

**Before the Panel of Hearing Commissioners
For the Queenstown Lakes Proposed District Plan**

In the Matter of

the Resource Management Act
1991

And

In the Matter of

the Queenstown Lakes Proposed
District Plan – Stage 2

And

In the Matter of

Hearing Stream 15 – Visitor
Accommodation Variation

**Legal Submissions on behalf of
Greenwood Group Limited
(Submitter 2552)**

Dated: 21 September 2018

Introduction

1. These legal submissions are presented on behalf of Greenwood Group Limited (**Greenwood**).
2. Greenwood owns two adjoining parcels of land at 8 Frankton Road, legally described as Lots 1-2 DP 99459 (**Site**). The Site has an area of 2808m².



Stage 1 Zoning

3. The Greenwood Site is zoned as High Density Residential under the Queenstown Lakes Operative District Plan. Under the notified version of the Queenstown Lakes Proposed District Plan (Proposed Plan – Stage 1), the Site was re-zoned to Medium Density Residential.
4. The Commissioners agreed with the evidence of Ms Devlin for the Council and Ms Leith for Greenwood at Stage 1 that High Density Residential was the most appropriate zoning on the Site. However due to scope issues (Greenwood only lodged a further submission at Stage 1), the decision to re-zone the Site to Medium Density Residential was made in the Decisions Version of Plan Map 35.
5. So although there is agreement between experts for Greenwood and the Council that the effects enabled by High Density Residential Zoning are appropriate (High Density Residential having a policy of enabling visitor

accommodation close to town centres), the Site remains zoned Medium Density Residential.

Greenwood Relief

6. The relevant point of contention for this hearing between Ms Devlin for the Council and Greenwood is the proposed zoning of the Visitor Accommodation Subzone (**VA Subzone**) under Stage 2.
7. Greenwood made a submission under Stage 2 of the Proposed Plan (submission 2552) seeking an amendment to Plan Map 35 to include the Site in the VA Subzone. Alternatively, Greenwood submitted that Visitor Accommodation becomes a controlled activity within the underlying Medium Density Residential zone.
8. In relation to Greenwood's submission, Ms Devlin has recommended that the VA Subzone is not the most appropriate way to meet the notified policy framework for restricting visitor accommodation with the Medium Density Residential Zones.
9. In my submission, Ms Devlin's recommendation is not the most appropriate in a section 32 sense. Higher density developments and the provision of visitor accommodation on the Site more appropriately aligns with the receiving environment.
10. The effect of Visitor Accommodation on the Site has already been deemed appropriate through the Stage 1 hearing process.
11. We consider that a visitor accommodation sub-zone does not remove or preclude residential development which Chapter 8 intends to protect. Instead, such rezoning would achieve the purpose of the Chapter while also enabling potential uses of the Site appropriate to the receiving environment.
12. In my submission the Medium Density Residential Zone anticipates some VA activity and the question is where within that zone is the most appropriate place for it to go. My submission is that the Site is, as demonstrated by the agreed appropriateness of the High Density Residential Zoning.

Law

Overview

13. The Council's various opening legal submissions have already thoroughly set out the relevant statutory considerations to your decision making.
14. I will only briefly outline the law as it is particularly relevant to your assessment of Greenwood's submission.
15. When preparing or changing a district plan the Council must have regard to the matters listed in section 74 which include any proposed regional policy statement, a proposed regional plan and management plans and strategies prepared under other Acts.
16. Under section 75, the plan must give effect to any national policy statement, any New Zealand coastal policy statement and any regional policy statement and must give effect to a water conservation order or a regional plan (for any matter specified in subsection 30(1)).
17. Under s 31 (a) the Council holds the following functions for the purpose of giving effect to the RMA:
 - (a) The establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district.
18. Under section 75(1), district plan policies must implement objectives, while any rules must implement the policies. Section 76 requires rules to achieve the objectives and policies of a plan.
19. In accordance with s 32(1) (a), an evaluation report must examine the extent to which objectives of the proposal being evaluated are the most appropriate way to achieve the purposes of this Act; and
20. Examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by:
 - (a) Identifying other reasonably practicable options for achieving the objectives;

- (b) Assessing the efficiency and effectiveness of the provisions in achieving the objectives;
- (c) summarising the reasons for deciding on the provisions; and
- (d) Contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal.

Section 32

- 21. Ultimately, I submit that the most appropriate planning outcome as agreed between all relevant experts has been lost through Ms Devlin's recommendation in relation to the Greenwood Site.
- 22. Ms Devlin has submitted conflicting views during the Stage 1 and 2 processes. At Stage 1, Ms Devlin took the position that High Density Residential Zoning would be appropriate in relation to the Site. Ms Devlin's evidence was accepted by the Independent Commissioners at Stage 1 however scope restrictions meant the Site remained zone Medium Density Residential.
- 23. Subsequently at Stage 2, Ms Devlin opposed the Site's re-zoning to Visitor Accommodation Subzone on the basis that the subzone would not meet the notified policy framework for restricting Visitor Accommodation under the Medium Density Residential zoning.
- 24. In my submission, Medium Density zoning does not "close the door" to the Visitor Accommodation Subzone. Ms Devlin has not genuinely considered the ability of the VA Subzone rules to "most appropriately" provide for the Medium Density Residential Zone's objectives and policies in the context of the receiving environment. Instead, Ms Devlin in undertaking her assessment has only considered that the site is zoned Medium Density Residential.

Objectives and Policies

- 25. Additionally, given those site specific attributes when considering the requirements of s 32, Visitor Accommodation sub-zoning over the Site will more appropriately give effect to the Policies and Objectives of the MDRZ given the provision for Visitor Accommodation within the MDRZ Objectives.

26. The relevant Objective and Policies giving effect to Visitor Accommodation in the MDRZ indicate that the question which should have been asked by Ms Devlin is whether the Site is one that is more appropriate for VA zoning rather than saying that the Medium Density Residential Zoning does not provide for Visitor Accommodation.
27. The following policies in the Medium Density Residential Chapter contemplate Visitor Accommodation in the Medium Density Residential Zone:
28. Zone Purpose 8.1 which states:
- Visitor Accommodations is restricted, **except within medium density residential visitor accommodation sub-zones...**
29. Zone Purpose 8.1 also states:
- The zone will primarily accommodate residential land uses, but **may also support limited non-residential activates where these enhance residential amenity or support an adjoining town centre**, and do not impact on the primary role of the Zone to provide Housing supply.
30. Policy 8.2.14.1 States:
- Provide for accommodation options for visitors in the Medium Density Visitor Accommodation sub-zones... **that is appropriate for the medium density residential environment**
31. In my submission, the appropriateness of High Density Residential zoning over the Site, as supported by Ms Devlin, is an evidential indicator of the appropriateness of Visitor Accommodation within the Medium Density Residential Zone. As are the suite of resource consents that have been granted for Visitor Accommodation on the Site.

Appropriateness of the Site for VA Sub Zone

32. The amenity of the adjoining Brisbane Street residents is a key consideration.

33. Ms Devlin in her rebuttal evidence agrees with Greenwood's evidence that it would be possible to contain the effects of Visitor Accommodation in this location while ensuring that residential amenity is maintained for the adjoining property to the south.¹
34. In summary it is considered that the site should be more appropriately zoned within the Visitor Accommodation Sub-Zone for the following reasons:²
- (a) The Site is immediately proximate to the Queenstown Centre and is therefore accessible to the public through transport, cycle or walk ways;
 - (b) The Site is adjacent to the gardens reserve and open space;
 - (c) The historic settlement pattern around the Site and the adjoining visitor accommodation development;
 - (d) The site is largely, undeveloped, flat and is bounded by two streets; and
 - (e) There is a scarcity of such sites in close proximity to the town centre.
35. Two other submitters sought a Visitor Accommodation subzone on their land near the Site. These two submitters are located in the neighbouring PDP High Density Residential Zone and are a backpacker and a hotel.
36. In addition to Stage 1 evidence regarding the appropriateness of High Density Residential, the ability for the surrounding environment to be positioned next to the VA Subzone is demonstrated by previous resource consents granted on the Site where Visitor Accommodation was considered appropriate.
37. These include:
- (a) RM060810 - Consent was granted on 21 October 2008 for a 45 unit visitor accommodation development. This lapsed on 21 October 2013;

¹ Ms Devlin rebuttal at para 5.3

² Bridget Allen Evidence, paragraph 23

- (b) RM050508 – Consent granted for the construction of 22 Visitor Accommodation Units. This was amended to provide for visitor accommodation;
 - (c) RM040409 – Consent was granted for the construction of 30 Residential Units; and
 - (d) RM020836 – Consent was granted for 59 Visitor Accommodation Units.
38. Reasons for granting consent in the most recent decision include that *“the site is adjacent to a note of visitor accommodation activity and an area of intensification of a much higher density of visitor accommodation units rather than the low density residential style development to the west and south of the site.”*³
39. In my submission these decisions reinforce the appropriateness of enabling Visitor Accommodation on the Site.
40. Furthermore, any consent for a Visitor Accommodation proposal under the Medium Density Residential Zone will be subject to resource consent. Under Rule 8.4.30. There is assurance that any proposal’s effects can be adequate assessed and the amenity of nearby residents maintained.
41. Lastly, it is considered that the inclusion of the Site into the Visitor Accommodation Zone will not have an impact on housing supply as the re-zoning will not remove or preclude residential development but instead will enable a potential additional activity.
42. As previously noted by Ms Devlin, enabling visitor accommodation over the site could also assist in avoiding further loss to housing supply within the residential zones by meeting some of the visitor accommodation demand on the site.⁴

Conclusion

43. The objectives and policy framework of the Medium Density Residential Zone does not “close the door” to the VA Subzone.

³ RM060810 - Description of the Receiving Environment, At 5.

⁴ Section 42A Report [30.8] Visitor Accommodation Subzones – Mapping (10 August 2018).

44. Section 32 therefore requires consideration to be given to whether activities enabled by the VA Subzone are an appropriate outcome on the Site. This includes an assessment of the receiving environment.
45. In my submission the evidence of Ms Devlin and Ms Leith at Stage 1, Ms Devlin and Ms Allen at this hearing all support the evidential position that those effects are appropriate and the amenity of nearby residents can be maintained.



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