

QUEENSTOWN LAKES DISTRICT COUNCIL

Hearing of Submissions on Proposed District Plan

Report and Recommendations of Independent Commissioners Regarding
the Visitor Accommodation Subzone in Chapter 22: Rural Residential &
Lifestyle

Report 4B

Commissioners

Denis Nugent (Chair)

Brad Coombs

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Appendix 1: Recommendations on Submissions and Further Submissions

1. PRELIMINARY

1.1 Terminology in this Report

1. Throughout this report, we use the following abbreviations:

Council	Queenstown Lakes District Council
PDP	Stage 1 of the Proposed District Plan for Queenstown Lakes District as publicly notified on 26 August 2015
RBP	Registered building platform
Stage 2 Variations	the variations, including changes to the existing text of the PDP, notified by the Council on 23 November 2017.
VASZ	Visitor Accommodation Subzone

1.2 Topics Considered

2. The subject matter of the Stream 2 hearing was Chapters 21, 22, 23, 33 and 34 of the PDP. A separate Hearing Report is provided for Stream 2 overall, but this report was necessitated by Commissioner St Clair, one of the Stream 2 commissioners, discovering during the hearing that he had a conflict of interest in relation to this subtopic: Visitor Accommodation Subzone in Chapter 22 – Rural Residential & Lifestyle.

1.3 Hearing Arrangements

3. Hearing of Stream 2 commenced in Hawea on 2nd May 2016 and continued in that location until and including 6th May 2016. The hearing recommenced in Queenstown on 17th May 2016 and continued in that venue on 18th, 23rd, 24th, 25th, 26th and 27th May 2016.

4. Parties heard from in respect of the VASZ topic were:

Council

- James Winchester and Sarah Scott (Counsel)
- Craig Barr

Marc Scaife¹

Christine Byrch²

Matakauri Lodge Limited³

- Mike Holm (Counsel)

¹ Submission 811

² Submission 243

³ Submission 595 and FS1224

- Tim Williams

1.4 Procedural Steps and Issues

5. The substantive report relating to Chapter 22 sets out the procedural steps taken in respect of that chapter.
6. Specific to this report, we record that Commissioner St Clair identified that his firm was preparing a resource consent application for another business in another part of New Zealand which was owned by the individual who was the ultimate owner of Matakauri Lodge Limited. He disclosed this during the hearing prior to each of the submitters presenting their respective cases, and left the hearing for the duration of each presentation.
7. We also record that Commissioner St Clair was not present when we deliberated on this matter and at no time did he discuss the matters at issue with we remaining commissioners.
8. We note that Ms Byrch and Mr Scaife each lodged a number of submissions on other matters in Chapter 22, and that Matakauri Lodge Limited lodged further submissions opposing each of those submissions also. We heard no submissions or evidence from Matakauri Lodge Limited in respect of those other submissions. We do record that while those other submissions and further submissions are dealt with in Report 4A, being the main report for Stream 2, Mr St Clair did not participate in the deliberations on, or report preparation of, the relevant provisions in Chapter 22.
9. When we heard the submitters and deliberated on this matter, Commissioner Lawton was part of the Hearing Panel. In February 2017 Commissioner Lawton resigned from the Council and her role as a commissioner. She has taken no further part in the process following that resignation.

1.5 Visitor Accommodation Subzone - Overview

10. As notified, Chapter 22 contained objectives, policies and rules providing for two zones: Rural Residential and Rural Lifestyle. Relevant to this topic, the notified PDP set out Objective 22.2.2 as follows:

“Ensure the predominant land uses are rural, residential and where appropriate, visitor and community activities.”

11. Three policies set out under this objective are relevant: 22.2.2.3, 22.2.2.4 and 22.2.2.5. They read as follows:

“Discourage commercial and non-residential activities, including restaurants, visitor accommodation and industrial activities, so that the amenity, quality and character of the Rural Residential and Rural Lifestyle zones are not diminished and the vitality of the District’s commercial zones is not undermined.”

“Encourage visitor accommodation only within the specified visitor accommodation subzone areas and control the scale and intensity of these activities.”

“The bulk, scale and intensity of buildings used for visitor accommodation activities are to be commensurate with the anticipated development of the zone and surrounding residential activities”.

12. Consequent upon those policies, Rule 22.4.10 provided for visitor accommodation within a VASZ as a controlled activity, with control reserved to eight matters including:

“The bulk and scale of buildings in the context of the scale of residential buildings in the surrounding area.”

“Landscaping to mitigate effects associated with buildings, infrastructure and car parking areas.”

13. Four submissions were received on this rule:
- One sought that it be retained⁴;
 - One sought more stringent standards⁵;
 - One sought it be classified as a non-complying activity⁶; and
 - One opposed the sub-zone⁷.
14. Rule 22.6.2 provided that applications under Rule 22.4.10 would not require the written approval of any other persons and would not be notified or limited notified.
15. The submissions on this rule:
- opposed it generally⁸;
 - sought an exception where the site adjoined a state highway⁹.
16. Rule 22.5.13 set out a specific building coverage provision for visitor accommodation in the Rural Lifestyle Zone Visitor Accommodation Subzone. This limited building coverage to 10%, or on sites larger than 1 ha the maximum building coverage would be 10% or 2,500 m², whichever was the lesser. To exceed these limits required a restricted discretionary activity consent.
17. Submissions on this rule sought:
- delete or set the maximum coverage at 2000 square metres¹⁰;
 - make non-compliance a non-complying activity¹¹.

⁴ Submission 719

⁵ Submission 674, supported by FS1050, FS1082, FS1089, FS1146, opposed by FS1255

⁶ Submission 243, opposed by FS1224

⁷ Submission 811, opposed by FS1224

⁸ Submission 243, opposed by FS1224

⁹ Submission 719

¹⁰ Submission 243, opposed by FS1224

¹¹ Submission 811, opposed by FS1224

18. Rule 22.4.11 provided that all other visitor accommodation in both zones was a non-complying activity.
19. Three VASZs were shown on the Planning Maps:
 - a. A rear site zoned Rural Lifestyle off School Road, Makarora, on Map 16;
 - b. A site zoned Rural Residential in Speargrass Flat Road, Wakatipu Basin, on Map 26; and
 - c. A site zoned Rural Lifestyle on Farrycroft Row, Closeburn, on Map 38.
20. In his Section 42A Report, Mr Barr discussed the VASZs in paragraph 4.6. It appears he was not aware of the subzone in Makarora. He suggested the requests by Ms Byrch and Mr Scaife that the subzone be deleted be deferred to the hearings in relation to maps. He addressed those parts of Mr Scaife's submission dealing with provisions of the VASZ in his Appendix 2, recommending that they be rejected.
21. In answer to our questions, Mr Barr confirmed that the only section 32 report relevant to the VASZ in these two zones is the Council report entitled *Section 32 Evaluation Report Matakauri Lodge* (undated). We note that this report is indeed solely directed to the circumstances of Matakauri Lodge and the resource management issue it addresses is the administrative cost to Matakauri Lodge Limited of altering or expanding the operations on the lodge site. As we understand it there has been no evaluation in terms of section 32 of the Act in respect of the application of the VASZ provisions on the other two sites, nor, in our view, has any proper evaluation been made of the effects of applying the proposed rules on the environment surrounding the three VASZs.
22. Mr Barr recommended changes to the wording of Objective 22.2.2 in accordance with our directions that objectives should aspire to achieve an environmental outcome. He also recommended that visitor accommodation outside of a visitor accommodation subzone should be a discretionary activity, and consequently recommended Policies 22.2.2.3 and 22.2.2.4 be reworded as follows:

“Discourage commercial and non-residential activities, including restaurants, visitor accommodation and industrial activities, that would diminish amenity, rural living quality and character.”

“Encourage intensive¹² visitor accommodation only within the specified visitor accommodation subzone areas and control the scale and intensity of these activities.”
23. The essence of Mr Scaife's evidence was that:
 - a. the provisions specific to the VASZ represented a substantial increase in density in the zone;
 - b. any reduction in administrative burdens should apply across the entire zone; and
 - c. the standards of the zone should be for the collective interests of those in the zone, not for a single landowner.

¹² The underlining identifies the addition proposed by Mr Barr.

24. Ms Byrch highlighted the inconsistency between the provisions for residential buildings in the Rural Lifestyle Zone and the provisions for visitor accommodation in the VASZ. She noted that while construction of a residential building outside of a residential building platform (“RBP”) was a non-complying activity, visitor accommodation in the VASZ could be built anywhere on site as a controlled activity. She submitted that all buildings located outside a RBP, whether for residential activities or visitor accommodation, should be non-complying. She also submitted that if the VASZ were to be retained, Rule 22.5.13 (relating to building coverage in the VASZ) should include views from public places in the matters of discretion if coverage were to be exceeded. Notwithstanding that submission, she sought the deletion of the VASZ on the basis that visitor accommodation should be compatible with the underlying provisions of the relevant zone.
25. We note that Ms Byrch and Mr Scaife live on a property adjoining Matakauri Lodge and while we understood their concerns to be primarily directed toward Matakauri Lodge, their submissions each had a broader focus.
26. Mr Williams supported the provisions of the VASZ. He acknowledged that he was largely responsible for initially preparing the *Section 32 Evaluation Report Matakauri Lodge*. It was his opinion that as the Rural Lifestyle and Rural Residential zones were applied in rural areas identified as able to absorb change, it was logical that the zones are appropriate for activities such as visitor accommodation. He considered the VASZ provided certainty for operators and neighbouring residents by identifying where visitor accommodation was considered appropriate in the rural environment, and was more efficient than a case by case assessment through a discretionary activity regime.¹³
27. Mr Williams discussed how the various bulk and location controls in the zones would operate in conjunction with the specific building coverage rule for VASZs. His conclusion in relation to this consideration was *“the individual characteristics of each visitor accommodation sub-zone will contribute to the appropriateness of this provision. However, given the process to identify individual sub-zones provides the opportunity for a more detail [sic] analysis of these potential effects greater certainty can be provided from the outset.”*¹⁴
28. Mr Williams suggested that the building coverage limits for VASZs needed to be considered in the context of the apparent lack of cap on the size of RBPs in the Rural Lifestyle Zone. We understood him to be referring to Rule 22.4.3.3 when making this comment.
29. While Mr Williams was able to advise us of the location of the other two VASZs in these zones, his evidence was directed to the situation at Matakauri Lodge and in answering the Panel’s questions he stated that he had not looked at the wider area.
30. In his evidence in support of the Council’s reply, Mr Barr recommended that Rule 22.4.3.3 be amended by specifying that the size of a RBP was limited to between 70m² and 1,000m², consistent with the provision in Rule 27.5.1.1 which applies when a RBP is identified in conjunction with subdivision. We leave any recommendation on this to the main report on

¹³ T Williams, EIC at 11 ff

¹⁴ ibid at 14

Chapter 22, but note the clearly expressed intention of the Council that RBPs in the Rural Lifestyle Zone not exceed 1,000m² in area.

31. In this same evidence, Mr Barr resiled from his recommendation in the Section 42A Report that Policy 22.2.2.4 be amended. He stated:

“Although these areas [the VASZs] contemplate visitor accommodation, the scale and intensity should be commensurate with the zone it is located in.”¹⁵

32. Mr Barr made no other comment on the submissions relating to the VASZs.
33. We note that we received no evidence at all in relation to the VASZs located in Speargrass Flat Road or at Makarora. We do not know whether they contain visitor accommodation, or indeed, buildings. Nor do we know the size of the sites or the nature of the surrounding environment in each case.
34. We undertook a visit to Matakauri Lodge on the morning of 18 May 2016 to enable us to understand the nature of that environment and the scale, location and design of the existing development. We note from the list of consents attached to the Section 32 Evaluation¹⁶ that activities additional to visitor accommodation are authorised on the site: specifically, a public restaurant and a public health care (spa) facility, albeit of limited scale in each case.

1.6 Extent of Our Consideration of the Issue

35. The question as to whether VASZs should be identified on the Planning Maps in the Rural Residential and Rural Lifestyle Zones has been deferred to hearings on the Planning Maps. We will limit our consideration of the issue before us to:
- a. Policy 22.2.2.4;
 - b. Rule 22.4.10; and
 - c. Rule 22.5.13.
36. If the result of our consideration impacts on the mapping question we will make a recommendation to the relevant Hearing Panels hearing the submissions on the Planning Maps.

1.7 Policy 22.2.2.4

37. This policy is one of four policies under Objective 22.2.2¹⁷ which deals with visitor accommodation in the Rural Residential and Rural Lifestyle zones. Policy 22.2.2.1 is to enable visitor accommodation (among other activities) which, in terms of location, scale and type, is compatible with and would enhance the predominant activities of the zone ((rural and residential activities see Objective 22.2.2). Policy 22.2.2.3 seeks to discourage visitor accommodation (among other activities) that would diminish amenity values and the quality and character of rural living environment. Policy 22.2.2.5 suggests that buildings used for visitor accommodation should be of a bulk, scale and intensity commensurate with anticipated development in the zone and surrounding residential activities.

¹⁵ C Barr, Reply Evidence on Chapter 22 at 5.1

¹⁶ Section 32 Evaluation Report Matakauri Lodge, Appendix [B] – Resource Consents History

¹⁷ We refer here to the wording of the objective and policies as recommended by the Stream 2 Hearing Panel.

38. We find Policy 22.2.2.4, as notified and supported by Mr Barr, to be inconsistent with Policies 22.2.2.1, 22.2.2.3 and 22.2.2.5 as recommended. Each of those policies provide that visitor accommodation should be able to occur in the two zones where the overall qualities of the relevant zone are retained and the scale and intensity of development is consistent with that anticipated by the zone outside of any VASZ.
39. We understand the purpose of the policies under Objective 22.2.2 are, in part, to establish those circumstances where visitor activities are appropriate. Policies 22.2.2.1, 22.2.2.3 and 22.2.2.5 clearly do that. Policy 22.2.2.4 is contrary to those policies by suggesting visitor accommodation should only occur in “*specified visitor accommodation subzone areas*”. To the extent that Policy 22.2.2.4 requires the control of the scale and intensity of visitor activities, it is superfluous as Policy 22.2.2.5 provides more direct guidance on this point.
40. For those reasons we recommend that Policy 22.2.2.4 be deleted.

1.8 Rule 22.4.10

41. This rule provides that visitor accommodation within a VASZ, including the construction or use of buildings for visitor accommodation, is a controlled activity. The matters of control do not enable consideration of all matters which the policies in Chapter 22 suggest would be relevant. For example, Policies 22.2.2.4 and 22.2.2.5 raise issues regarding the *intensity* of visitor accommodation development, but control is limited to the bulk and scale of buildings. Further, Policy 22.2.3.1 seeks to discourage new development that requires servicing and infrastructure at a cost to the community. This is not a matter able to be considered under this rule. Similarly, Policies 22.2.1.1 and 22.2.1.4 seek to ensure the location and form of buildings do not affect specified landscape qualities. The only aspect that can be controlled under this rule is in respect of water bodies by ensuring buildings are compatible with the scenic and amenity values of any waterbodies.
42. In a practical sense, the application of this rule in conjunction with Rule 22.5.13 in relation to Matakauri Lodge would enable a further 576m² of building coverage subject only to conditions that would appear to enable some control on the size and shape of individual buildings and require landscaping.¹⁸ We have no information to enable a similar assessment of the other two VASZ sites.
43. Looking at the Strategic Policies (in Chapters 3 and 6), it is clear that the provision for visitor accommodation outside the urban areas is contemplated only where they would protect, maintain or enhance landscape quality, character and visual amenity values.¹⁹ This rule does not enable consideration of any of those characteristics, other than in respect of those scenic and amenity values relating to water bodies.
44. We have considered whether this rule could be amended by extending the matters control is reserved over so as to include the deficiencies noted above. However, when one considers the range of matters control would need to be reserved over and the policy direction set by the PDP, we are satisfied that a controlled activity status for such visitor accommodation

¹⁸ Based on Mr Williams’ Evidence in Chief at paragraph 7

¹⁹ Policies 3.3.25 and 6.3.3

would be inappropriate. In our view, only by having the ability to refuse consent would the Council be able to achieve the policies of the PDP when considering applications for visitor accommodation in a VASZ.

45. Having reached that conclusion, we have then examined whether provision should be made for visitor accommodation in VASZs as a restricted discretionary activity. However, we are confronted with two difficulties. First, we have no evidence concerning the environment within or surrounding the two VASZs in Speargrass Flat or Makarora. Thus, we are unable to be satisfied that we would be able to create an adequate set of discretions for those two sites.
46. Second, as it stands, the range of matters discretion would need to be restricted to at a minimum so as to give effect to the objectives and policies of the PDP, as discussed above, would be so extensive as to be tantamount to an unrestricted discretionary activity. Consequently, we conclude that provision for visitor accommodation in the VASZs should be a discretionary activity.
47. As Rule 22.4.11, as recommended in the Recommendation Report on Chapter 22, provides for visitor accommodation outside of a VASZ as a discretionary activity, we recommend that Rule 22.4.10 be deleted and Rule 22.4.11 be amended to apply to all visitor accommodation in the zones not otherwise provided for. As a consequential amendment, we recommend that Rule 22.6.2 be deleted.

1.9 Rule 22.5.13

48. This rule sets a building coverage limit in VASZs in the Rural Lifestyle Zone of 10% with a maximum of 2,500m². Building coverage is only otherwise controlled in the Rural Lifestyle Zone by the requirement that buildings are to be located within a RBP (Rule 22.4.3.1) and a maximum permitted size of any individual building of 500m² (Rule 22.5.3).
49. These rules are to give effect to Policy 22.2.1.2²⁰:

“Set density and building coverage standards in order to maintain rural living character and amenity values, and the open space and rural qualities of the District’s landscapes.”
50. This rule applies whether the buildings to be erected in the relevant VASZ are for visitor accommodation or any other purpose. The rule creates an inconsistency with other provisions in the Rural Lifestyle Zone by suggesting that development outside of a RBP in a VASZ is allowable, notwithstanding Rules 22.4.2.1, 22.4.2.2, 22.4.2.3 and 27.7.10.
51. No evidence has been provided, either in the Section 32 Evaluation Report or at the hearing, to justify the differentiation between allowable coverage in the VASZ versus that allowable elsewhere in the Rural Lifestyle Zone. Given that all such rules are giving effect to the same policy we would have expected some cogent reasons to be provided for such a differentiation. In this respect, we consider Mr Williams’ evidence did not satisfactorily show how this rule dealt with the individual characteristics of each site as he claimed in the paragraph we quoted above (paragraph 26).

²⁰ As recommended by Stream 2 Hearing Panel

52. If the rationale was purely related to the construction of visitor accommodation, then the rule is unnecessary now that we have concluded such activities are to be discretionary activities. The standards in Table 2 only apply to permitted activities²¹. The only permitted activities involving buildings are required by Rule 22.4.2.1 to be located within a RBP of 1,000m² or less, or where there is no RBP, required by Rule 22.4.2.2 to be limited as to scale.
53. For all of those reasons we recommend that Rule 22.5.13 be deleted.

2. Stage 2 Variations

54. Since preparing this report, the Stage 2 Variations were notified by the Council on 23 November 2017. In accordance with Clause 16B of the First Schedule, the provisions of the variations merged with the PDP at that date. One result of that is the deletion of the notified VASZ at Speargrass Flat Road from Map 26.

3. OVERALL RECOMMENDATION

55. Throughout this report, reference is made to recommended changes. The changes recommended by the Panel have been incorporated into the version of Chapter 22 recommended by the Hearing Panel on Stream 2.
56. We recommend to the Council for the reasons set out above, that the deletions and amendments we have recommended above be adopted, and the submissions and further submissions be accepted, accepted in part or rejected accordingly, as listed in Appendix 1.
57. As a consequence of our recommendation that the provisions specific to the Visitor Accommodation Sub-Zone from Chapter 22 be removed, we recommend that the Hearing Panels hearing the submissions on the maps delete the VASZ notation as being unsupported by any provision.

For the Hearing Panel



Denis Nugent, Chair

Date: 30 March 2018

²¹ See Rule 22.3.2.1

Appendix 1: Recommendations on Submissions and Further Submissions

Part A: Recommendations on Submissions

Submission Point Number	Submitter	Commissioners' Recommendation
OS243.19	Byrch, Christine	Accept
OS243.25	Byrch, Christine	Accept
OS243.26	Byrch, Christine	Reject
OS243.33	Byrch, Christine	Accept
OS595.2	Matakauri Lodge Limited	Reject
OS674.10	Hadley, J & R	Accept in part
OS719.115	NZ Transport Agency	Reject
OS719.118	NZ Transport Agency	Reject
OS811.12	Scaife, Marc	Accept

Part B: Recommendations on Further Submissions

Further Submission	Original Submission Reference	Further Submitter	Commissioners' Recommendation
FS1050.11	674.10	Jan Andersson	Accept in part
FS1082.10	674.10	Hadley, J and R	Accept in part
FS1089.11	674.10	McGuinness, Mark	Accept in part
FS1146.10	674.10	Nicolson, Lee	Accept in part
FS1224.19	243.19	Matakauri Lodge Limited	Reject
FS1224.25	243.25	Matakauri Lodge Limited	Reject
FS1224.26	243.26	Matakauri Lodge Limited	Accept in part
FS1224.33	243.33	Matakauri Lodge Limited	Reject
FS1224.59	811.12	Matakauri Lodge Limited	Reject
FS1255.4	674.10	Arcadian Triangle Limited	Reject