

**In the Environment Court of New Zealand
Christchurch Registry**

**I Te Kooti Taiao O Aotearoa
Ōtautahi Rohe**

ENV-2019-CHC-

Under the Resource Management Act 1991

In the matter of an appeal under clause 14(1) of the First Schedule of the Act

Between **Airbnb Australia Pty Limited**
Appellant

And **Queenstown Lakes District Council**
Respondent

Notice of appeal by Airbnb Australia Pty Limited

Dated 7 May 2019

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To the Registrar
Environment Court
Christchurch

- 1 Airbnb Australia Pty Limited (**'Airbnb'**) appeals against the decisions of the Queenstown Lakes District Council (the **'Respondent'**) on Stage 2 of the Queenstown Lakes District Council Proposed District Plan (**'PDP'**).
- 2 Airbnb made a submission (dated 23 February 2018) and further submissions (dated 27 April 2018) on the PDP.
- 3 Airbnb is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991 (**'RMA'**).
- 4 Airbnb received notice of the decisions on 21 March 2019.
- 5 The decisions were made by the Respondent.
- 6 The part of the decision that Airbnb is appealing relates to the Stage 2 Visitor Accommodation Variation Provisions relating to Homestays and Residential Visitor Accommodation (**'RVA'**). In addition, Airbnb is appealing associated rule 29.8.9 in the Transport Provisions. The particular provisions that Airbnb is appealing are detailed in paragraphs 9 to 17 of this appeal (and identified in **Annexure 1**), and in summary relate to:
 - a The activity status for Homestays and RVAs in specific zones;
 - b Specific permitted activity standards, controlled activity standards and Criteria relating to Homestays and RVAs in some zones; and
 - c Rule 29.8.9 (relating to carparking for RVAs) in the Transport Provisions.

Reasons for the appeal

- 7 The general reasons for this appeal are that, in the absence of the relief sought, the Respondent's decisions:
 - a Will not promote sustainable management of resources, and will not achieve the purpose of the RMA;
 - b Do not promote the efficient use and development of natural and physical resources;

- c Are contrary to Part 2 and other provisions of the RMA;
- d Will not assist in the reasonably foreseeable needs of future generations being met;
- e Will not enable social, economic and cultural wellbeing;
- f Do not represent the most appropriate way of exercising the Respondent's functions, having regard to the efficiency and effectiveness of other reasonably practicable options, and are therefore are not appropriate in terms of section 32 and other provisions of the RMA; and
- g Establish a complex matrix of rules applying across 13 zones with inconsistencies and no discernible rationale or justification for the differences in the rules between zones.

8 The specific reasons for the appeal are set out below.

Homestay Rules

- 9 Airbnb generally supports the rules that provide for Homestays as a permitted activity in all zones (subject to compliance with the relevant development standards). However, Airbnb opposes the following development standards:
- a *The requirement for one carpark to be provided per Homestay room used, in accordance with parking requirements in 29.8.9:*¹ No expert evidence was presented to the Hearing Panel that there is a parking issue in any of the zones in the Queenstown Lakes District or that Homestays generate more demand for carparking than other residential uses. The parking requirements to be applied to Homestays are considerably more onerous than the parking standards that apply to other residential uses. For example, in the High Density zone, the minimum carparking requirement is 0.25 per flat/studio/one bedroom unit, and 0.5 per studio/ unit for all other units.
 - b *The restriction on vehicle movements by heavy vehicles, coaches or buses to and from the site:*² No expert evidence was presented to the Hearing Panel of any adverse effects from heavy vehicles, coaches or buses directly associated with vehicles picking up and dropping off guests from Homestays

¹ Refer Lower Density Suburban Residential (7.5.19.2), Medium Density Residential (8.5.18.2), High Density Residential (9.5.15.2), Arrowtown Residential Historic Management (10.5.10.2), Large Lot Residential (11.5.14.2), Business Mixed Use (16.5.13.2), Jacks Point (41.5.1.13.3), Waterfall Park (42.5.10.3) and Millbrook (43.5.15.3).

² Low Density Suburban Residential (7.5.19.3), Medium Density (8.5.18.3), High Density (9.5.1.5.3), Arrowtown Residential Historic Management (10.5.10.3), Large Lot Residential (11.5.14.3), Business Mixed Use (16.5.13.3), Jacks Point (41.5.13.4), Waterfall Park (42.5.10.4), and Millbrook (43.5.15.4).

in any of the residential zones (but particularly the lower density zones where residential development is more spread out). There is also ambiguity as to whether “heavy vehicles” would include a prohibition on delivery trucks (for example, supermarket delivery trucks, LPG gas, rubbish collection trucks etc). In addition, it would be extremely difficult, if not impossible, to monitor and enforce a complete prohibition in relation to heavy vehicles visiting Homestays.

- c *The restriction on Homestay guests occupying more than one residential unit on a site at the same time:*³ Given the restriction on the maximum number of Homestay guests per night per property, the restriction on where such guests are staying within a site serves no useful purpose. It is not clear why this additional restriction has been applied in relation to the Jacks Point, Waterfall Park and Millbrook zones. The Hearing Panel’s recommendation noted that, in relation to low and medium density zones, “we do not consider the potential for adverse effects on residential character and amenity values would be influenced by both a residential unit and a residential flat on a site being used for homestay guests at the same time.”⁴ The Hearing Panel goes on to justify this by reiterating that there is already the requirement for permanent residents to be on the site, plus the limitation on guest numbers.⁵ The densities in the Jacks Point, Waterfall Park and Millbrook zones are similar to the low and medium density zones, and it is unclear why the Hearing Panel did not apply the same rationale to these zones.

- d *The inclusion of a maximum of 3 paying guests per night (in relation to the Jacks Point Zone rule 41.5.13.2):* The limit of 3 paying guests in the Jacks Point Zone is inconsistent with all the other zones which permit a maximum of 5 paying guests. There is no reason for a reduction from 5 to 3 paying guests in this zone. The Hearing Panel’s recommendation noted that a limit of 5 paying guests (as opposed to 3) is appropriate for low and medium density zones (which are similar to the Jacks Point zone in terms of densities).⁶ The Hearing Panel considered whether there was any benefit in reducing the number of guests to 3 in any zone but noted that the costs of reduced diversity of accommodation options for visitors, reduced economic and social benefits for Homestay hosts and associated service providers, and the additional resource consenting costs were not outweighed by the

³ Refer Jacks Point (41.5.13.1), Waterfall Park (42.5.10.1), and Millbrook Zone (43.5.15.1).

⁴ Report and Recommendations of Independent Commissioners Regarding Chapters 25, 29, 31, 38, and Visitor Accommodation, paragraph 140.

⁵ Ibid.

⁶ Report and Recommendations of Independent Commissioners Regarding Chapters 25, 29, 31, 38, and Visitor Accommodation, paragraph 88.

indeterminate benefits for residential amenity, given the lack of any clear evidence.⁷

- 10 Airbnb also opposes the rules that result in Homestays that do not comply with the permitted activity standards defaulting to a restricted discretionary, discretionary, or non-complying activity status.⁸ Non-compliance with the permitted activity standards for Homestays should instead result in the Homestay defaulting to a controlled activity status. The objectives and policies for each zone clearly anticipate Homestays in all zones provided that the adverse effects that differentiate them from residential activities are managed. Any potential adverse effects from Homestays can be controlled via appropriate conditions.
- 11 Airbnb opposes the following matters of control for Homestays that are controlled activities:
- a *Location nature and scale of activities:*⁹ This criteria is extremely broad, and lacks certainty. The rules do not provide any guidance as to what scale of Homestay activities is appropriate and in which areas.
 - b *Noise, rubbish and outdoor activities:*¹⁰ Noise within each zone is controlled by the rules in Chapter 36 (rules 36.5.1 to 36.5.4). The rules for each zone have been specifically drafted to ensure that an acceptable level of amenity is maintained appropriate to that zone. There is no justification for imposing more stringent noise conditions on dwellings that are operating as a Homestay. Similarly, there is no justification for imposing additional conditions in relation to rubbish and outdoor activities. It is not clear what “rubbish” effects the Council seeks to control or manage or how outdoor activities would be controlled and differentiated between outdoor activities undertaken as part of the residential use of the residential unit. The only potential effect from outdoor activities is noise and as already noted, the noise controls for each zone already apply to Homestays.
 - c *The provision of screening, in relation to carparking:*¹¹ There are no rules requiring the screening of parking in any of the residential zones. It is not clear why different rules should apply to Homestays than for other residential

⁷ Ibid.

⁸ Refer Lower Density Suburban Residential (7.5.19), Medium Density Residential (8.5.18), High Density Residential (9.5.15), Arrowtown Residential Historic Management (10.5.10), Large Lot Residential (11.5.14), Rural Residential and Rural Lifestyle (22.5.15), Gibbston (23.5.13), and Jacks Point (41.5.1.13).

⁹ Refer Business Mixed Use (16.5.13(a)), Rural (21.9.5(a)), Wakatipu Basin (24.5.22 (a)), Waterfall Park (42.5.10(a)), Millbrook (43.5.15(a)).

¹⁰ Refer Business Mixed Use (16.5.13(c)), Rural (21.9.6(b)), Waterfall Park (42.5.10(c)), Millbrook (43.5.15(c)), and Wakatipu (24.5.22(b)).

¹¹ Refer Business Mixed Use (16.5.13(b)), Waterfall Park (42.5.10(b)), Millbrook Zones (43.5.15(b)).

uses. There is no guidance in the PDP as to what type of screening is necessary or what purpose it should serve.

RVA Activity Status and Standards

- 12 RVA is a permitted activity in the High Density Residential (9.4.4), Business Mixed Use (16.4.2), Rural (21.4.15), Rural Residential and Rural Lifestyle (22.4.7), Gibbston Character (23.4.21), Wakatipu Basin (24.4.15), Jacks Point (41.4.1.9), Waterfall Park (42.4.13), and Millbrook (43.4.26) zones, subject to compliance with development standards.
- 13 In contrast, RVA is a controlled activity in the Lower Density Suburban Residential (7.4.5), Medium Density Residential (8.4.7A), Arrowtown Residential Historic Management (10.4.5A), Large Lot Residential (11.4.5) and Jacks Point Zone in the Village and Education Activity Areas (41.4.2.1) zones, subject to compliance with development standards. These lower density zones containing larger lots are generally less susceptible to the very effects the Hearing Panel was seeking to control (such as noise and parking) than the High Density or Business Mixed Use zones where there is a higher residential development density. In the lower density zones, the zone purpose states that *“low intensity use of residential units, including residential flats, to accommodate paying guests is enabled where the predominant residential character of the environment is retained and the residential amenity values of nearby residents are maintained.”*¹² Accordingly, RVA should be provided for as a permitted activity in all zones subject to compliance with appropriate development standards (as outlined in paragraph 14 below). Making RVA a permitted activity subject to standards that address any potential effects on amenity values more appropriately achieves the outcomes that are clearly set out in the purpose of the zones.
- 14 In relation to the permitted activity standards for RVAs, Airbnb does not object to the requirements to notify Council prior to commencement of the RVA, or keep records. However, Airbnb opposes the following RVA permitted activity standards:
- a *The maximum of a cumulative total of 90 nights occupation by paying guests on a site per 12 month period:*¹³ The 90 night threshold is an arbitrary limit that lacks rationale or any supporting expert evidence that demonstrated

¹² Zone Purpose in 7.1, 8.1, 10.2, 11.1.

¹³ Refer Lower Density Suburban Residential (7.5.18.1), Medium Density Residential (8.5.17.1), High Density Residential (9.5.14.1), Arrowtown Residential Historic Management (10.5.9.1), Large Lot Residential (11.5.13.1), Business Mixed Use (16.5.12.1), Rural (21.9.5.1), Rural Residential and Rural Lifestyle (22.5.14.1), Gibbston Character (23.5.12.1), Wakatipu Basin Rural Amenity (24.5.20.1 and 24.5.21.1).

why it was necessary. The Hearing Panel acknowledged the arbitrariness of the limit and that “it doesn’t seem to be easy to find a clear “effects basis” for any threshold”.¹⁴ Airbnb considers that the limit of 90 nights is too low and should be increased to 120 nights. 120 nights allows for RVAs to be rented during school holidays and less than half the weekends during the year. A limit of 120 nights would still ensure that the dwelling is rented for no more than a third of the year.

- b *The limit of a cumulative total of 42 nights of occupation by paying guests on a site per 12 month period in the Jacks Point Zone (41.5.1.12.1).* No justification has been provided for this for a lower night limit in this zone. Airbnb considers that a 120 night limit should apply for the reasons outlined in paragraph 14 (a) above.
- c *The restriction on vehicle movements by heavy vehicles, coaches or buses to and from the site.*¹⁵ Airbnb opposes this development standard for the same reasons listed in paragraph 9(b) above.
- d *The requirement to comply with the minimum parking requirements in Chapter 29 Transport.*¹⁶ Compliance with the minimum parking requirements in Chapter 29 Transport is appropriate for new residential unit (that may in the future be used for RVA). The construction of any new dwelling would trigger a requirement to comply with the parking rules in any case. Existing residential dwellings that are being used for RVA may not meet the parking requirements but may have existing use rights. There is no evidence that RVA generates more demand for parking than other residential activities. The development standard should be redrafted to make it clear that compliance with the parking standards only applies only to new residential units.
- e *The requirement for smoke alarms to be installed in accordance with the Residential Tenancies (Smoke Alarms and Insulation) Regulations 2016.*¹⁷ Airbnb agrees that smoke alarms should be installed in all dwellings as a matter of good practice. Airbnb highly encourages its hosts to install smoke

¹⁴ Refer Report and Recommendations of Independent Commissioners Regarding Chapters 25, 29, 31, 38, and Visitor Accommodation Paragraph 97.

¹⁵ Refer High Density Residential (9.5.14.2), Business Mixed Use (16.5.12.2), Jacks Point (41.5.12.2), Waterfall Park (42.5.9.2), and Millbrook (43.5.14.2) zones.

¹⁶ Refer Lower Density Suburban Residential (7.5.18.3), Medium Density Residential (8.5.17.3), High Density Residential (9.5.14.3), Arrowtown Residential Historic Management (10.5.9.3), Large Lot Residential (11.5.13.3), Business Mixed Use (16.5.12.3), Jacks Point (41.5.1.12.3), Waterfall Park (42.5.9.3) and Millbrook (43.5.14.3) zones.

¹⁷ Refer High Density Residential (9.5.14.6), Business Mixed Use (16.5.12.6), Rural (21.9.5.4), Rural Residential Lifestyle (25.5.14.4), Gibbston Character (23.5.12.4), Wakatipu Basin Rural Amenity (24.5.20.4 and 24.5.21.4), Jacks Point (41.5.1.12.6), Waterfall Park (42.5.9.6) and Millbrook (43.5.14.6) Zones.

alarms, and has a program that entitles each host to one free smoke alarm. While the Regulations do not apply to holiday accommodation, the installation of smoke alarms is addressed through the specific requirements in the Building Act 2004 and the Building Code, not under the RMA.

15 RVAs that do not comply with the permitted activity standards should default to a controlled activity not restricted discretionary¹⁸ or discretionary.¹⁹ All the potential effects generated by RVAs can be controlled by conditions including limits on the number of nights per year and the number of occupants per dwelling. Airbnb also opposes the following matters of control for RVAs:

- a *The location, nature and scale of activity/scale of the activity, including the number of guests on site per night:*²⁰ This matter of control is extremely broad, and lacks certainty. The PDP does not provide any guidance as to what scale of RVA activities is appropriate or in which locations.
- b *The management of noise, use of outdoor areas/outdoor activities, rubbish and recycling:*²¹ Airbnb opposes this matter of control for the same reasons set out in paragraph 11(b) above.
- c *The location, provision, use and screening of carparking:*²² Airbnb opposes this matter of control for the same reasons provided in 11(c) above.
- d *Compliance with the Building Code as at the date of the consent:*²³ Compliance with the Building Code is enforced under the Building Act 2004 and is not something that is, or should be, regulated under the RMA.
- e *Health and safety provisions in relation to guests:*²⁴ Health and safety matters (such as fire safety and building compliance) are regulated under the Building Act 2004 and the Building Code. It is unclear what additional matters, if any, Council is aiming to control or what kinds of conditions could

¹⁸ Refer Lower Density Suburban Residential (7.5.18), Medium Density Residential (7.5.18), High Density Residential (9.5.14), Arrowtown Residential Historic Management (10.5.9), Large Lot Residential (11.5.13).

¹⁹ Refer Rural Residential and Rural Lifestyle (22.5.14), Gibbston Character (23.5.12), Wakatipu Basin Rural Amenity (24.5.21), Jacks Point (41.5.1.1).

²⁰ Refer Lower Density (7.4.5(a)), Medium Density Residential (8.4.7A(a)), Arrowtown Management (10.4.5A(a)), Large Lot Residential (11.4.5(a)), Business Mixed Use (16.5.12(a)), Rural (21.9.5(a)), Wakatipu Basin (24.5.20(a)), Waterfall Park (42.5.9(a)), Millbrook (43.5.14(a)).

²¹ Refer Lower Density (7.4.5(b)), Medium Density Residential (8.4.7A(b)), Arrowtown Management (10.4.5A(b)), Large Lot Residential (11.4.5(b)), Business Mixed Use (16.5.12(c)), Rural (21.9.5(b)), Wakatipu Basin (24.5.20(b)), Waterfall Park (42.5.9(c)), Millbrook (43.5.14(c)).

²² Refer Lower Density (7.4.5(c)), Medium Density Residential (8.4.7A(c)), Arrowtown Management (10.4.5A(c)), Large Lot Residential (11.4.5(c)), Business Mixed Use (16.5.12(b)), Waterfall Park (42.5.9(b)), Millbrook (43.5.14(b)).

²³ Refer Lower Density (7.4.5(d)), Medium Density Residential (8.4.7A(d)), Arrowtown Management (10.4.5A(d)), Large Lot Residential (11.4.5(d)), Business Mixed Use (16.5.12(d)), Rural (21.9.5(c)), Wakatipu Basin (24.5.20(c)), Waterfall Park (42.5.9(d)), Millbrook (43.5.14(d)).

²⁴ Refer Medium Density Residential (8.4.7A(e)), Arrowtown Management (10.4.5A(e)), Large Lot Residential (11.4.5(e)), Business Mixed Use (16.5.12(e)), Rural (21.9.5(d)), Wakatipu Basin (24.5.20(d)), Waterfall Park (42.5.9(e)), Millbrook (43.5.14(e)).

properly be imposed under the RMA in relation to 'health and safety matters'.

- f *Guest management and complaints procedures:*²⁵ It is not clear what effects Council is seeking to control or what kinds of conditions Council envisages it may impose in relation to this matter.

Objectives and policies

- 16 Airbnb generally supports the objectives and policies within the Visitor Accommodation Variations. However, Airbnb considers that the following policy should be added to the Medium Density Residential zone (Chapter 8):

Provide opportunities for low intensity residential visitor accommodation and homestays as a contributor to the diversity of accommodation options available to visitors and to provide for social and economic wellbeing.

- 17 This policy is in the Lower Density Suburban Residential (policy 7.2.8.4), Arrowtown Residential Historic Management (policy 10.2.5.4), and Large Lot Residential (policy 11.2.3.4) zones. There is no reason why it should not also be included in the Medium Density zone.

Relief sought

- 18 Airbnb seeks the following relief:
 - a The amendments set out in **Appendix 1** of this appeal; and
 - b Such further additional or alternative relief and consequential or ancillary changes that give effect to the concerns set out in this appeal.
- 19 Airbnb attaches the following documents to this notice:
 - a The relief in **Appendix 1**;
 - b A copy of Airbnb's submission and further submissions on the PDP in **Appendix 2**.
 - c A copy of Stage 2 Visitor Accommodation Variation Provisions of the PDP (decisions version) in **Appendix 3**;

²⁵ Refer Lower Density Suburban Residential (7.4.5(f)), Medium Density Residential (8.4.7A(f)), Arrowtown Residential Historic Management (10.4.5A(f)), Large Lot Residential (11.4.5(f)), Business Mixed Use (16.5.12(f)), Rural (21.9.5(e)), Wakatipu Basin (24.5.20(e)), Waterfall Park (42.5.9(f)) and Millbrook (43.5.14(f)).

- d A copy of Stage 2 Chapter 29 Transport of the PDP (decisions version) in **Appendix 4**;
- e A copy of the Report 19.2 Visitor Accommodation in **Appendix 5**;
- f A list of names and addresses of persons to be served with a copy of this notice in **Appendix 6**.

Dated 7 May 2019



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