

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

IN THE MATTER of the Resource
Management Act 1991

AND

IN THE MATTER of Hearing Stream 06A
– Arrowtown Design
Guidelines

**REPLY OF NIGEL ROLAND BRYCE
ON BEHALF OF QUEENSTOWN LAKES DISTRICT COUNCIL**

VARIATION 1 – ARROWTOWN DESIGN GUIDELINES

11 November 2016

 **Simpson Grierson**
Barristers & Solicitors

S J Scott
Telephone: +64-3-968 4018
Facsimile: +64-3-379 5023
Email: sarah.scott@simpsongrierson.com
PO Box 874
SOLICITORS
CHRISTCHURCH 8140

TABLE OF CONTENTS

1. INTRODUCTION..... 1

**2. CLARIFICATION OF THE ROLE OF THE ARROWTOWN PLANNING
ADVISORY GROUP 2**

**3. HOW THE 2016 ADG ARE PROPOSED TO WORK IN RELATION TO COUNCIL
OWNED LAND SUCH AS RESERVES AND ROADS..... 3**

**4. REVIEW OF PLANNING PROVISIONS RELATING TO THE RESIDENTIAL
CHAPTERS UNDER HEARING STREAM 06 TO DETERMINE WHETHER TO
BROADEN THE APPLICATION OF THE 2016 ADG 4**

**5. FURTHER AMENDMENTS TO THE 2016 ADG TO RESPOND TO PANEL
QUESTIONS AND SUBMITTER RESPONSES..... 9**

6. CONCLUSION 12

1. INTRODUCTION

- 1.1 My name is Nigel Roland Bryce. I prepared the section 42A report for Variation 1 – Arrowtown Design Guidelines 2016 (**2016 ADG**) of the Proposed District Plan (**PDP**). My qualifications and experience are listed in that s42A report dated 12 October 2016.
- 1.2 I have reviewed the only statement of evidence filed on behalf of submitters (of Ms McLeod for the New Zealand Fire Service, submitter #438), and attended all of the hearing on the 7 November 2016.
- 1.3 This reply evidence covers the following issues:
- (a) clarification as to the Role of the Arrowtown Planning Advisory Group (**APAG**);
 - (b) how the 2016 ADG are proposed to work in relation to Council owned land such as reserves and roads;
 - (c) review of planning provisions relating to the Residential Chapters to broaden the application of the 2016 ADG; and
 - (d) further amendments to the 2016 ADG to respond to Panel questions and submitter responses.
- 1.4 In this Reply I do recommend amendments to the 2016 ADG, which is in the process of being updated to reflect these amendments. This should be able to be completed prior to Christmas. I provide a list of recommended amendments to the 2016 ADG in section 5.0 below. I emphasise that if the Hearing Panel (**Panel**) recommends any further changes to the relevant zones, or extent of the zones, through the Residential Hearing Stream and the rezoning hearings, the ADG 2016 will need to be revisited.

2. CLARIFICATION OF THE ROLE OF THE ARROWTOWN PLANNING ADVISORY GROUP

- 2.1** The Panel asked for further clarification as to the role of the APAG.
- 2.2** My understanding is that the APAG is a non-statutory group who were formed following amalgamation of Council from the former Arrowtown Borough Council in 1989. As a consequence of this amalgamation, I understand that there was concern that Arrowtown's heritage issues needed to be appropriately represented in a planning context. Consequently, the Council initiated APAG to ensure that heritage issues in Arrowtown were appropriately considered by an independent panel formed by local Arrowtown representatives. This role is advisory, not statutory.
- 2.3** The Council over the last 10 years has adopted a process whereby all resource consent applications within the Arrowtown Town Centre and the Arrowtown Residential Historic Management Zone are referred to APAG who provide comments on the acceptability or otherwise of the application. The APAG's role is not to make decisions but to advise on planning applications, with particular emphasis on guiding consideration of local Arrowtown heritage issues. In this regard, APAG's role is similar to the independent urban design panels formed in Queenstown and Wanaka.
- 2.4** The role of the urban design panels formed in Queenstown and Wanaka are recognised within the Council's Urban Design Strategy (adopted in November 2009), to give effect to the New Zealand Urban Design Protocol (2005), which the Council is signatory to. The APAG is not recognised in the Urban Design Strategy.
- 2.5** The Council's Urban Design Strategy sets out that the role of the urban design panels is to provide independent urban advice to applicants and Council. Their objective is to improve the standard of the built environment.

- 2.6** Like the Council's urban design panels, APAG's role is to provide specific input into the consideration of resource consent applications under section 104 of the Resource Management Act 1991 (**RMA**). In practice APAG's advice to the Applicant or reporting officer is considered through the assessment of the application.
- 2.7** I am reasonably comfortable that the role of APAG (and that of the urban design panels) does not need to be formalised through reference to this advisory group in either the PDP or the 2016 ADG. While it could be argued that the 2016 ADG is less effective because it does not provide any direct reference to APAG, the non-statutory process advanced by the Council to date has been effective in ensuring that relevant applications are referred to APAG through either the pre-application or formal application assessment process. I do not consider there is any need to change this process.
- 2.8** I note, for completeness, that my conclusion in paragraph 2.7 above is consistent with the Council's opening legal submission to Hearing Stream 06, where the Council considered that the current use of the urban design panel (non-mandatory but encouraged, and recommended for proposals where urban design assessment is required) is adequate and will remain available under the PDP.

3. HOW THE 2016 ADG ARE PROPOSED TO WORK IN RELATION TO COUNCIL OWNED LAND SUCH AS RESERVES AND ROADS

- 3.1** The Panel questioned Council staff on how the 2016 ADG would adequately respond to works within public owned land such as roads and Council owned reserves. It is understood that the central issue raised by the Panel related to the fact that the Council has not advanced a rule framework for managing activities on land contained within road reserves or on reserve land under Stage 1 of the District Plan Review. As such, there is no mechanism for the 2016 ADG to be applied when considering development activities in roads/reserves.
- 3.2** My understanding is that the Council will be implementing an Open Space and Recreation Chapter to govern all activities on land zoned

in this way as part of Stage 2 of the District Plan Review. Similarly, I also understand that the Council will be advancing a new rule framework to governing development activities within road reserves as part of the Transport Chapter to be advanced as part of Stage 2 of the District Plan Review.

3.3 As a consequence, it is anticipated that the 2016 ADG can be appropriately referenced within both the Open Space and Recreation Chapter and Transport Chapter as part of Stage 2 of the District Plan Review.

4. REVIEW OF PLANNING PROVISIONS RELATING TO THE RESIDENTIAL CHAPTERS UNDER HEARING STREAM 06 TO DETERMINE WHETHER TO BROADEN THE APPLICATION OF THE 2016 ADG

4.1 The Panel requested that I undertake a review of the relevant rules governing the Low Density Residential zone (**LDRZ**), Medium Density Residential zone (**MDRZ**) and the Arrowtown Residential Historic Management zone (**ARHMZ**) to determine whether it would be appropriate to reference the 2016 ADG across a broader array of rules, irrespective of their activity status. I have undertaken this review, in consultation with the relevant section 42A Officers for each of the above zones.

4.2 In undertaking this review I have considered the following rules within the LDRZ, MDRZ and ARHMZ.

Low Density Residential Zone

4.3 The relevant LDRZ standards include:

Table 1 – Low Density Residential Zone Standards

Notified Rules	Amended Rule in Officer Right of Reply
Rules 7.5.1 and 7.5.2 Height) – Non-Complying;	Rules 7.5.1 and 7.5.2 Height) – Non-Complying ¹
Rule 7.5.5 Building Coverage -	Redraft Rule 7.5.5 – Non-

¹ Within the Section 42A officers Right of Reply to Chapter 7 – Low Density Residential Zone.

Non-Complying;	Complying; ²
Rule 7.5.7 Landscape permeable surface – Non-Complying;	Redraft Rule 7.5.6 – Non-Complying ³
Rule 7.5.8 Recession Plane – Non-Complying;	Redraft Rule 7.5.7 Recession Plane – Non-Complying ⁴
Rule 7.5.9 Boundary setbacks - Discretionary;	Redraft Rule 7.5.8 Boundary setbacks - Discretionary ⁵
Rule 7.5.11 Continuous building length - Restricted Discretionary;	Redrafted Rule 7.5.10 Building length - Restricted Discretionary ⁶
Rule 7.5.10 Building separation within Sites - Restricted Discretionary;	Redrafted Rule 7.5.9 Building separation within Sites - Discretionary ⁷

4.4 Given that discretion is not limited for those rules that trigger a discretionary or non-complying activity status, I do not consider it effective to integrate any further changes to the rule framework to guide plan users.

4.5 I note that Ms Amanda Leith, the section 42A reporting officer for Chapter 7 Low Density Residential, has recommended further amendments to the supporting policy framework under notified Objective 7.2.5 (redraft Objective 7.2.3)⁸ and Policies 7.2.5.3 (redraft Policy 7.2.3.3).⁹ These amendments provide clearer guidance for plan users when advancing discretionary or non-complying activity resource consent applications. I support these amendments.

4.6 Further, Ms Leith has recommended that notified Rule 7.5.11 Continuous building length (redraft Rule 7.5.10) be expanded to

2 Within the Section 42A officers Right of Reply to Chapter 7 – Low Density Residential Zone.
3 Within the Section 42A officers Right of Reply to Chapter 7 – Low Density Residential Zone.
4 Within the Section 42A officers Right of Reply to Chapter 7 – Low Density Residential Zone.
5 Within the Section 42A officers Right of Reply to Chapter 7 – Low Density Residential Zone.
6 Within the Section 42A officers Right of Reply to Chapter 7 – Low Density Residential Zone.
7 Within the Section 42A officers Right of Reply to Chapter 7 – Low Density Residential Zone.
8 Within the Section 42A officers Right of Reply to Chapter 7 – Low Density Residential Zone.
9 Within the Section 42A officers Right of Reply to Chapter 7 – Low Density Residential Zone.

include specific reference to the 2016 ADG as a matter of discretion.
I support this amendment.

Medium Density Residential Zone

4.7 The relevant MDRZ standards include:

Table 2 – Medium Density Residential Zone Standards

Notified Rules	Amended Rule in Officer Right of Reply
Rule 8.5.1 Height) – Non-Complying;	Redraft Rule 8.5.1 – Non-Complying (discretionary for 5.5m height limit for additional dwellings) ¹⁰
Rule 8.5.4 Building Coverage - Discretionary	Redraft Rule 8.5.4 – Restricted Discretionary ¹¹
Rule 8.5.5 Density – Non-Complying;	Redraft Rule 8.5.5.1 – Restricted Discretionary
Rule 8.5.6 Recession Plane – Non-Complying;	Redraft Rule 8.5.6 Recession Plane – Restricted Discretionary ¹²
Rule 8.5.7 Landscape permeable surface – Non-Complying;	Redraft Rule 8.5.7 Landscape permeable surface – Restricted Discretionary ¹³
Rule 8.5.8 Boundary setbacks - Discretionary;	Redraft Rule 8.5.8 Boundary setbacks - Restricted Discretionary ¹⁴
Rule 8.5.9 Continuous building length - Restricted Discretionary;	Redraft Rule 8.5.9 Building length - Restricted Discretionary ¹⁵
	Redraft Rule 8.5.14 Dominance of garages - Discretionary ¹⁶

10 Within the Section 42A officers Right of Reply to Chapter 8 – Medium Density Residential Zone.

11 Within the Section 42A officers Right of Reply to Chapter 8 – Medium Density Residential Zone.

12 Within the Section 42A officers Right of Reply to Chapter 8 – Medium Density Residential Zone.

13 Within the Section 42A officers Right of Reply to Chapter 8 – Medium Density Residential Zone.

14 Within the Section 42A officers Right of Reply to Chapter 8 – Medium Density Residential Zone.

15 Within the Section 42A officers Right of Reply to Chapter 8 – Medium Density Residential Zone.

16 Within the Section 42A officers Right of Reply to Chapter 8 – Medium Density Residential Zone.

- 4.8** For the reasons I have set out in paragraph 4.4 of this right of reply, I do not consider that it is necessary to amend the rule framework for those standards that trigger discretionary or non-complying activity resource consents, given that discretion is not limited under these standards. The supporting policy framework under notified Objective 8.2.6 (redraft Objective 8.2.4)¹⁷ and notified Policies 8.2.6.1 (redraft Policy 8.2.4.1)¹⁸ provides sufficient scope to apply the 2016 ADG.
- 4.9** Ms Leith (section 42A reporting officer to Chapter 8 (MDR)) has also recommended further amendments to these policies to better guide plan users. I support these amendments.
- 4.10** Further, Ms Leith has recommended a number of further amendments to the rules supporting the MDRZ to better integrate reference to the 2016 ADG. These amendments include a change to activity status for redraft Rule 8.5.4 Building Coverage, redraft Rule 8.5.5.1 Density, redraft Rule 8.5.6 Recession Plane, redraft Rule 8.5.7 Landscape permeable surface, redraft Rule 8.5.8 Boundary setbacks, and redraft Rule 8.5.9 Building length. For all of these cases Ms Leith has recommended that the activity status be changed to a restricted discretionary activity status with the 2016 ADG forming a matter of discretion.
- 4.11** I consider that Ms Leith's recommended changes to the rules listed above will provide improved guidance for plan users on the application of the 2016 ADG within the MDRZ. I therefore support her suggested amendments to these rules.

17 Within the Section 42A officers Right of Reply to Chapter 8 – Medium Density Residential Zone.

18 Within the Section 42A officers Right of Reply to Chapter 8 – Medium Density Residential Zone.

Arrows town Residential Historic Management Zone

4.1 The relevant ARHMZ standards include:

Table 3 – Arrows town Residential Historic Management Zone Standards

Notified Rules	Amended Rule in Officer Right of Reply
Rule 10.5.5 Road Boundary Setback) – Restricted Discretionary	Redraft 10.5.6 Road Boundary Setback) – Restricted Discretionary ¹⁹

4.2 In relation to Chapter 10 ARHMZ, the rule framework triggers the need for resource consent for the construction or alteration of buildings under notified Rule 10.4.4. This rule already references the 2016 ADG.

4.3 Table 3 above lists the only rule that I consider could be strengthened to articulate reference to the 2016 ADG as a matter of discretion and relates to buildings within road boundary setbacks under notified Rule 10.5.5 (redraft Rule 10.5.6).

4.4 Ms Rachel Law, the section 42A reporting officer to the ARHMZ chapter has recommended an amendment to redraft Rule 10.5.6 to specifically reference the 2016 ADG as a matter of discretion. I consider that the suggested amendment to redraft Rule 10.5.6 will provide better guidance for plan users on the application of the 2016 ADG within the ARHMZ and as a consequence, I support this amendment.

4.5 The Panel asked that I consider whether the rule framework supporting the LDRZ, MDRZ and ARHMZ needs to be more hierarchical in nature in order to better protect those areas of Arrows town that are more sensitive. I do not consider that the rule framework supporting these zones requires a more hierarchical structure. In most cases the 2016 ADG is listed as a matter of

19 Within the Section 42A officers Right of Reply to Chapter 10 – Arrows town Residential Historic Management Zone.

discretion and it should fall to the 2016 ADG themselves to guide development on a case by case basis and based on the context of a particular development proposal.

5. FURTHER AMENDMENTS TO THE 2016 ADG TO RESPOND TO PANEL QUESTIONS AND SUBMITTER RESPONSES

5.1 Through the hearing process a number of further changes to the 2016 ADG have been identified. I now discuss these, and confirm that an updated ADG will be filed with the Panel and served on submitters, in due course.

5.2 The Panel raised concern that some of the Guidelines were worded very strongly and include wording such as "must be achieved" and "should be achieved". Ultimately, the intent is that the Guidelines should be applied as a whole and development considered in the context of the design issues raised by a particular proposal. I recommend that the 2016 ADG are further amended to ensure that the wording does not elevate the importance of any one particular guideline. The intention is that they should all be considered based on a case by case assessment and considered in the round. The extent of these further amendments is expanded upon in paragraph 5.4(j) below.

Need for Basic User Guide At front of Guidance

5.3 The Panel considered that there was merit in providing a clearer user guide at the front of the 2016 ADG to ensure that users have a clearer understanding of the inter-relationship between the 2016 ADG and the PDP. It is therefore proposed to integrate the following user guide within section 1.4 of the 2016 ADG as follows:

In order to use the Guidelines, there are six steps that users should follow when considering any new development activities that may trigger the need for resource consent:

Step 1 – *Identify the zoning of your property under the Operative District Plan and Proposed District Plan and are there any*

resource consent requirements for proposed development, which would trigger the need for the ADG to inform future development;

Step 2 – *If resource consent is required, identify what character area your property is located within (Town Centre, Old Town Residential, or New Town);*

Step 3 - *Identify the relevant Neighbourhood Area that your property falls within and any identified constraints or heritage features of relevance;*

Step 4 – *With reference to 1-3 above, assess the proposed development against either Section 3 (Town Centre) or Section 4 (Old Town/New Town Areas) and consider how the proposal responds to the identified historic character and values of Arrowtown.*

Step 5 - *Determine whether any changes are required to the proposal in light of Steps 1 to 4 above.*

Step 6 – *Ensure that your application provides for the necessary information set out in Development Assessment Checklist in Section 5.6, 5.7, or 5.8.*

Amendments to the wording of specific guidelines

5.4 The Panel questioned whether further changes were required to specific parts of the Guidelines. The parts that I recommend are changed, are set out below:

- (a) Guideline 1.5.5 be amended to remove reference 'to must be compatible' and make it clear that users should consider all relevant Guidelines;
- (b) Guideline 3.7.1.1(b) be amended to provide specific guidance as to when trees are damaging property;
- (c) Guideline 3.13 be amended to include "are" to be encouraged within the guideline;
- (d) Guideline 4.1.1 should not be included within the colour box as this is setting out key elements that generate heritage character and is not a guideline;

- (e) Guideline 4.5.1.3(b) needs to be amended to better define what is meant by street frontage. It is proposed that this guideline will reference back to amended MDRZ – Figure 1, MDRZ – Figure 2 and MDRZ – Figure 3, which will provide further guidance on how the 60% of street frontage needs to be retained in green space;
- (f) Guideline 4.10.1.3(a) to be reviewed to consider if the provision to provide a landscape plan for the street frontage is too onerous and need to better define instances where this may not be required;
- (g) Guideline 5: Plant List needs to provide clearer guidance on how the plant lists should be applied and the need for certainty for users;
- (h) The 2016 ADG to be amended to remove all references to proposed zones;
- (i) Pg 182 to consider wording of matters set under this checklist; and
- (j) The 2016 ADG be amended to delete reference to 'must be achieved' and 'should be achieved' and provide for amended wording that does not elevate the importance of a particular guideline (rather they should all be considered based on a case by case assessment).

Amendments to Plans/Maps

5.5 I also recommend that the following changes be made to the Neighbourhood Plans and maps:

- (a) All Neighbourhood Plans need to be updated to refer to the PDP date;

- (b) All Neighbourhood Plans need to be updated to align hedges on the maps, with protected trees chapter;
- (c) Pg 23: items 5 and 6 need to determine whether these are reserve spaces; and
- (d) Pg 27: add in notation #1.

Further Changes as A Consequence of Evidence

5.6 In relation to the changes that Ms McLeod (on behalf of the New Zealand Fire Service) proposes to the 2016 ADG, I consider that these have merit except that I recommend the following amendment:

Departure from these design guidelines ~~are~~ may be appropriate to accommodate any redevelopment of the fire station in Hertford Street, where such departures are demonstrated to be necessary in order to accommodate the operational and functional requirements of a fire station.

5.7 It is proposed that Ms McLeod's amendments will be incorporated within the further revisions to the 2016 ADG.

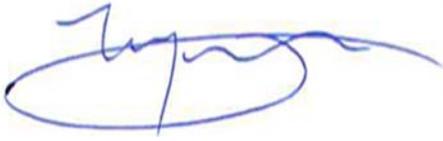
5.8 I note that the section 42A report supporting Variation 1 set out a number of specific amendments to the 2016 ADG to respond to the submission by Mr Philip Blakely (submitter 28).²⁰ For the reasons set out at paragraphs 12.32 to 12.40 of my section 42A report to Variation 1, I do not recommend any further amendments to the 2016 ADG to respond to the issues raised by Mr Blakely's concerns.

6. CONCLUSION

6.1 Overall, I do not consider any further amendments to the planning provisions referencing the 2016 ADG are required, except for those I proposed in the replies for the HDRZ, MDRZ and ARHMZ chapters. However, I do recommend further amendments to the 2016 ADG as a

20 As listed at paragraph 12.30 of the section 42A report

consequence of submissions and responses from the Panel (as listed in section 5.0 of this right of reply).

A handwritten signature in blue ink, appearing to be 'Nigel Roland Bryce', written in a cursive style.

Nigel Roland Bryce
Consultant Planner
11 November 2016