

**BEFORE THE HEARINGS PANEL
FOR THE QUEENSTOWN LAKES PROPOSED DISTRICT PLAN**

IN THE MATTER of the Resource
Management Act 1991

AND

IN THE MATTER of Stage 3 of the
Proposed District Plan

**SECTION 42A REPORT OF ELIAS JACOBUS MATTHEE
ON BEHALF OF QUEENSTOWN LAKES DISTRICT COUNCIL**

**VARIATION TO PLANNING MAPS 31A, 32 AND 37: REMOVAL OF MAPPING
ANNOTATION "SUBJECT TO RULES 9.5.1.3 & 9.5.3.3"**

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1. EXECUTIVE SUMMARY

- 1.1** In this section 42A report, I provide recommendations to the Hearings Panel (**Panel**) on the submissions and further submissions received on the Variation to Plan Maps 31a, 32 and 37 notified as part of Stage 3 of the Proposed District Plan (**PDP**) (the '**variation**').
- 1.2** The variation addresses a mapping error identified in Stage 1 of the District Plan review, whereby an area of land on the south side of Frankton Road (**Frankton Road Site**) was erroneously included within a mapping annotation (an overlay called "Subject to Rules 9.5.1.3 & 9.5.3.3 ("**mapping annotation**)")¹. Land within the mapping annotation is subject to specific rules that limit the maximum permitted height of buildings. The effect of this error is that Rules 9.5.1.3 and 9.5.3.3 of the High Density Residential Zone (**HDR**) erroneously apply to the land.
- 1.3** The variation corrects this mapping error by removing the mapping annotation from properties that it was not intended to apply to. The variation does not propose any changes to PDP text.
- 1.4** The variation attracted four submission points from two submitters and one further submission point, which I consider in this report. My overall recommendation is that the variation, as notified, is retained.

2. PROFESSIONAL DETAILS

- 2.1** My full name is Elias Jacobus (EJ) Matthee. I hold the position of Intermediate Policy Planner at Queenstown Lakes District Council (**the Council or QLDC**). I have been in this position since September 2019. I hold the following qualifications: an undergraduate degree (Bachelors of Arts - Development and the Environment) and a postgraduate degree (Bachelors of Arts with honours - Geographical Information Systems) from the University of Stellenbosch, South Africa; as well as a postgraduate, Royal Town Planning Institute (RTPI) accredited degree (Masters of City and Regional Planning) from the University

1 Shown on [PDP Decisions Version Map 32](#) as the area within the purple outline.

of Cape Town, South Africa. I am an associate member of the New Zealand Planning Institute.

- 2.2** I have been employed by QLDC for the last 5.5 years, including monitoring resource consent conditions for approximately 1.5 years and processing resource consents for approximately 4 years.
- 2.3** Although this is a Council hearing, I confirm that I have read the Code of Conduct for Expert Witness contained in the Environment Court Practice Note and that I agree to comply with it. I confirm that I have considered all the material facts that I am aware of that might alter or detract from the opinions that I express, and that this evidence is within my area of expertise, except where I state that I am relying on the evidence of another person. The Council, as my employer, has authorised that I give this evidence on its behalf.

3. INTRODUCTION

- 3.1** A total of four submission points from two submitters and one further submissions point were received on the variation, including one submission point from SkyCity Entertainment Group (**3060**) which supports the notified variation.
- 3.2** The remaining three submission points, all from Fred van Brandenburg (**3294**), oppose the variation. I have grouped my analysis of these submission points into the following topics:
- (a) Topic 1 - Reject the mapping variation.
 - (b) Topic 2 - Amend the wording of Rule 9.5.1.3 and Rule 9.5.3.3.
 - (c) Topic 3 – Extend the removal of the mapping annotation to the submitter’s land.
 - (d) Topic 4 – Sky City Entertainment Group Submission
- 3.3** The submission addressed in each topic grouping are identified in the relevant sections of the report and are summarised (including further submissions) in **Appendix 1**.

3.4 The key documents I have used, or referred to, in forming my view while preparing this section 42A report are:

- (a) Variation to Maps 31a, 32 and 37 Section 32 evaluation (**S32**);
- (b) PDP Stage 1 & 2 Decision Version (**PDP**);
- (c) Mr Barr's Stage 3 Strategic Evidence (**Strategic Evidence**);
- (d) Chapter 9 High Density Residential Section 42A Report²;
- (e) Statement of Evidence of Garth Falconer on behalf of QLDC, Urban Design, dated 14 September 2016³.
- (f) Independent Hearing panel report on PDP, Report 09AStream 6 Chapters 7, 8, 9, 10 and 11⁴.
- (g) Fred Van Brandenburg Notice of Appeal (reference ENV 2018–CHC–071),
- (h) Resource consents: RM040051, RM041005, RM040624 (as amended by RM050580), RM150175, (as amended by RM171383) and RM171383.

4. TOPIC 1 – DELETE THE MAPPING VARIATION

4.1 Mr Brandenburg's (**3294**) submission seeks that the notified mapping variation be deleted. The effect of this relief would be that the Frankton Road Site identified generally in the yellow box in Figure 2 below would remain subject to the mapping annotation. This is the entire area of HDR land that the variation seeks to uplift the annotation from.

2 <https://www.qldc.govt.nz/media/z4kedlon/chapter-9-high-density-residential-section-42a-report.pdf>.

3 <https://www.qldc.govt.nz/media/gfmr1n/qldc-06-residential-garth-falconer-evidence-28376898-v-1.pdf>.

4 <https://www.qldc.govt.nz/media/d4maqap/report-09a-stream-6-chapters-7-8-9-10-11.pdf>.



Figure 1 Snip of the notified version of a map variation (i.e. Map 31a, 32 and 37) including the submitter's properties shown with green dots and the land subject to the variation (referred to as **Frankton Road Site** in this evidence) generally outlined in yellow.

4.2 Mr Brandenburg provides the following planning reasons for seeking this relief (summarised):

- (a) The variation does not achieve the best planning outcome for efficient and effective management of development in the HDR south of Frankton Road.
- (b) There are no clear planning reasons to support the application of different height rules to neighbouring properties within the HDR.
- (c) The S32 does not provide sufficient reasoning to support the variation or establish that the variation is the most appropriate way to achieve the purpose of the RMA.

4.3 The environmental outcomes that the rules referred to in the mapping annotation are seeking to achieve is to limit the impact of building heights on views of Lake Wakatipu as viewed from Frankton Road (SH6A). The mapping annotation triggers the following exceptions to the height standards in the HDR:

- (a) Building height of 12 metres is permitted for flat sites in Queenstown, except where specified in Rule 9.5.1.3 (among others) and 7 metres is permitted for sloping sites except as specified in Rule 9.5.3.3 (among others).
- (b) Rule 9.5.1.3 and 9.5.3.3 specify the following: Within the area specified on the planning maps on the south side of Frankton Road (SH6A), the highest point of any building shall not exceed the height above sea level of the nearest point of the road carriageway centreline.

4.4 Non-compliance status is discretionary.

4.5 I have observed that most of the original ground levels of the Frankton Road Site is slightly below, at or above the level of the road carriageway centreline. A large part of the Frankton Road Site between Frankton Road and Lake Wakatipu remains relatively flat and contains existing houses. The Site has a gradual fall towards the lake, becoming steeper closer to the lake. Within the middle of the Frankton Road Site, there is an exception where the land rises to be higher than Frankton Road (SH6A) followed by a steep fall towards the lake.

4.6 Should the mapping annotation remain on the Site, in many cases development would effectively not be permitted and it would require a discretionary activity resource consent in order to develop the land in accordance with the HDR zone purpose⁵. This is not the intention of the mapping annotation and the relevant rules and it would not allow for the efficient use of land within close proximity to the Town Centre, which is contrary to the purpose of the HDR.

4.7 In my view Mr Brandenburg has not considered the key reasons for initiating this variation, which is to correct a mapping error which erroneously applied Rules 9.5.1.3 and 9.5.3.3 to the land identified in Figure 2. The mapping annotation that imposes Rules 9.5.1.3 and 9.5.3.3 on the properties shown in the yellow box above would, in my view, unduly restrict development.

4.8 In my view the relief sought would not achieve the most appropriate outcome for the efficient and effective management of development in the HDR.

4.9 In my view the removal of the mapping annotation and the associated exception to the height standards, would allow for the application of the general HDR

5 [Queenstown Lakes Proposed District Plan Stage 1 & 2 Decision Version – High Density Residential.](#)

building height standards for flat and sloped sites, which would better achieve the PDP Strategic Direction and Urban Development Objectives, specifically Objectives 3.2.2 and 4.2.2B, and more effectively and efficiently implements Policies 3.2.2.1, 4.2.2.1 and 4.2.2.2. It would also better achieve the HDR objective 9.2.1 and 9.2.6.

4.10 I therefore recommend that the relief sought be rejected, as shown in **Appendix 1**.

5. TOPIC 2 – AMEND THE WORDING OF RULES 9.5.1.3 AND 9.5.3.3

5.1 In combination with the relief sought in Section 4 above, Mr Brandenburg (**3294**) also seeks that Rules 9.5.1.3 and 9.5.3.3 be amended to allow for building elements (one storey in height, limited to 16m parallel to the road) to exceed the height of the Frankton Road (SH6) carriageway centreline.

5.2 The effect of the variation is to remove the mapping annotation from the Frankton Road Site and therefore change the height standards that apply depending if a site is flat or sloping. Therefore, the scope of any amendment to Rules 9.5.1.3 and 9.5.3.3 is limited to the height standard for the Frankton Road Sites (only). Further, I understand the scope for change available is created by:

- (a) at one end, that created by Rules 9.5.1.3 and 9.5.3.3 as triggered by the mapping annotation; and
- (b) at the other end, that created by Rules 9.5.1.1 (Flat sites) and 9.5.3.1 (sloping sites), which would apply without the [overlay].

5.3 There is no scope to amend Rules 9.5.1.3 and 9.5.3.3 or Rules 9.5.1.1 and 9.5.3.1 as they apply to land zoned HDR other than that within the Frankton Road Site, nor to amend any HDR provisions generally.

5.4 In my view, when considering the relief sought as it applies to the Frankton Road Site, it would still unduly restrict development of the Site, so as to be contrary to the purpose of the HDR. It would only allow one story in height for many sites and none for others. My assessment in paragraph 4.5 – 4.10 above would largely still apply. Additionally, I consider that the relief would introduce unnecessary complexity to the rules which would make them challenging to

administer, because the rules would differ depending on whether they applied to the Frankton Road Site or the rest of the mapping annotation.

5.5 In my view the removal of the mapping annotation and the associated exception to the height standards, would allow for the application of the general HDR building height standards for flat and sloped sites, which would better achieve the PDP Strategic Direction and Urban Development Objectives, specifically Objectives 3.2.2 and 4.2.2B, and more effectively and efficiently implements Policies 3.2.2.1, 4.2.2.1 and 4.2.2.2. It would also better achieve the HDR objective 9.2.1 and 9.2.6.

5.6 I therefore recommend that the relief sought by the submitter is rejected, as shown in **Appendix 1**.

6. TOPIC 3 - EXTEND THE REMOVAL OF THE MAPPING ANNOTATION TO THE SUBMITTER'S LAND

6.1 As alternative relief, Mr Brandenburg (**3294**) seeks that the variation be amended so that the mapping annotation is also removed from his land, being Lot 1 DP 12665 and Lot 28 DP 11099 (shown with green dots in **Figure 1** above), located at 595 and 567 Frankton Road.

6.2 The submission states that there are no clear planning reasons for the application of different height rules to neighbouring properties within the HDR.

6.3 With the exception of the Frankton Road Site, the ground level of the HDR land to which the Stage 1 mapping annotation applies, including the submitter's land, is generally below the road level with a steeper fall towards Lake Wakatipu.

6.4 In my view, there are clear planning reasons why the mapping annotation should apply to the submitter's land, and why different height rules should apply to specified properties within the HDR.

6.5 This area shown in the mapping annotation (minus the Frankton Road Site) was subject to the Operative District Plan (**ODP**) provision 7.5.3.3 (iv)⁶, limiting building height to below the road (with an exception for some Visitor

6 [ODP – Residential areas - rules.](#)

Accommodation components) with earthworks generally required due to the topography to create level building platforms. The result is that where sites have been developed, views of the lake have largely been preserved for this section of the road (annotated area minus the Frankton Road Site). For redeveloping or for the development of greenfield sites, in most cases, buildings could be constructed in compliance with the permitted height (7m for sloping sites or 12m for flat sites) without also exceeding the height of the road carriageway centreline, thereby achieving the purpose of protecting views of the lake from Frankton Road (SH6A), without unduly restricting development or being contrary to the purpose of the HDR.

- 6.6** I also do not consider that the application of different height rules to neighbouring properties within the HDR would have adverse amenity effects between neighbouring sites not anticipated by the HDR. I consider that these potential effects are effectively addressed by the matters of discretion for the height rules, the building coverage, recession plane, building length and setback rules.
- 6.7** Mr Brandenburg's land at 595 and 567 Frankton Road is located where Frankton Road (SH6A) has been elevated above the sites by between 2 – 4 metres with mass block and gabion basket retaining walls. Earthworks have been undertaken to form an access way (supported by gabion basket retaining walls) lowering into the site to create level building platforms. A site visit and a review of the consent history⁷ shows that in most cases earthworks were required for level building platforms and that in most cases the submitter's land would be considered a sloping site/s. It is also evident, when considering the site topography and the road boundary setback that in most cases buildings could be developed in accordance with the HDR provisions without breaching the prescribed height relative to Frankton Road.
- 6.8** Overall, I consider that Mr Brandenburg's land does not have any distinguishing features that set it apart from the rest of the land covered by the mapping annotation (with the exception of the Frankton Road Site) and I am not persuaded that it warrants special treatment.

⁷ Resource consents: RM040051, RM041005, RM040624 (as amended by RM050580), RM150175, (as amended by RM171383) and RM171383.

6.9 I therefore recommend that the relief sought by the submitter be rejected, as shown in **Appendix 1**.

7. TOPIC 4 - GENERAL SUBMISSION

7.1 In accordance with my recommendations at paragraphs 4.10, 5.5, and 6.9 above which recommend that the variation remains as notified, I recommend that the SkyCity Entertainment Group (**3060**) submission, which supports the notified variation, be accepted as shown in **Appendix 1**. With a further submission, Mr Brandenburg (FS3428.1) opposes the relief sought by SkyCity Entertainment Group.

7.2 I recommend that the relief sought within the further submission be rejected, as shown in Appendix 1.



Elias Jacobus Matthee

18 March 2020

APPENDIX 1

Summary of submissions and recommended decisions

No.	Organisation	On Behalf Of	Point No.	Position	Submission Summary	Provision	Planner Recommendation
3060	Barker & Associates	SkyCity Entertainment Group	3060.1	Support	That the variation to Maps 31a, 32 and 37 in order to remove Rules 9.5.1.3 and 9.5.3.3 be retained as notified.	2-Variation to the Proposed District Plan	Accept
3060	Anderson Lloyd	Fred van Brandenburg	FS3428.1	Opose	That the relief sought in submission 3060.1 is opposed. The further submission seeks alternative amendment so that rules 9.5.1.3 and 9.5.3.3 do not apply to the Further Submitter's land if rules 9.5.1.3 and 9.5.3.3 do not apply to the original submitter's land.	2-Variation to the Proposed District Plan	Reject
3294	Anderson Lloyd	Fred van Brandenburg	3294.1	Oppose	That the variation to the planning maps in relation to Frankton Road Height Control be rejected.	2-Variation to the Proposed District Plan	Reject
3294	Anderson Lloyd	Fred van Brandenburg	3294.2	Oppose	That Rule 9.5.1.3 be amended as follows: Within the area specified on the planning maps on the south side of Frankton Road (SH6A), the highest point of any building shall not exceed more than one storey in height above the Frankton Road carriageway centreline, limited to a length of 16m parallel to the Road, or, that the variation be amended so that Rules 9.5.1.3 and 9.5.3.3 do not apply to 567 Frankton Road (Lot 1 DP 12665 and Lot 28 DP 11099); or any alternative consequential or necessary additional relief be made to give effect to the submission.	2-Variation to the Proposed District Plan	Reject
3294	Anderson Lloyd	Fred van Brandenburg	3294.3	Oppose	That Rule 9.5.3.3 be amended as follows: Within the area specified on the planning maps on the south side of Frankton Road (SH6A), the highest point of any building shall not exceed more than one storey in height above the Frankton Road carriageway centreline, limited to a length of 16m parallel to the Road, or, that the variation be amended so that Rules 9.5.1.3 and 9.5.3.3 do not apply to 567 Frankton Road (Lot 1 DP 12665 and Lot 28 DP 11099); or any alternative consequential or necessary additional relief be made to give effect to the submission.	2-Variation to the Proposed District Plan	Reject