

**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 Stream 08
– Business Zones

**REPLY OF AMY BOWBYES
ON BEHALF OF QUEENSTOWN LAKES DISTRICT COUNCIL**

16 BUSINESS MIXED USE ZONE CHAPTER

13 December 2016

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Appendix 1 – Revised Chapter 16 Business Mixed Use Zone

Appendix 2 – s32AA Evaluation

1. INTRODUCTION

1.1 My name is Amy Bowbyes. I prepared the section 42A report for the Business Mixed Use Zone (**BMUZ**) Chapter 16 of the Proposed District Plan (**PDP**). My qualifications and experience are listed in that s42A report dated 2 November 2016.

1.2 I attended the hearing on 29 November 2016, where I presented my Summary of Evidence and responded to questions from the Hearing Panel (**Panel**). I have reviewed the evidence filed by other expert witnesses on behalf of submitters, attended parts of the hearing between 28 November and 6 December 2016, and have been provided with information from submitters and counsel at the hearing, including reports of what has taken place at the hearing each day when I was not in attendance.

1.3 This reply evidence covers the following issues:

- (a) whether including a reference to *visitor accommodation* in Objective 16.2.1 would be appropriate;
- (b) whether the use of 'avoid' in redraft Policy 16.2.1.6 is the intended meaning of the policy;
- (c) whether redraft Policy 16.2.2.8 is appropriately phrased;
- (d) further consideration of redraft Policy 16.2.2.9 and Rule 16.4.2 insofar as it pertains to Horne Creek, having regard to comments from the Panel and the submissions made by Mr Freeman¹ and Ms Macdonald² and Mr Ridd;³
- (e) further consideration of redraft Policy 16.2.1.4 and Rule 16.5.3, having regard to the evidence submitted by Mr Freeman;⁴
- (f) whether the first two bullet points of Rule 16.4.2 are matters of discretion or assessment matters;
- (g) consideration of Rule 16.4.3 (final bullet point) responding to questions from the Panel and having regard to the evidence

1 For GH & PJ Hensman, High Peaks Limited (545), Ngai Tahu Property Limited (550), Skyline Enterprises Limited (556) and Trojan Holdings Limited (634).

2 For High Peaks Limited (545) and Trojan Holdings Limited (634).

3 For Erna Spijkerbosch (392, FS 1059).

4 Mr Freeman's evidence in chief at paragraphs 33 to 36.

provided by Ms Sian Swinney for QLDC on the same rule for the Queenstown Town Centre Chapter;

- (h) further consideration of redraft Rule 16.5.10 regarding the phrase "*and so as to limit the effects on the night sky*" as I understand them to be *ultra vires*;
- (i) consideration of the default permitted activity in Rule 16.4.1;
- (j) consideration of non-substantive changes to improve the consistency of drafting across the chapters heard in Business Zones Hearing Stream 08; and
- (k) providing information requested by the Panel regarding industrial activities currently operating within the Gorge Road area of the BMUZ.

1.4 Where I am recommending changes to the provisions as a consequence of the hearing, I have included these in the recommended chapter in **Appendix 1 (Revised Chapter)**. I have attached a section 32AA evaluation in **Appendix 2**.

1.5 In this Reply:

- (a) if I refer to a provision number without any qualification, it is to the notified provision number and has not changed through my recommendations;
- (b) if I refer to a 'redraft' provision number, I am referring to the s 42A recommended provision number; and
- (c) if I refer to a 'reply' provision number, I am referring to the recommended provision number in **Appendix 1** to this Reply.

2. OBJECTIVE 16.2.1

2.1 The Panel has requested that I give further consideration to Objective 16.2.1, and specifically whether *visitor accommodation* should be inserted into the objective (as sought by NZIA Southern and Architecture + Women Southern (238.94) (opposed by further

submitters FS1314, FS1107, FS1226, FS1234, FS1239, FS1248, FS1249 and FS1242) and as considered in my s42A Report.⁵

2.2 I agree with the Panel that interpreting the Policy does rely on the plan user having an understanding of the definition of *Residential Activity* in the PDP Chapter 2 (Definitions). However, in my view the Objective does not result in uncertainty as to the status of visitor accommodation activities. If any uncertainty was to arise this would be easily resolved by referring the plan user to the definition of *Residential Activity* in Chapter 2, which is the purpose of defining the term in Chapter 2.

2.3 The view detailed in my s42A Report⁶ therefore remains unchanged and as such I do not recommended any changes to this Objective.

3. REDRAFT POLICY 16.2.1.6

3.1 The Panel has requested that I consider the use of *avoid* in redraft Policy 16.2.1.6 and whether this is the intent of the policy. I agree that this policy does warrant being reworded, as it would be impractical to expect reverse sensitivity effects to be avoided. In my view the policy should be reworded to *limit reverse sensitivity effects* rather than *avoid* them.

3.2 As no submission was received seeking that this policy is amended it is my view that there is no scope to make the amendment. I therefore have not recommended any changes to this policy, but have noted the recommended change in **Appendix 1**.

4. REDRAFT POLICY 16.2.2.8

4.1 The Panel has requested that I reconsider the drafting of redraft Policy 16.2.2.8 to ensure that it is expressed in a manner that provides for the intended action. I note that this matter was initially raised in the Bunnings Limited submission (746). Mr Norwell's

5 S42A Report for the Business Mixed Use Zone at paragraphs 9.2 and 9.3.

6 S42A Report for the Business Mixed Use Zone at paragraphs 9.2 and 9.3.

evidence tabled for Bunnings⁷ supports the inclusion of redraft Policy 16.2.2.8 and Mr Freeman⁸ is also of the view that the policy is appropriate, and furthermore notes that the policy would apply to both new and existing non-residential activities operating within the BMUZ.

4.2 In my view the policy should not prescribe the 'operational and functional' matters to be considered, as these will vary between the many non-residential activities enabled in the BMUZ. In my view the s42A version of the policy is appropriately worded and no further amendments are necessary.

4.3 I therefore do not recommend any changes to this policy.

5. HORNE CREEK (REDRAFT POLICY 16.2.2.9 AND RULE 16.4.2)

5.1 Mr Freeman⁹ provided his view on the new policy and rule regarding the naturalisation of Horne Creek (redraft Policy 16.2.2.9 and part of Rule 16.4.2). Mr Freeman highlights a number of practical issues associated with daylighting Horne Creek, and he is of the view that there would be uncertainty regarding the application of Policy 16.2.2.9 and the relevant part of Rule 16.4.2. I accept that the drafting of these provisions may result in uncertainty as to their application due to the use of the phrases "*substantially develop or redevelop*" and "*where practicable*".¹⁰

5.2 Mr Ridd¹¹ also expressed concern with potential health and safety issues that may arise in the event that public access is required along the length of the Creek. In Mr Ridd's view, the requirement for development to integrate with the Creek should only apply when ground floor residential or visitor accommodation activities are proposed.

7 Mr Norwell's evidence at paragraph 3, bullet point 1.

8 Mr Freeman's evidence in chief at paragraph 51.

9 Mr Freeman's evidence in chief at paragraphs 52 to 61.

10 Mr Freeman's additional comments/supplementary evidence submitted to the Panel on 6 December, at paragraph 5.

11 For Erna Spijkerbosch (392; FS 1059).

- 5.3 Ms Macdonald¹² in legal submissions questioned whether a rule requiring the opening up of Horne Creek is a matter within the jurisdiction of the District Council, and rather whether it falls within the control of the Otago Regional Council (**ORC**).
- 5.4 I remain of the view that Horne Creek should be acknowledged in the BMUZ. However, having considered the views of Mr Freeman and Mr Ridd regarding the potential practicalities of implementing redraft Policy 16.2.2.9, and Ms Macdonald's comments regarding jurisdictional matters, I have reconsidered my view as to the appropriateness of the policy.
- 5.5 It would not, in my view, be appropriate to require implementation of a policy that relies on an applicant also obtaining third party approval (in this case obtaining resource consent from the ORC). I therefore recommend that redraft Policy 16.2.2.9 is amended to *encourage*, rather than *require* the integration of the Creek with a proposed development.
- 5.6 I recommend that the policy and associated element of Rule 16.4.2 are simplified so that they are less prescriptive in respect of treatment of the culverted sections of the creek. Further to this, I accept Mr Freeman's view that to require daylighting of the culverted sections may also require multiple landowners to agree to redirect the Creek. In the absence of such an agreement between landowners, redirection of the Creek to achieve daylighting, whilst limiting the impact of the ability of sites on the eastern side of Gorge Road to be developed would be very difficult to achieve.
- 5.7 In light of this, I recommend that the references to daylighting are removed from the policy. I consider that it would be appropriate for the matter of daylighting to be pursued through the formulation of the Design Guide for the BMUZ, if it is to be pursued.
- 5.8 The recommended changes to the policy and associated matter of discretion in Rule 16.4.2 are shown in **Appendix 1**.

12 Ms Macdonald's submissions at paragraph 1.

6. REDRAFT POLICY 16.2.1.4 AND RULE 16.5.3 – RESIDENTIAL AND VISITOR ACCOMODATION ACTIVITIES

- 6.1** Mr Freeman¹³ has highlighted an interpretation issue with redraft Policy 16.2.1.4 and Rule 16.5.3 due to the potential uncertainty arising from use of the term *fronting* in both these provisions. Mr Freeman suggests that a more appropriate alternative is the introduction of a prescribed setback for ground floor residential and visitor accommodation activities on sites adjoining Gorge Road.
- 6.2** I agree with Mr Freeman that prescribing a setback would provide greater certainty regarding the application of the policy and associated rule. I also agree that the term *fronting* is not defined and would be open to differing interpretations.
- 6.3** In my view (as outlined in my Summary of Evidence¹⁴) it would be appropriate to replace the word *fronting* with *adjoining* in both the policy and the rule, so that it is clear that the provisions apply only to sites adjoining Gorge Road. In addition (and as also outlined in my Summary of Evidence) I consider that it would be appropriate to amend the policy and rule to only apply to residential and visitor accommodation activities at ground floor level located within 10m of the site boundary adjoining Gorge Road. This is the distance suggested by Mr Freeman.¹⁵
- 6.4** Mr Freeman confirmed that he supports this approach when he appeared on 6 December 2016.¹⁶
- 6.5** I consider that submission point 238.98, which seeks amendments to redraft Policy 16.2.1.4 to improve the clarity of the policy (amongst other suggested changes) provides sufficient scope to make these amendments. The recommended amendments to Rule 16.5.3 would,

13 Mr Freeman's evidence in chief at paragraphs 33 to 36.

14 Summary of Evidence, 25 November 2016 Chapter 16 Business Mixed Use Zone – Hearing Stream 08 at paragraph 6.

15 Mr Freeman's evidence in chief at paragraph 36.

16 Mr Freeman's additional comments/supplementary evidence submitted to the Panel on 6 December, at paragraph 3.

in my view, further assist with the correct implementation of the recommended revised policy.

6.6 Consequently, the recommended changes to the policy and rule are included in **Appendix 1** and are considered in the s32AA evaluation in **Appendix 2**.

7. RULE 16.4.2 – BUILDINGS

7.1 The Panel requested that I consider whether the first two bullet points of Rule 16.4.2 are assessment matters, rather than matters of discretion.

7.2 I have reconsidered these provisions and agree with the Panel's comments. As shown in **Appendix 1**, I recommend that the two bullet points remain within Rule 16.4.2, however I recommend that they are shown under a heading specifying that they are assessment matters.

8. RULE 16.4.3 – LICENSED PREMISES

8.1 The Panel noted the evidence of Ms Sian Swinney for QLDC on Rule 12.4.4 of the Queenstown Town Centre Zone chapter that concerns itself with licensed premises. Ms Swinney¹⁷ supports removal of the final bullet point of the rule that lists, as a matter of discretion, *consideration of any relevant Council alcohol policy or bylaw*. The reason stated by Ms Swinney is that there is currently no alcohol policy in place and breach of any bylaw could result in enforcement action being required.

8.2 The Panel have asked that I consider whether Rule 16.4.3, which includes the same matter of discretion, should also be amended.

8.3 I accept Ms Swinney's view and consider that, on the face of it, it would be appropriate to amend Rule 16.4.3. However as no submission was received on this rule it is my view that there is no scope to make the amendment.

¹⁷ Ms Swinney's evidence at paragraph 5.32.

8.4 I therefore do not recommend any changes to this rule, but have noted this issue in the revised chapter.

9. REDRAFT RULE 16.5.10 – NIGHT SKY

9.1 The Panel has asked that I reconsider my position on redraft Rule 16.5.10, having regard to submissions received that specifically consider the effects of lighting on the night sky. I have subsequently considered the submissions of Grant Bisset (**Bisset**) (568) and Ros and Dennis Hughes (**Hughes**) (340).

9.2 My original position on redraft Rule 16.5.10, as set out in my s42A report, was that while I considered that the following words should be deleted from redraft Rule 16.5.10.1, *and so as to limit the effects on the night sky*, there was no scope to make this change.¹⁸

9.3 The Bisset submission¹⁹ seeks that the effects of light pollution are appropriately controlled in order to limit the effects on the night sky.

9.4 The Hughes submission relates specifically to Chapter 3 (Strategic Directions) and Chapter 6 (Landscapes) (both district wide chapters), however the submission²⁰ generally highlights the importance of the night sky as a natural feature and seeks that it is a consideration in the design of lighting infrastructure.

9.5 The matter of scope is addressed in the Council's Reply legal submissions. I understand from those submissions that there isn't scope to delete the phrase, but there is scope to make the zone provisions (ie, the phrase) more measurable and specific, as "a greater level of direction" is sought in submission 568.

9.6 In any event, I understand that the phrase "*and so as to limit the effects on the night sky*" is *ultra vires* for uncertainty as also discussed in the Council's Reply Legal Submissions. I therefore consider that the part of the phrase "*and so as to limit the effects on*

18 S42A Report for the Business Mixed Use Zone at paragraph 13.12.

19 Submission 568, paragraphs 4.14 and 4.15

20 Submission 340, paragraph 4, bullet 2.

the night sky" should be deleted in Rule 16.5.10), as shown in **Appendix 1** to this report.

10. RULE 16.4.1 – DEFAULT PERMITTED ACTIVITY RULE

10.1 The Panel has asked that consideration be given to whether Rule 16.4.1 is necessary. This rule provides the 'default' permitted activity status for activities which comply with all standards and are not otherwise listed in the activity table.

10.2 This matter is discussed in the Right of Reply provided by Ms Vicki Jones for the Queenstown Town Centre Chapter.²¹ I concur with Ms Jones' view and the reasons outlined in her Reply.

10.3 I therefore have not recommended any changes to this rule.

11. NON-SUBSTANTIVE CHANGES FOR CONSISTENCY

11.1 The Panel has pointed to a number of minor drafting inconsistencies between the PDP chapters heard in Business Zones Hearing Stream 08. I have consulted with Ms Vicki Jones and Ms Rebecca Holden (who are the other authors of the s42A Reports for this hearing) and I recommend minor changes to the following provisions to increase consistency between the chapters:²²

- (a) Rule 16.4.4: remove the words "*in respect of*" and replace with "*Control is reserved to the following*";
- (b) Rules 16.4.2, 16.4.3, 16.4.5, 16.4.6, 16.5.1, 16.5.2, 16.5.3 and redraft Rule 16.5.7: amend so that the text in each rule consistently says: "*Discretion is restricted to consideration of the following...*";
- (c) Rule 16.4.10: amend to make the layout consistent across the chapters heard in Business Zones Hearing Stream 08 which contain this rule by separating Rule 16.4.10 into three

²¹ Ms Jones' Right of Reply for the Queenstown Town Centre Chapter at paragraph 3.1 to 3.4.

²² These changes increase consistency between the following PDP chapters: Queenstown Town Centre Zone, Wanaka Town Centre Zone, Arrowtown Town Centre Zone, Local Shopping Centre Zone, Business Mixed Use Zone and the Airport Mixed Use Zone.

rules (shown in **Appendix 1** as reply Rule 16.4.10, reply Rule 16.4.11 and reply Rule 16.4.12);

- (d) Reply Rule 16.5.9 to clarify which parts of the rule are exemptions and which are explanatory notes; and
- (e) Rule 16.4.5 to amend the final bullet point.

11.2 The Panel also requested that I consider amending redraft Rule 16.5.8 to make the format of the rule consistent with that of Rules 12.5.9 and 12.5.10 of the Queenstown Town Centre Chapter. I have considered the changes suggested by the Panel, however I remain of the view that the current format of the rule (as shown in **Appendix 1**) is sufficiently clear, such that in my view no amendment is necessary.

12. INDUSTRIAL ACTIVITIES OPERATING WITHIN THE GORGE ROAD AREA OF THE BMUZ

12.1 The Panel has requested that I provide information regarding the activities currently operating within the Gorge Road area of the BMUZ that would fall within the PDP definition of *industrial activity*.

12.2 I note that the definition of industrial activity in the notified version²³ of PDP Chapter 2 (Definitions) is as follows:

Industrial Activity

Means the use of land and buildings for the primary purpose of manufacturing, fabricating, processing, packing, or associated storage of goods.

12.3 I visited the Gorge Road area of the BMUZ on 30 November 2016 and noted the following activities operating that, on the face of it, would be captured by the above definition:

- (a) Rockgas: 119 Gorge Road;
- (b) Otago Southland Waste Services: 121 Gorge Road; and
- (c) Allied Concrete: 105 Gorge Road.

²³ No changes have been recommended to this definition in the s42A reports and rights of reply for Hearing Streams 01 to 08.

12.4 The Panel also requested that I provide site areas for these established activities. However, these activities appear to occupy only part of the sites they are situated on. As such I cannot with any confidence provide the site area of the activities to the Panel. Although, I can confirm that they are established in a cluster on the eastern side of Gorge Road between the intersections with Sawmill Road and Bowen Street.

12.5 The *total* area of these sites (as shown on the Council's GIS maps) is as follows:

- (a) 119 and 121 Gorge Road (shown as one single cadastral parcel Lot 1 DP 10731 BLK XX SHOTOVER SD): 9,530m²; and
- (b) 105 Gorge Road (Lot 1 DP11297): 1,965m².

13. CONCLUSION

13.1 Overall, with the incorporation of the above-mentioned changes, I consider that the recommended revised chapter as set out in **Appendix 1** is the most appropriate way to meet the purpose of the RMA.



Amy Bowbyes
Senior Policy Planner
13 December 2016