

IN THE MATTER of the Resource Management Act
1991

AND

IN THE MATTER of an appeal under clause 14 of
Schedule 1 of the Act against
decisions of the Queenstown
Lakes District Council on Stage 1
of the Proposed Queenstown
Lakes District Plan

BETWEEN **GIBBSTON VALLEY STATION
LIMITED**

Appellant

AND **QUEENSTOWN LAKES
DISTRICT COUNCIL**

Respondent

**JOINT MEMORANDUM OF PARTIES IN SUPPORT OF CONSENT ORDER:
RESOLVING APPLICATION FOR REHEARING**

11 May 2020

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MAY IT PLEASE THE COURT

Introduction

1. On 27 November 2019, the Court made a decision resolving the appeal by GVS (*Gibbston Valley Station Limited v Queenstown Lakes District Council* ENV-2018-CHC-54) on 27 November 2019, by way of consent order (“**Decision**”).
2. On 17 April 2020, Gibbston Valley Station Limited (“**GVS**”) gave notice of motion for a rehearing of the Decision, on a limited basis, to address the following two matters (as stated in the notice):
 - 2.1 The correction of an error in Rule 45.4.6, so as to remove permitted activity status for Residential Visitor Accommodation within Activity Area 1 (“**AA1**”) and Activity Area 2 (“**AA2**”) (“**RVA Error**”); and
 - 2.2 The addition of “AA2” into Standard 45.5.16, so as to enable owners to make limited residential use of their units in AA2 for up to six months each year (“**Owner RA limited exemption**”).
3. Accompanying the notice, were affidavits by Mr Hunt and Mr Giddens.
4. Queenstown Lakes District Council (“**QLDC**”) and GVS entered into discussions soon after the notice of rehearing was filed, and have been advancing those discussions. On 5 May 2020, QLDC and GVS gave notice to the Court of a set of amendments that would resolve the matters raised in the notice of rehearing by agreement between them.
5. The other party to the original appeal, Otago Regional Council (“**ORC**”) was maintaining a watching brief, and does not oppose the amendments agreed between QLDC and GVS.
6. This memorandum confirms the position of the parties, and records, briefly, why the parties are of the opinion that it is appropriate for the notice of rehearing to be granted, and the amendments agreed between QLDC and GVS to be ordered by the Court, through a further consent order.

Substantive matters

7. The Planners for the Council and GVS have prepared a joint witness statement (“**JWS**”) dated 8 May 2020, which accompanies this consent memorandum. The Council and GVS rely on this JWS in support of the amendments agreed, and further confirm the nature of the amendments as follows:

- 7.1 RVA Error:** The correction of an error in providing for Residential Visitor Accommodation in AA1, AA2 and AA4 as permitted activities, when Residential Activity is not intended in those zones (unless subject to the Owner RA limited exemption). The GVS notice had originally only identified this error in respect of AA2, but it also existed in respect of AA1 and AA4. To the extent that any scope issue arises, Counsel for the Council and GVS consider that the Court may make these changes under section 292, to correct a “mistake, defect, or uncertainty” for the reasons set out at paragraphs [9] – [11] of the JWS.
- 7.2 The Owner RA limited exemption:** The Council and GVS have agreed that an exception can be made to provide for a limited number of Visitor Accommodation units in AA2 – up to 85 – to be used as residential activity by their owners for up to 180 days per year. Both parties consider that the amendment would result in appropriate environmental effects and would accord with the definition of Resort, and Objective 45.2.1 of the Gibbston Valley Resort Zone. . The jurisdictional and discretionary aspects of an application for rehearing are addressed further below.
- 7.3 Consequential changes:** Two minor consequential changes are agreed, and follow from the extension of the Owner RA limited exemption (for up to 85 Visitor Accommodation Units) to AA2. These are considered within the scope of the application for rehearing.

Jurisdiction and discretion under section 294

- 8.** The Council and GVS are agreed that there are three elements to the exercise of the power to rehear under section 294:¹
- (1) Does one of the two jurisdictional preconditions obtain — is there new and important evidence or has there been a change in circumstances?
 - (2) Might that have changed the decisions?
 - (3) If the answers to questions (1) and (2) are both positive, should the Court exercise its discretion to order a rehearing, and if so, on what conditions?
- 9.** In respect of the jurisdictional preconditions, the Council and GVS agree that:
- 9.1** There has been a change in circumstances identified by GVS in its notice of application for rehearing and the affidavit of Mr Hunt, arising from the consequences of Covid-19 for the next intended stage of development of the Gibbston Valley Resort.
 - 9.2** The Planners' JWS also qualifies as new and important evidence in relation to the issues raised by GVS in its notice of application for rehearing.
 - 9.3** Either of these matters "might" have changed the Court's determination, ie it might have approved and ordered the amendments now agreed between the Council and GVS.
- 10.** Accordingly, given the unique circumstances of this case, the parties agree that the jurisdictional precondition for the Court to consider a rehearing are made out. The Council and GVS agree that it does not automatically follow that a rehearing should be ordered, and the changes now agreed made. However, on balance they agree that this is appropriate in these particular circumstances, which include:
- 10.1** the nature of the original Decision, being one made by consent of the parties; and the current agreement of the parties for the changes now sought by GVS to again be made by consent;

¹ *Robinson v Waitakere City Council* (No 13) 16 ELRNZ 245 at [25].

- 10.2** the fact that the original consent order Decision was made relatively recently, so there has not been longstanding reliance (or any reliance) on the provisions that are sought to be changed;
- 10.3** the narrowly confined nature of the amendments;
- 10.4** the support by the planning experts to the amendments; and
- 10.5** the agreement that the amendments will continue to give effect to the Objective 45.2.1 of the Gibbston Valley Resort Zone.
- 11.** On this basis, the Council and GVS respectfully request the Court make the amendments sought, as set out in the attached draft consent order.
- 12.** ORC abides the Court's decision.

Costs

- 13.** The Parties do not have any issue as to costs.

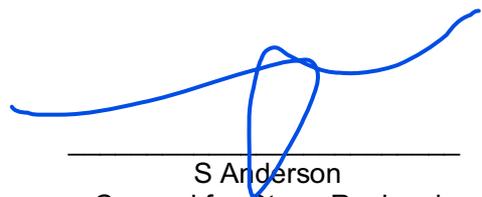
DATED this 11th day of May 2020



James Gardner-Hopkins
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Station Ltd
(Appellant)



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Counsel for Queenstown Lakes
District Council
(Respondent)



S Anderson
Counsel for Otago Regional
Council
(section 274 Party)

ATTACHMENT A: Draft consent order

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of an appeal under clause 14 of Schedule 1 of the Act against decisions of the Queenstown Lakes District Council on Stage 1 of the Proposed Queenstown Lakes District Plan

BETWEEN **GIBBSTON VALLEY STATION LIMITED**

Appellant

AND **QUEENSTOWN LAKES DISTRICT COUNCIL**

Respondent

Environment Judge sitting alone under section 279
of the Act **IN CHAMBERS** at .

**DRAFT CONSENT ORDER
GIBBSTON VALLEY STATION LIMITED**

**TOPIC 16 “QUEENSTOWN REZONINGS”: AMENDMENTS TO
EARLIER CONSENT ORDER OF 27 NOVEMBER 2019**

Introduction

1. The Court has read and considered the notice of application for rehearing by Gibbston Valley Station Limited (**GVS**) for a rehearing (on a limited basis) of *Gibbston Valley Station Limited v Queenstown Lakes District Council* ENV-2018-CHC-54, and decision made by the Court on 27 November 2019 by way of consent order (“**Decision**”).
2. The application for a rehearing has been treated as an interlocutory application in respect of the primary prior proceedings, ENV-2018-CHC-054.

APPENDIX 1

The following amendments are to be made to the Rules as identified as follows (additions in underline, deletions in ~~strike-out~~).

45.4.4	Residential Activity in Activity Areas AA2, AA3, AA5, AA6 and AA8 that comply with the standards in Table 2.	P
45.4.5	Residential Activity in Activity Areas AA1, AA2, AA4, AA7, PL, LM and OSR.	NC
45.4.6	Residential Visitor Accommodation in AA1, AA2, AA3, AA4, AA5 and AA6 unless otherwise stated.	P
45.5.16	<p>Residential Activity within visitor accommodation buildings</p> <p><u>a. Within those visitor accommodation buildings in AA2, AA3, AA5 and AA6 where residential activity is not provided for by Rule 45.5.15, residential activity shall be limited to that undertaken by the owners of the units for not more than 180 nights per year per unit.:</u></p> <p><u>b. Within AA2, residential activity permitted by rule 45.5.16.a shall be limited to 85 visitor accommodation units.</u></p> <p>a. Not more than 180 nights per year; and</p> <p>b. Residential activity undertaken by the owners of the buildings.</p>	NC