

QUEENSTOWN LAKES DISTRICT COUNCIL

Hearing of Submissions on Stage 3 Proposed District Plan Provisions

Report and Recommendations of Independent Commissioners

Report 20.8A: Cardrona Village Limited Addendum

Commissioners

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1. PRELIMINARY

1.1 Subject Matter of this Report

1. Report 20.8, dated 12 January 2021, addressed submissions on Chapter 20 (Settlement Zone), and related variations to other chapters, including requests for rezoning of land notified as Settlement Zone or adjacent thereto. Cardrona Village Limited (CVL)¹ made a number of requests for changes to the text of Chapters 20 and 27, together with changes to the zoning of land at Cardrona, all of which were addressed in Report 20.8. On 26 January 2021, Counsel for CVL, Mr Gardner-Hopkins, filed a Memorandum that included a link to a recent resource consent decision by Council authorising extensive development of CVL's property. Accompanying the Memorandum was an earlier decision of the Council authorising extension of the lapse period for the pre-existing consent authorising development on the land located on the east side of the Cardrona River, also owned by CVL.
2. The purpose of this addendum report is to consider the additional information supplied by Mr Gardner-Hopkins; in particular, to determine whether any of the Hearing Panel's recommendations contained in Report 20.8 should be varied, taking account of that information.

1.2 Relevant Background

3. We summarise below the relevant aspects of Report 20.8, but this addendum report needs to be read in conjunction with the whole of that report, in order to fully understand the context for our recommendations to Council.
4. As noted in Report 20.8, that report also needs to be read in conjunction with our introductory report, 20.1, which includes a list of abbreviations we use in this addendum report.
5. In addition, the Council decision reports under RMA Reference RM190669, dated 18 November 2020 and ET061204 dated 30 April 2020 are also of relevance. We discuss both in the sections following.
6. The statutory considerations guiding our recommendations remain as stated in Report 20.8 (and 20.1). We do not repeat those matters.
7. There is, however, one preliminary legal issue that we need to address. In Mr Gardner-Hopkins' covering Memorandum, he suggests that given the recency of the grant of resource consent (RM190669), and of the extension to the lapse period for the pre-existing resource consent (in ET061204), and CVL's position (as he advised) that it intends to exercise those consents, then they can be considered as part of the environment in accordance with the decision of the Court of Appeal in *Queenstown Lakes District Council v Hawthorn Estate Limited*².
8. Mr Gardner-Hopkins went on to suggest that "*generally, it is appropriate for District Plan zonings to reflect existing uses or consented activities, particularly where they are recently granted (or extended); although with an eye to the future and to provide an appropriate*

¹ Submitter #31019 and Further Submitter #31066

² [2006] NZRMA 424

framework for the consideration of variations or further consents which might be sought over time”.

9. Mr Gardner-Hopkins did not provide authority for that proposition, but he did note that the Gibbston Valley Resort Zone provided a recent precedent for its application. We consider that Mr Gardner-Hopkins overstates the legal position.
10. As we discussed in Section 5.6 of Report 20.8, the High Court found in *Shotover Park Limited v Queenstown Lakes District Council*³ that RMA decision-makers on plans are not obliged to consider the environment by reference to the test contained in the *Hawthorn* decision, but have a discretion to do so in appropriate cases. Obviously, that discretion needs to be exercised on a principled basis. Report 20.9 provides an example of a situation where the Stream 18 Hearing Panel found it appropriate to take account of resource consents (for subdivision and development) that had been granted within the Arthurs Point North area. That was because alternative relief (from that notified) sought by a submitter would have been inconsistent with the outcomes authorised by the relevant resource consent.
11. We will discuss the practical application of these principles later in this Report but, for the moment, we record our view that in a Plan setting, treating unimplemented resource consents as part of the environment needs to be approached with some caution, so that the resulting plan provisions do not provide a mechanism to produce a materially different outcome from that consented; for example, through deletion of conditions that formed the basis for the grant of consent. Mr Gardner-Hopkins gave us cause to wonder whether this might be such a case, by noting the way in which the Plan provisions might provide an appropriate framework for consideration of variations or further consents.

1.3 CVL Submission

12. A map of the area the subject of CVL’s submission is set out following paragraph 315 of Report 20.8.
13. That map highlights a complexity produced by the fact that the CVL site is bisected by the Cardrona River, which has moved eastward over time. The Hearing Panel was advised that CVL is in the process of negotiating a land swap with the Crown in order that the former Crown-owned riverbed land to the west of the current track of the river is amalgamated with the CVL site, and the land underlying the actual track of the river currently owned by CVL, is transferred to the Crown.
14. As discussed in Section 5.2 of Report 20.8, CVL sought that the land proposed to be transferred to it by the Crown be rezoned (from Rural to Settlement, with a Visitor Accommodation Sub-zone overlay), and that a strip of land either side of Soho Street have a Commercial Precinct overlay applied to it.
15. In Report 20.8, we recommended rejection of the former, and acceptance of the latter.
16. CVL also sought detailed amendments to the text of Chapter 20 and consequential changes to Chapter 27 (Subdivision and Development). The detail of the changes sought was set out in Appendix 1 to the evidence in chief of CVL’s planning witness, Mr Grace. However, the thrust of the amendments sought to Chapter 20 was to provide more specific recognition in the

³ [2013] NZHC 1712

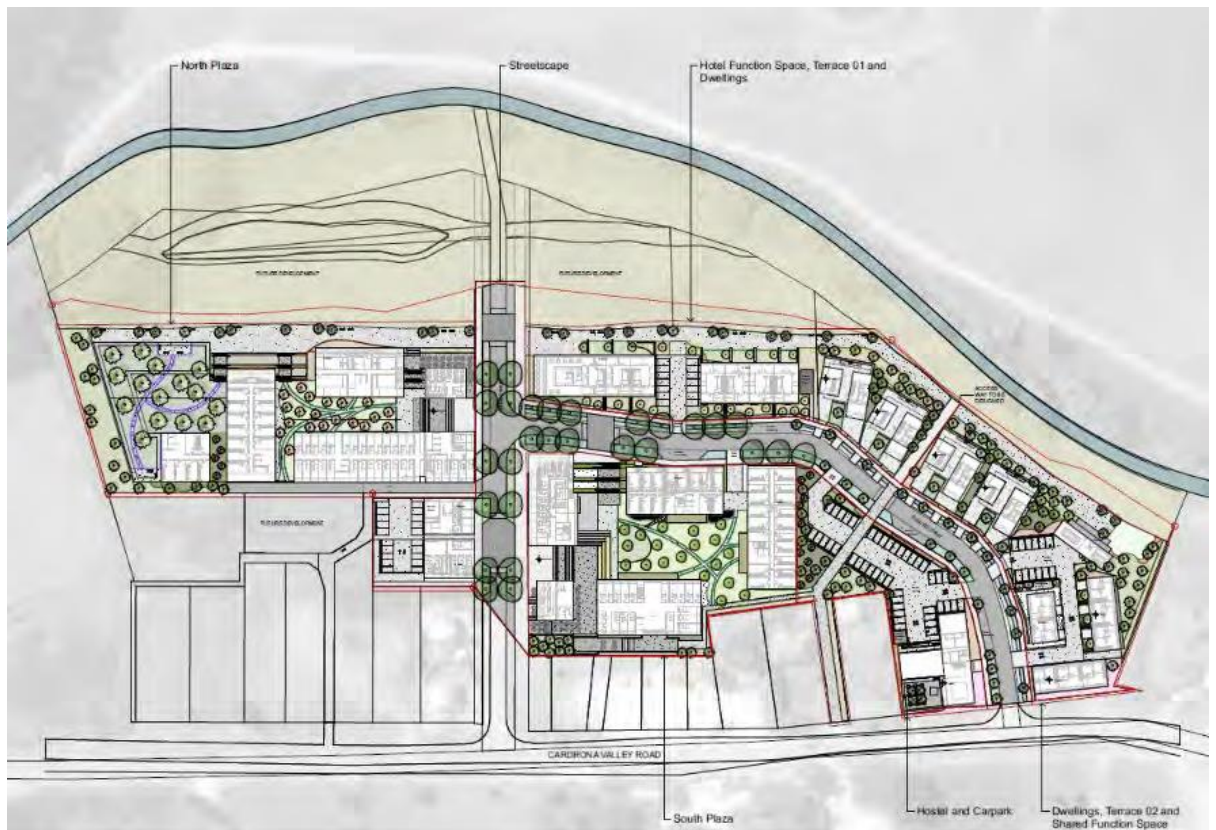
purpose, objectives and policies, and rules of Chapter 20 for the comprehensive Master Plan Mixed Use development subsequently consented on the site.

17. The Hearing Panel recommended acceptance in part of the suggested changes insofar as they sought to reduce the regulatory force of the Cardrona Village Character Guideline 2012 within the Settlement Zone at Cardrona. However, we largely recommended rejection of the balance of provisions sought. We will discuss in greater detail the reasons for that recommendation later in this Report.

2. THE CONSENTED ACTIVITIES

2.1 RM190669

18. The land the subject of this resource consent is located entirely within the notified Settlement Zone west of the Cardrona River. The consent divides the site into seven blocks with different activities in each block as follows:
 - Block 1: Four buildings containing variously, a 104 room hotel; 8 residential apartments; 14 serviced apartments; 6 serviced apartments and 18 residential apartments;
 - Block 2: A 54 room hotel located in two buildings;
 - Block 3: Three buildings containing variously, a 106 room hotel with associated food and beverage spaces and gym; 18 serviced apartments; 23 serviced apartments;
 - Block 4: Two buildings containing variously, 3 serviced terrace houses and a hotel function space; 4 residential terraced houses;
 - Block 5: Four buildings, each containing 2 residential units;
 - Block 6: Four buildings containing variously, 2 serviced terraced houses; 3 serviced terrace houses; 3 serviced terrace houses; shared function space;
 - Block 7: One building containing a hostel with 54 beds in 9 bunkrooms and a manager's residence.
19. In broad terms, the consented proposal involves the construction of 24 two and three level buildings.
20. The distribution of buildings across the site, along with the proposed landscaping provision (revised during the application process), is as shown below:



21. As is usual with developments of this kind, the consent decision records a number of material variations to the proposal as originally applied for, as the applicant sought to respond constructively to the Council's Section 92 Further Information Requests.
22. The decision report records that the development is likely to proceed in stages. CVL provided an indicative staging order, suggesting that the residential accommodation, and the hostel either side of Rivergold Way will probably proceed in advance of the hotel-related developments either side of Soho Street.
23. The decision report records that the applicant sought a ten year lapse period, based among other things, on the lack of certainty as to the timing of a new public wastewater scheme proceeding at Cardrona. The applicant's logic in this respect was accepted, with the decision report recording the view that it is not realistic for the development to be implemented within a standard five year lapse date⁴.
24. Although the timing of the application meant that the notified Stage 3 provisions were given little weight in the decision-making process, the decision report included the following statement:

"The proposed development provides for a development outcome that generally accords with the Policy direction under the PDP under Stage 3b zoning, in that it provides for lower density residential development within the southern part of the site, while concentrating larger scale visitor accommodation development in an area of the site that is identified as a Visitor

⁴ Section 6.8

Accommodation sub-zone. The proposal has been designed with regard to the Guidelines [i.e. the Cardrona Village Character Guideline 2012], and while not all development promotes the more traditional vernacular style articulated within the Guidelines, the proposal is supported from a urban design perspective and is not considered to be fundamentally or diametrically opposed to the policy framework amended by Stage 3b of the PDP.”⁵

25. Last but not least, the consent was granted on a non-notified basis, because the relevant ODP provisions precluding notification.

2.2 ETO61204

26. The material provided to us by Mr Gardner-Hopkins contains limited information about the nature and scale of the development permitted by resource consent RM061204, the lapse date for which has been extended to 6 May 2025. From the description in the Council decision extending the lapse date, however, it involves a lodge for visitor accommodation purposes, 48 units for visitor accommodation residential use, a manager’s residence, earthworks, landscaping, carparking and access.
27. Mr Grace’s application on behalf of CVL provides a little more information. Mr Grace’s application also includes commentary on the consistency of the consented development with the notified provisions of Chapter 20 expressing the view⁶ that *“the development approved by resource consent RM061204 is generally consistent with the development now anticipated on the site by the proposed new rules and standards”*.
28. Later in his application⁷, Mr Grace expressed the view that the consented development is not contrary to the overall intent of the proposed objectives and policies in Chapter 20.
29. We record that strictly speaking, the lapse extension approval is not new information. It was granted a month before CVL’s evidence in chief was pre-circulated and could have been put before the Hearing Panel for consideration in the normal way. Notwithstanding that, we have taken this additional information into account, as discussed below.

3. RELEVANCE OF CONSENT DECISIONS TO REZONING SUBMISSIONS

30. We have recommended that CVL’s submission be accepted as regards placement of the Commercial Precinct overlay either side of Soho Street. While the grant of consent for commercial activities on that land would support that recommendation, clearly no additional amendment is required (or indeed within jurisdiction).
31. We do not consider that either grant of consent as discussed above, or extension of the lapse period to the already consented development east of the Cardrona River has any relevance to CVL’s submission seeking rezoning of the currently Crown-owned ‘riverbed’ land. Consent RM190669 does not include that land and the plans contained in the decision report show a setback from it (10 metres in the case of residential development and 20 metres in the case of visitor accommodation).

⁵ Section 6.6 at page 59

⁶ Lands & Survey (Auckland) Limited application on behalf of CVL at page 15

⁷ Ibid at page 19

32. The AEE for the resource consent describes the proposed land swap and the fact that at the time of writing it had not been completed and advises that the proposal provides for *“integration with any development that may be undertaken on this land in the future”*⁸.
33. We regard the grant of consent as essentially neutral to the zoning of the ‘riverbed’ land.
34. Nor does the extension to the lapse period for the pre-existing resource consent RM061204 impact on that issue, given that it relates to the CVL owned land east of the Crown land CVL will eventually take title to.
35. It follows that we do not recommend any change to our previous recommendations as regards mapping/zoning issues, as set out in Report 20.8.

4. RELEVANCE OF CONSENT DECISIONS FOR TEXT OF CHAPTERS 20 AND 27

4.1 Chapter 20: Purpose

36. CVL sought changes to the notified purpose:
 - To note the application of the Commercial Precinct at the intersection of Soho Street and Rivergold Way;
 - To record that the Commercial Precinct provides for a mix of retail, commercial, commercial recreation, community and visitor accommodation activities;
 - To record that the Visitor Accommodation Sub-zone enables low to medium intensity residential activities;
 - To state that the Cardrona Village Character Guideline 2012 provides broad design guidance;
 - To state that that guideline may be reviewed and that until such time as a review is completed, it will continue to apply *“in terms of Section 104(c) of the RMA”*.
37. At paragraph 28 of Report 20.8, we recorded our view that it was not appropriate for the purpose of Chapter 20 to refer explicitly to the nature and scale of the development CVL proposes, effectively implying that it already exists. In addition, we did not think that expansion of the language was necessary.
38. We do not consider that the granted consent alters that position, particularly given the indicative staging information provided by CVL that suggests the hotel/commercial development on Soho Street is likely to be the last element of the integrated mixed use development that proceeds. The extent to which the Commercial Precinct provides for a range of activities CVL seeks reference to also in our view a matter of detail that is not necessary for a broad statement of purpose.
39. The residential components by contrast are likely to be early in the staging process, but we do not consider it necessary to refer to them specifically in the context of the Visitor Accommodation Sub-zone: the existing text records, accurately, that the purpose of that sub-zone is to enable further establishment of visitor accommodation activities.

⁸ CVL AEE at paragraph 19

40. Paragraph 29 of Report 20.8 addresses the issues related to the Cardrona Village Character Guideline 2012, recommending acceptance of CVL's relief seeking reference be inserted to it providing broad design guidance, but not to the suggested addition of reference to potential reviews, or the status of the Guidelines in terms of the RMA in the interim.

41. We do not consider that the additional information supplied alters the position in either respect.

4.2 Chapter 20: Objectives and Policies

42. The relief sought by CVL was addressed in Section 3.6 of Report 20.8. In summary, CVL sought an objective relating to enablement of what it described as "*comprehensive master plan mixed use development*" at Cardrona supported by two new policies. In each case, the suggested provisions are qualified to ensure consistency with the character and amenity of Cardrona with the policies using a slightly different language (referring to character and heritage values).

43. Our conclusion (at paragraph 114 of Report 20.8) was that the suggested objectives and policies were not required because, if the proposed development was advanced consistently with the emphasis in those provisions on maintaining the character and amenity of the existing village and protecting the surrounding ONLs, the existing provisions would accommodate them, and provide a consent pathway for their consideration.

44. If anything, the fact that consent has now been granted, as noted above on the basis that, among other things, the proposed development was generally consistent with the notified chapter 20 provisions, supports that conclusion. This is the opposite situation to the Arthurs Point North example referred to above.

45. Mr Grace's submission noted above in relation to extension of the lapse period on RM061204, that the consent is generally consistent with the rules and standards of Chapter 20, and not contrary to the overall intent of the objectives and policies, supports that conclusion also.

46. We remain of the view that the suggested additional provisions are not required.

4.3 Chapter 20: Rules

47. CVL sought a series of amendments to the chapter 20 rules summarised at paragraph 157 of Report 20.8. As noted in Report 20.8, the submission emphasised the controlled activity status for CVL's proposed development in the ODP Rural Visitor Zone. We note that from the Decision Report supplied to us, some aspects of the development were considered (and consented) as restricted discretionary activities.

48. In Report 20.8, we noted the view of the Council Reporting Officer, Ms Bowbyes, that the key tensions between CVL's development aspirations and the notified zone provisions were centred on the submitter's desire for increased residential density and permissive standards for activities. Her view was that the CVL site was not sufficiently unique to warrant a suite of site-specific provisions and that the zone already provided a consenting pathway for the proposed development.

49. As with the objectives and policies, Ms Bowbyes' view has been borne out by the grant of consent on the basis, among other things, that the proposed development is generally consistent with the notified provisions and that, in the cases of inconsistency, the Council's urban design assessment supported what was proposed.

50. We note for instance the CVL submission seeking softening of the standard for gables in 20.5.9. The Decision Report for RM190669 indicates that CVL proffered a gable design for a number of its proposed buildings and satisfied the Council that for those with a flat roof style, that was appropriate on urban design grounds generally. In our view, this is how a rule standard should generally work – not as an absolute requirement, but rather as a trigger for further analysis and justification.
51. In summary, we do not consider that the grant of consent RM190669 provides a sound rationale for the rule amendments sought. Rather, it demonstrates that a soundly based proposal, supported by appropriate technical analysis, is able to be approved notwithstanding any inconsistencies with those standards. It does not demonstrate that those standards are inappropriate.
52. We do not have enough information regarding the character of the development consented on the east side of the Cardrona River to form any view on its relevance or otherwise to the rule amendment sought, although Mr Grace’s view that it is generally consistent with the existing rules and standards does not indicate a need for amendment on that account.
53. In Report 20.8, we noted that while we did not support the suggested deletion of all reference to the Cardrona Village Character Guideline 2012 in the Rules, some amendment was required to reduce the extent of regulation. We do not read anything in the recently granted consents that would cause us to alter that view either.

4.4 Chapter 27: Rules

54. CVL sought specific provision for subdivision around buildings constructed in accordance with an approved land use resource consent. This was addressed at Section 4.4 of Report 20.8. Our view, as expressed in paragraph 242 of Report 20.8 was that subdivision, if intended, should be dealt with in an integrated manner at the same time as the consenting of land use activities. That appears to have occurred in relation to the proposed development on the east side of the Cardrona River.
55. Our reading of the more recent consent that has now been granted is that did not occur. Consent RM190669 does not authorise any subdivision.
56. As discussed in paragraph 240 of Report 20.8, Mr Grace’s evidence for CVL was that the density and intensity of residential development would be managed through the land use consent process, with subdivision merely a mechanism to provide for separate legal ownership of the consented commercial units, visitor accommodation units or residential units.
57. Clearly, there is considerable overlap between the matters of relevance to grant of land use consents and to subdivision. However, in our view, subdivision raises discrete issues because it facilitates the dilution of ownership and the resulting loss of overall planning and management of the property, such that the Council needs to retain the ability to reject subsequent subdivision application in appropriate cases.
58. It follows that we do not consider that the grant of consent in a manner that has not considered subsequent subdivision of individual elements of the development to be a sound reason for amending Chapter 27 in the manner proposed.

5. OVERALL RECOMMENDATION

59. It follows from our reasoning as above, that we do not consider that the grant of consent RM190669 or the extension of the lapse date in Decision ET061204 to provide a rationale for any amendment to the recommendations set out in Report 20.8, and the accompanying appendices.



Trevor Robinson
Chair
Stream 18 Hearing Panel

Dated: 11 February 2021