

Before the Panel of Hearing Commissioners

In the Matter of                      the Resource Management Act 1991

And

In the Matter of                      the Queenstown Lakes District Council Proposed District  
Plan (**Chapter 3: Strategic Direction and Chapter 4:  
Urban Development**)

Legal submissions on behalf of the Pounamu  
Body Corporate Committees [208] and [FS-  
1148]

Dated: 21 March 2016

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## INTRODUCTION

1. These opening legal submissions are presented on behalf of the Pounamu Body Corporate Committees on the Strategic Direction and Urban Development Chapters of the Queenstown Lakes District Council Proposed District Plan (**Proposed Plan**).
2. Accompanying these legal submissions is the planning evidence of **Mr Timothy Walsh** in relation to the Strategic Direction and Urban Development Chapters.

## POUNAMU

3. The Pounamu Body Corporate Committees (**Body Corporate**) are comprised of the owners of the 68 apartments at 110 Frankton Road (**Pounamu Apartments**).
4. Pounamu Apartments are privately owned luxury 5 star apartments available for short and long term accommodation. They are of a high quality architectural design with extensive native landscaping appropriate for their high profile location on the main entrance to Queenstown. **Attached as Annexure 1** is a photograph of the Pounamu Apartments.
5. The Pounamu Apartments are highly rated visitor accommodation<sup>1</sup> and as such contribute to the social and economic wellbeing of the wider Queenstown District.
6. The design of the Pounamu Apartments is heavily influence by the original resource consent (granted by Environment Court consent order) which provided for a comprehensive development on the Pounamu Apartment site and *Lot 5* to the north of the current buildings. The master plan for this comprehensive development, was to be managed by the Hilton Hotel, is **attached as Annexure 2**.
7. We note that when considering the appropriate rules in the High Density Residential Zone, it is necessary for the Hearings Panel to provide for the integrated management of the Pounamu Apartment site and Lot 5 in

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<sup>1</sup> Recently rated as the second best accommodation in Queenstown and the third best in New Zealand (Travellers Choice Award 2015)

accordance with its functions under section 31 of the Act. This point will be addressed in more detail at the hearing on those rules.

## OVERALL SUBMISSION

8. The Body Corporate supports the broad vision of the Proposed Plan in that it seeks to ensure that appropriate development outcomes are achieved, which have due regard to and protect neighbours' amenity. **Mr Walsh** for the Body Corporate considers that appropriately located higher density neighbourhoods can bring a multitude of benefits provided they are desirable places to live.<sup>2</sup> **Mr Bird** has set out the good urban design outcomes of such intensification.<sup>3</sup>
9. However, the Body Corporate has concerns with aspects of the Proposed Plan from the Strategic Directions through to the *teeth* of the provisions in the Residential Chapter. In particular, the Body Corporate is concerned that the Proposed Plan does not strike an appropriate balance between providing for the residential intensification required while avoiding low quality poorly designed infill developments through the High Density Zone provisions. Linked to this is a concern that the dilution of existing development controls may negatively impact on how future development would integrate with Pounamu Apartments.
10. In relation to Strategic Directions and Urban Development, **Mr Walsh** has proposed amendments that for the reasons set out in these legal submissions do strike this appropriate balance, and ultimately better achieve the Purpose of the Resource Management Act 1991 (**the Act**). Unlike the notified version of the Strategic Directions chapter which tips the balance in favour of intensification at the expensive of amenity, **Mr Walsh's** amendments achieve residential intensification without compromising residential amenity and character to an unacceptable degree.<sup>4</sup>
11. Not relevant to this hearing but important to the overall Body Corporate submission is the Body Corporate's concern around the removal of the existing height controls along Frankton Road. This will be addressed in subsequent hearings.

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<sup>2</sup> Evidence of Mr Timothy Walsh, at paragraph 4.1

<sup>3</sup> Evidence of Mr Clinton Bird, at paragraph 5.11

<sup>4</sup> Evidence of Mr Timothy Walsh, at paragraph 4.2

## STATUTORY CONSIDERATIONS

12. The Council's Opening Legal Submissions has thoroughly set out the relevant statutory considerations to your decision making.
13. This section will therefore only briefly outline the provisions of the Act that are relevant to the preparation and change of district plans.

### *Part 2 of the Act*

14. The purpose of the preparation, implementation, and administration of district plans is to assist councils to carry out their functions in order to achieve the purpose of the Act.<sup>5</sup>
15. The purpose of the Act is to promote the sustainable management<sup>6</sup> of natural and physical resources under section 5 of the Act. Under section 6, identified matters of national importance must be recognised and provided and, under section 7, particular regard is to be had to the "other matters" listed there which includes the maintenance and enhancement of amenity values<sup>7</sup> and the maintenance and enhancement of the quality of the environment.<sup>8</sup> Under section 8, the principles of the Treaty of Waitangi are to be taken into account.

### *Section 31*

16. Section 31 provides that a function of councils is, through the establishment of objectives, policies and methods, to achieve integrated management of the effects of the use, development or protection of land and natural and physical resources.

### *Section 32*

17. Section 32 sets out the legal framework within which a council (and therefore the Hearings Panel) must consider the submissions, evidence and reports before it in relation to a proposed plan, in conjunction with the matters specified in section 74.

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<sup>5</sup> Section 72 of the Act

<sup>6</sup> As that phrase is defined in section 5(2) of the Act

<sup>7</sup> Section 7(c) of the Act

<sup>8</sup> Section 7(f) of the Act

18. Under section 32, an evaluation report on a proposed plan must examine whether proposed objectives are the most appropriate way to achieve the purpose of the Act, and whether the provisions are the most appropriate way of achieving the objectives. To do that, a council must identify other reasonably practicable options to and assess the efficiency and effectiveness of the proposed provisions through identifying the benefits and costs of the environmental, economic, social and cultural effects including opportunities for economic growth and employment.
19. Section 32AA requires a further evaluation to be undertaken for any changes made or proposed to the Proposed Plan since the section 32 evaluation was completed. This further evaluation can be published as a separate report, or referred to in the decision making record in sufficient detail to demonstrate it was carried out in accordance with section 32AA.

*District Plan Preparation (Sections 74 and 75)*

20. A council's or in this case the Hearing Panel's decision on a proposed plan must be in accordance with (relevantly):<sup>9</sup>
- (a) its functions under section 31; and
  - (b) the provisions of Part 2; and
  - (c) its obligation to prepare and have regard to an evaluation report prepared in accordance with section 32; and
  - (d) any regulations.
21. When preparing or changing a district plan a council shall have regard to the matters listed in section 74 which include any proposed regional policy statement, a proposed regional plan and management plans and strategies prepared under other Acts. It must take into account any relevant planning document recognised by an iwi authority. It must also have particular regard to an evaluation report prepared in accordance with section
22. Under section 75, it must give effect to any national policy statement, any New Zealand coastal policy statement and any regional policy statement

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<sup>9</sup> Section 74(1) of the Act

and must give effect to a water conservation order or a regional plan (for any matter specified in subsection 30(1)).

23. Finally, under section 75(1), district plan policies must implement objectives, while any rules must implement the policies. Section 76 requires rules to achieve the objectives and policies of a plan.
24. The Environment Court gave a comprehensive summary of the mandatory requirements for the preparation of district plans in *Long Bay-Okura v North Shore City Council*<sup>10</sup>. Subsequent cases have updated the *Long Bay* summary following amendments to the Act in 2005 and 2009, the most comprehensive and more recent of which was provided in *Colonial Vineyard Ltd v. Marlborough District Council*<sup>11</sup>. Since that decision section 32 has been materially amended again<sup>12</sup>. The 2013 Amendment changed the requirements for and implications of section 32 evaluations, but did not change the statutory relationship between the relevant higher order documents (as set out in paragraphs 14-23 above).
25. An updated version of the Long Bay/Colonial Vineyard test, incorporating the 2013 Amendments is set out in **Annexure 3**.

### CHAPTER 3: STRATEGIC DIRECTIONS

26. The majority of the Body Corporate's submissions relate to High Density Residential Chapter and the impacts of residential intensification on residential and established neighbourhood character. The Body Corporate will present legal submissions, and **Mr Walsh** will prepare evidence addressing this later in the year.
27. In relation to Strategic Directions the Body Corporate considers that it is important to have higher order policy framework which guides the implementation of the High Density Residential provisions in order to achieve the purpose of the Act. The Section 42A Report writer **Mr Paetz** considers this integrated planning framework is good planning and resource management practice. The Body Corporate agrees with **Mr Paetz's** expert view that it is important that the Strategic Directions chapter reconciles the competing issues in the district in a balanced manner.

<sup>10</sup> A078/08, 16 July 2008, paragraph [34]

<sup>11</sup> *Colonial Vineyard Ltd v. Marlborough District Council* [2014] NZEnvC 55, paragraph [17]

<sup>12</sup> By section 70 of the Resource Management Amendment Act 2013, which came into force in December 2013

28. The Body Corporate seeks that the Strategic Directions Chapter manages the form of urban development within the urban growth boundaries by ensuring that it is of a high quality and adverse effects on nearby properties are appropriately managed. In his evidence, **Mr Walsh** has set out the benefits of this high quality residential intensification.
29. Although supportive of intensification of residential development, the Body Corporate considers that this intensification must be appropriately balanced with the protection of the amenity and character existing neighbourhoods. Both **Mr Walsh** and **Mr Paetz** identify the risks of badly designed high density developments and neighbourhoods.
30. Signalling this balance in the Strategic Directions chapter will ensure that the application of the rules do not result in intensification to the detriment of the amenity and character that Queenstown is internationally renowned for. Success is dependant on striking the right balance between achieving higher densities and maintaining or improving the quality of the living environment.<sup>13</sup>
31. The Body Corporate has engaged the expert services of **Mr Walsh** and refined its relief in relation to the Strategic Directions and Urban Development Chapters. The evidence of **Mr Walsh** specifies the relief that the Body Corporate now wishes to pursue<sup>14</sup> which is within the scope of the Body Corporate's original submission.
32. This relief sought is outlined below. Although Counsel for the Body Corporate has attempted to engage with the Council as directed in the Minute and Directions of the Hearings Commissioners dated 5 February 2016 regarding this relief sought, discussions are yet to take place. The Body Corporate remains ready and willing to discuss the relief sought with Council.

### **Relief Sought**

33. In **Mr Walsh's** expert opinion, the balance between intensification and amenity protection is not expressed as well as it could be in the Strategic Directions chapter.

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<sup>13</sup> Evidence of Mr Timothy Walsh, at paragraph 6.6

<sup>14</sup> Evidence of Mr Timothy Walsh, at paragraphs 7.1-7.2

34. **Mr Walsh** sets out the relief sought by the Body Corporate in section 7 of his evidence.

### **3.1 Purpose**

35. The Body Corporate supports the general approach of *3.1 Purpose* of the Strategic Direction Chapter, in our submission it does not appropriately acknowledge Queenstown's residential neighbourhoods. **Mr Walsh** notes that these make up a significant portion of the urban environment and suggests an addition to the list in section 3.1 to include *attractive residential neighbourhoods with district character*. This addition recognises the role of residential neighbourhoods in the urban environment.
36. The Section 32 Evaluation Report expressed the resource management issues in the district in the form of 7 goals.<sup>15</sup> Goal 3 is *a quality built environment taking into account the character of individual communities*. The Section 32 Evaluation Report goes on to state that this goal address the issue of high growth rates by having regard to the character of communities but balanced with the emphasis that urban intensification is necessary and character will change.<sup>16</sup> Given Goal 3, including a consideration of character of individual communities in the Purpose section is important to shaping the consideration of the Goals, Objectives, Policies and Rules that follow.
37. This also better address Issue 9.3.1 of the Otago Regional Policy Statement (**RPS**) that identifies that adverse effects of urban development can impact on the quality of the built environment. Policy 9.5.5 of the RPS, that the Proposed Plan must give effect to, requires the maintenance or promotion (where practicable) of the quality of life of Otago's built environment through promotion the level of amenity acceptable to the community. In our submission the amendments sought by the Body Corporate better give effect to this Policy.

#### **Policy 3.2.3.1.1**

38. The Body Corporate agrees with the intent of Policy 3.2.3.1.1, however it considers that it is more appropriate to split the policy in two so that the first part relates to the form of the built environment responding to established

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<sup>15</sup> Section 32 Evaluation Report, Strategic Direction, page 5

<sup>16</sup> Section 32 Evaluation Report, Strategic Direction, page 9



character, and the second part relates to effects on that character by ensuring that any changes to established character contribute positively to the amenity, quality and enjoyment of the area.<sup>17</sup>

39. As notified, Policy 3.2.3.1.1 anticipates that increasing density will result in some change to character. The Body Corporate agrees with **Mr Bird**<sup>18</sup> for the Council when he states that this policy provides for increased density responding to character, infrastructure and sustainability concerns. In our submission, **Mr Bird** has not addressed what is lacking from the policy which is an explicit policy direction to ensure that any change is positive and not negative. As **Mr Walsh** has set out in his evidence, there can be intensification without negative amenity and character effects. The amendments sought by the Body Corporate better achieve the Council's own objective *to promote a well designed and integrated form*.<sup>19</sup>
40. This amendment will create a better balance in the Strategic Directions Chapter between encouraging intensification while protecting amenity and recognising and respecting local character which is an outcome sought by both the Council and the Body Corporate. It will also better achieve the need for good quality urban design approaches emphasised in the Councils' Urban Design Strategy.<sup>20</sup>
41. It is submitted that together, these amendments detailed by **Mr Walsh** are the most appropriate way to achieve the purpose of the RMA and give effect to section 7(c) and (f) of the Act.

#### **COUNCIL OFFICERS REPORT AND COUNCIL EVIDENCE**

42. Where relevant to the Strategic Directions Chapter we have referenced and responded to the Council Officer Report and associated evidence throughout these legal submissions.
43. The Body Corporate agrees with the goals and outcomes sought assessment of the Strategic Direction and Urban Development Chapters in the Section 42A Report and in the evidence of Mr Bird.

<sup>17</sup> At paragraph [7.3] of Mr Walsh's Statement of Evidence

<sup>18</sup> Evidence of Mr Clinton Bird, at paragraph 6.11

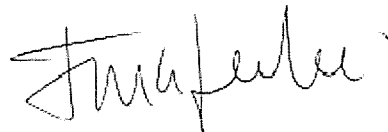
<sup>19</sup> Objective 1 of Goal 2, page 21 Section 32 Report – Strategic Directions

<sup>20</sup> Urban Design Strategy 2009

44. However the Body Corporate considers that the refined relief outlined above better achieves those outcomes sought by the Proposed Plan compared to the notified version. This can be achieved without jeopardising or adding risk to the intensification goals of the Council or protection of the character and amenity of the environment.

## CONCLUSION

45. In our submission the Proposed Plan needs to encourage both increased residential intensification and a high level of amenity in residential developments through high quality design that considers the effects on neighbours and neighbourhood character. Expert witnesses for the Council agree; indeed this is one of their Goals.
46. The Body Corporate's refined relief will provide the necessary higher order policy direction to ensure that there is a balance between intensification and the maintaining or improving the quality of the living environment. This will significantly assist in ensuring that the application of the mechanical provisions in the Proposed Plan has an appropriate focus and balance.<sup>21</sup>
47. This will better give effect to section 7(c) of the Act, better give effect to the relevant objectives and policies of the Regional Policy Statement and Proposed Regional Policy Statement, and ultimately is the most appropriate way to achieve the Purpose of the Act.<sup>22</sup>
48. Most of the submission points of the Body Corporate will be addressed at the High Density Residential hearing, including the methods used to give effect to the balance between intensification and the quality of the environment. **Mr Walsh** will also prepare a complementary statement of evidence to his first statement at that time.



**J M G Leckie**

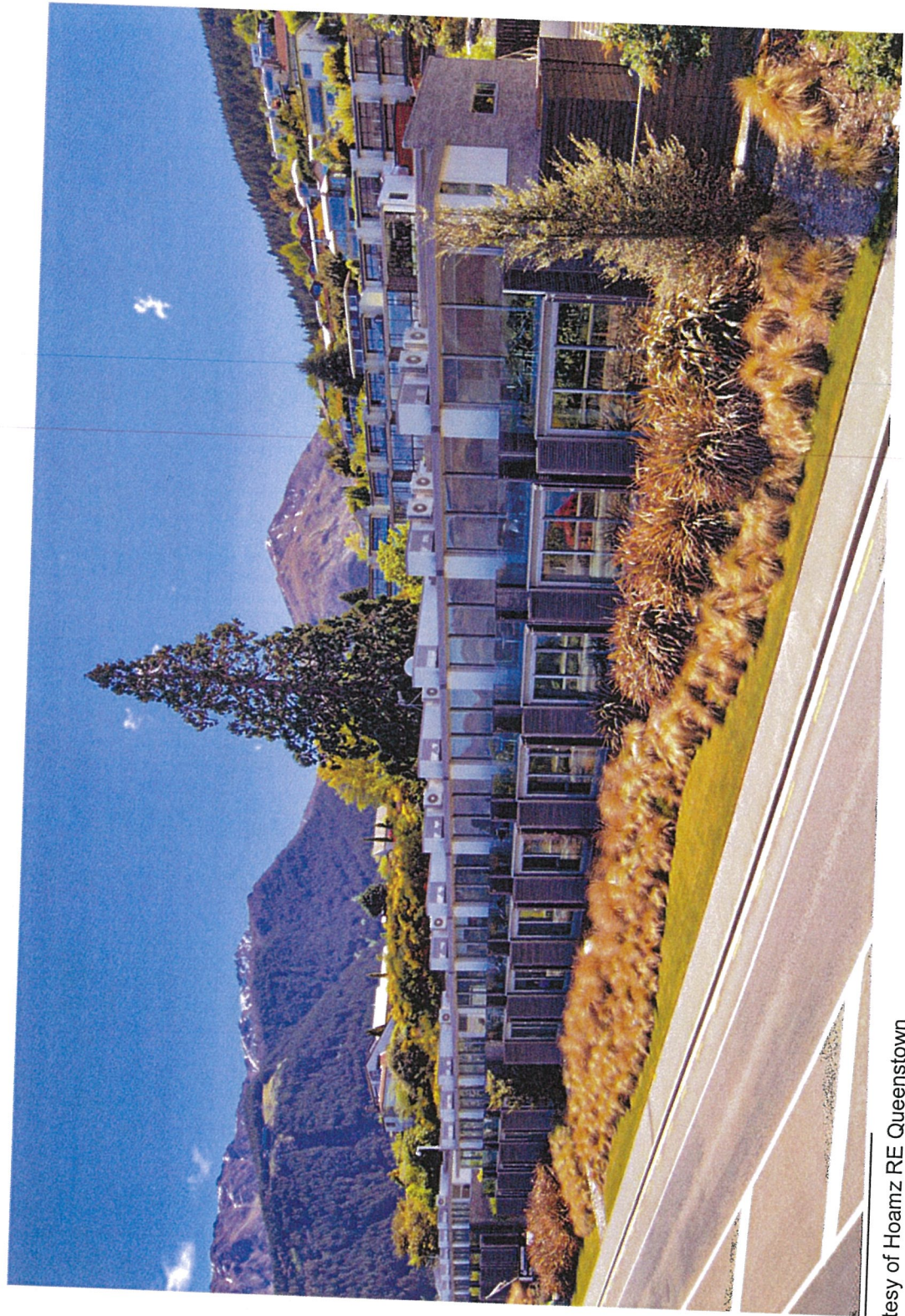
Counsel for the Pounamu Body Corporate Committees

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<sup>21</sup> Evidence of Mr Timothy Walsh, at paragraph 7.2

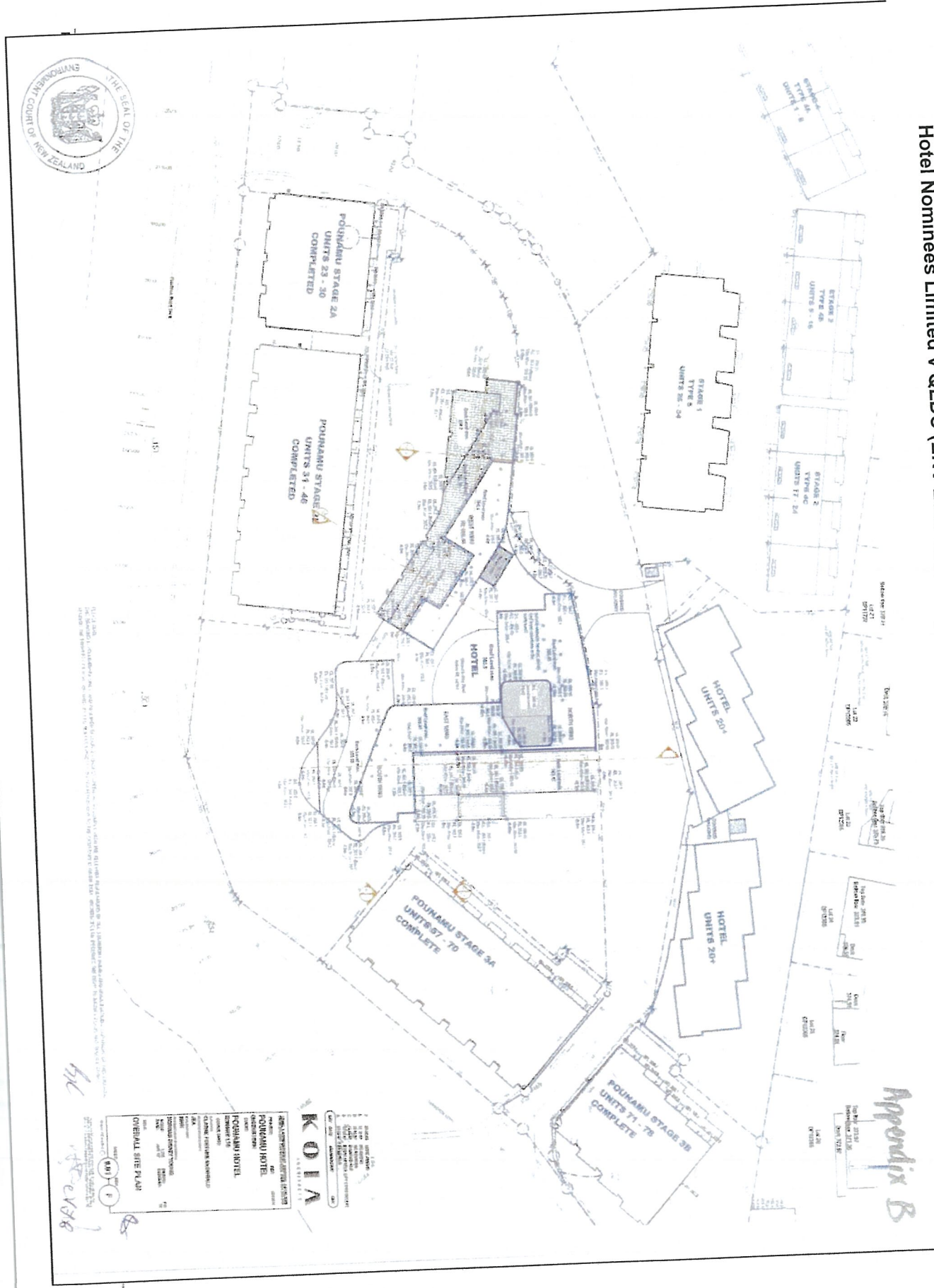
<sup>22</sup> Evidence of Mr Timothy Walsh, at paragraph 7.4

Annexure 1: Photograph of Pounamu Apartments<sup>23</sup>



<sup>23</sup> Photo courtesy of Hoamz RE Queenstown

Annexure 2: Master plan of former Hilton Hotel and Pounamu Apartments included as Appendix B to Consent Order for Pounamu Hotel Nominees Limited v QLDC (ENV-2007-CHC-191)



**Annexure 3: *The Long Bay/Colonial Vineyard test incorporating the amendments to section 32 made by section 70 of the Resource Management Amendment Act 2013 RMA Amendments***

**General Requirements**

1. A district plan should be designed in accordance with<sup>24</sup>, and assist the territorial authority to carry out – its functions<sup>25</sup> so as to achieve, the purpose of the Act.<sup>26</sup>
2. When preparing its district plan the territorial authority must give effect to a national policy statement, New Zealand coastal policy statement or regional policy statement.<sup>27</sup>
3. When preparing its district plan the territorial authority shall have regard to any proposed regional policy statement.<sup>28</sup>
4. In relation to regional plans:
  - (a) the district plan must not be inconsistent with an operative regional plan for any matter specified in s 30(1) or a water conservation order<sup>29</sup>; and
  - (b) shall have regard to any proposed regional plan on any matter of regional significance etc.<sup>30</sup>
5. When preparing its district plan the territorial authority:
  - (a) shall have regard to any management plans and strategies under any other Acts, and to any relevant entry on the New Zealand Heritage List and to various fisheries regulations (to the extent that they have a bearing on resource management issues in the region)<sup>31</sup>, and to consistency with plans and proposed plans of adjacent authorities;<sup>32</sup>

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<sup>24</sup> RMA s 74(1).

<sup>25</sup> As described in s 31 RMA.

<sup>26</sup> RMA ss 72 and 74(1)(b).

<sup>27</sup> RMA s 75(3)(a)-(c).

<sup>28</sup> RMA s 74(2).

<sup>29</sup> RMA s 75(4).

<sup>30</sup> RMA s 74(2)(a).

<sup>31</sup> RMA s 74(2)(b).

<sup>32</sup> RMA s 74(2)(b).

- (b) must take into account any relevant planning document recognised by an iwi authority;<sup>33</sup> and
  - (c) must not have regard to trade competition.<sup>34</sup>
6. The district plan must be prepared in accordance with any regulation.<sup>35</sup>
  7. The formal requirement that a district plan must<sup>36</sup> also state its objectives, policies and the rules (if any) and may<sup>37</sup> state other matters.
  8. A territorial authority now has obligations to prepare an evaluation report in accordance with section 32 and have particular regard to that report.<sup>38</sup>
  9. A territorial authority also has obligations to prepare a further evaluation report under where changes are made to the proposal since the section 32 report was completed.<sup>39</sup>

### Objectives

- (viii) The objectives in a district plan (change) are to be evaluated by the extent to which they are the most appropriate way to achieve the purpose of the RMA.<sup>40</sup>

### Provisions<sup>41</sup>

- (ix) The policies are to implement the objectives, and the rules (if any) are to implement the policies.<sup>42</sup>
- (x) Each provision is to be examined, as to whether it is the most appropriate method for achieving the objectives of the district plan, by:
  - a. identifying other reasonably practicable options for achieving the objectives;<sup>43</sup>

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<sup>33</sup> RMA s 74(2)(b).

<sup>34</sup> RMA s 74(3) .

<sup>35</sup> RMA s 74(1)(f).

<sup>36</sup> RMA s 75(1).

<sup>37</sup> RMA s 75(2).

<sup>38</sup> RMA s 74(1)(d) and (e).

<sup>39</sup> RMA s 32AA

<sup>40</sup> RMA s 32(1)(a).

<sup>41</sup> Defined in s32(6), for a proposed plan or change as the policies, rules or other methods that implement of give effect to, the objectives of the proposed plan or change.

<sup>42</sup> RMA s75(1).

<sup>43</sup> RMA s32(1)(b)(i).

- b. assessing the efficiency and effectiveness of the provisions in achieving the objectives, including:<sup>44</sup>
- identifying and assessing the benefits and costs of the environmental, economic, social and cultural effects that are anticipated from the implementation of the provisions, including opportunities for economic growth and employment that are anticipated to be provided or reduced;<sup>45</sup> and
  - quantifying these benefits and costs where practicable;<sup>46</sup> and
  - assessing the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.<sup>47</sup>

## Rules

- (xi) In making a rule the territorial authority shall have regard to the actual or potential effect on the environment of activities including, in particular, any adverse effect.<sup>48</sup>

## Other Statutes

- (xii) The territorial authority may be required to comply with other statutes.

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<sup>44</sup> RMA s32(1)(b)(ii).

<sup>45</sup> RMA s32(2)(a).

<sup>46</sup> RMA s32(2)(b).

<sup>47</sup> RMA s32(2)(c).

<sup>48</sup> RMA s76(3).

