

QUEENSTOWN LAKES DISTRICT COUNCIL

Hearing of Submissions on Proposed District Plan

Report 17-7

**Report and Recommendations of Independent Commissioners
Regarding Mapping of Kelvin Heights**

Commissioners

Denis Nugent (Chair)

Jan Crawford

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PART A: WINTON PARTNERS, LAND INFORMATION NEW ZEALAND

Submitters Winton Partners Funds Management No. 2 Limited (Submission 533) and Land Information New Zealand (Submission 661)

Further Submissions

- FS1036 - Sharpe Family Trust – oppose both
- FS1078.1 - Kelvin Peninsula Community Association – oppose 533
- FS1340 - Queenstown Airport Corporation – oppose both
- FS1352.8 - Kawarau Village Holdings Limited - oppose 533

1. PRELIMINARY MATTERS

1.1. Subject of Submissions

1. These submissions related to the zoning and landscape classification of 35 Peninsula Road, Kelvin Heights.

1.2. Outline of Relief Sought

2. The submission of Winton Partners Funds Management No. 2 Limited sought to amend Map 33 as follows:
 - a. Relocate the boundary of the ONL dividing the Kawarau Falls Station High Density Residential Zone from the Subject Land Rural Zone so as to align with the current UGB line on the eastern edge of the Subject Land. Ensure that this relocation coincides with the road boundaries so as to not partially capture one title within two landscape classifications;
 - b. Re-zone the area of land hatched on the map attached to the submission from Rural to either:
 - i. High Density Residential; or
 - ii. Medium Density Residential; or
 - iii. Low Density Residential; or
 - iv. Business Mixed Use; or
 - v. Any alternative zoning/sub-zoning or overlay which will achieve the same outcomes as listed in the reasons column and which would achieve appropriate use and development of this Subject Land.
3. LINZ sought that:
 - a. the location of the Urban Growth Boundary as shown on Proposed Planning Maps 31a and 33 and the provisions relating to Urban Growth Boundaries is made operative as proposed;
 - b. the Outstanding Natural Landscape line as shown on Proposed Planning Maps 31a and 33 be adjusted to align with the Urban Growth Boundary, excluding the Peninsula Road site from the Outstanding Natural Landscape; and
 - c. the Peninsula Road site be zoned Low Density Residential rather than Rural and that Planning Maps 31a and 33 be amended accordingly.
4. In addition, LINZ sought the inclusion of location-specific objectives, policies and provisions in Chapter 27 – Subdivision & Development. Their purpose was to provide for amenity values and to require development to comply with an outline development plan for the property.

1.3. Description of the Site and Environs

5. The submission concerned an area of 6.69 hectares within the notified Rural Zone located between Kingston Road and Peninsula Road to the south of the Kawarau Falls bridges. It is a long, thin site measuring approximately 850m by 120m, falling from Peninsula Road to

Kingston Road and is densely vegetated with exotic species. Figure 7-1 shows the location of the site relative to the Kawarau River bridge and Figure 7-2 shows the proposed zoning and the location of the UGB and ONL lines.

6. The land to the south west of the site, on the southern side of Peninsula Road, is zoned Low Density Residential (see F S Mee Development Co Limited¹). Immediately to the west lies the Hilton Queenstown Resort which is partially developed and partially under construction. This property is in the HDRZ.
7. The Remarkables lie to the east and the farm formerly known as Deer Park Heights rises to the south. All of this land is within the Rural Zone and is either ONL or Rural Character Landscape.



Figure 7-1 - Aerial photograph of the Peninsula Road land subject to the submission (approximate), outlined in red.

¹ Submission 429



Figure 7-2 – Zoning as shown on Planning Maps 31a and 33 of the PDP

1.4. The Case for Rezoning and Amending the ONL line

8. Both submitters considered that the land was suitable for urban development albeit to different intensities and that the ONL line should align with the UGB. By the end of the hearing, the Council's witnesses had come to a similar conclusion. In this part of our recommendation report, we record the background to this convergence of opinion. We note that the Sharpe Family Trust, further submitters in opposition, said at the hearing that they would accept the LINZ proposal if the Panel was of a mind that this land was suitable for subdivision.
9. In their written submission, Winton Partners said that the site is serviced by the infrastructure of the adjoining HDRZ, and that the subject land cannot give effect to the objectives and policies of the Rural Zone. Of the options available, HDRZ was identified as most efficient for the site, providing a link to the adjacent HDRZ. Winton Partners did not attend the hearing and did not provide evidence.
10. LINZ stated in their written submission that the land was located between two busy roads, was covered in exotic species and immediately adjoined HDR and LDR zoning and development. Given that the site was within the UGB, it had potential for some urban development. Expert landscape, engineering geological and planning evidence was presented at the hearing on behalf of LINZ.
11. Mr Paddy Baxter, landscape architect, evaluated the extent and merits of the ONL. He agreed with Dr Read for the Council that whilst the land is adjacent to an ONL (the Kawerau River), it is flanked by residential zoning and, given its scale, cannot be considered to be a Rural Landscape in its own right.² Nevertheless, he considered the site to be an important 'gateway landscape' to both Kelvin Heights and Frankton/Queenstown deserving of some recognition in any future development e.g., protection of the steep escarpment.

² P Baxter, Summary Statement of Evidence, 21 August 2017, paragraph 8

12. Mr Baxter's EIC included an indicative outline development plan of a 19-lot residential subdivision showing public and shared walkway access and a landscape protection buffer area.³ This was based on a full landscape assessment of the site and area. Dr Read considered the site had potential for more intense development such as that enabled by HDRZ whereas Mr Baxter preferred his more cautious design.
13. With respect to natural hazards, Mr Jeff Bryant (engineering geologist) assessed the suitability of the land for development by reference to Mr Baxter's indicative proposal. He found that the site was not susceptible to liquefaction and that the risk of debris flow could be mitigated by constructing training bunds positioned to constrain any flow within the gully in the vicinity of lots 8 & 9. He assessed the risk posed by a large and very old landslide extending from just below the eastern peak of Peninsula Hill to more or less the level of Peninsula Road in the vicinity of the western part of the subdivision but to lower levels further around to the east. He concluded that this landslide is dormant and unlikely to have been active in historical times.⁴
14. For the Council, Mr Charlie Watts, an engineering geologist, had recommended further investigations and stability analyses to inform the planning approval process.⁵ Mr Bryant addressed this concern in his summary statement:
- "... Since my earlier report, the toe of the landslide has been defined more clearly and it no longer appears to extend down into the area of interest. Accordingly, I don't believe further investigations into landslide stability would be either necessary or meaningful."*⁶
15. Mr Bryant observed large blocks in the area of interest, notably Lots 13 – 19. He assessed the risk of rockfalls upslope of the road as very low and noted that Peninsula Road would be expected to halt most if not all moving rocks and thus the threat to the proposed lots would be low. He recommended additional protection in the form of a 2m high, reinforced earth bund could be constructed between the southern boundary of Lots 11 - 19 and Peninsula Road.
16. In Mr Bryant's opinion, the site is suitable for development. He concluded as follows:
- "Despite a number of potential hazards being identified on the QLDC hazards register most are considered to not be relevant to the proposed subdivision. Rock fall and debris flow hazards have a very low to extremely low risk potential for the area of interest. Modest earthwork structures are recommended to mitigate this risk. With these recommendations in place, the area covered by the 19 lots is considered suitable for development."*⁷
17. Mr Scott Edgar presented planning evidence for LINZ. He considered that the relief sought generally aligned with the intentions of the NPS UDC and lower order planning documents. He considered that additional traffic would be unlikely to give rise to significant adverse effects in the context of existing and zoned development further along Peninsula Road. Servicing was not a constraint on development.

³ P Baxter, EIC, 9 June 2017, Attachment C

⁴ J Bryant, Summary Statement of Evidence, 21 August 2017, paragraph 16

⁵⁵ C Watts, Rebuttal Evidence, 11 July 2017, paragraphs 8.3 – 8.4

⁶ J Bryant, Summary Statement of Evidence, 21 August 2017, paragraph 17

⁷⁷ *ibid*, paragraph 24

18. In reliance on Dr Read and Mr Baxter, he considered that the site could accommodate a broader application of the LDRZ or a more intensive HDRZ from a landscape perspective.⁸ Addressing Mr Baxter's point about the need for a landscape buffer, Mr Edgar pointed out that access constraints combined with the topography of the site may result in built development being setback from Kingston Road with an appropriate landscape buffer being the result.⁹
19. Mr Edgar adopted Mr Bryant's opinion that natural hazards do not pose a significant or unacceptable risk to development of the site and that they can be appropriately mitigated at the time the land is developed.¹⁰ Section 106 of the Act provides Council with the ability to consider natural hazards when assessing any subdivision regardless of zoning, and the district-wide provisions of Chapter 28 Natural Hazards also apply. Specific provisions in the Residential chapters address natural hazard risk where consent is required.
20. Overall, he considered that the structure plan and location specific provisions requested in the submission were not necessary and that a more intensive zoning than LDRZ could be appropriate.
21. Mrs Kirsty Sharpe, accompanied by Bill and Stuart Sharpe, spoke for the Sharpe Family Trust in opposition to both LINZ and Winton. The Sharpe Family Trust (FS1036) considered that the ONL status of this land should be revoked as it is near residential land but that the rural zoning should be retained and it be maintained as reserve. Mrs Sharpe told us the background to the native planting on the corner of SH6 and Peninsula Road done some 20 years ago by Neil Simpson, ex-head of DOC. Mr Simpson and the Kelvin Residents Association maintain this planting. In the Sharpes' opinion, this land is a visual amenity to Frankton and is needed as a buffer between Peninsula Hill and Frankton. The provision of green spaces should be considered hand in hand with opening up more areas for subdivision.
22. Further, the land is not suitable for shopping and in any case, there are shopping areas in Frankton and Remarkables Park as well as a request for small shops on the F S Mee property in Peninsula Road.
23. Finally, Mrs Sharpe indicated that if the Panel is of the mind that this land is suitable for subdivision, the Family Trust would accept the proposal put forward by LINZ. They did not accept that this is an efficient use of the land and considered that 19 lots is still substantial.¹¹
24. The Council's planner, Ms Kim Banks, revised her opinion in reliance on the geotechnical evidence and accepted that the site may be able to absorb some level of urban development.¹² She recommended that the land be rezoned to LDRZ with a "Hazards Investigation Overlay" applied over the zoning. This overlay would make all land uses and/or subdivision restricted discretionary activities and require resource consent, with 'natural hazards' identified as a matter of discretion.¹³ Ms Banks considered that LDRZ would better enable designing for natural hazards and any mitigation structures and would enable the retention of greenspace to soften views from SH6 and Peninsula Road and help preserve the natural character of the

⁸ S Edgar, Summary Statement of Evidence, 24 August 2017, paragraph 1.10

⁹ Ibid, para 1.11

¹⁰ Ibid, para 1.13 – 1.14

¹¹ Submission presented by Mrs Kirsty Sharpe on behalf of the Sharpe Family Trust, 9 August 2017, reasons 1 - 8 and concluding paragraphs

¹² K Banks, Reply Evidence, 6 October 2017, paragraph 9.3

¹³ Ibid, paragraph 9.4

Kawarau River. In her opinion, higher densities (such as HDRZ) may not be realistically achievable on the site.¹⁴

25. Ms Banks agreed with Mr Edgar that a structure plan may not be necessary under the less intensive LDRZ because the layout of the lots can be considered at subdivision time, including an assessment of constraints. In her opinion, specific objectives and policies were not necessary within Chapter 27 as an application for subdivision would involve consideration of the matters of discretion listed under Rule 27.5.7 which include ecological and natural landscape features and provision for open space and recreation.¹⁵
26. By the end of hearing, the experts for LINZ and the Council were generally in agreement except that Ms Banks supported the identification of a 'Hazards Investigation Overlay' on the site as described above.
27. For completeness, QAC lodged a further submission opposing the rezoning of currently vacant land and/or enabling intensification of existing or residentially zoned land because this will bring more people to the aircraft noise effect now and into the future.¹⁶ However the submission site is not located within the OCB and QAC has not initiated a plan change seeking to extend the OCB.

1.5. Discussion of Planning Framework

28. The land was zoned Rural within an Outstanding Natural Landscape in the PDP and was within the UGB. Strategic Objectives and Policies in Chapters 3 and 6 of the PDP require the identification of ONL's and avoidance of adverse effects on them that would be more than minor and or not temporary. Subdivision and development are discouraged in ONL's unless the landscape can absorb the change and where the buildings and structures and associated roading and boundary changes will be reasonably difficult to see from beyond the boundary of the site¹⁷.
29. The purpose of the Rural Zone is to enable farming activities and provide for appropriate other activities that rely on rural resources while protecting, maintaining and enhancing landscape values, ecosystem services, nature conservation values, the soil and water resource and rural amenity. The objectives and policies of Chapter 21 provide for a range of land uses, including farming, to be enabled while protecting landscape, and other natural and amenity values, recognise economic diversification sustainable commercial recreation activities.¹⁸ Rules in the plan provide for residential and larger scale commercial recreation as discretionary activities.
30. The LDRZ is the largest residential zone in the District. In Chapter 7, as recommended, it is renamed the Lower Density Suburban Residential zone to more accurately capture the range of traditional and modern suburban densities and housing types enabled. Objective 7.2.1 provides for '*a mix of compatible suburban densities and a high amenity low density residential environment for residents...*'. Policy 7.2.1.2 encourages development that '*maintains suburban residential amenity values including predominantly detached building forms, and predominantly one or two storey building heights.*' Policy 7.2.1.3 seeks to maintain amenity values between sites, in particular privacy and access to sunlight. A clear theme is the

¹⁴ Ibid, paragraph 9.6

¹⁵ Ibid, paragraph 9.7

¹⁶ J. Kyle, EIC, 9 June 2017, paragraph 6.4

¹⁷ See Objective 3.2.4, policies 3.3.29 and 3.3.30, and Policy 6.3.9

¹⁸ See Objectives 21.2.1, 22.1.8, 21.1.9, 21.1.10 and their related policies.

maintenance of suburban character and high amenity values. Commercial activities are generally discouraged. Winton Partners sought either LDRZ, MDRZ, HDRZ or BMUZ.

31. The purpose of the MDRZ is to enable a greater supply of diverse housing options for the District at a higher density than the LDRZ. Development controls are designed to ensure that the reasonable maintenance of amenity values is maintained. MDR zones should be easily accessible to local shopping centres, town centres or schools by public transport, cycling or walking.
32. The HDRZ provides for efficient use of land within close proximity to town centres that is easily accessible by public transport, cycle and walkways. In Queenstown, it enables taller buildings than in other residential zones, subject to high design quality. Development controls provide minimum of protections for existing amenity values and are otherwise prioritised towards enabling the community's wellbeing by promoting growth and development. There is a focus on intensification and small scale commercial activities are enabled to support larger residential developments, or to provide low impact local services.
33. The intention of the BMUZ, as recommended, is to provide for complementary commercial, business, retail and residential uses that supplement the activities and services provided by town centres. Higher density living opportunities close to employment and recreational activities are also enabled. Significantly greater building heights are enabled in the Business Mixed Use Zone in Queenstown, provided that high quality urban design outcomes are achieved. There are two areas of BMUZ in the PDP; Anderson Heights, Wanaka, and Gorge Road, Queenstown.
34. The Strategic Direction Chapter, as recommended, includes Policy 3.2.2 which requires urban development to occur in a logical manner so as to (among other things) 'minimise the natural hazard risk, taking into account the predicted effects of climate change'.¹⁹
35. This policy is implemented through Chapter 28 Natural Hazards and Chapter 27 Subdivision & Development. In addition, section 106 of the Act and sections 71 – 74 of the Building Act 2004 are important means of implementation. Overall, the Council's approach is based on case by case risk assessment requiring any natural hazards to be identified, an assessment of risk and proposals for avoiding, remedying or mitigating that risk.
36. Chapter 28 Natural Hazards provides a policy framework to address natural hazards throughout the District. The District is recognised as being subject to multiple hazards and as such, a key issue is ensuring that when development is proposed on land potentially subject to natural hazards, the risk is managed or mitigated to tolerable levels. In instances where the risk is intolerable, natural hazards will be required to be avoided. Council has responsibility to address the developed parts of the District that are subject to natural hazard risk through a combination of mitigation measures and education, to lessen the impacts of natural hazards.
37. The Council maintains a natural hazards database and development proposals affected by, or potentially affected by, natural hazards as identified in the database will require an accompanying assessment of natural hazard risks commensurate with the level of risk posed by the natural hazards (see Rule 28.3.2.3).
38. Chapter 27 Subdivision & Development states that 'all subdivision is able to be assessed against a natural hazard through the provisions of section 106 of the RMA. In addition, in some

¹⁹ Report 17-1, Section 4.4

locations natural hazards have been identified and specific provisions apply.’ Natural hazards are matters of discretion to be assessed when consents are lodged e.g., Rule 27.5.7.1.

39. Sections 71 – 74 of the Building Act 2004 apply to construction of buildings. Section 71 provides that a building consent authority (the Council in this case) must refuse to grant consent for construction of a building, or major alterations to a building, if the land is likely to be subject to one or more natural hazards, or the building work is likely to accelerate, worsen, or result in a natural hazard on that land or any other property.
40. The site is not located within the OCB for Queenstown Airport.

2. ISSUES

- a. The most appropriate zone for this property
- b. Natural hazards
- c. Landscape

3. DISCUSSION OF ISSUES AND CONCLUSIONS

41. We agree with the experts that this land is capable of urban development because it is within the UGB and already has an urban character. Ms Kim Banks considered (and we concur) that the urban character consists of:
 - a. the existing LDRZ, which extends further upslope from this land;
 - b. the nature of urban development occurring with the Hilton Complex and Lakes Edge developments (zoned HDRZ);
 - c. location fronting the state highway and Kawarau Bridge; and
 - d. proximity to existing established urban areas.²⁰
42. Traditional rural activities are unlikely to be viable on this relatively small site. Instead, an application for discretionary activity consent to establish housing would likely follow given its existing urban character. For this reason, we do not consider that the outcomes intended for the Rural Zone are likely to be achieved if that zoning was retained.
43. Further, we agree with the landscape architects that whilst the land is adjacent to an ONL (the Kawarau River), it is flanked by residential zoning and, given its scale, cannot be considered to be a Rural Landscape in its own right. We recommend that the ONL boundary be moved to align with the UGB and that it should coincide with the road boundaries to avoid capturing one title within two landscape classifications.
44. We accept the evidence of Mr Bryant that the natural hazards risks on this property are tolerable and mitigation of any potential risks is achievable at the time of subdivision and/or development.
45. In the circumstances, the key issue remaining is the appropriate type of development to be enabled and, if residential, the appropriate level of intensity.

²⁰ K Banks, Section 42A Report 1B, 25 May 2017, paragraph 24.11

46. In our view, BMUZ is not an appropriate zoning because the land is too far away from the Queenstown town centre therefore application of BMU zoning would be contrary to the Plan's strategic direction which is to focus mixed use development around hubs.
47. Similarly, HDRZ is intended to be located within close proximity to town centres and easily accessible by public transport, cycle and walkways. Again, it would be contrary to the strategic direction of the Plan to rezone the land as HDR when it is not close to Queenstown town centre. We acknowledge that cycle and walkways are being provided via the historic Kawarau Bridge however this does not overcome the fundamental problem of distance from Queenstown.
48. In addition, we consider that the height, bulk and configuration of the development permitted in the HDRZ would not be suitable on this 'gateway' site. A less intense development would better suit its location next to the Kawarau River and enable protection of the escarpment and amenity values.
49. No planning evidence evaluated the suitability of MDRZ for this property whereas both planners supported LDR zoning. Having said that, both planners and Dr Read were tempted by the notion of HDRZ however we remain of the view that HDRZ in this location would not satisfy the strategic zoning pattern.
50. We consider that LDR zoning is the most appropriate zone because it provides for both traditional and modern suburban densities. This versatile zone enables a range of housing styles as well as comprehensively designed developments and is particularly suitable given the constraints of this site including its shape, position between two roads, the escarpment and potential for natural hazard risk.
51. We do not support the inclusion of a 'Hazards Investigation Overlay' because this is unnecessary. Where subdivision is proposed, section 106 of the Act provides sufficient safeguards for the management of natural hazards and where permitted activity status applies, sections 71 – 74 of the Building Act 2004 give the Council the power to refuse consent where natural hazards affect land or the construction of a building. Indeed, the basic approach of this Plan is to rely on providing information about natural hazards and then to require a comprehensive assessment on a case by case basis. The RMA and Building Act work together in this regime and we see no reason why this land should be treated any differently from the rest of the District in this regard.
52. With respect to QAC's further submission, we consider it is not sound resource management practice to limit development potential in the face of uncertainty about the future of an airport particularly in a location like Queenstown which has topographical constraints that limit the land available for urban development.
53. Consistent with our approach to similar cases close to Queenstown Airport but outside the Outer Control Boundary, we consider it would be unfair to the landowners to apply a more restrictive regime than that recently established under Plan Change 35 to the ODP.²¹

²¹ Report 17-1; Section 5.3

4. RECOMMENDATION

54. For the reasons set out above, we recommend that:
 - a. Submission 533 be accepted in part; and
 - b. FS1036.2, FS1078.1, FS1340.124 and FS1352.8 be rejected; and
 - c. Submission 661 be accepted; and
 - d. FS1036.8, FS1077.57 and FS1340.132 be rejected; and
 - e. The submission site be rezoned from Rural to Lower Density Suburban Residential Zone and the landscape classification line be moved to align with the Urban Growth Boundary as shown on Planning Map 33.

PART B: F S MEE DEVELOPMENTS CO LIMITED

Submitter F S Mee Developments Co Limited (Submission 429)

Further Submissions

- FS1078.2 - Kelvin Peninsula Community Association – support
- FS1007.1 - Barry Thomas - oppose
- FS1340.109 - Queenstown Airport Corporation - oppose
- FS1352.13 - Kawarau Village Holdings Limited - oppose

5. PRELIMINARY MATTERS

5.1. Subject of Submissions

55. These submissions related to an area of approximately 3.5 hectares south of Peninsula Road about 1 km west of its junction with SH6/Kingston Road.

5.2. Outline of Relief Sought

56. The submitters sought that the area identified in the submission be rezoned from LDR to HDR.

5.3. Description of the Site and Environs

57. FS Mee Developments Co Ltd own a farm with frontage to Peninsula Road and taking in the whole of Peninsula Hill, formerly known as Deer Park Heights. This land is undeveloped notwithstanding it has been zoned for residential purposes for many years. It overlooks the Hilton Queenstown Resort and the LINZ site²², both of which are located on the northern side of Peninsula Road as shown on Figure 7-3 below. Peninsula Road provides access to Kelvin Heights residential area and ultimately to the Kelvin Heights golf course.

Aerial photo of site (refer to submission for more accurate drawing of rezoning (see below) as rezoning does not follow property boundaries)



Figure 7-3 – Aerial photograph of the land subject to the submission (approximated) outlined in blue

5.4. The Case for Rezoning

58. The basis of the submission was that HDR zoning was the most appropriate outcome because:

²² Submission 661

- a. *The land immediately adjoins the existing High Density Zone on the lake side of Peninsula Road, currently occupied by the Hilton and Kawarau Falls hotels.*
 - b. *The site is in close proximity to the Frankton shopping centres, being within walking/cycling distance*
 - c. *The visual amenity of the area has been significantly altered through the location of the Hilton complex and the additional land currently being developed for residential use (Lakes Edge).*
 - d. *The location of high density residential land in this area provides for a diversity of residential use in the Kelvin Heights area.*²³
59. The submitter considered that HDR zoning is also appropriate because it would give effect to the strategic direction in Chapter 3 of the PDP.
60. According to the submission, although the site was identified on the Council's GIS mapping system as being a non-verified landslip area there was no on-site evidence of historic landslides and the proposed zoning change would not increase the potential risk.
61. The submission included an overview assessment of the potential landscape effects arising from the re-zoning of the area from LDR to HDR.²⁴ The assessment concluded that the rezoning would have a minor effect on the site and wider landscape values for the following reasons:
- a. The proposed buffer and steep existing landforms adjacent to Peninsula Road at the base of the site would ensure that visibility from Peninsula Road of high density development would be screened from that road.
 - b. Any potential adverse effects would be limited therefore to views from distance.
 - c. The proposed High Density Zone would be located amongst a frame of complying residential development, extending from this site to the eastern end of Kelvin Peninsula. This would ensure that High Density development would not be viewed in isolation.
62. Mr Goldsmith, counsel for FS Mee, submitted that the only concerns relating to the proposed development identified by the Council's expert witness evidence and the Section 42A Report related to location (in the traffic evidence), ecological (in relation to lizards) and potential hazards. He submitted that effects on lizards on this site were a baseline starting point given the existing LDRZ, and HDRZ would not exacerbate those effects.
63. We heard from Mr Jeff Bryant, an engineering geologist, that no evidence could be found for any liquefaction or landslide hazard as described in the QLDC webmap hazard register. Rockfall potential was identified from rock cliffs overhanging the site however he concluded that there was a negligible risk of rockfalls affecting the zone because a combination of flat terraces and cross cutting gullies have provided a natural defence against boulders reaching the area of interest. He concluded that the new access road would provide further protection and it would be feasible to augment that with a bund if necessary.²⁵
64. For the Council, Ms Kim Banks acknowledged in her rebuttal evidence that the land may accommodate development subject to a more detailed analysis of hazards and the establishment of mitigation measures as appropriate. In her opinion, there remained uncertainty as to whether the land identified could be developed to the intensity of the HDRZ

²³ Submission 429 Reasons

²⁴ Baxter Group October 2015

²⁵ J. Bryant, Summary Evidence, 14 August 2017, paras 10 & 21

such that it might set an inappropriate expectation of development rights under such a zoning.²⁶

65. Broadly, Dr Read agreed with Mr Baxter that the area of land identified by the submitter could be rezoned as HDR. She considered that any development would be seen as a logical continuation of the development of the lower slopes to the north.²⁷
66. QAC lodged a further submission opposing the rezoning of currently vacant land and/or enabling intensification of existing or residentially zoned land because this will bring more people to the aircraft noise effect now and into the future. Mr Kyle's evidence was that the best form of protection available to avoid potential reverse sensitivity effects is to avoid development 'coming to the effect' in the first place.²⁸ However the submission site is not located within the OCB and QAC has not initiated a plan change seeking to extend the OCB.
67. No specific evidence was presented by the further submitters (other than QAC).

5.5. Discussion of Planning Framework

68. The land is zoned LDR and has been for many years. The LDRZ is the largest residential zone in the District. In Chapter 7, as recommended, it is renamed the Lower Density Suburban Residential zone to more accurately capture the range of traditional and modern suburban densities and housing types enabled. Objective 7.2.1 provides for '*a mix of compatible suburban densities and a high amenity low density residential environment for residents...*'. Policy 7.2.1.2 encourages development that '*maintains suburban residential amenity values including predominantly detached building forms, and predominantly one or two storey building heights.*' Policy 7.2.1.3 seeks to maintain amenity values between sites, in particular privacy and access to sunlight. A clear theme is the maintenance of suburban character and high amenity values. Commercial activities are generally discouraged.
69. By contrast, the HDRZ provides for efficient use of land within close proximity to town centres that is easily accessible by public transport, cycle and walkways. In Queenstown, it enables taller buildings than in other residential zones, subject to high design quality. Development controls provide minimum of protections for existing amenity values, and are otherwise prioritised towards enabling the community's wellbeing by promoting growth and development. There is a focus on intensification and small scale commercial activities are enabled to support larger residential developments, or to provide low impact local services.
70. The Strategic Direction Chapter, as recommended, includes Policy 3.2.2 which requires urban development to occur in a logical manner so as to (among other things) 'minimise the natural hazard risk, taking into account the predicted effects of climate change'.²⁹
71. This policy is implemented through Chapter 28 Natural Hazards and Chapter 27 Subdivision & Development. In addition, section 106 of the Act and sections 71 – 74 of the Building Act 2004 are important means of implementation. Overall, the Council's approach is based on case by case risk assessment requiring any natural hazards to be identified, an assessment of risk and proposals for avoiding, remedying or mitigating that risk.

²⁶ K. Banks, Rebuttal evidence, 6 October 2017, para 9.17

²⁷ Dr M. Read, EIC, 24 May 2017, paras 11.15 – 11.18

²⁸ J. Kyle, EIC, 9 June 2017, paragraphs 6.4 – 6.8

²⁹ Report 17-1; see discussion on Natural Hazards

72. Chapter 28 Natural Hazards provides a policy framework to address natural hazards throughout the District. The District is recognised as being subject to multiple hazards and as such, a key issue is ensuring that when development is proposed on land potentially subject to natural hazards, the risk is managed or mitigated to tolerable levels. In instances where the risk is intolerable, natural hazards will be required to be avoided. Council has responsibility to address the developed parts of the District that are subject to natural hazard risk through a combination of mitigation measures and education, to lessen the impacts of natural hazards.
73. The Council maintains a natural hazards database and development proposals affected by, or potentially affected by, natural hazards as identified in the database will require an accompanying assessment of natural hazard risks commensurate with the level of risk posed by the natural hazards (see Rule 28.3.2.3).
74. Chapter 27 Subdivision & Development states that 'all subdivision is able to be assessed against a natural hazard through the provisions of section 106 of the RMA. In addition, in some locations natural hazards have been identified and specific provisions apply.' Natural hazards are matters of discretion to be assessed when consents are lodged e.g., Rule 27.5.7.1.
75. Sections 71 – 74 of the Building Act 2004 apply to construction of buildings. Section 71 provides that a building consent authority (the Council in this case) must refuse to grant consent for construction of a building, or major alterations to a building, if the land is likely to be subject to one or more natural hazards, or the building work is likely to accelerate, worsen, or result in a natural hazard on that land or any other property.

6. ISSUES

- a. The most appropriate zone for the area of land identified in the submission (approximately 3.5 hectares)
- b. Traffic effects
- c. Natural hazards

7. DISCUSSION OF ISSUES AND CONCLUSIONS

76. With respect to traffic matters, Ms Wendy Banks for the Council opposed the rezoning on strategic grounds but did not address traffic effects in any detail. No evidence was called by the submitter in this regard. Peninsula Road is an 'out and back' drive therefore the cumulative traffic effects of up-zoning this site and, indeed, other sites owned by FS Mee, is an issue warranting more attention than it was given. Further, a substantial area of existing residential zoning is yet to be developed which would increase the traffic on this road with potential consequences for the efficiency of its junction with SH6/Kingston Road. We make no assumptions about the outcome of a traffic assessment however we do consider that a fuller understanding of traffic effects is required before a change in zoning could be recommended.
77. With respect to natural hazards and their risks, Mr Bryant's evidence was generally reassuring in that he considered there was negligible risk from rockfall to the proposed HDRZ and that any risk that did exist could be mitigated by bunding and/or the road. It was not clear to us, however, that Mr Bryant had considered whether those risks would increase, decrease or not change when the LDR zoned area was developed.

78. For that reason, we were not satisfied that the submitter had sufficiently investigated the implications of developing this land for high density residential and associated commercial purposes in the context of the development of the larger LDR zoned parcel. In our view, the submitter's case stopped short of demonstrating (at a level suitable for making zoning decisions) that all of the actual and potential effects of development could be managed whilst enabling the outcomes sought by HDR zoning. Put another way, there was no overall evaluation or analytical synthesis to assist in promoting integrated resource management. We agree with Ms Kim Banks that there remains uncertainty as to whether the land could be developed to the intensity of the HDRZ.
79. In our opinion, HDR zoning in this location would be contrary to the strategic direction of the PDP because this land is not located in close proximity to the Queenstown town centre.
80. We consider there is no justification for increasing the intensity of zoning because capacity modelling demonstrates there is adequate residentially-zoned land within the existing urban area to meet growth needs for many years to come. There may have been some justification for increasing the range and choice of housing types in this desirable location however the submitter did not make a case for this outcome.
81. Finally, consistent with our approach to similar cases close to Queenstown Airport but outside the Outer Control Boundary, we consider it would be unfair to the landowners to apply a more restrictive regime than that recently established under Plan Change 35 to the ODP.³⁰ Having said that, we do not recommend any change of zoning thereby satisfying the submitter's interests by retaining the LDRZ for this land.

8. RECOMMENDATION

82. For the reasons set out above, we recommend that:
- a. Submission 429 and FS1078.2 be rejected; and
 - b. FS1007.1, FS1340.109 and FS1352.13 be accepted; and
 - c. Lower Density Suburban Residential Zoning be retained on the submission site as shown on Planning Map 33.

³⁰ Report 17-1; Section 5.3

PART C: KERR RITCHIE ARCHITECTS

Submitter Kerr Ritchie Architects (Submission 48)

Further Submissions

FS1340.54 - Queenstown Airport Corporation - oppose

9. PRELIMINARY MATTERS

9.1. Subject of Submissions

83. These submissions related to 48 & 50 Peninsula Road, Kelvin Heights.

9.2. Outline of Relief Sought

84. The submission requested rezoning from Rural to LDRZ.

9.3. Description of the Site and Environs

85. These two lots (1.0941 ha) occupy a north-facing part of a broadly convex slope falling off the east summit of Peninsula Hill. The property at 48 Peninsula Road is developed for rural residential purposes whereas 50 Peninsula Road is vacant land. To the west lies a substantial area of land zoned LDR owned by FS Mee Developments Co Limited.³¹ Peninsula Hill is also Mee land, formerly known as Deer Park Heights, and abuts these properties to the south and east. To the north, there is an area of 6.69 hectares within the Rural zone located between Kingston Road and Peninsula Road which is the subject of submissions seeking rezoning from Rural to Residential.³² The land subject to the submission is shown in Figure 7-4 below.



Figure 7-4 – Aerial photograph of the land subject to the submission outlined in blue

9.4. The Case for Rezoning

86. The submission sought the zoning change on the grounds that the subject land is more compatible with the LDRZ purpose, objectives and policies than the Rural Zone purpose largely due to its central proximity and good living attributes. It was acknowledged that the current attributes of openness, visibility and naturalness would be significantly compromised if the land was developed more intensely. On the other hand, the land is well-located and has high amenity values. Its development would be an extension of the existing LDRZ to the west therefore would not constitute urban sprawl. Landscape and natural hazards were also acknowledged as key issues.

³¹ Submission 429

³² Submissions 533 and 661

87. With respect to natural hazards, Mr Bryant, an engineering geologist, evaluated the risk of debris falls due to landslide, rock falls and liquefaction. He concluded that:

*"...rockfalls represent the most significant threat but the risk to dwellings is considered very low to extremely low. The risk could be mitigated by construction of a protection structure (e.g., fence or bund) on the upslope side of any habitable structure. The property could thus be suitable for a range of zoning options provided the above recommendation is actioned."*³³

88. The planning evidence of Mr Carey Vivian addressed the supply of residential land for housing, landscape and visual amenity, servicing, traffic effects, and geotechnical and natural hazard issues. He evaluated the proposed rezoning in terms of the policy framework and the Colonial Vineyard tests, concluding that the requested LDRZ achieved the purpose and principles of the RMA. Mr Vivian relied on Dr Read's landscape evidence for the Council and the expert opinion of Mr Bryant on natural hazards risks in coming to this view.

89. Dr Read considered that Submissions 48, 533 and 661 were inter-related. From a landscape perspective, it was her opinion that:

*"... If residential development were anticipated on the land below the subject site, either at LDR or HDR density, then extending the LDR zoning to these lots would have a much diminished effect on the overall landscape. Dwellings on these lots would then be seen behind other buildings rather than a natural landscape. In terms of the landscape character, it would be significantly more urban, even without development of the LDR land above the road."*³⁴

90. In Dr Read's opinion, if the relief requested by Submissions 533 and 661 was granted, then the effects of granting the relief requested by Submission 48 would be insignificant. Conversely, if the relief sought by Submissions 533 and 661 was not granted, the relief sought by Submission 48 would have adverse effects of a significant extent leading her to consider that it should not be granted.³⁵ In forming her opinion, Dr Read considered the opinion of Rebecca Lucas on landscape matters. This opinion was attached to the original submission however it predated two relevant decisions of the Environment Court and the identification of landscape classifications within this vicinity which included this site within the ONL of Peninsula Hill.³⁶ Consequently, Dr Read placed little weight on the views expressed therein.

91. While Ms K Banks, the Council's planning witness, agreed with Dr Read that the zoning of the land below was likely to have some effect, she maintained her opinion that the current extent of the LDRZ provides an appropriate boundary in this location and that to extend this further into these two allotments may result in cumulative effects including development creep in this eastern end of Peninsula Hill.³⁷

92. With respect to natural hazards, she considered that, compared to the LINZ site to the north, Mr Bryant's evidence did not make the same assurances about a reduced threat of landslide.³⁸ In her opinion, the Rural Zone was more appropriate for the consideration of an appropriate building platform with the site, and that this framework would also enable appropriate

³³ J Bryant, Summary Statement, 17 August 2017, paragraph 22

³⁴ Dr M Read, EIC, 24 May 2017, paragraph 11.13

³⁵ Ibid, paragraph 11.14

³⁶ Ibid, paragraph 11.11

³⁷ K Banks, Reply Statement, paragraph 9.11

³⁸ K Banks, Supplementary Rebuttal Evidence, 11 July 2017, paragraph 5.4

landscape considerations at the time development was proposed.³⁹ Large Lot Residential zoning, as proposed by Mr Vivian, is not currently applied in Queenstown, therefore she held to her opinion that Rural was the most appropriate zone.⁴⁰

93. QAC lodged a further submission opposing the rezoning of currently vacant land and/or enabling intensification of existing or residentially zoned land because this will bring more people to the aircraft noise effect now and into the future. Mr Kyle's evidence was that the best form of protection available to avoid potential reverse sensitivity effects is to avoid development 'coming to the effect' in the first place.⁴¹ However the submission site is not located within the OCB and QAC has not initiated a plan change seeking to extend the OCB.

9.5. Discussion of Planning Framework

94. As notified, the land was zoned Rural within an Outstanding Natural Landscape. Strategic Objectives and Policies in Chapters 3 and 6 of the PDP require the identification of ONL's and avoidance of adverse effects on them that would be more than minor and or not temporary. Subdivision and development are discouraged in ONL's unless the landscape can absorb the change and where the buildings and structures and associated roading and boundary changes will be reasonably difficult to see from beyond the boundary of the site⁴².

95. The Zone Purpose for the Rural Zone is to enable farming activities and provide for appropriate other activities that rely on rural resources while protecting, maintaining and enhancing landscape values, ecosystem services, nature conservation values, the soil and water resource and rural amenity. The Zone Purpose also recognises that a substantial proportion of the Outstanding Natural Landscapes of the district comprises private land managed in traditional pastoral farming systems. Rural land values tend to be driven by the high landscape and amenity values in the district. The long-term sustainability of pastoral farming will depend upon farmers being able to achieve economic returns from utilising the natural and physical resources of their properties. For this reason, it is important to acknowledge the potential for a range of alternative uses of farm rural properties that utilise the qualities that make them so valuable⁴³.

96. Objectives and policies of Chapter 21 for the Rural Zone provide for a range of land uses including farming to be enabled while protecting landscape, and other natural and amenity values, recognise economic diversification sustainable commercial recreation activities.⁴⁴ Rules in the plan provide for residential and larger scale commercial recreation as discretionary activities.

97. The LDRZ is the largest residential zone in the District. In Chapter 7, as recommended, it is renamed the Lower Density Suburban Residential zone to more accurately capture the range of traditional and modern suburban densities and housing types enabled. Objective 7.2.1 provides for '*a mix of compatible suburban densities and a high amenity low density residential environment for residents...*'. Policy 7.2.1.2 encourages development that '*maintains suburban residential amenity values including predominantly detached building forms, and predominantly one or two storey building heights.*' Policy 7.2.1.3 seeks to maintain amenity values between sites, in particular privacy and access to sunlight. A clear theme is the

³⁹ Ibid, paragraph 5.5

⁴⁰ K Banks, Reply Statement, paragraph 9.13

⁴¹ J. Kyle, EIC, 9 June 2017, paragraphs 6.4 – 6.8

⁴² See Objective 3.2.4.3, Policies 3.3.29 and 3.3.30, and Policy 6.3.12

⁴³ Chapter 21, Clause 21.1

⁴⁴ See Objectives 21.2.1, 22.1.8, 21.1.9, 21.1.10 and their related policies.

maintenance of suburban character and high amenity values. Commercial activities are generally discouraged.

98. The Strategic Direction Chapter, as recommended, includes Policy 3.2.2 which requires urban development to occur in a logical manner so as to (among other things) 'minimise the natural hazard risk, taking into account the predicted effects of climate change'.⁴⁵
99. This policy is implemented through Chapter 28 Natural Hazards and Chapter 27 Subdivision & Development. In addition, section 106 of the Act and sections 71 – 74 of the Building Act 2004 are important means of implementation. Overall, the Council's approach is based on case by case risk assessment requiring any natural hazards to be identified, an assessment of risk and proposals for avoiding, remedying or mitigating that risk.
100. Chapter 28 Natural Hazards provides a policy framework to address natural hazards throughout the District. The District is recognised as being subject to multiple hazards and as such, a key issue is ensuring that when development is proposed on land potentially subject to natural hazards, the risk is managed or mitigated to tolerable levels. In instances where the risk is intolerable, natural hazards will be required to be avoided. Council has responsibility to address the developed parts of the District that are subject to natural hazard risk through a combination of mitigation measures and education, to lessen the impacts of natural hazards.
101. The Council maintains a natural hazards database and development proposals affected by, or potentially affected by, natural hazards as identified in the database will require an accompanying assessment of natural hazard risks commensurate with the level of risk posed by the natural hazards (see Rule 28.3.2.3).

10. ISSUES

- a. The most appropriate zone for this land
- b. Landscape
- c. Natural hazards

11. DISCUSSION OF ISSUES AND CONCLUSIONS

102. The landscape evidence did not directly address the issue of whether the subject sites are within the ONL. Rather, Dr Read linked ONL status to the effects of zoning changes to the north which, in our view, conflates the task of ONL identification with that of evaluating the optimal future use and development of the property. Consequently, we were left with uncertainty as to the extent of the Peninsula Hill ONL in this vicinity.
103. The extent of the Peninsula Hill ONL is, in fact, of wider concern. In her evidence on Submission 425, Dr Read said that the boundary of the ONL on the F S Mee property was not logical from a landscape perspective because it was a straight line bearing no relation to topography and natural features. We agree with Dr Read as did Mr Baxter, the landscape architect advising the submitter. We consider that the same outcome would arise here if the ONL boundary was moved to align with the southern and eastern property boundaries. The new ONL line would not bear any relation to the topography and natural features of the eastern part of Peninsula

⁴⁵ Report 17-1; Section 4.4

Hill thereby inviting further incursions to the east. In our view, this would not result in a defensible ONL boundary.

104. With respect to natural hazards and their associated risks, we share Ms K Bank's caution about rezoning these properties from Rural to LDRZ because of the uncertainty as to whether any additional development could realistically occur on these sites. Mr Watts, an engineering geologist advising the Council, considered that further modelling of the landslide hazard and its stability should be undertaken. However Mr Bryant disagreed. He said that the landslide was dormant and unlikely to have been active in historical times. Mr Bryant said that further investigations would be expensive and that Mr Watts had not provided any thresholds or criteria on which approval could be granted.⁴⁶ In his opinion, in a severe earthquake, the threat from landslide activation is likely to be minor compared to the threat of structural damage to any building from the shaking itself and rockfall damage.
105. Notwithstanding Mr Bryant's assurance that the property could be suitable for a range of zoning options, we do not consider there was sufficient evidence provided to demonstrate the level of additional development that could realistically occur on these sites. By contrast, the information provided with the LINZ submission contained an appropriate level of detail on which to assess the consequences of changing the zoning from Rural to LDRZ in terms of natural hazards risk. Consequently, we were uncertain about the level of risk that would arise from adopting the LDRZ therefore we prefer to err on the side of caution in this case.
106. Consistent with our approach to similar cases close to Queenstown Airport but outside the Outer Control Boundary, we consider it would be unfair to the landowners to apply a more restrictive regime than that recently established under Plan Change 35 to the ODP.⁴⁷ Having said that, retaining Rural zoning as recommended would satisfy the interests of this submitter.
107. Overall, we agree with Ms Banks that Rural is the most appropriate zoning for these properties for the reasons set out in the Section 42A Report and her Reply Evidence. In addition, we consider that the Council should review the extent of the Peninsula Hill ONL in this vicinity to ensure that the ONL is properly defined from a landscape perspective. Having done that, we recommend that the Council evaluates the most appropriate zoning for this land in light of natural hazards risks and any other relevant matters.

12. RECOMMENDATION

108. For the reasons set out above, we recommend that:
 - a. Submission 48 be rejected; and
 - b. FS1340.54 be accepted; and
 - c. Rural Zoning be retained on the submissions sites as shown on Planning Map 33; and
 - d. Council undertake a review of the existing Outstanding Natural Landscape boundary in this vicinity and re-assess the most appropriate zoning to achieve the strategic direction of the Plan.

⁴⁶ J Bryant, Summary Statement, 17 August, paras 14 - 16

⁴⁷ Report 17-1; Section 5.3

PART D: F S MEE DEVELOPMENTS CO LIMITED

Submitter F S Mee Developments Co Limited (Submission 425)⁴⁸

Further Submissions

FS1269.1 - Henley Downs Land Holdings Limited - support
FS1078.3 - Kelvin Peninsula Community Association – oppose
FS1168.1 - Ainslie Byars – oppose
FS1169.1 - Diane Margaret Cade – oppose
FS1171.1 - Dean Rennie Carleton – oppose
FS1173.1 - Gerard Bligh - oppose
FS1174.1 - Valerie Carter – oppose
FS1175.1 - AE & CJ Brazier – oppose
FS1176.1 - William and Jill Clissold – oppose
FS1178.1 - Trevor Burton – oppose
FS1180.1 - Lyndon Thomas – oppose
FS1181.1 - Donald Byars – oppose
FS1184.2 - Peth Gillingham & James Berry - oppose
FS1185.1 - Virginie Vandenhove - oppose
FS1187.1 - Margurite Beverley Henderson - oppose
FS1188.1 - Jan Marten Kingma – oppose
FS1190.1 - Jan Nelson – oppose
FS1194.1 - Christine McIntosh – oppose
FS1196.1 - Roger Mcrae – oppose
FS1199.1 - Alan Stuart Nelson - oppose
FS1201.1 - Hilary O'Hagan – oppose
FS1204.1 - Suzanne Shaw – oppose
FS1205.1 - Sharron Payne – oppose
FS1213.1 - Geoffrey Leslie Matthews – oppose
FS1230.1 - James O'Hagan – oppose
FS1233.1 - Jason Payne – oppose
FS1240.1 - Warwick and Angela Lange - oppose
FS1243.1 - Pascale Lorre – oppose
FS1277.124 - Jacks Point Residents and Owners Association – oppose
FS1039 and FS1328- Lakeland Park Christian Camp Trustees⁴⁹ – oppose
FS1340.107 - Queenstown Airport Corporation - oppose

13. PRELIMINARY MATTERS

13.1. Subject of Submissions

109. These submissions related to three separate areas of land within different parts of the property formerly known as Deer Park Heights, situated on Peninsula Hill above Kelvin Heights.

13.2. Outline of Relief Sought

110. The submitter requested zoning changes for three sites:

- Site A has frontage to Peninsula Road (see Figures 7-5 and 7-6 below) and is currently zoned LDR. A change to MDRZ (approx. 2.21 ha) and LSCZ (approx. 0.81 ha) was requested;

⁴⁸ This submission was incorrectly referred to as being by Bonisch Consultants Ltd, when in fact, that firm was the consultant firm who lodged the submission on behalf of FS Mee Developments Co Ltd

⁴⁹ It appears that the same further submission was lodged twice and received two different numbers.

- b. Site B lies between the end of Balmoral Road and Oregon Drive (see Figure 7-7 below) and was notified as LDRZ. A change to MDRZ (approx. 2.1 ha) was requested.
- c. Site C is in two parts of 6.11 and 11.99 hectares respectively (see Figure 7-8 below). The submitter requested rezoning from Rural to LDRZ and relocation of the ONL boundary. No request was made to shift the UGB however this could be done as a consequential amendment should this submission point be accepted.

111. At the hearing, the submitter presented an amended rezoning proposal for Site C⁵⁰ which was subsequently addressed in a memo dated 14 September 2017. Counsel for FS Mee Developments Co Ltd formally requested leave to amend Submission 425 or leave to lodge a late submission to achieve the outcome sought by the amendments.⁵¹ This application was refused therefore the submission to be considered in this recommendation report is as lodged in October 2015.⁵²

13.3. Description of the Site and Environs

112. Kelvin Heights is an established low-density residential area on the Kelvin Peninsula. The area is generally north-facing and many properties enjoy views of Lake Wakatipu and Queenstown Hill. The main access is provided by Peninsula Road.

113. Figures 7-5 – 7-8 below show the three areas identified within the submission for which rezoning was requested.

Aerial Photograph of the 'Site A' (Approximate area to be rezoned outlined in blue. Refer to submission for more accurate area as rezoning does not follow lot boundaries).



Figure 7-5 – Approximate extent of proposed MDRZ and LSCZ sought in the submission outlined in blue (identified as Site A in this report).

⁵⁰ P Baxter, Summary Statement, 21 August 2017, Exhibit 13.13

⁵¹ Memorandum of Counsel for FS Mee Developments Co Ltd, Mr W. Goldsmith, 14 September

⁵² Decision on Application to Amend Submission or Lodge Late Submission, Hearing Panel Chair, 20 September 2017.

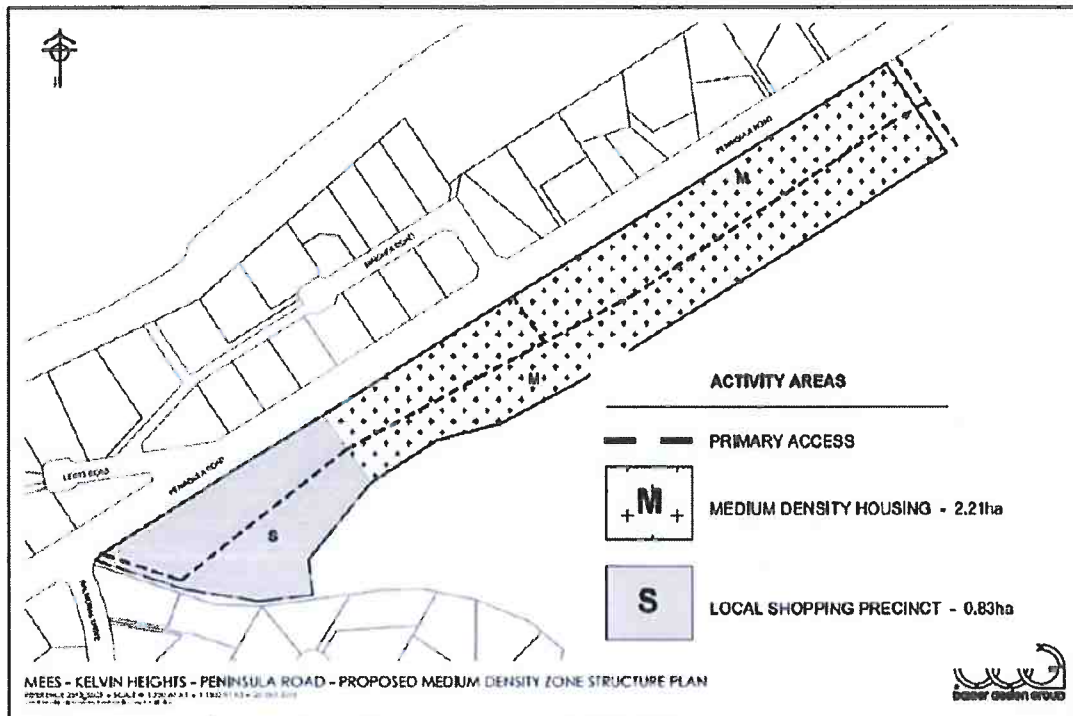


Figure 7-6 – Proposed allocation of LSCZ and MDRZ in Site A

Aerial Photograph of the site (approximate as zoning request does not follow property boundaries. Refer to submission attachment 'Balmoral Drive – Proposed Medium Density Zone Structure Plan').



Figure 7-7 – Approximate extent of proposed MDRZ sought in the submission outlined in blue (identified as Site B in this report).

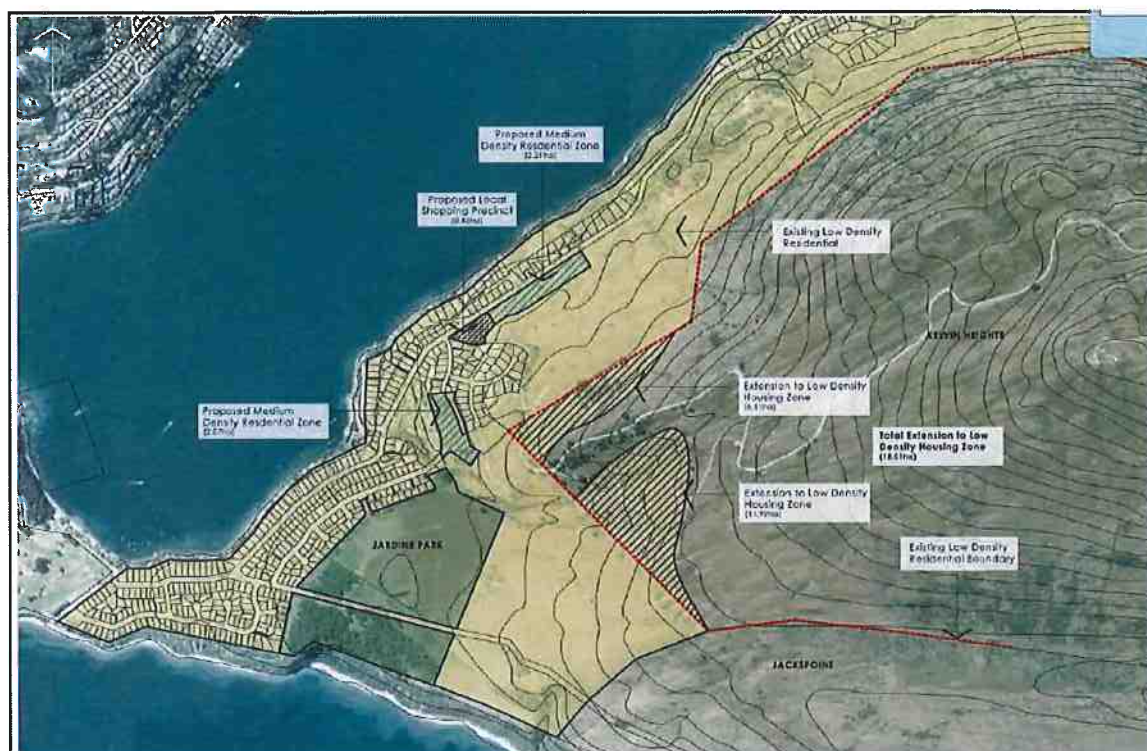


Figure 7-8– Approximate extent of proposed extension to the LDRZ sought in the submission shown by hatching to the north-east of Jardine Park (identified as Site C in this report). One extension has an area of 6.11 ha and the other has 13.99 ha.

13.4. The Case for Rezoning

114. In support of rezoning part of Site A to MDRZ, the submission stated that good transportation networks were available and development would not have any significant adverse effect on amenity in the area. The proposed LSCZ would allow for much needed small scale commercial land in Kelvin Heights. The MDR zoned land would be situated in close proximity to the proposed LSCZ and would provide a diversity of living options in desirable locations. The proposal would enable development that achieves the objectives and policies of the PDP.
115. The Council's expert witnesses did not oppose this request because the zonings were considered appropriate in the location identified and the land was within the water and wastewater scheme boundaries.⁵³
116. With respect to Site B, the submission stated that the rezoning would serve the purpose of the MDRZ by minimising urban sprawl and increasing housing supply particularly in an area of low scenic values. This land had good connections to nearby transport routes and services and connectivity to the land zoned LDR to the south and east was easily able to be provided. Local cycling and walking trails were accessible. A 'no build setback' was proposed along the eastern boundary to maintain the views from existing dwellings on Garland Terrace. No additional evidence was presented at the hearing.
117. This submission was opposed by the Trustees of the Lakeland Park Christian Camp.⁵⁴ At the hearing, Mr Murray Frost identified reverse sensitivity issues associated with the residential development that have occurred since the camp was established some 60 years ago. These

⁵³ K Banks, Section 42A Report Group 1B, paragraph 28.16

⁵⁴ FS1039 (duplicated as FS1328)

issues include trees restricting views and shading, access, especially people taking shortcuts over the site, the consequential issue of site security and trying to reduce noise generated by users of the camp.

118. Medium density housing along the camp's eastern boundary was a concern to the Trust. Mr Frost suggested mitigation measures such as a buffer along the site's western boundary, a substantial embankment to reduce noise impacts on neighbours, substantial planting to reduce visual aspects and provide privacy, substantial fencing, building line restrictions to require dwellings to be sited at a distance from the Camp's boundary and/or a no complaints covenant.⁵⁵ In answer to questions from the Panel, Mr Frost said that a bund would be the best option because there wasn't enough land for a road along the site's western boundary and rows of trees as well. He noted that a bund could affect views of the lake from within the development so the shape of it would be important.
119. For the Council, Ms Kim Banks addressed the matters raised by the camp in rebuttal evidence.⁵⁶ The MDRZ has the potential to increase the scale and intensity of built form and numbers of people within the site (relative to the LDRZ) however she believed that for the most part, the provisions of the MDRZ and Chapter 27 Subdivision would enable adequate consideration of the effects of development on the adjoining camp e.g., development of 4 or more dwellings would require restricted discretionary consent. Ms Banks discussed the possibility of a buffer or setback but made no recommendations in this regard.
120. At the hearing, the evidence for the submitter focused on the issues related to Site C because the extent of LDR zoning was in contention primarily due to landscape issues.
121. Mr Paddy Baxter, landscape architect for the submitter, said that the notified LDR boundary included straight lines, aligned on cadastral boundaries, with no relevance to the contour line of the existing landform. He proposed a more considered approach to the existing landform, contours and other landscape considerations taking into account Dr Read's opinion and amended ONL.⁵⁷ However, as noted above, the Hearing Panel Chair refused the application to amend the original submission, therefore the relevance of Mr Baxter's evidence was accordingly somewhat limited.
122. Mr Baxter identified three areas and discussed each in turn. He considered that Area A (adjacent to the existing LDRZ) did not exhibit the ONL characteristics of the rest of Peninsula Hill above and to the south. It was a small plateau containing a man-made pond and a considerable variety of exotic vegetation. These characteristics were more akin to the characteristics of the LDR zoned land to the north than they were to the characteristics of the glacially carved grasslands slopes of Peninsula Hill.⁵⁸ He proposed a minor extension to the south however this change was beyond the scope of the original submission.
123. With respect to Areas B & C as identified in the original submission, Mr Baxter considered that part of this area should be retained as Rural with ONL protection because the original boundary went further up the hill than the landowner intended. Mr Baxter proposed reducing the original area from about 12 ha to 6.07 ha and altering the boundary to give better coherence to landform and to protect the major ridgelines from residential development.⁵⁹

⁵⁵ M Frost, Statement, 23 August 2017, paragraphs 10, 13, 20 & 21

⁵⁶ K Banks, Rebuttal Evidence, 7 July 2017, paragraphs 6.1 – 6.4

⁵⁷ P Baxter, Summary Statement, 21 August 2017, paragraphs 7 & 5 and Attachment B (Exhibit 13.13)

⁵⁸ Ibid, paragraph 16

⁵⁹ Ibid, paragraphs 19 - 22

124. Area D was described by Mr Baxter as prime residential land however he considered that development would result in dwellings visible on the skyline from the lower elevations of Kelvin Heights and from points on Lake Wakatipu. Mr Baxter proposed the removal of 3.6 ha from the existing LDRZ, however there is no scope to adopt that proposal as this relief was not sought in the original submission.
125. For the Council, Dr Read considered that the landscape boundary was moderately incoherent from a landscape perspective, with linear boundaries zigzagging up and down the hillside with little relationship to topography, character or landscape quality nor, it would appear, to the actual development potential of the land.⁶⁰ In her opinion, the zone boundary would be more coherent, and give rise to more appropriate development, if it were located along the 400masl contour which would effectively round off this corner of the Rural Zone. If adopted, Dr Read's ONL boundary would significantly reduce the extent of Area A compared to the original submission.⁶¹
126. Dr Read's recommended changes to Areas B & C would encompass only the lower, less steep slopes and significantly reduce the area available for LDR zoning. In her opinion, the spur within Area B (to the south of the valley) is a relatively prominent area, being visible from much of Queenstown and Kelvin Heights.⁶²
127. Dr Read and Mr Baxter agreed that the existing ONL boundaries were not logical from a landscape perspective however they disagreed as to the logical location of the ONL boundary and hence the extent of LDR zoning.
128. QAC lodged a further submission opposing the rezoning of currently vacant land and/or enabling intensification of existing or residentially zoned land because this will bring more people to the aircraft noise effect now and into the future. Mr Kyle's evidence was that the best form of protection available to avoid potential reverse sensitivity effects is to avoid development 'coming to the effect' in the first place.⁶³ However the submission site is not located within the OCB and QAC has not initiated a plan change seeking to extend the OCB.
129. Other than QAC, no further submitters appeared at the hearing or provided evidence in respect of Site C. The Jack's Point Residents and Owners Association⁶⁴ submitted that rezoning from Rural to LDR or MDR should be disallowed unless amenity values for Jacks Point Residents, including from light spill, can be avoided.

13.5. Discussion of Planning Framework

130. Sites A & B are currently zoned LDR. The LDRZ is the largest residential zone in the District. In Chapter 7 as recommended it is renamed the Lower Density Suburban Residential zone to more accurately capture the range of traditional and modern suburban densities and housing types enabled. Objective 7.2.1 provides for '*a mix of compatible suburban densities and a high amenity low density residential environment for residents...*'. Policy 7.2.1.2 encourages development that '*maintains suburban residential amenity values including predominantly detached building forms, and predominantly one or two storey building heights.*' Policy 7.2.1.3 seeks to maintain amenity values between sites, in particular privacy and access to sunlight. A

⁶⁰ Dr M Read, EIC, 24 May 2017, para 11.24

⁶¹ Ibid, Appendix 2

⁶² Ibid, para 11.28(a)

⁶³ J. Kyle, EIC, 9 June 2017, paragraphs 6.4 – 6.8

⁶⁴ FS1277

clear theme is the maintenance of suburban character and high amenity values. Commercial activities are generally discouraged.

131. MDR zoning was requested for Sites A & B. The purpose of the MDRZ is to enable a greater supply of diverse housing options for the District at a higher density than the LDRZ. Development controls are designed to ensure that the reasonable maintenance of amenity values is maintained. MDR zones should be easily accessible to local shopping centres, town centres or schools by public transport, cycling or walking.
132. The land within Site C (shown as Areas A, B & C on Mr Baxter's Attachment B) is currently zoned Rural within an Outstanding Natural Landscape. Strategic Objectives and Policies in Chapters 3 and 6 of the PDP require the identification of ONL's and avoidance of adverse effects on them that would be more than minor and/or not temporary. Subdivision and development are discouraged in ONL's unless the landscape can absorb the change and where the buildings and structures and associated roading and boundary changes will be reasonably difficult to see from beyond the boundary of the site.
133. The Zone Purpose for the Rural Zone states that the purpose of the zone is to enable farming activities and provide for appropriate other activities that rely on rural resources while protecting, maintaining and enhancing landscape values, ecosystem services, nature conservation values, the soil and water resource and rural amenity. The Zone Purpose also recognises that a substantial proportion of the Outstanding Natural Landscapes of the district comprises private land managed in traditional pastoral farming systems. Rural land values tend to be driven by the high landscape and amenity values in the district. The long-term sustainability of pastoral farming will depend upon farmers being able to achieve economic returns from utilising the natural and physical resources of their properties. For this reason, it is important to acknowledge the potential for a range of alternative uses of farm rural properties that utilise the qualities that make them so valuable.
134. Objectives and policies of Chapter 21 for the Rural Zone provide for a range of land uses including farming to be enabled while protecting, maintaining and enhancing landscape values, ecosystem services, nature conservation values, the soil and water resource and rural amenity. Rules in the plan provide for residential and larger scale commercial recreation as discretionary activities.

14. ISSUES

- a. The most appropriate zones for Sites A, B & C
- b. Landscape (Site C only)

15. DISCUSSION OF ISSUES AND CONCLUSIONS

15.1. Site A

135. The rezoning of Site A was not in contention at the hearing. The submitter relied on the Council's evidence and Section 42A Report and did not call other evidence. No further submitters appeared at the hearing or provided evidence. It follows that we accept and rely on the opinion of Ms Banks and the Council's other expert witnesses that rezoning Site A to a combination of MDRZ and LSCZ will result in the most appropriate zoning for these areas. We adopt the reasons given in Ms Bank's Section 42A Report and Rebuttal evidence in support of this rezoning.⁶⁵

136. In addition, we have taken into account the benefits of increasing the choice and diversity of housing types available within this desirable neighbourhood in light of the findings of dwelling capacity modelling. While there is no need to increase the supply of dwellings for the foreseeable future, Mr Osborne's evidence was that increasing the extent of MDR zoning would help to free up land for housing thus counteracting the widespread practice of land banking.⁶⁶

15.2. Site B

137. The zoning of Site B was in contention. We considered the circumstances of the Lakeland Park Christian Camp given its proximity to Site B during our site visit. Mr Goldsmith presented legal submissions in this regard.⁶⁷ He made several points that we agree with including that the camp is already surrounded by low density residential development or vacant land zoned for that purpose and that a change of zoning will not change the reality of those issues, or the extent to which those issues may arise. He submitted that the issues identified by LPCC were part and parcel of any neighbourhood. Noise standards must be complied with and are the same for both zones. Also, the intensity of development enabled by MDR zoning compared to LDR zoning is not that different therefore it is difficult to see how the concerns, if valid, would be significantly different between these two residential zonings.

138. In this light, we considered the merits of imposing a building setback, buffer or other method of addressing reverse sensitivity concerns. We are of the view that no additional intervention is required because, for the most part, the provisions of the MDRZ and Chapter 27 Subdivision & Development enable evaluation of reverse sensitivity effects.

139. As with Site A, we took into account the benefits of increasing the choice and diversity of housing types in this desirable residential area and concluded that MDR zoning is the most appropriate for this land.

140. Overall, we agree with the evidence of Ms Kim Banks in support of changing the zoning from LDR to MDR for Site B.

15.3. Site C

141. With respect to Site C (as divided into Areas A, B & C on Mr Baxter's Attachment B), the boundary of the ONL was the main issue in our consideration of the most appropriate zoning for this land. We undertook a site visit which enabled us to see these sites and we also visited a number of viewing points in and around Queenstown. We found these inspections very

⁶⁵ K Banks, Section 42A Report, 25 May 2017, paragraphs 28.9 – 28.11 and 28.16 – 28.20; Rebuttal Evidence, 7 July 2017, paragraphs 6.2 – 6.2

⁶⁶ Report 17-1; Section 3.1

⁶⁷ W. Goldsmith, Legal Submissions for FS Mee Developments Co Ltd, 18 August, paragraphs 7 - 11

useful and consequently, we agree with the landscape architects that the ONL boundary is not logical from a landscape perspective. It needs to be revisited.

142. In the case of Area A (as reduced by the submitter at the hearing), we agree with Mr Baxter that this is a small plateau exhibiting landscape characteristics more akin to those of the LDR zoned land to the north and west rather than Peninsula Hill to the north. In our view it would be unduly restrictive to align the ONL boundary with the 400masl contour in the vicinity of the north-western corner of the existing Rural Zone when development within the LDRZ to the north would occupy the foreground of wider views of the hillside from outside the property. Accordingly, we find that the ONL boundary logically aligns with the edge of the 'yellow' area marked A on Attachment B i.e., a reduced extent compared to the original relief sought. The 'blue' area cannot be included within the ONL because there is no scope for this relief. We agree that the area within the amended ONL boundary is suitable for LDR zoning as part of a low-density neighbourhood as it is a logical extension to land already zoned residential in a location where any landscape effects would be minimal. There was no evidence of servicing issues for this land.
143. In the case of Areas B & C, we agree with Dr Read that this is a relatively prominent area visible from much of Queenstown including the Mercure Hotel, the hearing venue from time to time. We do not support any zoning change in this part of the farm because no justification has been provided in terms of section 32 analysis. Further, there is no need for further urban zoning based on the results of the dwelling capacity modelling. In our opinion, there is plenty of time for the Council and/or the submitter to revisit the logic of the ONL boundary, the need for additional urban zoning and the future of this farm in an integrated manner. Meanwhile, Rural zoning is enabling of a diversity of activities subject to resource consent being obtained.
144. Finally, we note that consistent with our approach to similar cases close to Queenstown Airport but outside the Outer Control Boundary, we consider it would be unfair to the landowners to apply a more restrictive regime than that recently established under Plan Change 35 to the ODP.⁶⁸ Having said that, to the extent that Rural and LDR zoning is retained for some of this land, there would be a reduced likelihood of ASANS being established in future in those parts of the property.

16. RECOMMENDATION

145. For the reasons set out above, we recommend that:
- a. Submission 425 be accepted in part; and
 - b. All Further Submissions be accepted in part; and
 - i. Site A be zoned a combination of Medium Density Residential Zone and Local Shopping Centre Zone as shown on the structure plan attached to the original submission; and
 - ii. Site B be zoned Medium Density Residential Zone; and
 - iii. Site C be zoned Lower Density Suburban Residential Zone but only with respect to the reduced extent of Area A as shown on Attachment B to Mr Baxter's Summary Statement (Exhibit 13.13);
 - c. The Outstanding Natural Landscape boundary be aligned with the new Lower Density Suburban Residential Zone boundary applicable to Area A (reduced extent); and

⁶⁸ Report 17-1; Section 5.3

- d. As a consequential amendment, the UGB be aligned with the new Lower Density Suburban Residential Zone and Outstanding Natural Landscape boundary of Area A (reduced extent); and
- e. Council undertake a review of the existing Outstanding Natural Landscape boundary and zoning pattern between Jardine Park and the Jacks Point Special Zone to ensure that the Outstanding Natural Landscape is properly defined from a landscape perspective and the zoning achieves the strategic direction of the Plan.

PART E: SUMMARY OF RECOMMENDATIONS

146. For the reasons set out above, we recommend that:
- a. Submission 533 be accepted in part and Further Submissions 1036.2, 1078.1, 1352.8 and 1340.124 be rejected (refer Part A);
 - b. Submission 661 be accepted and Further Submissions 1036.8, 1077.57 and 1340.132 be rejected (refer Part A);
 - c. Submission 429 and Further Submission 1078.2 be rejected and Further Submissions 1007.1, 1340.109 and 1352.13 be accepted (refer Part B);
 - d. Submission 48 be rejected and Further Submission 1340.54 be accepted (refer Part C);
 - e. Submission 425 and all Further Submissions on Submission 425 be accepted in part (refer Part D).
147. As a consequence of those recommendations, we recommend that:
- a. 35 Peninsula Road be zoned Lower Density Suburban Residential and the Landscape Classification line be moved to align with the Urban Growth Boundary;
 - b. Land on the south side of Peninsula Road from Balmoral Drive to approximately opposite 347 Peninsula Road be zoned Medium Density Residential and Local Shopping Centre Zone (see Map 37 and Figure 7-6);
 - c. The land between Oregon Drive and Balmoral Drive be zoned Medium Density Residential (see Figure 7-7); and
 - d. Amend the Landscape Classification line and location of Urban Growth Boundary and extend the Lower Density Suburban Residential Zone in the area south of Milward Place (see Map 37).
148. We further recommend the Council consider:
- a. undertaking a review of the existing ONL boundary in the vicinity of 48 & 50 Peninsula Road and re-assess the most appropriate zoning to achieve the strategic direction of the Plan;
 - b. undertaking a review of the existing ONL boundary and zoning pattern between Jardine Park and the Jacks Point Zone to ensure that the ONL is properly defined from a landscape perspective and the zoning achieves the strategic direction of the Plan.

For the Hearing Panel



Denis Nugent (Chair)

Dated: 4 April 2018