

**Before the Panel of Hearing Commissioners
For the Queenstown Lakes Proposed District Plan**

**In the Matter of
And**

the Resource Management Act 1991

**In the Matter of
And**

the Queenstown Lakes Proposed
District Plan - Stage 2

In the Matter of

Hearing Stream 15 – Visitor
Accommodation Variation

Legal Submissions on behalf of
for MajorDomo Limited (Submitter 2592),
Touch of Spice Limited (Submitter 2600)
and NZSIR Luxury Rental Homes Limited
(Submitter 2598)

Dated: 17 September 2018

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INTRODUCTION

1. These submissions are presented on behalf of MajorDomo Limited (Submitter 2592), Touch of Spice Limited (Submitter 2600) and NZSIR Luxury Rental Homes Limited (Submitter 2598) (collectively referred to the **Luxury Accommodation Providers**) in relation to their submissions on the Visitor Accommodation Variation (**Variation**) on the Proposed Queenstown Lakes District Plan (**Proposed Plan**).
2. The Council has sought to limit what is now defined as Residential Visitor Accommodation (**RVA**) through the Variation. In the section 42A Report the Council Officer has recommended amendments to the Variation including increasing the number of nights for permitted RVA activities from 28 nights as notified to 42 nights.
3. The operative consenting regime in relation to RVA in the Operative District Plan is more permissive than is what is proposed by the Council. Under the Operative Plan a holiday home that has been registered with the Council as a “Registered Holiday Home” can be rented out for 90 nights per year as a permitted activity. Additionally, the policy framework enables the grant of consent beyond 90 days.

RELIEF SOUGHT

4. The Luxury Accommodation Providers in their submissions sought permitted activity status for up to 120 nights as a permitted activity. Although, Mr Farrell considered there is a lack of evidence to support the Council’s proposed provisions, in order to address its concerns regarding a potential effect, he proposes the following amendments¹ that result in RVA being:
 - (a) Recognised in objectives and policies as contributing a significant benefit to the community, acknowledging that adverse effects on residential amenity values should be managed.
 - (b) Provided for in Urban Zones as a controlled activity for up to 120 nights per year, subject to standards relating to noise, parking and vehicle access. Council’s control should be reserved to site-specific

¹ Evidence of Ben Farrell dated 6 August 2018 at [27]

operational management protocols to assist in the management of visitor behaviour and encourage professionally managed RVA such as those provided by the Luxury Accommodation Providers. Beyond 120 nights, RVA would be managed as a Discretionary or Restricted Discretionary Activity with the focus of assessment on the effects on residential amenity values and residential cohesion.

- (c) Provided for in Rural Zones as either permitted or controlled activities for up to 120 nights per year, subject to standards relating to noise, parking, and vehicle access. RVA beyond 120 nights in Rural Zones should be classified as a Discretionary Activity (not Non-Complying).

RELEVANT LAW

- 5. The Council's various opening legal submissions have already thoroughly set out the relevant statutory considerations to your decision making.
- 6. As such I focus on section 32 of the Resource Management Act 1991 (**RMA**) as it is particularly relevant to your assessment of the Variation.

Section 32

- 7. In my submission the Council expert witnesses have not provided a sufficient evidential basis to support the Variation under section 32 of the RMA.
- 8. The Council is required to demonstrate that the Variation is the most appropriate way to achieve the objectives of Proposed Plan by:
 - (a) identifying other reasonably practicable options for achieving the objectives;² and
 - (b) assessing the efficiency and effectiveness of the provisions in achieving the objectives.³
- 9. In assessing the efficiency and effectiveness of the provisions the Council must undertake the cost benefit assessment provided for in section 32(2) of the RMA. The onus is on the Council, rather than submitters, to

² Section 32(1)(b)(i) of the RMA

³ Section 32(1)(b)(ii) of the RMA

undertake that assessment and provide sufficient evidence to demonstrate the proposal is the most appropriate option.⁴

10. For the reasons set out in these submissions, the Council's section 32 Report, section 42A Report and the economic evidence have failed to demonstrated that the Variation or amendments recommended in the section 42A Report will be effective, efficient or promote sustainable management of the District's resources. In particular, they have failed to demonstrate that the provisions will address housing supply or amenity issues.
11. In addition, in my submission the significant benefits of RVA have not adequately been taken into consideration nor have the costs on homeowners, the luxury visitor accommodation industry or Queenstown tourism industry as is required under section 32(2) of the RMA.
12. It is the case of the Luxury Accommodation Providers that the Variation is not supported by evidence demonstrating a problem or a solution. To the contrary, the Variation will have negative economic effects on an important sector of Queenstown's tourism market.

ASSESSMENT OF EVIDENCE

13. I understand the following to be the Council's main reasons for managing and seeking to restrict RVA:
 - (a) helping address the District's shortage of housing supply; and
 - (b) maintaining residential amenity values and cohesion.
14. I address these matters below, while firstly addressing the benefits of RVA.

Benefits of RVA

15. The objectives and policies in the Variation do not recognise the significant benefit that RVA has for the District. I do not understand the Council to be disagreeing with these benefits and in my submission it is important that these benefits are recognised in the objectives and policies.

⁴ Clause 5(1)(a) of Schedule 1 of the RMA

16. The significant benefit of RVA to the Queenstown economy is recognised by the Council in the evidence of Mr Heyes who estimates that Airbnb alone directly created \$35.18 million in GDP and directly supported 748 jobs.⁵ This does not include the contribution of the luxury accommodation that is managed by companies such as the Luxury Accommodation Providers.
17. The evidence on behalf of the Luxury Accommodation Providers demonstrates that RVA, in particular luxury managed RVA, generates significant benefits for the District.
18. The Luxury Accommodation Providers themselves contribute through employment and the engagement of services to operate their business, as well as the various contractors that are employed to maintain the properties.⁶
19. The properties that the Luxury Accommodation Providers manage have a nightly rent ranging from \$800 per night - \$40,000 per night.⁷
20. The Luxury Accommodation Providers are paying their way. The properties managed by the Luxury Accommodation Providers are all registered as holiday homes with the Council which means they pay 25%-80% more in rates than a standard residential property.⁸ This assists with covering the increased infrastructure costs of the additional visitor numbers and represents a significant additional income stream for the Council.⁹
21. In my submission these significant benefits have not been given sufficient recognition in the cost-benefit exercise required under section 32.

Housing Supply

22. We acknowledge that housing supply is a relevant consideration under section 31, however there needs to be evidence that RVA as an activity is using up development capacity in respect of housing land that would

⁵ Evidence of Robert Heyes dated 23 July 2018 at [7.2]

⁶ Evidence of Mark Harris dated 6 August 2018 at [19] and Evidence of Lisa Hayden dated 6 August 2018 at [23]

⁷ Evidence of Lisa Hayden dated 6 August 2018 at [7]

⁸ Evidence of Lisa Hayden dated 6 August 2018 at [23]

⁹ Evidence of Robert Heyes dated 23 July 2018 at [2.1(e)]

otherwise meet the demands of the District.¹⁰ In my submission the Council has not provided any evidence of this.

23. The section 42A Report relies on the section 32 evaluation and evidence of Mr Heyes in regard to the effects on the housing supply.
24. Mr Farrell has assessed the Council's evidence in relation to housing supply and he considers there is a lack of credible or certain evidence demonstrating that the proposed RVA planning regime will result in a discernible benefit to housing supply and affordability issues in the District.¹¹
25. The evidence of Mr Heyes for the Council makes it clear that there is insufficient evidence to quantify the extent to which RVA has an impact on the availability and affordability of the long-term rental market.¹²
26. The Luxury Accommodation Providers clients' own their residential properties to have a home in Queenstown that they can use for family holidays throughout the year.¹³ In my submission this is "housing" in a section 31(1)(aa) sense. These properties will not be made available for long term rentals and this is recognised by Mr Heyes for the Council.¹⁴
27. Additionally, as the evidence of Mr Harris¹⁵ and Ms Hayden¹⁶ demonstrates even if the properties they manage were made available for long term rentals, they would not be suitable or affordable for the local market given they would be let at around \$1,500 - \$3,000 per week.¹⁷
28. The distinction between the general home market and the luxury home market (in the context of overseas buyers) is recognised by the Council themselves in its submission on the Overseas Investment Amendment Bill.¹⁸ In that submission, Mayor Boulton makes the observation that homes in the general housing market are generally owned by "regular working

¹⁰ Section 32(1)(aa)

¹¹ Evidence of Ben Farrell dated 6 August 2018 at [12]

¹² Summary Statement of Robert Heyes dated 31 August 2018 at [3] and Evidence of Robert Heyes dated 23 July 2018 at [10.3] and [10.9]

¹³ Evidence of Mark Harris dated 6 August 2018 at [15] and Evidence of Lisa Hayden dated 6 August 2018 at [8]

¹⁴ Evidence of Robert Heyes dated 23 July 2018 at [2.1(i)] and [10.7]

¹⁵ Evidence of Mark Harris dated 6 August 2018 at [14]

¹⁶ Evidence of Lisa Hayden dated 6 August 2018 at [31(a)]

¹⁷ Evidence of Mark Harris dated 6 August 2018 at [14]

¹⁸ QLDC Overseas Investment Amendment Bill Submission dated 23 January 2018 at [1.4.2]

families”, while those in the luxury home market are owned by the “exceptionally wealthy”¹⁹ and that “luxury home buyers are not purchasing homes that would be otherwise available for regular families to purchase”.²⁰ In my submission the same argument applies to the long-term rental of luxury homes in that they would not form part of the same rental market.

29. In my submission Mr Heyes’ evidence that 45 nights per annum is an appropriate threshold does not reflect the costs associated with the luxury accommodation rentals. Ms Hayden considers that 45 nights per annum would be uneconomic for clients of the Luxury Accommodation Providers given the fixed costs associated with each stay, higher council rates, higher insurance premiums for rental properties and the higher cost to maintain the property at a premium level.²¹ Ms Hayden considers that restricting the nights to 45 would “*result in an unacceptable loss of economic benefit for the owners of this type of VA and they would not choose to put their houses on the short-term rental market*”.²²
30. This would have the effect of reducing the number of luxury rentals available and would likely result in these high-value visitors to Queenstown choosing to stay elsewhere in New Zealand or overseas.²³ Those that stay in properties managed by the Luxury Accommodation providers are unlikely to stay in hotels, as they often travel with families or multiple couples so large homes mean they can be accommodated together.²⁴ They are also often looking for privacy and a discrete level of service where they can be self-sufficient as much or little as possible.²⁵
31. While acknowledging that existing RVA can continue to operate where existing use rights apply, it is important that the continued growth of the luxury accommodation sector is facilitated by the planning framework over the life of the Proposed Plan given the important role it plays in an economic sense and also the lack of impact it has on housing supply.

¹⁹ QLDC Overseas Investment Amendment Bill Submission dated 23 January 2018 at [3.2.1]

²⁰ QLDC Overseas Investment Amendment Bill Submission dated 23 January 2018 at [3.2.2]

²¹ Evidence of Lisa Hayden dated 6 August 2018 at [33]

²² Evidence of Lisa Hayden dated 6 August 2018 at [33]

²³ Evidence of Lisa Hayden dated 6 August 2018 at [33]

²⁴ Evidence of Mark Harris dated 6 August 2018 at [17]

²⁵ Evidence of Mark Harris dated 6 August 2018 at [17]

32. The evidence of Ms Hayden is that 120 nights per year per property is the necessary threshold to earn a sustainable return for a bespoke accommodation provider.²⁶
33. In my submission, the Council's evidence has failed to demonstrate that the approach taken in the Variation will achieve its intended goals of improving housing affordability and housing supply and the evidence of Mr Harris, Ms Hayden, and Mr Farrell demonstrate that by restricting RVA, in particular high end RVA this will not result in more long term rentals being available.

Effects of RVA on Residential Amenity Values and Residential Cohesion

34. The Council considers that the Variation is necessary to manage adverse effects on amenity and residential cohesion. In my submission there is a lack of evidence to demonstrate that the provisions proposed in the Variation are necessary to address these potential effects and there is a lack of consideration of role that businesses, such as the Luxury Accommodation Providers, play in managing the effects of RVA including the potential effects on amenity values.
35. In my submission it is using a sledgehammer to crack a nut to treat peer to peer rentals in the same way as those managed by professional companies as the potential for adverse effects are not the same. However, it is recognised that it is appropriate for there to be controls in place to manage the potential amenity effects of RVA.
36. In my submission the amendments proposed by Mr Farrell are a more appropriate response for addressing these perceived problems. The proposed controlled activity status provides the opportunity to manage adverse amenity effects by ensuring that RVA complies with the necessary standards and providing the ability to impose conditions specifically addressing amenity effects of particular properties or by requiring the preparation of a management plan to address effects.²⁷
37. The Luxury Accommodation Providers recognise that it is appropriate that the potential adverse effects of RVA are managed. The Luxury Accommodation Providers fully support the current controls on registered

²⁶ Evidence of Lisa Hayden dated 6 August 2018 at [34]

²⁷ Evidence of Ben Farrell at [27(c)]

holiday homes and they ensure their properties fully comply those requirements. Some of the key requirements of registration are:

- (a) two carparks must be available at all times;
- (b) appropriate signage throughout the property to help manage noise levels;
- (c) minimum three-night stays; and
- (d) limited to two adults per room this includes ensuring there is the necessary parking.²⁸

38. The Luxury Accommodation Providers consider that if the existing controls were fully enforced it would likely address some of the effects identified.²⁹

39. Additionally, the Luxury Accommodation Providers provide a “high touch” service which significantly reduces the potential for any adverse amenity effects. The Luxury Accommodation Providers manage noise and other amenity effects by meeting guests at the properties and ensuring they are aware of the house rules including no party policies and ensuring neighbours know the Luxury Accommodation Providers can be contacted 24/7 in the rare occasion issues arise.³⁰ As such their properties do not contribute to the adverse amenity effect that peer to peer rentals may generate.³¹

40. In respect of rural zones (including Rural Residential and Rural Lifestyle), it is noted that there is no evidence or demonstrable reason why RVA should be restricted or discouraged in the rural environment.³²

CONCLUSION

41. In my submission the evidence of the Luxury Accommodation Providers demonstrates the RVA provisions proposed by the Council as notified and amended in the section 42A Report will not be effective, efficient or promote sustainable management of the District’s resources.

²⁸ Evidence of Lisa Hayden dated 6 August 2018 at [11]

²⁹ Evidence of Lisa Hayden dated 6 August 2018 at [36]

³⁰ Evidence of Lisa Hayden dated 6 August 2018 at [21] and Evidence of Mark Harris dated 6 August 2018 at [18]

³¹ Evidence of Lisa Hayden dated 6 August 2018 at 31]

³² Evidence of Ben Farrell at [14]

42. The Council has not provided any justification based on evidence that a change from the current approach for managing RVA is required. This is particularly so for higher end homes that are managed by professional third parties such as the Luxury Accommodation Providers.
43. The Council has failed to demonstrate that the amendments will have any discernible impact on housing supply and does not place sufficient weight on the fact that properties that are owned as holiday houses will never enter the long term rental pool. Additionally, even if they did a significant number of these properties would not be considered affordable.
44. RVA provides a significant benefit to the District's economy not only through spending of people staying in RVA but also the significant number of service providers that rely on RVA and the additional rates RVA could generate. The Variation will prevent those economic benefits.
45. The Luxury Accommodation Providers recognise the Council's desire to manage the effects of peer to peer rentals in some locations on the basis of a perception that RVA can give rise to effects on residential amenity values and residential cohesion beyond those anticipated by long-term rentals.³³ However, the properties managed by the Luxury Accommodation Providers are not peer to peer rentals and a key aspect of their operations is to ensure there are not adverse amenity effects generated by those using their properties.
46. In my submission the amendments proposed by the Luxury Accommodation Providers in the evidence of Mr Farrell strike the appropriate balance between managing the effects of RVA and also providing sufficient flexibility for people to use their properties as RVA. These should be preferred by the Panel.

Dated this 17th day of September 2018



Joshua Leckie

Counsel for MajorDomo Limited, Touch of Spice Limited and NZSIR Luxury Rental Homes Limited

³³ Evidence of Mark Harris dated 6 August 2018 at [24]