

Before the Queenstown Lakes District Council Hearings Panel

In the Matter of the Resource Management Act 1991 (**Act**)

And

In the Matter of Stream 13 – Queenstown Mapping and submissions lodged by Reddy Group Limited (now Coherent Hotels Limited) on the Queenstown Lakes Proposed Plan 2015 (699 and FS1172)

Legal Submission on behalf of Coherent Hotels Limited

Dated 14 July 2017

Jeremy Brabant
Barrister
Broker House, Level 2, 14 Vulcan Lane
PO Box 1502, Shortland St
Auckland City
Ph: 09 306 2901 Mob: 021 494 506
Email: jeremy@brabant.co.nz

MAY IT PLEASE THE PANEL:

Introduction

1. These legal submissions are presented on behalf of Coherent Hotels Limited (**Coherent**) in relation to submissions lodged on the Queenstown Lakes Proposed District Plan 2015 (**Proposed Plan**).
2. As set out in the planning evidence of Mr Grala,¹ Coherent has landholdings in Fernhill comprising several properties. The largest property is located at 139 Fernhill Road which currently accommodates the Aspen Hotel on the northern portion of that site. The remaining five properties addressed in the submission are four smaller residential properties owned by Coherent (10, 12 and 16 Richards Park Lane and 20 Aspen Grove) and one contiguous property (14 Richards Park Lane). I refer to the identified properties collectively as the **Site**.
3. The submissions² were made by Reddy Group Limited which was the owner at the time of the properties now owned by Coherent.³
4. In summary, for reasons addressed in the evidence of Mr Grala, the submission lodged:
 - a. Supported the application of the Medium Density Residential Zone (**MDR**) over 139 Fernhill Road as notified and sought to extend the MDR over the other identified properties; and
 - b. Supported the application of the Visitor Accommodation Sub-Zone (**VA Sub-Zone**) to 139 Fernhill Road and sought to extend the VA Sub-Zone over the other identified properties.

Summary Position

5. The professional opinions of Mr Grala on behalf of Coherent and Ms Devlin on behalf of Council⁴ are essentially in agreement. The appropriateness of

¹ Statement of evidence (**SOE**), N Grala, dated 9 June 2017

² Submission 699 and FS1172

³ Coherent is progressing the submissions through the hearing process as successor to Reddy Group.

⁴ Section 42A Report/SOE, R Devlin (Group 1C Queenstown Urban – Central, West and Arthurs Point), dated 24 May 2017; Rebuttal evidence of R Devlin (Group 1C Queenstown Urban – Central, West and Arthurs Point), dated 7 July 2017

the MDR zoning⁵ supported by Mr Grala and Ms Devlin will be the subject of a finding by the Panel on the evidence – as far as I am aware there are no unusual or specific legal issues arising.

6. Mr Grala and Ms Devlin now agree, in the context of the relief originally sought by reference to the Proposed Plan as notified, that the issue of visitor accommodation will be appropriately addressed in Stage 3 of the Proposed Plan review process.
7. I note that at the time Mr Grala prepared his evidence, he identified two areas where disagreement remained, which I will briefly comment on. Those issues were:
 - a. The recommendation by Ms Devlin to refuse Coherent’s request for a VA Sub-Zone over the Site; and
 - b. The appropriateness of making a determination on the merits of applying the VA Sub-Zone to the Site during the current Stage 2 hearing process.

Legal framework – Plan Change /Review

8. The matters requiring consideration in law will be well known to the Commissioners, and I presume will have been addressed in detail before the Panel earlier in the process. Given they are not controversial, I do not propose to address them.

Section 42A report and recommended zoning

Application of the MDR zone

9. The section 42A Report recommends that the rezoning of the Site to MDR is logical and will enable efficient land development close to a local shopping centre and public transport route.⁶ Support for the zoning by other Council

⁵ By reference to the purpose of the RMA, achievement of relevant objectives and policies, and taking into account the benefits and costs of the proposed zoning

⁶ SOE, Devlin, section 39.

witnesses/specialists is recorded.⁷ Ms Devlin maintains support for the MDR zoning in her rebuttal evidence.⁸

10. The recommendation and reasoning of Ms Devlin is supported by Coherent’s planning expert Mr Grala.⁹ In particular, Mr Grala is of the opinion that the MDR zone is appropriate because:¹⁰

- a. It is consistent with the objectives and policies of the MDR zone;
- b. It provides an opportunity for a large site in one ownership to be redeveloped on an integrated basis;
- c. The Site is within the notified Urban Growth Boundary;
- d. The rezoning forms an extension of the current MDR zone as notified and would not result in spot zoning;
- e. The Site adjoins the local shops situated on the corner of Fernhill road and Richards Park Lane;
- f. The Site is situated on a public transport route;
- g. The Site is not within any landscape protection overlays under the Proposed Plan; and
- h. The re-zoning sought is consistent with the strategic direction of the Proposed Plan because it consolidates growth within the UGL and could encourage higher densities close to local amenities and public transport routes.

11. For these reasons, Coherent submits that the section 42A Report recommendation be adopted and the MDR Zone applied to the entirety of the Site.

⁷ Addressing Infrastructure, Traffic and Ecology – see paragraphs 39.3 – 39.4

⁸ Rebuttal, Devlin, at paragraph 13.3.

⁹ SOE, Grala, at paragraph 19.

¹⁰ SOE, Grala, at paragraph 19.

VA Sub-Zone

12. My understanding is that the issue of visitor accommodation will now be addressed in the context of Stage 3 of the Proposed Plan process. On that basis, Coherent does not pursue the VA Sub-Zone relief sought in its submission. The decision not to pursue that relief is without prejudice to its right to seek appropriate visitor accommodation provisions in the context of Stage 3.
13. I submit that as a result of the position outlined above, the Panel should not (and is not required to) make a determination on the merits as to whether a VA Sub-Zone should apply to the Site.

Background

14. The Panel will recall that the Proposed Plan as notified included a VA Sub-Zone – that zone was applied to 139 Fernhill Road. Reddy Group’s (now Coherent’s) submission supported the sub- zone and also sought to extend the sub-zone to the other identified contiguous properties.
15. Subsequent to submissions on the Proposed Plan being lodged, the Council withdrew provisions relating to visitor accommodation (including the VA Sub-Zone) from the Residential Zones including Chapter 8 – MDR.¹¹ The Council has confirmed that visitor accommodation provisions will be moved to Stage 3 of the District Plan Review.¹² I understand Stage 3 is expected to be notified in October/November 2017 with a possible hearing date scheduled for the second quarter of 2018.
16. Notwithstanding that the visitor accommodation provisions had been withdrawn, Ms Devlin addressed the submission in her section 42A report/statement of evidence. To be fair, because Coherent had scope to seek application of the subzone, some form of recommendation by Ms Devlin with

¹¹ These provisions were withdrawn under clause 8D, Schedule 1 RMA by public notice in November 2015.

¹² Queenstown Lakes District Council – Planning and Strategy Committee – Report for Agenda Item 1 dated 21 April 2017 at paragraph 15. See also the statement of Mr Grala at paragraphs 24 – 26.

respect to that relief sought was appropriate.

17. Ms Devlin addressed the VA Sub-Zone relief sought at paragraph 39.8 of her evidence. The evidence did not refer to the withdrawal of the visitor accommodation provisions and Council's intention to address that issue in Stage 3 of the process. Instead the section 42A Report addressed the merits of the subzone being applied to the properties in question and recommended that the VA Sub-Zone be refused.¹³

...I consider that providing prioritising visitor accommodation over residential development in this location would not be generally consistent with the strategic direction provided in Chapter 3 to ensure that the Urban Growth Boundaries contain sufficient suitably zoned land to provide for future growth and a diversity of housing choice. In addition, I do not support a bespoke 'spot zone' for visitor accommodation. Overall, I recommend that the submitter's request for a visitor accommodation sub-zone should be refused.

18. I advised Mr Grala prior to preparation of his evidence that in my opinion if the issue of visitor accommodation is to be assessed in an integrated and comprehensive way as part of Stage 3 of the Proposed Plan process, then it would be appropriate for Coherent not to pursue VA Sub-Zone relief in this hearing. However, I also advised Mr Grala that because Ms Devlin had addressed the merits of the subzone, for the record Mr Grala should include a response.¹⁴

19. In her rebuttal statement of evidence Ms Devlin agrees with Mr Grala that visitor accommodation will be appropriately addressed in Stage 3 of the PDP.¹⁵

20. On that basis, Coherent does not pursue the aspects of its submission relating to imposition of the VA Sub-Zone on the Site. For the avoidance of doubt, this decision does not alter Coherent's view that provision for visitor accommodation on the Site is ultimately appropriate.

¹³ SOE, Devlin, at paragraph 39.8.

¹⁴ SOE, Grala, at paragraphs 30 – 36.

¹⁵ Rebuttal, Devlin, at paragraph 13.2.

Conclusion

21. I submit the planning evidence before the Panel establishes that the rezoning of the Site to MDR is appropriate in the context of the relevant considerations in law.

22. Further, in my submission a determination on the merits of the VA Sub-Zone applying to the Site should not be made (and is not required) because Council has withdrawn the Sub-Zone provisions and Coherent has elected not to pursue that relief. Coherent's approach is adopted on the basis that visitor accommodation provisions will be addressed in an integrated and comprehensive way during Stage 3.



Jeremy Brabant
Counsel for Coherent Hotels Limited

Dated 14 July 2017