

IN THE MATTER

of the Resource
Management Act 1991

AND

IN THE MATTER

of a submissions and
further submissions lodged
by **WINTER MILES
AIRSTREAM LIMITED**
(Submitter 94)
in relation to the **TE
PUTAHI LADIES MILE
PROPOSED VARIATION**
to the **QUEENSTOWN
LAKES DISTRICT PLAN**

**LEGAL SUBMISSIONS OF COUNSEL FOR
WINTER MILES AIRSTREAM LIMITED**

1. INTRODUCTION AND PRELIMINARY MATTERS

- 1.1 Winter Miles Airstream Limited ("WMAL") is a Queenstown-based land development company which was established in 2022 and undertakes a range of subdivision and housing projects in the Queenstown Lakes District (and elsewhere in New Zealand).
- 1.2 WMAL owns a 3.3267 ha parcel of land ("the Site") currently zoned Rural Lifestyle in the PDP which is located within Sub Area E of the land that is subject to the Ladies Mile variation ("Variation" or "LMV"). The company therefore has a vital interest in the outcome of the LMV process as that will determine the development potential of the Site.
- 1.3 WMAL therefore lodged a primary submission and number of further submissions in relation to the LMV.
- 1.4 WMAL intended to file its legal submissions on 6 December 2023, as required. However, Mr Berry was unwell that day and was unable to complete his final review of the relevant documents. WMAL apologises for any inconvenience caused by the slight delay in filing.

Memorandum that accompanied WMAL evidence

- 1.5 Counsel respectfully refers to the memorandum of counsel for WMAL that was filed with WMAL's evidence on 20 October 2023 to assist the Panel to put that evidence into context without having to resort to the primary documents.
- 1.6 These submissions draw on that memorandum but have been updated to reflect developments as a result of the very productive procedural history that has ensued since the evidence was filed.

Purpose and scope of submissions

- 1.7 Against that background, the purpose of these submissions is to outline WMAL's current position in relation to the LMV and the WMAL issues in respect of which the Panel is required to make a call.
- 1.8 In doing so, these brief submissions:
- (a) Set out WMAL's support for the Variation subject to minor amendments (Section 2).
 - (b) Provide a brief overview of WMAL's primary and further submissions and further submissions in respect of WMAL's primary submission (Section 3).
 - (c) Address the interpretation of transportation infrastructure triggers (Section 4).
 - (d) Outline WMAL's request for a 2,500 square metre commercial centre on its land (Section 5).
 - (e) Briefly address other amendments to the LMV provisions recommended by Mr Brown that WMAL particularly supports (Section 6).
 - (f) Make some concluding comments (Section 7).

2. WMAL'S SUPPORT FOR THE LMV SUBJECT TO MINOR AMENDMENTS

- 2.1 WMAL supports the LMV as representing an opportunity to provide a new residential neighbourhood for the Queenstown Lakes District community and the development of the Ladies Mile area which will assist with the provision of more affordable housing in the Whakatipu area and the vision of creating an integrated, well-functioning and self-sustaining urban community.
- 2.2 To that extent, and for what it's worth, WMAL submits that the Variation:
- (a) Will appropriately give effect to all applicable higher order planning instruments, including the NPSUD policy outcome of creating well-functioning urban environments, the Otago Regional Policy Statement ("Otago RPS"), and the PDP.
 - (b) Will be consistent with all relevant National Environmental Standards.
 - (c) Promotes the sustainable management purpose of the RMA, particularly insofar as it will enable the use and development of natural and physical resources in a way and at a rate that will enable the community of Queenstown Lakes District to provide for their social, economic, and cultural wellbeing while addressing potential adverse effects.
- 2.3 WMAL also submits that it is appropriate that the Variation be approved on the basis that, in terms of section 32 of the RMA:
- (a) The proposed objectives are the 'most appropriate' means of achieving the purpose of the RMA; and
 - (b) The proposed zoning, policies and other provisions are the 'most appropriate' means of achieving the objectives.

2.4 The issues in respect of which WMAL differs from the relief identified in Mr Brown's rebuttal evidence are set out in Sections 4 – 6 below.

3. **WMAL SUBMISSIONS AND RELATED SUBMISSIONS**

3.1 For context, this section sets out the thrust of WMAL's submission, and further submissions filed for and against WMAL's submission.

WMAL primary submission

3.2 WMAL's primary submission was generally supportive of the LMV and the rezoning of its land within the High Density Residential Precinct but opposed the LMV in part, on the basis that Mr Giddens, in particular, considered that some aspects of the LMV were overly restrictive or prescriptive, or otherwise did not represent sound resource management.

3.3 WMAL's concerns were summarised in WMAL's 20 October memorandum¹ as follows:

- "(a) *That the level of information required to be supplied with resource consents is excessive and unhelpful in providing a clear planning framework.*
- (b) *That there is insufficient certainty of the 'trigger' points required to be met before development can occur / zoning can be implemented being achieved in a timely manner alongside the support of the Council and other agencies.*
- (c) *The provisions will encourage or direct development that is not financially feasible or attractive to end users, hindering the development of Ladies Mile.*
- (d) *Lack of direction on 'affordable housing' has the potential to increase unaffordability of housing.*
- (e) *The requirement to undertake development that is in "general accordance" with the Structure Plan may be unduly restrictive.*
- (f) *Residential visitor accommodation does not represent an activity that generates such adverse effects that it be afforded a non-complying activity status.*
- (g) *The provisions relating to traffic are unduly restrictive, onerous, and contrary to resource management planning.*
- (h) *Residential flats should not be unreasonably precluded by the provisions, but rather should be recognised as an ancillary residential use that would support the shortage of accommodation in the Wakatipu area.*
- (i) *The LMV should support the establishment of a primary commercial precinct while refining the location of smaller-scale commercial zoning across the Structure Plan to ensure sufficient*

¹ Paragraph 2.2 of the memorandum of counsel to accompany evidence dated 20 October 2023.

provision is made in response to the demand to be established from urban rezoning.

- (j) *The LMV should require development in the High Density Residential Precinct to be advanced without affected persons approval and without notification."*

WMAL further submissions

- 3.4 On 3 August 2023, WMAL lodged further submissions in support of a number of submissions and in opposition to others.
- 3.5 WMAL lodged further submissions in support of the submissions made by Ladies Mile Property Syndicate, Sanderson Group and Queenstown Commercial Limited, Maryhill Limited and Milstead Trust, stating that the points raised in these submissions support the general direction of the WMAL submission and the amendments that it seeks.
- 3.6 WMAL opposed DOC's submission and the relief sought on the basis that, given Ladies Mile is proposed to be a high-density area, DOC's submission points would not support and/or would undermine the levels of density required and proposed in the LMV.
- 3.7 As regards Waka Kotahi's submission, WMAL:
- (a) Supported Waka Kotahi's in principle support of the LMV, as the vision and principles set out in the Transport Strategy are consistent with the outcomes sought by Waka Kotahi.
 - (b) Remained neutral on Waka Kotahi's suggested safety improvements request for involvement in any suggested further discussion with the Council regarding parking provisions.
 - (c) Opposed Waka Kotahi's suggested removal, from two separate policies of the following wording:

"...unless it can be demonstrated that development will avoid future cumulative adverse effects from additional traffic movements, particularly at weekday daily peak periods on State Highway 6."
- 3.8 While WMAL supported construction of the roundabout and bus stops prior to development occurring, it did not support any requirement to construct an underpass prior to development occurring. WMAL considered that retaining this wording would allow some flexibility should it be demonstrated that specific infrastructural works are not required.

Further submissions in relation to WMAL's submission

- 3.9 Five further submissions were lodged in relation to WMAL's submission; three in support and two in opposition.

Further submissions in support

- 3.10 Further submissions were lodged in support of the WMAL submission by:
- (a) Ladies Mile Property Syndicate was supportive of the general direction and amendments sought by WMAL in its submission.

- (b) Sanderson Group and Queenstown Commercial Limited also supported the general direction and amendments sought by WMAL in its submission.
- (c) Maryhill Limited supported WMAL's submission, in particular, the relief sought by WMAL for a change to minimum density, to provide a mix of housing typologies, and the enablement of residential flats.

Further submissions in opposition

- 3.11 Park Ridge Limited and Ladies Mile Pet Lodge lodged further submissions in opposition to the WMAL submission on the basis that they did not consider the land to be suitable for development, as the roading and infrastructure will not support the scale and intensity of development proposed in the Variation and because they do not favour the form and scale of development anticipated.

4. EVIDENCE FILED BY WMAL

- 4.1 WMAL filed evidence from three witnesses as follows.

Greg Wensley, Winter Miles Airstream Ltd

- 4.2 Mr Greg Wensley is a Director of WMAL. His evidence:

- (a) Provides an overview of WMAL and its involvement in the Queenstown Lakes District.
- (b) Outlines WMAL's interest in the LMW process.
- (c) Provides an overview of WMAL's position on the Variation, including the basis for WMAL's support of the Variation generally and its key concerns in relation to specific provisions proposed by the Variation.

Traffic safety - Leo Hills, Commute Transportation Consultants

- 4.3 Mr Leo Hills has over 24 years' experience as a specialist traffic and transportation engineer and is a director of Commute Transportation Consultants.

- 4.4 Mr Hill's evidence:

- (a) Addresses issues of interpretation regarding applicability of infrastructure triggers in Standard 49.5.33.
- (b) Addresses the infrastructure triggers for Sub-Area E.
- (c) Addresses the provisions related to the proposed road crossing / underpass.

- 4.5 Both of the key issues addressed in Mr Hills' evidence – relating to transport infrastructure triggers and the nature of the road crossing required – were addressed in the process of planning and transportation expert conferencing. As a result of that process, the provisions attached to Mr Brown's rebuttal evidence has recommended sensible and workable provisions which, if the Panel accepts them, would address WMAL's concerns.

- 4.6 The upshot is that, following an exchange with the Panel via Ms Scott, it has been decided that Mr Hills will not attend the hearing but is happy to answer any questions the Panel may have of him.

- 4.7 Mr Hills has also prepared a brief summary of his evidence which is filed with these submissions.
- 4.8 WMAL is grateful to Ms Scott and for the Panel's attention to this specific matter.

Planning – Brett Giddens, Town Planning Group Limited

- 4.9 Mr Brett Giddens is a Senior Planner and Managing Director of Town Planning Group with over 20 years' planning experience.
- 4.10 Mr Giddens' evidence provides an overall planning assessment and 'wrap up' piece, which addresses key issues with the provisions of the LMV and includes recommended amendments to those provisions.
- 4.11 Mr Giddens' principal issue relates to uncertainty in the provisions that impact on how the zone will ultimately be given effect to. Much of his concerns were addressed through changes that arose from the planning conferencing.
- 4.12 His summary focusses on the commercial precinct that has been requested on the WMAL land and some suggested refinements to the provisions.

5. SUBSEQUENT PROCEDURAL HISTORY

- 5.1 The procedural history of the LMV post referral is obviously well known to the Panel as a result of the comprehensive directions dated 10 August 2023, comprising:
- (a) Detailed and helpful directions and responses to queries;
 - (b) The Section 42A report;
 - (c) QLDC's evidence;
 - (d) Submitters' evidence;
 - (e) Expert conferencing; and
 - (f) QLDC's rebuttal evidence.
- 5.2 The process that has been pursued as directed by the Panel has been highly productive and has enabled many issues to be addressed as between the submitters and QLDC's experts and others to be narrowed in scope.
- 5.3 As a result of the process, all issues of concern to WMAL (except one relating to the entitlement to commercial development on WMAL's land) have been addressed if the Panel accepts the proposed amendments to the LMV provisions provided to the Panel during the opening of QLDC's case, comprising:
- (a) The provisions titled *Hearings Version* attached to Mr Brown's rebuttal evidence; and
 - (b) The document titled *Density in the HDR Precinct – suggested changes to Rule 49.5.16*. WMAL supports those provisions.

- 5.4 As noted, the exception relates to WMAL's request that 2,500 sqm be provided for commercial development on WMAL's land. From a strictly economic perspective, Ms Hampson, does not agree that such provision is necessary². However, Mr Giddens considers that there is justification for such a provisions from a planning perspective, particularly given uncertainty as to the number of people who are likely settle in the area being higher than what was first anticipated, the expansion of the supermarket within the commercial precinct and the provision for permitted visitor accommodation (e.g., hotels) within the commercial precinct. This is further addressed in Section 7 below.

6. INTERPRETATION OF TRANSPORT INFRASTRUCTURE TRIGGERS

- 6.1 One of WMAL's primary concerns was the lack of clarity in Standard 49.5.33 (Rule 49.5, Table 2) regarding transport infrastructure "development triggers" that must be completed prior to development occurring in the "sub-areas" (A – G) within the Medium Density Residential Precinct ("MDR Precinct") or High-Density Residential Precinct ("HDR Precinct"). This issue is addressed further below.

Reference to all transport infrastructural works having to be completed

- 6.2 Specifically, Standard 49.5.33 stated:

*"Development, (except for utilities, the specified infrastructural works and other physical infrastructure) within the Te Pūtahi Ladies Mile Sub-Areas shown on the Structure Plan shall not occur until **all** the corresponding transport infrastructural works listed below are completed."*

(Emphasis ours.)

- 6.3 Out of an abundance of caution, WMAL expressed the concern that, based on the plain wording of this standard, it could be interpreted in such a way that completion of all of the works listed for sub-areas A - G is required before any development in those sub-areas can commence, irrespective of the relevance of that particular development trigger to each sub-area.
- 6.4 Mr Hills addressed this in his evidence which stated that:

"2.5 I consider that the transport infrastructure measures, except for the ones for Sub-Area E listed in Rule 49.5.33, are unrelated to WMAL's site, such that delaying development of WMAL's site pending works identified in other sub-areas is completely unjustified for the following reasons:

- (a) The intersection upgrades listed provide safe and efficient links / access from SH6 to the various sub-areas. They are not wider network upgrades;*
- (b) The upgrades include bus stop upgrades at various locations along SH6. These individually would only serve the local*

² Wynn Williams document dated 24 November 2023 titled "Reply to questions asked of Natalie Diane Hampson." See also paragraph 7 of the summary of Ms Hampson's evidence in which the witness indicated that "I remain opposed to a proposed neighbourhood centre on the ...WMAL, with further explanation set out in my response to submitter's [sic] questions."

sub-areas (i.e., users of the bus stops at Sub-Area E are unlikely to use the other bus stop upgrades listed as it would be too far to walk to these other bus stops); and

- (c) *The upgrades include various pedestrian crossings across SH6. Again, these provide local links from the sub-areas across SH6 and individually only serve the local sub-areas.*

2.6 *Given the unrelated nature of these works, the consequences of a literal interpretation of Rule 49.5.33, i.e., all triggers met before any development can occur would, in my opinion, significantly delay development for no appropriate reason."*

6.5 Page 7 of the Joint Witness Statement of the transportation engineers ("JWST") records their view that clarity was required in relation to this matter. It also records that Mr Shields' view aligns with the view of Mr Hills, as set out above.

6.6 Mr Shields confirmed at paragraph 51 of his rebuttal evidence that he agrees with Mr Hills regarding this matter.

6.7 Mr Brown addresses this issue in paragraphs 43 to 53 of his rebuttal evidence, and amendments to Standard 49.5.33 are included in the Hearings Version of the provisions. Those amendments are supported by WMAL as they provide the clarity that WMAL was seeking.

Key Crossing - underpass

6.8 Mr Hills' evidence also addresses the Key Crossing trigger provisions of the LMV and notes at paragraph 3.6 of his evidence that Policy 49.2.6.4(b) states:

"49.2.6.4 *Encourage the use of pedestrian and cycling modes by:*

...

- b. *Preferring the provision of an underpass for the Key Crossing indicated on the Structure Plan."*

6.9 Mr Hills goes on to state the following in his evidence:

"3.7 *In this regard:*

- (a) *In my opinion, underpasses can create issues regarding safety (CPTED) of users, especially at night.*
- (b) *I consider signalised at-grade crossings to be the optimal form of pedestrian crossing in these situations as these are more direct in terms of accessibility as well as providing better security for all users. I do however acknowledge that this needs to be balanced with the effect on traffic flow.*

3.8 *I therefore agree with the trigger table in that no specific pedestrian treatment is referenced. I do however consider that Objective [sic – it is a policy] 49.2.6.4b relating to the preference for an underpass should be removed.*

6.10 The TJWS states the following³ at page 7:

"With regard to the reference to the underpass being the preference CS noted the reference to it being the preference should be deleted as others (non-traffic) consider that the underpass should be kept as a future proofed option.

DS and the other experts agreed that the installation of signalised intersections at Stalker Road and Howards Drive accompanied by a lower speed environment would eliminate the need for an underpass."

6.11 The short point is that none of the transportation experts support an underpass for the Key Crossing shown on the Structure Plan. Mr Shields confirmed his view in that regard at paragraph 52 of his rebuttal evidence, and the Hearings Version of provisions proposes to delete Policy 49.2.6.4(b). WMAL supports that deletion.

6.12 As noted, given that these issues are the primary issues that Mr Hills was covering, we did not consider it necessary that he attend the hearing.

7. **PROVISION FOR COMMERCIAL ACTIVITY ON WMAL LAND**

7.1 A key aspect of the WMAL submission stated:

"11.1 WMAL's position is that the LMV should support the establishment of a primary commercial precinct while refining the location of smaller scale commercial zoning across the Structure Plan to ensure that sufficient provision is made in response to the demand to be established from urban rezoning, including the allowance of 5,000m² of commercial precinct on the submitters land;"

7.2 The table attached to the submission stated the following:

"While the establishment of a primary commercial zone is supported, provision should be made for small areas of Commercial precinct to be established to ensure that access is efficient to cater for the demands arising from the intensified development."

7.3 The relief sought in relation to the above was to amend Objective 49.2.3 as follows (additions underlined and deletions ~~struck through~~):

"The Commercial Precincts are ~~is~~ compact, convenient and accessible for meeting the needs of local residents."

7.4 Mr Giddens addressed this issue in paragraphs 6.28 to 6.33 of his evidence, where he set out the reasons in support of commercial activity on the WMAL Site of 2,500m² – reduced from the 5,000m² sought in the WMAL submission.

³ Transport Experts' Joint Statement dated 30 October 2023.

- 7.5 Mr Brown did not accept in his rebuttal evidence the evidence of Mr Giddens and, in that regard, he relied on the rebuttal evidence of Ms Hampson.
- 7.6 WMAL subsequently put some questions to Ms Hampson based on input from Mr Giddens and her responses were to the effect that Ms Hampson still does not accept that commercial activity in the order of 2,500m² should be provided on the WMAL Site. Mr Giddens has considered Ms Hampson's response and is of the view, as stated in his summary of evidence, that:

"While I appreciate Ms Hampson's opinion from an economic perspective, it still does not address my concern that there is a high likelihood that the commercial precinct will include visitor accommodation (hotels) given such uses are permitted, and alongside the expansion of the supermarket footprint, will in my opinion mean that there will be a reduction in conventional commercial activity within the precinct. The WMAL land in my opinion is a logical location for a relatively confined area of commercial precinct".

8. **OTHER AMENDMENTS TO THE LMV PROVISIONS**

- 8.1 A number of other amendments proposed by Mr Brown to the LMV provisions are supported by WMAL insofar as they relate to matters in WMAL's submission and further submissions. The amendments relate to provisions for:

- (a) Not requiring strict adherence to all aspects of the Structure Plan.
- (b) Residential flats.
- (c) Residential visitor accommodation.
- (d) Residential density.
- (e) Infrastructure – stormwater provisions.

- 8.2 We address each of these briefly below.

Strict adherence to all aspects of the Structure Plan not required

- 8.3 This issue was addressed in the WMAL submission, and in Mr Giddens' evidence at paragraphs 6.2 to 6.6. The Joint Witness Statement of the planning experts ("JWSP") dated 3 November 2023 notes on Page 7 that the agreed position is:

"Agreed that minor deviation from the structure plan with good reasons should not force a development that achieves the wider objectives down the non-complying route. Need to allow a level of tolerance for minor deviations given level of uncertainty around future detailed designs. Jeff will investigate possible mechanisms to allow this and describe an appropriate degree of flexibility."

- 8.4 No amendments were included in Mr Brown's rebuttal evidence to address the issue. Amendments have now been included in the Hearings Version of the provisions. Those amendments are supported by WMAL.

Residential flats

- 8.5 The WMAL submission sought deletion of Rule 49.4.7, which made residential flats a non-complying activity. In Appendix D to the section 42A Report, Mr Brown set out his reasons for deleting Rule 49.4.7.
- 8.6 The rule remains deleted from the Hearings Version of the provisions and WMAL supports its deletion. Mr Giddens addressed this issue in paragraphs 6.25 to 6.27 of his evidence.

Residential visitor accommodation

- 8.7 The WMAL submission sought provision for Residential Visitor Accommodation and Mr Giddens addressed this issue in paragraphs 6.19 to 6.24 of his evidence. Mr Brown's rebuttal evidence addresses the issue at paragraphs 54 to 67, where he includes recommended amendments to provide for Residential Visitor Accommodation in the HDR Precinct.
- 8.8 Those recommended amendments have been carried through into the Hearings Version of the provisions. WMAL supports the recommended amendments.

Residential density

- 8.9 The WMAL submission sought relief to amend Policy 49.2.2.1(b) to "manage" rather than "avoid" lower residential density than provided for in the notified version of the LMV. No agreement was reached on any minimum or range of densities in the JWSP, as input was required from other experts.
- 8.10 Amendments are now proposed by QLDC in accordance with the document titled *Density in the HDR Precinct – suggested changes to Rule 49.5.16* provided as part of the opening of the QLDC's case. WMAL supports those provisions as they provide for densities between 40 and 72 residential units per hectare with varying activity statuses.

Infrastructure - stormwater provisions

- 8.11 Following from the planning conferencing, Mr Giddens understood that the provisions were to be amended to make it clearer that interim stormwater options would be enabled to allow development to advance with those systems ultimately forming part of the integrated network. Mr Giddens' opinion is that the Hearing Version provisions have not provided that clarity and he has made some suggestions to assist in that regard.

9. CONCLUDING COMMENTS

- 9.1 This has been, and is, a complex process that has clearly required quite a lot of case management. WMAL wishes to commend the Panel and QLDC officers for what has been a productive process with generally well-documented outcomes (subject to the comments made above).
- 9.2 We wish in particular wish to acknowledge and thank Hearing Secretary, Lynley Scott, for her attentive, efficient and friendly manner.
- 9.3 WMAL stands ready to respond to any questions from the Panel as soon as reasonably practicable.

9.4 Counsel and the WMAL team are grateful to the Panel for its attention to WMAL's submissions and wish you well for productive deliberations and a Christmas free of this Variation (if that is feasible).

DATED at Auckland this 7th day of December 2023

A handwritten signature in blue ink, appearing to be 'S J Berry', written in a cursive style.

S J Berry

Counsel for Winter Miles Airstream Ltd