

**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 2 –
Rural, Rural Residential
and Lifestyle, Gibbston
Character Zone,
Indigenous Vegetation
and Biodiversity, and
Wilding Exotic Trees

**REPLY OF CRAIG ALAN BARR
ON BEHALF OF QUEENSTOWN LAKES DISTRICT COUNCIL
CHAPTER 22 – RURAL RESIDENTIAL AND RURAL LIFESTYLE
3 June 2016**

 **Simpson Grierson**
Barristers & Solicitors

J G A Winchester / S J Scott
Telephone: +64-3-968 4018
Facsimile: +64-3-379 5023
Email: sarah.scott@simpsongrierson.com
PO Box 874
SOLICITORS
CHRISTCHURCH 8140

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1. INTRODUCTION

- 1.1 My name is Craig Barr. I prepared the section 42A report for the Rural Residential and Rural Lifestyle Chapter of the Proposed District Plan (**PDP**). My qualifications and experience are listed in that s42A report dated 7 April 2016.
- 1.2 I have reviewed the evidence and submissions filed by other expert witnesses and submitters both in advance of and during the Rural hearing, and attended the hearing except on 25 May 2016 where I was provided with a report of the information from submitters and counsel presented on that day.
- 1.3 This reply evidence covers the following issues:
- (a) Matters deferred to the Hearing on Rezoning;
 - (b) Chapter structure and drafting;
 - (c) Residential density in the Rural Lifestyle Zone;
 - (d) Allowing more than one Residential Unit within a Building Platform
 - (e) Visitor Accommodation, community activities and commercial activities;
 - (f) Rule 22.4.3.3 Building Platforms;
 - (g) Amenity within the zones;
 - (h) Rule 22.5.3 Building Size;
 - (i) Colour of permitted Buildings;
 - (j) Rural Residential Sub Zone: Bobs Cove;
 - (k) Informal Airports;
 - (l) Home occupation; and
 - (m) Fire fighting water supply.
- 1.4 Where I am recommending changes to the provisions as a consequence of considering submitter evidence and the hearing of evidence and submissions before the Panel, I have included those changes in **Appendix 1 (Revised Chapter)**. I have also attached a section 32AA evaluation in **Appendix 2**.

2. MATTERS DEFERRED TO THE HEARING ON REZONING

2.1 I maintain my opinion held in the s42A report that the request by Lake Hayes Cellar Limited (#767) for rezoning from Rural to Rural Residential, and the introduction of a 'commercial overlay' rules is best addressed within the rezoning hearings. The requested 'commercial overlay' provisions are to do with a zone that effectively does not exist in the notified PDP. However, in terms of the merits I do question the appropriateness of rezoning an activity that is contemplated under the PDP Rural Zone framework (being winery buildings associated with viticulture) to Rural Residential, and then, to avoid the non-complying status, creating a new suite of rules. For these reasons, from a section 32 perspective I question the merits of the relief sought *but* consider that it should in substance be considered at the rezoning hearing.

3. RESIDENTIAL DENSITY IN THE RURAL LIFESTYLE ZONE

3.1 Submitters represented by Mr Fergusson¹ support the concept of increasing the density of the Rural Lifestyle Zone to 1ha, with no minimum allotment size. In addition, submitters represented by Mr Farrell² seek a similar change to Rule 22.5.12.3 so that on sites of two hectares you can have two residential units on average.

3.2 Mr Farrell relies upon PDP Strategic Direction Objective 3.2.6.1 to ensure a mix of housing opportunities to support the submitters' position. I consider that this is taking a very ambitious view of that objective because the PDP, as notified, provided a mix of housing including rural living at a density of one residential unit every 2 ha. I therefore do not accept Mr Farrell's argument that increasing density further accords with the objective.

3.3 I also disagree with Mr Fergusson where he states in the written evidence, that he considers all the Rural Lifestyle Zones throughout

1 Darby Planning LP (#608) , Soho Ski Area Ltd (#610) , Treble Cone Investments Ltd (#613), Mount Christina Ltd (#764), Lake Hayes Ltd (#763), Lake Hayes Cellar Ltd (#767), Hansen Family Partnership (#751).

2 G W Stalker Family Trust, Mike Henry, Mark Tylden, Wayne French, Dave Finlin, and Sam Strain (534 and 535), Wakatipu Equities limited (515), Slopehill Joint Venture (537), G W Stalker Family Trust (535) , Cook Adam Trustees limited/C & M Burgess (669), Slopehill Properties limited (854), D & M Columb (624), Real Journeys Limited (621/1341), Te Anau Developments Limited (607/1342), Cardrona Alpine Resort Limited (615), Queenstown Water Taxis Ltd (658), Ngai Tahu Tourism Limited (716).

the District can absorb a density of 1ha. This does not just include the Rural Lifestyle areas within the Wakatipu Basin where additional submissions from landowners, legal counsel and landscape evidence were submitted. I consider that accepting a higher density such as that proposed would require a greater emphasis on managing the adverse effects of contemplated development. In addition, many of the Rural Lifestyle zoned areas are located amidst the Outstanding Natural Landscape (**ONL**) area.³ On this basis I consider that the PDP framework of a permitted building regime may not suit the nature and density of residential development that these submitters are requesting.

3.4 I note in paragraph 3.2 (f) of Ms Pfluger's evidence (representing the same submitters as Mr Fergusson) where she states that some of the Rural Lifestyle Zoned areas have the capacity to absorb a higher density of residential units than one per 2 ha. This is contrary to Mr Fergusson's evidence that he considers the increased density can be applied district wide.

3.5 I consider that the majority of submitters seeking a higher density across the entire Rural Lifestyle zone have not provided expert evidence that supports this density district wide. I also refer to and rely on the evidence of Dr Read where she supports the retention of a density of 2 ha.

3.6 Having considered the expert landscape evidence presented by the submitters, I consider that there could be areas where a higher density could be appropriate as the environment has capacity to absorb such development. However, overall, I do not support a higher density in the Rural Lifestyle zone and also do not support the notion that a 65 metre separation of buildings is a suitable benchmark for privacy.⁴ In addition I do not think a benchmark or development expectation such as this would maintain rural living character within the Rural Lifestyle Zones, and I consider it would compromise the District's landscape quality overall.

3 For example at Mt Barker, Makarora, Wyuna.

4 As suggested by Landscape Architect Mr Stephen Skelton.

3.7 In conclusion, I consider that these submitters have primarily focused their perspective of the Wakatipu Basin, in particular the south-eastern extent. I note that the majority of these landholdings are subject to rezoning requests. Overall, I consider the density of the Rural Lifestyle should be retained as notified.

4. **ALLOWING MORE THAN ONE RESIDENTIAL UNIT WITHIN A BUILDING PLATFORM**

4.1 Mr Goldsmith's submission for Arcadian Triangle Limited (#497) and Mr McDonald and Geddes for several submitters⁵ request that it be a permitted activity to allow more than one residential unit within a building platform in the Rural Zone⁶ and Rural Lifestyle Zone. Mr Goldsmith suggests a policy framework and if necessary a prohibited status to ensure building platforms are not further subdivided. However, Mr McDonald appeared reluctant to accept the preclusion of the ability to further subdivide a building platform containing two residential units in the future.

4.2 Mr McDonald's submission also focussed on where this could be appropriate and suggested the 'river flats' would be an appropriate area. Mr McDonald did not provide any landscape evidence, and I therefore do not accept or support his submission on that matter. I do agree in part with Mr Goldsmith where he expressed concern at the limitations associated with accommodation options and the efficient use of land.

4.3 A relevant matter associated with the number of Residential Units within a building platform that is not discussed by Mr Goldsmith, and which I now raise, is the effect of the accumulation of living arrangements through Residential Flats. A Residential Flat sits within the definition of Residential Unit, therefore, if two Residential Units are allowed, there would be an expectation that a Residential Flat would be established with each Residential Unit. Therefore, within a single building platform that has two Residential Units there could be four separate living arrangements. From an effects perspective this

5 Hutchinson (228), Gallagher (534), Sim (235) McDonald Family Trust (411).

6 Refer to the Reply for Chapter 21.

could go well beyond what was contemplated when the existing building platforms in the Rural General Zone were authorised.

4.4 Mr Goldsmith criticised the size of a Residential Flat as provided in the definition, that the 70m² area is arbitrary and of an urban context that is out of place in a rural area. I recommend that in the Rural Zone and Rural Lifestyle Zone the size of a Residential Flat is increased from 70m² to 150m². This is considered to effectively provide for a wider range of opportunities for accommodation. A 150m² residential building could easily provide 4 bedrooms and ample living area. I also note that accessory building(s) associated with Residential Flats are excluded from the area required in the definition. Therefore, the 150m² can be dedicated to 'living' areas of the Residential Flat.

4.5 I also consider that this method is efficient and effective for the following reasons:

- (a) the PDP rules would require a non-complying activity resource consent to subdivide a Residential Flat from a Residential Unit, therefore there are robust processes in place to prevent unintended outcomes and precedent issues can be dealt with;
- (b) the development contribution for a Residential Flat is only 50% the development contribution for a Residential Unit. Therefore, it is more efficient for landowners if the Council (through a district plan) encourage Residential Flats instead of multiple residential units;
- (c) the only changes required to the PDP provisions is an amendment to the definition of Residential Flat, therefore reducing any potential complexities associated with controlling multiple Residential Units within a single building platform; and
- (d) allowing additional Residential Units as part of the PDP submission process could be likely to create a disconnect between the approval in principal and conditions registered on the computer freehold register and the potential desire to

establish separate driveways and curtilage areas. This is less likely to happen under the use of Residential Flats.

- 4.6 An amended definition of Residential Flat is included in **Appendix 1** and a s32AA evaluation is attached at **Appendix 2** of my Rural Reply evidence.

5. VISITOR ACCOMMODATION, COMMUNITY ACTIVITIES AND COMMERCIAL ACTIVITIES

- 5.1 I agree with Submitter 764 (Hadley) represented by Mr Vivian that the reference to intensive visitor accommodation within the visitor accommodation subzones is not appropriate, specifically, in Policy 22.2.2.4. Although these areas contemplate visitor accommodation, the scale and intensity should be commensurate with the zone it is located within. I recommend the word 'intensive' is removed, and I have made this change in the Revised Chapter in **Appendix 1**.

6. RULE 22.4.3.3 BUILDING PLATFORMS AS A DISCRETIONARY ACTIVITY

- 6.1 On 18 May 2016 the Panel identified a potential issue with Rule 22.4.3.3 in that it does not specify the size parameters between 70m² and 1000m² typically associated with a building platform.⁷
- 6.2 Rule 22.4.3.3 (Rural Lifestyle Zone) provides the opportunity to apply for a discretionary activity land use resource consent, for the identification of a building platform. The rule provides the opportunity to secure a 'development right' in situations where a site does not have a building platform registered on the computer freehold register. Under the ODP the only method to identify a building platform is through a subdivision. This matter is discussed in the section 32 report for Chapter 22 at page 42.
- 6.3 A discretionary activity status ensures the Council has the ability to assess the potential broad spectrum of issues that could arise for applications under this rule. In addition to matters such as servicing, access, landscape and amenity matters and natural hazards, an

7 For example, refer to Rule 21.4.9 of the Rural Zone Chapter.

analysis could be required to ensure the proposed residential building platform would not undermine the overall density and resultant activity status of any previous subdivision approvals. In particular in the context of a controlled activity subdivision requiring a 2 hectare average.

6.4 A number of submissions have identified that when the rule is read in isolation, it could be misconstrued that a discretionary activity resource consent regime is proposed similar to the Rural Zone. This is not the intention of Rule 22.4.3.3 in this instance. The fundamental residential development rights of the Rural Lifestyle Zone are set out in the Subdivision Chapter and corresponding density standards in Rule 22.5.12. The recommended revised chapter attached to the Rural Lifestyle s42A report adds a clarification point to ensure that the rule does not apply where a residential building platform is proposed through Subdivision Rule 27.5.1.1, therefore removing the duplication of resource consents where a residential building platform is proposed through a subdivision.

6.5 Rule 22.4.3.3 as recommended in the S42a report is:

22.4.3.3 The identification of a building platform for the purposes of a residential unit except where identified by Rule 27.5.1.1.

6.6 The area parameters were omitted intentionally because primarily and in most instances the identification of a building platform will be undertaken through Rule 27.5.1.1 of the Subdivision Chapter, which specifies the 70m² to 1000m² size range. It is considered unlikely that an application for land use consent would seek to create a building platform through Rule 22.4.3.3 that exceeds 1000m², or identifies a building platform over the entire site. This is particularly the case given that the Council has unrestricted discretion and can seek certainty over the location of future buildings to ensure that matters such as rural amenity and character, hazards, reverse sensitivity and servicing are appropriately managed.

6.7 To provide clarification and certainty to address the issue raised by the Panel, the rule could be improved by including the size

parameters in Rule 27.5.1.1 so that it is consistent with the expectations associated with the size of building platforms in the Rural Lifestyle Zone. This matter is associated with clarity and not considered to be a substantial change.

- 6.8** The suggested modification to Rule 22.4.3.3 is set out below (in red type) and is shown in **Appendix 1**:

22.4.3.3 *The identification of a building platform not less than 70m² and not greater than 1000m² for the purposes of a residential unit except where identified by Rule 27.5.1.1.*

- 6.9** Rule 22.4.3.2 permits the exterior alteration of buildings located outside of a building platform not exceeding 30% of the ground floor area of the existing building in any ten year period. The Panel sought clarity that this applies to extensions of buildings only where there is no registered building platform and that this extension is not about allowing buildings going outside of a building platform. I confirm that this is the intent and upon reflection of the submissions I now appreciate the submission of the New Zealand Institute of Architects and Southern Women in Architecture (#238), who opposed this rule on the basis building should be discouraged to locate outside of building platforms.

- 6.10** I recommend the revised wording above. I consider that this matter is related to clarity however if the Panel consider that this is a substantive change I consider that there is scope with Submission 238 to do so.

- 6.11** The construction and exterior alteration of buildings are permitted:

Rule 22.4.3.2

*Where there is not an approved building platform on the site
~~the~~ exterior alteration of buildings located outside of a building platform not exceeding 30% of the ground floor area of the existing building in any ten year period.*

7. AMENITY WITHIN THE ZONES

- 7.1 Submitter 674 (Hadley) represented by Mr Vivian requests that there is more attention paid to recognising the management of amenity within the zones, and not just the effects of activities within the zone on the wider Rural Zoned Landscape. I agree to a point, and recommend amendments to Objective 22.2.1 and Policies 22.2.1.3 and 22.2.1.5. Recommended changes are set out in **Appendix 1**.
- 7.2 Mr Vivian also requests that an objective and two policies are included to safeguard the life supporting capacity of water, with particular focus on Lake Hayes and Mill Creek. I recommend that these provisions are not accepted as there are other standards in the ODP, such as the (operative) Earthworks Chapter, and in the relevant Otago Regional Council Regional Plan: Water, which address these issues. In addition there has not been any evidence tabled setting out why this area deserves special attention compared to other areas.
- 7.3 I accept the reintroduction of a 15 metre setback of buildings in the Rural Residential Zone north of Lake Hayes (Rule 22.5.5). This Rule was included in the notified version and was unintentionally recommended to be removed in the s42a report. I recommend this rule is reinstated and this is set out in **Appendix 1**.

8. RULE 22.5.3 BUILDING SIZE

- 8.1 Mr Goldsmith for Arcadian Triangle Ltd (#497) is one of many submitters that had concerns with Rule 22.5.3 requiring a restricted discretionary activity resource consent to construct a single building over 500m². I also note that Dr Read in her evidence suggests that the matter could be addressed through volume, and as a response, Mr Goldsmith on behalf of Arcadian Triangle Ltd entertained the idea of making some parts of a building a certain height and, once it is over a certain size, other parts of the building being a lower height.
- 8.2 I consider that this would unnecessarily complicate the rule, which is intended to give the Council the ability to take a closer look at buildings over a certain size. This is to ensure that, while taking into

account the expectations of development in that location, the bulk of the building does not appear incongruous and have adverse effects in terms of the amenity of the immediate locality or any wider landscape effects. I also note that Ms Pfluger supports the 500m² size limit for buildings.

8.3 I do appreciate that the ODP requires resource consent for equivalent activities but as a controlled activity. Therefore, currently there is a higher level of intervention generally across the zone, but the consequences for the applicant are less as the controlled status means that a consent must be granted. I consider that the rule should be retained in its current form and if changes are considered necessary, to lessen the impact on future applicants, the activity status should be changed from restricted discretionary to controlled. This would give submitters assurance that future applications would obtain resource consent, while still giving the Council control over the bulk and visual prominence of buildings. However, I continue to recommend in the first instance that the restricted discretionary status, as notified, is retained.

9. COLOUR OF PERMITTED BUILDINGS

9.1 Mr Fergusson's evidence⁸ pursues the inclusion of schist in the permitted materials that cannot be measured by way of light reflectance value. I consider that the revised wording set out in the s42A report includes schist. I disagree with Mr Fergusson that the rule introduces uncertainty. As set out in the s42A report I am reluctant to list a range of materials because over the life of the district plan there will almost certainly be other materials that come onto the market and it would be ineffective and inefficient if these materials required a resource consent because they were not listed. I prefer the drafting in the s42A because while it does place discretion at the benefit of the Council, it allows the Council to accept a range of materials and not be hamstrung by the rule. I consider that including only schist or a range of materials is short-sighted.

⁸ Darby Planning LP (#608) , Soho Ski Area Ltd (#610) , Treble Cone Investments Ltd (#613), Mount Christina Ltd (#764), Lake Hayes Ltd (#763), Lake Hayes Cellar Ltd (#767), Hansen Family Partnership (#751).

10. RURAL RESIDENTIAL SUB ZONE: BOBS COVE

- 10.1** Mr Wells for Glentui Heights Ltd (#694) presented a revised set of provisions that retain the sub zone, but seek to modify a number of provisions. I generally consider that the anticipated environmental outcomes (as set out in **Appendix 1** at Objectives 22.2.6 and 22.2.7) should be retained, including the emphasis on ecological matters/indigenous biodiversity. However I do acknowledge that Mr Wells' provisions make reference to a 'development plan' that does not appear to exist, at least in a statutory manner within the body of the PDP (or ODP).
- 10.2** Having reviewed the changes requested I am not satisfied that the provisions should be amended. In particular I am not satisfied whether Rule 22.5.30 that requires landscaping in association with the approval of subdivision, has been given effect to. I recommend the provisions are retained as set out in **Appendix 1**.

11. INFORMAL AIRPORTS

- 11.1** Some submitters seek that informal airports be prohibited activities (Christine Byrch #243) while other submitters (Hadley (#674)) seek that they are retained as discretionary in the Rural Lifestyle Zone and made non-complying in the Rural Residential Zone. I consider the discretionary activity status is appropriate. The circumstances of an application including the site, proximity to neighbouring properties, and the nature and scale of the activity will influence the appropriateness and ultimate outcome of the application.

12. HOME OCCUPATION

- 12.1** Submitter 127 (Simon Chisolm) seeks the ability to undertake meat processing and sought an exemption to the list of prohibited activities. The s42A report recommended this submission point be accepted. Upon further consideration and after questioning from Panel I consider that generally Home Occupations are exempt from these activities because while the identified activities in Rule 22.4.17 has

the potential to be noxious, the nature and scale of these activities associated with Home Occupation is limited.

12.2 The same issue is also relevant for Temple Peak Limited (#486) who note that as part of farming activities, undertaking maintenance work on motor vehicles is permitted in the Rural Zone, but prohibited in the Rural Lifestyle Zone, despite these environments being the same (in the case of Temple Peak's land). An issue raised by the Panel was that motor body repair might not fall within the definition of farming. I consider that if it didn't fall within the definition of farming then it is the same as a residential activity where a person would be maintaining or repairing their motor vehicle at home.

12.3 I recommend that a point of clarification is made that these activities undertaken as part of a residential activity (not commercial) or as a Home Occupation are exempt from the prohibited status, and are permitted activities within the ambit of the range of activities for Home Occupations. This recommended change is set out in Revised Chapter in **Appendix 1**.

13. FIRE FIGHTING AND WATER SUPPLY

13.1 I maintain my recommendation set out in my s42A report that the best method to manage firefighting in the Rural Lifestyle Zone is via the conditions of resource consents. I also maintain that the proposed rule presented in the s42A report is more appropriate than that requested by the New Zealand Fire Service because it is more certain and practicable to administer. I also reaffirm my evidence given at the hearing when asked by the Panel on 3 May that the proposed rules in the Rural Residential Zone could be applied across the Rural Zone and Gibbston Character Zone if it is their desire to do so.

13.2 Related to managing fire and the risk to people and property, is Policy 22.2.1.7 and new recommended policy 22.2.1.8.

13.3 Policy 22.2.1.7 is:

Have regard to fire risk from vegetation and the potential risk to people and buildings, when assessing subdivision, development and any landscaping.

13.4 The panel questioned whether the policy should reflect two aspects rather than only fire, and suggested whether the desire for the retention of indigenous vegetation and planting can also create fire risk. I consider that this matter is the intent of the policy, the policy as phrased does not limit the decision maker to existing vegetation but vegetation generally. Therefore any vegetation that is proposed to be planted or proposed to be retained, as well as vegetation that just happens to be on the application site, is applicable.

13.5 I do not consider the policy needs to be modified. However if the Panel seek to do so there is likely to be scope from the comprehensive submission from the New Zealand Fire Service (#438).

13.6 New recommended policy 22.2.1.8 introduced in the s42A report is:

Provide adequate firefighting water and fire service vehicle access to ensure an efficient and effective emergency response.

13.7 The policy is recommended to provide a basis for the new rule recommended for the Rural Residential Zone (21.5.x on Page 21-11). The Panel sought clarification to address how this policy will be given effect to. I consider that this policy would be given effect to through new Rule 21.5.x, associated with buildings in the Rural residential Zone that are otherwise permitted, and through Rule 22.4.3 that provides the opportunity to apply for a discretionary activity status land use consent to identify a building platform in the Rural Lifestyle Zone.

13.8 In the case of subdivision activities I consider that this matter would be addressed by Subdivision Policy 27.2.5.7 '*Ensure water supplies are of a sufficient capacity, including firefighting requirements, and of*

a potable standard, for the anticipated land uses on each lot of development'.

14. CONCLUSION

14.1 Overall, I consider that the revised chapter as set out in **Appendix 1** is the most appropriate way to meet the purpose of the RMA.



Craig Barr
Acting Policy Planning Manager
3 June 2016