

**BEFORE THE HEARINGS PANEL  
FOR THE QUEENSTOWN LAKES PROPOSED DISTRICT PLAN**

**IN THE MATTER** of the Resource  
Management Act 1991

**AND**

**IN THE MATTER** of Hearing Streams 17  
Stage 3 Proposed  
District Plan

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**REPLY OF ELIAS JACOBUS MATTHEE  
ON BEHALF OF QUEENSTOWN LAKES DISTRICT COUNCIL**

**PLANNING: 101 BALLANTYNE ROAD**

**4 September 2020**

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## CONTENTS

	PAGE
1. INTRODUCTION.....	1
2. USE OF CLAUSE 16 TO REZONE THE ACCESS STRIP TO ACTIVE SPORT AND RECREATION ZONE (ASRZ).....	1
3. WHETHER POLICY 38.5.1.1 IS AN ENABLING POLICY FOR COMMUNITY ACTIVITIES AND WHETHER A DISCRETIONARY ACTIVITY STATUS WOULD MEET THIS POLICY BETTER THAN A NON-COMPLYING STATUS .....	3
4. WHETHER A LESSER ACTIVITY STATUS, SUCH AS DISCRETIONARY, FOR MATERNITY SERVICES OR SIMILAR IS WARRANTED.....	5

## 1. INTRODUCTION

1.1 My name is Elias Jacobus (EJ) Matthee. I prepared the section 42A report<sup>1</sup> (**s42A**) and statement of rebuttal<sup>2</sup> for 101 Ballantyne Road (**site**) filed in Hearing Stream 17. My qualifications and experience are set out in my s42A.

1.2 I attended the hearing on Tuesday 30 June 2020 and have been provided with information from submitters and counsel at the hearing, including reports of what has taken place at the hearing where relevant to my evidence.

1.3 This reply addresses the following issues:

- (a) Whether there is an ability to use clause 16 of Schedule 1 of the RMA to rezone the 'access strip' to Active Sport and Recreation Zone (**ASRZ**), and what the width of this access strip is;
- (b) Whether Policy 38.5.1.1 is actually an enabling policy for Community Activities and whether a discretionary activity status would meet this policy better than a non-complying activity status;
- (c) Whether a lesser activity status, such as discretionary, for maternity services or similar is appropriate.

1.4 The summary of submissions and my recommendations set out in Appendix 1 of my s42A remain unchanged.

## 2. USE OF CLAUSE 16 TO REZONE THE ACCESS STRIP TO ACTIVE SPORT AND RECREATION ZONE (ASRZ)

2.1 At the Hearing, the Panel asked for confirmation as to the width of the access strip from Riverbank Road. I confirm the access strip is approximately five metres wide. It forms part of the same certificate of title to the rest of 101 Ballantyne Road.

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1 Dated 18 March 2020.

2 Dated 12 June 2020.

- 2.2** The Panel also questioned whether clause 16(2) of Schedule 1 of the RMA could be used to rezone the access strip to ASRZ. I agree with the reply legal submissions for Council that clause 16(2) of Schedule 1 should not be used to rezone the access strip to ASRZ because it could affect submitters, due to the fact that the ASRZ will create a larger building setback on the adjoining (notified General Industrial Zone) land. I therefore do not consider it to be a neutral change on adjoining landowners.
- 2.3** However, my recommendation remains as set out in my s42A (refer paragraphs 6.10 – 6.13) - that the access strip be rezoned ASRZ.
- 2.4** In my view there is scope for this change through a number of submissions that supported rezoning the whole/entire site to ASRZ. There is nothing in these submissions which, in my view, precludes the access strip to 101 Ballantyne Road from being captured by this support.
- 2.5** I note that Figure 1 of the s32 report shows a map of the entire site, including the access strip, and some of the submissions also reference Option 4 of the s32 evaluation which states: *Option 4. Zone the entire site Active Sports and Recreation.*
- 2.6** The specific submissions/ submission points are:
- (a) 3005.1 – Sport Otago;
  - (b) 3029.2 – Sport central;
  - (c) 3065.1 – Upper Clutha Sports Community Trust;
  - (d) 3109.11 – Public Health South;
  - (e) 3127.1 – Upper Clutha Hockey Club Inc;
  - (f) 3131 – Richard Vorstermans;
  - (g) 3140 - Central Otago Football Association COFA
  - (h) 3164.1 – Elizabeth Hadida;
  - (i) 3165.2 - Orchard Road Holdings Limited;
  - (j) 3167.3 - Ardmore Property Trust;
  - (k) 3195.1 - IP Solutions (Wanaka Associated Football Club);
  - (l) 3260.1 - Amanda Inkster;
  - (m) 3263.1 – Otago Cricket.

2.7 I retain the recommendation set out within Appendix 1 of my s42A, that these submission points be accepted and that the entire site, including the access strip be rezoned to ASRZ.

3. **WHETHER POLICY 38.5.1.1 IS AN ENABLING POLICY FOR COMMUNITY ACTIVITIES AND WHETHER A DISCRETIONARY ACTIVITY STATUS WOULD MEET THIS POLICY BETTER THAN A NON-COMPLYING STATUS**

3.1 At the hearing, the Panel queried whether Policy 38.5.1.1 is actually an enabling policy and suggested that perhaps a discretionary activity status would meet this policy better than a non-complying status. I note that this policy is still under appeal and could be altered and qualified within the scope of relevant appeals. Any changes made to the ASRZ provisions in this stage, would need to be bespoke / specific to 101 Ballantyne Road.

3.2 Nevertheless, I agree with the Panel, that if read on its own, Policy 38.5.1.1 reads as an enabling policy for all community activities:

*Policy 38.5.1.1: Provide for indoor and outdoor organised sports, active recreation, recreation facilities, community activities, accessory activities and associated buildings and structures.*

3.3 However, Policy 38.5.1.1 should be read within its context, which is to implement the ASRZ purpose and objectives; and that regard should be given to the other relevant objective, policies and corresponding activities/rules, as well as the objectives and policies which apply District wide to all Open Space and Recreational Zones (**OSRZ**).

3.4 When considering the higher order objectives and policies of the OSRZs and the broad definition of community activities (set out below), these policies are in my view relevant:

(a) **Policy 38.2.1.5:** *Avoid activities that do not have a practical or functional need to be located within Open Space and Recreation Zones, unless a particular activity:*

a) *is compatible with and does not affect the continued operation of established activities;*

- b) *does not preclude the development of new open space and recreation activities*
  - c) *maintains or enhances the recreation and amenity values.*
- (b) **Policy 38.2.2.2:** *Limit activities, buildings and structures to those compatible with the role and function of the zone, and the sensitivity of the surrounding environment, and which maintain or enhance the anticipated use or values of the zone.*
- (c) **Policy 38.2.3.1:** *Ensure that commercial activities have a genuine link with the open space and recreation resource.*

**Community Activities:** *Means the use of land and buildings for the primary purpose of health, welfare, care, safety, education, culture and/or spiritual wellbeing. Excludes recreational activities. A community activity includes day care facilities, education activities, hospitals, doctors surgeries and other health professionals, churches, halls, libraries, community centres, police purposes, fire stations, courthouses, probation and detention centres, government and local government offices.*

- 3.5 Given the broad definition of Community Activities, it is clear that some community activities would be contrary to these objectives and policies and to the purpose and objective of the ASRZ. It is also considered that activities listed as permitted, controlled, restricted discretionary and in some cases, but to a lesser extent, discretionary, are more likely to be compatible with other activities anticipated within the zone and the zone purpose than those not listed or listed as non-complying or prohibited.
- 3.6 When read with the related provisions, Policy 38.5.1.1, in my view, has the effect of providing for compatible community activities.
- 3.7 It follows from this that I still consider the non-complying activity status to be appropriate for community activities not listed. This is mainly because, a non-complying activity status introduces the gateway test in s104D of the RMA whereby Council can only grant an application for a non-complying activity if its adverse effects are minor, or if it is consistent with the Plan's objectives and policies, which together should ensure that any community activities not listed are compatible

and appropriate. I consider this to be a robust and necessary mechanism for protecting the integrity of the zone and its intended outcomes, particularly when considering the critical function of the OSRZs - that it is a limited/finite resource within urban areas, and given the development pressure it would likely face if the cumulative adverse effect on it is not appropriately managed through the plan provisions.

**3.8** In this regard, I also consider that the plan provides clear, strong objectives and policies so that the threshold to meet the second test (s104D(1)(b)) is appropriately set, so that it will allow for consents to be granted or refused as appropriate.

**3.9** A discretionary activity status does not provide this same level of protection, as a discretionary activity can be considered acceptable (and consent granted) even if the activity has more than minor effects or even if the proposal is inconsistent with some of the objectives and policies (provided it is on balance consistent with the objectives and policies considered under s104(1)(b)(vi)).

**4. WHETHER A LESSER ACTIVITY STATUS, SUCH AS DISCRETIONARY, FOR MATERNITY SERVICES OR SIMILAR IS WARRANTED.**

**4.1** At the hearing, the Panel queried whether a lesser activity status for maternity services or similar is warranted given the other activities listed with a lesser activity status. Following on from the above, I maintain the position set out in my rebuttal<sup>3</sup>, that the site does not have any particular qualities that warrant bespoke rules to enable maternity services. I also note that Council is generally opposed to the inclusion of site specific rules within the PDP, unless there is strong evidence of the appropriateness of such rules, as this can result in complexity for the reader and poor planning outcomes.

**4.2** I acknowledge that this, in and of itself is not a robust reason to reject the relief, however, I maintain that it is not appropriate to allow for all community activities within the ASRZ for the reasons explained above and within my s42A report.

- 4.3** In regards to a discretionary activity status, I consider a discretionary activity status to be suitable for activities anticipated within the ASRZ, such as a grandstand, but which might have effects associated with the activity itself that would need to be mitigated. The rule framework for the ASRZ does list activities with discretionary or less restrictive activity status, some of which are commercial in nature. However I consider that the listed activities are those considered to be anticipated and likely consistent with the zone purpose and generally not activities that are better provided for in other zones or considered to be more suited to be within other open space zones.
- 4.4** I also do not support listing maternity services as a discretionary activity, as it applies to the site, because, in my view, 'maternity services' could extend to a large scale commercial maternity hospital on the site, which would be contrary to the objectives and policies outlined above and the purpose of the zone. This concern is heightened by the different terms used to describe the relief sought which could have a range of outcomes (maternity ward/unit, maternity hospital, maternity home, maternity facility, maternity/birthing hub, maternity services).
- 4.5** It has been suggested by the submitter that the scale of the activity could be controlled through standards such as the building bulk and location standards. In this regard, I consider it crucial for the activity to be considered separately from the associated built form and that this is dictated by the architecture of the plan and the matters to which discretion is restricted to for these breaches. I therefore do not consider it appropriate to rely on rules/standards which do not relate to the activity itself, but rather the associated built form, to control the effect of the activity, especially if the activity is anticipated within the zone.
- 4.6** A maternity service activity at the scale of a hospital (for example) would not be compatible, in my view, with the anticipated surrounding activities or the ASRZ purpose. There is likely to be quite a significant difference in effects between an activity like this and a community hall or a day care facility (discretionary) for example, or a restaurant/café accessory to a permitted activity (controlled/restricted discretionary) such as recreation facilities, clubrooms or organised sports and



recreation. I therefore consider the non-complying activity status appropriate and that there is a need for the gateway test to apply, based on my reasoning in paragraph 3.7 – 3.9 above.

- 4.7** Retaining the non-complying activity status for maternity services does not preclude those types of activities from establishing on the site. However, appropriateness is not assured and this will depend on the specifics of the proposal and potentially consent conditions such as requiring noise insulation and mechanical ventilation to ensure its compatibility.
- 4.8** Given this, I consider it suitable for an application for a maternity service to be subject to the gateway test and that it does not warrant a lesser activity status within the ASRZ.

A handwritten signature in blue ink, appearing to read 'E. Matthee', is positioned above the printed name.

**Elias Matthee**

**4 September 2020**