

**BEFORE THE HEARING COMMISSIONERS
AT QUEENSTOWN**

IN THE MATTER of the Resource Management Act 1991
(the Act)

AND

IN THE MATTER of the Queenstown Lakes Proposed
District Plan: Stage 2

**LEGAL SUBMISSIONS ON BEHALF OF MATAKAURI LODGE LIMITED IN
RELATION TO VISITOR ACCOMMODATION**

12 SEPTEMBER 2018



ATKINS | HOLM | MAJUREY

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INTRODUCTION AND OVERVIEW

1. Matakauri Lodge is a world class luxury lodge located on the shores of Lake Wakatipu in Queenstown.
2. The Lodge is owned by the Robertson family through its investment company Matakauri Lodge Limited (**MLL**). The Robertson family also own and manage: two other luxury lodges – one in Hawkes Bay (Cape Kidnappers) and one in Northland (Kauri Cliffs) - as well as a winery and substantial farm block.
3. Matakauri Lodge has undergone significant refurbishment and investment since it was purchased by MLL nine years ago. The Lodge now comprises four different accommodation options, from the owner's cottage to deluxe suites, and lodge rooms. It offers fine dining with internationally renowned chefs, a luxurious spa, and exclusive experience and adventure packages to showcase the best that Queenstown has to offer.
4. Matakauri Lodge is located within the Rural Lifestyle zone of the Proposed Queenstown District Plan (**Proposed Plan**). MLL made a submission (and further submissions) of the Proposed Plan in order to ensure that its existing visitor accommodation activities and any future planned development of those activities is appropriately provided for.

Evidence

5. MLL is calling expert planning evidence from Ms Rebecca Holden, a resource management planning consultant at Southern Planning Group, in support of its position.

Relevant Law

6. The law applying to plan changes is summarised in the s 42A report(s) for this hearing, as well as the submissions of other parties. It is not intended to repeat that material here. Instead, these submissions provide the context and legal support for the visitor accommodation definition supported by MLL.

KEY ISSUE – VISITOR ACCOMMODATION

7. The appropriateness of a visitor accommodation subzone within the Rural Lifestyle zone was considered during Stage 1

of the Proposed Plan hearings. The hearings panel for that Stage determined that the visitor accommodation subzone (and related provisions) included in the notified version of the Proposed Plan should be removed from the Rural Lifestyle zone. MLL and other parties have appealed that decision and that matter is currently before the Environment Court.

8. The only issue on which MLL is seeking that the hearings panel determine, is how visitor accommodation should be defined.

Definition in Proposed Plan

9. The notified version of the plan contained a definition of "Visitor Accommodation" that MLL supported. The s 42A report recommends a number of amendments to the definition to improve the clarity, and to better differentiate it from residential visitor accommodation and homestays. The changes proposed in the s 42A version are set out below:

Visitor accommodation

Means the use of land or buildings (excluding the use of a residential unit or residential flat) for short term, fee paying, living to provide accommodation for paying guests where the length of stay for any visitor/guest is less than ~~3 months~~ 90 nights; and

- i. ~~Includes such accommodation as~~ camping grounds, motor parks, hotels, motels, ~~boarding houses, guest houses, backpackers' accommodation, bunkhouses, tourist houses, lodges, timeshares, and managed apartments; homestays, and the commercial letting of a residential unit; and~~*
- ii. ~~May include~~ some centralised services or facilities, that are directly associated with, and ancillary to the visitor accommodation, such as food preparation, dining and sanitary facilities, conference, bar and recreational facilities if such facilities are associated with the visitor accommodation activity. The primary role of these facilities is to service the overnight guests of the accommodation however they can be used by persons not staying overnight on the site.*

iii. Includes onsite staff accommodation.

iv. Excludes residential Visitor Accommodation and Homestays.

For the purpose of this definition:

a. ~~The commercial letting of a residential unit in (i) excludes:~~

- ~~A single annual let for one or two nights.~~*
- ~~Homestay accommodation for up to 5 guests in a Registered Homestay.~~*

~~• Accommodation for one household of visitors (meaning a group which functions as one household) for a minimum stay of 3 consecutive nights up to a maximum (ie: single let or cumulative multiple lets) of 90 nights per calendar year as a Registered Holiday Home.~~

~~(Refer to respective definitions).~~

~~b. "Commercial letting" means fee paying letting and includes the advertising for that purpose of any land or buildings.~~

~~c. Where the provisions above are otherwise altered by Zone Rules, the Zone Rules shall apply.~~

10. MLL supports the definition in the proposed plan and as modified in the s 42A report. MLL considers the definition is clear, concise and appropriately defines the scope of activities which come within that term.

Submitter issues / concerns

11. Submitters opposing the definition have taken particular issue with the inclusion of ancillary facilities (such as restaurants, spas and recreational facilities) which can be used by the public as well as guests.¹ The submitters have not however provided any robust evidential basis as to why it is inappropriate for such uses to be included.

How the definition compares to other plans / planning documents

12. There is no standard definition of visitor accommodation that applies across New Zealand. Currently each District is able to adopt its own definition of visitor accommodation and many have done so.² The courts approach has been to rely on the wording of the definition (and relevant provisions) within the applicable district plan to determine the scope of the activities covered.³
13. While the draft National Planning Standards have proposed a definition of visitor accommodation⁴ the Standards are not

¹ For example see the submissions of Christine Byrch (#2357) and Nikki Gladding (#2411).

² For example see the: Ashburton District Plan, Auckland Unitary Plan, Marlborough Resource Plan, Southland District Plan, Tauranga City District Plan and Whangarei District Plan.

³ For example see *Gladding v Queenstown Lakes District Council* [2015] NZEnvC 151 (**Gladding**).

⁴ Visitor accommodation means land and/or buildings used primarily for accommodating non-residents, subject to a tariff being paid.

yet in force and are currently being revised as a result of submissions. The draft Standards definition does not expressly address the issue of ancillary services and facilities.

14. In my submission, including ancillary facilities within the definition and providing for limited use by non-residents appropriately recognises the scope of, and existing investment in, visitor accommodation activities within the District and provides a clear indication to plan users as to what such activities encompass. It would also address the issues identified by the Environment Court in *Gladding v Queenstown Lakes District Council* where the Court noted the current visitor accommodation provisions were confusing, that it was hard to find a consistent theme to visitor accommodation, and that as regards the use of facilities by non-guests, the line between visitor accommodation and commercial activities was not clear.⁵

How submitter concerns can be addressed

15. In my submission, the concerns raised by submitters can be addressed through the relevant planning processes when the necessary consents are sought. It is important not to take such a narrow approach to visitor accommodation that it fails to reflect the reality on the ground. The definition itself does not permit or allow such activities to occur as of right, and the concerns raised by submitters fail to acknowledge this.
16. In MLL's view, the appropriate approach is to take a broad or inclusive approach to visitor accommodation, to ensure all relevant activities are captured and then these activities can be appropriately controlled by other plan provisions.

CONCLUSION

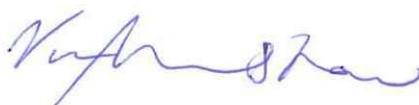
17. Given the significance of tourism to the Queenstown economy it is important that the council get the definition of visitor accommodation right.
18. Any definition of visitor accommodation has to be broad enough to capture the full range of accommodation and the associated services and facilities such accommodation provides. Any definition also needs to be clear, so that plan

⁵ Gladding, at paragraphs [27], [31], and [33] to [36].

users and decision makers understand what activities are controlled.

19. For these reasons and those set out in the planning evidence of Ms Holden, MLL considers that the s 42A version of the proposed plan definition is the most appropriate and will best give effect to the sustainable management use of the Act.

DATE: 12 September 2018



Mike Holm / Vicki Morrison-Shaw
Counsel for the Applicant
Matakauri Lodge Limited

BEFORE THE ENVIRONMENT COURT

Decision No. [2015] NZEnvC 151

IN THE MATTER of an appeal under section 120 of the
Resource Management Act 1991

BETWEEN NICOLETTE GLADDING
(ENV-2015-CHC-51)
Appellant

AND QUEENSTOWN LAKES DISTRICT
COUNCIL
Respondent

AND POUNAMU HOLDINGS 2014
LIMITED
Applicant

Court: Environment Judge J R Jackson
(Sitting alone pursuant to section 279 of the Act)

Hearing: In Chambers in Christchurch

Submissions lodged by:

Ms N Gladding for herself
Mr J G A Winchester and Ms K E Viskovic for the Queenstown
Lakes District Council
Mr M C Holm and Ms P Mason for Pounamu Holdings 2014
Limited
(Final submissions received 25 August 2015)

Date of Decision: 31 August 2015

Date of Issue: 31 August 2015

PROCEDURAL DECISION

A: Under section 279(1)(e) of the Resource Management Act 1991 I rule that:



- (1) Policy (9.1.4) 1.6 of the Queenstown Lakes District Plan applies to the proposal by Pounamu Holdings 2014 Limited to build and operate a camping ground and buildings in the Visitor Accommodation Subzone at Glenorchy as shown on the attached plan marked "A"; and
- (2) that if the development has site coverage of less than 70% (it appears to be 33%) then it would qualify as "small scale" under Policy (9.1.4) 1.6.

B: It would be premature (and theoretical) to rule on the second question ("Issue 3").

C: The appellant is to advise the Registrar and the parties by 8 September 2015 whether she seeks a hearing.

D: If the appellant seeks a hearing then:

- (1) she must lodge and serve all her evidence by **Friday 25 September 2015**;
- (2) the applicant and the respondent must serve their evidence by **Wednesday 7 October 2015**;
- (3) any rebuttal by Ms Gladding must be served by **Wednesday 14 October 2015**; and
- (4) the parties should be ready to proceed with a hearing in Queenstown in the week of **Monday 19 October 2015** (but not before 1000 Wednesday 14 October 2015).

E: Leave is reserved for any party to apply for further or other directions.

F: Costs are reserved.

REASONS

[1] This proceeding is an appeal about consents for the establishment and operation of a camping ground (Camp Glenorchy) at 34-42 Oban Street¹, Glenorchy.

¹ The legal description of the site is Lots 1-3, DP 435250, Lot 1 DP 434815 and Lot 14 DP 434815 with a total area of 11,977 m².



[2] Pounamu Holdings 2014 Limited (“PHL”), the applicant, applied to the Queenstown Lakes District Council for land use consent to develop a camping ground and associated activities at 34-42 Oban Street, Glenorchy. Hearing Commissioners granted the consents upon conditions on 8 June 2015. Ms Gladding, a submitter, appealed to this court.

[3] Some legal issues about the application of the operative Queenstown Lakes District Plan (“the QLDP”) have arisen for preliminary determination under section 279(1)(e) of the Resource Management Act 1991 (“the Act” or “the RMA”). They are:

- (1) Whether Policy (9.1.4) 1.6:

to provide for small scale non residential activities in the town, subject to listed standards to ensure development consistent with the predominant residential environment

– applies to Visitor Accommodation (VA) activities in the Visitor Accommodation Sub Zone.

- (2) [This issue was withdrawn by Ms Gladding².]

- (3) Whether the use of the Humboldt room for meetings or gatherings or conferences by persons paying for a service, but not being accommodated on site overnight, constitutes 'commercial activity' or could be defined as 'visitor accommodation activity' under the operative District Plan.

[4] The application describes the proposal as a refinement of a traditional New Zealand camping ground. The layout as approved by the Hearing Commissioners is shown on the site plan attached as “A”. For orientation purposes I record that Oban Street is the road from Queenstown and the main access is to be off Coll Street at the northern end of the site.

[5] The applicant’s proposal includes accommodation for up to 140 guests in nine bunk cabins, tenting sites and powered sites for campervans. The nine cabins, seven with a ground floor area of 85 m² and two smaller, are part of 15 proposed



new buildings in total. These include a large “Commons Building” (floor area of 560 m²), a shelter and laundry building, a services building and a maintenance building.

[6] Two existing dwellings on the site are proposed to be utilized for staff accommodation. An extensive “solar garden” in the form of photovoltaic arrays covering an area of 860 m² is proposed along the southern boundary of the site to provide energy. The total ‘built’ area on site would be 2,263 m² with a roof coverage of 3,710 m², giving a total site coverage of 32%.

[7] Extensive landscaping is proposed including a variety of native trees, grasses and shrubs around tent sites and an open lawn area in the centre of the site. Campervan and other parking is located along the eastern side. There is a 5 metre wide beautification strip vested in the Council as local purpose reserve along the Oban Street road frontage (“the beautification strip”). The applicant proposes to form a foot and bike path along the Oban Street (partly using the reserve) and Coll Street frontages of the site. Five of the proposed bunk rooms will face Oban Street adjacent to the boundary, along the beautification strip.

[8] The large Commons building adjacent to Coll Street will include a large room – called “the Humboldt room” by the applicant – which is proposed to be used for meetings and educational purposes.

[9] The site is within the Glenorchy Township Zone and also subject to an overlay³ showing it is part of a Visitor Accommodation Sub-Zone which lies both sides of Oban Street.

[10] The application sought a number of consents under the district plan of which the following are relevant for the purposes of this decision⁴:

- **Controlled Activity** consent pursuant to Rule 9.2.3.2(iii) for visitor accommodation activities within a Visitor Accommodation Sub-Zone with respect to:
 - (a) External Appearance of Buildings



² N Gladding submissions 12 August 2015 para 4.
³ Map 25 in Queenstown Lakes District Plan Volume 3 (Maps).

- (b) Setback from Internal Boundaries
- (c) Setback from Roads
- (d) Access
- (e) Landscaping
- (f) Screening of Outdoor Storage and Parking Areas.

...

- **Non Complying Activity** resource consent pursuant to Rule 9.2.5.2(ii)(a), as Bunk Cabins 1 to 5 will breach the height recession plane when measured from the western (Oban Street) boundary.
- **Non Complying Activity** resource consent pursuant to Rule 9.2.5.2(ii)(a)(iii), as the Commons Building will exceed the maximum building height of 5.5 m.

The relevant objectives, policies and rules in the Queenstown Lakes District Plan Townships in the QLDP

[11] The most specific, particularised objectives and implementing policies for the townships of the district including Glenorchy are in Chapter 9 of the district plan. The relevant objective is⁵:

Recognition and consolidation of the townships. Recognition of the low density open space residential amenity of the townships. Recognition of the particular character, built environment and range of uses existing in the individual townships.

[12] The relevant implementing policies are⁶:

1.1 To encourage consolidation of the townships within identified boundaries.

...

1.3 To limit the extent and density of development of the townships in recognition of:

1.3.1 risk of natural hazards;

1.3.2 the need to provide options for reticulated services;

1.3.3 the desired living environment of the majority of the township residents;

1.3.4 the effects of activities in the townships and the scale of activities on the main transport routes;

1.3.5 ...

1.4 To recognize and provide for the individual character and appearance of the individual townships and in particular:

1.4.1 limited building heights in Glenorchy and Makarora;

⁴ Council decision para 17.

⁵ Objective (9.1.4) 1 [QLDP p. 9-4].

⁶ Policies (9.1.4) 1.1 to 1.9 [QLDP pp. 9-4 and 9-5].



- 1.4.2 roof pitch design for Glenorchy.
- 1.5 The provision of a 5 metre wide Local Purpose Reserve (for beautification purposes) along the frontage of Oban Street, Glenorchy
- 1.5.1 On both sides of Oban Street south of Mull Street, the Council shall require that such land be taken as Local Purpose Reserve at the time of subdivision or development, except that:
- Where a Local Purpose Reserve has already been taken from sites as part of a previous subdivision, no further land shall be taken from those sites as a part of any further subdivision or development.
- 1.5.2 Where a beautification strip is provided within the Glenorchy Township Zone at the time of subdivision or development, the Council shall offset the value of this land against the Development contribution payable under the Local Government Act 2002.
- 1.6 To provide for a range of small scale non-residential activities in the towns subject to listed standards to ensure development consistent with the predominant residential environment.
- 1.7 To ensure subdivision and density controls do not inhibit the range of development options while providing for an open appearance.
- ...
- 1.9 To recognise the value of particular townships as important centres within the visitor industry.
- (underlining added)

The underlined words are in the key policy for Ms Gladding's first point.

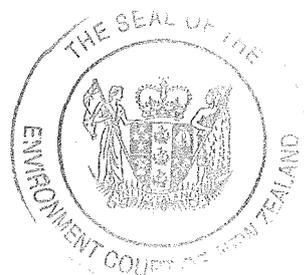
[13] The environmental results anticipated include⁷:

Implementation of the policies and methods for management relating to the townships will result in:

- (i) Development which reflects important local characteristics in terms of building style, appearance and density.
- (ii) A range of non-residential activities, satisfying residential amenity requirements.

Visitor accommodation

[14] "Visitor accommodation" is defined as in the Definitions Chapter of the district plan as (relevantly):



⁷ Para 9.1.5 [QLDP p. 9-6].

... mean[ing] the use of land or buildings for short term fee-paying, living accommodation and:

- (i) Includes such accommodation as camping grounds, motor parks, hotels and motels, ...; and
- (ii) May include some centralized services or facilities, such as food preparation, dining and sanitary facilities, conference, bar and recreational facilities if such facilities are associated with the visitor accommodation activity.

[15] The parties drew my attention to the Township's general objectives and policies but rather overlooked⁸ that Chapter 9 provides a further objective in the form of a "Zone Purpose". This is "... to maintain low density residential character interspersed with a number of non-residential activities"⁹. That is of some importance as the indirect justification of the VASZ. With that qualification there is no direct policy guidance about the Visitor Accommodation Sub-Zone ("VASZ") in Chapter 9 of the district plan, although there are policies about "non-residential uses"¹⁰ and recognizing the value of townships (such as Glenorchy) "... as important centres within the visitor industry"¹¹. I note that the list of "Individual Township Issues" identifies as an issue for Glenorchy¹²:

Retention and enhancement of the amenity of the township while providing for an increasing range of non-residential activities, in particular visitor activities, within the Township. ...

This reads more like a policy than an issue, but cannot be given more than explanatory weight.

[16] There is some policy guidance about visitor accommodation in Chapter 4 (District-Wide Issues) of the district plan. The urban growth subchapter 4.9 includes an objective¹³:

5 ... To enable visitor accommodation activities to occur while ensuring any adverse effects are avoided, remedied or mitigated.

⁸ It is in an odd place, at the beginning of the rules.

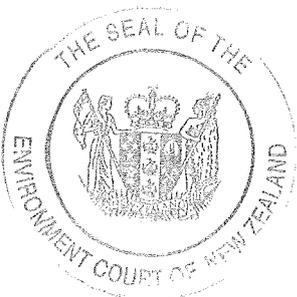
⁹ Para 9.2.1 [QLDP p. 9-8].

¹⁰ Policy (9.1.4) 1.6 [QLDP p. 9-5].

¹¹ Policy (9.1.4) 1.9 [QLDP p. 9-5].

¹² Para 9.1.3.5 [QLDP p. 9-3].

¹³ Objective (4.9.3) 5 [QLDP p. 4-56].



[17] The implementing policies are¹⁴:

- 5.1 To manage visitor accommodation to avoid any adverse effects on the environment.
- 5.2 To avoid, remedy or mitigate adverse effects of letting of residential units for short-term accommodation on residential coherence and amenity through a registration process and standards.
- 5.3 To ensure that the costs and regulatory obligations of visitor accommodation activities are appropriately borne and complied with by visitor accommodation providers.

Implementation Methods

Objective 5 and the associated policies will be implemented through a number of methods:

- (i) District Plan
 - (a) Provision for visitor accommodation sub-zones.
 - (b) Provisions controlling visitor accommodation activity.

It will be noted that the methods proposed include subzones like the VASZ.

The rules in Chapter 9

[18] Turning to the rules, any activity is a permitted activity with the Township zone (as applying to Glenorchy) unless it is defined as a controlled, discretionary, non-complying or prohibited activity, or does not comply with the appropriate performance standards. Residential activities are permitted on the subject site provided they comply with the relevant density standard, which is 800 m² in the case of the Glenorchy Township zone. Industrial and commercial activities are not permitted.

[19] More directly relevant is that visitor accommodation within a VASZ is a controlled activity¹⁵ with respect to:

- (a) external appearance of buildings;
- (b) setback from internal boundaries;
- (c) setback from roads;
- (d) access;
- (e) landscaping;
- (f) screening of outdoor storage and parking areas.



¹⁴ Policies (4.9.3) 5.1 to 5.3 [QLDP p. 4-56].
¹⁵ Rule 9.2.3.2(iii) [QLDP pp. 9-8 and 9-9].

[20] The following rules (standards) also affect the scale of visitor accommodation developments in the VASZ:

(Zone Standards)

- Rule 9.2.5.2(i)(c) – which allows for a maximum building density of 70%;
- Rule 9.2.5.2(ii)(a) – which describes the recession plane rules (25 degree recession plane starting at 2.5 m above ground level);
- Rule 9.2.5.2(ii)(a)(iii) – which allows for a maximum building height of 5.5 m.

(Site Standards)

- Rule 9.2.5.1(viii) – which states that the principal roof pitch must be at least 25 degrees, although up to 60% of the roof area may be of a lesser pitch;

The applicability of Policy (9.1.4) 1.6 of the QLDP

[21] The first issue raised by Ms Gladding is whether Policy (9.1.4) 1.6 – which is:

to provide for small scale non residential activities in the town, subject to listed standards to ensure development consistent with the predominant residential environment

– applies to Visitor Accommodation activities in the VASZ.

[22] The Hearing Commissioners wrote of this policy¹⁶:

Policy 1.6 seeks to provide for a range of small-scale non-residential activities. It was suggested in one submission that the proposed development was inappropriate because it was not “small scale”. However we do not agree this is the case, because the zoning as a whole specifically provides for visitor accommodation without any restrictions on scale at all. We agree with Ms Hislop¹⁷ that this policy addresses the establishment of small commercial or

¹⁶ Para 166 of the Hearing Commissioners’ decision (8 June 15).

¹⁷ Ms Hislop was the QLDC reporting planner in relation to the application.



perhaps industrial activities that are sought to be established in residential areas that, unlike this site, do not provide for visitor accommodation.

The Hearing Commissioners appear to have determined that Policy 1.6 does not apply in the VASZ “because the zoning as a whole specifically provides for visitor accommodation without any restrictions on scale at all”.

[23] Counsel for PHL and the Council submit that the Hearing Commissioners’ interpretation of the planning provisions was correct, and that Policy (9.1.4) 1.6 has no application to visitor accommodation activities in the VASZ. Their argument is that while there is a policy¹⁸ which requires visitor accommodation to avoid adverse effects, there is no requirement for visitor accommodation within the VASZ to be “small scale” or “consistent with the predominant residential environment”.

[24] Ms Gladding submits that while there may appear to be no rules limiting the scale of VA in the VASZ this is not the case. When the rules, constraints and controls are considered together, they provide for and manage a scale of development that is consistent with Policy 1.6. She continued:

The 70% building coverage rule describes a proportion; it does not indicate scale, nor does it define the *permitted* max coverage in the zone (that is 32% for residential activities). This rule is not incompatible with Policy 1.6 and is merely a theoretical maximum that is subject to the constraints of other standards and the conditions which may be imposed by the consenting authority.

[25] Ms Gladding submitted that the Council has disregarded a specific and relevant policy (Policy 1.6) based on one rule which they have considered to be “completely at odds” with achieving the purpose and objective of the Zone. She sought that the court “declare” that Policy 1.6 does apply to the Visitor Accommodation Sub Zone in the Queenstown Lakes District Plan.



¹⁸ Policy (4.9.3) 5.1.

[26] The QLDP is not simple on the role of visitor accommodation (and its subzones) in relation to residential activities. Indeed, the Hearing Commissioners wrote¹⁹:

... We need to make the observation that a number of the rules applicable, at least as they apply within the VASZ in Glenorchy, are confusing and contradictory. They also do not appear to align well with each other, community expectations, and the objectives and policy framework. Examples include the 70% site coverage provision, which appears completely at odds with maintaining an open and spacious character within the township; the tension between the minimum roof pitch of 25° and the unusually restrictive height provision of 5.5 m; the confusion over the desired building setback applicable to Oban Street, and the lack of policy/assessment guidance relevant to height breaches.

[27] While I agree with the sentiment because the provisions are confusing, I consider with respect that the Hearing Commissioners may have gone too far. The district plan needs to be read as a coherent whole if at all possible: *J Rattray & Sons Ltd v Christchurch City Council*²⁰. This was recently reinforced by the Supreme Court in *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd*²¹ where Arnold J, delivering the Court's Judgment, wrote that one must not "... conclude too readily that there is a conflict between particular policies and prefer one over another, rather than making a thorough ... attempt to find a way to reconcile them".

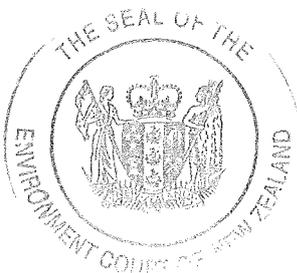
[28] While objectives and policies need to be read from the top (usually the most general wording) down, that does not mean that some indicia of how an objective or policy should be applied cannot be obtained from an implementing policy or method respectively. In other words some guidance as to the meaning of a policy may be obtained from a rule, and for an objective from a policy if only as an example of what the higher direction intends.

[29] In this case the relevant Policy (9.1.4) 1.6 needs to be read with the following policy, that "... density controls [should] not inhibit the range of development

¹⁹ Para 149 of the Hearing Commissioners' decision (8 June 2015).

²⁰ *J Rattray & Sons Ltd v Christchurch City Council* (1984) 10 NZTPA 59 (CA) at 61.

²¹ *Environmental Defence Society v New Zealand King Salmon Company Ltd* [2014] NZSC 38; [2014] 1 NZLR 593; [2014] NZRMA 195; (2014) 17 ELRNZ 442 (SC) at [131].



options while providing for an open appearance”²² and the rule that implements them both. Zone Standard 9.2.5.i under the heading **Building Coverage** states²³ (relevantly):

- (a) The maximum building coverage for all activities on any site shall be 40% **except** for buildings within ... **Visitor Accommodation Sub-Zones**.
- ...
- (c) In **Visitor Accommodation Sub-Zones** the maximum building coverage on any site shall be 70%.

This must have some significance for the meaning and application of policy 1.6: it suggests quite strongly that visitor accommodation with building coverage of less than 70% is, at first sight and subject to other controlled activity factors, “small scale” within the meaning of policy 1.6.

[30] I cannot see any good reason for excluding policy 1.6 from applying to visitor accommodation. On the direct application of the definition visitor accommodation is non-residential because the definition of “residential activity”²⁴ expressly excludes it. The Commissioners’ Decision appears to make a distinction between Visitor Accommodation and “other” non-residential activities for which there is no justification in the QLDP.

[31] I agree with the Hearing Commissioners that it is hard to find a consistent theme to visitor accommodation in the QLDP, but unlike them I hold that it can be achieved. Reading the relevant purpose, objective, policies and rules as a whole, I hold that the “small scale non-residential” activities referred to in Policy (9.1.4) 1.6 includes any visitor accommodation development in which the building coverage is less than 70%. Accordingly, I can give a simple ruling that the policy does apply to PHL’s proposal. However, I consider that I should add that any development which has site coverage less than the Zone Standard does at first sight implement the “small scale” policy.

²²

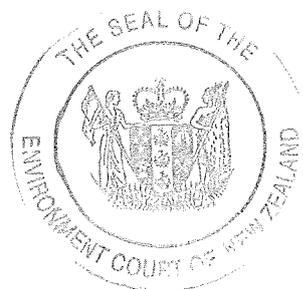
Policy (9.1.4) 1.7.

²³

Rule 9.2.5.2.i [QLDP p. 9-14].

²⁴

Definitions section [QLDP Volume 1A, p D-11].



[32] I agree with Ms Gladding that the other rules apply, so that if the building coverage approaches that figure (or even if it does not) the Council may alter any other variables²⁵ of the application under the controlled activity rule²⁶. On the PHL application, which is a non-complying activity, the consent authority had power to alter the density too. Apparently in this case the site coverage is 33% as recorded above. That may not be a variable which is important to the outcome but I cannot decide that here.

Use of the Humboldt room

[33] The Humboldt room occupies 30% of the 560 m² commons building within Camp Glenorchy. The proposed use of the room is described in the applicant's AEE²⁷ as follows:

The Humboldt room within the Commons Building will provide the ability to house small scale community and cultural events, as well as similarly small scale conferences within Camp Glenorchy. The Humboldt room will have the ability to accommodate different numbers of people depending upon the specific use. During a formal conference, the Humboldt room will accommodate up to 50 people, while for a more casual arrangement (i.e. speaker, showing of a film), this room will cater for up to 100 persons.

[34] "Commercial activity" is defined²⁸ as:

Means the use of land and buildings for the display, offering, provision, sale or hire of goods, equipment or services, and includes shops, postal services, markets, showrooms, restaurants, takeaway food bars, professional, commercial and administrative offices, service stations, motor vehicle sales, the sale of liquor and associated parking areas. Excludes recreational, community and service activities, home occupations, visitor accommodation, registered holiday homes and registered homestays.

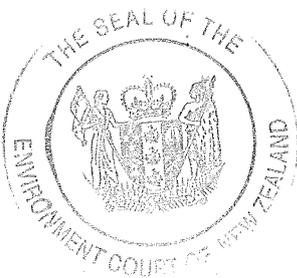
Ms Gladding is concerned that "... we cannot be certain what the Humboldt room will be used for, who will use it or how often", and that it may in effect be used for commercial activity.

²⁵ External appearance, setbacks, access, landscaping and screening.

²⁶ Rule 9.2.3.2.iii.

²⁷ Assessment of Environmental Effects para 6.4.

²⁸ QLDC Definitions p. D-14.



[35] The Hearing Commissioners heard evidence that the Humboldt room might be used for local meetings or as a Civil Defence Centre. Neither of those would not be “commercial activity” because “community” and “service” activities are expressly excluded. But as far as I can see there is no other evidence recorded of off-site visitors. The Hearing Commissioners held:

It was suggested that the use of the Humboldt Room for meetings, and for educational activities, was a commercial undertaking that was not provided for within the zone or the overlying VASZ. We were made aware of a legal opinion provided on this matter, which concluded that the proposed use of this facility was permitted under the zone rules. We note that the definition of visitor accommodation simply states that “... conference facilities ...” are included in the definition if they “are associated with” the visitor accommodation activity. We did not hear any evidence that might have persuaded us that the use of the Humboldt room was intended to operate as an independent standalone activity. Instead, it seemed clear that its use is to be primarily associated with the visitor accommodation business on the site, albeit that it may occasionally be made available for community purposes. Matters such as rating levels to be applied to any of the activities on the site are completely irrelevant to the assessment of an application for resource consent.

Given that finding I consider that at this stage there is no point in making a ruling about whether people not staying the night but attending a conference would make the use of the Humboldt room a commercial activity. At first sight it would, but there needs to be evidence that that is likely to happen.

[36] If the whole facility is built, and later it becomes apparent to Ms Gladding or anyone else, that the Humboldt room is being used for conferences at which more than a minimal number of attendees are not overnight guests, then she could apply to this court for a declaration or enforcement order. Conversely, the consent holder is on notice that if it arranges conferences at which more than a few (I leave this deliberately vague) attendees are not staying overnight, then it might need a further resource consent.

[37] Alternatively, this issue can be covered by evidence at the hearing if that is really necessary.



Outcome

[38] Ms Gladding has won her point about policy 1.6. However, I am concerned that it is a pyrrhic victory since it appears (but without deciding the point) that on the evidence, as recorded in the Hearing Commissioners' Decision, applying policy 1.6 would make little if any difference to the overall assessment. Because of that I consider Ms Gladding should, if she wants a hearing, lodge and serve her evidence first so that the other parties know what her practical concerns are and how the correct application of policy 1.6 might affect the outcome.

[39] As far as issue 3 is concerned I should decline to make any ruling on that at this stage: it would be premature to do so in the absence of evidence.



J R Jackson
Environment Judge



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QUEENSTOWN LAKES DISTRICT COUNCIL

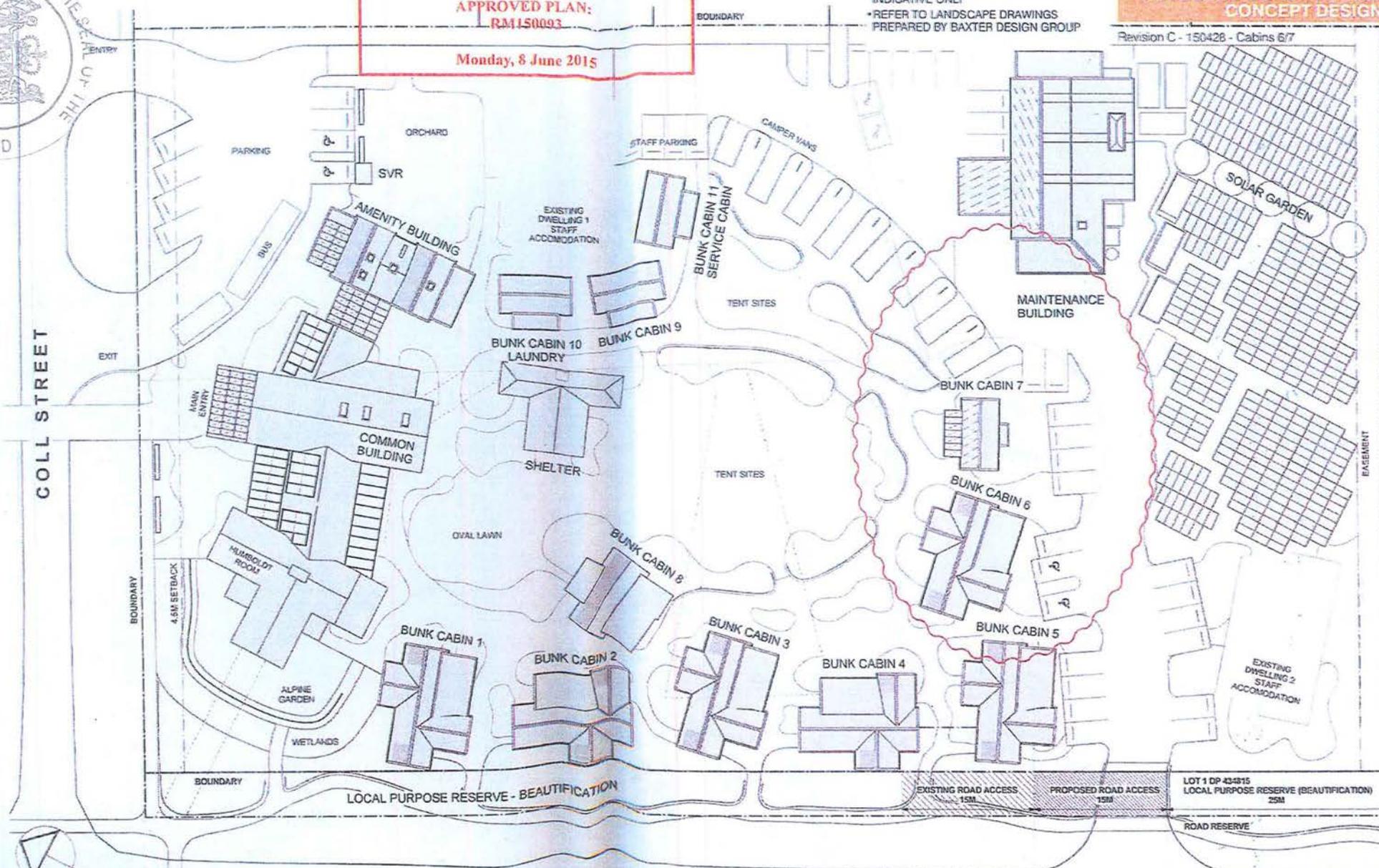
APPROVED PLAN:
RM150093

Monday, 8 June 2015

• LANDSCAPING SHOWN IS
INDICATIVE ONLY
• REFER TO LANDSCAPE DRAWINGS
PREPARED BY BAXTER DESIGN GROUP

RESOURCE CONSENT - RC2
CONCEPT DESIGN

Revision C - 150428 - Cabins 6/7



Scale: 1:400 at A3, 1:200 at A1
0 4 8 12 16 20m

MASON & WALES
ARCHITECTS

CAMP GLENORCHY • NEW ZEALAND

CAD ROOF PLAN
BULK AND LOCATION

2.10C
28 APRIL 2015
Project No. 5595 RC2

"A"