

**Before the Independent Hearing Panel
appointed by Queenstown Lakes District Council**

Under the Resource Management Act 1991
(Act)

And

In the Matter of a proposed variation to the Queenstown
Lakes Proposed District Plan – Te
Pūtahi Ladies Mile Zone

Opening Legal Submissions for
**The Roman Catholic Diocese of
Dunedin**

Dated: 5 December 2023

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INTRODUCTION

1. These opening legal submissions are presented on behalf of The Roman Catholic Diocese of Dunedin (**Diocese**) in relation to the proposed Te Pūtahi Ladies Mile (**TPLM**) variation (**Variation**) to the Queenstown Lakes Proposed District Plan (**PDP**).
2. The Diocese has a conditional contract to purchase land at 14 Lower Shotover Road, Queenstown, legally described as Lot 2 DP 586767 (**Site**). This land is yet to be subdivided. The Site is shown below in **Figure 1**.



Figure 1: Lot 2 DP 586767

3. In the notified Variation, the Site has been zoned TPLM – Medium Density Residential Precinct.
4. The Diocese is seeking to construct a primary school, church and ancillary staff accommodation on the Site.
5. The current Catholic primary school servicing the Queenstown community, St Joseph's, is located in central Queenstown and now has difficulty meeting the needs of the Catholic community due to its size and location limitations. In addition to the roll being near capacity due to size constraints, most families with young children are now not living in Queenstown Town Centre and instead are located in the southern and eastern corridors. Travel from these areas into Queenstown Town Centre is becoming increasingly difficult. Due to the growing population of the Queenstown Lakes District, there is an increasing demand for further schools and places of worship. This demand will be heightened as a result of this Variation, which

could result in a potential of up to 2,400 additional residential units. It is therefore important that the Variation sufficiently provides for these activities.

6. Put simply, the relief sought by the Diocese is to ensure that there remains a consenting pathway for schools and places of worship within Ladies Mile.

Relief Sought

7. The Diocese is concerned because the notified provisions required that development be undertaken in accordance with the Structure Plan and as the Site is zoned for residential purposes, any non-residential activity (for example, a school or place of worship) would automatically become non-complying by default.

8. The Diocese relief has evolved since the time of the submission. The Diocese no longer seeks to amend the zoning of the Site, but seeks amendments to the following provisions of the Variation to establish a clear and efficient consenting pathway for schools and churches within residential precincts of the TPLM Zone:¹

- (a) Amend Rule 49.5.15 to include the following:

- x. *For the purposes of this rule, land used for education and place of worship activities (as specifically defined) shall only be subject to this rule insofar as any developments relate to the Structure Plan.*

- (b) Amend Rule 49.5.16 to include the following:

- x. *For the purposes of this rule, where a resource consent proposal is lodged solely for an education or place of worship activity (as specifically defined), this rule shall not apply.*

9. Initially, the Diocese also sought that an Education and Place of Worship Precinct be established over the Site.² However, following expert conferencing of the planning experts, this relief is no longer being pursued.

Revised Council Position

10. The Council initially opposed the relief sought by the Diocese on the basis that it considered there was a sufficient consenting pathway already available under the notified provisions.³ Mr Dunn, planner on behalf of the Diocese, disagreed noting that such an application would be a non-complying activity lacking any policy support.

¹ Statement of Evidence of Alex Dunn dated 20 October 2023, at para [4.17] – [4.19].

² Statement of Evidence of Alex Dunn dated 20 October 2023, at para [24].

³ Section 42A Report, at para [12.128].

11. Following expert conferencing of the planners, the Council amended its position to agree with Mr Dunn that the notified provisions would result in any non-residential activity having a non-complying activity status by virtue of it not being in accordance with the Structure Plan, which could not have been the intention of the Variation.⁴
12. Accordingly, the Council's planner, Mr Brown, recommended the following amendments to the TPLM provisions:⁵
- (a) Relocate the Te Pūtahi Ladies Mile Zoning Plan so that it is not physically part of the Structure Plan and thereby ensuring that the Precincts (MDR Precinct etc), are not part of the Structure Plan; and
 - (b) Modify Rule 49.5.16 as follows to further specify that the residential standard applies only to residential developments:

49.5.16.1 In the Medium Density Residential Precinct, residential development shall achieve a density of...

49.5.16.2 In the High Density Residential Precinct, residential development shall achieve a density of...

13. For the reasons that follow, the Diocese supports the amendments as proposed by Mr Brown. To be clear, the Diocese is no longer pursuing the relief sought as set out in Mr Dunn's evidence and the wording set out in Mr Brown's rebuttal evidence is supported instead.

THE LAW

14. The statutory framework for district plan variations is set out in the Council's opening legal submissions.⁶ We agree with Counsel's summary and in the interests of efficiency do not repeat that framework here. We emphasise that section 32 of the RMA is of particular relevance to the Variation. This section sets out the relevant statutory tests that must be carried out to determine the most appropriate way to achieve the purpose of the Act.
15. Section 32(1)(b) requires an examination of whether the provisions of a proposal are the most appropriate way to achieve the objectives of the plan.

⁴ Statement of Rebuttal Evidence of Jeffrey Brown dated 10 November 2023, at para [90].

⁵ Statement of Rebuttal Evidence of Jeffrey Brown dated 10 November 2023, at para [91].

⁶ Opening legal submissions on behalf of Queenstown Lakes District Council dated 24 November 2023, at paras [14]-[51].

16. Section 32(2) requires that an assessment under section 32(1)(b)(ii) must identify and assess the costs and benefits of the environmental, economic, social and cultural effects that are anticipated from the implementation of the provisions.

APPROPRIATENESS OF RELIEF

17. The purpose of the TPLM Zone includes to ensure the efficient use of land for the provision of housing within an integrated, well-functioning and self-sustained urban community. This reflects Design Principle 4 of the Masterplan, which is to “create self-sustained and connected communities”.⁷ As part of this Design Principle, the Masterplan acknowledges that one of the key deliveries of the Variation is to provide for schools to serve the existing and future communities.
18. In our submission, it is important that the Variation specifically provides for these activities to ensure the overarching principles of the Masterplan, which have heavily influenced the notified provisions of the Variation, are specifically accommodated. Schools and places of worship contribute to a sense of community, so providing an appropriate consenting pathway for these activities will ensure the objectives of the Variation are achieved.

Section 32AA Analysis

19. Mr Dunn has completed a thorough analysis of the relief sought by the Diocese, which is contained in his evidence in chief. In summary, his evidence demonstrates that the proposed amendments are the most efficient and appropriate way to achieve the objectives of the Variation.
20. We submit that there are issues with some of the notified provisions of the Variation which contribute to the Variation methods being less effective than it could be at delivering the Variation’s objectives. In our submission, by amending the wording of Rule 49.5.16 to be clear that the residential standard applies only to residential developments, this will result in a more efficient consenting pathway for the establishment of non-residential activities such as schools and churches. This is because the amended wording to Rule 49.5.16 makes it clear non-residential activities do not trigger a non-complying activity status.
21. If the rule remained unchanged, the establishment of schools and churches would default to a non-complying activity for not being in accordance with the structure plan and failing to meet residential density requirements, which cannot have been

⁷ Design Principle 4, Te Pūtahi Ladies Mile Masterplan Report dated June 2022.

the intention of the Variation in light of its objective to be create self-sustaining communities.

22. Additionally, we submit that providing a consenting pathway for non-residential activities like schools is a more appropriate outcome for entities like the Diocese who are seeking to make these activities available to the existing and future communities. This is appropriate because the Diocese is not a requiring authority and therefore cannot designate land for education purposes. We consider this is an appropriate approach for the provision of education facilities in the Variation area, especially in the context where no schools have been identified in the notified Variation as discussions are ongoing with the Ministry of Education to identify suitable land.⁸
23. In terms of section 32(2), the costs and benefits of the proposed amendments to the Variation provisions are:
- (a) The modifications ensure there is no ambiguity that non-residential activities are not inconsistent with the Structure Plan and therefore do not trigger Rule 49.5.15, which requires development to be consistent with the Structure Plan.
 - (b) The modifications ensure there is a sufficient consenting pathway for the establishment of schools and churches, which is essential to achieve the objective of the Variation of establishing a self-sustained and connected community.
 - (c) There are no costs in terms of lost opportunities for urban intensification. The provisions relating to minimum residential densities remain unchanged. Further, the TPLM Zone anticipates some land in the Variation area being used for non-residential activities a Primary and High School,⁹ so the proposed amendments would better enable the vision in the Masterplan to be achieved.

Conclusion

24. In our submission, the proposed amended wording to Rule 49.5.16 better achieves the objectives of the Variation as it ensures that establishing schools or churches in the residential precincts of the Variation area do not trigger a non-complying activity status.

⁸ Statement of Evidence of Stuart Dun dated 29 September 2023 at [35(f)].

⁹ See Final Masterplan Report, at page 78.

25. This better achieves the objectives of the Zone as it would provide a restricted discretionary consenting pathway for the establishment of schools and churches in the Variation area, which is a more enabling and appropriate framework for achieving a self-sufficient and connected community.
26. Accordingly, we submit that the amended wording to Rule 49.5.16 as proposed by Mr Brown better achieves the relevant objectives of the Variation, the relevant provisions of the PDP and the purpose of the Act, compared to the wording of the rule supported in the section 42A Report.

Dated this 5th day of December 2023



Joshua Leckie
Counsel for The Roman Catholic Diocese of Dunedin