

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

**UNDER THE** Resource Management Act 1991 (“**Act**”)  
**IN THE MATTER OF** Stage 3b Proposed District Plan – Wāhi tūpuna  
**BETWEEN** **GIBBSTON VALLEY STATION** (Submitter  
#31037)  
**AND BETWEEN** **MALAGHANS INVESTMENTS LIMITED**  
(Submitter #31022)  
**AND** **QUEENSTOWN LAKES DISTRICT COUNCIL**  
Planning Authority

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**SUPPLEMENTRY LEGAL SUBMISSIONS  
ON BEHALF OF GVS & MIL: T18 – RURAL VISITOR ZONE**

**5 AUGUST 2020**

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**WELLINGTON**

**MAY IT PLEASE THE COURT:**

**Introduction**

1. These supplementary submissions are made, as with the original submissions, on behalf of the following submitters (“**Submitters**”):
  - (a) Gibbston Valley Station (Submitter #31037) (“**GVS**”); and
  - (b) Malaghans Investments Limited (#31022) (“**Malaghans Investments**”).
2. They address (briefly) the two matters explored by the Panel with Counsel at the time the Submitters were first heard, which were intended to be “picked up” in the course of the hearing of submissions of other submitters which Counsel was also acting for. Due to time constraints, this did not occur.
3. The submissions also (again, briefly) address an issue arising in respect of the Malaghans Investments’ “further information” matter, relating to traffic.

**Legal precedent**

4. The Panel asked for any legal authority for the following two propositions:
  - (a) that a general submission, such as one seeking:
 

... refinements to ... better achieve the purpose of sustainable management.

can provide jurisdiction for further “enabling” of activities through plan provisions, not just additional constraints; and
  - (b) that a consent authority can, in the context of a controlled subdivision activity, impose conditions that could amend the number and size of the allotments proposed.
5. In respect of the jurisdictional matter, I have been unable to find any authorities direction on point.
6. In terms of the general (and longstanding authorities), the paramount test is whether any amendment made to the plan as notified goes beyond what

is reasonably and fairly raised in submissions on the plan.<sup>1</sup> That assessment should be approached in a realistic workable fashion. It will usually be a question of degree to be judged by the terms of the proposed change and of the content of the submissions.<sup>2</sup> The approach requires that the whole relief package detailed in submissions be considered.<sup>3</sup> Consequential changes that logically arise from the grant of relief requested and submissions lodged are permissible, provided they are reasonably foreseeable.<sup>4</sup>

7. In this case, the “scope” of the Plan Change is relevant, that is, to introduce a Rural Visitor Zone into the PDP. There is no doubt that submissions seeking to apply that zoning to their land are within scope.
8. It is entirely foreseeable that the provisions of the RVZ might need to be tailored in some way, to reflect the circumstances of the land to which the zone is sought to be applied to. It is reasonably foreseeable that any “tailoring” might be both more enabling for the particular site, or more constraining. It will be a matter of fact and degree in all the circumstances.
9. With that in mind, it would be odd if a submission seeking “*refinements to ... better achieve the purpose of sustainable management*” could only be relied on to introduce constraints. The purpose of sustainable management in section 5 itself includes enables people and communities to provide for their social and economic well-being. This is elaborated on in section 7(b) through the requirement to have particular regard to the efficient use and development of natural and physical resources.
10. In that context (including the introduction of a new zone), it must be within scope to seek refinements to the zone provisions that are better enabling of development, including for efficiency in process and utilisation of resources.
11. The refinement sought by the Submitters of most concern to the Panel, in terms of scope, appears to be the structure plan approach. In my submission, this is:

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<sup>1</sup> *Countdown Properties (Northlands) Ltd v Dunedin City Council* (1994) 1B ELRNZ 150 (HC) at 171.

<sup>2</sup> *Royal Forest & Bird Protection Society Inc v Southland District Council* [1997] NZRMA 408 (HC) at 413.

<sup>3</sup> *Shaw v Selwyn District Council* [2001] 2 NZLR 277 (HC) at [31].

<sup>4</sup> *Westfield (New Zealand) Ltd v Hamilton City Council* [2004] NZRMA 556 (HC) at [73]–[77].

- (a) an available method of implementing the objective and policies of the zone; and
  - (b) an approach that is taken elsewhere in the plan, for other zones, so is not without precedent in that sense.
- 12. The detail in a structure plan may vary. The proposed Frankton North structure plan is an example of a structure plan that has a similar level of detail as the structure plans proposed by the Submitters.
- 13. The greatest concern of the Panel appears to be the consequential effect of a structure plan enabling subdivision as a controlled activity (which dovetails into the second legal question the Panel sought additional authority on). In terms of scope, however, it is noted:
  - (a) The RVZ provisions, as originally notified, provided for development (buildings) in the low and low-moderate landscape sensitivity areas as controlled. (The ground floor GFA limit triggering RDA consent only applied to individual buildings over 500 sqm.)
  - (b) In that context, a change to provide for associated subdivision (which subdivision in accordance with a structure plan would be) would be considered a consequential or flow-on change. In simple terms, if development/ buildings are controlled, then why shouldn't (or couldn't) subdivision also be controlled.
- 14. To the extent that there is now (arguably) a miss-match between the development/ buildings as effectively being RDA because of the change to the GFA trigger, that is not a matter of scope but "appropriateness". The Submitters take the view that if a subdivision is advanced first, as a controlled activity, the applicant takes the risk that a later consent for RDA development/ buildings might be declined, if the applicant has over-reached in its subdivision proposal.
- 15. As a final observation on scope through a "general submission", I note that it is relatively common practice for submitters to include such general submissions; and they appear widely accepted to provide considerable latitude as to scope – for example as a basis for various changes agreed through mediations.

### **Controlled activity status**

16. Again, there is no direct authority on point (perhaps, surprisingly).
17. Accordingly, the submission is that it must (also) be a matter of fact and degree as to the bounds of what a consent authority can impose by way of conditions, before those conditions amount to an effective decline of a proposal, or the grant of consent to a different proposal to that which consent was sought for. The authorities are clear that these outcomes are not permissible in the context of a controlled activity.
18. For example, imposing a condition to reduce a proposed controlled activity subdivision by one or two lots is (in my submission) likely to be:
  - (a) within scope if the proposal comprises a large number of lots (say, 20 plus); but
  - (b) outside scope if the proposal comprises a small number of lots (say 5).
19. There is unlikely to be any bright line in the middle, in terms of scope or jurisdiction. It will be a matter of judgment for the consent authority.
20. There must also be scope to adjust the location of proposed lot boundaries, but, again, subject to the jurisdictional limits of not amounting to an effective decline of a proposal, or the grant of consent to a different proposal.
21. This directly follows from the following matters reserved for control:
  - a. subdivision design and any consequential effects on the layout of lots and on lot sizes and dimensions;
  - b. internal roading design and provision, and any consequential effects on the layout of lots, and on lot sizes and dimensions;
22. In terms of reducing lots, although that is less obvious from the matters specifically reserved for control, there is a catch-all matter which would clearly bring such changes within jurisdiction (subject to the limitations of controlled activity conditions identified above):
  - o. any additional matters relevant to achievement of the objectives and policies in part 27.3 of this Chapter

### Traffic information

23. The Panel has determined (confirmed in minute 30) to receive the technical attachments to Mr Giddens' lay evidence, as such. In considering the traffic matter, Malaghans Investments simply asks the Panel to recall the specifics of the questions that it asked in respect of this issue. Malaghans Investments has now reviewed the audio,<sup>5</sup> and notes this includes the following:

35.14: Commissioner Dawson (to Ms Grace): "We haven't got any traffic assessment about the implications for traffic safety on that road from having an RVZ of the scale anticipated by the zone..."

35.35: Ms Grace: "It comes back to the scale; the rules contain a limit on group sizes for commercial [recreation] activities and building size limit for built development so any larger scale development needs more specific consideration through the consent process".

36.10: Ms Grace: "Skippers Road is part of the character of the area in a way".

36.50: Commissioner Dawson: "I am not used to those roads so I could over react".

37: Ms Grace: "The limited scale that can occur reduces the traffic impact".

40.10: The Chair (to Ms Grace): "Picking up your suggestion I think it would be good in anticipation that we will be raising it with the submitter who equally hasn't provide any traffic evidence as to whether it is an issue and what the answer is if it is. If you could respond please".

Ms Grace: "What would be the timing for the response?"

The Chair: "As part of your reply".

41.08: Councillor McLeod: "I feel I need to defend the road". "Wouldn't the condition of the road be a limiting factor for people that drive it?"

Ms Grace: "yes".

Councillor McLeod: "Having ridden down the road and appreciating it for the thing of beauty that it is, I will leave it for the further information and discussion".

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<sup>5</sup> <https://www.qldc.govt.nz/media/sm3kdqzk/02-07-2020-recording-5-pdp-stage-3.mp3>: Discussion starts at 34 minutes.

**Further consolidated version of the RVZ provisions**

24. I **attach**, for convenience, further refined RVZ provisions sought by the Submitters – having reflected on the matters raised by the Panel in its questions to date. In my submission, and in light of the jurisdictional discussion above, these are all amendments reasonably and fairly within the scope of “*refinements to better achieve the purpose of sustainable management*”. They do not change the fundamental nature of the RVZ or the effects of its rezoning.
25. If the Panel does not agree in respect of scope, it is further submitted that the RVZ re-zoning can still proceed for the Submitters’ sites. In other words, the re-zoning is not contingent on the changes sought to the RVZ provisions.

**DATED** 5 August 2020



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**J D K Gardner-Hopkins**  
Counsel for the Submitters

## Chapter 46

Changes for Malaghans Investments (Ben Farrell) are in purple.

Changes for Gibbston Valley Station (Brett Giddens) are in blue.

Combined changes are in green.

### 46.1 Zone Purpose – add new paragraph:

Schedule 46.7 includes a schedule of Structure Plans to guide future land use development within some of the Rural Visitor Zones. Development in accordance with each Structure Plan is specifically provided for.

### Policy 46.2.1.7 – amend policy

Avoid residential activity within the Rural Visitor Zone with the exception of:

- (a) enabling onsite staff accommodation ancillary to commercial recreation and visitor accommodation activities; and
- (b) residential activities within a visitor accommodation building for no greater than 180 days per year.

### Policy 46.2.2.6 – amend policy

Ensure development can be appropriately serviced through:

- a. the method, capacity and design of wastewater treatment and disposal;
- b. adequate and potable provision of water;
- c. adequate firefighting water and regard taken in the design of development to fire risk from vegetation, both existing and proposed vegetation; and
- d. provision of safe vehicle access or alternative water or air based transport and associated infrastructure.

### New Policy 46.2.2.7

Provide for roading and infrastructure within the Skippers Rural Visitor Zone to be of a rural standard, character and appearance, and provide solutions for roading and infrastructure that recognises the remoteness of the location and avoids urban forms, such as curb and channelling and street lighting, as an alternative to adherence to the Council's urban guidelines for subdivision and development.

### New Policy 46.2.2.8

Development that is in general accordance with a Structure Plan in 46.7 is enabled.



## 46.1 Rules – Activities

	Table 46.4 – Activities	Activity Status
46.4.4A	Residential activity up to 180 nights per year within visitor accommodation buildings.	P
46.4.13	Residential activity except as provided for in Rules 46.4.2, and 46.4.3 and 46.4.4A	NC

## Rules - Standards

	Table 46.5 – Standards	Non-compliance status
46.5.1	<p>Building Height</p> <p>46.5.1.1: The maximum height of buildings shall be 6m.</p> <p>46.5.1.2: Within the Water Transport Infrastructure overlay identified on the District Plan maps the maximum height of buildings shall be 4m.</p> <p>46.5.1.3: Within Height Exception Development Areas 1 and 3 identified on the Structure Plan in 46.7 District Plan maps in for the Gibbston Valley Rural Visitor Zone, the maximum height of buildings shall be 7m.</p> <p>46.5.1.4: Within the Development Area identified on the Structure Plan in 46.7 for the Skippers Rural Visitor Zone, the maximum height of buildings shall be 7m.</p>	<p>NC</p> <p>NC</p> <p>NC</p> <p>NC</p>
46.5.2	<p>Building Size</p> <p>46.5.2.1 The maximum ground floor area of any building shall be 500m<sup>2</sup>.</p> <p>46.5.2.1 In the Gibbston Valley Rural Visitor Zone &lt;x, y and z Rural Visitor Zones&gt; the total maximum ground floor area across the zoned area, excluding any areas identified as</p>	<p>RD</p> <p>Discretion is restricted to:</p> <p>a. Landscape</p> <p>a. Visual amenity values; and</p> <p>b. Nature, scale and external appearance;</p>

	Table 46.5 – Standards	Non-compliance status
	<del>Moderate – High and High Landscape Sensitivity, shall be 500m<sup>2</sup>.</del>	c. <del>Density of development;</del> d. <b>Traffic Effects</b>
46.5.5	<p>Setback of Buildings</p> <p>46.5.5.1: Buildings shall be set back a minimum of 10 metres from the Zone boundary.</p> <p>46.5.5.2: Rule 46.5.5.1 shall not apply to those structures or buildings identified in Rule 46.4.8 located within the Walter Peak Water Transport Infrastructure overlay.</p> <p><b>46.5.5.3: Within the Skippers Rural Visitor Zone, buildings shall be set back 10m from the escarpment edge identified on the Structure Plan in 46.7.</b></p>	<p>RD</p> <p>Discretion is restricted to:</p> <p>a. Nature and scale;</p> <p>a. Reverse Sensitivity effects; and</p> <p>b. Functional need for buildings to be located within the setback.</p>
46.5.9	<p><b>Roading – Skippers Rural Visitor Zone</b></p> <p><b>(a) All roading and car parking shall be gravel or chip seal with swale edging;</b></p> <p><b>(b) Kerb and channel is not permitted; and</b></p> <p><b>(c) Carriageway width shall be designed to conform to E1 in Table 3.2 (Road Design Standards) of the Queenstown Lakes District Council Land Development and Subdivision Code of Practice 2018 to retain rural amenity.</b></p>	<b>D</b>
46.5.10	<p><b>Structure Plan</b></p> <p><b>Where a Structure Plan applies to a Rural Visitor Zone, development shall be located in general accordance with that Structure Plan.</b></p>	<b>NC</b>

#### 46.6 Non-Notification of Applications

Any application for resource consent for controlled or restricted discretionary activities shall not require the written consent of other persons and shall not be notified or limited-notified, with the exception of the following:

- a. **Rule 46.4.8 Water Transport Infrastructure at Walter Peak.**
- b. **Rule 46.5.4 setback of buildings from waterbodies.**

- c. Rule 46.5.5 setback of buildings from the Zone boundary.
- d. Rule 46.5.6 commercial recreational activities.

x. For x and y RVZ only, Rule 46.4.6 The construction, relocation or exterior alteration of buildings (other than identified in Rules 46.4.7 to 46.4.11)

## **46.7 Structure Plans**

### **46.7.1 Skippers Rural Visitor Zone**

[Insert Structure Plan]

### **46.7.2 Gibbston Valley Visitor Zone**

[Insert Structure Plan]

Variation to Subdivision and Development Chapter 27:

Amend Chapter 27 by inserting the following into Section 27.3 Location – Specific objectives and policies:

**Gibbston Valley and Skippers Rural Visitor Zone**

**27.3.15** Objective – Subdivision and development in the Gibbston Valley and Skippers Rural Visitor Zones that provide for visitor accommodation, residential visitor accommodation, worker accommodation, commercial recreation, recreation, and activities ancillary to these uses.

**Policies**

**27.3.15.1** Enable subdivision that provides for visitor accommodation, residential visitor accommodation, worker accommodation, commercial recreation, recreation, and activities ancillary to these uses.

**27.2.15.2** Within the Skippers Rural Visitor Zone, provide for a rural standard of infrastructure, including access, and the need to consider alternative forms of servicing to meet the needs of the intended land uses acknowledging the remoteness and practical constraints as an alternative to adherence to the Council's urban guidelines for subdivision and development.