

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

ENV-2018-CHC-184

UNDER of the Resource Management
Act 1991

AND

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

BETWEEN **Gibbston Valley Station
Limited**

Appellant

AND **QUEENSTOWN LAKES
DISTRICT COUNCIL**

Respondent

JOINT STATEMENT ARISING FROM EXPERT PLANNER CONFERENCING

GIBBSTON VALLEY RESORT ZONE

18 October 2019

A. INTRODUCTION

1. This joint statement is the outcome of planner expert witness conferencing for the proposed Gibbston Valley Resort Zone Chapter 45 (**GVRZ**), as an alternative to those parts of the Gibbston Character Zone and Rural Zone and Outstanding Natural Landscape classification, as illustrated in **Annexure A**.
2. The conferencing sessions were not facilitated by an Environment Commissioner.
3. The planning experts who participated in conferencing and the parties for whom each planner provided are set out below.
 - (a) Craig Barr for Queenstown Lakes District Council; and
 - (b) Brett Giddens, for Gibbston Valley Station.
4. The planners' qualifications and experience are set out in **Annexure B**.
5. This joint statement has been prepared in accordance with Section 4.7 of the Environment Court Practice Note 2014.
6. In addition, the planners have read, and agree to abide with, Appendix 3 to the Environment Court Practice Note 2014, which comprises the Protocol for Expert Witness Conferencing.

B. ISSUES DISCUSSED

7. This joint statement sets out the matters discussed and those agreed and disagreed taking into account the following matters:
 - (a) The section 32AA evaluation for the proposed GVRZ;
 - (b) The relevant statutory framework:
 - (i) Partially Operative Otago Regional Policy Statement 2019;
 - (ii) Proposed Otago Regional Policy Statement (mediated version dated 27 October 2017) agreed by the Otago regional Council and appellants awaiting Court confirmation of proposed consent orders. The planners have viewed the Procedural Decision of Jackson J dated 15 March 2019 NZEnvC42 [2018] on the PRPS, and the amendments to Policy 3.2.4 agreed by all parties on 17 July 2019. The planners have also viewed the further

Minute of the Environment Court dated 29 August 2019. The planners have decided for the purpose of this Conference to proceed on the basis of the PRPS Chapter 3 provisions, including Policy 3.2.4, as set out in the 17 July 2019 version draft consent order currently before the Court);

(iii) The Proposed District Plan decisions version (**PDP**) with particular regard to the following chapters:

- 2 Definitions
- 3 Strategic Direction
- 6 Landscapes and Rural Character
- 23 Gibbston Character Zone
- 25 Earthworks
- 27 Subdivision and Development
- 28 Natural Hazards
- 31 Signs
- 35 Temporary Activities and relocated buildings
- 36 Noise.

(c) The protection of outstanding natural landscapes within the zone from inappropriate subdivision, use, and development, and the maintenance or enhancement of amenity landscapes;

(d) Drafting and structural design of Chapter 45 with a focus on:

- (i) Whether the rule framework would implement the policies and achieve the objectives;
- (ii) Whether the purpose of each Activity Area as described in Part 45.1 would be achieved by the policies and rules;
- (iii) Whether both individually and collectively the rules and policies would implement the structure plan;
- (iv) Activities anticipated are provided an appropriate pathway to be achieved, and that there is sufficient intervention and policy guidance for activities that are identified as a discretionary or non-complying activity

(e) The appropriateness of the Resort Zone and associated development from a landscape effects perspective;

- (f) Effects on Life Supporting Capacity of Soil;
- (g) Reverse Sensitivity Effects – Noise;
- (h) Traffic effects and design;
- (i) Natural Hazards;
- (j) Whether the proposal accords with the definition of Resort; and
- (k) Other annotations and constraints;

C. THE RELEVANT STATUTORY FRAMEWORK

i. Regional Policy Statement

8. The relevant regional policy statement is the partially operative proposed Regional Policy Statement 2019 (**poRPS 2019**) including Part 3.1 and 3.2 where consent orders have not yet been made.
9. The planners have also reviewed the Procedural Decision of Jackson J dated 15 March 2019 NZEnvC42 [2018] and the further Minute from the Environment Court dated 29 August 2019. The key component of the PORPS that is relevant to this proposal and where consent orders have not been made is Part B Chapter 3 '*Otago has high quality natural resources and ecosystems*'. Following further consideration of Policy 3.2.4 which relates to outstanding natural features and landscapes as directed by the Court¹ It is understood that the provisions have been agreed by the Otago Regional Council and appellants are awaiting confirmation of proposed consent orders. It is understood that presently the ORC and parties are yet to respond to the 29 August 2019 Minute. As set out below in the body of this evaluation, there is not considered to be tension between the proposal and the objectives and policies of the PORPS such that unresolved status of Policy 3.2.4 or any accompanying preamble text in Part 3.2 of the PORPS requires recourse to the partially operative 1998 RPS.
10. The planners agree that the objectives and policies identified in paragraphs 52 to 58 of the section 32AA are the most relevant to this proposal. The planners also agree with the relevance of these objectives and policies as it relates to the proposed GVRZ.

¹ Procedural Decision of Jackson J dated 15 March 2019 NZEnvC42 [2018].

ii. Proposed District Plan

11. The planners agree with the identification of the relevant PDP objectives and policies in paragraphs 60 to 73 of the section 32AA, including regard to the findings of the Environment Court as it relates to the PDP Topic 1 provisions². The planners also agree with the description of the intent of the relevant objectives and policies and their relevance to the proposed GVRZ.
12. The planners have reviewed the components of PDP Chapters 3 and 6 that are subject to Topic 2 (Landscapes and Rural Environment), as supported by the Council at 4 September 2019³.
13. The planners acknowledge that while this version of the provisions is relevant for context, they have no substantial bearing and the decisions version of the Topic 2 provisions are the relevant statutory provisions. Notwithstanding this, Mr Barr considers that in his view the proposed GVRZ would also implement the Topic 2 policies and achieve the Topic 2 objectives as supported by the Council in its closing submissions for Topic 2. Mr Barr was also the Council's planning witness in Topic 2.
14. Mr Giddens has not been involved in Topic 2 but has been provided the objectives and policies contained in the Council's closing submissions for Topic 2. Mr Giddens considers that while there should be no expectation that the Council's version will be supported, he agrees with Mr Barr that the proposed GVRZ would implement those objectives and policies.

D. The protection of outstanding natural landscapes within the zone from inappropriate subdivision, use, and development, and the maintenance or enhancement of amenity landscapes

15. The planners refer to and rely upon the landscape JWS where it describes the landscape character of the proposed GVRZ and context within the Gibbston Valley environment, and the ability for the landscape to absorb development in those areas where development is envisaged.

² [2019] NZEnvC 142 Erratum. Interim Decision: Topic 1, Stage 1 – 'A Resilient Economy').

³ Filed as part of the Council's closing legal submissions on Topic 2.

16. The planners agree that the policies and rules will ensure that development of the proposed GVRZ will maintain or enhance landscape character.
17. The planners agree with and refer to paragraphs 124 to 142 of the section 32AA where it evaluates the costs and benefits on the landscape resource and the effectiveness and efficiency of the provisions. The planners agree that while development will reduce landscape character values in certain locations, overall the proposed GVRZ would maintain or enhance landscape character.
18. The planners agree that the provisions in proposed Chapter 45 are the most appropriate to achieve the objectives of the proposal.

E. Effects on life supporting capacity of soil

19. The planners refer to and rely on the statement from Mr Chris Keys' in terms of the areas identified as being high value soils and the local factors that influence the use of soils from a productivity perspective. In particular, the planners accept Mr Keys opinion that the mesoclimate of Gibbston and in particular the proposed GVRZ is variable and the identification of PL areas on the Structure Plan would accord with those areas that are most likely to be viable taking into account the range of local factors that influence productivity.
20. Paragraph 100 of the section 32AA identifies the relevant PORPS policies (including the provisions in Chapter 3 before the Environment Court) that relate to the identification and management of significant soils. The Section 32AA has also evaluated the proposal against the relevant provisions of the PDP. As set out in the evaluation in the section 32AA, the planners agree that the proposed GVRZ Structure Plan identifies those parts of the site where productive vineyards are feasible and the identification of these, and related policies and rules, will ensure the retention of this resource.
21. The loss of potentially productive vineyard land due to development in AA3, AA4 and AA6 is mitigated with the retention of and installation of productive vineyard plantings as identified on the Structure plan set out as a requirement in Policy 45.2.1.6 and Rule 45.4.2.
22. The planners agree that the proposed GVRZ achieves the respective

PDP and PORPS objectives that relate to the identification and management of significant soils.

F. Reverse sensitivity effects and noise compatibility between productive vineyards and residential activity and visitor accommodation

- 23.** Mr Keys has confirmed that currently GVS does not contain any frost fans and it is unlikely that the identified PL areas would require frost fans. Audible bird scaring devices are also not used because netting is deployed.
- 24.** The planners agree that for the GVRZ, it is appropriate to exempt compliance with the noise limit standard for audible bird scaring devices (Rule 36.5.7). This is due to the unlikelihood of audible bird scaring devices being deployed within the GVRZ on the basis of vineyards (which use netting directly over the rows of vines) being the principal bird deterrent within the proposed zone.
- 25.** The planners agree that for the GVRZ, it is appropriate to exempt compliance with the noise limit standard for frost fans (Rule 36.5.8). This is because it is unlikely that frost fans would establish in the GVRZ, as identified in the statement by Mr Keys, and for the purposes of managing the effects frost fans outside the GVRZ, a range of alternative methods proposed to address this matter.
- 26.** The planners agree that the primary reverse sensitivity consideration is noise from frost fans and because frost fans are deployed during night time and early morning (i.e. often the hour or so before and after daybreak) in early spring to protect buds, and then in autumn to protect foliage and fruit, attenuation of buildings to alleviate effect from sleep are considered more relevant than amenity effects associated with achieving compliance at a notional boundary of buildings.
- 27.** Mr Keys considers that it is very unlikely that another frost fan would be established on Wentworth Estate in the general proximity of AA6 and AA8 because of the contour and favourable aspect meaning that frost is not an issue. He also considers the cost of the frost fan would make the option unfeasible. Mr Keys notes that this view was also confirmed by the operator of the Wentworth vineyards. Mr Giddens relies on the advice of Mr Keys and considers that a frost fan in this location would be problematic as the existing dwelling in AA6 would render the consent non complying.

- 28.** Mr Giddens refers to and relies on the acoustic advice provided by Mr Jon Styles⁴ in terms of the potential reverse sensitivity effects occurring from the frost fan currently located on the adjoining property (Wentworth Estate) approximately 270m from AA6 and AA8. Mr Styles confirms that the frost fan complies with the noise level noise limit of 55 dB $L_{Aeq(15min)}$ (Rule 36.5.8 of the PDP) at the approximate location of the existing notional boundary of AA6.
- 29.** While Mr Barr also accepts Mr Styles advice, he remained concerned about the potential for a further frost fan in the future on Wentworth Estate, and has taken some advice as to the likely location of such a frost fan. Viticulturist Mr James Dicey has provided advice on the likely location of an additional frost fan, and Dr Stephen Chiles has produced a noise model showing the extent of the noise effects arising from a frost fan in such a location, as contained in Appendix J of the S32AA. Mr Barr notes that GVS have modified the eastern boundary of AA8 so that any potential future frost fan established in the location suggested by Mr Dicey could comply with 55 dB $L_{Aeq(15min)}$. Given that 55 dB $L_{Aeq(15min)}$ will not be exceeded and that acoustic attenuation is also required Mr Barr is satisfied that the location of AA8 and its primary purpose, being a node of residential development in the form of worker accommodation, would not be likely to come to the nuisance of, and constrain the future intensification of productive vineyards on the Wentworth land as illustrated in Appendix J in the S32AA in the context of a frost fan being deployed in that hypothetical location.
- 30.** While the planners do not agree about the likelihood of a frost fan being installed in this location, they do agree that the location of AA6 and AA8 is appropriate given it is unlikely that frost fans would exceed 55 dB $L_{Aeq(15min)}$, within the activity areas. Despite this the planners agree that it is appropriate to include a further level of mitigation and require acoustic insulation for rooms within buildings in AA6 and AA8 that are used for sleeping to further avoid effects of residents and visitors within those activity areas. The planners agree that such a rule would also assist with the implementation of proposed GVRZ Policy 45.2.1.12 that seeks to ensure productive land is not compromised by the inappropriate location or sound insulation of buildings. Further to this, the planners agree that it is appropriate to amend the boundaries of AA6 and AA8 to align with

4 Attached as Appendix K to the Section 32aa evaluation.

the noise contours produced by Dr Chiles.

31. The planners agree that there are no other sensitive receivers (in the form of existing or potential residential or accommodation activities) located in close proximity to the development activity areas within the GVRZ.
32. The planners agree that for the GVRZ, it is appropriate to exempt compliance with the noise limit standard for frost fans (Rule 36.5.8). This is on the basis that the use of frost fans within the GVRZ are unlikely and that for frost fans outside the zone, 55 dB $L_{Aeq}(15min)$, is unlikely to be exceeded and any effects cause by noise below that limit will be addressed via the proposed standards to achieve indoor sound levels.

G. Traffic effects and pedestrian design

33. The planners refer to the statement of evidence from Mr Andrew Carr filed in the Council hearing. While the nature and scale of the proposal has changed since that time (reduced), the planners note that the access points onto State Highway 6 have not changed and the two underpasses remain part of the proposed GVRZ.
34. Car parking is identified within PL2. The planners are satisfied that district wide Chapter 29 would provide the means to assess onsite parking and performance standards for development across the proposed GVRZ. The planners are also satisfied that the effects on landscape character and amenity that could arise from the provision of parking are able to be managed through the matters of control for buildings in Rule 45.4.1. It is considered appropriate for this matter to be assessed because car parking requirements are typically based on the floor area of buildings and the type of land use.

H. Whether the proposal accords with the definition of resort

35. Central to the proposal is the extent to which it accords with PDP definition of resort. The definition of resort is:

“Means an integrated and planned development involving low average density of residential development (as a proportion of the developed area) principally providing temporary visitor accommodation and forming part of an overall development focused on onsite visitor activities”.

- 36.** Paragraphs 143 to 150 of the section 32AA evaluate this matter in detail.
- 37.** The use of a structure plan with guiding planning provisions will help ensure the activity will be “integrated and planned”; this is also assisted by the single common ownership of the land within the resort. Importantly, achieving integrated and planned developed will be implemented through a dedicated suite of provisions forming a special zone to the PDP that is directive of the form and location of development. Policies 45.2.1.1, 45.2.1.3, 45.2.1.6 and Rules 45.5.1 to 45.5.4 provide a planning framework that ensures the structure plan is implemented, and once implemented those outcomes are maintained. In the case that subdivision is undertaken, the planners are satisfied that any potential future subdivision would be consistent with these policy outcomes.
- 38.** The quantum of residential units anticipated in the GVRZ is 78, with the addition of provision for workers accommodation (defined as residential activity) with no limitation on the amount of residential units but a limit of 90 bedrooms; this is to provide flexibility as to the type of housing and accommodation for workers. In recognition of the unique role of AA8 to provide worker accommodation. Residential visitor accommodation and visitor accommodation are non-complying activities.
- 39.** The limitation of residential units to 78, and the restrictions on the activities in AA8 is overall considered to result in a low average density of residential development as a proportion of the overall development of the resort.
- 40.** The developed area of the proposed GVRZ are all the activity areas and the PL and LMA areas. The productive planting areas are considered integral to the development of the proposed GVRZ and the LMA areas would also require substantial investment to achieve the objectives of the proposal. The area of the proposed GVRZ that is not considered to qualify as developed area is the Open Space and Recreation Zone. No particular developments are envisaged in that activity with the exception of the continuance of pastoral farming activity.

41. The proposed GVRZ principally provides for visitor accommodation through AA1, AA2, AA3, AA5 and AA6 (Rule 45.4.10). Commercial recreation activities are provided for as a permitted or controlled activity (Rules 45.4.13 and 45.5.20/21). Other commercial activities are limited to those ancillary to winery, viticultural, horticultural or visitor activity within Activity Areas AA1 and AA2 (Rule 45.4.15) and any other commercial activity would be a non-complying activity.
42. The exception to this is for AA4 which is to function as a village centre and provide for small scale retail, offices and convenience facilities for both visitors and residents in the wider Gibbston community. There are several limitations to the nature and scale of activities to ensure the local convenience function is realised (Rules 45.4.16, 45.4.17, 45.4.20, and 45.4.18) the gross floor area of buildings in AA4 is limited 2,500m² (Rule 45.4.14).
43. The overall development is focused on onsite visitor activities. The exceptions are the residential component and AA4, however the scale of these as a proportion of the overall development is low.
44. The planners agree that the proposal accords with the definition of resort and that the package of provisions will ensure that the activities remain consistent with that definition.
45. The planners have considered the relief sought in the *Trojan Helmet Limited Appeal* (EC-2019-CHC-110). Trojan seek an amendment to the definition of resort:
- “means an integrated and planned development involving low average density of residential development (as a proportion of the developed area) principally providing that includes temporary visitor accommodation and forming part of an overall development focused on onsite visitor and recreation activities”*
46. While not forming a view on the merits or otherwise of the amendment sought, the planners agree that the proposed GVRZ would accord with this alternative definition such that it does not pose any difficulties with the planners’ views on the proposed GVRZ, should the Court make a determination supporting the amended definition.

I. Drafting and structural design of Chapter 45

i. Whether the rule framework would implement the policies and achieve the objectives

47. Proposed Chapter 45 contains rules that provide both a mechanical and regulatory function so as to implement the Structure Plan, and policies in Chapter 45.
48. In terms of managing the effects on landscape character, the statement in Part 45.1.2 has been derived from the landscape JWS and describes the key attributes of the proposed GVRZ's landscape character. This statement is intended to provide guidance for the implementation of the policies in Chapter 45, and matters of discretion/control in the respective rules that refer to landscape character.
49. The use of the phrase 'landscape character' is purposefully employed as distinct from the broader phrase of 'landscape', 'landscape values', or the potentially narrower phrase of 'rural character'. The planners understand that the phrases 'landscape values' and 'landscape character' are defined in a New Zealand Institute of Landscape Architects practice notes as follows:
- (a) Landscape is the cumulative expression of natural and cultural features, patterns and processes in a geographical area, including human perceptions and associations.
 - (b) Landscape value derives from the importance that people and communities, including tangata whenua, attach to particular landscapes and landscape attributes.
 - (c) Landscape character is a distinctive combination of landscape attributes that give an area its identity.
50. The emphasis therefore is for the policies to guide consideration of the extent to which activities would maintain or enhance landscape character. The description of the landscape character attributes in 45.1.2 provides useful guidance for implementation of Chapter 45.

51. The planners agree that the rule framework will ensure that the policies of Chapter 45 are implemented.

ii. Whether the purpose of each Activity Area as described in Part 45.1 would be achieved by the policies and rules

52. The planners have considered the policies, rules and structure plan carefully and consider that they enable each Activity Area to be developed as envisaged in Part 45.1.

iii. Whether both individually and collectively the rules and policies would implement the structure plan

53. Chapter 45 contains several 'process/mechanical' policies and rules to ensure that the structure plan would be implemented. The Planners are confident the provisions in Chapter 45 will implement the Structure Plan.

iv. Activities anticipated are provided an appropriate pathway to be achieved, and that there is sufficient intervention and policy guidance for activities that are identified as a discretionary or non-complying activity

54. The planners are satisfied that the policy framework provides appropriate direction to assess the effects of discretionary and non-complying activities, and to evaluate the extent to which the objectives of the GVRZ would be achieved. Intervention is also achieved through the identification of controlled and restricted discretionary activities with appropriate checks and balances within those matters of control / discretion. A "Catch all" discretionary activity status for land uses not otherwise identified, and non-complying activity status for certain activities that are not contemplated, will also enable an appropriate level of intervention with guidance provided through the implementation of the policies.

J. Other annotations and constraints

55. District Wide annotations affecting the proposed GVRZ are:
- (a) Significant Natural Area F40D. The objectives and provisions for indigenous vegetation and biodiversity, including the rules relating to SNA F40D are contained in Chapter 33. These rules continue to apply and the proposed GVRZ zoning of Open Space and Recreation is considered consistent with the

retention of the SNA.

- (b) The National Grid corridor enters the District around the Nevis area and passes through the Rural Zone and Gibbston Character Zone as it makes its way toward the substation at Frankton. The National Grid Corridor passes through the proposed GVRZ affecting a small area of the Open Space and Recreation activity area. The National Grid Corridor is not located in proximity to any Activity Areas where buildings are readily anticipated. Provisions associated with the management of activity in proximity to the National Grid are principally provided for within Chapter 30 Energy and Utilities. Chapter 30, like all district wide chapters, would be applicable to the proposed GVRZ where relevant.

K. MATTERS AGREED

56. Aside from the following matter recorded below, all matters are otherwise agreed

L. MATTERS DISAGREED

57. The planners do not agree on the likelihood of a frost fan being located on an adjoining property to the east of AA8 and its implications to the GVRZ, however they do agree that the appropriate response is through the inclusion of a rule relating to AA6 and AA8 requiring a minimum acoustic insulation standard for habitable rooms. There has also been an adjustment to the boundaries of AA6 and AA8 to align with the noise contours produced by Dr Chiles.
58. There are no other matters of disagreement.

M. ANNEXURES

Annexure A: Zoning map

Annexure B: Planners qualifications and experience

Craig Barr





Brett Giddens

DATE: 18 October 2019

Annexure A: Zoning map



Excerpt of PDP District Plan Maps. Green areas are the Gibbston Character Zone, Yellow areas are Rural Zone. The light blue overlay represents the extent of the area sought to be rezoned by the GVS submission.

Note that the area subject to the appeal is larger than the extent of the final recommended GVRZ and structure plan.

Annexure B: Planners qualifications and experience

Craig Barr
Qualifications and Experience

My full name is Craig Alan Barr.

I am employed by the Queenstown Lakes District Council as principal planner, resource management policy and I am a full member of the New Zealand Planning Institute. I hold the qualifications of Master of Planning and Bachelor of Science from the University of Otago.

I have been employed in planning and development roles since 2006, for both local authorities as well as in private practice.

I have been employed by QLDC since 2012, which includes its former regulatory provider Lakes Environmental Limited. As a result I am very familiar with the Upper Clutha, Queenstown, Frankton Flats and wider Queenstown Lakes District environment, having undertaken both plan administration and policy work across the District over the last 6 years. For most of 2016, I held the position of Acting Manager Planning Policy.

I have been closely involved in the Proposed District Plan process for QLDC. During 2016 and 2017, although I was not involved with the hearings on Gibbston Valley Station's submission, I was the lead planner and reporting officer for QLDC in relation to the following Stage 1 hearings:

- Strategic - Landscape (Chapter 6);
- Rural - Rural Zone (Chapter 21);
- Rural - Rural Residential and Lifestyle Zones (Chapter 22);
- Rural - Gibbston Character Zone (Chapter 23);
- District Wide - Energy and Utilities (Chapter 30);
- District Wide - Indigenous Vegetation and Biodiversity (Chapter 33);
- District Wide – Wilding Exotic Trees (Chapter 34); and
- Upper Clutha rezonings (except Business Zones).

I was the Council's planning expert for PDP Appeals Topic 2 and I am directly involved as either a planning witness, or holding delegation to settle appeals on the majority of the PDP Stage 1 appeals topics.

Attachment B continued

Brett Giddens
Qualifications and Experience

My full name is Brett James Giddens.

I am a planner and director of Town Planning Group (NZ) Limited, a resource management and development consultancy established in 2006 with 7 planning staff with offices in Queenstown, Christchurch and Auckland. I am an associate member of the New Zealand Planning Institute and have 16 years planning experience. I hold the qualifications of Bachelor of Science (Geology) from Canterbury University, Master of Environmental Management from Lincoln University, Master of Regional and Resource Planning (current) from Massey University.

Prior to establishing Town Planning Group, I have been employed in planning and development for local authorities and in private practice undertaking planning work throughout New Zealand. This work has included large scale plan changes, development planning and consenting, policy development, and consent processing for local authorities. Clients include private landowners, corporations, iwi groups, local authorities and government agencies.

I have been working with the Queenstown Lakes District Plan since 2003 and I am very familiar with the plan and its former versions. I am very familiar with the Queenstown Lakes District and Otago Region.

I have been involved in the review of the Queenstown Lakes District Plan for a large number of clients and have provided planning advice and evidence in both Stage 1 and 2 of the review.