

Before Queenstown Lakes District Council

In the matter of the Resource Management Act 1991

And

In the matter of The Queenstown Lakes District Proposed District Plan Topic 06
Residential

Legal Submissions

Dated 27 October 2016

DJ and EJ Cassells, the Bulling Family, the Bennett Family, and M Lynch (#503)

Friends of Wakatipu Gardens and Reserves (#506)

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1 Introduction

- (a) These legal submissions are presented on behalf of DJ and EJ Cassells, the Bulling Family, the Bennett Family, and M Lynch (#503) and Friends of Wakatipu Gardens and Reserves (#506) (the "**Submitters**") in respect of Chapter 8 ("**MDR**") of the Proposed District Plan ("**PDP**").
- (b) The Submitters presented legal Submissions in respect of Topics 01B (strategic direction and urban development) and Topic 03 (Heritage).
- (c) The Submitters' case is focused on protecting the special residential and amenity character of the area bounded by Park Street/Frankton Road and Hobart Street, and intersected by Brisbane Street (the "**special character area**").
- (d) Although the Submissions have been identified as being a 'rezoning' matter, appropriate of being transferred to the mapping hearings of the PDP, the Submitters consider that critical aspects of their case are important to bring to the attention of the Commissioners making recommendations on the wider MDR chapter.
- (e) The Submissions sought broad relief ranging between identifying a special character overlay, retaining the operative plan ("**ODP**") provisions and zoning, and providing bespoke planning provisions within the PDP zoning to reflect special character. Consequential and alternative relief is also sought in the Submissions meaning that many options are available for granting the outcomes sought.
- (f) The Submitters wish to clarify that the focus of their case at the mapping hearings next year will be to retain the ODP zoning equivalent, rather than providing for a bespoke special character overlay. These submissions primarily focus on amendments to wider MDR chapter, should a rezoning of the special character area not be successful.

2 Executive Summary

- (a) The special character area has important amenity values and exhibits character which warrants a level of recognition and protection beyond that provided through the MDR chapter.
- (b) The special and distinctive character of the area is driven by the combination of small-scale, residential homes that have grown organically since the area was first settled in the 1870s.
- (c) The special character area holds a distinctive residential amenity that ultimately generates a strong sense of place for many of the residents who

live there and call Queenstown their home. Part of its key distinctiveness and charm is that it is not wholly or obviously homogenous.

- (d) The important values of the area should be better protected both at the strategic level, by acknowledgement generally of the worth of those values, and at the operational level, by providing residential provisions that give appropriate weight to protection of those values and character.
- (e) The Friends of Wakatipu Gardens and Reserves ("**FOWGR**") is the pre-eminent community representative group which acts as a voice for the Wakatipu gardens and reserves areas. Protection of the character of the Gardens also requires consideration of protecting the amenity of the immediate surrounds of the Gardens.
- (f) Quality urban design, built form, and residential amenity are relevant factors to be provided for through Part 2 of the Act.
- (g) Increased densification of residential zones should not be provided for at the cost of adverse impacts on residential amenity. It is vital that unique character neighbourhoods are protected and that increased development is focused only in areas which are capable of absorbing the effects of such development.
- (h) The residents of the area have crafted a statement of significance for the purposes of working towards the mapping hearings. Although the statement will likely be subject to some further refinement, it is included here for the benefit of the Commissioners' understanding of the full case:

Area of special character

"A precinct of unique character being evocative of the various stages of residential development of the original central Queenstown settlement and town and, being contiguous with the Gardens Reserve and the Queenstown Bay - in and delivering must of its character from - a location of special value for the CBD and District."

3 Strategic Direction of the PDP

- (a) The section 42a report for Chapter 8 MDR identifies a number of submissions which generally oppose the notified MDR Chapter but which are also predominantly concerned with the application of that Zone in a particular locality. The Submitters are identified in this category and acknowledge that its submissions have been deferred until mapping hearings for consideration.

- (b) The key aspect of the relief sought by the Submitters was to essentially 'rezone' the land in a manner that protects its special character. This could be achieved several ways: by identifying a special character overlay; retaining the operative plan provisions and zoning; or providing bespoke planning provisions within the PDP zoning to reflect special character. The Submitters are focusing their attention on ways to retain the ODP status quo through zoning, rather than now seeking a bespoke character overlay. This matter will be discussed in further detail in the mapping hearings.
- (c) In addition to this focus, the Submissions also seek general relief that the PDP provide an integrated and strategic framework for ensuring that the District's built environment is maintained to a high quality, and that residential and amenity values are maintained and protected where appropriate.
- (d) These aspects follow on from a number of key higher order provisions of the PDP which establish the framework for protection of the built environment, including:

Goal 3.2.3 *"A quality built environment taking into account the character of individual communities".*

- (e) Goal 3.2.3 provides an overarching desired environmental outcome which is broader than historic heritage. It seeks to achieve an outcome of character and individualism which identifies communities. Lower order chapters of the PDP, including Chapter 8 should consider how best to give effect to this goal.

4 **An urban design-led approach to planning**

- (a) As submitted above, the remainder of these submissions focuses predominantly on provisions or concepts of the MDR which are appropriate to achieve sustainable management and accord with the higher order provisions of the PDP. This is an important alternative position for the Submitters, should their rezoning case be unsuccessful.
- (b) It is important that special character of communities and neighbourhoods is retained through design-led approaches to planning. A number of existing provisions in the PDP already provide for this key aspect, and are supported to be retained.

- (c) These include the following (as amended in the section 42a report):

8.2.2 Objective - *Developments contribute to the environment through quality urban design solutions which positively responds to the site, neighbourhood and wider context*

8.2.2.4 Policy - *Ensure developments reduce visual dominance effects through variation in facades and materials, roof form, building separation and recessions or other techniques*

8.2.3 Objective - *Development provides high quality living environments for residents and maintains the amenity of adjoining sites.*

8.2.2.6 Policy – *Require development take account of any Council adopted design guide or urban design strategy applicable to the area*

- (d) The Submitters consider the above provisions as amended through the section 42a report provide stronger and more appropriate principles to guide design-led development. These amendments also accord with section 7(c) of the RMA, which requires maintenance and enhancement of amenity values.
- (e) As discussed in the legal submissions presented in Topic 03, the Environment Court has considered that section 7(c) in an urban planning context extends to 'special character, streetscape, street views, and the relationship of buildings to one another'.¹
- (f) The evidence of Mr Falconer, which suggests stronger use of design guidelines to assist medium density development, is also supported by the Submitters. Ensuring that development occurs in accordance with best practice guidance will provide an effective mechanism for ensuring amenity values and the quality of the environment are maintained, whilst not providing an overly prescriptive process in the PDP itself.
- (g) This approach however is reliant on keeping those principles up to date, and similar to the PDP process, ensuring that they are developed in a manner which reflects the character of individual neighbourhoods and the residents' considerations. If any MDR guideline were to be introduced by Council in the future it is important that it reflect the existing characters and values of different areas of the MDR Zone.
- (h) Mr Falconer's evidence also suggests that another method of achieving design review is to require development proposals to be assessed by an

¹ *New Zealand Heavy Haulage Association Inc v Auckland Council* [2013] NZEnvC 145 at [60]

urban design panel of suitably qualified experts. The Submitters agree that such an approach could be useful, in principle; however this approach will not achieve sound planning outcomes where there are no clear and objective guidance criteria in place. Use of an urban design panel should only be in addition to the use of guidelines discussed above rather than relied on in isolation. Reliance only on an expert panel could otherwise result in ad-hoc and inconsistent decision making.

- (i) To this end, it is vital that Policy 8.2.2.6 be retained, along with associated urban design policies identified above. The above concepts introduced by Mr Falconer may also be appropriate to explore within other residential chapters of the PDP.

5 MDR densification

- (a) The purpose of the MDR Zone is as follows:

***Medium Density:** to provide for a greater supply of diverse housing options for the District whilst still ensuring that housing forms are well designed and located to provide residential amenity. The zone may incorporate small scale commercial activities where these enhance residential amenity or support the town centre and do not undermine the ability of the zone to provide housing supply. Community activities may also be located within the zone;*²

- (b) This purpose clearly articulates a balance to be achieved between providing an increase in densification, while retaining character and amenity values and the quality of the built environment. This summary assures plan users that development will only be appropriate where the receiving environment is capable of absorbing the effects of such development.
- (c) Some provisions of the MDR Chapter however do not match this stated purpose, in that they appear to provide for blanket densification, for example:

***8.2.1 Objective** - Medium density development occurs close to town centres, local shopping zones, activity centres, public transport routes and non-vehicular trails*

- (d) The associated policies for Objective 8.2.1 similarly provide a presumption for densification close to town centres to avoid urban sprawl.

² Para 6.1 section 42a report Ms Leith (Chapter 8)

It is submitted that these provisions could be more helpfully framed so as to accord with the general purpose statement above, and instead provide policy guidance as to where densification will be appropriate.

6 Remove home star rule

- (a) If the submitter is unsuccessful in its rezoning hearing, and the MDR zoning is retained, a key aspect of the MDR zoning is opposed. That is the ability to get a "bonus" density allocation if a 6 star Homestar Rating is achieved.
- (b) The Submitters consider that it is suitable that the PDP encourage appropriate uses of innovative housing technologies to provide for sustainable development. However it is not appropriate that such provisions provide a bonus system which could otherwise result in breaches to important density restrictions and therefore compromise amenity and quality.
- (c) Removal of the Homestar tool provisions is therefore supported, as outlined in para 9.34 of Ms Leith's section 42a report.

Dated this 27th day of October 2016



Rosie Hill

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