

**BEFORE THE COMMISSIONERS APPOINTED BY
THE QUEENSTOWN LAKES DISTRICT COUNCIL**

Submitter 31021

IN THE MATTER of Queenstown Lakes District
Council Proposed District Plan
Stage 3

IN THE MATTER **RURAL VISITOR ZONE**

**CORBRIDGE ESTATE LIMITED
PARTNERSHIP**

Submitter

OPENING SUBMISSIONS OF COUNSEL

**GALLAWAY COOK ALLAN
LAWYERS
DUNEDIN**

Solicitor on record: Bridget Irving
Solicitor to contact: Derek McLachlan
P O Box 143, Dunedin 9054
Ph: (03) 477 7312
Fax: (03) 477 5564
Email: bridget.irving@gallawaycookallan.co.nz
Email: derek.mclachlan@gallawaycookallan.co.nz

OPENING SUBMISSIONS OF COUNSEL

May it please the Commissioners:

1. Corbridge Estate Limited Partnership have sought to have their land at 707 Wanaka-Luggate Highway rezoned from Rural to Rural Visitor Zone (RVZ).
2. The site comprises 322ha of land that is currently utilised for predominantly pastoral land use and an existing event venue within the woolshed. The site is also subject to an existing consent to subdivide it into 35 rural allotments with a balance lot and communal activity area at the water reservoir. As stated in the evidence of Mr Watkins, this consent will be exercised if this rezoning is not successful.¹ The evidence of Mr Curley provides a detailed description of the site, its surroundings and consent history.²
3. The proposed RVZ for the Corbridge site is supported by a bespoke suite of proposed provisions and a structure plan that identifies the areas of the site available for development and those that are to be retained as either pure open space or open golf course areas. The open space areas have been identified to maintain landscape character and maintain and enhance visual amenity, whilst development is to be concentrated in the central areas of the site where effects can be internalised. This is set out in greater detail by Mr Espie³.
4. The proposed rules enable establishment of the Golf Course, a range of visitor accommodation offerings (including 35 units available for residential activity) and an area for worker accommodation. The proposed layout has taken account of surrounding activities including the Wanaka Airport and the State Highway by locating more sensitive activities away from them to manage potential reverse sensitivity risks⁴. Overall the provisions proposed support the development of an integrated resort style development that capitalises on the rural

¹ Brief of Evidence of Jason Gregory Watkins at [5].

² Brief of Evidence of Daniel Michael Curley at [7]-[35].

³ Brief of Benjamin Espie (Landscape Architect) at [5.6]-[5.7]

⁴ Refer Brief of Evidence of Michael Smith

qualities of the site, gives access to the wider rural landscapes surrounding the site and will generate significant economic benefits for the Upper Clutha area.

Questions of Scope

5. I understand that there is no contention regarding the ability for Corbridge to seek to have this site rezoned RVZ⁵. Given that I do not propose to address that question in further detail. If the Commission seek a more detailed analysis on that point I refer to Appendix 4 of the Corbridge Original Submission which addressed this point further.
6. The next question regarding scope that I wish to address is the scope for the revised suite of provisions promoted on behalf of Corbridge through evidence.
7. Generally I agree with the position set out by Ms Scott at paragraph 4.4 of her opening submissions, that scope for relief exists between the scope of the existing rural zone through to the scope of the relief sought in submissions on the proposed RVZ.
8. This is particularly relevant in relation to the proposed treatment of residential activities within Corbridge. During week one of the hearing Ms Scott submitted to you that there is no scope for residential activities to be permitted within the Corbridge RVZ. I respectfully disagree.
9. There are two components of 'residential activity' that Corbridge seek to enable through the provisions proposed by Mr Curley.
 - a. Residential Activity within up to 35 units within AA1 (Fairway Visitor Accommodation Activity Area).
 - b. Residential Activity for onsite construction and staff accommodation within AA5 (Worker Accommodation Activity Area).

⁵ Refer Opening Submission of Counsel for QLDC at [4.5] and [6.2]-[6.5]

10. It is submitted that the scope for permitting residential activity within up to 35 of the Fairway Accommodation units is drawn from the fact that under Rural Zone rule 21.4.5 a residential unit can be established as a permitted activity on any building platform identified via resource consent⁶. The permitted activity proposed in Rule 46.6.7 is then supported by Rule 46.7.2 which makes it a non-complying activity for residential activity to be enabled within more than 35 of the accommodation units.
11. In relation to the residential activity associated with the worker village scope is drawn from the notified RVZ provisions. In particular Rule 46.4.3 which permits commercial recreational activities and onsite staff accommodation. Within the proposed Corbridge rules the permitted residential activities within area AA5 (worker accommodation) relates only to on-site staff for both construction and operation of the development. It is submitted that this is within the ambit of the notified zone provisions (albeit expressed in slightly different terms). Once again this is supported by other provisions in the proposed suite. Namely Rule 46.7.19 which limits the number of worker accommodation units to 100, and Rule 46.6.25 which would make any application to accommodate off-site workers a non-complying activity.
12. In my submission these frameworks create a higher degree of certainty and control over residential activity than the RDA framework proposed in the original submission and both fall within scope available.
13. My final submission in relation to scope is in response to discussion that took place between the Commission and Ms Scott regarding scope to determine an alternative zone for the site. I agree with Ms Scott that the answer to that question is a 'qualified yes'. As with the scope for proposed rules your scope regarding the zoning of the Corbridge site sits between the existing zoning and proposed zone

⁶ I believe that Ms Scott will have referred to Rule 21.4.9 which classifies the use of land or buildings for residential activity as a discretionary activity, except as provided in any other rule.

with changes requested via submissions. In my submission it is within the ambit of that relief to decide that a 'standalone' zone is appropriate for the site. The only caveat on that is that the alternative zone provisions must fall within the bounds of the scope available as I set out above.

Existing Environment

14. In my submission the 'existing environment' is a relevant consideration in this case. It provides a point of comparison to assess what outcome is the most appropriate solution for the site and effectively implements the higher order provisions. As discussed in the Evidence of Mr Curley there are a range of existing consents on the site including:

- a. Consent to subdivide the site into 35 Rural Living allotments with community hub and visitor accommodation in proximity to the lake, including.
- b. Operation of the function venue within the existing woolshed.

15. The implementation of these consents will see the modified rural character of the site retained along with the establishment of the rural living activity, associated community hub and the commercial activity associated with the events venue. It is the outcome that is likely to result if the site remains zoned as Rural.

16. In terms of the strategic provisions within the PDP this option does not, in my submission support the objectives regarding the prosperous and resilient economy, in particular 3.2.1.1, 3.2.1.6, 3.2.1.8 or strategic policy 3.3.1A.

What is the RVZ for?

17. In my submission the RVZ is a tool to implement the strategic provisions. In particular those provisions that seek to achieve a prosperous and resilient economy. The policies that support Objective 3.2.1 seek to ensure that implementation methods in the

plan (primarily zones) provide for the visitor industry, such as Policy 3.3.1A.

18. Other strategic provisions place parameters or bottom lines around this by seeking to retain the District's distinctive landscapes, for example SO3.2.5 and 3.2.5.2. This is also evident in the drafting of SP3.3.1A and 3.3.25.
19. It is submitted that in order for these provisions to be implemented it is necessary for commercial recreation and tourism related activities to be provided for in Rural areas. Policy 6.3.1.3 contemplates the provision of a separate regulatory regime for doing this (as opposed to the Rural Zone).
20. Unfortunately, the notified provisions do not fully implement the strategic provisions as they do not adequately deal with RCL's. It appears from the drafting of some of the provisions that at one time it was expected to apply to both outstanding landscapes and RCL's. This is due to the language of the likes of 42.2.1.2 and 46.2.2 which both speak of landscape character and visual amenity values being maintained or enhanced.
21. Regardless, the notified RVZ clearly does not fully implement SP3.3.1A, which also anticipates visitor activities being provided for in RCL's. In my submission this leaves a gap in the implementation of the SO's that must be filled either by:
 - a. Amending the RVZ chapter to support development within RCL's; or
 - b. Implementing an alternative RVZ framework specifically applicable to RCL's.
22. With respect to provision for residential activity, it is not clear why the RVZ purpose has sought to exclude the establishment of residential activity within RVZ's. Particularly given that 'rural living' as defined by clause 3.1B.7 is an inclusive definition – The definition does not

require 'rural living' to be excluded from all zones other than the 'rural living zones'.

23. SP3.3.24 specifies the same tests with respect to effects of rural living on landscapes as SP3.3.1A. Therefore there does not appear to any reason for excluding it from the RVZ zone entirely. The section 32 report reveals a concern about potential for unrestricted residential development within RVZ's under the ODP framework. As I discuss below in relation to 'remoteness', exclusion of residential activity on this basis would appear to arise from a reverse engineering of the RVZ to fit existing locations. Rather than considering how the zone should be configured to implement the objectives and policies of the PDP.
24. It is submitted that the evidence presented by Corbridge demonstrates that provision for some (limited) residential activity supports the establishment and operation of visitor activities and ultimately better implements the SO's.⁷
25. As the SO's currently stand there is no provision that specifically addresses resorts. It is submitted that a resort is simply a form of delivery for commercial recreation and tourism related activities expected by SP3.3.1A. Whether Corbridge is considered to be a 'resort' is not determinative of the appropriateness of the RVZ in relation to the site, particularly given it would be a 'greenfield' RVZ.

What kind of development is Corbridge?

26. Whether Corbridge falls within any of the defined terms in the PDP is a question of fact to be determined on the basis of the evidence.

Resort

27. Resort is defined within the PDP as follows:

“Means an integrated and planned development involving low average density of residential development (as a proportion of the developed area) principally providing temporary visitor

⁷ This appears to have been recognized by provision for onsite accommodation, but equally applies to establishment of new visitor facilities as discussed in the evidence of Mr Brandenburg at [9(f)].

accommodation and forming part of an overall development focused on onsite visitor activities.”

28. In my submission the Corbridge proposal falls comfortably within the definition of ‘resort’. The proposed structure plan and associated rule framework represents an integrated and planned approach to development.
29. The overall site is some 322ha, of which only 19.5 ha can accommodate any form of residential development (that being 6.5ha of Fairway Visitor Accommodation Area (the ‘proportion’ of the 24ha area that could be used for the proposed 35 residential units) and 13ha of worker accommodation (which is limited to 100 units for onsite workers without further consent)). This equates to approximately 6% of the site being available for residential development⁸ (or approximately 23% of the area identified for the activity areas that enable buildings).
30. The significant majority of the development enabled by the proposed rules is for visitor accommodation and ancillary activities (covering 63.3ha of the site). The balance of the site is utilised for onsite visitor activities (principally golf) and other passive outdoor recreation activities within the open space areas.
31. Ultimately if you accept that this proposal falls within the definition of Resort, it is excluded from the definition of Urban Development which means further consideration of the proposal against that definition is not required.

Urban Development

32. Notwithstanding the above, I wish to discuss the definition of Urban Development and whether the Corbridge proposal falls within it. Urban Development is defined within the PDP as follows:

“Means development which is not of a rural character and is differentiated from rural development by its scale, intensity, visual

⁸ Please note this analysis does not take account of the maximum building size control proposed for AA1 and the maximum building size and maximum building coverage control for AA5 which would have the effect of significantly reducing the actual amount of built form within these areas.

character and the dominance of built structures. Urban development may also be characterised by a reliance on reticulated services such as water supply, wastewater and stormwater and by its cumulative generation of traffic. For the avoidance of doubt, a resort development in an otherwise rural area does not constitute urban development.”

33. As I have said whether the proposal falls within a definition is a question of fact. In that regard the following evidence is relevant.
- a. Mr Espie discusses this issue at paragraph 6.7 of his evidence ultimately concluding that *“the proposed relief would not significantly endanger rural character in a setting of this sort. Nodes of visitor activity can sit comfortably within rural landscapes.”* Mr Espie sets out his reasons for this in the following 4 bullet points.
 - b. In questions from the Commissioners Mr Jones acknowledged that
 - i. Golf Courses are often in rural environments and in some cases will enhance the qualities and appreciation of the environment and opportunities to enjoy it⁹, particularly if they are to occupy land that is already highly modified (as is the case here).
 - ii. The type of development proposed by Corbridge is not unusual in rural environments.¹⁰
 - iii. Mr Jones identifies in his second rebuttal two steps that could be taken to appease his concerns in relation to scale and intensity.¹¹

34. In my submission the evidence demonstrates that the type of development proposed by Corbridge is of a rural character. The key residual question is at what point might it ‘tip’ over in to being urban.

⁹ Recording 02-07-2020- recording 2 from 22 minutes.

¹⁰ Second Rebuttal Evidence of Matthew Stuart Bentley Jones at [4.15]

¹¹ Ibid at [4.29]

35. In my submission the definition gives you a clear steer on the factors that will be relevant in determining this. That being the:

- a. Scale
- b. Intensity
- c. Visual character
- d. Dominance of the built structures.
- e. Reliance on reticulated services/vehicle generation.

36. With respect to these aspects it is my submission that you must consider them with reference to the scale of the Corbridge site itself, the ability of the site to absorb the proposed development in a manner that maintains visual character surrounding the site and avoids built form becoming the dominant feature. In terms of the development's intensity I submit you need to consider the development density that is enabled within the site as discussed in paragraphs 27 and 28 above. In my submission the factors identified in the definition and set out in 33(a)-(d) above must be considered conjunctively.

37. With respect to services, as set out by Mr Botting it is not necessary for Corbridge to connect to council services. Therefore the development is not reliant on that so that factor is at worst neutral.

38. In my submission the evidence of Mr Espie and discussions with Mr Jones do not support a conclusion that this is 'urban development', irrespective of whether you agree that the proposal meets the definition of resort.

Interplay between the definitions of 'resort', 'urban development' and the Rural Visitor Zone

39. It is submitted that one of the key features that the plan appears to be using to differentiate between 'resort' and the RVZ is provision for residential activity. If a visitor accommodation/tourist activity

development does not include any residential activity it is more closely aligned with the RVZ zone.

40. However, this also means the visitor development is not a 'resort' and as such may be 'urban development'. It all becomes rather circular.

41. The only clear point is that if a development is a 'resort' it is not 'urban development'.

What does this mean for zoning the Corbridge site RVZ?

42. There is some significance in a determination that the proposal is not 'urban development' given some of the policy direction in chapter 6.¹² However, I do not consider that a finding that the Corbridge proposal falls within the definition of 'resort' as having any significant bearing on whether the site is an appropriate site for RVZ.

43. In my view there is considerable overlap between what activities appear to be contemplated by the definition of 'resort' and those activities that are sought to be enabled through the RVZ. It seems likely that many if not all of the RVZ's could equally be described as resorts (particularly given that the definition says nothing about scale) and would be considered as such if they were to establish on greenfield sites. The principal difference would appear to be the treatment of 'residential activity' in the RVZ rules. However, this distinction is effectively cosmetic given that the RVZ permits onsite staff accommodation (which is effectively residential activity).

The importance of 'remoteness'

44. Counsel has noted some of the questions and discussions during earlier parts of the hearing about the reference to remote locations in the RVZ purpose.

45. In my submission remoteness should not be considered a critical component of the RVZ Zone.

¹² Such as Policy 6.3.2.1 which seeks to avoid urban development to 'urban densities'.

46. It is perhaps trite to say that the RVZ must implement the PDP Objectives and Policies¹³. The objectives, policies and rules are not required by the Act to implement the zone purpose. In this instance section 32(3) applies and it is necessary to assess whether the RVZ is the most appropriate way of implementing the existing objectives in the PDP (specifically Chapter 3).
47. None of the higher order provisions refer to remote locations. Given that, it is not clear why the concept of remoteness has been introduced into the zone and how it serves the objectives and policies. Remoteness is not referred to in the RVZ objectives. It only finds its way into the provisions by virtue of Policy 46.2.1.4.
48. In my submission, the only explanation for the drafting of Policy 46.2.1.4 is that it is a consequence of the locations of the existing RVZ's. If that is the case it suggests that the RVZ has been reverse engineered and that there has been a failure to consider the need for and/or appropriateness of RVZ in other locations within the District in order to implement the objectives and policies in Chapter 3..
49. This approach is also likely to explain why the notified RVZ has not included provision for RVZ within RCL's. In my submission the SO's and SP's expect visitor activities to be provided for in both types of landscape classification. For example:
- a. SO 3.2.1.1 expects visitor industry places, facilities and services being realised across the District, not just in ONL's.
 - b. SO 3.2.1.8 expects diversification of land use in rural areas, not just in ONL's; and
 - c. SP 3.3.1A provides for commercial recreation and tourism related activities that enable people to access the district's landscapes, not just the ONL's.
50. If greater consideration was given to how the RVZ would implement these provisions it is submitted that the notified RVZ would have

¹³ Resource Management Act section 75 (1)

clearly provided for RVZ's within RCL's and the concept of 'remoteness' is unlikely to have appeared in the zone provisions.

Landscape Sensitivity analysis v. Structure Plan

51. In my submission use of landscape sensitivity analysis and a structure plan are not mutually exclusive, particularly for new RVZ's where there is little in the way of existing development. As has happened in the case of the proposed Corbridge site the structure plan is informed by the landscape sensitivity analysis. However, given the scale of the Corbridge site and the different types of activities proposed it was considered appropriate to manage development more deliberately than the notified provisions. In my submission the outcome is a more efficient and effective regime for the Corbridge site when compared with the notified provisions. The Structure Plan and associated rules provide a higher degree of certainty which is considered appropriate for a new RVZ site.

52. The approach in the notified provisions is perhaps appropriate for the notified RVZ's which are all existing.

53. In Mr Jones' second rebuttal evidence he identifies some areas of the site which he considers are of High-Moderate Landscape Sensitivity and he recommends that development in those areas needs to be carefully managed¹⁴. Corbridge have acknowledged this evidence and Mr Espie and Mr Curley will table a revised landscape sensitivity map and suite of provisions that respond to those suggested changes.

54. It is submitted that the changes will serve to demonstrate how the landscape sensitivity and structure plan framework dovetail together.

Provision of infrastructure

55. It is not clear from Mr Powell's evidence why he states that the proposed development within Corbridge would need to connect to Council services. As discussed in the evidence of Mr Botting, there

¹⁴ Discussed also in the Second Rebuttal Evidence of Emily Suzanne Grace at [4.4]

are viable options available for the site to self-cater for services. Indeed, self-catering for services is not without precedent in QLDC.

56. It is hardly surprising that capacity for the proposed development is not currently available within the Council's network, given the proposed zoning is new. Even if that were not the case, the lack of capacity within the existing network is not an insurmountable barrier and any costs associated with such upgrades would either have to be paid for by the developer directly, or fully recoverable through development contributions.
57. The fact that such upgrades are not currently identified within the Council's LTP is also not fatal. Long term plans are reviewed on a triennial basis which would provide a number of opportunities (if desirable) to include expenditure within Council's planning (subject to my submission above that any such costs would be recoverable from the developer).
58. Finally I note that the RVZ policy framework does not stipulate connection to Council infrastructure. Policy 46.2.2.6 seeks to ensure that a development can be appropriately serviced. It leaves options open as to how this can be achieved.
59. The only strategic objective of relevance is 3.2.1.9¹⁵. Nothing in the evidence of Mr Powell demonstrates that this objective cannot be achieved. All his evidence demonstrates is that Council have not turned their mind to how this particular site could be serviced (and in light of the Evidence of Mr Botting it may never need to).
60. In my submission the fact that QLDC do not currently have Council services available to support the proposed development is not a determinative factor in assessing whether the proposed RVZ is appropriate for the Corbridge site.

What if you take the view Corbridge is too big?

¹⁵ It is noted that SO 3.2.2 does not apply as this development is not Urban Development.

61. Mr Jones in his evidence identified parts of the Corbridge site that he thought were too sensitive to enable the level of development proposed by Corbridge. In Mr Jones's opinion there were 3 areas of moderate-high sensitivity within the Corbridge site¹⁶ and the development within these areas enabled by the structure plan may erode landscape character and/or visual amenity if not managed carefully.

62. Mr Espie and Mr Curley will further address the matters raised in the Rebuttal Evidence of Mr Jones. However, if the Commission conclude that elements of what is proposed will affect landscape character and visual amenity to an unacceptable degree I submit it is open to you to partially accept the Corbridge submission and either:

- a. Remove the relevant activity areas, and
 - i. Identify them as open space/golf course (noting Mr Jones and Mr Espie's evidence that golf courses are not out of character in the Rural Environment); or
 - ii. Have them revert to Rural Zone.

63. In my submission identifying such areas as open space /golf course is likely to be the more appropriate outcome as it would better support the provision of visitor activities within the site.

64. The same submission applies if the Commission concludes that any activity provided for within the proposed Corbridge suite did not implement the relevant objectives and policies.

Signed: 

B Irving

Counsel for Corbridge Estate Limited Partnership

¹⁶ Second Rebuttal Evidence of Matthew Stuart Bentley Jones at [4.9], [4.19], [4.24],

Date: 30 July 2020