

**IN THE ENVIRONMENT COURT
AT CHRISTCHURCH**

ENV-2021-CHCH-0000

UNDER THE

Resource Management Act 1991 ("**Act**")

IN THE MATTER OF

an appeal under Schedule 1, Clause 14(1), of the
Act

BETWEEN

GIBBSTON VALLEY STATION LIMITED

Appellant

AND

QUEENSTOWN LAKES DISTRICT COUNCIL

Respondent

**NOTICE OF APPEAL BY GIBBSTON VALLEY STATION LIMITED
(RURAL VISITOR ZONE)**

18 MAY 2021

Counsel instructed:

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TO: The Registrar
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CHRISTCHURCH
 (Christine.McKee@justice.govt.nz)

AND TO: The Respondent
 (dpappeals@gldc.govt.nz)

(NOTE: Service on submitters and further submitters is waived pursuant to the Environment Court's directions of 1 April 2020]

Notice of appeal

1. Gibbston Valley Station Limited ("**appellant**") appeals the following decision ("**Decision**"):

Decisions on Chapter 46 Rural Visitor Zone and Related Variations to Chapters 25, 27, 31 and 36 of Stage 3b of the Queenstown Lakes District Proposed District Plan ("**PDP**")

Submission and further submission

2. The appellant made a submission on the PDP on or around 18 November 2019, referenced as #31037.
3. No further submissions were made.

No prohibited trade competition purposes

4. The appellant is not a trade competitor for the purposes of Section 308D of the Act.

Timing / key dates

5. The Decision was made by the Queenstown Lakes District Council ("**Council**") on 18 March 2021, by way of ratification of the recommendations of the Recommendations of the Stage 3 Independent Hearing Panel ("**IHP**").
6. The appellant received notification of the Decision by email on 1 April 2021.
7. The Environment Court, by way of a minute dated 1 April 2021, confirmed that the appeal period ends on 18 May 2021 (with the s274 period ending 16 June 2021).

Decision / part of Decision appealed against

8. The Decision rezoned the appellant's site to Rural Visitor Zone: the Gibbston Valley Rural Visitor Zone ("**GVRVZ**"). That zoning is supported.
9. The appeal relates to the specific provisions of the GVRZ, which:
 - (a) depart substantively from the provisions of the RVZ as notified; and/or

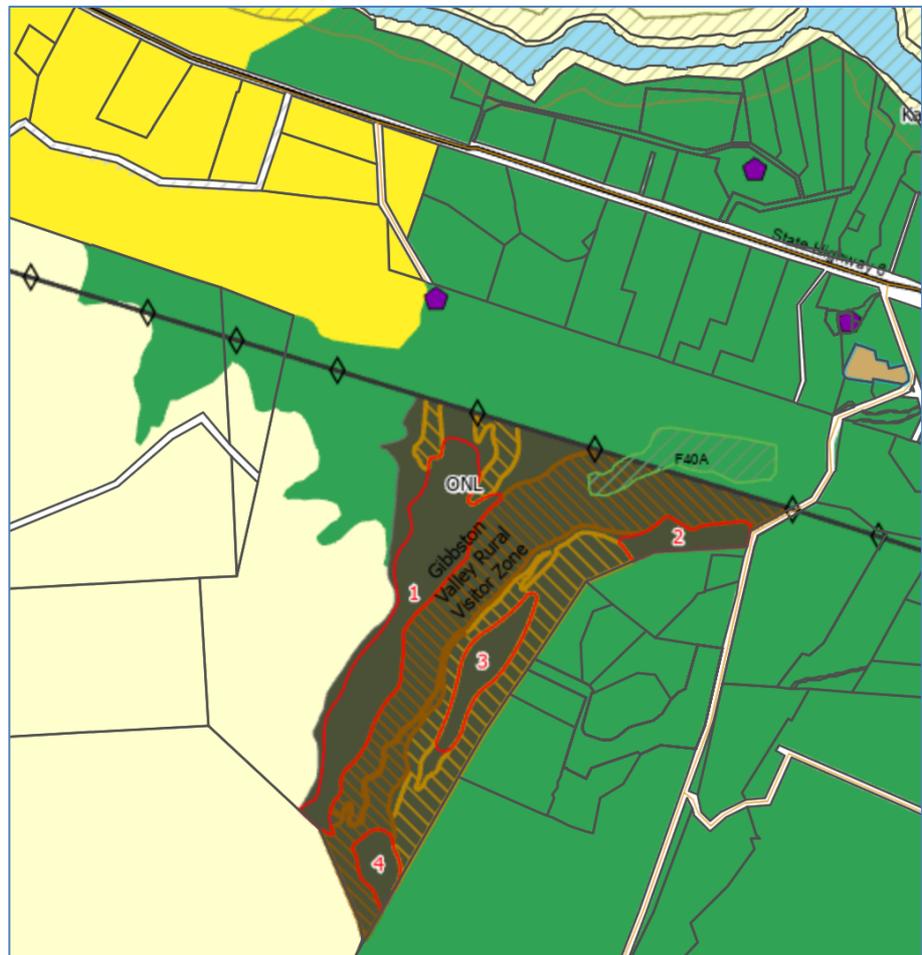
- (b) fail to adopt the specific refinements sought by the appellant in its submissions (including as consequential relief, or relief necessary as a consequence of a change from the RVZ provisions as notified).

Reasons for the appeal

10. The reasons for the appeal are as follows.

Overview/ background

11. The Rural Visitor Zone provides for visitor industry activities that enable people to access and appreciate the District's landscapes, at a small scale and low intensity, and in a manner that recognises the particular values of those landscapes. By providing for visitor industry activities within the rural environment, including in remote locations, the Zone recognises the contribution visitor industry places, services and facilities make to the economic and recreational values of the District.
12. The appellant's land was rezoned to GVRVZ, as follows:



13. The plan shows the development areas (red outline), moderate to high landscape sensitivity areas (ochre hatching) and high landscape sensitivity areas (brown hatching).

14. The rules provides for Farming, Visitor Accommodation, Commercial recreational activities and ancillary onsite staff accommodation, Recreation and recreational activity, and Informal airports, as permitted activities (Rule 46.4.1-46.4.5).
15. Buildings (other than farm buildings) within the GVRVZ are:
 - (a) Controlled within the Developable Areas (Rule 46.4.7);
 - (b) Non Complying within the High Landscape Sensitivity Areas (Rule 46.4.12); and
 - (c) Discretionary in all other areas within the GVRVZ.
16. Farm buildings are Restricted Discretionary (Rule 46.4.8).
17. While the status of activities initially seems permissive (particularly within the Developable Areas), the Standards impose additional controls including the following:
 - (a) In respect of height, a maximum height of 6m, other than within Developable Areas 1 and 3, with a maximum height of 7m, beyond which is Non Complying (Rule 46.5.1);
 - (b) Maximum GFA for any building being 500m², beyond which is Non Complying (Rule 46.5.2);
 - (c) Maximum GFA for all buildings of 500m², beyond which is Restricted Discretionary (Rule 46.5.3.1); and
 - (d) No commercial recreational activities and commercial use of buildings, including for visitor accommodation or commercial recreational activities, until the intersection of Resta Road and State Highway 6 has been upgraded (to meet the requirements of Figure 46.1) (Rule 46.5.11).
18. Under Rule 46.6, applications for controlled and restricted discretionary activities are to be processed non-notified, other than specified matters, which as relevant, include commercial recreational activities (with more than 30 people in any group, under Rule 46.5.7).
19. The appellant is concerned that:
 - (a) the wording of the objectives and policies has departed to a considerable extent from the notified versions, and may create issues with the later consenting of development within the GVRVZ, contrary to the original intention of the zone and its provisions;
 - (b) the trigger requiring all buildings where the total ground floor GFA across the entire RVZ exceeds 500m² to obtain restricted discretionary consent is inappropriate, unnecessary, and inefficient (and departs substantially from the notified approach);
 - (c) its request for residential use of visitor accommodation units for up to 180 days per year was declined;

- (d) its request for a structure plan, with the benefit of subdivision in accordance with that structure plan being controlled, was declined; and
- (e) the specific control restricting use until the intersection of Resta Road and State Highway 6 has been upgraded (to meet the requirements of Figure 46.1) (Rule 46.5.11) is unnecessary and inappropriate.

Objectives and policies

- 20. The RVZ as notified had two short objectives:
 - (a) 46.2.1 Objective – Visitor accommodation, commercial recreation and ancillary commercial activities within appropriate locations that maintain or enhance the values of Outstanding Natural Landscapes.
 - (b) 46.2.2 Objective – Buildings and development that have a visitor industry related use are enabled where landscape character and visual amenity values are maintained or enhanced.
- 21. These were supported by the appellant, including because these objectives will have been achieved through the rezoning to RVZ and the identification of Development Areas as well as identification of areas of differing landscape sensitivity. The rules do not then need to require an effective reconsideration of rezoning matters at the consent stage – at the consent stage consideration should be about matters of detail and mitigation of effects, rather than needing to revisit fundamental matters.
- 22. The Decisions version replaces the original two short objectives with two long objectives as follows:
 - (a) 46.2.1 Objective – Visitor accommodation, commercial recreational activities and ancillary commercial activities occur at a small scale and low intensity in rural locations where:
 - a. the protection of the landscape values of Outstanding Natural Features and Outstanding Natural Landscapes is achieved;
 - b. in areas not within Outstanding Natural Features or Outstanding Natural Landscapes, the maintenance of landscape character, and the maintenance or enhancement of visual amenity values, is achieved;
 - c. adverse effects, including cumulative effects in conjunction with other activities, buildings and development, which do not protect the values specified in a. or maintain or enhance the values specified in b. are avoided;
 - d. amenity values of the surrounding environment are maintained;

- e. they do not compromise the operation of existing activities or those enabled by the zones in the surrounding environment as a result of reverse sensitivity effects;
 - f. activities anticipated within each Zoned area can be adequately serviced with wastewater treatment and disposal, potable and firefighting water supply, and safe vehicle access or alternative water-based transport; and
 - g. significant or intolerable risks from natural hazards to people and the community are avoided.
- (b) Objective – Buildings and development that have a visitor industry related use are provided for at a small scale and low density within the Rural Visitor Zone in areas of lower landscape sensitivity where:
- a. the landscape values of Outstanding Natural Features and Outstanding Natural Landscapes are protected;
 - b. in rural areas not within Outstanding Natural Features or Outstanding Natural Landscapes, the landscape character is maintained and the visual amenity values maintained or enhanced;
 - c. adverse effects, including cumulative effects in conjunction with other activities, buildings and development, which do not protect the values specified in a. or maintain or enhance the values specified in b. are avoided; and
 - d. amenity values of the surrounding environment are maintained.
23. The original implementing policies (which were supported by the appellant) have also now changed considerably.
24. The appellant accepts that some changes are inevitable through the process, but the Decisions version of the objectives and policies now introduces much more stringent direction as to the outcomes sought. It is understood that this is in part to direct the future use of the RVZ zone, which the IHP was concerned could be sought in respect of numerous additional sites as spot-zones through later plan changes.
25. However, the redrafting is misdirected and unnecessary as:
- (a) Any future application of the RVZ zone will need to be assessed against the strategic objectives and policies, as well as the purpose of the RVZ – and pass through the usual s32 evaluation, submissions, etc;
 - (b) Conflating rezoning issues with issues (or objectives for the land that has already been rezoned) means that resource consent applications within zoned RVZ land, such as the GVRVZ, will be subject to much more onerous consent requirements, in terms of

assessment against the objectives and policies. This is despite significant assessment being undertaken at the re-zoning stage (in this case through the PDP review process), and, in the case of the GVRVZ, the identification of Developable Areas as well as areas of varying landscape sensitivity;

- (c) In effect, this means that the merits of the zone are re-evaluated through the resource consent process; and
 - (d) The Decisions Version Objectives also duplicates district wide natural hazards provisions (ie. Chapter 28) and the provisions in Chapter 21 Rural Zone (ie. Objective 21.2.4) as they relate to compatibility with other rural activities and reverse sensitivity.
26. In addition, as “Developable Areas” are to be provided for within the GVRVZ and other RVZ zones, an enabling policy should be included for the rules relating to such Developable Areas to implement.

Concerns compounded by restricted discretionary status for buildings above 500m²

27. These concerns are compounded by the standard imposed for buildings that means all buildings once a threshold of 500m² ground floor GFA is reached (for all buildings across the entire GVRVZ) are restricted discretionary, rather than the base status of controlled.
28. The appellant emphasises that the RVZ provisions originally had no overall GFA trigger (the only control being that any individual building above 500m² ground floor GFA was to be restricted discretionary. At the hearing, the appellant indicated that it could accept RDA status for buildings once a the overall zone threshold of 500m² ground floor GFA was exceeded – but this was on the basis of the objectives and policies as notified (or, at the very least, as also accepted in its own set of RVZ provisions put forward at the hearing).
29. On reflection, and, certainly in light of the Decisions version objectives and policies, the appellant is concerned at the efficiency of having all buildings above the overall zone threshold of 500m² ground floor GFA as restricted discretionary activities. The appellant is confident that any development it would propose would achieve consent, but it is concerned about the inefficiencies of the process as a RDA. Despite the RMA’s processing time expectations, current practice and past experience is that it can take many months for consents to be granted – even where notification is excluded. The RDA status also does not prevent a consents planner from recommending decline on policy grounds; and given the fundamental issues noted above with the notified objectives and policies, this would be an inappropriate outcome.

Residential use (180 days)

30. The appellant sought that an allowance be made for owners to stay for extended periods of time (up to 180 days). It should be noted that while this, in terms of the definitions of the plan, appears to “residential use”, it is not residential use in the usual or ordinary sense, and so it is not inconsistent to any policy to avoid “residential use” in the RVZs.

31. Mr Hunt explained the rationale and nature for the flexibility (or exemption) sought in his evidence as follows:

A likely model of funding is one where investors can own a visitor accommodation unit, but have it managed for visitor accommodation through the Gibbston Valley Management Company. In addition to a return on their investment, it would be attractive to investors if they could, for a reduced fee, stay in their own units for reasonable lengths of time during the year. Many owners are likely to come from Auckland, Australia, and potentially the west coast of the USA. They are likely to want the option, on occasion, to spend extend periods of time in their unit – but not permanently reside there. (If they were looking for semi-permanent accommodation, then other options outside a unit in a [Rural Visitor] Zone would be much more attractive, including financially.) In summary, having such an opportunity, from the owners' perspective, would appeal to them for their requirements for a regular holiday home to enjoy what Gibbston and the Queenstown region has to offer.

From a management perspective, owners would not have "free licence" to stay in their unit whenever they wanted. It would be managed in a way that "public" visitors would have priority. However, if there were sufficient empty units available without bookings, the owners of a unit could stay in their unit (for a limited period of time). They would have to prebook the unit if they wanted to use it and the Gibbston Valley Management Company would approve this, if their unit was available. In the situation where their units were available, we would let the owners know so that they could then determine whether they wanted to utilise their units at those times. I also consider it unlikely that every owner will want to stay in their unit for the full allowable period every year. Most owners will only take advantage of the opportunity from time to time.

From an economic perspective having such an opportunity would assist in giving certainty for the Rural Visitor Zone from both a cashflow perspective and an investment perspective. It will also have benefits to the wider region, as the guests and owners will most certainly enjoy the activities, restaurants and experiences on offer in the wider Lakes region.

32. Importantly, owners would only be able to stay (at a fee) for up to the 180 days on approval of the Management Company if their unit was available. The evidence was also that if owners were actually looking for semi-permanent accommodation (ie more akin to true "residential use") then they are other options that would be more attractive for that, including financially.
33. For all these reasons, the appellant continues to seek an exemption for owners to stay in their units for up to 180 days, per year. While that is technically "residential use", it is a limited form more akin to long term visitor accommodation.

Structure plan

34. The appellant remains of the opinion that greater detail can be provided through a structure plan approach, than through the mapping of Development Areas and Areas of Landscape Sensitivity. Roding, walkways, and other important features can be provided for through a structure plan that will better focus the intended development pattern.
35. As indicated in respect of the 180-day owner occupation issue identified above, a likely funding structure for the GVRVZ is the sale of individual units to investors, with those units then operated for visitor accommodation

by the Management Company. Subdivisions will necessarily need to occur to facilitate that funding and ownership/ management structure.

36. Provided that any structure plan provides sufficient detail, and does not leave it too open for unfettered subdivision resulting in subsequent lots that cannot (for whatever reason) then be developed, then the consequential controlled-activity status for subdivisions that are consistent with the structure plan is an efficient and effective approach to be taken.
37. The appellant would be prepared to work on a more detailed structure plan as part of the appeal process, to address these concerns and ensure that the structure plan adds more than the current notations on the planning maps/ GIS systems.

Limitations on use pending upgrade of the Resta Road and SH6 intersection

38. As recorded above, a new Rule 46.5.11 prevents commercial recreational activities and commercial use of buildings, including for visitor accommodation or commercial recreational activities, until the intersection of Resta Road and State Highway 6 has been upgraded (to meet the requirements of Figure 46.1).
39. As a first point, the underlying zone permits commercial recreational activities. So those activities at least could be undertaken at present, without the need to upgrade the Resta Road/SH6 intersection.
40. Further, requiring a “hard” restriction as provided for under new Rule 46.5.11 is inappropriate and unreasonable. What is required to address the effects of any proposal will depend on its nature, scale and intensity, and could range from no necessary upgrade, to an interim upgrade, or the full upgrade anticipated by Rule 46.5.11 (and Figure 46.1). This is something that can be addressed through conditions through any consent for a proposed building, even if that is a controlled activity. This follows from control being reserved as to “traffic generation”. That matter is also reserved for discretion should any building required consent as a restricted discretionary activity.
41. Finally, inclusion of a specific figure in the PDP providing for the design of an intersection is also considered inappropriate, particularly if the intersection does not need to be developed for some years. Improvements and efficiencies, or alternative design options may be available that are better (or to NZTA’s preference). A landowner should not be locked in the design in the PDP, only.

General reasons for the appeal

42. The general reasons for this appeal are that the Decision (as it currently stands) generally, and particularly in respect of the GVRVZ land:
 - (a) fails to promote sustainable management of resources, including the enabling of people and communities to provide for their social and economic well-being, and will not achieve the section 5 purpose of the Act;

- (b) fails to promote the efficient use and development of the land, a matter to have particular regard to under section 7(b) of the Act;
 - (c) in respect of land that is anticipated by its zoning for use and development:
 - (i) fails to achieve or implement the relevant district-wide objectives and policies of the PDP that supported that zoning;
 - (ii) fails to achieve or implement the relevant objectives and policies of the zone in question; and/ or
 - (iii) otherwise to support and/or is otherwise inconsistent with achieving the land use outcomes anticipated by the relevant zoning;
 - (d) fails to achieve the functions of the Council under section 31 of integrated management of the effects of the use and development of land and physical resources;
 - (e) fails to meet the requirements of section 32;
 - (f) is procedurally unfair and inefficient.
43. In contrast, granting the appeal will generally, and particularly in in respect of land that the appellant owns or otherwise has an interest, achieve all of the matters/ outcomes or otherwise address the issues identified above in paragraph [42] immediately above.

Relief sought

44. The appellant seeks the following relief:
- (a) Return to the notified objectives and policies, or amendment to a position “between” the notified and Decisions versions that better achieves the purpose of the RVZ zone, better implements the strategic objectives and policies, and directs a more efficient effective set of rules and their administration in order to achieve the purpose of the RVZ zone.
 - (b) Provide a new enabling policy for Developable Areas, which the relevant rules can then implement.
 - (c) Return the status of buildings to controlled, at least within the Developable Areas, irrespective of cumulative ground floor GFA.
 - (d) Provide for “residential use” of units by their owners for up to 180 days to facilitate a flexible funding mechanism, and encourage greater use of the visitor accommodation at all times.
 - (e) Allow a structure plan approach, including controlled subdivision status where subdivision is consistent with the structure plan.
 - (f) Delete new Rule 46.5.11.

- (g) The deletion, amendment or other refinement of the provisions to address the concerns raised by the appellant in this appeal as well as its original submissions (including alternative ways of achieving some outcomes sought).
- (h) Any other additional or consequential relief to the PDP, including but not limited to, the maps, issues, objectives, policies, rules, discretions, assessment criteria and explanations to fully address the concerns raised by the appellant.
- (i) Costs.

Alternative dispute resolution

45. The appellant agrees to participate in mediation or other alternative dispute resolution of the proceeding.

Attachments

46. The following documents are attached to this notice.
- (a) a copy of the appellant's original submission; and
 - (b) a copy of the Decision.

[The Environment Court has waived the requirement to serve submitters and further submitters, and so no list of submitters to be served is required to be filed with this notice. It has also waived the "advice to recipients" requirement, and so that advice is omitted from the notice to the appeal.]

DATED 18 May 2021



J D K Gardner-Hopkins
Counsel for the appellant

The appellant's address for service is C/- James Gardner-Hopkins, Barrister, PO Box 25-160, Wellington 6011.

Documents for service on the Applicant may be sent to that address for service or may be emailed to james@jghbarrister.com. Service by email is preferred, with receipt confirmed by return email.

Attachment 1 - the appellant's submission

Attachment 2 - the Decision