

**IN THE ENVIRONMENT COURT  
AT CHRISTCHURCH  
I TE KŌTI TAIAO O AOTEAROA  
KI ŌTAUTAHĪ**

**Decision No. [2023] NZEnvC 225**

IN THE MATTER of the Resource Management Act 1991

AND an appeal under s120 of the Act

BETWEEN THE OLIVE LEAF CENTRE  
TRUST

(ENV-2021-CHC-01)

Appellant

AND QUEENSTOWN LAKES DISTRICT  
COUNCIL

Respondent

Court: Environment Judge P A Steven  
Environment Commissioner K A Edmonds

Hearing: at Queenstown on 8, 9, 10, 11 and 12 May 2023

Appearances: P J Page for the appellant  
L F de Latour and I Edwards for the respondent  
G M Todd for NoLeaf Incorporated Society

Last case event: 13 June 2023

Date of Decision: 30 October 2023

Date of Issue: 30 October 2023

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**DECISION OF THE ENVIRONMENT COURT**

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A: The application for land use consent RM170844 to establish a multi-purpose building within the setting of St Patrick's Church and Blessed Mary

THE OLIVE LEAF CENTRE TRUST v QLDC – DECISION



MacKillop Cottage (listed heritage buildings Ref #370) that breaches building bulk and location standards, and to undertake associated earthworks is declined and the appeal dismissed.

B: Costs are reserved, although applications are discouraged.

## **REASONS**

### **Introduction**

[1] This proceeding concerns an appeal by The Olive Leaf Centre Trust (‘the Trust’) against the decision of Queenstown Lakes District Council (‘the Council’) to decline its resource consent application<sup>1</sup> (‘the application’) which sought to:<sup>2</sup>

... establish and use a presbytery, chapel and hall along with associated facilities (kitchen, store, bathrooms) as a multipurpose building with a focus on providing a facility for community use as well as for the parishioners of the Church. The presbytery provides a living space which could be utilised for a live-in caretaker, visiting clergy ...<sup>3</sup>

[(‘the proposal’)]

[2] The proposal is to be located at 7 Hertford Street, Arrowtown (‘the site’). The site contains two listed heritage buildings (the status of which we return to). The application for consent includes the establishment and use of the facility, and the associated earthworks and landscaping.<sup>4</sup>

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<sup>1</sup> Resource consent application RM170844 was lodged with Queenstown Lakes District Council on 8 February 2018.

<sup>2</sup> Notice of Appeal, Attachment A – Part 1, p 2.

<sup>3</sup> Visitor accommodation was included in the original application but was withdrawn as a proposed activity prior to the Council preparing its s42A report.

<sup>4</sup> Decision of Independent Hearing Commissioners on behalf of the Queenstown Lakes District Council, 30 November 2020 at [6]-[7].

## The proposal

[3] The proposal would be set over two levels comprising:<sup>5</sup>

- (a) upper floor – a hall (with up to 100 person capacity), kitchen and bathroom facilities and an internal courtyard and garden space; and
- (b) lower floor – an open plan chapel, a three bedroom presbytery residence (residential unit), a single garage and plant/machinery storage.

[4] The proposal includes landscaping around the primary building, adjacent to the scheduled item of St Patrick’s Church (‘the Church’), requiring excavation of the ground between, landscaping of the site margin, and the formation of gates and walls.<sup>6</sup>

[5] The primary purpose of the proposal is for activities associated with the Church. Secondary uses proposed include to operate it as an event facility for a range of non-church related, multi-function events and activities. This would operate 365 days per year, with hours of operation and the number of or type of events a contentious issue (one we return to).<sup>7</sup>

[6] The application was notified on 16 August 2018, with 368 submissions received. The application and the submissions on it were considered by independent hearing commissioners appointed by the Council. A decision to refuse the application was made on 30 November 2020. The Trust has appealed the Council’s decision seeking that resource consent for the proposal be granted. Several parties joined the Trust’s appeal as parties under s274 of the Resource Management Act 1991 (‘RMA’ or ‘the Act’):

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<sup>5</sup> Agreed statement of facts, 9 February 2022 at [5].

<sup>6</sup> Agreed statement of facts, 9 February 2022 at [6].

<sup>7</sup> Agreed statement of facts, 9 February 2022 at [7]-[9].

- (a) Arrowtown Promotion and Business Association Incorporated;
- (b) Arrowtown Village Association;
- (c) Herbert Brown and Jacqueline Brown;
- (d) Murray Forward and Jan-Marie Forward;
- (e) Ann Fowler and John Fowler;
- (f) Lakes District Museum Incorporated;
- (g) NoLeaf Incorporated Society;
- (h) Simon Oates;
- (i) Dale Paton;
- (j) David Patterson;
- (k) Queenstown and District Historical Society (2008) Incorporated;
- (l) Susan Rowley and John Rowley; and
- (m) Catherine Spencer.

[7] There are 274 parties that support the Trust's appeal, with others that oppose. Some parties in opposition were also members of NoLeaf Incorporated supporting its position. Many of the above individuals and groups gave evidence at the hearing. Some prepared evidence but for various reasons were not available for the hearing (even on AVL) and we set their evidence aside and do not consider it, as was the case with the evidence of Mr Darren Lee Rewi for the Trust.

### **Site zone and locality**

[8] The site:<sup>8</sup>

- (a) is situated on a corner lot at the junction of Hertford and Merioneth Streets, Arrowtown;
- (b) is 2,565 m<sup>2</sup> in area, is of flat topography and is located at the edge of a natural river terrace to the southeast of the township's commercial area;

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<sup>8</sup> Agreed statement of facts, 9 February 2022 at [14]-[18].

- (c) slopes off to the north and east which limits views of it when approaching from the north along Merioneth Street;
- (d) is zoned Residential Arrowtown Historic Management Zone under the Queenstown Lakes Operative District Plan ('ODP') and Arrowtown Residential Historic Management Zone ('ARHMZ') under the Queenstown Lakes Proposed District Plan ('PDP');
- (e) contains two scheduled heritage items, both under the ODP and the PDP:
  - (i) the 19<sup>th</sup> century St Patrick's Church; and
  - (ii) the former 19<sup>th</sup> century miner's cottage known as the Blessed Mary MacKillop Cottage located west of the Church ('the Cottage');
 ('the listed heritage buildings').
- (f) contains a protected tree (protected tree #29 under the PDP);
- (g) is primarily occupied by open lawn with the occasional tree and some boundary planting;
- (h) is also included on the New Zealand Heritage List as Category 2 Historic Place (administered by Heritage New Zealand Pouhere Taonga ('HNZPT')) and is also an archaeological site.

[9] As to its surroundings, the site directly adjoins the southern boundary of 14 Merioneth Street to the north. That property comprises two, two-storey townhouses. The front unit fronting Merioneth Street (14a) is approximately 7m from the internal boundary with the site and a planted boundary line.<sup>9</sup>

[10] Directly to the west of the site is 5 Hertford Street which includes a single-storey residential dwelling and a hedge defining the road boundary. Numbers 10, 12 and 14 Hertford Street are located directly opposite the site and comprise residential properties set back between 5m and 7m from the road boundary.

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<sup>9</sup> Agreed statement of facts, 9 February 2022 at [19].

[11] Opposite the site to the east/southeast on the diagonal corners are numbers 17 and 19 Hertford Street. These comprise residential properties with established gardens. Beyond the immediate context, the site environs comprise a mix of residential properties, the Arrowtown Bowling Club on the corner of Hertford and Denbigh Streets (including a grass verge and hedge boundary), local swimming pool and the Arrowtown Fire Station on the corner with Wiltshire Street.<sup>10</sup>

[12] The parties agree that the receiving environment has the following characteristics:<sup>11</sup>

- (a) a subdivision layout that reflects the historic patterns of development comprising a grid pattern and some diagonal crossroads;
- (b) small scale buildings (largely single storey) many with historic significance comprising of simple forms with gable or hipped roofs constructed largely from timber or stone with metal roofing;
- (c) dwellings which are typically set back from the street, orientated to the street, include established tree and shrub planting and often have a sense of openness within the lot;
- (d) road boundaries defined by low fencing or hedging, with grass verges, street trees, no footpaths and surface drainage;
- (e) non-residential buildings, comprising simple forms, single-storey buildings with a greater height and pitched roofs;
- (f) a backdrop of surrounding hills.

[13] Key parameters assisting in our understanding the evidence are that:<sup>12</sup>

St Patrick's Church is calculated to be 191.4m<sup>2</sup> and the total coverage for The Olive Leaf, including its courtyards (120m<sup>2</sup>), ramps (216m<sup>2</sup>) and building structure (278m<sup>2</sup>) giving a combined total of 614m<sup>2</sup>.

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<sup>10</sup> Agreed statement of facts, 9 February 2022 at [19]-[20].

<sup>11</sup> Agreed statement of facts, 9 February 2022 at [21].

<sup>12</sup> Notice of Appeal, Attachment B at [265].

[14] This of course is only part of the picture. The architect, Mr Frederikus Petrus van Brandenburg, is clear that the development needs to be considered in an integrated manner. His evidence included reference to several visual exhibits and models, with the court members directed as to how best to gain an impression of the proposal from the models early on in the proceedings.

### **Overview/parties' positions**

[15] We have considered all the written and oral submissions and evidence from those who appeared before us to inform our decision insofar as is appropriate. That includes their submissions and evidence. We mean no disrespect to the parties by not referring to their submissions and evidence in detail in this decision. The parties can be assured by the court that this has not been overlooked.

### ***The Trust***

[16] The Trust advances the facility as the St Patrick's Parish's vision for sustaining itself, its buildings, and the community in the 21<sup>st</sup> century.<sup>13</sup> Reverend Father Gerard Aynsley gave evidence of declining congregations.<sup>14</sup> The Trust's Chairman Mr Colin Bellett<sup>15</sup> gave evidence that the parish of St Patrick's is seeking to engage with the young people of Arrowtown in a new and relevant way that is impossible in context of a historic church building.<sup>16</sup>

[17] The Trust's motivation for the facility being that while a historic church is suited to being a place of worship for traditional congregations, it is poorly suited as a place in which to engage with the community. The Trust notes that like many parishes in New Zealand and the world, the parish of St Patrick's has the acute

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<sup>13</sup> Opening submissions of counsel on behalf of the Trust, 8 May 2023 at [4].

<sup>14</sup> Aynsley EIC, 13 April 2022 at [8].

<sup>15</sup> Barbara Anne Wilkins and Brigid Anne Inder, other Trustees of The Olive Leaf Trust, also gave evidence on the potential of the facility to provide for community needs.

<sup>16</sup> Opening submissions of counsel on behalf of the Trust, 8 May 2023 at [2], and NOE, Bellett p 15 l 13-24.

problem of how to sustain its heritage buildings that the community values, but is disinclined to pay for their upkeep.<sup>17</sup> Father Aynsley gave evidence that the Catholic Church is not in the business of curating heritage buildings.<sup>18</sup>

[18] In opening, Mr Page referred to the evidence from Mr van Brandenburg and Mr Bellett on how the facility is intended to revitalise the relationship between the Catholic Church and the Arrowtown community by providing a place that meets the 21<sup>st</sup> century needs of church and community. The proposal is not intended as a replacement for the Church, but an enhancement of its social function.<sup>19</sup>

[19] We were told that it is now commonplace around New Zealand for defunct church buildings to be converted to private or commercial uses that have no community support function of any kind. The historical connection between building and function is lost. The Trust is anxious that a means be found to ensure that the Church remains the focal point for the Catholic faith in Arrowtown, rather than fall into disuse and suffer conversion into a backpackers' accommodation, a private home, or some commercial use such as a cafe or bar.<sup>20</sup>

### *Queenstown Lakes District Council*

[20] The Council supports the first instance decision to decline the application.<sup>21</sup>

### *NoLeaf*

[21] NoLeaf was incorporated in 2017 with the primary purpose of protecting the heritage and community values of the Church from development or activities that might otherwise threaten or be contrary to such values. It made a submission

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<sup>17</sup> Opening submissions of counsel on behalf of the Trust, 8 May 2023 at [2]-[3].

<sup>18</sup> NOE, Aynsley p 158, l 25-32.

<sup>19</sup> Opening submissions of counsel on behalf of the Trust, 8 May 2023 at [5].

<sup>20</sup> Opening submissions of counsel on behalf of the Trust, 8 May 2023 at [10].

<sup>21</sup> Opening submissions of counsel on behalf of the Council, 10 May 2023 at [8]-[12].



opposing the application expressing concerns as to its impact on heritage, community and residential values.

[22] Outside the umbrella of NoLeaf, some s274 parties opposed the proposal on their own account. There was no argument from these parties opposing the application (or the Council) against the location of a parish hall on the site, just on the appropriateness of the proposal before us.

### **Activity status**

[23] The relevant plan for our evaluation in this case is the PDP; by the time of the hearing the PDP was required to be treated as operative in accordance with s86F of the RMA and as such, consent is no longer required under the ODP. Under the PDP, the proposal is a “community activity”.<sup>22</sup> The proposal requires resource consent under several rules of the PDP although overall activity status is a non-complying activity.<sup>23</sup> This status is triggered by a predicted night-time noise rule breach as function attendees leave the site after 8 pm, although daytime noise levels will comply subject to proposed operational conditions.<sup>24</sup>

[24] Mr Page submitted that if the court was of a mind that the s104D test under the RMA takes the proposal beyond its jurisdiction to grant, the Trust would accept an 8 pm closing limit for events that would resolve the rule breach and make the proposal a fully discretionary activity.<sup>25</sup> However, for reasons explained in this decision, we are not willing to entertain that amendment as our decision

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<sup>22</sup> The PDP defines “community activity” as “the use of land and buildings for the primary purpose of health, welfare, care, safety, education, culture and/or spiritual wellbeing”. Excludes recreational activities. A community activity includes day care facilities, education activities, hospitals, doctors surgeries and other health professionals, churches, halls, libraries, community centres, police purposes, fire stations, courthouses, probation and detention centres, government and local government offices.

<sup>23</sup> JWS Planning Experts, 24 February 2022 signed by G Taylor, R Scott and S Chamberlain (Planners JWS), at [4].

<sup>24</sup> JWS Acoustics and Vibration Experts, 31 March 2022 signed by R Hay, J Styles and P Faulkner at [7].

<sup>25</sup> Opening submissions of counsel on behalf of the Trust, 8 May 2023 at [52], closing submissions of counsel for the Trust, 29 May 2023 at [3].

would remain the same.

## The law

[25] As with the first instance decision-maker, the court is to consider the appeal in terms of s104(1) RMA that provides:

- (1) When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2 and section 77M, have regard to–
  - (a) any actual and potential effects on the environment of allowing the activity; and
  - ...
  - (b) any relevant provisions of –
    - (i) a national environmental standard:
    - (ii) other regulations:
    - (iii) a national policy statement:
    - (iv) a New Zealand coastal policy statement:
    - (v) a regional policy statement or proposed regional policy statement:
    - (vi) a plan or proposed plan; and
  - (c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.

[26] Section 104D provides:

- (1) Despite any decision made for the purpose of notification in relation to adverse effects, a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either–
  - (a) the adverse effects of the activity on the environment (other than any effect to which section 104(3)(a)(ii) applies) will be minor; or
  - (b) the application is for an activity that will not be contrary to the objectives and policies of –
    - (i) the relevant plan, if there is a plan but no proposed plan in respect of the activity; or
    - (ii) the relevant proposed plan, if there is a proposed plan but no relevant plan in respect of the activity; or

- (iii) both the relevant plan and the relevant proposed plan, if there is both a plan and a proposed plan in respect of the activity.

[27] In the light of the recent review of the PDP, the parties did not suggest there was a need to separately consider the Regional Policy Statement. We agree.

[28] The matters in s104 must be given regard, subject to Part 2. As confirmed by the Court of Appeal in *R J Davidson Family Trust v Marlborough District Council*,<sup>26</sup> it may not be necessary to refer to Part 2 where the relevant plans have been prepared in accordance with that part and provide a coherent set of policies designed to achieve clear environmental outcomes.<sup>27</sup> However, if a plan does not reflect Part 2, reference may be made to it.<sup>28</sup> We agree with the Council's submissions that reference to Part 2 in this case is not necessary because the PDP has recently been tested.<sup>29</sup>

### ***Permitted baseline***

[29] Section 104(2) RMA<sup>30</sup> empowers consent authorities (in this case the court), at their discretion, to disregard an adverse effect of a proposal if a plan permits an activity with that effect. No party sought to argue that the permitted baseline would apply to the effects on heritage or urban design in any persuasive manner. No new building is permitted in the ARHMZ. Accordingly, we find it is not appropriate to apply the permitted baseline in this case.

### **Conditions**

[30] Conditions are integral to the consideration of a resource consent

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<sup>26</sup> *R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316.

<sup>27</sup> At [73]-[74].

<sup>28</sup> Opening legal submissions on behalf of the Council, 10 May 2023 [27], referring to *R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316 at [75].

<sup>29</sup> Opening legal submissions on behalf of the Council, 10 May 2023 at [28].

<sup>30</sup> RMA, s104D(2) provides that s104(2) RMA “applies to the determination of an application for a non-complying activity”.

application. The Trust provided a set of proposed conditions it was prepared to accept very close to the hearing.<sup>31</sup> That gave other parties, witnesses and the court little time to assess them and then test them during the hearing.

[31] At the start of the hearing the court signalled that while we may ask some high-level questions about those conditions, if we were minded to grant consent to the proposal we would ensure there was adequate opportunity for parties to consider and comment on conditions that the court might contemplate.

[32] We note that the Trust provided a revised set of conditions with closing submissions. However, none of the opposing parties had the opportunity to respond. Accordingly, we set these aside, although conditions are incapable of resolving the issues we find with the proposal.

### **Section 290A**

[33] Section 290A of the RMA requires the court to have regard to the Council-level decision in relation to this proposal. The Council helpfully summarised some of the key reasons for the commissioners' decision to decline the consent:<sup>32</sup>

- (a) the proposal, including the proposed landscaping, built scale and form of the new buildings, resulting in more than minor adverse effects on heritage character, the heritage values of the Church and its setting, and the surrounding historical residential area and its character;
- (b) the proposal having more than minor effects on the historic streetscape character and residential amenity values;
- (c) the cumulative effect of the proposal on heritage values of the Church and its setting, and more than minor adverse effects on degree of unity in terms of scale and form and on the landmark significance of the

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<sup>31</sup> Memorandum of counsel for the Trust as to Proposed Conditions of Resource Consent, 5 May 2023.

<sup>32</sup> Opening legal submissions on behalf of the Council, 10 May 2023 at [16].

- site;
- (d) the effect of earthworks on the site's simple context and landmark value;
- (e) the unrestricted number of events that could occur after 8 pm, (acknowledging that is a matter that has been modified, and resulting effects on residential amenity values;
- (f) the conclusion that overall, the proposal would have adverse effects that were more than minor and consequently, the proposal did not meet the first test of section 104D(1)(a) which requires the effects of the proposal to be minor;
- (g) the conclusion that the proposal is contrary to objectives and policies of the ODP and the PDP and fails to pass the second threshold test of s104D(1)(b).

### **Core issues**

[34] In analysing the appeal and the evidence before us, we conclude there are several core issues that are the deciding factors and we deal with them first. These relate to:

- (a) historic heritage; and
- (b) urban design.

[35] We then deal with traffic, noise and amenity issues for completeness.

### ***Relevance of reports from the Wānaka Urban Design Panel and the Arrowtown Planning Advisory Group***

[36] At a pre-application meeting with the Council, the Trust was advised to contact the Wānaka Urban Design Panel ('the design panel'). The design panel produced a report which indicated support of the proposal, and encouraged the Trust to continue with the application in the hope that consent would be

forthcoming.<sup>33</sup> However, the Arrowtown Planning Advisory Group (‘the advisory group’) did not support the proposal.<sup>34</sup>

[37] We note that neither the design panel, nor the advisory group, is a statutory body with powers under the RMA. The first instance decision dealt with these reports as another matter under s104(1)(c). However, we do not intend to traverse either of these reports as the question of what the design panel or the advisory group may or may not have based its conclusions on and the appropriateness of its consideration is of no relevance in this appeal.

### ***Alternatives***

[38] We note that (except for some s274 witnesses) there was general recognition of the need for the parish to be able to provide for its congregation appropriately on site. There were no submissions attempting to justify the need for consideration of alternatives. Our focus is on the suitability of the proposal.

[39] We disregard the evidence on what other design options might be available and opinions on their suitability, including that of Mr Brown who proposed relocating the old school hall building (now relocated to the bowling club) that used to be located on the west side of the site towards the frontage of the street. For similar reasons we disregard the question of alternative facilities that may be available to the Trust.

### **Planning context**

### ***Strategic Directions – Chapter 3***

[40] Section 3.1B.3 of Chapter 3 states that for the purpose of plan

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<sup>33</sup> NOE, Rennie p 404 l 7-p 405 l 8 and p 406 l 4-6.

<sup>34</sup> Closing submissions of counsel for the Council, 6 June 2023 at [34] referring to The Arrowtown Advisory Group Report, p 9, paragraph 18, included in The Olive Leaf Centre Trust Resource Consent Application, appended to the Appellant’s Notice of Appeal, 11 January 2021, Appendices 11 and 12.

implementation, including in the determination of resource consent applications, the strategic objective and strategic policies may provide guidance on what the related objectives and policies in other chapters of the PDP are seeking to achieve in relation to the strategic issues. Relevant objectives and policies (including the strategic ones) are to be considered together and there is no fixed hierarchy between them.

[41] In opening<sup>35</sup> the Council referred to the purpose of the strategic direction chapter of the PDP as being to provide high level direction for land use and development in the district in a manner that ensures sustainable management of the district's special qualities, which include a unique and distinctive heritage.<sup>36</sup>

[42] Recognition of the district's unique and distinctive heritage is provided for through the following strategic objectives:<sup>37</sup>

- 3.2 Strategic Objectives
- 3.2.3 A quality built environment taking into account the character of individual communities.
- 3.2.3.1 The district's important historic values are protected by ensuring development is sympathetic to those values.
- 3.2.3.2 Built form integrates well with its surrounding urban environment.

### ***ARHMZ – Chapter 10***

[43] The PDP seeks to manage development within the ARHMZ through the provisions of Chapter 10. The main purpose of the zone is specified in section 10.1. This is to allow:

for the continued sensitive development of the historic area of residential Arrowtown in a way that will protect and enhance those characteristics that make

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<sup>35</sup> Opening submissions of counsel on behalf of the Council, 10 May 2023 at [31].

<sup>36</sup> PDP, Chapter 3, Section 3.1.

<sup>37</sup> The Council in opening mistakenly referred to strategic policies when all the provisions are strategic objectives.

it a valuable part of the town for local residents and for visitors attracted to the town by its historic associations and unique character.

[44] A number of Chapter 10 objectives and policies were drawn to our attention. Central to our consideration of the evidence are:

## **10.2 Objectives and Policies**

10.2.1 Objective – Development retains or enhances the historic character and amenity values of the zone, which is characterised by larger sites, low scale and single storey buildings, the presence of trees and vegetation and limited hard paving.

### **Policies**

10.2.1.1 Apply development controls around building location, scale and appearance, and landscaped areas, to ensure the special character of the area is retained or enhanced.

10.2.1.2 Encourage buildings to be located and designed in a manner that complements the character of the area guided by the Arrowtown Design Guidelines 2016.

10.2.1.4 Ensure that any commercial and non-residential activities, including restaurants, maintain or enhance the amenity, quality and character of the zone and surrounding area.

10.2.1.5 Avoid non-residential activities that would undermine the amenity of the zone or the vitality of Arrowtown's commercial zone.

10.2.2 Objective – Community activities that are best suited to a location within a residential environment close to residents are provided for.

### **Policies**

10.2.2.1 Enable the establishment of small-scale community activities where adverse effects on the character and amenity values of the area in terms of noise, traffic and visual impact can be avoided or mitigated.

[45] Before we discuss these provisions in any further detail it is relevant to refer to the design guidelines that have relevance in the context of Chapter 10.



### *Design guidelines*

[46] Chapter 10 incorporates the design guidelines through Policy 10.2.1.2.

[47] All new buildings (or alterations) within the ARHMZ require a restricted discretionary activity consent. Restricted discretionary activity Rule 10.4.6 also refers to the design guidelines as the principal tool in considering matters of discretion:

10.4.6 The construction or external alteration of any buildings

...

Discretion is restricted to the following with the Arrowsmith Design guidelines 2016 being the principal tool to be used in considering the merit of proposals (within the restrictions of discretion):

- a. how new or altered buildings make a positive contribution to the heritage character of the zone;
- b. building form, appearance, scale and layout including the height to the eaves, ridge, roof shape and pitch;
- c. exterior materials and colour;
- d. landscaping and fencing;

...

[48] Although we are not dealing with a restricted discretionary activity, these are broad matters of relevance to the core issues raised in this appeal. Of interest is the specific reference to how new or altered buildings make a positive contribution to the heritage character of the zone.

[49] As Mr Taylor, a planner for the Trust recognised in his evidence, the assessment matters require a wider assessment of heritage values in the ARHMZ, this being different from the assessment of heritage values relating to a building

within the setting under Chapter 26 on Historic Heritage.<sup>38</sup>

[50] As there is no definitive statement as to what the “heritage character” of that zone is, but “only references in the zone purpose and objectives and policies”, Mr Taylor acknowledged that the design guidelines are the only place that heritage character has been defined in any meaningful way.<sup>39</sup>

[51] The design guidelines specifically address “Churches and Church Grounds” as follows:

#### **4.15 CHURCHES AND CHURCH GROUNDS**

The Churches in early Arrowtown were a central focus for residents. The Church buildings are exceptions in terms of the scale of buildings. They are set within large grounds with mature buildings and are important and prominent. The simplicity and extent of mature plantings and grass contribute to the sense of spaciousness.

##### **4.15.1 GUIDELINES: CHURCHES AND CHURCH GROUNDS**

- 4.15.1.1 Try to protect/retain the visual primacy of Churches, their plantings and the simplicity and sense of spaciousness around the Churches.
- a) Try to retain the simplicity of the grounds around the Churches and protect the trees and plantings. Try to retain a sense of spaciousness.
  - b) Buildings, other structures or plantings should not compromise the primacy of the Church.

[52] We note in particular, the wording of Guideline 4.15.1.1 with its introduction of “try” which is repeated in sub-clause a).

[53] The design guidelines also contain other references to churches, including under Guideline 2.5.5.2 which deals with threats to the character of the zone. Other specific guidance is provided, for instance Guideline 4.9.1.1 on preserving

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<sup>38</sup> Taylor EIC, 20 May 2022 at [98].

<sup>39</sup> Taylor EIC, 20 May 2022 at [99].

the sense of spaciousness and simplicity within the ARHMZ:

- a) Try to retain the uncluttered simplicity of trees, hedges and grassed areas in the street, private sections and church grounds ...

[54] This refers to the simplicity and sense of spaciousness as coming primarily from careful siting of buildings and other elements to create a sense of space; retain the existing small scale of buildings; use hedges as opposed to high solid fences; retain grass verges and swales; and only plant trees on verges.

[55] Ms Rennie referred to the design guidelines as part of the relevant policy context. She considered the guidelines establish a clear picture of existing character and environs and provide an appropriate framework for considering the proposal.

[56] Ms Rennie referred to the following (adding underlining for emphasis):<sup>40</sup>

The character elements or generators outlined within Neighbourhood 4 which will enable developments to closely reflect the individual character of Neighbourhood 4 include:

- (a) Streets comprising narrow roads, grass verges, street trees and hedges.
- (b) Abundant vegetation.
- (c) Spaciousness and relatively low-density development.
- (d) Churches and their grounds which are prominent (as are the historic old cottages and small-scale cribs).
- (e) Sense of space reinforced by the simplicity of lawns and vegetation.

[57] Ms Rennie also emphasised that within Neighbourhood 4 relevant 'key views' include View 15 (North along Merioneth Street) and View 16 (from the intersection of Hertford and Merioneth Streets).<sup>41</sup>

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<sup>40</sup> Rennie EIC, 15 June 2022 at [48].

<sup>41</sup> Rennie EIC, 15 June 2022 at [50].

[58] She also referred to key threats for Neighbourhood 4 as:<sup>42</sup>

(a) Loss of character and spaciousness through vegetation removal and increased building size.

...

(c) Loss of visual supremacy of the Churches.

[59] Ms Rennie also referred to Guideline 4.15 Churches and Church Grounds and several other guidelines she considered relevant to the proposal.

[60] We do not attempt (or need) to list all of the references and matters that might be specifically mentioned in the context of “churches or church grounds”. After our extensive questioning and the responses received from the witnesses we conclude that Guideline 4.15.1 is most directly relevant. That is not to say other provisions may not have relevance and we deal with them as they arise.

### *Our approach to Objective 10.2.1 and implementing policies*

#### *Objective 10.2.1*

[61] Objective 10.2.1 is critical to the determination of the proposal. The question is: does the proposal retain or enhance the historic character and amenity values of the ARHMZ?

[62] We agree with the Council that the characteristics referred to in this provision are not exhaustive and that matters such as the zone purpose and the design guidelines more generally are relevant in informing what the historic character and amenity values are.<sup>43</sup>

[63] Further, the Council referred to confirmation in *Gibbston Vines Limited v*

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<sup>42</sup> Rennie EIC, 15 June 2022 at [51].

<sup>43</sup> Closing submissions of counsel for the Council, 6 June 2023 at [14].

*Queenstown Lakes District Council*<sup>44</sup> that statements within a zone purpose may assist in the interpretation of objectives and policies as context to these provisions.<sup>45</sup>

[64] We agree with that approach.

### ***Policy 10.2.1.2***

[65] Parties accept that the design guidelines are primarily aimed at residential development, as does the court. Nevertheless, as Mr Todd submitted, Policy 10.2.1.2 requires that buildings are to be located and designed in a manner that complements the character of the area. Guidance as to that character is found in the design guidelines read as a whole.<sup>46</sup> We agree; the combined effect is that these provisions are encouraging of an effort or attempt, rather than being directive.

### ***Policies 10.2.1.4 and 10.2.1.5***

[66] Policies 10.2.1.4 and 10.2.1.5 require that commercial and non-residential activities maintain or enhance the amenity, quality and character of the zone and require non-residential activities that would undermine the amenity of the zone to be avoided.<sup>47</sup> These policies contain strong directions in contrast to Policy 10.2.1.2. In interpreting what is the zone’s “amenity, quality and character”, the zone purpose and design guidelines are relevant reference points.

[67] The Trust submits that while this “avoid” policy has a directive flavour at first glance, the policy is expressed rather generically in relation to the “amenity of the zone”. Given the rather more specific Policy 10.2.1.2 that deals with the character of buildings, Mr Page contends that Policy 10.2.1.5 must be read as

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<sup>44</sup> *Gibbston Vines Limited v Queenstown Lakes District Council* [2019] NZEnvC 115.

<sup>45</sup> Closing submissions of counsel for the Council, 6 June 2023 at [13]-[15], referring to *Gibbston Vines Limited v Queenstown Lakes District Council* [2019] NZEnvC 115 at [190].

<sup>46</sup> Closing submissions of counsel for NoLeaf, 7 June 2023 at [20].

<sup>47</sup> Closing submissions of counsel for the Council, 6 June 2023 at [19].

addressing other aspects of zone amenity and that policy must in turn be read alongside Policy 10.2.2.1.<sup>48</sup>

[68] He notes that Policy 10.2.2.1 is one of the implementing policies for Objective 10.2.2. He submits that the policy itself addresses that objective by enabling “the establishment of small-scale community activities”.<sup>49</sup>

[69] Reference to the “visual impact” of a community activity must refer back to the scale of that activity, thus bringing the policy into alignment with Objective 10.2.1. Mitigation of visual impact is not an invitation to make value judgments about architectural style.<sup>50</sup> Mr Page then points out that the scale of the building would accommodate the same number of people as the existing church (100 people) indicating satisfaction with this policy.

#### *Our consideration*

[70] In terms of Objective 10.2.1, even if we were to consider the list of characteristics to be exclusive, those that are listed are capable of broad interpretation and application to the proposal and are not confining of the policies in the way suggested by Mr Page. For example, the scale of the proposal is very much at the heart of the issues before us in terms of its impact on historic character.

[71] Accordingly, we agree with the Council that scale in this context is not confined to the number of people participating or engaged in the activity but includes the size (scale) of the buildings.<sup>51</sup>

[72] The design guidelines referred to (in Policy 10.2.1.2) further expand on the

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<sup>48</sup> Opening submissions of counsel on behalf of the Trust, 8 May 2023 at [28].

<sup>49</sup> Closing submissions – final reply for the Trust, 13 June 2023 at [15]–[16].

<sup>50</sup> Closing submissions – final reply for the Trust, 13 June 2023 at [16].

<sup>51</sup> Closing submissions of counsel for the Council, 6 June 2023 at [20]–[21].

nature of the characteristics listed.

[73] As we have identified, these guidelines are not so helpful in terms of informing the approach to locating and designing new facilities for churches and church grounds. However, we do not accept the submission from Mr Page that Policy 10.2.2.1 has served its purpose. The design guidelines remain relevant in terms of informing whether the proposed building is located and designed to complement the character of the area, even if they are somewhat limited in their direct application to the development of churches and church grounds.

[74] We find that approach to be equally relevant to a non-complying (or discretionary) activity.

### ***Historic Heritage – Chapter 26***

[75] The provisions of Chapter 26 relating to historic heritage are also of some relevance to this proposal.

[76] The purpose of the chapter is to identify, recognise and protect heritage values. Both the Church and the Cottage are identified in the Council's PDP Inventory of listed Heritage Features as Category 2. Category 2 is described in 26.2.2 as "Category 2 Heritage Features warrant permanent protection because they are very significant to the District and/or locally". That listing records the HNZ category/no. as 2/2117.

[77] These provisions overlap to an extent with the Chapter 10 provisions although the Chapter 26 provisions are specific to the listed items and settings.

[78] While no physical works are proposed to the listed buildings, consent is required under Rule 26.5.9 for development of a new building with associated earthworks and structures, along with a carpark within the setting of scheduled heritage buildings. For the purpose of this rule, development means new buildings and structures, earthworks requiring consent under Chapter 25, and carpark areas

exceeding 15 m<sup>2</sup> within the view from a public road.

[79] For Category 2 heritage features, discretion is restricted to:

- (a) development within the setting, or within the extent of place where this is defined in the Inventory under Rule 26.8;
- (b) the extent of the development and the cumulative effects on the heritage feature, and its setting or extent of place;
- (c) the effects on the heritage values and heritage significance of the feature in accordance with the evaluation criteria in Section 26.6;
- (d) the operational reasons associated with the use of the heritage feature for the development to be located within the setting or extent of place.

[80] We note that as a non-complying activity (or even discretionary for that matter) our consideration of the effects on historic heritage is not confined to these matters.

[81] Relevant Chapter 26 objectives and policies are:

26.3.1 Objective – The District’s historic heritage is recognised, protected, maintained and enhanced.

**Policies**

...

26.3.1.3 Protect historic heritage values while managing the adverse effects of land use, subdivision and development, including cumulative effects, taking into account the significance of the heritage feature, area or precinct.

26.3.1.4 Where activities are proposed within the setting or extent of place of a listed heritage feature, to protect the heritage significance of that feature by ensuring that:

- a. the form, scale and proportion of the development, and the proposed materials, do not detract from the listed heritage feature located within the setting or extent of place;
- b. the location of development does not detract from the relationship that exists between the listed heritage feature and the setting or extent of place, in terms of the values identified



for that feature;

- c. existing views of the listed heritage feature from adjoining public places, or publicly accessible places within the setting or extent of place, are maintained as far as practicable;

...

26.3.1.7 Protect archaeological and historic heritage values of listed archaeological sites while managing the adverse effects of land use and development, including cumulative effects.

## The evidence

### *On heritage values*

[82] Four witnesses gave evidence on heritage:

- (a) Ian Butcher and Felicity Butcher (‘the Butchers’) prepared a joint statement of evidence and gave evidence in person together for the Trust. Their evidence attached a heritage report dated 18 August 2021;<sup>52</sup>
- (b) John Brown, a heritage expert gave evidence for the Council; and
- (c) Heike Lutz, a heritage expert gave evidence for NoLeaf.

[83] The first instance decision-makers received no expert heritage evidence from the Trust, and sadly Mr Jeremy Salmond the heritage expert for NoLeaf died after joint witness conferencing. The experts had by then prepared a joint witness statement (‘JWS Heritage’).<sup>53</sup> Ms Lutz adopted Mr Salmond’s evidence and further joint witness conferencing was held resulting in no change in position from that set out in the JWS Heritage.<sup>54</sup>

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<sup>52</sup> Ian Butcher, *Heritage Report St Patrick’s Church and Blessed Mary MacKillop Cottage 7 Hertford Street Arrountown for The Olive Leaf Centre Trust* (Revision 1, 18 August 2021).

<sup>53</sup> JWS Heritage, 10 February 2022 signed by I Butcher, J Brown, J Salmond.

<sup>54</sup> JWS Heritage, 24 March 2023 signed by I Butcher, J Brown, H Lutz.

[84] All adopted the agreed summary of facts prepared by the parties.

[85] There were two matters of agreement in the JWS Heritage:

- (a) as to the importance of the setting to the two listed heritage buildings on the site; and
- (b) that any new development including buildings on the site will have an effect on the present openness (and spaciousness) as they contribute to heritage values. There was disagreement on the measure of those effects.

[86] The different approaches taken to addressing the issues, particularly the effects and the policy, posed a considerable challenge from the outset of the hearing. The witnesses differed in the breadth to which they considered provisions of the PDP.

[87] Witnesses (including the Butchers) were unclear as to the relevance of the design guidelines. These are not referenced in Chapter 26 as they are in Chapter 10. However, we acknowledge that some elements of the guidelines provide a lens (or layer) that includes historic heritage. Accordingly, these guidelines may inform consideration of elements that would be relevant to Chapter 26, notwithstanding there is no explicit reference to them in this context.

### *Heritage listings*

[88] We accept the Council's argument that for heritage outcomes the purpose of Chapter 26 is clear; it is important to identify and recognise heritage values and protect these values,<sup>55</sup> and that is reflected in particular in the above objective and associated policies.

[89] Fundamentally, the proposal does not involve physical changes to the

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<sup>55</sup> Opening submissions of counsel on behalf of the Council, 10 May 2023 at [39].

scheduled buildings on the site, but it does result in the removal of the contributing presbytery building and significant physical changes to the setting.

### ***The relevance of the setting***

[90] Turning to the heritage values associated with the listing of the Church and Cottage, an issue arose as to the reach of the historic heritage ‘setting’ that is defined by the property boundary in Chapter 10, but not defined in Chapter 26.

[91] The Trust’s submission was that the PDP schedule does not identify and list the setting (or surroundings) of the listed items as a heritage feature. Therefore, our focus in considering the values and the effects on those values should be confined to the values of Church and Cottage.<sup>56</sup>

[92] The Council considers that when applying the objectives and policies in Chapter 10, a s6(f) lens should also be applied to that evaluation, referring to *New Zealand Transport Agency v Architectural Centre Incorporated*.<sup>57</sup> That case addressed this question in the context of a roading proposal near the Basin Reserve.<sup>58</sup>

[93] The Board of Inquiry had considered that s6(f) was relevant beyond listed heritage features, applying it to a wider precinct. The High Court upheld this on appeal, noting that the definition of historic heritage includes in “(b)(iv) surroundings associated with the natural and physical (historic heritage) resources”.<sup>59</sup>

[94] The High Court found no error of law in the Board of Inquiry decision that historic heritage extends to a surrounding area that is significant for retaining and interpreting the heritage significance of the heritage item, and may include the land on which a heritage building is sited, its precincts and the relationship of the

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<sup>56</sup> Closing submissions of counsel for the Trust, 29 May 2023 at [7].

<sup>57</sup> *New Zealand Transport Agency v Architectural Centre Incorporated* [2015] NZHC 1991 at [381]-[382].

<sup>58</sup> Closing legal submissions on behalf of the Council, 6 June 2023 at [47]-[48].

<sup>59</sup> Closing legal submissions on behalf of the Council, 6 June 2023 at [47].

heritage item with its built context and other surroundings.<sup>60</sup>

[95] We agree with the High Court’s approach which (in any event) is consistent with the chapeau of Policy 26.3.1.4:

Where activities are proposed within the setting or extent of place of a listed heritage feature, to protect the significance of that feature by ensuring that: ...

[96] The wording of this policy does not require that the setting itself be listed as a heritage feature.

[97] As agreed in the JWS Heritage, the heritage values of the historic place must be seen in the context and not limited to the area and buildings within the site boundaries.<sup>61</sup>

### ***What are the effects on heritage values?***

#### *The evidence for the Trust*

[98] The evidence of the Butchers is:<sup>62</sup>

The proposed Olive Leaf Centre building has no adverse effects on the heritage values of the setting. Views of St Patrick’s and surrounds from the Olive Leaf Centre will be enhanced. Views onto the site will also enhance heritage values due to the distinctly different but complimentary architectural form of the two main buildings.

The proposed ... building has been designed with a low profile set down into the site and is successful in retaining the sense of openness.

The proposed ... building being low in profile, curvilinear and nestled into the site contrasts with the upright sentinel form of the Church and that the architectural

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<sup>60</sup> Closing legal submissions on behalf of the Council, 6 June 2023 at [47].

<sup>61</sup> JWS Heritage, 10 February 2022 at [2.1].

<sup>62</sup> I Butcher and F Butcher Joint EIC, 21 April 2022 at [1]-[9].

forms of the two main buildings do not ‘compete’ as buildings of similar form might. The primacy of the Church is retained and enhanced.

The proposed ... building has no negative effects on the ... Cottage.

...

The undulating walls at the entry gate and proposed tree planting ... will enhance the visitor experience, adding intrigue on arrival and do not detract from heritage values.

The proposed ... building is consistent with the Arrowtown Design Guidelines and Management Zone suggestions, the building design is authentic, it is not faux nor flashy, and is in keeping with the promoted spirit of the historic town.

[99] They further state that:<sup>63</sup>

... It is an attractive little Church with much to admire, however it is not an exceptional work of architecture ...

In our Report we have made assessment of the architectural quality of the existing buildings and the proposed building. We have stated that the ... Proposal is an adaptation of an historic place. In this sense the architectural qualities of the place must be considered as a whole – not each building in isolation.

There is a delightful balance between the old Church and the design of the Olive Leaf building. St Patrick’s is rectilinear, upright, sentinel, closed and dominant, whereas the Olive Leaf design is of a building that would be low-slung, laid-back, open and welcoming. These two building share a strong functional relationship – the Church was a building for its time, and the Olive Leaf is designed as a place of community outreach in the spirit of ‘the Mary McKillop way’...

The Olive Leaf Centre on its site and in its wider setting, promises to be a beautiful work of architecture. It has a strong functional relationship with the other two buildings, and uses materials common to both.

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<sup>63</sup> I Butcher and F Butcher Joint EIC, 21 April 2022 at [43], [45]-[48].

[100] The Butchers refer to the approach taken to mitigate the effect of a large building on the ‘feeling’ within the site, and in the context of the wider setting. In their opinion nestling the building down into the ground retains the spaciousness of the setting because the visual boundaries of the place are still available to the observer around the building, over its low-slung roof, and through the new building’s glass side walls.<sup>64</sup>

[101] The architectural design for the new building is also considered to better respect heritage values as opposed to mimicking the form of the Church buildings and of smaller prospector cottages.

[102] The Butchers consider that the building design has been thoroughly considered, referencing many historical, geological and cultural values of the place, and does not detract from, but will enhance the heritage values of the place.<sup>65</sup> Their heritage report assessed the effects of the proposal on heritage values and heritage significance of the features as required under the restricted discretionary Rule 26.6.1.<sup>66</sup>

[103] Mr Taylor (the planning witness for the Trust) gave evidence that he considered, on the basis of the Butchers’ assessment, any adverse effects of the new building within the setting of the listed heritage features would be at the most minor, and in most respects would be less than minor, or in fact positive.<sup>67</sup>

*The evidence of Mr Brown for the Council*

[104] Mr Brown gave evidence that the impact of the proposal on the openness and the spacious qualities of the site that support the heritage values of the Church building is high because the magnitude of change to the site is so great. He

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<sup>64</sup> I Butcher and F Butcher Joint EIC, 21 April 2022 at [32]-[33].

<sup>65</sup> I Butcher and F Butcher Joint EIC, 21 April 2022 at [34].

<sup>66</sup> Ian Butcher, *Heritage Report St Patrick’s Church and Blessed Mary MacKillop Cottage 7 Hertford Street Arrarntown for The Olive Leaf Centre Trust* (Revision 1, 18 August 2021) Section 8.

<sup>67</sup> Taylor EIC, 20 May 2022 at [81].

disagreed with the Butchers that the proposal avoids the “competition” of architectural forms simply because it is ‘different’.<sup>68</sup>

[105] He referenced the ARHMZ design guidelines as these identify a series of potential threats to this historical character and quality character that may be anticipated as a result of further development within the zone:<sup>69</sup>

#### **2.5.5.2 THREATS**

- a) Old school site redevelopment, which has the potential to enhance or detract from this neighbourhood.
- b) Loss of character and spaciousness through vegetation removal and increased building size.
- c) Loss of simplicity of the narrow roads, grass verges, gravel shoulders, street trees and hedges.
- d) Loss of visual supremacy of the Churches.
- e) Loss of early cottages and small-scale appearance of the cribs.
- f) Owners not looking after heritage buildings.
- g) Loss of heritage buildings.

[106] His conclusions are usefully summarised in the following passages of his evidence which we cite in full:<sup>70</sup>

A significant aspect of the site that will be adversely affected by the proposal, is the spaciousness of the site, and its open relationship with the street, surrounding properties, and this relates to threats b), c), d), and to a lesser extent e), through the proposed removal of the small, cottage-like presbytery building.

In my opinion, the proposal represents a significant change of scale to the site, and includes a new development footprint, especially if including the courtyard areas surrounded by high retaining walls, that is substantially larger in volume than the St Patrick’s Church.

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<sup>68</sup> Brown EIC, 15 June 2022 at [96]-[97].

<sup>69</sup> Brown EIC, 15 June 2022 at [18], referring to ARHMZ Guidelines 2016, Section 2.5.5.2 Neighbourhood 4 – Top Terrace (Wiltshire Street To Stafford Ridge), June 2018 – Decisions Version.

<sup>70</sup> Brown EIC, 15 June 2022 at [19]-[25].

The highly engineered, busy and strikingly elaborate form of this large structure, and its landscaping, necessarily challenges the primacy of the Church as the key landmark on the site.

The proposal physically impacts on the river terrace which is a key natural feature of the historical neighbourhood, removes the supporting component of the presbytery and reduces the spaciousness of the site dramatically.

The proposed architectural form is highly inconsistent with the established vernacular nature of historical development, both within the site, and in relation to the wider character area of the Old Town Residential zone. It feels entirely ‘not of the place’, based as it is, on a very unique architectural philosophy more readily associated with Antoni Gaudi and his Barcelona Architecture. ‘Catalan Modernism’ is not a term one would employ to describe the historical vernacular of Arrowtown.

It is my opinion that the scale of the proposal, combined with its ‘architectural challenge’ and unconventional use of materials, adversely affects the historical integrity of the setting of the church and the cottage, and the wider characterful setting of the ARHMZ.

Further, in its current form, the identified historic heritage values of the site, relating primarily to the traditional vernacular, landscape values and the historic context of the site as a simple, ‘spacious’ place, would be affected to a significantly adverse degree as a result of the proposed development.

[107] Overall, Mr Brown concludes that when measuring the high impact of change against the high value of the place locally, or to the district that the adverse effects of the change on historic heritage values specifically identified with, the place is at best moderately and at worst significantly adverse.<sup>71</sup>

[108] Mr Brown considers that Policy 26.3.1.4 is not met because:<sup>72</sup>

- (a) the scale and form of the proposed development has a high impact on the setting of the Church and Cottage. The materials do not reflect

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<sup>71</sup> Brown EIC, 15 June 2022 at [104].

<sup>72</sup> Brown EIC, 15 June 2022 at [107].



- the site or are employed unconventionally, in contrast;
- (b) the proposed development overwhelms the plain, ‘generous’ and spaciousness of the site, identified in both the HNZPT listing (and the ARHMZ guidelines). This impacts the historically open nature and high landmark value of the setting;
  - (c) the proposed location detracts from the key corner of Merioneth and Hertford Streets, and additionally from within the site itself, where the loss of the natural terrace is most keenly experienced.

*The evidence of Ms Lutz for NoLeaf*

[109] Ms Lutz accepted that the proposal is meant to be an outstanding building in its own right and its design delivers that.<sup>73</sup> However, as with Mr Brown, she did not agree with the Butchers that the development avoids the competition of architectural forms simply because it is different.<sup>74</sup>

[110] She considers that the design features of the proposal introduce a complexity that contrasts with the currently spacious and simplistic setting that should be protected. She considers that the organic horizontal form of the building is in stark contrast to the simple, small rectangular form of the Cottage, and the rectangular and linear outline and predominantly vertical attributes of a church typical in gothic style architecture.<sup>75</sup>

[111] Ms Lutz referred to traditional proportions in buildings as characteristic of the zone. She notes that buildings predominantly single storey are typical in the residential area, with gabled roofs or at times mono-pitched roofs. The wall to window ratio was typically low, more so to the street fronts. She considered that the existing Church has similar proportions, and while larger than a residential

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<sup>73</sup> Lutz EIC, 24 January 2023 at [23].

<sup>74</sup> Lutz EIC, 24 January 2023 at [40]-[41].

<sup>75</sup> Lutz EIC, 24 January 2023 at [50].

building, the wall to window ratio and mass of building is proportionate.<sup>76</sup>

[112] Ms Lutz did not agree with Mr van Brandenburg's proposition that use of stone for the roof provides an appearance of a building naturally emerging from the ground and linking to nature elements of the site. She considers it atypical in this area and in complete contrast to the open lawn space that is permeable and green.

[113] She had a similar concern that the stone and brick entrance is not compatible with any fencing apparent in the zone and particularly that of the Church grounds. In her opinion it is so discernible, atypical in use and uncharacteristic for the area that subservience cannot be achieved.<sup>77</sup>

[114] She considers that the efforts to dig the building into the ground does not have the effect of making the building less visible, but makes it more visible from a variety of viewpoints, particularly from Merioneth St.<sup>78</sup> In her opinion the proposal would also reduce the heritage values inherent in the Church and Cottage, and the setting of these buildings and the relationship to each other. Ms Lutz also considers that the buildings would overwhelm the Church building and it would lose its primacy on the site.<sup>79</sup> The proposal is too large and complex.<sup>80</sup> She also considered the relationship between the Church and the Cottage would be greatly diminished due to the relative closeness of the new building to the Church, with the Cottage appearing as an auxiliary building off to the side.<sup>81</sup>

[115] In terms of impacts on views from and to the Church and its site, she considered the location, design and landscape meant that even views within the site will be drastically altered. She referred to the loss of views due to dense

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<sup>76</sup> Lutz EIC, 24 January 2023 at [54].

<sup>77</sup> Lutz EIC, 24 January 2023 at [52]-[53].

<sup>78</sup> Lutz EIC, 24 January 2023 at [51].

<sup>79</sup> Lutz EIC, 24 January 2023 at [72].

<sup>80</sup> Lutz EIC, 24 January 2023 at [26].

<sup>81</sup> Lutz EIC, 24 January 2023 at [56].

planting in the south-east corner, the built-up view from the lower north-east corner and the landscaping between the Church and centre.<sup>82</sup>

[116] Overall, Ms Lutz considers that the proposal has significant adverse effects on the historic heritage values of the Church and Cottage and their setting.<sup>83</sup>

[117] In addressing Chapter 26 provisions, Ms Lutz considered the design to be generally in stark contrast with the form, scale and proportions, materials and protection of existing views (in terms of Policy 26.3.1.4).

#### *Our consideration*

[118] The court does not accept the evidence of the Butchers on the adverse effects of the proposal on the heritage values of the listed buildings and their setting. Fundamentally, we do not accept that the Church will remain the dominant building on the site because of the bulk, form and size of the whole proposal.

[119] Neither do we accept that the Church will retain primacy, an issue we return to in considering Chapter 10 provisions and particularly the design guidelines.

[120] We also disagree with the Butchers that the development avoids the competition of architectural forms simply because it is different.

[121] We prefer the evidence of Mr Brown and Ms Lutz. We find that the proposal is likely to have significant adverse effects on the characteristic of openness and spaciousness that support the heritage values of the Church and site.

[122] For completeness we find that even if there was modification of boundary treatment, we do not consider that the adverse effects on the openness and

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<sup>82</sup> Lutz EIC, 24 January 2023 at [59].

<sup>83</sup> Lutz EIC, 24 January 2023 at [30], [48], [75].

spaciousness of the setting of the listed buildings in the Church grounds would be sufficiently mitigated, whether considered in terms of the design guidelines or not.

[123] We find the proposal is contrary to key objectives and policies in Chapter 26, relying on the evidence of Mr Brown and Ms Lutz as heritage experts and that of planning witnesses Mr Scott and Ms Chamberlin.

[124] We see no need to look back to the strategic objectives the Council referred to in Chapter 3.1. The district's important historic heritage values are protected by ensuring development is sympathetic to those values in light of the clear direction in the Chapter 26 objectives and policies.

[125] Accordingly, thus far we agree with the findings of the first instance decision on historic heritage under Chapter 26, preferring the evidence for the Council and NoLeaf.

### ***The rule framework –Chapter 10 ARHMZ***

[126] The site is located within the Old Town Residential Character Area of the design guidelines. Within that area the site falls within Neighbourhood 4 (Central Terrace). Neighbourhood 3 (Avenue) is also of relevance for consideration of the wider context (including of key viewpoints).

### **Urban design**

[127] Two urban design witnesses gave evidence on matters relevant to this chapter – Kobus Mentz for the Trust and Jane Rennie for the Council.

[128] Ms Rennie and Mr Mentz agreed<sup>84</sup> that heritage issues are a relevant consideration in urban design and a good practice urban design outcome includes a well resolved heritage proposal. However, Ms Rennie considers the relationship

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<sup>84</sup> As did Mr Richard Hubbard, who gave evidence in support of the Proposal by AVL.

between urban design and heritage is limited to consideration of context, character, visual dominance, visual interest, scale and form.

[129] We acknowledge that differences between Mr Mentz and Ms Rennie turn on their different understanding of the function of the design guidelines. While little guidance is provided on the design and appearance of church buildings other than as stated in Section 4.15 Churches and Church Grounds,<sup>85</sup> Ms Rennie considers that these provisions establish a clear picture of existing character and environs and provide an appropriate framework for considering the proposal's effects.<sup>86</sup>

[130] The Council submitted that to the extent the court might find the design guidelines of limited application to the proposal in front of us, we are able to rely on general urban principles in assessing the proposal's urban design effects.<sup>87</sup> While we have proceeded on that basis it has not been easy. Neither witness set out what general urban principles we might apply in a way that assists us. It has also been difficult to distinguish whether Ms Rennie or Mr Mentz rely on general urban principles or the design guidelines.

#### *Road boundary setbacks*

[131] The proposal breaches both road boundary and internal boundary setbacks. The road setback is determined by the shortest distance from the road boundary to the existing building (other than accessory buildings) measured at right angles to the front boundary. This means that the Church is the primary building and its location provides the benchmark to determine the road boundary setbacks to both Hertford and Merioneth Streets.

[132] A 4.5m road boundary setback is depicted in the plans (including diagrams

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<sup>85</sup> Closing submissions of counsel for the Trust, 29 May 2023 at [33]-[34].

<sup>86</sup> Rennie EIC, 15 June 2022 at [54].

<sup>87</sup> Closing legal submissions on behalf of the Council, 6 June 2023 at [30].

produced by Mr Mentz). That was adopted for the architectural design, although it is not the setback as determined by the district plan rules. We are clear that some of Mr Mentz's and other witnesses' evidence should be treated with care as they misunderstood the plans in terms of the PDP setback provisions.

[133] For the road boundary setback, Rule 10.5.5 sets the restricted discretionary matters as:

- a. streetscape character and amenity value, including the extent to which the building(s) sit compatibly with neighbours to the side and across the street;
- b. building dominance on neighbouring properties and the street;
- c. landscaping;
- d. parking and manoeuvring.

[134] The proposal also breaches the internal boundary/side boundary setback as measured from the northern boundary with 14a Merioneth Street. For the internal/side boundary setbacks, Rule 10.5.6 sets as matters of discretion:

- a. effects on open space, privacy, sunlight access and amenity values of neighbouring properties; and
- b. building dominance.

### *The urban design evidence*

[135] We note that the joint witness statement on urban design ('JWS Urban Design')<sup>88</sup> provides a succinct description of the differences between the two witnesses that informed the evidence subsequently produced by them. This is a useful starting point for addressing the urban design effects of the proposal. There was a considerable amount of detail (including repetition) in the individual evidence that followed the JWS Urban Design and we also attempt to deal with that succinctly. In considering their evidence we have used the headings contained in the JWS Urban Design. We note that these reflect the matters of discretion

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<sup>88</sup> JWS Urban Design, 23 February 2023 signed by J Rennie and K Mentz.

contained in the above-cited rules, and the policy framework of Chapter 10.

*Building location and scale*

[136] Both experts agree that the site presents a number of constraints in seeking to locate a building of this floor area. They agreed that as a principle, submerging a component of the building is a valid design response and has the benefit of reducing the effects of its mass. However, the witnesses disagreed on the location of the proposal in relation to both street frontages.

[137] Mr Mentz considers the location to be appropriate as it allows the new building to take advantage of the slope towards Merioneth Street to reduce its visual impact; the alternative location to the west of the Church would result in a far greater impact on the Church if a building of this size was built there.<sup>89</sup> He considers the floor area as a necessary consequence of accommodating the important social and spiritual functions of the proposal and the Church. He considers the value of these community functions to be given a high weighting when considered against more esoteric and subjective matters.<sup>90</sup>

[138] In his evidence, Mr Mentz referred to:<sup>91</sup>

- (a) the proposal being appropriately located to the east of the Church, leaving the relationship between the Church and the Cottage undisturbed;
- (b) the footprint being appropriately positioned in the north-eastern sector of the site where it has the least visibility from adjacent streets, due to the steep bank along Merioneth Street and how the building angles away from the Church to open up views from Hertford Streets;
- (c) the design appropriately incorporating a well-designed communal

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<sup>89</sup> JWS Urban Design, 23 February 2023 at [4].

<sup>90</sup> JWS Urban Design, 23 February 2023 at [4].

<sup>91</sup> Mentz EIC, 20 April 2022 at [63]-[65].

open space at the entrance off Hertford Street (that “communal open space” presumably refers to the space available to users given the restrictions on particular users at particular hours and an on-site caretaker that is suggested in the conditions provided by the Trust).

[139] Ms Rennie disagreed with the evidence of Mr Mentz. She considers that its location and mass alters key views of the Church, reduces the sense of spaciousness on this key corner site and impacts on the ability for the Church to maintain its visual primacy. She considers that the floor area of the building is too big for this site occupying the majority of the space between the Church and the street.<sup>92</sup>

[140] She acknowledges that larger footprint buildings are anticipated for non-residential uses and that an attempt has been made to integrate the building into the landform.<sup>93</sup> However, her central concern is that the scale of the proposal is too big and dominant and undermines a clear hierarchy between the buildings, impacting on the Church as the primary building on site and its relationship with the street.<sup>94</sup>

[141] Ms Rennie considers the building and Church do not speak to each other but compete for attention given the complexity of design, standalone nature and mass and location of building in site. The proposal lacks a simple recognisable form that positively responds to the historic character of the context.<sup>95</sup>

[142] Ms Rennie referred to the development of a prominent feature as viewed from the street and the properties opposite, including a significant cutting into the terrace face resulting in retaining walls along the Merioneth Street frontage.

[143] She also refers to a reduction in the sense of openness between the public and private realm and considered the proposal at odds with the existing landscape

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<sup>92</sup> JWS Urban Design, 23 February 2023 at [4].

<sup>93</sup> JWS Urban Design, 23 February 2023 at [4].

<sup>94</sup> Rennie EIC, 15 June 2022 at [87].

<sup>95</sup> Rennie EIC, 15 June 2022 at [88]-[89].



values of the site with the simple, landscaped lawns and buildings within spacious grounds. That would impact on amenity values currently enjoyed by local residents.<sup>96</sup>

[144] Overall, she considers the mass and scale of the building (including the sunken courtyard) remains apparent, occupying the majority of the space between the Church and both street frontages. She also referred to the two-storey building form along Merioneth St (aligning with vehicle entrance) as visually prominent.<sup>97</sup>

[145] In her opinion there will be more than minor adverse effects.<sup>98</sup>

#### *Our consideration*

[146] We accept Ms Rennie's assessment. We find that there will be more than minor adverse effects on the historic character in terms of the location of the building (on site) and its dominance (primarily due to its location and scale). We have earlier stated that we agree with Ms Lutz that these effects on heritage character values would be significant, and find accordingly, however, the evidence of these witnesses is complementary and certainly not inconsistent in our view.

#### *Streetscape character and views*

[147] The experts disagreed on the impact of the proposal on key views. Mr Mentz considers that the views from the west along Hertford Street are minimally affected as the building which is substantially lower than the Church sits to the east of the Church.<sup>99</sup> The views from the intersection of Hertford and Merioneth Streets are enhanced by the original architecture of the building which is designed to be submissive towards the verticality of the Church, and consciously makes a strong reference to the use of stone in the Church building. When

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<sup>96</sup> Rennie EIC, 15 June 2022 at [79].

<sup>97</sup> Rennie EIC, 15 June 2022 at [85].

<sup>98</sup> Rennie EIC, 15 June 2022 at [90].

<sup>99</sup> JWS Urban Design, 23 February 2023 at [5].

approaching along Merioneth Street from the north there are glimpses of the spire in a context where there are no significant views onto the Church currently.<sup>100</sup>

[148] Ms Rennie considers that in key views of the site from Hertford Street and the junction of Hertford and Merioneth Streets the proposal will have a range of adverse effects, with a lesser effect anticipated for views of the proposal from Merioneth Street. The building will both interrupt and alter key views of the Church and associated grounds and reduce the sense of openness between the public and private realm on this key corner. The building will comprise a prominent feature on this key corner in close proximity to the street.<sup>101</sup>

[149] Ms Rennie considers that the proposal is a clear departure from established streetscape character and will result in more than minor adverse effects. She considers the building will introduce a large new scale building in key corner locations and will impact the openness of the site. Also, that the vehicle entry and manoeuvring area along Merioneth Street will detract from the existing character of street scene, given the extent of excavation and associated retaining walls, in part due to its key corner location which influences the appearance of openness of the site.<sup>102</sup>

#### *Our consideration*

[150] We accept the evidence of Ms Rennie. In particular, we find that the proposal is a clear departure from established streetscape character and will result in more than minor adverse effects.

#### *Relationship between the Church and the Proposal (including primacy of the Church and*

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<sup>100</sup> JWS Urban Design, 23 February 2023 at [5].

<sup>101</sup> JWS Urban Design, 23 February 2023 at [5].

<sup>102</sup> Rennie EIC, 15 June 2022 at [96]-[97].

*maintaining spaciousness)*

[151] Witnesses disagreed on the appropriateness of the relationship between the Church and the proposal.

[152] Mr Mentz records his opinion that the Church will retain its primacy over the new building which would be less than half the height of the Church, and at its closest is 5.9m from the Church. The building would be angled away from the Church, leaving a large ‘V’-shaped visual cone from the street.<sup>103</sup>

[153] Furthermore, the building roof has a depressed profile in contrast to the Church with its accentuated verticality. In his opinion, there is a special and sophisticated dialogue between the building and the Church at several levels, the most compelling of which is how the Church is highly visible from the hall from where participants will be constantly reminded of the presence of the Church and its primacy.<sup>104</sup>

[154] Mr Mentz expands on these matters in his evidence concluding that:<sup>105</sup>

- (a) the design displays a sophisticated awareness of the relationship between the Church and the proposal through the use of form, space and materials;
- (b) the design is stylistically neutral, with the low stone roof more of a landscape element than a competing architectural building form. It allows the Church to still provide the dominant architectural expression; and
- (c) the presence of the Church will be notable even from within the building. The upward view of it from the hall will further underline the Church’s primacy. The use of stone on the exterior to match the

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<sup>103</sup> JWS Urban Design, 23 February 2023 at [6].

<sup>104</sup> JWS Urban Design, 23 February 2023 at [6].

<sup>105</sup> Mentz EIC, 20 April 2022 at [101]-[103].

Church will signal its respect for the older building.

[155] Ms Rennie considers that the proposal will have a more than minor adverse effect on the primacy of the Church.<sup>106</sup> The proposal does not ‘speak to the Church’ but competes for attention given the complexity of the design response. Its orientation has no obvious integration with the Church from a built form and architectural perspective.

[156] Ms Rennie does not consider that the proposal will ‘positively’ respond to the historic character of the area and in maintaining the spaciousness and primacy of the Church.<sup>107</sup>

*Our consideration*

[157] We accept the evidence of Ms Rennie. On the basis of that evidence we are left in no doubt that the proposal will have a more than minor adverse effect, if not significant adverse effect on the primacy of the Church.

*Built form character*

[158] Mr Mentz considers that the building’s contemporary style allows for contemporary values to be articulated, in line with the Trust’s objectives to appeal to a wider and younger demographic and resonate with the sentiment that Arrowtown should not be a ‘town frozen in the past’ as articulated by the design guidelines.

[159] Mr Mentz considers that the design is rich with symbolism relevant to faith, the Church and māori heritage. Having considered the external and interior architecture and built form character he concludes that the proposal successfully combines a well resolved sculptural form with a range of relevant and meaningful

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<sup>106</sup> Rennie EIC, 15 June 2022 at [95].

<sup>107</sup> JWS Urban Design, 23 February 2023 at [6].

symbolic and visual references. In his opinion the approach taken makes meaningful references to nature, the Saint and māori in a highly creative and contemporary way.<sup>108</sup>

[160] In terms of building design and appearance, Ms Rennie gave evidence that the site includes a number of key features/attributes important to the historic character of the town and given its location on a key corner site and with backdrop of wider landscape, it contributes to a strong sense of place and local identity.<sup>109</sup> She questions how the design and appearance would ensure retention or enhancement of the area's special character.<sup>110</sup>

[161] Ms Rennie considers that the design is overly complicated and lacks recognisable built form elements that draw on the historic character of the site and context.<sup>111</sup> Her opinions were similar to those of Ms Lutz and Mr Brown.

#### *Our consideration*

[162] We accept the evidence of Ms Rennie. While the juxtaposition of contemporary architecture with the old is a well-established architectural approach, the proposal is overly complicated and lacks recognisable built form elements that draw on the historic character of the site and its context.

#### *Landscape, access and parking design*

[163] The witnesses agree that as the parking use will be intermittent, the quality of any carpark surface treatment is visually important and needs to reflect the informal landscape character of the site and context.<sup>112</sup>

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<sup>108</sup> Mentz EIC, 20 April 2022 at [109]

<sup>109</sup> Rennie EIC, 15 June 2022 at [55].

<sup>110</sup> Rennie EIC, 15 June 2022 at [94].

<sup>111</sup> Rennie EIC, 15 June 2022 at [88].

<sup>112</sup> JWS Urban Design, 23 February 2023 at [10].

[164] They further agree that the boundary treatment comprising the stone wall design and the degree of tree planting on Merioneth Street would benefit from further redesign to address issues of streetscape character and obscuring views of the Church.<sup>113</sup>

*Our consideration*

[165] While the Trust is likely to be open to redesign (in terms of planting and carpark surface treatment) we find that these are not issues central to our conclusion on the urban design effects and set the question of their redesign to one side.

*Amenity values (pleasantness, privacy, building dominance, sunlight access)*

[166] The experts agree that the proposal does not cause any notable privacy or shading effects on neighbouring properties.<sup>114</sup>

*Our consideration*

[167] We note that several witnesses, and not only neighbours, gave evidence on other implications for them in terms of what was important to their amenity. However, we are not convinced that amenity impacts on privacy and sunlight access militate strongly against the proposal.

*Spiritual, cultural and community impacts*

[168] Mr Mentz refers to spiritual benefits from accommodating church activities as well as strong recognition of the Church's heritage, māori culture and Arrowtown's history. He considered there are significant social benefits by serving

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<sup>113</sup> JWS Urban Design, 23 February 2023 at [8].

<sup>114</sup> JWS Urban Design, 23 February 2023 at [9].

a range of demographic groups as well as enabling community activities.<sup>115</sup>

[169] He also considers there are some economic benefits by receiving income available for the maintenance of the Church (although we note the Trust's case was not run on this basis). There would also be less travel costs for the local community (although we note the proposal would serve a wider catchment than just the Arrowtown community).<sup>116</sup>

[170] He refers to the Trust's charitable objectives and purposes, including a commitment to serve some of the social, cultural, spiritual and educational needs of the community, referring to its intended multi-functional use. He considers these deserve significant recognition when weighing up trade-offs between competing objectives for the site.<sup>117</sup>

[171] In cross-examination he emphasised that weight should be given to the purpose of the building with its spiritual, social and pastoral nature. He considered the project would be worthwhile if it changes one or two people's lives.<sup>118</sup>

[172] While Ms Rennie agrees that the spiritual, cultural and community impacts are of importance she disagreed on the weighting of these relative to the built environment outcomes. Mr Mentz disagreed with Ms Rennie's weighting of built form and he gives more weight to social and cultural benefits.<sup>119</sup>

### *Our consideration*

[173] We do not accept the approach of Mr Mentz in giving greater weight to social and cultural benefits of the proposal (some of which were unsubstantiated). While they are relevant matters for our consideration, these potential outcomes do

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<sup>115</sup> JWS Urban Design, 23 February 2023 at [11].

<sup>116</sup> JWS Urban Design, 23 February 2023 at [11].

<sup>117</sup> Mentz EIC, 20 April 2022 at [110]-[113].

<sup>118</sup> NOE Mentz at p 79 l 16-26

<sup>119</sup> JWS Urban Design, 23 February 2023 at [11].

not outweigh our findings on other adverse effects even if these benefits came to fruition.

*Our overall findings on urban design effects*

[174] We accept that primacy is not always a consequence of scale and that the design of another building and the materials used can impact on the primacy of an existing church. However, on the basis of Ms Rennie’s evidence in particular, we find that the design and materials will contrast so greatly with the Church, that it will significantly reduce its primacy – and to a more than minor extent. This will result in a more than minor adverse effect, due to:

- (a) the height of the building;
- (b) the complexity of its form and the materials used;
- (c) the scale of both the building and courtyard areas.<sup>120</sup>

[175] We do not accept the evidence of Mr Mentz that not only the height and scale, but factors like colour and type of vegetation, materials (stone used for the roof) contribute to the Church retaining primacy including symbolically. Neither do we accept that the form and sculptural shaping of the roof (the olive leaf) and the roof in a depression make the proposal subservient to a church with its spire.

[176] We agree with Ms Rennie’s opinion that while a contemporary design response may be legitimate, the proposal has an inappropriate design outcome in terms of building location and scale, its impact on key views and streetscape, the relationship between the Church and the proposal (including issues associated with the primacy of the Church and maintaining spaciousness) and built form character.

*Heritage expert evidence in context of Chapter 10*

[177] For completeness, the heritage experts had also considered the effects of

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<sup>120</sup> NOE Rennie, at p 446 l 11-21.



the proposal on heritage character of the ARHMZ and in the context of the policy framework of Chapter 10.

[178] For NoLeaf, Ms Lutz considered there are significant adverse effects on the ARHMZ with the proposal diminishing the protected historic character.<sup>121</sup> She considered that while development in the zone is anticipated it is required to be sympathetic with the characteristics of the zone, as well as sensitive to the heritage values of scheduled places, the proposal does not comply with these requirements.<sup>122</sup>

[179] She concluded that the design does not retain or enhance the historic character of the zone through a low scale as is required. In her opinion the scale of the building compared with residential buildings or the Church or Cottage is by no means low.<sup>123</sup>

[180] Ms Lutz gave evidence that the Church and its site are a landmark within the ARHMZ and that while the site looks different to that of the residential buildings, it is a crucial element that completes the historic character of an old town. Therefore, the openness of the site and the visibility of the Church in all directions is a primary characteristic of the area.<sup>124</sup>

[181] In her opinion the proposal would have significant adverse effects on the visibility of the Church, particularly from the east and south-east, plus concealing views from the site.<sup>125</sup> Overall, Ms Lutz considers that the proposal would have significant effects on the existing character of the area and existing heritage values.<sup>126</sup>

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<sup>121</sup> Lutz EIC, 24 January 2023 at [71].

<sup>122</sup> Lutz EIC, 24 January 2023 at [74].

<sup>123</sup> Lutz EIC, 24 January 2023 at [38]-[39].

<sup>124</sup> Lutz EIC, 24 January 2023 at [21].

<sup>125</sup> Lutz EIC, 24 January 2023 at [47].

<sup>126</sup> Lutz EIC, 24 January 2023 at [30].

## **ARHMZ objectives and policies**

[182] Ms Rennie considered the proposal is contrary to the purpose of the ARHMZ of seeking to “ensure future development is of a scale and design sympathetic to the present character”.

[183] She also considers the proposal is contrary to the following provisions from an urban design perspective.

[184] In terms of Objective 10.2.1 and associated Policies 10.2.1, 10.2.1.4 and 10.2.1.5, Ms Rennie is of the opinion that the proposal:<sup>127</sup>

- (a) will not ensure the special character of the area is retained or enhanced as a result of the buildings location, scale and appearance;
- (b) has not been designed in a manner that complements the character of the area guided by the [design guidelines]; and
- (c) will not as a result of the activity maintain or enhance the amenity, quality and character of the zone and surrounding area.

[185] On Objective 10.2.2 and associated Policy 10.2.2.1, Ms Rennie considered the scale will result in adverse effects on character and amenity values of the area, particularly visual impacts.<sup>128</sup>

[186] Ms Rennie also looked at the assessment matters for restricted discretionary status for Rule 10.4.6 (all new building) and Rules 10.5.5 and 10.5.6 (road boundary setback and side boundary setback).<sup>129</sup> We do not need to cover these matters in detail given our findings relate to a non-complying (or even discretionary activity) and we have dealt with the effects in terms of the objectives and policies in the course of this decision.

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<sup>127</sup> Rennie EIC, 15 June 2022 at [109].

<sup>128</sup> Rennie EIC, 15 June 2022 at [110].

<sup>129</sup> Rennie EIC, 15 June 2022 at [112]-[126].

[187] However, of note is that Ms Rennie considers that the proposal will not make a positive contribution to the heritage character of the site or context from an urban design perspective in terms of Rule 10.4.6(a).<sup>130</sup> That is because she considers the proposal does not sufficiently address the key character attributes of the Old Town district, given:<sup>131</sup>

- (a) the scale of the building is inappropriate and intrusive in this setting;
- (b) the location and scale of the building will result in the loss of the simplicity and spaciousness of the Church grounds and uncluttered character;
- (c) the building design lacks recognisable built form elements and competes for attention with the Church; and
- (d) the extent of tree planting (dense continuous planting) is inappropriate and will restrict views of the site, particularly from Merioneth Street and from Views 15 and 17.

[188] The heritage experts for the Trust and the Council had also considered the objectives and policies of Chapter 10.

[189] The Butchers consider that no issues arise with the proposal in relation to Objective 10.2.1, Policies 10.2.1.1 (noting that the design guidelines state that “Church buildings are exceptions in terms of scale of buildings”), 10.2.1.2, 10.2.2 and 10.2.2.1.<sup>132</sup>

[190] Mr Brown also addressed the ARHMZ provisions, considering the proposal to be inconsistent with these objectives and policies from an historic heritage and historical character perspective. He referred to Strategic Objective 3.2.3 and Strategic Policy 3.2.3.1 as of relevance to urban design in addition to Objective 10.2.1 and Policy 10.2.1.2 in this context.<sup>133</sup>

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<sup>130</sup> Rennie EIC, 15 June 2022 at [114].

<sup>131</sup> Rennie EIC, 15 June 2022 at [113].

<sup>132</sup> Ian Butcher, *Heritage Report St Patrick’s Church and Blessed Mary MacKillop Cottage 7 Hertford Street Arrontown for The Olive Leaf Centre Trust* (Revision 1, 18 August 2021) at p 95.

<sup>133</sup> Brown EIC, 15 June 2022 at [116].

[191] As to Objective 10.2.2 and Policy 10.2.2.1, Mr Brown considered that the significant change visually to the existing site is not reflective of its historical character, which remains intact today and affects historic heritage township values and aesthetic landmark values, which also contribute to amenity, resulting in detrimental adverse effects.<sup>134</sup>

[192] On Policy 10.2.1.2 he referred to the design, ignoring the recommended development forms set out in the design guidelines. Mr Brown also considered there to be a related adverse effect to the historical context for the wider ARHMZ on the basis that the proposal does not demonstrate any of the identified characteristics of historical development, modest orthogonal building forms and landscaping elements described in the design guidelines, as contributing to this character.<sup>135</sup>

## **Transportation**

[193] Two traffic experts gave evidence – Mr Jason Bartlett for the Trust and Mr Michael Smith for the Council (adopting the evidence of Ms Wendy Banks who prepared evidence and participated in the joint witness conferencing).

[194] The Merioneth Street access, manoeuvring area and parking is proposed to be used only for the attached residential use (dwellings, the residents and their visitors/guests) and for servicing activities and functions at the new building. It would not meet PDP transport Rule 29.5.14(a) as a result of the length of the vehicle crossing.<sup>136</sup>

[195] The Hertford Street access would be used by those visiting the Church, the Cottage and the new building. The current design does not meet various PDP access rules – 29.5.10(a) and (b) on surfacing, 29.5.14(a) for vehicle crossing design

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<sup>134</sup> Brown EIC, 15 June 2022 at [124]-[125].

<sup>135</sup> Brown EIC, 15 June 2022 at [124]-[125].

<sup>136</sup> JWS Transport, 18 February 2022 signed by W Banks and J Bartlett at [14].

and 29.5.21 for separation distance from the nearest intersection.<sup>137</sup>

*Transport effects*

[196] In the joint witness conferencing the experts agreed the design of the Merioneth Street access will have minimal transport effects on the adjacent road network. For the access from Hertford Street to the on-site parking area located to the north/west of the existing Church, to be used by those visiting the Church, historic Cottage and the new building, the experts agreed the access requires upgrading to a two-way sealed crossing to improve operational efficiency of the crossing, reducing any potential queuing and traffic effects at the intersection of Hertford and Denbigh streets.<sup>138</sup>

[197] In closing, the Council raised a concern that the Trust had not updated the plans to incorporate the transport experts' agreed recommendations, which largely reflect concerns raised at the Council hearing.<sup>139</sup> These agreed points include:<sup>140</sup>

- (a) a revised access design for the Hertford Street access which provides for a sealed and two-way vehicle crossing;
- (b) on-site carparking is able to be provided for, and should be proposed on the site and should be an all-weather surface;
- (c) two sealed disability carparking spaces should be provided for;
- (d) carparking should be illuminated at night; and
- (e) either a travel plan<sup>141</sup> or transport management plan<sup>142</sup> is required to mitigate effects of higher parking demands as a result of larger events held at the site.

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<sup>137</sup> JWS Transport, 18 February 2022 at [11]-[12].

<sup>138</sup> JWS Transport, 18 February 2022 at [13]-[14].

<sup>139</sup> Closing submissions of counsel for the Council, 6 June 2023 at [51].

<sup>140</sup> JWS Transport, 18 February 2022 at [13],[17],[19],[25].

<sup>141</sup> Bartlett EIC, 20 April 2022 at [18].

<sup>142</sup> Banks EIC, 15 June 2022 at [30] (as adopted by M Smith EIC dated 12 April 2023).

[198] While the experts agreed that sufficient carparking can be provided on-site to accommodate demand to a degree that any transport effects on the surrounding road network will be minimised, there was disagreement between the experts on the number of on-site carparks that should be provided. Mr Bartlett considers 12 all-weather carparks would be sufficient for day to day operation of activities on the site.<sup>143</sup>

[199] However, Mr Bartlett appears to accept that the carparking proposed does not fully meet the potential demand. Mr Smith considers that 21 all-weather carparks should be provided for the operation of the existing Church and the new multi-use facility.<sup>144</sup>

[200] Ms Sue Patterson (giving evidence for Arrowtown Promotion and Business Association after the transport experts) expressed several concerns regarding traffic and parking. She considered the demand for all-weather carparks on the site will exceed what is provided and any overflow parking will move to the street. She observed that the street parking causes pedestrians to walk on the road in both Hertford Street and Merioneth Street.<sup>145</sup>

[201] She stated that the soft roadside landscaping required by the guidelines not only leaves footpaths as a poor option, but also leaves the road corners with no yellow lines to restrict parking near the corners, leading to more danger to pedestrians. She was critical that witnesses had not proposed any satisfactory solutions to street parking problems.<sup>146</sup>

[202] The Trust submitted that the proposed conditions largely adopt the joint witness statement conditions.<sup>147</sup> However, the conditions referred to were

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<sup>143</sup> Bartlett EIC, 20 April 2022 at [15] and [21]-[22].

<sup>144</sup> Banks EIC, 15 June 2022 (as adopted by M Smith EIC dated 12 April 2023) at [30].

<sup>145</sup> NOE, Patterson p 506 l 15-19.

<sup>146</sup> NOE, Patterson p 506 l 19-24.

<sup>147</sup> Closing submissions of counsel for the Trust, 29 May 2023 at [39].

provided after the hearing with closing submissions.

### *Our consideration*

[203] We have considered but do not set out the transport policies due to our findings on other more critical adverse effects and associated policy considerations.

[204] We note the first instance decision did not find the proposal contrary to the transport objectives and policies, although it referred to planning evidence that the proposal was not consistent with Objective 29.1.2 and Policy 29.1.2.1.

[205] We do note that there are an agreed number of transport elements requiring additional design to remedy or mitigate adverse transport effects insofar as that can reasonably occur within the approach of the Council to its roading and pedestrian infrastructure.

[206] We further note that the design guidelines support the retention of the existing low key approach to provision for vehicles, other active transport (scooters, bicycles etc) and pedestrians, and has associated speed limits posted through Arrowtown (although we do not comment on the appropriateness of those).

[207] We acknowledge the concerns of many of the witnesses about the parking situation around the site. However, transport issues are secondary to our concerns with the effects of the proposal pertaining to, the heritage values and heritage character of the site in this context. The detail of the further mitigation proposed by the Trust in its closing submissions would make no difference to our evaluation.

### **Noise**

[208] The proposal does not meet the PDP noise standards for operational noise after 8 pm. During the daytime (0800 to 2000) a noise limit of 50 dB  $L_{Aeq}(15min)$

applies, while at night (2000 to 0800) a noise limit of 40 dB  $L_{Aeq(15min)}$  applies. During the night-time an additional noise limit of 75 dB  $L_{Amax}$  applies. We note sound from vehicles on public roads is a permitted activity under Rule 36.4.1.

[209] Two expert noise witnesses gave evidence and participated in joint expert witness conferencing – Mr Jon Styles for the Council and Mr Rob Hay for the Trust.

#### *Relevant PDP provisions*

[210] Relevant PDP provisions are:

36.2.1                      Objective – The adverse effects of noise emissions are controlled to a reasonable level to manage the potential for conflict arising from adverse noise effects between land use activities.

Policy 36.2.1.1          Avoid, remedy or mitigate adverse effects of unreasonable noise from land use and development.

[211] We note the planning witnesses at the first instance hearing considered the proposal contrary to this policy.

#### *Parties' position on noise*

[212] The Council's concern in respect of operational noise effects, relates to noise generated by people leaving the site after 8 pm, which exceeds the night-time noise limits in the PDP. This effect was also found to be more than minor in the first instance decision.<sup>148</sup>

[213] The Council's concern is that there is no restriction proposed on the number of events that could occur between 1 June and 31 August when the Trust

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<sup>148</sup> Decision of Independent Hearing Commissioners on behalf of the Queenstown Lakes District Council, 30 November 2020 at [410].



proposes that events will finish by 8 pm, but people may leave the site from 8 pm. The Trust now proposes a limit of 39 functions over the spring, summer and autumn period until 11 pm, which in the Council’s view is still a significant number of late night events in this residential environment.

[214] Whilst some refinements have been made since the Council’s decision, the Council’s evidence is that noise effects remain as a result of the night-time noise limit exceedances, and that needs to be evaluated in light of the strong policy direction.

[215] Some s274 parties, particularly those living nearby (or opposite) the proposal, gave evidence of their concerns on the effects of such noise on their amenity.

[216] We find that the question of the acceptability of operational noise has boiled down to the number of events past 8 pm. The evidence of Mr Hay was that 39 is the maximum acceptable number per annum, whereas Mr Styles accepts that 10 would be acceptable. So, what is “reasonable” lies somewhere between 10 and 39 functions per annum.<sup>149</sup>

[217] In closing, the Trust accepted and responded to some points made by Mr Styles. This response was reflected in the revised conditions attached with his closing submissions. We did not hear from any parties on the revised conditions and accordingly, we have set those aside.

#### *The assessment of noise effects*

[218] Mr Styles’ opinion was that noise generated after 8 pm will result in intrusive and unreasonable noise effects on the surrounding residential dwellings. He considered that these effects are not easily mitigated as the source of the noise effects is from people leaving functions in the evening who might be calling

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<sup>149</sup> Closing submissions of counsel for the Trust, 29 May 2023 at [43].

goodbye to their friends or having animated conversations. These effects can be elevated when alcohol is involved.<sup>150</sup>

[219] Mr Hay agreed with Mr Styles that the boundary of 5 Hertford Street and 14b Merioneth Street, common to the proposed carparking area, will require provision of a noise control fence and the predictions take these fences into account.

[220] These predictions assume that up to 120 guests are on site and that up to 60 of these may depart within the 15 minutes following the end of a function with music off, compressing noise generation and increasing the predicted noise level and creating a worst-case assessment. Mr Hay assumed that it might be spread over 30 minutes or so.<sup>151</sup>

[221] Mr Hay predicted that compliance with the PDP noise performance standards would be achieved at all locations, other than only to residences to the south across Hertford Street during the peak guest departure period following the end of a function.<sup>152</sup>

[222] Mr Hay concluded in his evidence that the Trust has offered to restrict the number of such functions to 39 over the spring, summer and autumn months and with a finish time of 2230 hours, with guests off-site by 2300 hours. He considered these (and other controls in conditions) are sufficient to ensure that noise effects on the three dwellings where the night-time standard will be briefly exceeded are minor at most.<sup>153</sup>

*Number of events after 8 pm*

[223] On the court's direction, Mr Styles filed a document on the second day of

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<sup>150</sup> Styles EIC, 15 June 2022 at [75]-[81].

<sup>151</sup> Hay EIC, 20 April 2022 at [7.2]-[7.4].

<sup>152</sup> Hay EIC, 20 April 2022 at [7.5]-[7.6].

<sup>153</sup> Hay EIC, 20 April 2022 at [3.5].

his cross-examination setting out his assumptions behind his recommended 10 events per annum restrictions.

[224] The Council submits that the restrictions proposed on the number of events does not address the adverse effects that result for the use of the site after 8 pm and that the evidence of Mr Styles is based upon reasonable assumptions.<sup>154</sup>

[225] The Trust submitted that Mr Styles' assumptions are unduly conservative and that Mr Forward's evidence on noise associated with functions at the bowling club was sensible and compelling. Functions at the bowling club across the road are not disturbing because they are well managed.<sup>155</sup> There is no reason to suspect that the new facility will not be well managed, especially given the requirement for an on-site caretaker.<sup>156</sup>

[226] However, the Council considers that the presence of the bowling club does not justify a conclusion that additional similar noise is also appropriate, and that residential dwellings in the area are used to that type of noise.<sup>157</sup> Rather, the noise from the proposal will have an adverse cumulative effect on the residential dwellings.<sup>158</sup>

### *Our consideration*

[227] In closing, the Trust made further extensive submissions on the issue of noise.<sup>159</sup> We do not intend to go into those submissions in any detail given our earlier findings on the core issues.

[228] That said, we did not find the evidence of Mr Styles for 10 events (after

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<sup>154</sup> Closing legal submissions on behalf of the Council, 6 June 2023 at [57]-[61].

<sup>155</sup> NOE, Forward, at p 541 l 25-27.

<sup>156</sup> Closing submissions of counsel for the Trust, 29 May 2023 at [53].

<sup>157</sup> Scott EIC, 15 June 2022 at [92] and Styles EIC, 15 June 2022 at [125]-[126].

<sup>158</sup> Opening submissions of counsel for the Council, at [49].

<sup>159</sup> Closing submissions of counsel for the Trust, 29 May 2023 at [43]-[54].

8 pm) compelling, nor do we accept the evidence of Mr Hay. We doubt whether noise could be wholly contained within a facility when people are coming and going, particularly during periods when the weather encourages frequent use of the outdoor spaces.

[229] Neither did we understand the basis for the 39 events initially offered up by the Trust. We remain unclear as to what activities the conditions would apply to, and the potential noise effects of those activities (including music from inside the Centre) the conditions would not apply to. That left a question as to their certainty and enforceability that in the court's view, would be difficult to overcome.

### **Overall evaluation**

[230] On the basis of our findings made throughout this decision, we find that the proposal will have more than minor adverse effects and is contrary to the objectives and policies of the PDP, in particular those in Chapters 10 and 26 referred to in this decision.

[231] Some of these adverse effects reach the level of being significant, as indicated in earlier findings, particularly the effects on the heritage character of this part of the ARHMZ.

[232] Accordingly, the appeal must be declined.

### **Conclusion and directions**

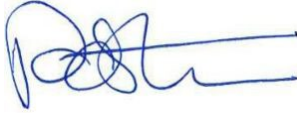
[233] The court dismisses the appeal and declines the application for resource consent.

### ***Costs***

[234] An application for costs is not encouraged. Much of the expert evidence lacked focus on the issues, including that of expert witnesses that did not give

evidence at the first instance hearing.

For the court

A handwritten signature in blue ink, appearing to read 'P A Steven', written over a horizontal line.

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**P A Steven**  
**Environment Judge**