices to address stormwater from the future urban development, along with the significant flows coming off Slope Hill.<sup>75</sup> Due to both developer and Council concerns, the TPLM Variation as notified proposed this proposal was not carried through. However, in light of concerns and engagement between Council, Kāi Tahu, as well as concern from the general public, and in light of evidence from both stormwater and ecology experts, Mr Brown has already proposed a range of amendments to the notified TPLM provisions to ensure that the stormwater solutions are integrated.
- 107 It is Council's position that there is scope for these refinements, in large part due to the relief sought by Kāi Tahu in its submission. For example, Kāi Tahu stated in its submission that it opposes the lack of an integrated stormwater management network in the Structure Plan, and that it be incorporated in.<sup>76</sup> Kāi Tahu also sought that new rules be included to stage development to integrate with the provision of

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<sup>75</sup> Opening legal submissions of QLDC dated 24 November 2023, at paragraph 133.

<sup>76</sup> Submission of Kāi Tahu dated 9 June 2023, appendix four, at page 18.

stormwater infrastructure.<sup>77</sup> The proposed amendments to the stormwater provisions is in light of these submissions, and to alleviate concerns regarding the change from the TPLM Masterplan integrated stormwater proposal. As such, Council is of the view that these changes, similar to those proposed for transport, fall under these broader submission points.

*Accessibility within dwellings*

- 108 In response to discussions at the Hearing with the Panel regarding housing accessibility, Mr Lowe now recommends that where possible dwellings incorporate design features supportive of accessibility such as lifts and level access, and can achieve certifications such as Lifemark.<sup>78</sup>
- 109 No submissions touched on housing accessibility in this way, and while there were wider submissions supporting diverse housing typologies, Counsel is of the opinion that this is beyond the scope of what those submission points were reasonably contemplating. As such, there is unlikely to be scope for this specific recommendation.

**OTHER DISCRETE LEGAL ISSUES**

- 110 The following section of these legal submissions addresses the other discrete legal issues which the Hearing Panel had questions in relation to at the hearing.

**Stormwater – Reference to Code of Practice**

- 111 At the hearing, the Panel queried whether references to the Code of Practice needed cater for the updated QLDC Code of Practice which is in the process of being updated. The proposed new Code of Practice has undergone public consultation and will likely be in place later in 2024.
- 112 The references to the Code of Practice within the PDP rules, act as a cross reference, rather than a document incorporated by reference.<sup>79</sup>

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<sup>77</sup> Submission of Kāi Tahu dated 9 June 2023, appendix four, at page 17.

<sup>78</sup> 49.7.1.g(vi).

<sup>79</sup> There are some parts of the PDP that specifically refer to the 2018 Code of Practice which is incorporated by reference (e.g. in Chapter 29 - Transport). The Chapter 29.3.3.1 makes it clear that it has been incorporated by reference. However, in the subdivision chapter, the Code of Practice is not referenced to a particular version.

- 113 In the context of the TPLM provisions, the cross reference to the Code of Practice occurs only in information requirement under Rule 27.7.28. This information requirement is listed under the matters of discretion in Rule 27.7.28.1. The information requirement is also referenced in Rule 49.4.4 (two or more residential units in MDR or HDR) and Rule 49.4.18 (buildings for non-residential activities), in both instances as a matter of discretion. Given the way that the Code of Practice is referenced in the provisions, as a matter of discretion, rather than as a standard for compliance, it is submitted it is lawful for the references to occur without a reference to a date.
- 114 Further as the TPLM Variation provisions currently do not reference a year or a date, any new or future versions of the Code of Practice will be encompassed.<sup>80</sup> As noted above this approach is also consistent with the wider QLDC PDP references to the Code of Practice.

**References to Structure Plan – ‘consistent with’, ‘generally consistent with’ and ‘in accordance with’**

- 115 At the hearing the Panel asked whether there is a difference between ‘in accordance with’, ‘consistent with’ and ‘generally consistent with’.
- 116 The TPLM Variation provisions use the phrases ‘consistent with’ and ‘generally consistent with’ when referring to the Structure Plan.<sup>81</sup> There are also references in the provisions to certain matters occurring ‘in accordance with’.<sup>82</sup> There is a deliberate distinction between those aspects on the Structure Plan that have to be “consistent with” versus those that can be “generally consistent with”. This was addressed in the reply evidence of Mr Brown.<sup>83</sup>

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<sup>80</sup> See for example *Day v Manawatu-Wanganui Regional Council* [2012] NZEnvC 285, at [96] to [101] where the Environment Court held that generic reference to OVERSEER rather than referring to a specific version was accepted as an approach.

<sup>81</sup> ‘Consistent with’ references to structure plan: Standards 49.5.15, 49.5.37, 49.5.53  
‘Generally consistent with’ references to structure plan: Policies 49.2.1.1; Standards (references here are all creating exceptions to the higher ‘consistent with’ references) 49.5.15(d), 49.5.37(d), 49.5.53.

<sup>82</sup> E.g. the rules refer to a hydraulic model being produced in accordance with the QLDC Code of Practice in Rule 27.7.28.1; that vehicular access should be in accordance with Road Design Standards in the Code of Practice in Rule 29.5.X, that a mechanical ventilation system be installed in accordance with Table 5 in Chapter 36 in rule 49.5.45

<sup>83</sup> Rebuttal evidence of Mr Brown dated 10 November 2023, at paragraphs 162 to 170.

- 117 Both ‘in general accordance’ and ‘consistent with’ are used interchangeably within QLDC’s PDP when referring to other structure plans, for example in Chapter 27, subdivision of the PDP.<sup>84</sup>
- 118 In terms of the case law, the vast majority of case law is in the context of resource consent conditions and the convention of conditions that require the development to occur either in accordance with, or in general accordance with the plans and information submitted in support of a resource consent application.
- 119 Accordingly, a line of case law has developed considering the meaning of ‘generally in accordance with’, albeit within the context of consent conditions. As explained by the Court of Appeal in *Palmerston North City Council v New Zealand Windfarms Ltd*, the use of the word ‘generally’ is:<sup>85</sup>
- ...intended to **permit minor variations** to the activity described in the application for a resource consent and the accompanying documents. It does not permit the consent holder to conduct the activity in a **materially different** way from that described.
- 120 In *Hood v Dunedin City Council* the Environment Court, in assessing whether an action proposed was ‘generally in accordance with’ specified documents, any changes must be ‘trifling’ in order to be considered generally in accordance with the plan referred to.<sup>86</sup>
- 121 Given that the majority of the case law has used the phrase “in accordance” rather than “consistent with” and also that this phrase is used in other chapters of the PDP when referring to Structure Plan provisions there would be merit in the references being changed to “in accordance with” and “generally in accordance with”. It is submitted that a distinction between the different elements of the Structure Plan is still warranted and accordingly, both the terms “in accordance with” and “generally in accordance with” will need to be utilised.

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<sup>84</sup> Subdivision ‘not in general accordance’ with the Coneburn Industrial Structure Plan is non-complying QLDC PDP, Chapter 27, rule 27.7.7.1. For the Jacks Point Zone, the relevant objective is that ‘subdivision occurs consistent with’ the Jacks Point Structure Plan QLDC PDP, Chapter 27, objective 27.3.7. Subdivision ‘consistent with’ a structure plan that is in the District Plan (with specific exemptions) is a complying activity, with control reserved to specific areas QLDC PDP, Chapter 27, rule 27.7.1.

<sup>85</sup> *Palmerston North City Council v New Zealand Windfarms* (2014) 18 ELRNZ 149 at [89].

<sup>86</sup> *Hood v Dunedin City Council* [2017] NZEnvC42 at [41] – [42].

### Defendable edges

- 122 One other matter discrete matters that warrants brief mention and is relevant to the merits of the rezoning requested by AHFT concerns the proposed extension to the UGB and whether the Variation boundary or the Extension Area boundary is more appropriate in terms of the which boundary provides a defendable edge.
- 123 This is relevant given the higher order provisions of the PDP in relation to the UGB, particularly Objective 4.2.1 which provides “manage the growth of urban areas within distinct and defendable urban edges”. This objective is also referred to in *Waterfall Park Developments Limited* which was referenced in Counsel for AHFT’s legal submissions.
- 124 There is case law addressing this objective which may be of assistance to the Panel in assessing the respective evidence of Mr Milne and Mr Skelton who clearly differ in their opinions as to what the appropriate defendable edge is in this case:
- (a) First, the term “distinct” refers to whether the boundary is clearly defined, distinguishable or legible.<sup>87</sup>
  - (b) “Defendable” or “defensible” has been interpreted as meaning whether or not the determined boundary is justifiable in light of the planning instruments guidance on the demarcation of rural/urban or equivalent boundaries, and the intention of plans more generally. These two considerations may be conflated or considered in tandem as an evaluation of the coherence of the boundary.<sup>88</sup>
  - (c) Defensible boundaries may follow natural and built features that create demarcation (for example: escarpments, embankments, ridgelines and roads)<sup>89</sup> but this does not appear to be sufficient alone to create a defensible boundary, and likely goes more towards whether it is distinct.<sup>90</sup> Defensibility is closely related to whether the boundary can endure long term. This is often

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<sup>87</sup> *Monk v Queenstown Lakes District Council* [2013] NZEnvC 12 at [90] and *Hawthenden Ltd v Queenstown Lakes District Council* [2019] NZEnvC 160 at [99].

<sup>88</sup> *Monk v Queenstown Lakes District Council* [2013] NZEnvC 12.

<sup>89</sup> *Hawthenden Ltd v Queenstown Lakes District Council* [2019] NZEnvC 160. *Guthrie v Queenstown Lakes District Council* [2021] NZEnvC 79.

<sup>90</sup> *Monk v Queenstown Lakes District Council* [2013] NZEnvC 12 at [90].

assessed in light of the land use of the site and the likelihood it will continue to be used in that way. In *Monk*, the Court found that although the two options of the boundary were both relatively arbitrary, one of the land uses (roads and a golf course) had no guarantee or protection to endure, whereas the other, an escarpment, unsuitable for development, was much more likely to remain in the same land use.<sup>91</sup> Although noting that this case was not in the context of the current PDP planning provisions.

- 125 The cases all also highlight that the defendable edge will be highly dependent on the facts and expert evidence before a decision maker.
- 126 AHFT has sought to criticize Mr Skelton's evidence that the Variation boundary follows natural and land use features of the landscape which combine to create a distinct and legible edge, which is aligned with the LCU boundaries.<sup>92</sup> These features are:<sup>93</sup>
- (a) the transition between the flatlands of TPLM and Slope Hill;
  - (b) the Southwestern Ridge meeting the escarpment; and
  - (c) the Cemetery.
- 127 Mr Milne's opinion is that a gully to the north of the submitter's land creates a defendable edge.<sup>94</sup> Mr Skelton considers that the gully is not highly legible and that there are two larger gullies further north along the same terrace.<sup>95</sup> On that basis, the gully does not represent a defendable edge.
- 128 Given the impasse between the experts, the Hearing Panel will need to determine which evidence it prefers (if it determines there is scope). Mr Brown's reply report will address these matters, and the other aspects relating to the merits of rezoning of the AHFT land further.

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<sup>91</sup> *Monk v Queenstown Lakes District Council* [2013] NZEnvC 12 at [91].

<sup>92</sup> Evidence of Stephen Skelton dated 29 September 2023, paragraph [60].

<sup>93</sup> Evidence of Stephen Skelton dated 29 September 2023, paragraph [96].

<sup>94</sup> Evidence of Tony Milne dated 20 October 2023, paragraph [57].

<sup>95</sup> Rebuttal of Stephen Skelton dated 10 November 2023, paragraph [23].

## Parking

- 129 Due to the provisions providing for limited parking, the Hearing Panel queried whether there was any consideration about the effects of limited parking, including people parking on verges and lawns.
- 130 QLDC's Traffic and Parking Bylaw 2018 (**Bylaw**) provides Council with the ability to control parking in the District. This includes the ability for Council to 'prohibit or restrict the stopping, standing or parking of vehicles on any road', establishing a permit or approval system for parking, and a variety of other restraints.<sup>96</sup> As such, Counsel considers that the Bylaw is able to provide the enforcement of unsafe or dangerous parking should it occur in the TPLM Variation Area.

## Threepwood

- 131 At the presentation of Threepwood's case a range of concerns were raised regarding the potential use of Marshall Avenue by new residents in the TPLM neighbourhood and the impacts that this would have on farming operations including stock movements and tractor use.
- 132 Whilst it is acknowledged that there will be increased care required by the Threepwood Farm when operating its farms if the development occurs, Marshall Avenue is a public road, vested in QLDC. The Local Government Act 1974 and the common law provide a right to pass and repass. This right extends to stock movements and stock movements across public roads is a common occurrence across New Zealand, albeit with increased complexity the closer the location is to urban development. The Bylaw does not address stock movement (which is the case in some districts). While the proposed urban development may impact on how and when stock are moved, these impacts do not represent a reason not to proceed with the TPLM Variation. It also noted that users of Marshall Avenue are required to exercise due care towards a person moving animals on a road.<sup>97</sup>

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<sup>96</sup> 'Road' is defined to include "a place to which the public have access, whether as of right or not...", which includes berms or footpaths for example. See also clause 21, parking off a roadway where a person must not stop, stand or park a motor vehicle on that part of a road which is laid out as a lawn or cultivated area, including a grass plot, or any reserve, park or similar land used for public recreation which is under Council control.

<sup>97</sup> Land Transport (Road User) Rule 2004, r 11.17.

**CONCLUSION**

- 133 Overall, the Council maintains that proposed rezoning as sought by the Council is the most appropriate way of achieving the objectives of the PDP and the TPLM Variation and will achieve the purpose of the Act, taking into account all of the statutory directions.
- 134 Finally, Counsel wish to thank the Hearing Panel for the thorough and efficient way that the hearing has been conducted.



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L F de Latour | K H Woods

Counsel for Queenstown Lakes District Council

## Appendix A



**Te Tāhuhu o  
te Mātauranga**  
Ministry of Education

23 January 2024

Queenstown Lakes District Council  
Attn: Alyson Hutton, Manager Planning Policy  
Via email: [Alyson.Hutton@qldc.govt.nz](mailto:Alyson.Hutton@qldc.govt.nz)

Tēnā koe Alyson

### **Te Pūtahi Ladies Mile Plan Variation – Response re Potential Rule relating to Schooling provision**

Thank you for your email of 20 December 2023 in which you seek the Ministry of Education's ('the Ministry') position on the inclusion of a rule in Te Pūtahi Ladies Mile Plan Variation that requires a level of confirmation of a secondary school in the TPLM Zone north of SH6 before certain development can proceed. We acknowledge that you have not yet formed a final recommendation to the Hearing Panel however you indicate that you are considering the insertion of a rule that would trigger development upon confirmation of a designation for a new secondary school by the Ministry.

As QLDC will be aware, the Ministry has evaluated a number of potential sites along Ladies Mile to accommodate both a primary school and secondary school, with these necessary to respond to the growth anticipated / proposed for Ladies Mile. Whilst the Ministry has a clear interest and commitment to the provision of educational facilities along Ladies Mile, at present, the Ministry is yet to confirm any land acquisition, however engagement with landowner(s) are continuing. The Ministry reiterates the challenges and complexity involved in securing land amongst several competing landowners, particularly given the uncertainty associated with the final form of the Ladies Mile planning provisions / master plan.

The Ministry foresees issues with the suggestion of rules that link the enabling of development to the designation and/or delivery of a school and the Ministry's preference is not to have a rule or trigger of this nature imposed.

The efficiency and effectiveness of such a rule or trigger to resolve the traffic effects is questioned in the hearing given the following matters:

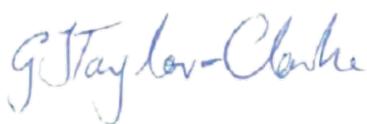
- The requirement for the Ministry to secure a new school site and subsequently construct the new school is driven by a range of factors including the location, scale and pace of development and wider school network capacity. The Ministry responds to the growth enabled and housing being delivered as opposed to the provision of a school being the trigger for housing growth.



- Each phase of acquisition, designation, master planning and construction of a new school is subject to prioritisation, budget allocation and approval. There may be some time between the designation of a site and the construction of the new school. It is not practical to therefore directly link residential development to the potential provision of a new school.

The Ministry notes the hearing process confirmed the constrained land area and competing uses and priorities for the undeveloped land to the north of Ladies Mile. Some time ago the Ministry presented QLDC with a proposal to explore the use of 516 Frankton Ladies Mile Highway. The Ministry remains open to exploring this further if this was of interest to QLDC.

Nāku noa, nā



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## Appendix B

<b>Communication to and from submitters regarding updated Amenity Access Area</b>		
	<b>Queenstown Lakes District Council Correspondence</b>	<b>Date</b>
2	Email from Ms Woods on behalf of Queenstown Lakes District Council to submitters representatives regarding updated Amenity Access Area plans	21 December 2023
4	Updated Draft Amenity Access Area Plans	21 December 2023
9	Updated Draft TPLM Variation Provisions related to Amenity Access Area	21 December 2023
<b>Submitter Responses</b>		
16	Mr Todd on behalf of Ladies Mile Pet Lodge	8 January 2024 – 10 January 2024
22	Ms Justice on behalf of Maryhill Limited	17 January 2024
26	Mr Gardner-Hopkins on behalf of Glenpanel Developments Limited	17 January 2024
28	Mr Murray on behalf of Glenpanel Developments Limited	17 January 2024
35	Mr Winchester on behalf of the Anna Hutchinson Family Trust	18 January 2024

## Kate McKinlay

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**Subject:** TPLM Variation - Amenity Access Area updated plans and provisions - Our Client Ladies Mile Pet Lodge [WW-ACTIVE.FID557424]

**From:** Kate Woods <[Kate.Woods@wynnwilliams.co.nz](mailto:Kate.Woods@wynnwilliams.co.nz)>

**Sent:** Thursday, December 21, 2023 3:37 PM

**To:** [jw@jameswinchester.co.nz](mailto:jw@jameswinchester.co.nz); James Gardner-Hopkins <[james@jgh.nz](mailto:james@jgh.nz)>; Joshua Leckie <[joshua.leckie@laneneave.co.nz](mailto:joshua.leckie@laneneave.co.nz)>; [craig@berrysimons.co.nz](mailto:craig@berrysimons.co.nz); Graeme Todd <[graeme@toddandwalker.com](mailto:graeme@toddandwalker.com)>; ngeddes <[ngeddes@cfma.co.nz](mailto:ngeddes@cfma.co.nz)>; [blair@vivianespie.co.nz](mailto:blair@vivianespie.co.nz); Michael Bathgate <[michael@aukaha.co.nz](mailto:michael@aukaha.co.nz)>; [jeremy@brabant.co.nz](mailto:jeremy@brabant.co.nz); [HannahH@barker.co.nz](mailto:HannahH@barker.co.nz); [Rodney.Albertyn@nzta.govt.nz](mailto:Rodney.Albertyn@nzta.govt.nz); Ben Farrell <[ben@cuee.nz](mailto:ben@cuee.nz)>; [alex@southernplanning.co.nz](mailto:alex@southernplanning.co.nz); Werner Murray <[wmurray@propertygroup.co.nz](mailto:wmurray@propertygroup.co.nz)>; Kristy Rusher <[Kristy.Rusher@awslegal.co.nz](mailto:Kristy.Rusher@awslegal.co.nz)>; Brett Giddens <[brett@townplanning.co.nz](mailto:brett@townplanning.co.nz)>; Daniel Minhinnick <[daniel.minhinnick@russellmcveagh.com](mailto:daniel.minhinnick@russellmcveagh.com)>; [blair@vivianespie.co.nz](mailto:blair@vivianespie.co.nz); Erin Stagg <[erin@edgarplanning.co.nz](mailto:erin@edgarplanning.co.nz)>; Meg Justice <[meg.justice@taylorplanning.co.nz](mailto:meg.justice@taylorplanning.co.nz)>

**Cc:** Lucy de Latour <[Lucy.deLatour@wynnwilliams.co.nz](mailto:Lucy.deLatour@wynnwilliams.co.nz)>; Jake Robertson <[Jake.Robertson@wynnwilliams.co.nz](mailto:Jake.Robertson@wynnwilliams.co.nz)>; Molly McDouall <[Molly.McDouall@wynnwilliams.co.nz](mailto:Molly.McDouall@wynnwilliams.co.nz)>; [jeff@brownandcompany.co.nz](mailto:jeff@brownandcompany.co.nz); Maddy Familton <[maddy@brownandcompany.co.nz](mailto:maddy@brownandcompany.co.nz)>; Alyson Hutton <[Alyson.Hutton@qldc.govt.nz](mailto:Alyson.Hutton@qldc.govt.nz)>; Daniel Hadfield <[Daniel.Hadfield@qldc.govt.nz](mailto:Daniel.Hadfield@qldc.govt.nz)>

**Subject:** TPLM Variation - Amenity Access Area updated plans and provisions [WW-ACTIVE.FID557424]

Kia ora koutou,

Last week at the Te Pūtahi Ladies Mile hearing, the Council indicated to the Panel that its witnesses had been further contemplating the plans for the Amenity Access Area including whether any amendments needed to be made to provisions to further clarify the development and future ownership of the Amenity Access Area. The Council advised the Panel:

- Updated plans and provisions would be circulated to submitters for comment.
- Any comments received would be considered by Mr Brown in his recommendations on the Amenity Access Area in the section 42A reply report due Friday 26 January 2024 (along with all other evidence and joint witness statements filed on the TPLM Variation to date).

Accordingly, we **attach** the following for your consideration and comment:

- The Council's urban design witnesses' final plans for the Amenity Access Area including an updated cross section, two new plans (tree spacing plan and long elevation), and indicative street tree species.
  - We note that due to timing constraints the indicative street tree species included in the plans are still subject to confirmation from the Council's Parks and Reserves team, and it is possible these species will need to be further refined.
- Mr Brown's draft further amendments to provisions relating to the Amenity Access Area.

Can you please provide any comments by **midday Wednesday 17<sup>th</sup> January 2024**.

We intend to include an appendix to the s42A reply report that compiles any responses received by submitters on these plans and amended provisions.

Kind regards,  
Kate



**Kate Woods**  
Senior Associate  
Wynn Williams

Wynn Williams' offices will be closed from 5pm on Friday, 22 December 2023, and will reopen on Thursday, 11 January 2024. If your matter is urgent, please check our website for more information about who can assist you: [Christmas Closure Information](#)

**WYNNWILLIAMS-MESSAGE-DISCLAIMER:**

This e-mail (including any attachment) is confidential and may be legally privileged. If you have received this email in error, you must not disclose or use its contents and must immediately notify the sender and then delete this email. While we regularly scan our computer system for viruses using anti-virus software, this email (including any attachment) may not be free of viruses and therefore you will open it at your own risk.

# **Te Pūtahi: Ladies Mile**

## Ladies Mile Consortium

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December 2023

# Street Trees

## Indicative Species

Key: (Height)m x (Width)m

Large scale exotic deciduous trees adjacent SH6 to maintain local character:



**Sweet Chestnut**  
*Castanea sativa*  
10 Years: 8m x 6m  
Mature Size: 30m x 15m



**Pin Oak**  
*Quercus palustris*  
10 Years: 8m x 5m  
Mature Size: 20m x 12m



**Tulip Tree**  
*Liriodendron tulipifera*  
10 Years: 8m x 6m  
Mature Size: 30m x 15m



**Sweetgum**  
*Liquidambar styraciflua*  
10 Years: 6m x 4m  
Mature Size: 20m x 8m

(To match South side)

Native trees in front of buildings with underplanting to increase ecological value:



**Silver Beech**  
*Lophozonia menziesii*  
10 Years: 6m x 2m  
Mature Size: 25m x 8m



**Kōwhai**  
*Sophora microphylla*  
10 Years: 6m x 3m  
Mature Size: 8m x 3m



**Ribbonwood**  
*Plagianthus regius*  
10 Years: 5m x 2m  
Mature Size: 12m x 4m

# Plan

## North Side SH6 Showing Tree Spacing at 20 Year Maturity



State Highway 6 Studies

# Long Elevation

## Showing North Side SH6 Tree Planting at 20 Year Maturity



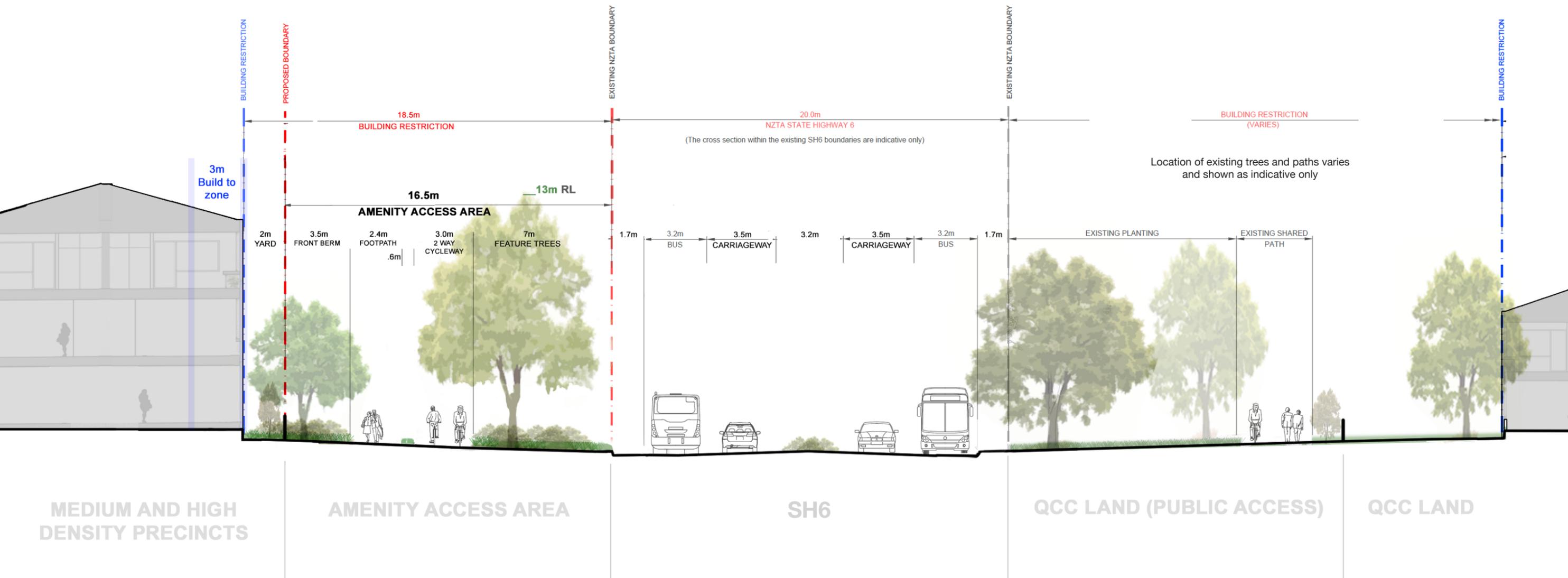
State Highway 6 Studies

**NOTE:** Buildings massing shown at 26m long with 4m building separation as per zone provisions



# Cross Section

## SH6 (16.5m Amenity Access Area)



## TPLM VARIATION PROVISIONS RELATING TO AMENITY ACCESS AREA

1. New amendments made to relating to the Amenity Access Area provisions following the adjournment of the hearing are in **green highlight**.
2. Otherwise, this document includes the provisions that were included in the Hearings Version of the provisions circulated on 8 December 2023.
3. The black wording is the notified wording, the **blue** wording is the s42A report version, and the **red** wording is the current "Rebuttal Version" suggested wording for discussion. Amendments that have been made post Rebuttal Version are in **yellow highlight**. Amendments made during the hearing, week commencing 4 Dec are in **grey highlight**.

### Amendments to Policy 49.2.6.4, Policy 4.2.2.21, Rule 27.7.2.8.1, Rule 27.7.28.3

4. Amendments to Policy 49.2.6.4(a) in chapter 49 – Te Pūtahi Ladies Mile Zone:

49.2.6.4 Encourage the use of pedestrian and cycling modes by:

- a. Requiring high-quality, well connected, integrated and legible walking and cycling routes and linking to existing routes outside the Zone **including by the Amenity Access Area on the north side of the state highway and an active travel route on the south side of the state highway**.
- ~~b. Preferring the provision of an underpass for the Key Crossing indicated on the Structure Plan;~~
- c. Discouraging private vehicle ownership and use by limiting onsite carparking via maximum rates for residential office and retail activities;
- d. Requiring minimum cycle parking to be provided onsite for commercial, educational and residential activities; and
- e. Enhancing active travel experiences by requiring adjacent development to integrate with the Key Crossing shown on the Structure Plan and by providing high-quality recreation spaces along routes.

Commented [JB1]: #78 Ladies Mile Pet Lodge

5. A new limb (d) to policy 4.2.2.21 in Chapter 4 – Urban development:

4.2.2.21 Ensure that development within the Te Pūtahi Ladies Mile Zone provides for:

- a. an urban development with a strong community identity and sense of place by enabling community activities, including education activities, a commercial centre that meets needs of local residents, and connections to the surrounding landscape and residential communities;
- b. high and medium density residential development to enable diversity of housing choice through different typologies to contribute to increased supply of housing and affordable homes;
- c. a landscaped gateway treatment:
  - of the edge of adjoining State Highway 6 to increase provide high quality amenity for both road users and adjoining residential areas; and
  - adjoining the eastern end of the Zone north of State Highway 6 to provide a designed urban edge that promotes the containment of the urban development within the landscape;
- d. **as part of the landscaped gateway treatment required by Policy 4.2.2.21 c. above, require on each of the northern and southern boundaries of the state highway corridor, a continuous, legible and uniformly designed walkway and cycleway linkage that integrates**

Commented [MF2]: #86 Ministry of Education

Commented [MF3]: #105 Maryhill Limited

Commented [MF4]: #104 Waka Kotahi

development with the bus services along the highway and enables active travel along the full length of the Zone.

- e. integration of key roading north of the State Highway with existing intersections serving development south of the State Highway to encourage connectivity, including walking and cycling trips, between the south and north sides of the State Highway;
- f. reduced reliance on travel by private vehicle through promotion of public and active transport; and
- g. Ngāi Kāi Tahu values, including through:
  - i. Incorporating climate change mitigation and adaptation within design;
  - ii. Protecting the mauri of water with water sensitive design, incorporating on-site management of stormwater and requirement for permeable surfaces, utilising reticulated systems for potable supply and wastewater, incorporating onsite water retention and reducing operational water use;
  - iii. Preferring the use of indigenous vegetation that naturally occurs and/or previously occurred in the area as part of landscape design, including species preferred by indigenous birds; and
  - iv. Incorporating reference to Ngāi Tahu values in design where appropriate.

**Commented [MF5]:** #100 Te Rūnanga o Ngāi Tahu, Papatipu Rūnanga

6. A new matter of discretion for under Rule 27.7.2.8.1 in Chapter 27 – Subdivision and development:

<b>27.7.28</b>	<p><b>Te Pūtahi Ladies Mile Zone</b></p> <p><u>27.7.28.1 Subdivision of land within the Te Pūtahi Ladies Mile Zone</u></p> <p><u>Discretion is restricted to:</u></p> <p>a. <u>the matters contained in Rule 27.5.7;</u></p> <p>b. <u>the spatial layout of the subdivision, and its relationships to and integration with other sites and development, taking into account the location of:</u></p> <p>i. <u>Roads, walkways and cycleways throughout the Sub-Area including Indicative Roads as shown on the Structure Plan and where these will connect to adjoining sites and (where relevant) neighbouring Sub-Areas and (where relevant) State Highway 6, including intersection layout and design;</u></p> <p>ii. <u>Open spaces and blue-green or ecological corridors, and their intended function(s), including those open spaces and blue-green corridors required by the Structure Plan, Indicative Parks as shown on the Structure Plan, and any additional open spaces necessary to serve the future needs of the site and the wider Sub-Area;</u></p> <p>iii. <u>Three waters infrastructure, including the retention and treatment of stormwater, and integration with the stormwater network within the Zone;</u></p> <p>iv. <u>Heritage and archaeological values, specifically with regard to how the subdivision design integrates with and enhances the character of the Glenpanel Precinct and wider setting.</u></p> <p>c. <u>how the subdivision design will enable the achievement of the minimum residential density requirements set out in the relevant Zone provisions;</u></p> <p>x. <u>how the subdivision design will enable buildings and development that achieves the development standards for the relevant Precinct.</u></p> <p>d. <u>the methods proposed for ensuring that building typologies provide for a diversity of housing choice (taking into account the zoning of the land).</u></p> <p>e. <u>within Sub-Areas B and C, the impact of development on existing established trees identified on the Structure Plan;</u></p> <p>f. <u>within Sub-Area A, the establishment of the "Landscape Buffer Area" shown on the Structure Plan, and the methods to ensure it is maintained in perpetuity;</u></p> <p>g. <u>within Sub-Area H1, the impact on Sub-Area H2 of landscaping within the 6m setback from the boundary with Sub-Area H2 and methods to ensure that shading effects from landscaping are minimised;</u></p> <p>h. <u>Transport infrastructural works to be established to support alternatives to private vehicle use, including the imposition of conditions requiring that the relevant transport infrastructural works as identified in Rules 49.5.10, 49.5.33, 49.5.50 and 49.5.56 be completed prior to certification under section 224(c).</u></p>	<u>RD</u>
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**Commented [MF6]:** #100 Te Rūnanga o Ngāi Tahu, Papatipu Rūnanga

**Commented [MF7]:** #100 Te Rūnanga o Ngāi Tahu, Papatipu Rūnanga

**Commented [MF8]:** Evidence of Mr Millar - subject to determination of scope.

**Commented [JB9]:** Suggested wording of new matter of discretion in response to Panel's verbal questions to the Council's urban designers on 4 Dec 23, regarding ensuring that subdivision does not foreclose the opportunity for land uses that are consistent with the objectives and policies of the Zone and the specific Precincts

	<p>i. <del>Within the Crossing Curtilage Area Overlay shown on the Structure Plan, the integration of the subdivision layout and potential future development with the Key Crossing.</del></p> <p>j. <del>The design and ownership / management of the Amenity Access Area and the active travel link on the south side of State Highway 6. The preference is for the Amenity Access Area to be formed and vested in the Council as Local Purpose Reserve (Connection).</del></p> <p>k. <del>How the stormwater management proposed for the subdivision will be managed as part of a centralised, integrated stormwater management system for the TPLM Zone north of SH6, including management of secondary flow paths and levels of ground surfaces to facilitate the system integration.</del></p> <p>l. <del>How a fully integrated stormwater management solution for Slope Hill is to be coordinated via swales for conveyance and soakage to capture and dispose of stormwater on the Slope Hill side of the collector road, including co-ordinated overland flow paths to ensure no adverse effects on downstream properties.</del></p> <p>x. <del>How the stormwater management proposed for the subdivision will be managed as part of an integrated stormwater management system for the TPLM Zone north of SH6 to achieve soakage to ground for the 1% AEP event, including management of overland flow paths and levels of ground surfaces to facilitate the system integration and any legal mechanisms required to achieve integration.</del></p> <p>x. <del>How a fully integrated stormwater management solution for Slope Hill is to be coordinated via swales for conveyance and soakage to capture and dispose of stormwater on the Slope Hill side of the collector road for the 1% AEP event, or as close as possible to the 1% AEP event, including coordinated overland flow paths to ensure no adverse effects on downstream properties and any legal mechanisms required to achieve integration.</del></p> <p>Information requirements:</p> <p>a. <del>A statement demonstrating how the subdivision layout will enable:</del></p> <p>i. <del>the densities expected in the relevant Precinct; and</del></p> <p>ii. <del>diversity of future building typologies on the sites created by the subdivision, to offer maximum choice for residential or business owners or tenants, and any methods (including by way of consent notices on the titles to be created, or other instrument) to ensure such diversity; and</del></p> <p>iii. <del>buildings and development that will achieve the development standards for the relevant Precinct.</del></p> <p>b. <del>A statement and supporting plans and specifications with a level of detail as necessary to demonstrate how the stormwater management proposed will be managed as part of an centralised, integrated stormwater management system for the TPLM Zone north of SH6, including:</del></p> <p>i. <del>the manner by which the system within the land subject to the application will integrate with the system on adjoining or nearby land within the same catchment or sub-catchment, and where stormwater management devices can be shared for development across multiple properties;</del></p>	
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**Commented [JB10]:** #78 Ladies Mile Pet Lodge

**Commented [JB11]:** #100 Te Rūnanga o Ngāi Tahu, Papatipu Rūnanga

**Commented [JB12]:** Stormwater and infrastructure JWS

**Commented [JB13]:** Suggested wording of new information requirement in response to Panel's verbal questions to the Council's urban designers on 4 Dec 23, regarding ensuring that subdivision does not foreclose the opportunity for land uses that are consistent with the objectives and policies of the Zone and the specific Precincts

	<p>ii. <u>the manner by which a fully integrated stormwater management solution for Slope Hill and the TPLM Zone north of SH6 (including treatment) is to be co-ordinated across development blocks with reference to the Stormwater Management Guidelines to provide between 1 and 4 minimise the number of stormwater facilities (detention basins, and/or soakage devices and/or including underground chambers) across the TPLM Zone north of SH6, including co-ordinated overland flow paths through the developments to ensure no adverse effects on upstream or downstream properties;</u></p> <p>iii. <u>demonstration of meaningful consultation with affected landowners (being those upstream and downstream to the extent that the stormwater runoff from their land would influence or be influenced by the stormwater system being proposed) about stormwater management and the effects on these parties;</u></p> <p>iv. <u>the manner by which land along the toe of Slope Hill will be made available for stormwater management;</u></p> <p>v. <u>how pre-treatment of Slope Hill Runoff and treatment of first flush from roads, carparks etc will be provided to ensure longevity of soakage devices;</u></p> <p>vi. <u>how stormwater runoff from events up to and including the 1% AEP event are to be soaked to ground. If this is proven infeasible, how stormwater from events up to and including the 5% AEP is to be soaked to ground</u></p> <p>vii. <u>The easements to be provided as required for new stormwater trunks and swales cross private property. Where possible infrastructure will be coordinated within QLDC-owned road corridors and the State Highway 6 corridor;</u></p> <p>viii. <u>Sediment and erosion control plans, prepared by a suitably qualified temporary works engineer and be implemented for the duration of the construction;</u></p> <p>ix. <u>How the stormwater management system(s) have been designed considering climate change adjusted rainfall (RCP6.0 8.5 for the period 2081-2100);</u></p> <p>b. <u>A statement, supporting plans, specifications (and modelling when required) with a level of detail as necessary to demonstrate how the stormwater management proposed will be managed as part of an integrated stormwater management system for the TPLM Zone north of SH6, including:</u></p> <p><u>Catchment modelling and technical information</u></p> <p>i. <u>A pre-development catchment-wide (encompassing Slope Hill and the full TPLM Zone) hydraulic model for all critical design storms up to and including the 1% AEP event. The hydraulic model is to be produced in accordance with the QLDC Code of Practice Section 4.3.5 Design Criteria and the QLDC Stormwater Modelling Specification. Surface infiltration tests are necessary across the TPLM Zone north of SH6 to calibrate the model for pre-development infiltration rates.</u></p> <p>ii. <u>Predicted post-development hydraulic model update demonstrating how the stormwater management system(s) proposed in the application will:</u></p> <ul style="list-style-type: none"> <li>• <u>achieve or contribute to a fully integrated stormwater management system for the Zone; and</u></li> </ul>	
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Commented [JB14]: Stormwater and infrastructure  
JWS

	<ul style="list-style-type: none"> <li>• <u>achieve soakage to ground of runoff generated for the 1% AEP event (or for the contributing Slope Hill catchment soakage to ground for the 1% AEP event or as close to possible to the 1% AEP, and no less than the 5% AEP event);</u></li> </ul> <p>iii. <u>how the stormwater management system(s) have been designed considering climate change adjusted rainfall (RCP 6.0 8.5 for the period 2081-2100);</u></p> <p><u><i>Integration</i></u></p> <p>iv. <u>the manner by which the system within the land subject to the application will:</u></p> <ul style="list-style-type: none"> <li>• <u>contribute to a fully integrated stormwater management solution for the TPLM Zone north of SH6 (including Slope Hill);</u></li> <li>• <u>be coordinated across development blocks with reference to the Guiding Principles for Stormwater Management;</u></li> <li>• <u>minimise the number of stormwater facilities (detention basins, and/or soakage devices and/or including underground chambers) across the TPLM Zone north of SH6;</u></li> <li>• <u>integrate with the system on adjoining or nearby land within the same catchment or sub-catchment, and where stormwater management devices can be shared for development across multiple properties;</u></li> </ul> <p>v. <u>the manner by which land owned by the Applicant along the toe of Slope Hill will be made available for stormwater management;</u></p> <p>vi. <u>the easements to be provided as required for new stormwater trunks and swales crossing private property;</u></p> <p>vii. <u>demonstration of meaningful consultation with affected landowners (being those upstream and downstream to the extent that the stormwater runoff from their land would influence or be influenced by the stormwater system being proposed) about stormwater management and the effects on those parties;</u></p> <p>viii. <u>How co-ordinated overland flow paths through the developments will be provided to ensure no adverse effects on upstream or downstream properties; and</u></p> <p><u><i>Treatment</i></u></p> <p>ix. <u>how pre-treatment of Slope Hill Runoff and treatment of first flush from roads, carparks etc will be provided to ensure longevity of soakage devices.</u></p>	
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7. Amendments will need to be made to Rule 27.7.28.3 when the names of the updated Amenity Access Area plans are finalised:

<p><u>27.7.28.3</u> <u>Within the Amenity Access Area, development shall be consistent with the "State Highway 6 Typical Road Section" [insert final name of cross-section, long section and species list] in the Structure Plan in 27.13.XX.</u></p>	<p>RD Discretion is restricted to:</p> <ul style="list-style-type: none"> <li>a. <u>Integration between, and passive surveillance of, walkway and cycleway linkages;</u></li> <li>b. <u>Consistency of landscaping and pathway treatments throughout the Amenity Access Area;</u></li> <li>c. <u>Connectivity of any access or road.</u></li> </ul>
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## Kate McKinlay

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**From:** Kate Woods  
**Sent:** Tuesday, 9 January 2024 12:06 PM  
**To:** Graeme Todd  
**Cc:** jw@jameswinchester.co.nz; James Gardner-Hopkins; Joshua Leckie; craig@berrysimons.co.nz; ngeddes; blair@vivianespie.co.nz; Michael Bathgate; jeremy@brabant.co.nz; HannahH@barker.co.nz; Rodney.Albertyn@nzta.govt.nz; Ben Farrell; alex@southernplanning.co.nz; Werner Murray; Kristy Rusher; Brett Giddens; Daniel Minhinnick; blair@vivianespie.co.nz; Erin Stagg; Meg Justice; Lucy de Latour; Jake Robertson; Molly McDouall; jeff@brownandcompany.co.nz; Maddy Familton; Alyson Hutton; Jeannie Galavazi; Daniel Hadfield  
**Subject:** RE: TPLM Variation - Amenity Access Area updated plans and provisions [WW-ACTIVE.FID557424]

Dear Graeme,

In response to your questions, we have liaised with the Council team and can advise:

1. It is intended that the Amenity Access Area will only be vested when the land is developed or subdivided.
2. It is the Council's preference for the Amenity Access Area to be formed and vested in the Council as Local Purpose Reserve (Connection) (refer 27.7.28.1.j in amended provisions circulated on 21 December). Given it is not intended for this to be vested as recreation reserve it will not be eligible for Reserve Land development contribution credits.

Kind regards,  
 Kate



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 Senior Associate  
 Wynn Williams

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**From:** Graeme Todd <graeme@toddandwalker.com>  
**Sent:** Monday, January 8, 2024 2:10 PM  
**To:** Kate Woods <Kate.Woods@wynnwilliams.co.nz>  
**Cc:** jw@jameswinchester.co.nz; James Gardner-Hopkins <james@jgh.nz>; Joshua Leckie <joshua.leckie@laneneave.co.nz>; craig@berrysimons.co.nz; Graeme Todd <graeme@toddandwalker.com>; ngeddes <ngeddes@cfma.co.nz>; blair@vivianespie.co.nz; Michael Bathgate <michael@aukaha.co.nz>; jeremy@brabant.co.nz; HannahH@barker.co.nz; Rodney.Albertyn@nzta.govt.nz; Ben Farrell <ben@cuee.nz>; alex@southernplanning.co.nz; Werner Murray <wmurray@propertygroup.co.nz>; Kristy Rusher <Kristy.Rusher@awslegal.co.nz>; Brett Giddens <brett@townplanning.co.nz>; Daniel Minhinnick <daniel.minhinnick@russellmceveagh.com>; blair@vivianespie.co.nz; Erin Stagg <erin@edgarplanning.co.nz>; Meg Justice <meg.justice@taylorplanning.co.nz>; Lucy de Latour <Lucy.deLatour@wynnwilliams.co.nz>; Jake Robertson <Jake.Robertson@wynnwilliams.co.nz>; Molly McDouall <Molly.McDouall@wynnwilliams.co.nz>; jeff@brownandcompany.co.nz; Maddy Familton <maddy@brownandcompany.co.nz>; Alyson Hutton <Alyson.Hutton@qldc.govt.nz>; Daniel Hadfield <Daniel.Hadfield@qldc.govt.nz>  
**Subject:** FW: TPLM Variation - Amenity Access Area updated plans and provisions [WW-ACTIVE.FID557424]

Good afternoon Kate

In respect of the latest proposed Amenity Access Area so that we can take instructions and advise can you please clarify the following

1. That the Access Amenity Area is only to be set off on any development or subdivision of land?
2. Is the value of the same to be credited against Financial Contributions otherwise payable?

To enable us to obtain instructions and meet the proposed timetable for responses please respond no later than 5.00pm on Wednesday the 10<sup>th</sup> January 2024

**Graeme Todd LLB, Notary Public**

Principal

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**From:** Kate Woods <[Kate.Woods@wynnwilliams.co.nz](mailto:Kate.Woods@wynnwilliams.co.nz)>

**Sent:** Thursday, December 21, 2023 3:37 PM

**To:** [jw@jameswinchester.co.nz](mailto:jw@jameswinchester.co.nz); James Gardner-Hopkins <[james@jgh.nz](mailto:james@jgh.nz)>; Joshua Leckie <[joshua.leckie@laneneave.co.nz](mailto:joshua.leckie@laneneave.co.nz)>; [craig@berrysimons.co.nz](mailto:craig@berrysimons.co.nz); Graeme Todd <[graeme@toddandwalker.com](mailto:graeme@toddandwalker.com)>; [ngeddes@cfma.co.nz](mailto:ngeddes@cfma.co.nz); [blair@vivianespie.co.nz](mailto:blair@vivianespie.co.nz); Michael Bathgate <[michael@aukaha.co.nz](mailto:michael@aukaha.co.nz)>; [jeremy@brabant.co.nz](mailto:jeremy@brabant.co.nz); [HannahH@barker.co.nz](mailto:HannahH@barker.co.nz); [Rodney.Albertyn@nzta.govt.nz](mailto:Rodney.Albertyn@nzta.govt.nz); Ben Farrell <[ben@cuee.nz](mailto:ben@cuee.nz)>; [alex@southernplanning.co.nz](mailto:alex@southernplanning.co.nz); Werner Murray <[wmurray@propertygroup.co.nz](mailto:wmurray@propertygroup.co.nz)>; Kristy Rusher <[Kristy.Rusher@awslegal.co.nz](mailto:Kristy.Rusher@awslegal.co.nz)>; Brett Giddens <[brett@townplanning.co.nz](mailto:brett@townplanning.co.nz)>; Daniel Minhinnick <[daniel.minhinnick@russellmcveagh.com](mailto:daniel.minhinnick@russellmcveagh.com)>; [blair@vivianespie.co.nz](mailto:blair@vivianespie.co.nz); Erin Stagg <[erin@edgarplanning.co.nz](mailto:erin@edgarplanning.co.nz)>; Meg Justice <[meg.justice@taylorplanning.co.nz](mailto:meg.justice@taylorplanning.co.nz)>

**Cc:** Lucy de Latour <[Lucy.deLatour@wynnwilliams.co.nz](mailto:Lucy.deLatour@wynnwilliams.co.nz)>; Jake Robertson <[Jake.Robertson@wynnwilliams.co.nz](mailto:Jake.Robertson@wynnwilliams.co.nz)>; Molly McDouall <[Molly.McDouall@wynnwilliams.co.nz](mailto:Molly.McDouall@wynnwilliams.co.nz)>; [jeff@brownandcompany.co.nz](mailto:jeff@brownandcompany.co.nz); Maddy Familton <[maddy@brownandcompany.co.nz](mailto:maddy@brownandcompany.co.nz)>; Alyson Hutton <[Alyson.Hutton@qldc.govt.nz](mailto:Alyson.Hutton@qldc.govt.nz)>; Daniel Hadfield <[Daniel.Hadfield@qldc.govt.nz](mailto:Daniel.Hadfield@qldc.govt.nz)>

**Subject:** TPLM Variation - Amenity Access Area updated plans and provisions [WW-ACTIVE.FID557424]

Kia ora koutou,

Last week at the Te Pūtahi Ladies Mile hearing, the Council indicated to the Panel that its witnesses had been further contemplating the plans for the Amenity Access Area including whether any amendments needed to be made to provisions to further clarify the development and future ownership of the Amenity Access Area. The Council advised the Panel:

- Updated plans and provisions would be circulated to submitters for comment.
- Any comments received would be considered by Mr Brown in his recommendations on the Amenity Access Area in the section 42A reply report due Friday 26 January 2024 (along with all other evidence and joint witness statements filed on the TPLM Variation to date).

Accordingly, we **attach** the following for your consideration and comment:

- The Council's urban design witnesses' final plans for the Amenity Access Area including an updated cross section, two new plans (tree spacing plan and long elevation), and indicative street tree species.
  - We note that due to timing constraints the indicative street tree species included in the plans are still subject to confirmation from the Council's Parks and Reserves team, and it is possible these species will need to be further refined.
- Mr Brown's draft further amendments to provisions relating to the Amenity Access Area.

Can you please provide any comments by **midday Wednesday 17<sup>th</sup> January 2024**.

We intend to include an appendix to the s42A reply report that compiles any responses received by submitters on these plans and amended provisions.

Kind regards,  
Kate



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 Connect with us on LinkedIn

Wynn Williams' offices will be closed from 5pm on Friday, 22 December 2023, and will reopen on Thursday, 11 January 2024. If your matter is urgent, please check our website for more information about who can assist you: [Christmas Closure Information](#)

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## Kate McKinlay

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**Subject:** RE: Comments - TPLM Variation - Amenity Access Area updated plans and provisions - Our Client Ladies Mile Pet Lodge [WW-ACTIVE.FID557424]

**From:** Graeme Todd <[graeme@toddandwalker.com](mailto:graeme@toddandwalker.com)>

**Sent:** Wednesday, January 10, 2024 11:36 AM

**To:** Kate Woods <[Kate.Woods@wynnwilliams.co.nz](mailto:Kate.Woods@wynnwilliams.co.nz)>; Lucy de Latour <[Lucy.deLatour@wynnwilliams.co.nz](mailto:Lucy.deLatour@wynnwilliams.co.nz)>; Jake Robertson <[Jake.Robertson@wynnwilliams.co.nz](mailto:Jake.Robertson@wynnwilliams.co.nz)>

**Cc:** Alyson Hutton <[Alyson.Hutton@qldc.govt.nz](mailto:Alyson.Hutton@qldc.govt.nz)>; Daniel Hadfield <[Daniel.Hadfield@qldc.govt.nz](mailto:Daniel.Hadfield@qldc.govt.nz)>; [jeff@brownandcompany.co.nz](mailto:jeff@brownandcompany.co.nz)

**Subject:** Comments - TPLM Variation - Amenity Access Area updated plans and provisions - Our Client Ladies Mile Pet Lodge

Kate, Lucy and Jake

1. We refer to your email of the 21 December 2023 received at 3.37pm on that day less than 2 hours before the writer went on annual leave for the summer break .
2. Notwithstanding the inconvenience of having to do so during the summer break to meet the time limits imposed for a response we have now had the opportunity to seek instructions from our clients in respect of Councils proposed amendments . Given the time period imposed for a response it has not been possible for our clients to obtain advice from their independent advisers .
3. We record that we find it highly unusual if not unlawful that such an amendment would be proposed at this stage of the process and no opportunity be given to make formal submissions or call evidence before the Panel of Independent Commissioners hearing submissions to the Variation , other than the comments you have sought. We note you advise such comments will be" considered " by Councils planner Mr Brown in his s42A reply report and appended to such report. Again we would suggest such is process is highly questionable especially where the period given for such comments does not allow for consideration and input from submitters experts
4. We also refer to your email of the 9<sup>th</sup> January ( copy now attached ) where you provided answers to questions of clarification we had sought to the proposed amendment in our email to you of the 8<sup>th</sup> January ( also attached ) .
5. You have confirmed that it is intended that the private land to be set aside as part of the ammended Amenity Access Area , being some 16.5m in width, is to be on any subdivision or development of the land "...formed and vested in the Council as Local Purpose Reserve (Connection ) .....Given it is not intended for this to be vested as recreation reserve it will not be eligible for Reserve land Development contribution credits "
6. With respect the proposed plan provisions do not make it clear what the status of the land is to be or that it is proposed to be "gifted " by land owners to Council or what effect of the development the land is sought to be avoided, remedied or mitigated by the requirement to vest such land as a Local Purpose Reserve and further the justification for the "taking" of such land which is clearly for the public benefit without any form of financial compensation or offset
7. Given it appears the primary purpose of the now proposed widened Access Amenity area is to create footpath and cycleways within what is private land for the public benefit , the requirement to take such land without compensation amounts to a defacto designation and is clearly unreasonable and hence unlawful. Any landscaping that the is proposed to be provided and may be seen as necessary to avoid , remedy or mitigate the effects of subdivision and or development could be provided for without the need for private land to be set off as reserve as is the case with many rules within various zones of the QLDC Proposed District Plan.
8. The "taking" of such land without compensation by requiring it to be vested in Council has a number of impacts on the development potential of owners land . As an example is site coverage of development to be assessed before or after such vesting occurs ? If after then this will result in a significant "cost " to land owners

Given the above we advise our clients Ladies Mile Pet Lodge Limited strongly oppose the proposed ammended provisions relating to the Amenity Access Areas .Further given the clarification you have now provided that the land will be required to vest in Council, which we do not understand even in relation to the original proposal for Amenity Areas ( as per the original notified provisions of the Variation ) to have ever previously been disclosed we believe the same to be unreasonable and unlawful .

**Graeme Todd** LLB, Notary Public

Principal

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**From:** Kate Woods <[Kate.Woods@wynnwilliams.co.nz](mailto:Kate.Woods@wynnwilliams.co.nz)>

**Sent:** Thursday, December 21, 2023 3:37 PM

**To:** [jw@jameswinchester.co.nz](mailto:jw@jameswinchester.co.nz); James Gardner-Hopkins <[james@jgh.nz](mailto:james@jgh.nz)>; Joshua Leckie <[joshua.leckie@laneneave.co.nz](mailto:joshua.leckie@laneneave.co.nz)>; [craig@berrysimons.co.nz](mailto:craig@berrysimons.co.nz); Graeme Todd <[graeme@toddandwalker.com](mailto:graeme@toddandwalker.com)>; [ngeddes@cfma.co.nz](mailto:ngeddes@cfma.co.nz); [blair@vivianespie.co.nz](mailto:blair@vivianespie.co.nz); Michael Bathgate <[michael@aukaha.co.nz](mailto:michael@aukaha.co.nz)>; [jeremy@brabant.co.nz](mailto:jeremy@brabant.co.nz); [HannahH@barker.co.nz](mailto:HannahH@barker.co.nz); [Rodney.Albertyn@nzta.govt.nz](mailto:Rodney.Albertyn@nzta.govt.nz); Ben Farrell <[ben@cuee.nz](mailto:ben@cuee.nz)>; [alex@southernplanning.co.nz](mailto:alex@southernplanning.co.nz); Werner Murray <[wmurray@propertygroup.co.nz](mailto:wmurray@propertygroup.co.nz)>; Kristy Rusher <[Kristy.Rusher@awslegal.co.nz](mailto:Kristy.Rusher@awslegal.co.nz)>; Brett Giddens <[brett@townplanning.co.nz](mailto:brett@townplanning.co.nz)>; Daniel Minhinnick <[daniel.minhinnick@russellmcveagh.com](mailto:daniel.minhinnick@russellmcveagh.com)>; [blair@vivianespie.co.nz](mailto:blair@vivianespie.co.nz); Erin Stagg <[erin@edgarplanning.co.nz](mailto:erin@edgarplanning.co.nz)>; Meg Justice <[meg.justice@taylorplanning.co.nz](mailto:meg.justice@taylorplanning.co.nz)>

**Cc:** Lucy de Latour <[Lucy.deLatour@wynnwilliams.co.nz](mailto:Lucy.deLatour@wynnwilliams.co.nz)>; Jake Robertson <[Jake.Robertson@wynnwilliams.co.nz](mailto:Jake.Robertson@wynnwilliams.co.nz)>; Molly McDouall <[Molly.McDouall@wynnwilliams.co.nz](mailto:Molly.McDouall@wynnwilliams.co.nz)>; [jeff@brownandcompany.co.nz](mailto:jeff@brownandcompany.co.nz); Maddy Familton <[maddy@brownandcompany.co.nz](mailto:maddy@brownandcompany.co.nz)>; Alyson Hutton <[Alyson.Hutton@qldc.govt.nz](mailto:Alyson.Hutton@qldc.govt.nz)>; Daniel Hadfield <[Daniel.Hadfield@qldc.govt.nz](mailto:Daniel.Hadfield@qldc.govt.nz)>

**Subject:** TPLM Variation - Amenity Access Area updated plans and provisions [WW-ACTIVE.FID557424]

Kia ora koutou,

Last week at the Te Pūtahi Ladies Mile hearing, the Council indicated to the Panel that its witnesses had been further contemplating the plans for the Amenity Access Area including whether any amendments needed to be made to provisions to further clarify the development and future ownership of the Amenity Access Area. The Council advised the Panel:

- Updated plans and provisions would be circulated to submitters for comment.
- Any comments received would be considered by Mr Brown in his recommendations on the Amenity Access Area in the section 42A reply report due Friday 26 January 2024 (along with all other evidence and joint witness statements filed on the TPLM Variation to date).

Accordingly, we **attach** the following for your consideration and comment:

- The Council's urban design witnesses' final plans for the Amenity Access Area including an updated cross section, two new plans (tree spacing plan and long elevation), and indicative street tree species.
  - We note that due to timing constraints the indicative street tree species included in the plans are still subject to confirmation from the Council's Parks and Reserves team, and it is possible these species will need to be further refined.
- Mr Brown's draft further amendments to provisions relating to the Amenity Access Area.

Can you please provide any comments by **midday Wednesday 17<sup>th</sup> January 2024**.

We intend to include an appendix to the s42A reply report that compiles any responses received by submitters on these plans and amended provisions.

Kind regards,  
Kate



**Kate Woods**  
Senior Associate  
Wynn Williams

---

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Wynn Williams' offices will be closed from 5pm on Friday, 22 December 2023, and will reopen on Thursday, 11 January 2024. If your matter is urgent, please check our website for more information about who can assist you: [Christmas Closure Information](#)

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**Kate McKinlay**

**Subject:** RE: TPLM Variation - Amenity Access Area updated plans and provisions [WW-ACTIVE.FID557424]

**From:** Meg Justice <[meg.justice@taylorplanning.co.nz](mailto:meg.justice@taylorplanning.co.nz)>

**Sent:** Wednesday, January 17, 2024 8:09 AM

**To:** Kate Woods <[Kate.Woods@wynnwilliams.co.nz](mailto:Kate.Woods@wynnwilliams.co.nz)>

**Cc:** [jeff@brownandcompany.co.nz](mailto:jeff@brownandcompany.co.nz); Kristan Stalker <[kristan@maryhill.nz](mailto:kristan@maryhill.nz)>

**Subject:** RE: TPLM Variation - Amenity Access Area updated plans and provisions [WW-ACTIVE.FID557424]

Hi Kate, thank you for sending through the updated plans and provisions for the TPLM Amenity Access Area ("AAA") on 21 December 2023.

My client, Maryhill Limited owns a large strip of land that is affected by the AAA as shown in the image below. The area affected is approximately 7,178 m<sup>2</sup> of land within the 16.5m wide AAA and an additional 870 m<sup>2</sup> of land within the 2m building setback:



The updated plans and provisions provide additional clarity about the purpose of the land and how it will be developed. Maryhill Limited (submitter number 105) has no opposition to the AAA in principle. However, it is concerned about the means by which Council intends to acquire this land and the mechanisms for developing it. Its concerns are set out below:

### 1. **Fair payment/compensation for the land is required.**

It is understood that Council intends to acquire this 16.5m wide strip of land on the northern side of SH6 at the time subdivision or development occurs within the AAA, and that the acquisition of the land will not be eligible for development contributions or any other payment. Further, Council will require the landowners to develop the AAA in accordance with the updated plans, including the extensive planting and completion of the footpath and cycle way. This will be a considerable expense for developers, which will not be compensated. This raises the following questions:

- It is not clear what legal mechanism will be used to acquire privately owned land without compensation or payment.
- There is no certainty that the full length of the AAA will be able to be acquired if the acquisition is dependent on land owners subdividing or developing their land. Therefore, sections of the AAA may not be completed. This could curtail the operational use of the AAA, which is an important element to the TPLM modal shift aspirations.
- The proposed methodology requires landowners to develop the AAA with the footpaths, cycleway and landscaping. With individual landowners completing this work, the uniformity of the works is not guaranteed. This could be avoided if all of the AAA land was developed by the Council.

The proposed method of acquiring the AAA land without compensation is not equitable or reasonable. In addition to gifting the developed AAA land to Council, landowners will be required to develop normal infrastructure for their developments (roads, 3 waters assets and recreational reserves) at the time of development. The AAA is an important element of the proposed modal shift for the TPLM and will be utilised by all members of the community, and wider area. As the AAA will be a public asset, it is considered that the appropriate means of acquiring the land is via a sale and purchase agreement or the Public Works Act 1981 process, both of which would see the land purchased at market value. The loss of the AAA land, which for Maryhill Trust Ltd equates to approximately 7,178 m<sup>2</sup> of AAA land and an additional 870 m<sup>2</sup> of land within the 2m building setback, without fair compensation, will have cost implications that will likely stymie development and stall the development of the AAA.

An alternative method (to using the Public Works Act) would be to introduce a specific DC's policy that applies to this TPLM Local Purpose 'Connection' reserve, in order to enable DC credit's to be eligible for this reserve land. However, this method would not ensure that all the land required for the AAA is obtained in a timely manner.

### 2. **Area of the AAA remains excessive.**

The updated plan for the AAA has reduced the width of the area from 18.5m to 16.5m (this excludes the additional 2m no build area that will be within private property set aside as a building setback/yard setback from the AAA). 16.5m remains a large area to be set aside for connection purposes. It is requested that the width of the AAA is further reduced wherever possible. This could be achieved by reducing the width of the planting strips and/or using part of the State Highway corridor for the AAA (i.e. not having the planted medium strip within the State Highway corridor).

### 3. **Planning mechanisms**

The notified TPLM Zoning Plan and TPLM Structure Plan is required to be amended to show the updated plans for the AAA.

Please get in touch if you have any questions or require further clarification on any matters raised in this email.

Regards,  
Meg

**Meg Justice**

Partner

**P:** +64 27 227 2444

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**Subject:** TPLM Variation - Amenity Access Area updated plans and provisions [WW-ACTIVE.FID557424]

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**Kate Woods**

Senior Associate  
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**TO:** Queenstown Lakes District Council (“**QLDC**”), C/- Wynn Williams

**FROM:** James Gardner-Hopkins

**DATE:** 17 January 2024

**SUBJECT:** Proposed Vesting of Amenity Access Area in Council, at no cost

---

### Introduction

1. As I understand it, the Council wishes for the Panel to recommend adoption of a set of Amenity Access Area (“**AAA**”) provisions, including new amendments to an objective, policy and other provisions that would effectively require or result in the vesting of the AAA in Council, without compensation as part of any subdivision process.
2. The purpose of this memorandum is to record my understanding, and experience,<sup>1</sup> of the principles around compulsory acquisition – which, in short, require compensation for value. I have briefly reviewed some of the authorities to assist.

### Principles

3. Discussion on the subject of compulsory acquisition of land must assume a basic acceptance that land in private ownership may be required for public purposes from time to time. Nevertheless, “the owner of private land is entitled to protection from arbitrary decisions by the executive in respect of his land.”<sup>2</sup> This accords with Article 17(2) of the Universal Declaration of Human Rights, which states that “No one shall be arbitrarily deprived of his property”; and Article 17(1) of the Charter of Fundamental Rights of the European Union which states: “No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, **subject to fair compensation** being paid in good time for their loss” (emphasis added).
4. In their Legislation Guidelines (2021), the Legislation Design and Advisory Committee recognised the importance of property rights, stating:
 

People are entitled to the peaceful enjoyment of their property ... . The Government should not take a person’s property without good justification. A rigorously fair procedure is required and compensation should generally be paid. If compensation is not paid, there must be cogent policy justification (such as where the proceeds of crime or illegal goods are confiscated).
5. While produced some time ago, the Treasury paper of 2002, “*Protection against Government Takings: Compensation for Regulation?*”, concluded that:
 

... appropriation of physical property (particularly land) must be compensated.

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<sup>1</sup> Noting that I am not currently practicing as a lawyer (but as a Project Manager), and this is not intended to be legal advice, but rather an explanation as to why the Applicant is so concerned about the Council’s proposed general consent notice.

<sup>2</sup> Eg *D. Brown, Land Acquisition (1972)*, 308.

6. This all continues to find expression in the Public Works Act 1981 (“PWA”). Compensation for acquisition is provided for in the PWA. The compensation principles under that Act are well established, being that no one should be either better or worse off due to the acquisition of their land. In other words, there is fair market value paid for the compulsory acquisition of land under the PWA (and mechanisms to ensure that is achieved (eg appeals to the Land Valuation Tribunal as to value).
7. More fundamentally, however, there is also a right to object (and appeal) to the taking under the PWA. Where there is a “designation” in play as well, or as a precursor to a PWA acquisition, there are also similar rights to submit and appeal. As found in *Queenstown Airport Corporation Ltd v Queenstown Lakes District Council* [2013] NZHC 2347:

Both statutes deal with the coercive powers of public authorities to derogate from private property rights. They should be interpreted in a consistent way.

8. In particular, Whata J found:

The language of “requirement” and “reasonably necessary” in ss 168(2) and 171(1)(c) (and in s 24(7) of the PWA) are standards used in everyday language. They should require no undue elaboration. But in the present context, involving the coercive powers of public authorities for public purposes, the words “requirement” and “reasonably necessary” are statutory indicia that any proposed works must be clearly justified by reference to the objective of the NOR. This aligns with the threshold identified by the Court of Appeal in *Seaton* when dealing with the concept of “required” and given the prospect of compulsory acquisition.

### **Application**

9. It seems clear that the Council is now seeking to have the AAA compulsory acquired from landowners fronting the Ladies Mile, **without compensation**.
10. That goes against all principles of modern, and historic, common law. It also cuts against the requirements of the PWA and designations under the RMA.
11. Given this, respectfully, the Council should be very wary about recommending provisions of the SPP Variation that “set up” an expectation of compulsory acquisition without compensation. If it does so, it would appear to be risking exposure of the Panel, and the Minister (if the Minister were to accept the recommendation), to challenge by way of judicial review.

**James Gardner-Hopkins**  
17 January 2024

## MEMORANDUM

**TO:** Queenstown Lakes District Council (“**QLDC**”), C/- Wynn Williams

**FROM:** Werner Murray (Independent Planning Expert)

**DATE:** 17 January 2024

**SUBJECT:** Proposed Vesting of Amenity Access Area in Council, at no cost

### Introduction

This memorandum addresses the planning issues raised by the Council’s proposed Amenity Access Area (**AAA**), that the Council has now confirmed that it wishes to have vested in it, at no cost.

This follows from the following exchange:

**Q:** In respect of the latest proposed Amenity Access Area so that we can take instructions and advise can you please clarify the following:

- (1) That the Access Amenity Area is only to be set off on any development or subdivision of land ?
- (2) Is the value of the same to be credited against Financial Contributions otherwise payable ?

**A:**

- (1) It is intended that the Amenity Access Area will only be vested when the land is developed or subdivided.
- (2) It is the Council’s preference for the Amenity Access Area to be to be formed and vested in the Council as Local Purpose Reserve (Connection) (refer 27.7.28.1.j in amended provisions circulated on 21 December). Given it is not intended for this to be vested as recreation reserve it will not be eligible for Reserve Land development contribution credits.

Accordingly, the Council’s proposed SPP provisions (including amendments to objectives, policies, assessment criteria, and any other provisions) need to be considered in that light. The provisions that are proposed to be changed are:

4.2.2.21(d)

27.7.28.1(j)

27.7.28

49.2.6.4(a)

While providing for active travel was present in the TPLM plan variation as notified, the only requirement in the notified version was for a link across SH6 from sub-area H1 (49.5.10 as a standard in the low density precinct). Now, especially when considering the newly proposed 27.7.28(j), and 27.7.28.3 together, with the Council's response to the questions asked above, there is now a clear requirement being established under the District Plan (as proposed to be amended) to not only construct but also to vest the AAA that includes, as Council now insist, critical linear infrastructure (continuous, legible and uniformly designed walkway and cycleway linkage). It has never previously been made clear that this would be at the landowners cost (land cost and construction cost) until now, as Council have never put a requirement for this to occur in *Chapter 27 (Subdivision)* until now. Previously, the terminology and understanding was that there needed to be some sort of setback – initially put forward for landscape reasons (which now seem to have evaporated), but not the establishment of an objective/ policy for the acquisition of land (without compensation).

I have adopted and adhered to the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2023 in preparing this memorandum. The issues are within my areas of expertise and experience, and I have not omitted any material facts known to me that might alter or detract from our opinions.

### 1.1 Glenpanel Development Limited's original submission

Glenpanel Development Limited (**GDL**) originally submitted as follows:

*It is unclear to the submitter why the building restriction along SH6 has been kept. Such a setback may have been desirable at one point, while there was a much more rural feel to Lady's Mile. However, the current Variation will undoubtedly urbanize Lady's Mile (even more so than it already is). This type of setback (a building restriction line) is no longer required in an urban environment. All it will achieve is to decrease the land available for housing, the very thing that the District so desperately needs and what is supposed to be driving the core thrust of the Variation itself.*

GDL further sought a strike out of the rule requiring compliance with the cross section, as follows:

~~27.7.28.3 Within the Amenity Access Area, development shall be consistent with the "State Highway 6 Typical Road Section" in the Structure Plan in 27.13.19.~~

### 1.2 Council changes

#### **Chapter 49**

The AAA came into the Variation with no additional evidence supporting strengthening the position under 49.2.6.4, which originally stated:

49.2.6.4 Encourage the use of pedestrian and cycling modes by:

- a. Requiring high-quality, well connected, integrated and legible walking and cycling routes and linking to existing routes outside the Zone

It is now proposed to add:

... including by the Amenity Access Area on the north side of the state highway and an active travel route on the south side of the state highway;

In my opinion, no additional evidence has been provided that would warrant the inclusion of the above. While the evidence presented thus far does mention a cycleway in the AAA there has been no real case made that this cycleway is essential to the success of the transport interventions and that it must be in that location. In the proposed district plan this area is known as building restriction area, and the understanding was that it was to remain a building restriction area (rather than land to be vested). This has now morphed into a “vital” piece of linear infrastructure, apparently to be vested (but without compensation).

I also note, with the now proposed reduction in speed on SH6 and the potential of mid-block crossings, getting across to the existing cycleway on the Southern side of SH6 will be safer, and more efficient than creating duplicate infrastructure on the northern side (and compared to shared pedestrian and cycle-ways proposed within the development areas).

#### **Chapter 4**

It is now proposed to further change chapter 4.2.2.21 to include:

- d. as part of the landscaped gateway treatment required by Policy 4.2.2.21c. above, require, on each of the northern and southern boundaries of the state highway corridor, a continuous, legible and uniformly designed walkway and cycleway linkage that integrates development with the bus services along the highway and enables active travel along the full length of the Zone.*

As explained above, Council’s expectation has now also been made clear that this piece of linear infrastructure will be required to be vested at the time of subdivision, with no development contribution offset or any form of compensation available to landowners for this land.

This is out of step with similar provisions in the remainder of Chapter 4, for example the approach taken to the “gateway to Arrowtown” at 4.2.2.19(c). This is only for landscape treatment and does not require land to be vested (let alone at no cost) to the Council.

It has been my understanding that through the master plan and the SPP process, the purpose of the setback which has now become the AAA was to provide a “landscape gateway” into Queenstown as was stipulated in 4.2.2.21(c). 4.2.2.21(c) was open to treatments that could have been provided at 224(c) stage (note this is also considered to be in line with (4.2.2.19)).

The addition of 4.2.2.21(d), however, means that this landscape gateway now also contains linear infrastructure that is – apparently – so important that it is proposed to include this requirement not only within proposed Chapter 49 but also Chapter 4. This is a step change (as it elevates a lower order, more general issue, to a higher order obligation), noting that removing a requirement to comply with the SH6 cross section at the lower order level was part of GDL’s submission.

It is therefore valid, if not necessary, to revisit this – despite the urban design joint witnesses agreeing on an indicative cross section through conferencing. This follows from the proposal now elevating lower order considerations to higher order objectives that logically lead to the imposition of vesting requirements through subdivision processes, at no cost to the Council.

This is quite different to the approach taken to linear infrastructure generally, which is usually designated, or, if not, is acquired under the Public Works Act 1981 (for value) so as to ensure any “necessary” outcomes sought by the relevant authority.

The Panel, in considering what is now proposed as a new requirement for vesting of linear infrastructure at subdivision, is required to consider the relevant options in terms of s32/ s32AA.

### **1.3 S32AA analysis**

#### **Option 1:**

Providing plan provisions that require the AAA, on the basis that the AAA is critical to the success of the TPLM Variation.

In that case, then the method (vesting at the time of subdivision) that is currently being proposed by the Council is not effective or efficient, for the following reasons:

1. Given that various landowners will have different drivers, and timings, the AAA will be completed at different times, and may never be completed at all if one or more landowners do not develop along the route. This is because, as proposed, the AAA will only vest at subdivision, so if a landowner were to wait and does not subdivide for a number of years (or ever) then the linear infrastructure will not eventuate in any meaningful way; or
2. The infrastructure ultimately vests at different times, and potentially takes many many years to be completed, such that the intended benefits only arise in the very long term (without contributing to any real material mode shift in the meantime).

Both of these scenarios will make it difficult for the infrastructure to be contained within the AAA to be continuous, legible and uniformly designed, so this policy would not be met.

Should the Panel find that the intended AAA linear infrastructure is required, in order to make the Variation “work”, then the most appropriate (and only certain) method to ensure that happens, given the extent of the linear infrastructure that is required by the AAA would be to:

- designate the AAA as part of this plan change; and/ or
- use the Public Works Act to acquire the land

This would firstly (in the case of a designation) protect the AAA from activities occurring that might undermine the purpose of the designation, and secondly (in the case of acquisition) allow QLDC (or possibly NZTA) to develop the necessary infrastructure in a co-ordinated and coherent way.

In my experience with linear infrastructure works at the Property Group (and observing processes elsewhere), the designation and/or PWA route is almost always advanced as the most appropriate mechanism for managing the protection and ultimate roll out of linear infrastructure. This will ensure that the “necessary” linear infrastructure is both co-ordinated and can be delivered.

In terms of costs, the Council can, if the AAA infrastructure (including any landscape treatments related to a gateway experience) it wishes to see is truly “necessary” (in s32 terms), recover the costs through development contributions, or rates.

## **Option 2:**

Should the Panel find that there is insufficient evidence to support the inclusion of linear infrastructure at the landowner's expense (ie without the Council acquiring the land at value), then it would be most appropriate that the AAA requirements be removed from the plan change as Glenpanel submitted in the first instance.

Even if this were to be the case, then the Panel could still find that some set back and landscaping treatment is most appropriate to create a landscape (or amenity) experience. In that scenario, having a requirement similar to that applying in respect of Arrowtown at 4.2.2.19 would be appropriate.

It is noted that as part of the urban design Joint Witness Statement, a number of urban design experts agreed that a 12 metre Urban Amenity Zone would be appropriate. As I understand it, this cross section was advanced in the absence of the knowledge that the linear infrastructure contained within the cross section was intended to vest at no cost to Council.

It is unknown if the urban design experts would reach the same conclusion, if they understood that there was to be no compensation; or that the underling basis for the AAA's requirements were not proven.

In respects of costs, to either the Council (in acquisition, should that eventually be required) or to landowners (if, ultimately, not compensated), I note the following:

### **Costs**

1.4Km along the length of Ladies Mile and 20m of no build (AAA plus setback) = 1400m x20m = 28,000m<sup>2</sup>. Assuming a land value of \$1,000/m<sup>2</sup>, that would equate to some \$28 million.

Another way to look at it ,if 20m of land is required for linear infrastructure over:

- (a) 950m (High Density) = 1.9Ha at a density of 60 dwellings/Ha that comes at a cost of 114 dwellings in the high density zone; and
  - (b) 450m (Medium Density) = 0.9Ha at a density of 35 dwellings/Ha that come at a cost of 31 dwellings in the medium density zone.
- = A total cost of displacing 145 dwellings for the AAA.

This appears immediately contrary to the purpose of the zone which is stated as: *"to ensure efficient use of land for the provision of housing within an integrated, well-functioning, and self-sustaining urban community, that is inclusive of communities in nearby zones"*.

### ***Risk of not acting***

The risk of not designating and/ or acquiring the AAA land under the PWA is that:

- (a) Some AAA is developed through a non-complying consent process, which would then preclude the proper functioning of the AAA land in its entirety.
- (b) Significant costs are expended in non-complying consent processes, including appeals, even if they are not ultimately successful.
- (c) The AAA cannot be delivered as a whole, in any event, if one or more landowners simply do not develop.

### **Efficiency**

In contrast, designating the land and/ or acquiring under the PWA would effectively guarantee that the AAA is kept free of inappropriate development.

The costs for this would fall on the appropriate entities, being the entities that require the linear infrastructure rather than what essentially amounts to confiscation from landowners, with the benefit being that multiple funding channels would be open to QLDC and/or NZTA to be able to fund this infrastructure should it be decided that it is required.

Taking this approach over waiting for individual land owners to vest the land would be much more efficient as all the land could be assured for linear infrastructure development now (designation), and then would be acquired (PWA) and then constructed all together. This would be a far more efficient than a piecemeal ad hoc process, that would result if vesting through subdivision was relied on to deliver this infrastructure (even if such process was lawful).

### **Option 3**

As stated above, there is scope within the submissions to remove the requirement of 27.7.28.3 to require that the AAA be consistent with the cross section.

If there was no cross section requirement but simply a building setback and landscape treatment requirement, that would enable developers to get on and undertake their subdivisions, leaving any setback land available for a future designation and acquisition (or simply as an amenity setback, owned by the landowners).

As I understand it, the Panel cannot through this SPP process require the Council to undertake a designation or PWA process. However, as I understand it, the Panel can recommend any setback or AAA area that it considers justified on the evidence, and further recommend that the Council then undertake a designation and/or PWA process to ensure its intended outcomes, outside the Plan Process. If there is no traffic justification, then the balance of the urban design evidence is that little or no setback is required. And the landscape experts appear to defer to others on the “gateway” issue in a new urban environment.

Further this would allow NZTA to undertake an update to the SH6 corridor management plan which is the most instrument to be used for the design of the corridor.

If there is no traffic justification, then the balance of the urban design evidence is that little or no setback is required. And the landscape experts appear to defer to others on the “gateway” issue in a new urban environment.

### **Conclusion**

As can be seen from the analysis above:

- (a) there been no advance notice of an compulsory acquisition of AAA land without compensation through the notified version of the plan or the master plan;
- (b) the current proposal to now acquire land for linear infrastructure (without compensation) via a mechanism to be employed at subdivision only, is highly inefficient and likely to be ineffective; and

(c) will reduce the availability of land to meet Council's requirement in respect of housing bottom lines which it is already failing to do.

**Prepared by:**

A handwritten signature in black ink, appearing to read 'Werner Murray', is written over a horizontal line that extends across the width of the signature.

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**Werner Murray**

Principal Planner

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# JAMES WINCHESTER

## BARRISTER

18 January 2024

Queenstown Lakes District Council  
c/- Wynn Williams  
Solicitors  
PO Box 4341  
CHRISTCHURCH 8140

For: Lucy de Latour/Kate Woods (via e-mail)

Dear Lucy and Kate

### **Te Pūtahi Ladies Miles Variation – Amenity Access Area proposals**

1. I refer to your e-mail on 21 December 2023 regarding the Council's proposals for the Amenity Access Area (**AAA**). This response is provided on behalf of the Anna Hutchinson Family Trust (**AHFT**).
2. I apologise for the delay in providing this response but was travelling yesterday and was not in a position to provide feedback by the time stipulated for responses. I trust however that the minor delay will not prejudice the preparation of the Council's section 42A reply report dealing with these issues.
3. Comments regarding the proposed AAA provisions have been provided by the AHFT urban design witness, Mr Tim Church. Mr Church's advice is as follows:

I have reviewed the documentation provided by the Council Experts and I consider the following from my Urban Design perspective (in addition to previous evidence provided):

1. A second cross section should be provided specifically relating to the Howards Drive and Lower Shotover / Stalker Road intersections, including the Town Centre Zone interface, noting there was agreement between experts that setbacks from SH6 / Amenity Access Area could be reduced in this area to enhance legibility and provide additional friction. The landscape treatment of this area is likely to utilise harder materiality and some allowance needs to be made for bus stops, turning lanes and pedestrian safety areas in the median strip. Furthermore, an updated structure plan should be included to clearly indicate the location and extent applicable to each of the two cross sections, including the proposed approach to integrate the Amenity Access Strip into Spence Road and / or other proposed active travel alignments within any Western Amendment.
2. The width of the feature tree strip was one of the key areas of disagreement between Urban Design Experts. One part of the Council Expert's rationale for a wider strip was potential provision for Stormwater attenuation and treatment. However, the plan and cross section provided do not indicate any provisional allowance for this, such as a swale, which could help to inform the Panel of the minimum width to achieve the necessary depth and slope batters required.

3. It is noted that existing trees are already provided at regular spacings and carriageway offsets along the northeast and southern edge of the SH6 road corridor. It is unclear if these have been analysed and if the proposed spacings are informed by these to achieve a consistent approach between existing and new street tree plantings.
  4. It is unclear what the following highlighted clause is trying to achieve and would likely need more clarification in addition to that provided in clause d. that follows:
    - 4.2.2.21 Ensure that development within the Te Pūtahi Ladies Mile Zone provides for:
      - a. an urban development with a strong community identity and sense of place by enabling community activities, including education activities, a commercial centre that meets needs of local residents, and connections to the surrounding landscape and residential communities;
      - b. high and medium density residential development to enable diversity of housing choice through different typologies to contribute to increased supply of housing and affordable homes;
      - c. a landscaped gateway treatment:
        - of the edge of adjoining State Highway 6 to increase provide high quality amenity for both road users and adjoining residential areas; and
        - adjoining the eastern end of the Zone north of State Highway 6 to provide a designed urban edge that promotes the containment of the urban development within the landscape;
  5. It is assumed that provisions for the 3m Building Restriction Zone / Build To Zone indicated will effectively restrict the inclusion of vehicle access ways and car parking adjacent to the Amenity Access Area. However, it is unclear if this Zone needs to be a continuous built edge and how any separation between buildings and provision for shared pedestrian and cycle access to the Amenity Access Area could be accommodated.
  6. It is assumed a non-statutory design guide for buildings and landscape treatments addressing the edge of the Amenity Access Area is not part of the TPLM Variation. As such, it appears from the updated provisions for the Amenity Access Area (i.e. green highlights) that no consideration has been made to ensure an active edge and CPTED outcomes are provided for along its development interface.
4. I advise that the AHFT adopts Mr Church's comments and asks that the Council's experts take these into account in their reply.
  5. In addition, I have been provided copies of the memoranda lodged on behalf of Glenpanel Development Limited (**GDL**) on these matters, dated 17 January 2024. While there may not be the same direct impact of the AAA provisions on the Extension Area as there might be with regard to other submitters, the AHFT agrees in principle and supports the comments made on behalf of GDL.
  6. It considers that provisions which are contrary to established legal principles, unfair and unreasonable, and at odds with the approach reflected in the balance of the District Plan should not be advanced by the Council.

JAMES WINCHESTER  
BARRISTER

7. I trust that this position is clear, but please feel free to contact me if you require any clarification.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'J. Winchester', with a small dot above the 'i'.

James Winchester