

Before the Queenstown Lakes District Council

Under the Resource Management Act 1991

And

In the matter of **the Queenstown Lakes Proposed District Plan Stage 3 -
Stream 18 – Hāwea**

Legal Submissions on behalf of Universal Developments Hawea Limited

31 July 2020

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**anderson
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May it please the Panel

Introduction

- 1 These legal submissions are presented on behalf of Universal Developments Hawea Limited in respect of its submission (#3248) on Stream 18 of the Proposed District Plan (**PDP**).
- 2 The submitter seeks extension of the Urban Growth Boundary (**UGB**) and rezoning of 140ha of Rural land (**the Site**) effectively extending the township of Hāwea, with the following elements:
 - (a) 9.2ha of General Industrial Zoning (**GIZ**) – Yielding a potential of 72 (1000m²) sections;
 - (b) 3.5ha of Local Shopping Centre Zone (**LSCZ**) – Yielding a potential of 16,800m² GFA;
 - (c) 3.5ha of land which is an obvious site for a future school;
 - (d) 5.2ha of Medium Density Residential Zone (**MDRZ**) – Yielding a potential of 145 sections;
 - (e) 110.3ha of Lower Density Suburban Residential Zone (**LDSRZ**) (including 29.1ha consented in April 2020 under HASHAA) – yielding a potential of between 881 & 1137 sections plus the 465 sections approved by the consent under HASHAA.
- 3 The Site proposed for rezoning incorporates and expands upon the area consented on 20 April 2020 under the Housing Accords and Special Housing Areas Act 2013 (**HASHAA**) for 465 residential allotments, subdivision consent for 10 bulk lots, and landuse consent for a childcare centre. The Special Housing Area (**SHA**) resource consent is in the process of being implemented and as part of that the significant benefits in terms of guaranteed contribution to affordable housing will be delivered:
 - (a) 12.5% of serviced allotments are to be given to the Housing Trust at nil consideration (equating to approximately 58 allotments), including a greater (20%) contribution committed upfront in stage 1 of the development;
 - (b) Additional commitments to affordability including through the commitment to provide a supply of houses at the price point that matches the Kiwisaver First Home Grant ceiling, limiting speculation, visitor accommodation and on-sale of residential allotments;

- 4 The benefits of the SHA consent are in the process of being realised.
- 5 The rezoning will provide additional benefits in terms of affordable housing, addressing the significant and long term housing crisis by bringing more of the appropriate typology of sections to the market to meet the demand at that level and increase competition. This is entirely consistent with the method now promoted through the NPS Urban Development 2020 (**NPS-UD**).
- 6 Additional benefits of the rezoning being sought derive from the suitability of the Site and additional controls proposed. The additional housing and commercial/industrial capacity will be on land that is flat, sunny, easy to access and develop, and that can be efficiently serviced by the town water and waste water infrastructure. Major upgrades are already proposed for the Hāwea Township or will be required to accommodate the growth council is seeking to promote within Hāwea anyway.
- 7 Proposed measures will ensure quality urban design and amenity outcomes for the rezoned area as well as the wider Hāwea Township, including:
 - (a) Provision of a Structure Plan to ensure an integrated approach to development over the Site with the proposed defensible and logical boundaries;
 - (b) Ensuring a compact and integrated urban form with good pedestrian and cycle connectivity, pedestrian/cycle trail along the water race reserve;
 - (c) Proposed 3.5ha site for a primary school at a central location to service existing and new community;
 - (d) The mechanisms to ensure the defensible boundary include the green buffer in the form of a Building Restriction Area (**BRA**) along the southern edge, industrial zoning at the southern extent of the UGB, limiting access from Domain Road with structure plan controls and associated policies.
- 8 In response to council's evidence additional amendments have been made, and these will be addressed in the Submitter's evidence at the hearing. Mr Williams will produce an amended Structure Plan and provisions including:
 - (a) The 15m BRA is proposed to be extended all the way along the Domain Road boundary to Cemetery Road (increasing a previously 5m wide portion);

- (b) The 15m BRA on the eastern side of the Site is proposed to be extended from the water race up to the southern boundary of the SHA. Given the SHA consent will be implemented it is not considered necessary to extend the BRA into the SHA;
- (c) The primary roading network originally shown on the indicative Master Plan has been added to the Structure Plan as recommended by Mr Barr, with primary roads within the SHA shown as fixed as per the consent, and those outside of the SHA able to move by up to 50m;
- (d) Mr Williams will be proposing changes to Chapter 27 to ensure that there is a mechanism to address infrastructure and roading. The submitter now proposes that subdivision within the Site, even if in accordance with the Structure Plan, be restricted discretionary. Specific matters of discretion relating to property access and roading, water supply and sewage treatment and disposal will ensure that subdivision does not outpace the necessary infrastructure upgrades;
- (e) With regards to Ms Hampson's recommendations for the LSCZ, one of these is supported - provision for one larger retail tenancy is supported, but Mr Williams will be recommending it allow for up to a 1000m² tenancy rather than the 400m² Ms Hampson recommends.

Matters to be considered – section 74 RMA

Section 31 Functions of territorial authority (section 74 (1) (a))

- 9 Section 31 (a) (aa) squarely makes it a core statutory function of Council to ensure that there is sufficient development capacity in respect of housing and business land to meet the expected demands of the district.

31 Functions of territorial authorities under this Act

(1) Every territorial authority shall have the following functions for the purpose of giving effect to this Act in its district:

...

(aa) the establishment, implementation, and review of objectives, policies, and methods to ensure that there is sufficient development capacity in respect of housing and business land to meet the expected demands of the district:

- 10 The Council does not have a good track record in respect of this core statutory function – the plan framework and processes have not provided the sufficient incentive, and enabled provision of land to the market to meet housing and other needs of the community. This has been to significant detriment of the community's wellbeing.

- 11 In the face of this track record for one of its Council's primary functions, Universal Developments is promoting what should be a very palatable contribution to resolving the issue that the District is likely to continue to face over the medium and long term – the rezoning of land that is flat, accessible, able to be serviced, the logical extension of an existing urban area and development that does not impact any important cultural, landscape or other natural values.
- 12 It would be in accordance with Council's section 31 functions to confirm the rezoning sought. Approval of the rezoning is not inconsistent with or contrary to any aspect of section 31.

Part 2 (section 74 (1) (b))

- 13 There are no adverse effects on s 6 RMA matters – which in this District, particularly when it comes to the tension between planning for development to meet housing and other needs and protection of outstanding natural landscapes, is a **significant** advantage of the Site:
 - (a) There will be no adverse effects on the margins of lakes or rivers, or on outstanding natural features (**ONF**) or landscapes (**ONL**) (s 6 (a) and (b));
 - (b) There are no areas of significant indigenous vegetation or habitats (s 6 (c));
 - (c) The proposal will enhance public access to the nearby Hāwea River (s 6 (d)). The Structure Plan is designed taking into consideration the existing cycle/pedestrian way from Domain Acres to the Hāwea Township. The Structure Plan includes the proposal for an additional cycle/pedestrian way along the Hāwea water race, enabling access through the centre of the Site and connecting the eastern side of the Site to Domain Road and the Hāwea River, and then along Domain Road on to Hāwea;
 - (d) There are no impacted wāhi tūpuna or customary rights (s 6 (e) and (g));
 - (e) There are no impacts on historic heritage (s 6 (f));
 - (f) The rezoning will not give rise to any significant risks from natural hazards (s 6 (h)).
- 14 In terms of section 7, the relevant provisions to have particular regard to are section 7(b) "the efficient use and development of natural and physical resources", section 7 (c) "the maintenance and enhancement of amenity

values" and (f) the maintenance and enhancement of the quality of the environment".

- 15 There can be little doubt that this Proposal will achieve the efficient use and development of natural and physical resources for residential, recreational, industrial, community (including education) and commercial / mixed use purposes.
- 16 The Site is marginal farm land, a lot of it covered in mature pines, of poor soil quality for primary productive uses, and which contains limited ecological values. The rezoning of the Site as proposed is an efficient use of the land resource.
- 17 In terms of section 7 (c) and (f), effects on visual amenity values are entirely appropriate, and are an expansion of the already consented subdivision and landuse consent for 465 dwellings.
- 18 It is submitted, in reliance on Mr Espie's evidence, that the Site is appropriate for the proposed rezoning given its proximity to an existing urban area (rather than creating rural satellite development); it is otherwise of limited productive value; is not an ONF/L; is not prominent/ visually displayed, and does not have particularly pastoral or picturesque aesthetics. While some changes to landscape character and visual amenity are inevitable in a greenfield development like this, these have been appropriately mitigated for the Site. Also, as will be noted later in these submissions in respect of the new NPS-UD, "change" is specifically contemplated that may detract from amenity values for some, but which improves amenity values and accessibility for housing to others – and those changes are deemed to be not adverse (Policy 6 (b));
- 19 Ms Gilbert maintains¹ that the proposed zoning and Structure Plan are inappropriate in terms of effects on landscape character and visual amenity values, that the proposed landscape buffers are unsuitable in places to create a defensible edge and maintain landscape character, and that the scale of the proposed development is at odds with the character of the existing Hāwea Township.
- 20 However, Ms Gilbert considers development that would be appropriate in terms of landscape effects could be achieved through extension/amendment of the proposed landscape buffers around the Site boundary, and amendment to the southern extent of the Site boundary.

¹ As addressed in her rebuttal evidence.

- 21 Universal Developments does not support any amendment to the extent of the Site boundary, and nor can it support extension of the landscape buffer where it will compromise the already consented requirements for the SHA consent.
- 22 In response to Ms Gilbert's outstanding concerns, and in consideration of the amended Structure Plan and Chapter 27 provisions proposed, Mr Espie's position is:
- (a) The Site is considerably less sensitive to landscape change than the majority of rural areas in the District, is within an area of Rural Character Landscape of low sensitivity to urban expansion, and is suitable for urban/suburban development;
 - (b) The landscape buffers around the Site boundary, in conjunction with the restricted discretionary status for subdivision in accordance with the Structure Plan, provide for logical and defensible edges to the expanded urban area;
 - (c) Historic subdivision, the rezoning of land within Hāwea to LDSRZ, the existing Large Lot Residential Zone, consented SHA and consented Street rural living development have already and will continue to change the character of Hāwea Township to a larger urban/suburban town;
 - (d) Visual amenity effects on elevated views from within the existing Township will be low to moderate in the short term, reducing as the new development matures. Visual amenity effects on local road users along Cemetery and Domain Roads will not be inappropriate and will be mitigated by the proposed landscape buffers and development controls.

Section 32 evaluation – section 74 (1) (d) and (e)

- 23 Section 32 requires council to identify reasonably practicable options for achieving the objectives of the proposed plan² and assess the efficiency and effectiveness of the proposed provisions in achieving the objectives³. In its assessment the council must identify and assess the benefits and

² S 32(1)(b)(i) RMA.

³ S 32(1)(b)(ii) RMA.

costs of the effects anticipated from the implementation of the provisions, and quantify them if practicable⁴.

- 24 The council's section 32 evaluation for the Hāwea UGB and existing Hāwea Township Zone⁵ is clearly premised on the expectation that the existing Township Zone will be 'upzoned' to LDSRZ, increasing density and therefore development capacity within the existing Hāwea UGB. It is through this lens that the section 32 evaluation and council's evidence determine that expansion of the Hāwea UGB and urban area is not appropriate, because plan-enabled development within the existing Township is sufficient to meet housing demand.
- 25 The section 32 evaluation does consider the option of extending the Hāwea UGB, however only in conjunction with the option of retaining (and extending) the Settlement Zone density (Option 4). The costs of this option are determined to be that it does not provide for intensification of development or diversity of land use, and is an inefficient use of land.
- 26 The section 32 evaluation does not consider the option of extending the UGB and enabling development to a higher density both within the existing Township and in the extended area, whilst enabling a range of land uses. This is an insufficient assessment of reasonably practicable alternatives, particularly where this option was clearly signalled to council at Stage 1 as relief to be sought by the submitter.
- 27 If a costs and benefits analysis of this option had been carried out it would have been clear the benefits outweigh the costs, and that this option is an appropriate way to achieve the purpose of the RMA with minimal costs or adverse effects. As discussed already in these submissions, there is an absence of any tangible downside resulting from the proposed development. The primary concern is landscape effects, which are addressed through the amended proposal. The benefits include enabling a range of land uses at varying densities, providing for housing, industrial, business and education uses, in particular increasing housing stock (including affordable housing) in a growth area.
- 28 Particularly in light of the new NPS-UD, discussed next, it is submitted that it is not sufficient to simply not consider the proposal as an option because the council identifies no 'need' for additional residential and business land. In the face of the significant and long term housing crisis that has developed

⁴ S 32(2) RMA.

⁵ S 32 Evaluation for Townships.

under council's stewardship to date, that is a surprising and short sighted position for council to take.

- 29 The assessment of the proposal must be effects based – this land can suitably be developed for urban uses, will increase supply to meet the demand not being met over the medium to long term, without adverse effects, while providing for the wellbeing of people and communities.

NPS-UD 2020 – section 74 (1) (ea)

- 30 In very simple terms, the new NPS-UD directs local authorities to support competitive land and development markets, to be responsive to proposals (such as Universal Developments') to enable development to meet demand for housing and business space.
- 31 Section 75 (3) requires council to give effect to the NPS-UD. The NPS-UD will come into force on 20 August 2020, and requires local authorities to amend their district plans to give effect to it 'as soon as practicable' (clause 4.1). Given that the NPS-UD will come into force prior to decisions on Stage 3, the Panel must consider whether the provisions of the PDP it is considering will give effect to the relevant provisions NPS-UD, which at this stage in the NPS's implementation will primarily be at the level of the Objective and Policies in Part 2 of the NPS, as there will be some lead in time before many of the action-focused directions in Part 3 are implemented by council.
- 32 Mr Williams and Mr Copeland have provided supplementary evidence on the NPS-UD.
- 33 It is submitted that the key considerations are:
- (a) There is an increased emphasis on the importance of ensuring competitiveness in the market to improve housing affordability, including so far as building in the requirement for "competitiveness margins" over and above development capacity requirements, at every step;
 - (b) This requirement to build in the "competitiveness margin" is not just in respect of housing, but also business land and therefore relevant to the proposed industrial zoning also, as QLDC is a tier 2 local authority (see clause 3.3 (2)). The NPS-UD directs that **as a minimum** there be a "variety of sites that are suitable for different business sectors in terms of location and site size", that there be "good accessibility for all people between housing, jobs", and that the council "support, and limit as much as possible adverse impacts on,

the competitive operation of land and development markets". All these directions from policy 1 are strongly in support of approval of the proposed industrial zoning.

- (c) There is a simpler and clearer direction that councils be responsive to proposals that would open up more development capacity;
- (d) There is increased recognition of the need to provide land not just for living but also employment in the vicinity of residential development;
- (e) There is a very explicit direction that by providing for housing, there will be changes to urban environments and those changes are not, of themselves, adverse effects;
- (f) Decision makers are now required to have particular regard to the contribution a proposal will make to meeting the requirements of the NPS to "provide or realise development capacity".

Regional Policy Statement – section 74 (2)

- 34 Section 75 (3) requires that the district plan give effect to the regional policy statement. The relevant provisions in the Otago RPS 2019 are beyond challenge.
- 35 In respect of landscape, the direction in the RPS in 3.2.6 is that for (non ONL) "highly valued landscapes" that "significant" adverse effects on the "values that contribute to the high value" of the landscape are avoided. It is submitted that not only is the Site **not** a "highly valued landscape", but that even if this threshold is found to be met, there are no significant adverse effects on values that contribute to this high value. Approving the rezoning of the Site would be consistent with, and give effect to this direction in the RPS.
- 36 Mr Williams in his evidence in chief also analyses the relevant RPS provisions on urban growth, from paragraph 73 onwards, and concludes that in his opinion the urban zoning of the site aligns with and promotes the relevant provisions in the RPS – it is urban growth providing addition housing and business land that is strategic, coordinated, effectively integrated, minimises adverse effects on rural productive land and landscape values.

Proposed District Plan

- 37 Mr Williams assesses the relevant settled objectives and policies of the proposed district plan and the Hāwea Community Plan at paragraph 84 onwards of his evidence in chief, and concludes that in his opinion the

rezoning in the manner proposed aligns well with the settled plan priorities, particularly as it is promoted as a logical extension of an existing urban area, with a comprehensive structure plan and defensible and logical boundaries.

Scope to accept the submission

38 We support submissions of the council⁶ that the two limb legal test as to whether a submission is "on" a plan change is set out in *Motor Machinists*⁷ as follows:

- (a) whether the submission addresses the change to the preexisting status quo advanced by the proposed plan; and
- (b) whether there is a real risk that people affected by the plan change (if modified in response to the submission) would be denied an effective opportunity to participate in the plan change process.

39 In terms of the extension of the UGB, the scope to seek amendment of the status and location of the Hāwea UGB comes from the submitter's Stage 1 submission⁸ and appeal⁹. Mediation on the Stage 1 appeal was held on 20 March 2019. The parties to the mediation agreed that the appeal point on the location of the Hāwea UGB would be placed on hold until after notification of Stage 3 of the PDP¹⁰. It was agreed that as part of its section 32 assessment in Stage 3 the council would consider the most appropriate location and extent of the Hāwea UGB, including whether the UGB should be extended south of Cemetery Road¹¹, and that the parties would be able to submit on the section 32 assessment¹². The agreement is detailed at [8]-[9] of the mediation agreement attached as Appendix A. The Hāwea Community Association was a party to the mediation agreement.

40 In terms of the rezoning, it is submitted that the rezoning sought for the land south of the existing Hāwea Township is an extension of the LDSR zoning proposed for the Hāwea Township, in line with the test set out by the Court

⁶ Legal submissions for QLDC, dated 29 June 2020, at [4.3]-[4.4].

⁷ *Palmerston North City Council v Motor Machinists Ltd* [2013] NZRMA 519.

⁸ Submission #414 by Clark Fortune McDonald and Associates, to which Universal Developments Hawea Limited is successor.

⁹ ENV-2018-CHC-065.

¹⁰ Mediation Agreement on Topic 16: Rezoning Appeals (Group 1), Clark Fortune McDonald & Associates and Streat Developments Ltd, dated 20 March 2019 at [9.3] – [9.4].

¹¹ *Ibid* [9.1]-[9.2].

¹² *Ibid* [8].

in *Motor Machinist* – the submission "addresses" the proposed plan by seeking an extension of the proposal to rezone Hāwea LDSR¹³.

- 41 In the ODP the Hāwea Township was zoned part Township Zone and part Rural Residential Zone. The Township Zone is being reviewed as part of Stage 3, with some of the operative Township Zones being proposed to be changed to alternative zoning. This includes the Hāwea Township, with the Township Zone being proposed to be changed to LDSR.
- 42 The council has clarified its position on scope that it considered submissions which seek a Stage 3 zoning over non-stage 3 land to be "on" Stage 3 of the PDP¹⁴. This approach to scope is necessary to ensure procedural fairness, i.e. that submitter have the opportunity to seek a stage 3 zoning over their land in stage 3, given that the opportunity to seek this outcome was not available in earlier stages.
- 43 However it is further submitted that the relief sought to rezone parts of the submitter's land to non-stage 3 zonings is also incidental relief. While some of the zonings sought were considered in Stage 1, there was not in reality the opportunity to review, change and extend the Hāwea operative Township Zone in Stage 1. It would have been illogical to consider rezoning the submitter's site in isolation, separate from consideration of the Hāwea Township Zone. As such, the opportunity to seek these rezonings logically arises in Stage 3, with the review of the Township Zones.
- 44 In light of the second limb of the *Motor Machinists* test regarding opportunities for other parties to participate in the plan change process, it is noted that the s 32 evaluation report considered expansion of the Hāwea UGB to the south, and that Ms Gilbert's Hāwea Urban Growth Boundary Landscape Assessment¹⁵ which provided support for the s 32 evaluation discussed the potential for urban development south of Cemetery Road. As such, the possibility for expansion of the Hāwea urban area was clearly identified in the s 32 Report. It is also relevant that the Hāwea Community Association were a party to the Stage 1 appeal, and were aware of the intentions of the submitter to seek an expansion of the Hāwea Township Zone to the south. No party has argued that public participation of persons

¹³ Palmerston North City Council v Motor Machinists Limited 2013 [2013] NZHC 1290 at [80]

¹⁴ Legal submissions of QLDC at [4.5].

¹⁵ Dated August 2019, attached to the s32 Report as Appendix 2.

directly affected by the additional changes sought have been denied an effective response.¹⁶

Receiving environment

- 45 The receiving environment includes:
- (a) The Site which is currently a combination of Rural Zone and Rural Residential Zone, as zoned under Stage 1 of the PDP;
 - (b) Land to the north of the Site and west of Capell Avenue (aside from a narrow strip of land immediately to the east of Capell Avenue) is LDSR (operative);
 - (c) Land to the north of the Site and east of Capell Avenue and almost up to Grandview Road which was zoned large Lot Residential A (**LLR A**) under PDP Stage 1, however is now proposed to be rezoned LDSR. This site is also known as the Sintenal Park development, and is the subject of an existing implemented consent which has led to the current allotment layout, of sizes down to 800m²;
 - (d) Further to the north east, beyond Grandview Road, the zoning remains LLR A.

Resource consent

- 46 Under HASHA Universal Developments was granted subdivision and landuse consent for 465 residential allotments, subdivision consent for 10 bulk lots, and landuse consent for a childcare centre on 20 April 2020. The consented area is 34ha, and forms a portion of the area now being sought for rezoning. That consent now operates as a consent pursuant to the RMA for all intents and purposes, and has been assessed as relevant by council's experts.
- 47 In its submission Universal Developments did not seek to rely on the Minister establishing part of the area as a SHA, as the Deed between Universal Developments and Council prevented it from doing so. However, now that the resource consent has been granted, it is a matter of fact that that Consent exists, and as such the consent forms part of the receiving environment.

¹⁶ Ibid, [82]

- 48 The primary authority on "effects on the environment" is *Hawthorn*¹⁷ where the Court of Appeal held that, in relation to s 104(1)(a) RMA, "environment" includes the future state of the environment as it might be modified by the utilisation of permitted activity rights, and the implementation of resource consents which have been granted at the time the application is considered, where it is likely those consents will be implemented.¹⁸
- 49 Counsel accepts the council's submission that the High Court in *Shotover Park*¹⁹ held that when considering plan changes (as opposed to resource consents), the decision maker is not obliged to interpret "environment" as defined by the Court of Appeal in *Hawthorn*²⁰.
- 50 However, *Shotover Park* was decided on the factual basis that the granted resource consents in question were subject to appeal. It is clear from the High Court's decision that this was a fundamental consideration in the Court's overall determination. The Court noted that the "likely to be implemented test" from *Hawthorn* was required to be a "real world" analysis and that, taking a practical approach, the Environment Court had been unable to assess likelihood because the consents were subject to appeal²¹. The High Court considered the status of the consents in detail and summarised the issue for the Environment Court as follows:

[130] It would be very hard for Judge Borthwick to have to justify in the public interest, let alone against the efficient policy of the RMA, abandoning delivering a decision on PC19 while awaiting appeals on the Foodstuffs and Cross Roads resource consents through the appellate Courts. She did not.

[131] On the other hand, if she was going to go ahead and assume that the resource consents were granted, and write a plan change, the provisions of which would adopt the logic and reasons of the grant of the resource consent, this could have nullified the outcome of the appeal process. For if, as a result of the appeal process and the referral back, the resource consents were not granted, the parties favouring that outcome would be thwarted by the adoption of the challenged outcome in PC19

[132] I consider that Judge Borthwick's division had in fact no choice but to keep going.

¹⁷ *Queenstown Lakes District Council v Hawthorn Estate Ltd* [2006] NZRMA 424 (CA).

¹⁸ *Ibid* [84].

¹⁹ *Shotover Park Ltd v Queenstown Lakes District Council* [2013] NZHC 1712.

²⁰ *Ibid* [4].

²¹ *Ibid* [117]-[118].

- 51 Most telling, the High Court concluded its analysis by noting that if the status of the consents was finalised there may still be time for the Environment Court to consider the consents as likely to be implemented.²²
- 52 It is submitted that High Court's determination in *Shotover Park* is of limited application to the case at hand, given the fundamental factual difference of the status of the consent(s) in question. In this case the consent is not subject to appeal.
- 53 Regardless, if the Panel considers *Shotover Park* should be applied in this case, *Shotover Park* is not authority that the interpretation of "environment" in *Hawthorn* should not apply when considering plan changes. Rather, it is authority that decision makers are required to exercise their discretion, on a principled basis, to determine whether the "likely to be implemented" test from *Hawthorn* should be applied on the facts to the case at hand.
- 54 It is submitted that in this case it is appropriate for the Panel to apply the *Hawthorn* "likely to be implemented test", and that on the facts the consent forms part of the receiving environment because it will be implemented. Mr Hocking will address this in more detail.
- 55 To be clear, we are not suggesting that the consented development for the SHA forms the permitted baseline for the proposed rezoning, rather we are submitting that the consented development is a part of the receiving environment to be considered by the Panel when having regard to the actual and potential effects on the environment of the proposal, in accordance with s 76(3) RMA.

Council's proposed affordability criteria

- 56 Mr Barr's proposed provisions for the 'Lake Hāwea South' development (provided in case the Panel are minded to grant the relief sought) include a housing affordability criteria.
- 57 It would be understandable if the council's intention with the affordability criteria was to ensure that Universal Developments delivers on the HASHAA requirements for affordable housing within the SHA consented land. In that case the submitter can confirm it fully intends to deliver on the SHA along with the significant housing affordability obligations – evidence will be presented to this effect.

²² Ibid [134].

58 However, the indication from Mr Barr is that he supports the affordability criteria for the whole of the Site. This position is strongly opposed by the submitter on a number of grounds:

- (a) There is no requirement or direction in the RMA, NPS-UDC, NPS-UD, RPS or the strategic chapters of the PDP for a housing affordability criteria;
- (b) It is questionable whether such a method has any basis in the RMA. The RMA does not consider housing affordability and does not contain provisions similar to ss 14 and 15 of HASHAA which set out the meaning and criteria for qualifying developments under that legislation;
- (c) As far as we are aware the council has not introduced housing affordability criteria for any other area of urban land in the District zoned through the PDP review process;
- (d) There is no section 32 evaluation to support the proposed criteria. Further there is no explanation of the effects or outcomes the council is trying to manage through implementation of the criteria, and therefore no evidence to support whether the criteria would be an effective method for achieving the council's desired outcomes;
- (e) It is impractical and unworkable to codify affordability criteria in the PDP when affordability is not something the district plan can appropriately manage. For example, the references to 'market rate' and 'affordability' raise questions as to at what point in time these definitions are determined. 'Affordability' assessed at the consenting stage may be very different to 'affordability' when lots or dwellings come to market. Further, there are potential issues around compliance and enforcement under the RMA;
- (f) Practically, the criteria would most likely have the effect of disincentivising residential development within the 'Lake Hāwea South' area, not enabling affordable housing. The Structure Plan as proposed by the submitter provides for housing supply at a range of densities which will drive competition and more effectively create affordable housing opportunities than the proposed criteria.

59 Mr Williams and Mr Copeland have discussed the affordability criteria further in their evidence.

Infrastructure

- 60 Universal Developments has provided evidence that water, wastewater and roading infrastructure upgrades as required to service the rezoned Site can be accommodated.
- 61 Regarding water and wastewater, Mr Waite's evidence is that existing infrastructure can be upgraded to service the proposed rezoning. Mr Powell accepts that, but continues to oppose the rezoning on the basis that such upgrades are not contemplated or funded in the LTP.
- 62 Council have not provided any modelling in regards to water and wastewater, but appear to be taking a principled opposition to the rezoning without justification in relation to infrastructure.
- 63 Lack of funding is not appropriate justification to oppose development where there is evidence infrastructure upgrades can be undertaken to provide sufficient capacity. It is unreasonable and illogical to expect that the LTP would already allocate funding for newly sought development. The LTP can be updated year to year so funding can be allocated, or alternative arrangements for funding can be considered via developer agreements.
- 64 Regarding roading, Mr Carr's evidence is that intersection and roading improvements can be accommodated within existing legal roads. Mr Smith maintains that the required intersections cannot reasonably be engineered.
- 65 Again, council has not provided any modelling to support its position on increased demand on the road network, and appears not to have separately assessed the effect of increased demand resulting from growth within the existing Hāwea Township and surrounds independent to the proposed rezoning.
- 66 In it clear that infrastructure upgrades are required for the existing Hāwea Township. Strategically the most appropriate time to considered servicing for additional zoning is now, to ensure capacity enabled through these necessary upgrades is future proofed.

Conclusion

- 67 In conclusion, as stated in opening, there are only obvious significant benefits of the proposed rezoning, as it will assist, in a carefully planned and managed way, to address some of the significant housing issues facing the community. There are no material adverse effects that weigh against approving the rezoning, so that these benefits can be realised.

Dated this 31st day of July 2020

Maree Baker-Galloway

Maree Baker-Galloway
Counsel for Universal Developments Hawea Limited

APPENDIX A – STAGE 1 MEDIATION AGREEMENT

**IN THE ENVIRONMENT COURT
AT CHRISTCHURCH
I MUA I TE KOOTI TAIAO O AOTEAROA**

**ENV-2018-CHC-065
ENV-2018-CHC-086**

IN THE MATTER of the Resource Management Act
1991

AND

IN THE MATTER of appeals under clause 14 of
Schedule 1 of the Act against
decisions of the Queenstown
Lakes District Council on Stage 1
of the Proposed Queenstown
Lakes District Plan

BETWEEN **CLARK FORTUNE MCDONALD
& ASSOCIATES
STREAT DEVELOPMENTS LTD**

Appellants

AND **CLARK FORTUNE MCDONALD
& ASSOCIATES
HAWEA COMMUNITY
ASSOCIATION INC
OTAGO REGIONAL COUNCIL
UNIVERSAL DEVELOPMENTS
LTD**

Section 274 Parties

AND **QUEENSTOWN LAKES
DISTRICT COUNCIL**

Respondent

MEDIATION AGREEMENT

TOPIC 16: REZONING APPEALS (GROUP 1)

**CLARK FORTUNE MCDONALD & ASSOCIATES
STREAT DEVELOPMENTS LTD**

20 March 2019

Queenstown Lakes District Council

Counsel: H L Baillie

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PARTIES

Appellants

- A. Clark Fortune McDonald & Associates
- B. Streat Developments Ltd

Section 274 parties

- A. Clark Fortune McDonald & Associates
- B. Hawea Community Association Inc
- C. Otago Regional Council
- D. Universal Developments Ltd

Respondent

- E. Queenstown Lakes District Council

BACKGROUND

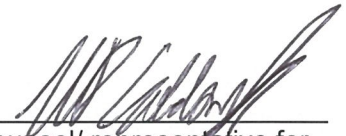
1. The Queenstown Lakes District Council (**Council**) notified its decisions on Stage 1 of the Proposed Queenstown Lakes District Plan (**PDP**) on 7 May 2018. The appellants listed above appealed to the Environment Court. Parts of the appeals were allocated into Topic 16 “Rezoning Appeals (Group 1)”.
2. Seven parties gave notice of their intention to be a party to the appeals.
3. The following parties subsequently withdrew their interest in the appeals:
 - 3.1 Marc Scaife;
 - 3.2 Queenstown Country Club;
 - 3.3 Remarkables Park Ltd; and
 - 3.4 Steve Xin.
4. The following parties gave notice of their intention to participate in mediation:
 - 4.1 Clark Fortune McDonald & Associates;
 - 4.2 Otago Regional Council; and
 - 4.3 Universal Developments Ltd.
5. The Hawea Community Association Inc filed late section 274 notices and applications for waiver in respect of the appeals. The applications were granted on 15 and 19 March 2019 and the Hawea Community Association Inc participated in mediation.
6. Christine Byrch did not file a mediation attendance form or participate in mediation, and accordingly is not a party to this agreement.
7. Environment Court directed mediation was scheduled for 20 March 2019. The parts of the appeals directed to be mediated were in relation to whether there should be an Urban Growth Boundary (**UGB**) at Lake Hawea Township (**Hawea**), and if so, where it should be located.

8. By way of context, the notified PDP Map 17 did not include a UGB at Hawea. The Decisions Version Map 17 included a UGB. The Parties note that the process outlined in paragraphs 9.1 – 9.2 will enable the Parties to make submissions on the extent of the geographic areas considered in the section 32 report.
9. During mediation, the Parties did not identify a means by which the appeal points could be resolved by consent. However, the Parties agreed further steps as follows:
 - 9.1 The Council will consider, at officer level, the most appropriate geographic scope of the UGB at Hawea (including but not limited to whether the UGB should be extended south of Cemetery Road), as part of its section 32 reporting process in Stage 3 of the PDP (intended to be notified in July 2019);
 - 9.2 The matters to be considered by Council officers in the section 32 report will include:
 - (a) The most appropriate location and extent of the UGB and zoning for Hawea (including the sites subject to the appeals by Streat Developments Limited and Clark Fortune McDonald & Associates, as discussed during the mediation);
 - (b) Appropriate minimum lot sizes at Hawea, including within the Operative Township Zone;
 - (c) Any information provided by the Parties prior to the end of May 2019.
 - 9.3 By 29 March 2019, the Council and Clark Fortune McDonald & Associates will file a memorandum of counsel and amended notice of appeal, to refine the relief in ENV-2018-CHC-065-001 that is allocated to Topic 3, such that the refined relief relates only to the UGB at Hawea; and to request that both ENV-2018-CHC-065-001 (in relation to the text of Chapter 4) and 002 (in regard to the location of the UGB at Hawea) be placed on hold until after notification of Stage 3 of the PDP;
 - 9.4 By 29 March 2019, the Council and Streat Developments Limited will file a memorandum of counsel to request that the relief in its notice of appeal (ENV-2018-CHC-086-001 and

002) that is allocated to Topic 16 be put on hold until after notification of Stage 3 of the PDP;

- 9.5** The Parties agree not to seek an Environment Court hearing on appeal points ENV-2018-CHC-065-001 and 002 and ENV-2018-CHC-086-001 and 002, until after notification of Stage 3 of the PDP.

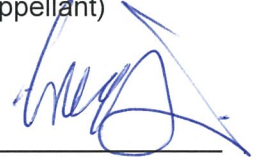
DATED this 20th day of March 2019



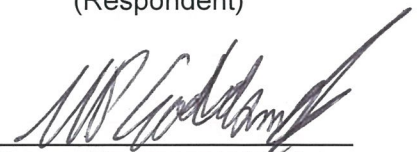
Counsel/ representative for
Clark Fortune McDonald &
Associates
(Appellant)



Counsel/ representative for
Streat Developments Ltd
(Appellant)

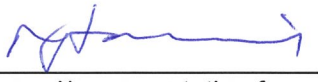


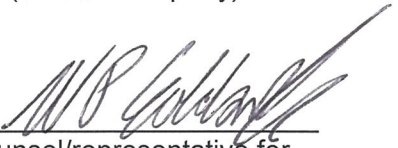
H L Baillie / C A Barr
Counsel/ representative for
Queenstown Lakes District
Council
(Respondent)



Counsel/representative for
Clark Fortune McDonald &
Associates
(section 274 party)


Counsel/representative for
Hawea Community Association Inc
(section 274 party)


Counsel/representative for
Otago Regional Council
(section 274 party)


Counsel/representative for
Universal Developments Ltd
(section 274 party)