

**BEFORE HEARING COMMISSIONERS
IN TIMARU | TE TIHI-O-MARU ROHE**

In the matter of the Resource Management Act 1991

And

In the matter of the hearing of submissions in relation to the Proposed
Timaru District Plan

Between **THE REDWOOD GROUP**

Submitter & Further Submitter

And **TIMARU DISTRICT COUNCIL**

Planning Authority

**MEMORANDUM / REPRESENTATIONS FOR HEARING
ON BEHALF OF THE REDWOOD GROUP**

23 July 2024

JGH

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MAY IT PLEASE THE PANEL:

Introduction

1. As the Panel is aware, I am the project manager for the Redwood Groop (Redwood) in respect of its submissions. I am filing this memorandum and make *representations*¹ on its behalf. While some legal matters are addressed, I am not presenting as a lawyer but as a project manager with a legal background, and having had to navigate the legal frameworks in that context for many projects over the last few years. This includes debates as to scope in at least three recent plan changes (Taupo PC42, the Queenstown Ladies Mile SPP Variation, and Hastings PC5).
2. I have had the benefit of reviewing the legal submissions for the Council. As relevant to Redwood, they raise the following matters:
 - a. Fairness arising from the Council's (through its CCO) sale of the Showgrounds land to Redwood – is it relevant?; and
 - b. Scope, stating:

... the submission sought to provide for specific activities in the Large Format Retail Zone (LFR) or retain the existing commercial zoning. The evidence now seeks to provide for activities not specifically sought in the submission (or previously included in the former commercial zoning), although they are the type of activities that may be generally anticipated in a commercial area.
3. This memorandum/ these representations address these matters.

Fairness

4. This issue has essentially been resolved, with the Reporting Planner having accepted the need to better align the proposed plan provisions with those of the current Commercial 2A Zone (if not what has been consented).
5. However, Redwood does not accept that fairness is an irrelevant consideration. There is highest authority that “context is everything”², and that must include the history to a site, and the basis on which it was sold when the vendor is a territorial authority (even if through a CCO). Fairness

¹ A term commonly applied to where a non-lawyer advocate advances a case on behalf of a submitter, applicant, etc.

² *McGuire v Hastings District Council* [2000] UKPC 43 at [9], citing *R (Daly) v Secretary of State for the Home Department* [2001] 2 WLR 1622 at 1636 per Lord Steyn.

is also an integral requirement of natural justice, and it cannot be suggested that consideration of natural justice is an irrelevant consideration in RMA proceedings.

Scope / Jurisdiction

6. These matters were canvassed comprehensively in the Ladies Mile SPP Variation, with the SPP Panel (Chaired by David Allan) including in an Appendix its understanding of the authorities. I **attach** a copy of that Appendix, but do not intend to speak to it. It is for completeness and for the Panel's assistance, if it might be helpful.
7. In short, as I understand the case law, consideration of scope or jurisdiction has two main considerations:

- a. Whether the relief sought in the challenged submission is incidental to, consequential upon, or (perhaps) directly connected to the matters raised in the Plan Review? (**First Limb**); and
- b. Have potential submitters been given fair and adequate notice of what is proposed in the submission, or has their right to participate been removed? (**Second Limb**).

(the Motor Machinists Test).

8. I do not understand the First Limb as likely to be in issue here, but that the Second Limb is raised, given the Council's legal submissions have stated: *"The evidence now seeks to provide for activities not specifically sought in the submission"*.
9. It is necessary to test whether this is correct, and, if provision is in fact sought for any activities not specifically sought in the submission whether they are sufficiently within the nature of activities that were specifically sought in the submission.
10. I understand that the following activities are at issue:
 - a. Residential;
 - b. Healthcare and childcare facilities; and
 - c. Visitor Accommodation (one only).

11. The “specific” relief sought by Redwood was as follows:

The submitter requests that:

- That the specified provisions of the PDP be deleted or amended to address the matters raised in this submission.
- Should this first relief not be granted, that the LFRZ and associated provisions are deleted in their entirety and replaced with the operative district plan zoning and provisions, with amendments to provide for residential activity.
- Such further or other relief, or other consequential amendments, as are considered appropriate and necessary to address the concerns set out in this submission.

12. Residential activity is specifically referred to in the second bullet-point, and so there can be no issue of scope arising in respect of the residential relief now sought.

13. The body of the submission (under key amendments sought), which the first bullet point incorporates included an amendment sought as follows:

(e) Include **commercial activities**, retail activities, residential activities and food and beverage activities as permitted.

(f) Any additional amendments required to support the full development of the site as **mixed-use** ...

14. Commercial activity is defined as:

means any activity trading in goods, equipment or **services**.

15. Healthcare and childcare facilities, as well as visitor accommodation all trade in services, and so are captured as “commercial activity” which is specifically referred to in the submission. These are also activities that you would expect to find in a “mixed-use” development, which is also specifically referred to in the submission. In the context of a large format centre, that would include other ancillary activities that support these large scale retail activities (consistent with Objective 1 of the LFR Zone), such as healthcare, childcare, and visitor accommodation.

16. Accordingly, on a careful analysis of the submission, it is Redwood’s position that the relief it seeks was all specifically – and at least sufficiently – identified in its submission such that it clearly passes the “Second Limb”.

17. The Panel may proceed with comfort to consider the substance of the relief sought.

Evidence

18. It is well accepted that evidence needs to be assessed and weighed in respect of the usual tests for probative value, such as “relevance, coherence, consistency, balance, and insight”.³ Not much needs to be said about the principles. They just need to be applied in practice.
19. The following statements of evidence have been pre-filed:
 - a. Paul Hudson (Development Manager, Redwood).
 - b. Natalie Hampson (Independent Expert, Economics).
 - c. Hannah Hoogeveen (Independent Expert, Planner).
20. Each of these witnesses has produced a short summary statement, which is being filed with this Memorandum/ Representation.
21. In addition, as foreshadowed in my first Memorandum (but having taken longer to produce than expected), a statement from Redwood’s funders also accompanies this Memorandum/ Representation. The witness (Nathan Buckley) may not be available to attend the hearing, in which case leave is sought to have his evidence tabled. That is not considered prejudicial to the Council or the process, as it relates to context and the “fairness” issue, which is essentially resolved.

23 July 2024

James Gardner-Hopkins

Project Manager

³ *Whitewater New Zealand Inc v New Zealand and Otago Fish and Game Councils* [2013] NZEnvC 131, at [66].

APPENDIX 7: JURISDICTIONAL ISSUE 1 – ARE THE SUBMISSIONS "ON" THE TPLM VARIATION?

First limb

- 1.1 The first limb is described as the "dominant consideration"¹ involving the breadth of alteration to the status quo entailed in the TPLM Variation and whether the submission then addresses that alteration.
- 1.2 Given its importance it is worth quoting from the High Court's decision in *Motor Machinists* which endorsed the earlier High Court decision of *Clearwater Resort Ltd v Christchurch City Council (Clearwater)*². As stated in the Council's Opening Legal Submissions:³

... The First Limb 'serves as a filter', based on the connection between the submission and the degree of notified change proposed. Kós J expanded on the First Limb, explaining that:

In other words, the **submission must reasonably be said to fall within the ambit of the plan change**. One way of analysing this is to ask **whether the submission raises matters that should have been addressed in the s 32 evaluation and report**. If so the submission is unlikely to fall within the ambit of the plan change. Another is to ask **whether the management regime in a district plan for a particular resource ... is altered by the plan change**. If it is not, then the submissions seeking a new management regime for that resource is unlikely to be 'on' the plan change. ... **Incidental or consequent extensions of zoning changes proposed in the plan change are permissible, provided that no substantial further s 32 analysis is required to inform affected person of the comparative merits of that change**.

(emphasis added)

- 1.3 A submission must address the proposed plan change itself to be "on" the plan change. Asking whether a submission raises matters that should have been addressed in the s32 Evaluation Report is one way of doing this. *Motor Machinists* describes one of the two fundamentals of sustainable management to involve a:⁴

... thorough analysis of the effects of a proposed plan (whichever element within it is involved) or activity. In the context of a plan change, that is the s 32 evaluation and report: a comparative evaluation of efficiency, effectiveness and appropriateness of options. Persons affected, especially those "directly affected", by the proposed change are entitled to have resort to that report to see the justification offered for the change having regard to all feasible alternatives. **Further variations advanced by way of submission, to be "on" the proposed change, should be adequately assessed already in that evaluation. If not, then they are unlikely to meet the first limb in Clearwater.**

(emphasis added)

- 1.4 However, the Court goes on to say that:⁵

... **the Clearwater approach does not exclude altogether zoning extension by submission. Incidental or consequential extensions of zoning changes proposed in a plan change are permissible, provided**

¹ *Motor Machinists* at [80].

² *Clearwater Resort Ltd v Christchurch City Council* HC Christchurch AP34/02, 14 March 2003 (*Clearwater*).

³ Opening Legal Submissions for the Council, Appendix B, at [59], relying on *Motor Machinists* at [81].

⁴ *Motor Machinists* at [76].

⁵ *Motor Machinists* at [81].

that no substantial further s 32 analysis is required to inform affected persons of the comparative merits of that change. Such consequential modifications are permitted to be made by decision makers under schedule 1, clause 10(2). Logically they may also be the subject of submission.

(emphasis added)

- 1.5 With this in mind, the Court cautions permitting changes that significantly enlarge the subject matter and resources addressed throughout the process:⁶

In contrast, the Schedule 1 submission process lacks those procedural and substantial safeguards. Form 5 is a very limited document. I agree with Mr Maassen that it is not designed as a vehicle to make significant changes to the management regime applying to a resource not already addressed by the plan change. That requires, in my view, a very careful approach to be taken to the extent to which a submission may be said to satisfy both limbs 1 and 2 of the Clearwater test. Those limbs properly reflect the limitations of procedural notification and substantive analysis required by s 5, but only thinly spread in clause 8. **Permitting the public to enlarge significantly the subject matter and resources to be addressed through the Schedule 1 plan change process beyond the original ambit of the notified proposal is not an efficient way of delivering plan changes.** It transfers the cost of assessing the merits of the new zoning of private land back to the community, particularly where shortcutting results in bad decision making.

(emphasis added)

- 1.6 This was summarised in the Council's Opening Legal Submissions in the following way:⁷

Put another way, this First Limb analysis can be summarised as:

(a) Asking whether the submission raises matters that should have been addressed in the s 32 evaluation and report. If so, the submission is unlikely to fall within the ambit of the plan change; or

(b) Alternatively, ask whether the management regime in a district plan for a particular resource (such as a particular lot) is altered by the plan change. If it is not, a submission seeking a new management regime for that resource is unlikely to be 'on' the plan change.

- 1.7 The Environment Court in *Well Smart Investment Holding (NZQN) Ltd v Queenstown Lakes District Council (Well Smart Investment)* stated:⁸

A section 32 evaluation is usually prepared by the proposer of the plan change, so it has an interest in confining the plan change to the boundaries (and issues) it wants dealt with. Despite that it must comply with section 32(1) RMA. **Indeed, if a section 32 evaluation fails to consider the consequences of some flexibility in the boundary location (because that flexibility might more appropriately achieve the relevant objectives) then that may be a failure in the section 32 evaluation. A sense of fair play suggests it should not lead to jurisdictional consequences for a submitter who claims to have located a better boundary.**

(emphasis added)

- 1.8 In relation to whether the submission relates to matters that should have been addressed in the s32 Evaluation Report there are a number of decisions debating the implications of the Motor Machinist's decision. The Environment Court in *Bluehaven Management Ltd v*

⁶ *Motor Machinists* at [79].

⁷ Opening Legal Submissions for the Council, Appendix B, at [60].

⁸ *Well Smart Investment* at [23].

Western Bay of Plenty District Council (Bluehaven) determined that the absence of consideration in the s32 Evaluation Report is not determinative:⁹

In that sense, we respectfully understand the questions posed in *Motor Machinists* as needing to be answered in a way that is not unduly narrow, as cautioned in *Power*. In other words, while a consideration of whether the issues have been analysed in a manner that might satisfy the requirements of s 32 of the Act will undoubtedly assist in evaluating the validity of a submission in terms of the *Clearwater* test, **it may not always be appropriate to be elevated to a jurisdictional threshold without regard to whether that would subvert the limitations on the scope of appeal rights and reduce the opportunity for robust participation in the plan process.**

(emphasis added)

1.9 The Environment Court further concluded that:¹⁰

Our understanding of the assessment to be made under the first limb of the test is that it is an inquiry **as to what matters should have been included in the s 32 evaluation report** and whether the issue raised in the submission addresses one of those matters. **The inquiry cannot simply be whether the s 32 evaluation report did or did not address the issue raised in the submission. Such an approach would enable a planning authority to ignore a relevant matter and thus avoid the fundamentals of an appropriately thorough analysis** of the effects of a proposal with robust, notified and informed public participation.

(emphasis added)

1.10 This reasoning by the Environment Court finds some support from the High Court's decision of *Albany North Landowners v Auckland Council (Albany North)*.¹¹ While *Albany North* relates to the Proposed Auckland Unitary Plan regime which is "far removed from the relatively discrete variations or plan changes under examination in *Clearwater, Option 5* and *Motor Machinists*",¹² the High Court states:¹³

... While it may be that some proposed changes are so far removed from the notified plan that they are out of scope (and so require "out of scope" processes), it cannot be that every change to the PAUP is out of scope because it is not specifically subject to the original s 32 evaluation. To hold otherwise would effectively consign any submission beyond the precise scope of the s 32 evaluation to the Environment Court appellate procedure. This is not reconcilable with the streamlined scheme of Part 4.

1.11 However, the reasoning in *Bluehaven* is questioned in *Tussock Rise* on the basis of the importance in *Motor Machinists* of information, including comparable evaluations, being available to submitters.¹⁴ In an earlier decision of *Well Smart Investment*, the same Judge as in *Tussock Rise* had noted that "simply because a local authority had put forward what is possibly an inferior section 32 evaluation at the initial step does not mean that a further wrong should be done to interested persons by denying them the right to participate."¹⁵

⁹ *Bluehaven Management Ltd v Western Bay of Plenty District Council* [2016] NZEnvC 191 at [36]. In *Tussock Rise Ltd v Queenstown Lakes District Council* [2019] NZEnvC 111, [2019] NZRMA 509 at [60], the Environment Court raised questions of this approach considering *Motor Machinists* with a focus on prejudice. We address the issue of prejudice under the Second Limb.

¹⁰ *Bluehaven* at [39].

¹¹ *Albany North Landowners v Auckland Council* [2017] NZHC 138.

¹² *Albany North* at [129].

¹³ *Albany North* at [132].

¹⁴ *Tussock Rise* at [60].

¹⁵ *Well Smart Investments* at [38].

1.12 The policy and purpose of the plan change are relevant, with the High Court stating, in *Option 5 Inc v Marlborough District Council (Option 5 Inc)*:¹⁶

... The Court correctly took into account when assessing whether the submission was on the variation:

(a) the policy behind the variation;

(b) the purpose of the variation;

(c) whether a finding that the submissions were on the variation would deprive interested parties of the opportunity for participation.

1.13 Counsel for the Council also commented on the potential inefficiency of process and the other options available for AHFT to obtain the outcomes it is seeking through resources consents, a new plan change or a private plan change.¹⁷

1.14 We have considered the key matters under several headings developed from submissions and case law below. Not all these questions have to be answered positively, it is a question of degree in the circumstances, while noting the need for a careful assessment and the benefits of robust s 32 assessment and notification in avoiding "bad decision making".¹⁸

Second limb

1.15 The second fundamental inherent in sustainable management is underpinned by natural justice concerns. What is required by the test and its rationale is described by Kos J in *Motor Machinists*:¹⁹

The second is robust, notified and informed public participation in the evaluative and determinative process. As this Court said in *General Distributors Ltd v Waipa District Council*:

"The promulgation of district plans and any changes to them is a participatory process. Ultimately plans express community consensus about land use planning and development in any given area."

A core purpose of the statutory plan change process is to ensure that persons potentially affected, and in particular those "directly affected", by the proposed plan change are adequately informed of what is proposed. And that they may then elect to make a submission, under clauses 6 and 8, thereby entitling them to participate in the hearing process. **It would be a remarkable proposition that a plan change might so morph that a person not directly affected at one stage (so as not to have received notification initially under clause 5(1A)) might then find themselves directly affected but speechless at a later stage by dint of a third party submission not directly notified as it would have been had it been included in the original instrument.** It is that unfairness that militates the second limb of the Clearwater test.

(emphasis added)

1.16 This analysis focuses on:²⁰

¹⁶ *Option 5 Inc v Marlborough District Council* (2009) 16 ELRNZ 1 (HC) at [41].

¹⁷ Opening Legal Submissions for the Council, Appendix B, at [65]. This reflects the findings in *Motor Machinists* although we note that the options would be challenging in the present case.

¹⁸ *Motor Machinists* at [79].

¹⁹ *Motor Machinists* at [77].

²⁰ *Motor Machinists* at [82].

... whether there is a real risk that persons directly or potentially directly affected by the additional changes proposed in the submission have been denied an effective response to those additional changes in the plan change process.

1.17 The High Court further commented that:²¹

Plainly, there is less risk of offending the second limb in the event that the further zoning change is merely consequential or incidental, and adequately assessed in the existing s 32 analysis. **Nor if the submitter takes the initiative and ensures the direct notification of those directly affected by further changes submitted.**

(emphasis added)

1.18 In *Clearwater* the High Court stated:²²

... It may be that the process of submissions and cross-submissions will be sufficient to ensure that all those likely to be affected by or interested in the alternative method suggested in the submission have an opportunity to participate. In a situation, however, where the proposition advanced by the submitter can be regarded as coming out of “left field”, there may be little or no real scope for public participation. Where this is the situation, it is appropriate to be cautious before concluding that the submission (to the extent to which it proposes something completely novel) is “on” the variation.

1.19 As identified by the High Court in *Option 5 Inc*, scale and degree are also important considerations in this analysis:²³

... But where the position is not so clear the two factors identified by William Young J will become especially important together with the scale and degree of difference. Scale and degree will also be important when considering the extent to which affected property owners are shut out of the consultation process for the purpose of determining whether the submission is on a variation.

1.20 In closing legal Submissions counsel for the Council concluded as follows:²⁴

Council accepts that AHFT serving notice on neighbouring landowners helps to alleviate some concerns under the second limb of the *Motor Machinists* test. However, Council reiterates that this does not dispose of the concerns for the wider public in general. The AHFT submission, being an increase in 1/5th of the land of the original TPLM Variation, could have wide ranging effects on the wider public of the Dalefield / Shotover / Quail Rise general public. We restate that the concern and focus of the *Motor Machinists* test is to the public at large.

Strategic Context

1.21 Our first consideration is the strategic and policy background to the TPLM Variation. As raised in the AHFT legal submissions, and summarised above, the Extension Area has factored, to varying degrees, within the underlying policy development to the TPLM Variation. The context of all the background policy is to address growth and housing pressures within the district. As set out above these issues are significant and the policy documents recognise that.

²¹ *Motor Machinists* at [83]

²² *Clearwater* at [69].

²³ *Option 5 Inc* at [43].

²⁴ At [84].

- 1.22 In the WBLUS the Extension Area, while identified as having moderate to high capacity to absorb development,²⁵ was not included in the Ladies Mile mapping²⁶ and the mapping for the "Recommended Ladies Mile Gateway Precinct."²⁷ Rather, the WLBUS recommended that the Extension Area be zoned as 'Wakatipu Basin Lifestyle Precinct'. WLBUS also assessed the relevant Landscape Character Unit (**LCU**) for the Extension Area (**LCU 7**).²⁸ While this was a different LCU (but immediately adjacent unit) to the TPLM Site both are recorded as having a 'high' absorption capability.²⁹ Under the heading "potential landscape opportunities and benefits associated with additional development", WLBUS states in relation to LCU 7 "larger-scaled lots suggest potential for subdivision; close proximity to Queenstown; 'developed' context and easy topography."
- 1.23 The Establishment Report set the 'foundation' for the masterplan.³⁰ The Establishment Report states: "The Ladies Mile (Te Putahi) Corridor between Shotover River (Kimi-ākau) and Lake Hayes (Te Whaka-ata a Haki-te-kura) is an area of major strategic importance for Queenstown and the lakes district." This includes at least part of the Extension Area, which aligns with the stipulated 'area of focus'.³¹ The 'indicative Masterplan' within the Establishment Report did not include the Extension Area, but it is adjacent to it.
- 1.24 The draft Spatial Plan identified the Ladies Mile priority development area as including the Extension Area.³²
- 1.25 The AHFT submission on the Spatial Plan stated:³³
- We agree with and support the proposed Spatial Plan especially as; it relates to the eastern growth corridor. It is our view that at the site to which this submission relates is located within the future urban area and is also earmarked as priori development area, and as this submission shows Council had good reason to do so. However, we suggest some changes to the extent of the area with respect to the Lower Shotover so that development in that locality falls into a concise landscape unit and creates a defensible edge where urban development ends and rural residential development begins. We have suggested this in order to discourage urban sprawl but encourage comprehensive development.
- 1.26 The final Spatial Plan does not include the Extension Area within the priority development area mapped for Ladies Mile.³⁴ But, it indicates at least part of the Extension Area (like the rest of the TPLM Site) as "future urban" and within a "frequent public transport corridor."³⁵ It is also clearly within the "eastern Corridor" area. The Spatial Plan TPLM area excludes land to the south of SH6 until east of the QCC land and includes the Threepwood land. No reasoning is provided as to the differing areas between the draft and final version.
- 1.27 As mentioned above, while the 'area of focus' for the Masterplan included part of the Extension Area, the Masterplan maps use:

²⁵ WBLUS, Figure 1.

²⁶ WLBUS, Figures 1 and 2.

²⁷ WLBUS, paragraph 8.6.

²⁸ WLBUS, Table 1.

²⁹ As above, see also Table 2 for a more detailed assessment.

³⁰ Establishment Report, page 9.

³¹ Establishment Report, Figure 9.

³² Map 9, page 60.

³³ Hutchinson submission on the QLDC Spatial Plan, paragraph [2].

³⁴ Map 9, page 68.

³⁵ Map 7, page 58. It also identifies the protected areas and constraints within Extension Area with the same level of constraints as the rest of the TPLM Site (Map 4, page 39).

- (a) an 'approximate focus area'³⁶ that excludes the western end of the 'area of focus' (but is adjacent to it); but
- (b) also contains other maps and plans³⁷ that include the 'full' focus area. There is no discussion as to why and no discussion about other areas.

1.28 The Masterplan does not explain the rationale for, nor has a consideration of, options for the location of the boundaries (especially to the west) for the area that ultimately becomes the TPLM Site. The Masterplan was intended to be, and was, a fundamental step in the development of the TPLM Variation.

1.29 The strategic policy also emphasises the requirement for integrated and co-ordinated urban development and that, within the many confines of the Waikapu Basin such land is a finite, and important, resource which needs to be used efficiently to address the issues of growth and housing pressures.³⁸

The purpose of the TPLM Variation

1.30 We have set out above the drivers (population growth and housing unaffordability) and the purpose of the TPLM Variation, being:³⁹

The Te Pūtahi Ladies Mile Zone implements the Spatial Plan and Te Pūtahi Ladies Mile Masterplan by providing a planning framework designed to achieve an integrated urban environment. The purpose of the Zone is to ensure efficient use of land for the provision of housing within an integrated, well-functioning, and self-sustaining urban community, that is inclusive of communities in nearby zones.

1.31 From this wording the relevance of the Spatial Plan and Eastern Corridor becomes immediately apparent. We have discussed them above. What is also apparent is that the purpose is not just in relation to the TPLM Site but also communities in wider zones. That reflects the clear benefits of, and partial justification for, the TPLM Zone being to benefit the existing surrounding communities and areas.

1.32 The purpose of the TPLM Variation is strongly driven, and supported by the NPS-UD (see Section 3) which requires the Council to provide at least sufficient development capacity to meet expected housing demand and to contribute to a well-functioning urban environment (among other matters). The NPS-UD (and its predecessors) have strongly driven the district wide urban development assessments and responses, which include the TPLM Variation.

1.33 The purpose, and the strategic policy, also emphasise the requirement for integrated and co-ordinated urban development and the efficient use of land for housing (as a finite resource). We consider that issues of integration, co-ordination and efficient use of land for housing⁴⁰ (and its associated infrastructure) also reflect the broader nature of the TPLM Variation itself.

³⁶ Pages 13, 15 and 16.

³⁷ Pages 24, 28 and 30.

³⁸ Section 42A Report at [10.6(e)].

³⁹ TPLM Variation, notified version, page 1.

⁴⁰ See the s42A Report, paragraph [10.5].

1.34 The s42A Report states the intention of the TPLM Variation is to "assist in managing Queenstown's continuing and projected rapid growth, by providing more land for urban use in an efficient way."⁴¹ This is also reflected in the s32 Evaluation Report's four "key issues"⁴² which include "population growth and housing affordability" and "efficient use of land". Under this second issue the s32 Evaluation Report refers to the Independent Hearings Panel for the PDP decisions as acknowledging that "the land at issue [we assume the TPLM Site] would be appropriate for comprehensively planned urban development but that this was not open to it ...".⁴³

1.35 The s32 Evaluation Report then goes onto state that:⁴⁴

In the Wakatipu Basin, land that has a combination of attributes that make that land suitable for accommodating significant population growth, is scarce. These attributes include:

- (i) Physically suitable for development (topography, serviceability);
- (ii) Adjacent or proximate to existing urban areas;
- (iii) On or easily accessible to main transport corridors, and able to be developed in a way that promotes modal shift away from single car trips and towards public and active transport;
- (iv) Able to be developed without compromising natural values, including, in particular, appreciation of the Wakatipu's outstanding natural landscapes and features;
- (v) Able to provide social amenities to serve the local population (existing and future).

1.36 However, the s32 Evaluation Report does not undertake an assessment of the attributes in relation to land to the west of the TPLM Site, despite many (if not all) of the stipulated attributes potentially (if assessment was completed) applying to that land.

1.37 Overall, while the spatial extent of the TPLM Variation was specific we do not consider that the purpose (and the context) excludes the potential for the Extension Area. Rather, providing at least consideration of the inclusion of adjacent areas seems to us to align with the purpose of the TPLM Variation (and its wider and strategic issue of housing).

The nature and scope of the TPLM Variation

1.38 The breadth of the proposed zoning to the present, status quo, zoning is significant (with for example housing densities never applied before in the district). It proposes fundamental changes to the underlying zoning of the TPLM Site and fundamentally alters the PDP by proposing an entire new zoning (Te Pūtahi Ladies Mile Zone - Chapter 49) to it. That new zoning is at the core of the TPLM Variation and provides for an entirely new 'town' to be developed, including commercial areas, open space, high, medium and low-density areas, etc. The TPLM Variation also includes some new areas of zoning types that are already contained within the PDP.

⁴¹ At [10.1].

⁴² At pages 14- 17 and addressed further above.

⁴³ At page 16.

⁴⁴ At pages 16 – 17.

- 1.39 The AHFT submission accepts the zoning (with suggested changes) and does not seek additional zonings. The nature and scope of the TPLM Variation, beyond its boundaries, are unchanged. Rather it seeks that that zoning be applied to the Extension Area.
- 1.40 The AHFT submission proposes to add a considerable amount of additional land to the TPLM Variation. The area being included is not of itself a determining factor but rather the more the area the greater the potential that the submission may go beyond a variation, require more evaluation, and have a greater potential for people to be affected (and hence who may wish to submit). The Extension Area sought in the submission included land owned by other persons. The land area has now been reduced to that owned by the AHFT and QLDC.⁴⁵

Section 32 technical reports

- 1.41 The technical reports attached to the s32 Evaluation Report provide significant detail on the aspects of the TPLM Variation and the potential effects (positive and negative). In this respect the s32 Evaluation Report addresses several matters that also relate (at a general level) to the Extension Area. It is not however (and obviously) a robust assessment relating to the Extension Area, but that does not necessarily mean that "substantial" additional consideration is required.
- 1.42 In relation to the Transport Strategy, it covers the key existing transport conditions, vision, mode shift target and transport interventions all aimed at shaping urban form and development to influence transport outcomes (especially PT mode shift). To undertake its assessments, it uses the Tracks strategic model. While we recognise that the extension Area would add additional dwellings (and hence more traffic) we do not consider that the extra assessment required would be "substantial" over and above the detailed assessment undertaken.
- 1.43 In relation to the Landscape Assessment, it covers the regional, Wakatipu Basin and Ladies Mile context. In relation to 'Ladies Mile', it refers to it as a portion of land which includes "the Shotover River corridor in the west".⁴⁶ That includes at least part of the Extension Area.
- 1.44 But "the site" within the assessment relates to LCU 10 as identified in WLBUS which excludes the Extension Area to the north of SH6 but includes down to the Shotover River the land on the south side of SH6. The focus of the assessment is then narrowed further to the TPLM Site. As with WELBUS (see above) the Extension Area is within a different LCU (LCU 7 Domain Road River Terrace). The Extension Area is however at the very southern end of LUC7 and immediately adjacent LUC10. Given the immediacy of the location, and its characteristics, we do not consider that being in a different LCU would necessitate a substantial additional s32 assessment.
- 1.45 The landscape assessment includes as 'other view's effects from Lower Shotover Road and Spence Road near the Extension Area. Views of the TPLM Site from the Shotover Bridge looking east (and over the Extension Area) are also assessed (and shown in Image

⁴⁵ Struture Plan provided with the memorandum of Counsel for AHFT, 18 December 2023.

⁴⁶ At [3.3].

21). But, given the focus on the TPLM Site, there is no assessment of landscape or visual effects of including the Extension Area, and in particular potential effects on the Shotover River ONF (the extension area is not within, but is adjacent to, that ONF). The landscape assessment however identifies the Shotover River ONF as an ONF that has the potential to be affected by the TPLM Variation.⁴⁷ Assessment of the TPLM Variation and TPLM Site on the Shotover River ONF is included.⁴⁸

- 1.46 Given its location in the Shotover River margins the Extension Area will clearly have potential adverse effects on it. While those effects may well be greater than in relation to the TPLM Site it is not a case of a totally unaffected ONF now being affected. It is a question of degree of effect, and we do not think its inclusion in the s32 assessment would be a substantial addition.
- 1.47 In relation to Ecology, the assessment includes part of the Extension Zone in the 'Rezone boundary'⁴⁹ which matches the assessments 'study area'.⁵⁰ Given the study area, and the nature of the assessment, we do not consider that any significant additional assessment for the Extension Area is required.
- 1.48 In relation to Heritage, the assessment refers to the Ladies Mile study area between the Shotover River and Waiwhakaata Lake Hayes which is shown as including part of the Extension Area.⁵¹ The assessment then focuses more on the 'flat' area of the TPLM Site and the Threepwood land running down to Waiwhakaata Lake Hayes. The old Shotover bridge stone causeway is identified as an archaeological site near the study area⁵² but the old Shotover Bridge (to the north of SH6 – now used as part of the trail network), and the relocated Ferry Hotel, are not referenced (which is unusual as both are listed heritage features in the PDP and they are just as close to the TPLM Site as the old causeway). The Extension Area is adjacent to the Ferry Hotel and old Shotover Bridge and heritage assessment of potential effects on them did not occur.⁵³ Such an assessment would have provided information on the setting and factored into the initial archaeological advice⁵⁴ and potential mitigation⁵⁵ in the assessment. However, given the generalised and broad nature of the assessment we do not consider that the additional assessment would have been "substantial".
- 1.49 Finally, in relation to stormwater:
- (a) The Three Waters Infrastructure Report uses a catchment plan based form the Masterplan that excludes the Extension Area. It does however include the area 'South 3' (which includes Koko Ridge) which relates to Shotover River terraces. It is noted that it is not feasible to connect this area hydraulically to the catchments to the north (where a comprehensive system was proposed).

⁴⁷ At [5.24].

⁴⁸ At [5.32] – [5.33].

⁴⁹ See Figure 1.

⁵⁰ Consistent with the text on page 5.

⁵¹ See Figure 1.

⁵² Table 11.

⁵³ We note that the AHFT submission did refer to heritage features and included the Ferry Hotel as an example.

⁵⁴ Section 9.

⁵⁵ Section 10.

- (b) The Stormwater Options Memorandum notes that the management of surface water flows in South 3 area are limited by "the step terrace slopes ."⁵⁶
- (c) In the Preliminary Stormwater Soakage Testing report again the 'area of focus' from the Masterplan is referenced as the 'Site Location Plan'.⁵⁷ Given that area of assessment the report notes that the groundwater flows track towards, "the Shotover River at the western end of the site." The investigations themselves were however all focused on the 'flat' area of Ladies Mile.

1.50 Having reviewed the stormwater reports, we do not consider that substantial additional s32 stormwater assessment is required for the Extension Area. Further, as the TPLM Variation includes land to the west on the Shotover River terraces just south of SH6 (Koko Ridge) it is not, a whole new catchment being affected.

⁵⁶ At page 2.

⁵⁷ Figure 1