

**BEFORE COMMISSIONERS APPOINTED
BY QUEENSTOWN LAKES DISTRICT COUNCIL**

IN THE MATTER of the Queenstown Lakes Proposed
District Plan

AND

IN THE MATTER of **VARINA PTY LIMITED**
OS 591

**SUBMISSIONS OF COUNSEL FOR
VARINA PTY LIMITED**

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MAY IT PLEASE THE COMMISSIONERS

1. These submissions concern Varina's proposal to:
 - (a) The Wanaka Town Centre Transition Overlay (WTCTO) Zone contained in the Medium Density Residential Zone is deleted and replaced with the Wanaka Town Centre Zone.
 - (b) Extension of the Medium Density Residential Zone on Brownston Street to the block to the south-west of McDougall Street. That part of the submission has been supported by the reporting officer and so is not addressed further.

Legal Principles

2. I have read Counsel for the Council's opening legal submissions on the legal principles and for the most part am content to adopt them. However paragraphs 2.16 and 2.17 of the Council's submissions do not flow from the principles and authorities cited in so far as these inferences may be drawn from them:
 - (a) Submitters bare an onus to prove that the zone provisions sought are more appropriate than that notified zone provisions (para 2.16). To the contrary, the long held legal position is that there is no presumption in favour of the notified plan, nor an onus of proof on a submitter: *Green and McCahill Properties v Auckland Regional Council* (18 August 1997, Salmon J, High Court, Auckland 4/97).
 - (b) It is not appropriate to rely on matters for discretion or control reserved in zone provisions and exercised at the time of resource consent to assess adverse effects. *Colonial Vineyards Limited v Marlborough District Council* [2014] NZEnvC 55 is relied upon for that proposition. I have been unable to find the proposition recorded in paragraph 2.17 in the *Colonial Vineyards* case. Section 32(1)(c) (referred to in para 2.17) deals with a different task, namely requiring a level of detail corresponding to the

anticipated effects of implementing the proposal¹. It is submitted that assessing the likely effectiveness of provisions in achieving the objectives is inherent in section 32(1)(b)(ii). Care needs to be taken not turn plan submissions into quasi-resource consent applications. Section 32 does not require an evaluation of any particular use of land per se, but rather whether a provision is effective in achieving a Plan's objectives in relation to anticipated land uses. Section 32(1)(c) needs to be understood in that light.

3. The substantive difference between the Council reporting officers and witnesses for Varina seems relatively easy to define.
 - (a) Both parties seem to agree that a high quality urban environment with commercial activity on both sides of Brownston Street is the common goal.
 - (b) The Council does not agree that Russell Street should be included because it is different to Brownston Street.
 - (c) The Council sees no functional need to extend the Town Centre Zone in terms of floor space demand, although accepts that the current uses of the submission site are already largely commercial and this is provided for in the MDR-TCTO overlay anyway.
 - (d) The Council does not agree that the MDR-TCTO provisions will result in a built form that is inefficient for commercial activities or result in a sub-optimal urban design outcome.
4. Fundamentally there is substantial agreement between the witnesses about what the goal is. The submission site is to serve as the Town Centre's southern margin and should make provision for commercial activities. But the witnesses do not agree on whether the MDR-TCTO provisions are the most appropriate way of defining that margin.
5. At the core of the difference of opinion is whether the rules should enable buildings on the road frontage that are up to 3 stories tall (WTCTO); or should they be setback 3m from the road frontage, with a maximum 7m building height, and 45% site coverage.

¹ The proposal meaning the proposed plan or the changes to that proposed plan promoted by a submission should that be adopted.

6. Ms Jones in her rebuttal points out that the competing provisions both have buildings as discretionary restricted activities subject to an identical suite of design relates matters². If the same design outcome is anticipated, then it seems very odd that the zone standards (setback, building height, site coverage, parking) that lead to that result are different. Surely a different result was intended?
7. It is submitted that if Ms Corson's and Mr Greaves' evidence is accepted, then the relevant policy framework points towards Varina's relief being favoured. This is because the Town Centre standards are purpose designed to support efficient utilisation of Town Centre land and meet the needs of commercial activities. The Medium Density Residential standards are not designed for that purpose. Commercial activities are therefore more likely to be more economically sustainable and therefore more vibrant within built form that is designed for their express purpose under the WTC provisions.
8. A schedule of relevant provisions of the NPS UDC 2016 and the objectives and policies of the Proposed Plan pointing to an urban form consistent with Varina's submission is appended to these submissions. It is submitted that the weight of those provisions favours the transitional overlay sitting within the WTC zone provisions and adopting that zone's standards.

Unintended consequences

9. Finally, there is an interesting practical problem arising from the position being defended by the reporting officers. Most of the buildings on the south side of the road are nearing the end of their economically useful lives. Suppose Varina builds new buildings now in accordance with the standards in MDR TCTO rules. Then in 10 or even 20 years' time the site is rezoned WTC because town centre growth has overtaken the site or more commercial space is required. What happens then? To achieve the "no road setback" design outcome envisaged by the WTC provisions does Varina demolish 10 year old buildings and replace them with new ones? Of course not. On the basis of the Building Act these buildings have a life of at least 50 years. So Wanaka is left for the next 50 years with a built form that does not accord with what the Council wants the WTC to look like. What this tells us is that the future integration of the staff's

² Jones rebuttal para 7.10.

proposed MDR TCTO commercial buildings into the Town Centre is a real practical issue that should be resolved now. The way to fix that problem is for the TCTO overlay to sit within the WTC zone provisions.

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Counsel for Varina Pty Limited

National Policy Statement on Urban Development Capacity 2016 (NPS)

Identifier	Details	Varina's submission
NPS OA1	Effective and efficient urban environments that enable people and communities and future generations to provide for their social, <u>economic</u> , cultural and environmental <u>wellbeing</u>	The WTC provisions contain controls on built form that enable efficient and effective commercial activities. The MDR built form provisions are not designed for that purpose and so are not efficient and effective environments for urban activities.
NPS OA3	Urban environments that, over time, develop and change in response to the changing needs of people and communities and future generations	The changing land use need on the present site is more likely to trend towards Town Centre commercial activities than to trend back to residential activities.

Proposed District Plan Objectives and Policies

Provision	Details	Varina's submission:
3.1: Purpose	Vibrant and compact town centres	The purpose stresses the importance of vibrant and compact town centres. The development of Brownston St shall would for a compact town centre due to its proximity to the existing town centre and its current inclusion of buildings serving a commercial purpose.
3.2.1.1 (objective)	Recognise, develop and sustain the Queenstown and Wanaka central business areas as the hubs of New Zealand's premier alpine resorts and the District's economy	If Wanaka's central business area is going to perform as a hub, then it needs suitably designed space to do it. The submission allows this to occur in a planned manner that supports Wanaka's role as the commercial, retail and cultural heart of Wanaka. It also links the existing and future precincts of the town.
3.2.1.1.1 (policy)	Provide a planning framework for the Queenstown and Wanaka central business areas that enables quality development and enhancement of the centres as the key commercial hubs of the District, building on their existing functions and strengths	The submission is concerned with ensuring quality development that enhances the function of the Town Centre. It does this by enabling commercial activities to be housed in buildings fit for commercial purposes.

3.2.1.1.3 (policy)	Promote growth in the visitor industry and encourage investment in lifting the scope and quality of attractions, facilities and services within the Queenstown and Wanaka central business areas.	The submission proposes a method of achieving this be enabling optimal use of land for providing services to visitors.
3.2.1.3 (objective)	Enable the development of innovative and sustainable enterprises that contribute to diversification of the District's economic base and create employment opportunities.	For this to occur a flourishing town centre is required. The submission facilitates the growth of the commercial zone by increasing the flexibility of built form and the efficient utilization of commercial space.
3.2.1.3.1 (policy)	Provide for a wide variety of activities and sufficient capacity within commercially zoned land to accommodate business growth and diversification.	The submission allows for the orderly growth of Wanaka's commercial core.
3.2.2.1 (objective and policy)	Ensure urban development occurs in a logical manner: <ul style="list-style-type: none"> to promote a compact, well designed and integrated urban form; 	The submission facilitates all of these aspects. As outlined in the submission, expanding south is the only logical direction for the town centre. Should the Town Centre Growth eventually "leapfrog" the site to the south, the built form will remain appropriate and consistent with Town Centre rules.
3.2.3.1.1 (policy)	Ensure development responds to the character of its site, the street, open space and surrounding area, whilst acknowledging the necessity of increased densities and some change in character in certain locations	Part of the surrounding area of submission site 1 is the town centre. The character of the site is influenced by the commercial services being carried out. Development should reflect that character.
4.2.3.1 (policy)	Provide for a compact urban form that utilises land and infrastructure in an efficient and sustainable manner, ensuring: <ul style="list-style-type: none"> connectivity and integration; housing development does not compromise opportunities for commercial or community facilities in close proximity to centres 	Under the WTCTO provisions, residential development that compromises opportunities for commercial facilities is less likely.
13.1: Zone purpose	The centre will serve a <u>growing resident population and visitor numbers</u> , for which it plays a vital role as the focal point for	The submission will allow for this growth to occur in a way that accommodates the growing number of people in Wanaka.

	community activities and amenities. It will be <u>large enough</u> to provide a range of retailing, business and entertainment options	
13.2.1 (objective)	Wanaka town centre remains the principal focus for commercial, administrative, cultural, entertainment and visitor activities in the Upper Clutha area	The submission provides a method of expansion in a logical and planned manner that helps to facilitate this purpose – this is further supported through QLDC PP 13.2.1.1
13.2.2.1 (policy)	Provide for future controlled growth opportunities through the Town Centre Transition Overlay, which enables appropriate town centre activities to establish in a discrete area of residential-zoned land adjoining the town centre	This policy sits in the Town Centre provisions rather than in the Medium Density Residential zone provisions. It should follow that the TCTO should apply to an underlying Town Centre zoning, not MDR zoning to mark the intended shift to commercial uses
13.2.2.2 (policy)	Discourage outward expansion of town centre activities in areas other than the Town Centre Transition Overlay in order to ensure that the town centre maintains a compact form	For consistency, this also suggests that the TCTO should have an underlying Town Centre zone to maintain the integrity of the MDR. zone.

