

PLAN CHANGE 22
Visitor Accommodation
Definition

Section 32 Evaluation

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Queenstown Lakes District Council

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1.0 Executive Summary

The purpose of this report is to address the issues surrounding the current definition of “Visitor Accommodation” in the Queenstown Lakes Partially Operative District Plan (“the Plan”) specifically in regard to the letting of individually owned residential units for a limited number of days per year while the owners are away on holiday.

Under the current provisions of the District Plan resource consent is required for any person(s) who wishes to let their residential unit on a short term basis, even if just for a couple of days per year. This is problematic for a variety of reasons which are discussed in this report. It is not considered that the current system represents sustainable resource management and given the importance of the visitor sector to the district, it is believed that the issue requires attention.

This report evaluates a number of options to resolve this “consenting dilemma” and arrives at the conclusion that the most appropriate option is to amend the visitor accommodation definition to allow for residential units to be let for a limited number of days per year as a permitted activity.

This Plan Change has considered the framework and legislation behind making a change to a District Plan, and applied the provisions of section 32 in the preceding analysis. It is considered that this Plan Change has met the requirements set out in section 32 and in doing so also achieves the purpose of the Act and therefore can be adopted.

2.0 Introduction

2.1 Purpose of Report

This report outlines Proposed Plan Change 22 to the Queenstown Lakes District Plan, being the definition of **Visitor Accommodation**. When proposing to undertake any change to the District Plan, Council is required to carry out an evaluation of alternative methods to establish the best and most appropriate course of action. This requirement is prescribed by section 32 of the Resource Management Act 1991 (the Act) and is commonly referred to as a section 32 report or evaluation. It is effectively an evaluation of the costs and benefits of different options. Further explanation of this analysis is provided in the following pages.

This report will outline the background to and reasons for the Plan Change, and progress on the issue to date, including a summary of the public consultation so far. Section 32 of the Act is also introduced in more detail, before outlining the amendments to the District Plan proposed by this plan change, and final conclusions.

2.2 Background

Visitor accommodation is a topical issue in the district as it is a key part of the local economy. Council has earmarked this issue as a priority project to address in terms of the District Plan.

The Residential Issues Study undertaken by Queenstown Lakes District Council ("QLDC") in November 2004 identified the need for a review of the definition of visitor accommodation in the Queenstown Lakes Partially Operative District Plan (hereafter referred to as "the District Plan"). One of the key issues arising from this study was that, as it is currently defined, visitor accommodation includes individual private homes, with no dispensation for those homeowners who let out their homes for a limited number of days annually whilst on holiday. Under the current definition, such homeowners are required to apply for resource consent to do so. The Issues and Options Paper produced by Vivian+Espie Limited earlier this year termed this problem the "consenting dilemma."

The aim for this aspect of the wider visitor accommodation debate (as set out in QLDC Strategy Committee Meeting Report 11 October 2006) is:

To resolve the consenting dilemma currently existing whereby a homeowner cannot advertise and rent their house on a short-term basis for even just a few days per year, while away on holiday, without having resource consent for visitor accommodation.

This plan change is being undertaken in conjunction with Plan Change 23 (Visitor Accommodation and Residential Amenity). Plan Change 23 investigates the broader issue of locating visitor accommodation units and defining the role of visitor accommodation in the residential areas, the High Density Zone in particular. An Issues and Options report was prepared for that plan change in September 2006 with public comment closing on 30 November 2006.

2.3 Reasons for the Plan Change

As already mentioned, under the current provisions of the District Plan resource consent is required for any person(s) who wishes to let their residential unit (which includes houses or holiday homes) on a short term basis, even if just for a couple of days per year. This is problematic for a variety of reasons which are discussed in this report. It is considered that the current system does not represent sustainable resource management and given the importance of the visitor sector to the district, it is believed that the issue requires attention.

The current District Plan objective and policy supporting this issue are provided below.

4.9.3 Objectives and Policies

Objective 5 - Visitor Accommodation Activities

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

Policy:

5.1 To manage visitor accommodation to avoid any adverse effects on the environment.

(PODP June 2007, p 4-55)

The Council has initiated this process to investigate whether the perceived “consenting dilemma” could be addressed via a change to the District Plan. The aforementioned Issues and Options Paper recommended that the most appropriate method for doing so would be to alter the current

definition of "Visitor Accommodation". The Council has accepted this recommendation in so far as the definition is to be amended, however the proposed amendments themselves have been further reworked from the version in the Issues and Options Paper.

This Plan Change seeks to outline these amendments in detail, with this report building on the Issues and Options Paper and providing the basis for analysis and discussion with respect to the various avenues for undertaking such a Plan Change.

It is stressed that the scope of this plan change is purposefully limited to enabling the letting of residential dwellings to visitors while the owners are away on holiday. This Plan Change does not include consideration of wider issues associated with visitor accommodation in the district. Many of these broader issues are being looked at in Proposed Plan Change 23.

3.0 Exploration of Issues and Options

3.1 Issues

The need for a review of the definition for visitor accommodation in the District Plan was identified following the Residential Issues Study undertaken in November 2004. While this study focused primarily on residential issues, including the relationship between the effects of visitor accommodation activities in low density residential zones, subsequent discussions on this subject have identified a number of administrative issues with visitor accommodation activities in the District. These issues are summarised as follows:

1. The existence of "mixed use" establishments (incorporating both residential and visitor accommodation activities) which provide visitor accommodation services but do not have the necessary resource consent/s.
2. The existence of "mixed use" establishments which provide visitor accommodation services that are not classified in accordance with the appropriate rating categorisation.
3. The Building Act 1991 imposes different building standards for visitor accommodation compared with residential activities, and many mixed use establishments initially constructed for residential purposes do not comply with these standards.
4. Development contributions for visitor accommodation activities are higher as a result of the increased pressure visitor accommodation activities place on existing infrastructure. Mixed use establishments which have been constructed primarily as residential developments have not been levied the appropriate level of contribution in accordance with the actual visitor accommodation services provided.
5. The current definition of visitor accommodation expressly includes individually owned residential units without providing any relief for homeowners who let out their homes for a limited number of days per year while away on holiday.

Subsequently, a substantial amount of consultation was entered into by Council with industry professionals (real estate / property management companies) and individual homeowners to raise

public awareness of these issues and to clarify the implications of using residential properties for visitor accommodation without the necessary consents.

Since March 2005, this issue has effectively been suspended pending the initiation of a plan change to consider these issues in more detail. This report relates specifically to issue number 5 identified above, however it is acknowledged that the new definition may have flow-on effects to issues 1 – 4.

It is emphasised that the scope of this plan change is intentionally limited to the issue of enabling residential homes to be let for a limited period each year while the owner is away on holiday without being “caught” by the wider issues relating to visitor accommodation and the consequential issues relating to compliance and enforcement which are discussed further below.

It is acknowledged that both Hill Young Cooper Ltd and David Collins were asked to comment on the issue of the definition of visitor accommodation as part of their respective reviews of the Residential Issues Study. Both of these reviews noted problems with the current definition and suggested that there was a strong case to consider changes to this definition:

- David Collins identified that the housing stock in the district is a significant resource and thus there would have to be good reasons to prevent owners making the best use of that resource in accordance with sections 5 - the overall enabling purpose of the RMA, and section 7(b) - the efficient use and development of resources.
- Hill Young Cooper Ltd noted that on the face of it, it is unreasonable to require consent from all home owners to rent out their normal home for a few weeks each year. Such rentals provide a source of income for households, while also helping the local economy by providing for additional accommodation options. Such an activity could be described as a temporary activity, and provided it is intermittent over a year, could not be said to be undermining residential cohesion. Just as the definition of visitor accommodation excludes homestays, the definition could exclude short term rental of permanent residences, for example allowing rental of up to a total of 6 weeks per year for the purposes of visitor accommodation.

For completeness, we note the following related projects currently underway by Council:

1. Plan Changes 23 and (to a lesser extent) 24 in relation to visitor accommodation and affordable housing.
2. The issue of collecting information and ensuring compliance with the visitor accommodation rules. It is understood that Council are currently considering the following options in relation to this issue:
 - o Annual research undertaken by Council to compile an information base specifying all visitor accommodation providers;
 - o The imposition of consent conditions to assist with monitoring;
 - o The formulation of a bylaw / licence system for visitor accommodation operators.

3.2 Definitions

The District Plan groups activities together according to their common characteristics based on the premise that there is no need to distinguish between activities which result in similar environmental effects (Page 1 – 3 of the Plan). Thus, we can assume that the definitions provided in the plan have been formulated in accordance with the environmental effects that are considered to arise from those activities. The following will consider the relevant definitions in the plan and the effects based rationale which underlies those definitions.

The Plan provides the following definition of "Visitor Accommodation":

"1. Means the use of land/or buildings for short-term, fee paying, living accommodation where the length of stay for any visitor is not greater than 3 months at any time. This definition does not exclude the letting of individually owned residential units.

2. Includes such accommodation as camping grounds, motor park, hotels, motels, boarding houses, guest houses, backpackers' accommodation, bunkhouses, tourist houses and lodges.

3. Includes the letting of individually-owned residential units, in particular homestays for more than four guests but does not include homestay accommodation for up to four guests.

4. Includes some centralised services or facilities, such as food preparation, dining and sanitary facilities, conference, bar and recreational facilities if such facilities are associated with visitor accommodation within the sense of (1)-(3) above."

In general, this definition operates as follows:

1. The use of land or buildings for living accommodation in exchange for a rental / fee for as few as one visitor night (to a maximum of three months) will trigger the need for visitor accommodation resource consent.
2. The only exception to this definition is homestay activities for four guests or less. (NB: Homestay activities are slightly different in nature to visitor accommodation. Such activities relate to the situation where both the occupants of a residential unit and paying guests reside within a residential unit at the same time.)
3. The definition specifically **includes** the letting of individually owned residential units.
4. The definition also includes a number of specified services / facilities that are generally associated with visitor accommodation activities.
4. The definition specifies a number of visitor accommodation type operations which are specifically included in the definition.
5. In general, the definition is inclusive and not exhaustive, thus there may be other visitor accommodation activities and services that are not specifically identified in the definition but come within the purview of "visitor accommodation" as defined.

The Plan provides the following definition of "homestay":

Means a residential activity where an occupied residential unit is also used by paying guests.

The Plan provides the following definition of “residential activity”:

Means the use of land and buildings by people for the purpose of permanent living accommodation, including all associated accessory buildings, recreational activities and the keeping of domestic livestock. For the purposes of this definition, residential activity shall include emergency, refuge accommodation and the non-commercial use of holiday homes. Excludes visitor accommodation.

In light of these definitions, the following general conclusions can be drawn in relation to the nature of visitor accommodation activities anticipated by the Plan:

1. As visitor accommodation is defined as involving the use of land and buildings for “fee paying” accommodation, visitor accommodation activities are by definition commercial activities (although it is noted that such activities are specifically excluded from the definition of commercial activities in the Plan). This is supported by the definition of “residential activity” which defines the non-commercial use of holiday homes as a “residential activity”. On that basis, the District Plan suggests that there is a distinction or difference in effects between visitor accommodation and residential activities where the payment of a fee is involved.
2. It is noted that both residential activities and visitor accommodation activities involve the use of land and buildings for “living accommodation”. The primary difference being that residential activities relate to “permanent living accommodation” while visitor accommodation is “short term” living accommodation - short term being a period of three months or less.
3. Primarily, these definitions indicate that both residential activities and visitor accommodation activities are consistent to the extent that they both involve the provision of living accommodation however, they differ in relation to the duration and commercial nature of that living accommodation.

4. Homestay accommodation is defined separately and comes within the definition of visitor accommodation only when the number of guests exceeds four persons. Homestay and visitor accommodation activities are similar in that both involve a commercial element – the payment of a fee. However, in the case of a homestay, the occupier of the residential unit (presumably the permanent occupier) must remain in residence in conjunction with the fee paying guests thus homestay type visitor accommodation effectively involves only part of the property being used for visitor accommodation and part remaining residential. When the four person threshold is exceeded, the definition suggests that the scale and nature of the homestay activity moves beyond what is primarily the residential use of a site to the use of the site being primarily visitor accommodation.

3.3 Rules

The definition of visitor accommodation provided in the Plan is only relevant to the extent that the activity is controlled via other plan provisions either as an activity in itself requiring resource consent or where the physical nature of a visitor accommodation development requires certain design standards – for example the provision of a bus park.

The District Plan currently provides for specific rules relating to visitor accommodation activities in all zones. Thus there are no zones or areas in the District where visitor accommodation can be carried out as a permitted activity without the need for resource consent.

3.4 Objectives and Policies

For the purposes of this discussion, only the District Wide objectives and policies have been considered to give an overall view of visitor accommodation activities as opposed to zone specific provisions. This is considered more useful and appropriate in this context where a change to a definition is being considered which will have district wide application.

In considering Urban Growth issues the Plan identifies a specific objective and associated policy for visitor accommodation. It provides as follows:

Objective 5 – Visitor Accommodation Activities

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

Policy:

5.1 To manage visitor accommodation to avoid any adverse effects on the environment.

Implementation Methods

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

(i) District Plan

(a) Provision for visitor accommodation sub-zones.

(b) Provisions controlling visitor accommodation activity.

Explanation and Principal Reasons for Adoption

The value of the visitor industry to the District is recognised and is a major factor in generating urban growth in terms of the demand it places on infrastructure, the need for housing and the extent of retail expenditure.

The Act requires the Council to ensure that the adverse effects of any such increase in visitor accommodation are avoided, remedied or mitigated.

This objective and policy clearly indicates the fundamental considerations which are to be taken into account when considering the management of visitor accommodation activities within the District – specifically that the provision of visitor accommodation is an integral part of the visitor industry and urban growth within the District; and this must be weighed against the demand that visitor accommodation activities place on infrastructure and services.

3.5 Financial Contributions

Part 15 of the District Plan includes rules, policies and objectives relating to Financial Contributions. Until this part of the Plan is made operative, Council is able to impose financial contributions pursuant to the Local Government Act 1974 under sections 407 and 409 of the RMA. These provisions are designed to consider the non-fiscal impacts of the effects of development through the RMA / District Plan process. Financial contributions can be imposed on developments to mitigate any adverse effects of the activity on the environment. In the case of visitor accommodation developments, such contributions could be imposed to mitigate against any adverse effect of the development on existing infrastructure.

3.6 Compliance

In terms of compliance and enforcement mechanisms, the use of residential units for visitor accommodation is problematic. The visitor accommodation activity relates to the use of an existing residential building - no physical change to the building itself is required to accommodate the activity. As discussed above, the distinction between residential and visitor use as defined in the Plan relates to the length of stay of the occupants and the payment of a fee, these elements of the activity are not outwardly obvious and therefore difficult to monitor.

Monitoring / compliance issues are endemic in the current visitor accommodation regime and not limited to the issue that is being discussed here in relation to the "consenting dilemma" for the letting of individually owned residential units on a short term basis. However, it is noted that if an exemption is created where the letting of individually owned residential units can occur as a permitted activity for a limited number of days per year, compliance issues may become even more complicated as in order to establish non-compliance with the visitor accommodation regime, Council officers will have to establish firstly that the visitor accommodation activity is occurring and secondly, that it is occurring for more than once for 28 days or less per year. Conversely, it can also be said that the proposed change to the definition would allow the monitoring effort to focus on visitor accommodation activities that do not fall within a permitted activity exemption being those activities which are of more concern in terms of compliance in any case.

It is understood that Council is currently considering various mechanisms to deal with monitoring / compliance issues separately in relation to the visitor accommodation regime as a whole, thus it is

considered that the issue of monitoring / compliance need not be addressed as part of this prospective plan change.

3.7 Regime Summary

In summary, the visitor accommodation regime promulgated by the current definition of visitor accommodation in the Plan has the following characteristics:

- The current regime specifically includes the letting of individually owned residential units used for visitor accommodation purposes.
- As defined, visitor accommodation and residential activities differ primarily on the basis that visitor accommodation requires the payment of a fee and people only partake in visitor accommodation activities for limited or short periods of time.
- Visitor accommodation is by definition a commercial activity. No distinction is made between visitor accommodation activities which primarily operate as a business or small scale visitor accommodation activities which are not part of a larger business or commercial operation.
- The Plan recognises that visitor accommodation activities and residential activities can occur simultaneously where the visitor accommodation component of the activity remains small in scale (in the case of homestay activities for four people or less), however, where visitor accommodation activities exceed this scale, resource consent for visitor accommodation is required.
- Visitor accommodation activities are an integral part of the visitor industry and accordingly the District's economy.
- Visitor accommodation activities place increased demands on infrastructure and services within the District.
- Visitor accommodation developments may cause adverse effects on infrastructure which (in theory) can be mitigated through the imposition of financial contributions on such

developments. (NB: Whilst Council does not impose such contributions through the District Plan, it does impose development contributions, collected under the Local Government Act).

- The current regime gives rise to compliance issues.

3.8 Ancillary Matters (outside of the District Plan / RMA)

In addition to the resource management considerations for visitor accommodation activities, the use of land for visitor accommodation purposes is also relevant to rating requirements and development contributions imposed under the Local Government Act 2002. As a preliminary point, it is noted that rating and development contribution issues technically fall outside of the resource management process and therefore carry little if any weight in considering a potential plan change. These matters are discussed here to ensure that this Paper addresses all relevant issues and provides an overall analysis of the implications of any potential changes to the existing visitor accommodation regime.

The rating categorisations provided in the Council's Long Term Community Plan differentiate rating levies on the basis of land use. The three relevant rating categorisations to this discussion are "Residential", "Accommodation" and "Mixed Use Apportioned". The respective definitions of these categories are as follows:

***Residential** – All rating units which are used exclusively for residential purposes, but excluding properties categorised as Primary Industry or Country Dwelling.*

***Accommodation** – All rating units used exclusively or principally for the accommodation of paying guests on a short term basis including hotels, motels, houses and flats used for such purposes, commercial time share units, managed apartments, bed and breakfast properties, motor camps and home stay properties; but excluding properties categorised pursuant to clause 11 (mixed use apportioned) or clause 5 (CBD Accommodation).*

Mixed Use Apportioned – All rating units which are used in part, but not exclusively, for residential purposes, and in part, but not principally for commercial or accommodation purposes.

The use of residential units for visitor accommodation purposes will fall within the “Mixed Use Apportioned” or “Accommodation” categories defined above depending on the extent of the visitor accommodation use of those premises. It is understood that the rates for “Mixed Use Apportioned” and “Accommodation” rated properties are significantly higher than for “Residential” properties.

The use of land for the purposes of rating categorisations is determined by the resource consents relating to that land. Thus where visitor accommodation consent has not been obtained by an existing residential (or other) development, the appropriate rating levy will not be applied. Clearly this results in other ratepayers bearing the cost of the additional demands placed on the District’s infrastructure and services as a result of that activity.

The corollary to the relationship between rating categorisations and resource consents is that the consequent change in rates – being higher for visitor accommodation activities than residential activities, acts as a disincentive for individual homeowners and mixed use accommodation complexes to apply for resource consent for visitor accommodation activities.

Similar issues arise in relation to development contributions levied under the Local Government Act 2002. As development contributions are generally triggered by the granting of resource consent, any potential changes to the definition of visitor accommodation, particularly changes which affect the need for resource consent for visitor accommodation activities, will have a consequential effect on the Council’s ability to levy such contributions for visitor accommodation activities. The result being that the cost arising from any additional demands placed on infrastructure by those activities will be recovered from other sources. It is noted however, that this matter falls outside of the RMA and therefore is not relevant to any potential plan change relating to the definition of visitor accommodation.

3.9 Options

Four options were explored and assessed to address the above issues in the Issues and Options Paper. These options were:

- (1) No change to the current definition of “visitor accommodation” thereby requiring the Council to exercise its discretion with enforcement measures where the visitor accommodation use occurs for a limited period per year while homeowners are away on holiday.
- (2) Initiate a plan change to alter the definition of visitor accommodation to allow for individually owned residential units to be rented out as a permitted activity for a limited period of time.
- (3) Initiate a plan change to alter the definition of visitor accommodation such that a new temporary visitor accommodation category is created which enables the letting of individually owned residential units for limited periods as a controlled activity.
- (4) The issue of a blanket consent by Council in accordance with the existing rules for all residential unit owners who wish to rent out their homes for a limited number of days per year.

3.10 Council Recommendation

The Issues and Options Paper recommended that the most appropriate means in which to sufficiently address the consenting dilemma which currently exists for visitor accommodation would be to:

Initiate a plan change to alter the definition of visitor accommodation to allow for individually owned residential units to be rented out as a permitted activity for a limited period of 28 days per year.

This was preferred for the following reasons:

- (a) The option resolves the consenting dilemma that currently exists whereby individual homeowners are not able to rent out their homes on a short term basis without triggering the requirement to obtain a resource consent.
- (b) The creation of a permitted activity exemption in the definition means that the letting of individually owned residential units for visitor accommodation purposes for 28 days per year (which is consistent with the statutory holiday period) can continue to occur with minimal, if any, compliance costs for the homeowner.

The Council has accepted the recommendation to amend the definition, with some reworking of the wording, to provide further certainty for the public and to ensure that enforcement is fair and reasonable.

In addition to the amended definition, it is proposed to add new performance standards to the District Plan to complement the change in definition. The purpose of the addition of performance standards is to ensure that residential amenity is preserved under a permitted regime. Should residential amenity be affected, then the Council has standards in the plan which enables it to intervene.

It is intended that this report will effectively build on the Issues and Options Paper and provide the basis for analysis and discussion with respect to the various avenues for achieving the desired outcome, by exploration and assessment of each of the stated options and proposed additional provisions introduced above.

4.0 Public Consultation

In addition to the study undertaken in 2004, there has also been public consultation carried out which is specific to this proposed Plan Change in particular. On 7 September 2006 a press release was announced and the aforementioned Issues and Options paper posted on Council's website. Public comment on this report closed on 29 September 2006 and a total of 54 responses were received – 9 in support and 44 in opposition to Council's preferred option to "initiate a plan change to alter the definition of visitor accommodation to allow for residential units to be rented out as a permitted activity for a limited period of 28 days per year."

It is noted that 9 holiday home owners in Wanaka out of 36 responses perceived that council was imposing a new rule, instead of putting forth options for resolving concerns regarding an existing rule. As a result, these comments are more appropriately addressed through the VA and Residential Amenity issues and options paper rather than the VA definition paper.

Comments from consultation suggest that any future options:

- Ensure that everyone who is benefiting from Queenstown and Wanaka tourism marketing efforts pay something towards that benefit;
- Set forth how they will be monitored and enforced;
- Ensure everyone plays by the same rules;
- Offer a different solution for Wanaka from Queenstown;
- Recognize that holiday home rentals are a very different market (people coming for 1-4 weeks) from people who stay in hotels/motels/serviced apartments (who come from one night to a few days);
- Collect information that is robust and can support/reject claims made by all;
- Discuss how residential amenity can be managed through means other than by the use and need for Resource Consent (e.g. noise standards, parking requirements);
- Acknowledge that residential properties and holiday homes used for short term VA wouldn't appear on the long term rental market; there has been little or no conversion of residential property to VA;

- Acknowledge that the people who are paying mixed use rates find that to be adequate and appropriate means to contribute to the council/community in exchange for commercial renting of their property, but that no further consent should be required.

Smaller group consultation has also been requested, namely with the Wanaka Concerned Citizens Group, REINZ, Queenstown Branch-Motel Association of New Zealand and a variety of homeowner and resident groups.

Specific comments are summarised as follows:

- Nine submitters (8 from Wanaka, 1 from Queenstown) had misunderstood the preferred option would impose a new requirement for consent, not understanding that the paper had proposed to remove this requirement. One submitter provided lengthy comment that the Issues and options paper was an inadequate Section 32 analysis- again misunderstanding that Council was soliciting early feedback before undertaking the cost of such an analysis. There seems to be a presumption that Council would only add requirements and hassles, not seek a way to remove or resolve them.
- The tone of the majority of the opposing comments highlighted the need for Council to rebuild trust with the community before any decision would be widely accepted.
- Ten responses did prefer a combination of options 3 and 4, which would still retain the current requirement that resource consent be issued for all visitor accommodation, but only if a simple, quick, fixed-price consent could be secured for holiday homes and primary residences occasionally used for VA.
- Twenty responses (16 from Wanaka, 4 from Queenstown) indicated that none of the options were acceptable - preferring instead that all references to holiday homes as a form of visitor accommodation be removed from the district plan. This was based on a view that there is no difference in environmental effects whether a home is occupied by its owner, a short-term tenant or a long term tenant.
- Two responses (both from Wanaka) did not support or oppose; one of these suggested that the holiday homes of Wanaka are a resource that should be maximised to grow local tourism, and asked Council to consider ways to encourage owners to let their homes on short term basis for some minimum period of each year (aka a “warm bed” requirement). The other

response were supportive of holiday homes being rented and felt that the mixed rates approach was working well, and that a resource consent requirement was unnecessary.

- Nine supporters (4 from Wanaka, 5 from Queenstown) thought that the proposed definition did resolve the issues stated in the paper, and were pleased that Council valued their efforts in complying with all requirements intended to set a high standard for commercial accommodation in the district.
- Four responses supported the status quo, that no change to the definition is needed. All four were from commercial operators in the Queenstown area, further suggesting the differences with the Wanaka views.

Fairness was another strong theme, which translated into the need to articulate how monitoring and enforcement would work under any future options put forth. A related theme was certainty - if resource consent is required; make it clear what the costs, timeframes, and assessment matters are. Further, there is a clear need to find solutions that respect the differences of Wanaka from Queenstown. Lastly, there seem to be as many comments desiring the quiet that results from the house next door being vacant for half the year, as those that long for a constant neighbour and see a vacant property as a problem.

In this public comment period, several requests were made for targeted consultation to occur with small interest groups. Council representatives and Vivian+Espie staff met with eight interest groups in October and November 2006 to further flesh out the issues. Meetings were held in Queenstown and Wanaka.

Additional meetings have been held with interest groups as new ideas and options have developed.

5.0 Statutory Framework

5.1 The Resource Management Act 1991

Plan Changes to a District Plan are prepared under a framework provided by the Resource Management Act 1991 (and subsequent amendments).

This Plan Change has been prepared as a means of achieving the purpose of the Resource Management Act (the Act), which is expressed in Section 5 as follows:

- “(1) The purpose of this Act is to promote the sustainable management of natural and physical resources*
- (2) In this Act, **sustainable management** means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while—*
 - (a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
 - (b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*
 - (c) Avoiding, remedying or mitigating any adverse effects of activities on the environment.”*

The purpose of the Act is achieved by providing for visitor accommodation needs of the district. It is predicted that Queenstown’s high visitor numbers will continue, and in order to ensure that the reasonably foreseeable needs of the Queenstown Community can be met, it is considered necessary that alternative visitor accommodation activities be enabled through the District Plan.

Section 6 of the Act sets lists matters of national importance in achieving the purpose of the Act. None of these matters of national importance are considered relevant to this Plan Change.

Section 7 of the Act lists matters of which the Council shall have particular regard to in achieving the purpose of the Act. Sections 7(b) and (c) are of particular relevance to this Plan Change:

- (b) *The efficient use and development of natural and physical resources. ...*
- (c) *The maintenance and enhancement of amenity values.*

Clause (b), the efficient use and development of natural and physical resources is of particular relevance to the intent of this Plan Change. The use of unoccupied dwellings while a homeowner is away on holiday represents the efficient use of natural and physical resources in meeting the future demands of visitors in Queenstown.

Clause (c), the maintenance and enhancement of amenity values is also of relevance in determining the level to which residential units should be used for visitor accommodation activities. The Act defines "amenity values" as:

"Means those natural and physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, cultural and recreational attributes."

It is important, in having regard to this matter, that permitted visitor accommodation activities maintain and enhance people appreciation of an areas pleasantness, aesthetic coherence, cultural and recreational attributes.

Section 31 of the Act sets out the functions of territorial authorities. This plan Change relates specifically to Council's functions under Section 31(a) and (b), which read:

- (a) *The establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district:*
- (b) *The control of any actual or potential effects of the use, development and protection of land .."*

Section 74 of the Act requires that the Plan Change be in accordance with the Council's functions under Section 31, the provisions of Part II, its duty under section 32 and any regulations or bylaws.

Section 32 of the Act sets out the Council's duty to assess alternatives, benefits and costs of a plan change. Section 32 is also a test of appropriateness of the proposed change. Furthermore, Section 32 necessitates that Council must be satisfied the plan change is necessary to achieve the purpose of the Act. Section 32 of the Act reads as follows:

"Consideration of alternatives, benefits, and costs

- (1) *In achieving the purpose of this Act, before a proposed plan, proposed policy statement, change, or variation is publicly notified, a national policy statement or New Zealand coastal policy statement is notified under section 48, or a regulation is made, an evaluation must be carried out by—*
 - (a) *the Minister, for a national policy statement or a national environmental standard; or*
 - (b) *the Minister of Conservation, for the New Zealand coastal policy statement; or*
 - (c) *the local authority, for a policy statement or a plan (except for plan changes that have been requested and the request accepted under clause 25(2)(b) of Part 2 of Schedule 1); or*
 - (d) *the person who made the request, for plan changes that have been requested and the request accepted under clause 25(2)(b) of Part 2 of the Schedule 1.*
- (2) *A further evaluation must also be made by –*
 - (a) *a local authority before making a decision under clause 10 or clause 29(4) of the Schedule 1; and*
 - (b) *the relevant Minister before issuing a national policy statement or New Zealand coastal policy statement.*
- (3) *An evaluation must examine -*
 - (a) *the extent to which each objective is the most appropriate way to achieve the purpose of this Act; and*
 - (b) *whether, having regard to their efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives.*
- (3A) *This subsection applies to a rule that imposes a greater prohibition or restriction on an activity to which a national environmental standard applies than any prohibition or restriction in the standard. The evaluation of such a rule must examine whether the prohibition or restriction it imposes is justified in the circumstances of the region or district.*
- (4) *For the purposes of the examinations referred to in subsections (3) and (3A)], an evaluation must take into account—*
 - (a) *the benefits and costs of policies, rules, or other methods; and*
 - (b) *the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods.*
- (5) *The person required to carry out an evaluation under subsection (1) must prepare a report summarising the evaluation and giving reasons for that evaluation.*
- (6) *The report must be available for public inspection at the same time as the document to which the report relates is publicly notified or the regulation is made."*

This report fulfils the requirements of Section 32 by providing an analysis of the various options to remedy the “consenting dilemma” (including an analysis of objectives, policies and rules) at a broad level.

5.2 Regional Policy Statement for Otago

Section 75 specifies the contents of District Plans, and in clause 3(c) specifies that the District Plan must give effect to any regional policy statement. The Regional Policy Statement (RPS) for Otago (14 September 1998) provides the regional policy framework for the Queenstown Lakes District, and is therefore of relevance to this Plan Change. Relevant parts of the RPS have been identified as follows:

“Objective 9.4.1

To promote the sustainable management of Otago’s built environment to:

- (a) Meet the present and reasonably foreseeable needs of Otago’s people and communities; and*
- (b) Provide for amenity values; and*
- (c) Conserve and enhance environmental and landscape quality; and ...*

Policy 9.4.3

To avoid, remedy or mitigate the adverse effects of Otago’s built environment on Otago’s natural and physical resources.

Policy 9.5.4

To minimise the adverse effects of urban development and settlement, including structures, on Otago’s environment through avoiding, remedying or mitigating:

- ...*
- (b) The creation of noise, vibration and dust; and ...*
- (d) Significant irreversible effects on:*
 - (i) Otago Community Values; or*
 - (ii) The creation of noise, vibration and dust; or ...*
 - (vi) Amenity Values; or ...”*

Policy 9.5.5

To maintain, and where practicable, enhance the quality of life for people and communities within Otago’s built environment through:

- (a) Promoting the identification and provision of a level of amenity which is acceptable to the community; and*
- (b) Avoiding, remedying or mitigating the adverse effects on community health and safety resulting from the use, development and protection of Otago’s natural and physical resources. ...”*

It is considered that the RPS is given effect through the District Wide Issues contained in Part 4 of the District Plan. A Plan Change to enable people to let their dwellings while away on holiday ensures that the amenity values of the site and surrounds are maintained to an acceptable level.

5.3 Kai Tahu Ki Otago Natural Resource Management Plan 2005

Section 74(2)(A) of the RM Act requires the District Council, when preparing a change to the district plan, to 'take into account' any relevant planning document recognised by an iwi authority and lodged with the territorial authority, to the extent that its contents has a bearing on resource management issues of the district.

None of the issues raised in the KTKO NRMP are of particular relevance to the intent of this Plan Change.

5.4 Historic Places Trust Register

Section 74(2)(b)(ia) requires that in preparing any change to the District Plan, the territorial authority should have regard to any relevant entry in the Historic Places Register. This Plan Change does not affect the status of any historic buildings under this register.

5.5 Long Term Community Plan

Section 74(2)(b) requires that in preparing any change to the District Plan, the territorial authority shall have regard to any management plans prepared under other Acts.

The Long Term Council Community Plan (LTCCP) has been prepared under the Local Government Act 2002, and outlines the community outcomes for the District.

These community outcomes have been derived from the community workshops held in all communities during 2002 and 2003. Each community plan is different and identifies slightly different desired outcomes, but by looking at the different plans strong and repeated signals were identified.

The Queenstown Lakes District Council community outcomes are as follows:

- 1. Sustainable growth management.*
- 2. Quality landscapes and natural environment and enhanced public access.*
- 3. A safe and healthy community that is strong, diverse and inclusive for people of all age groups and incomes.*
- 4. Effective and efficient infrastructure that meets the needs of growth.*
- 5. High quality urban environments respectful of the character of individual communities.*
- 6. A strong and diverse economy.*
- 7. Preservation and celebration of the district's local cultural heritage.*

The Community outcomes of most relevance to this plan change are 1, 3, 4, 5 and 6. The intent of this Plan Change is considered consistent with these community outcomes.

6.0 Section 32 Evaluation

6.1 Broad Alternatives

This section of the evaluation works through the general options for the consent dilemma. This meets the requirements of Section 32(3) and 32(4) of the Act, which read:

- (3) *An evaluation must examine -*
 - (a) *the extent to which each objective is the most appropriate way to achieve the purpose of this Act; and*
 - (b) *whether, having regard to their efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives.*
- (3A) *This subsection applies to a rule that imposes a greater prohibition or restriction on an activity to which a national environmental standard applies than any prohibition or restriction in the standard. The evaluation of such a rule must examine whether the prohibition or restriction it imposes is justified in the circumstances of the region or district.*
- (4) *For the purposes of the examinations referred to in subsections (3) and (3A)], an evaluation must take into account—*
 - (a) *the benefits and costs of policies, rules, or other methods; and*
 - (b) *the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods.*

The first step in this evaluation is to identify the issue, and then determine whether:

- It is a resource management issue;
- It is significant for the District;
- Its being addressed will be effective in achieving the purpose of the Act;
- The issue needs to be addressed through the District Plan.

Identification of Issue

The issue has previously been described in this report as a “consenting dilemma”. The issue is whether or not residents should be required to obtain a discretionary activity resource consent if they let their dwelling on a temporary basis while they are on holiday.

Is this a resource management issue?

The District Plan definitions and rules make this “consenting dilemma” a resource management issue. The Council’s position is there is little resource management issues associated with the restricted letting a dwelling on a temporary basis while the owner is away on holiday.

Is it a significant issue for the District?

At present the District Plan requires resource consent for the letting of a dwelling. This Plan Change seeks to remedy this consenting dilemma. To that extent the Plan Change is a significant issue for the district – otherwise people are acting in contravention to the District Plan rules.

6.2 Proposed Options

This evaluation assesses five different options for addressing the ‘consenting dilemma’ as detailed in this evaluation. These options are as follows:

1. Alter the definition of visitor accommodation to exclude the short term letting of residential units for accommodation purposes. Such an exclusion would make the short term letting of a residential activity for accommodation purposes a permitted activity in the majority of zones within the district. Under the existing definition of visitor accommodation, the letting of a residential unit for more than 3 months is already excluded.
2. Leave the current provisions as they are, that is that short term letting of a residential unit falls within the definition of a visitor accommodation activity which requires various resource consent types under the specific zone provision of the District Plan.
3. Alter the definition to create a temporary visitor accommodation category, which allows the letting of residences for a limited number of days per year as a controlled activity.
4. Council to issue a ‘blanket consent’ which would be a standardised consent for all residential unit owners who wish to rent their homes for a limited number of days per year.
5. Non-regulatory methods.

Each of these options is analysed in Part 7 - Assessment of Alternatives – as contained in this report.

6.3 District Plan Objectives

Section 75(1)(a) of the Act sets out the requirement for objectives to be included in a District Plan:

75 *Contents of district plans*

(1) *A district plan must state –*

- (a) *the objectives for the district; and...*
- (b) *the policies to implement the objectives; and*
- (c) *the rules (if any) to implement the policies.*

There is one objective which directs the management of visitor accommodation:

“To enable visitor accommodation activities to occur while ensuring any adverse effects are avoided, remedied or mitigated.” (Objective 5 Visitor Accommodation Activities, p 4-55).

This Objective is to be achieved by the following singular policy:

5.1 To manage visitor accommodation to avoid any adverse effects on the environment. (Objective 5 Policy 5.1 Visitor Accommodation Activities, p 4-55).

The Plan Change does not seek to alter this objective, and any proposed changes or additions to the subsequent policies, rules or other methods will need to be guided by and promote this objective. The assessment of the proposed options will be in terms of effectiveness, efficiency and overall appropriateness in accordance with the above objective.

7.0 Analysis: Assessment of Alternatives

This section of the report analyses how the preferred options relate to existing provisions of the Partially Operative District Plan by undertaking an assessment of each option against the Visitor Accommodation objective:

Objective 5 - Visitor Accommodation Activities

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

Option One	<p>STATUS QUO - DISCRETIONARY ACTIVITY</p> <p>No change to the current definition of “visitor accommodation.”</p>
<p>Objective: To enable visitor accommodation activities to occur while ensuring any adverse effects are avoided, remedied or mitigated.</p>	
<p>Efficiency and Effectiveness in Achieving this Objective</p>	<ul style="list-style-type: none"> ▪ Ineffective as consent is required for all letting of visitor accommodation, whether it be for commercial purposes or letting of a private home for a short period. These are two clearly different operations with effects of a different scale. ▪ Does not represent the most efficient forum for ‘enabling’ visitor accommodation to occur in the district, as the full spectrum of options for VA requires consent, not just those for which effects may justify such a level of assessment as required by resource consent.
<p>Associated Costs and Benefits (Environmental, Social and Economic)</p>	
<p>COSTS</p> <ul style="list-style-type: none"> ▪ All visitor accommodation providers (including homeowners renting out their homes for only a limited number of days per year while on holiday) are required to obtain consent. ▪ Time and costs associated with obtaining a consent may outweigh the benefits of short term letting of the property. ▪ Requiring consent could be a deterrent, which may result in residents being prepared to risk enforcement action in order to rent their homes for short term visitor accommodation. ▪ Council and the community have indicated that this is an unreasonable approach because of the following reasons: The rental provides a supplementary income; the availability of these homes increases visitor accommodation in the community; time and costs associated with a 	

<p>resource consent application (and other non-RMA requirements); the visitor accommodation use is ancillary to the primary residential use of the property.</p> <p>BENEFITS</p> <ul style="list-style-type: none"> ▪ Allows each application for visitor accommodation to be assessed on a case by case basis and on its own merits. ▪ Allows regulation of this land use if necessary. ▪ Allows Council to impose conditions of consent which enables effective monitoring of visitor accommodation. 	
Appropriateness of Option	<ul style="list-style-type: none"> ▪ This is the current method and has been identified as problematic for the reasons outlined in the body of this report.

Option Two	<p>PERMITTED ACTIVITY</p> <p>Alter the definition to allow for residential units to be rented out for a limited time and number of days per year as a permitted activity.</p>
<p>Objective: To enable visitor accommodation activities to occur while ensuring any adverse effects are avoided, remedied or mitigated.</p>	
Efficiency and Effectiveness in Achieving this Objective	<ul style="list-style-type: none"> ▪ Allows visitor accommodation to occur throughout the district, and for the short term letting of residential units as of right - for which the adverse effects are relative to the nature and scale and are likely to be minimal. ▪ The discretionary status will remain for all other visitor accommodation activities, which fall outside the revised definition, allowing Council to regulate and monitor adverse effects as appropriate.
<p>Associated Costs and Benefits (Environmental, Social and Economic)</p>	
<p>COSTS</p> <ul style="list-style-type: none"> ▪ Council loses the current control and jurisdiction to regulate and monitor such activities and require the mitigation any adverse effect. ▪ May have a (albeit minimal) impact on the commercial sector if a high percentage of homeowners pursue renting their homes as a result of the plan change becoming operative. <p>BENEFITS</p> <ul style="list-style-type: none"> ▪ Is more cost effective than current situation as it reduces the number of consents applied for and processed, saving in time, resources and money. ▪ Allows home owners a supplementary income for a limited time without the need to apply for 	

consent.	
Appropriateness of Option	<ul style="list-style-type: none"> ▪ Appropriate for the reasons identified above. ▪ Provides an avenue for homeowners who wish to pursue short term letting without removing control over larger scale renting and does not change things for commercial renting.

Option Three	CONTROLLED ACTIVITY Alter the definition to create a “temporary visitor accommodation” category which allows the letting of residential units for a limited number of days per year as a controlled activity.
Objective: To enable visitor accommodation activities to occur while ensuring any adverse effects are avoided, remedied or mitigated.	
Efficiency and Effectiveness in Achieving this Objective	<ul style="list-style-type: none"> ▪ Less effective than a permitted activity ruling as consents must still be applied for and processed. ▪ Effective in that it will enable visitor accommodation to occur as consent must be granted by Council.
Associated Costs and Benefits	
COSTS	
<ul style="list-style-type: none"> ▪ Time and financial costs associated with obtaining a consent may outweigh the benefits of short term letting of the property. ▪ Requiring consent could be a deterrent, which may result in residents being prepared to risk enforcement action in order to rent their homes for short term visitor accommodation. 	
BENEFITS	
<ul style="list-style-type: none"> ▪ Allows Council to impose conditions of consent which enables effective monitoring of visitor accommodation. ▪ Provides relative certainty to applicants that consent will be granted whilst still allowing Council a degree of control. 	
Appropriateness of Option	<ul style="list-style-type: none"> ▪ Appropriate.

Option Four	BLANKET CONSENT Issue standardised resource consent for all residential unit owners who wish to rent out their homes for a limited number of days per year
Objective: To enable visitor accommodation activities to occur while ensuring any adverse effects are avoided, remedied or mitigated.	
Efficiency and	Inefficient as the consenting process from Council's end would need to

Effectiveness in Achieving this Objective	be ongoing
Associated Costs and Benefits	
<p>COSTS</p> <ul style="list-style-type: none"> ▪ Not a permanent or ongoing solution. ▪ Only benefits property owners who own residential units at the time consent is applied for. ▪ Council would continually have to reapply for consents to ensure the fair and consistent treatment of new owners/new residential units. ▪ Issues may arise with other visitor accommodation providers who would prefer the Plan Change process to be undertaken to ensure thorough public consultation (especially if the blanket consent was processed non-notified – precluding the opportunity for public input). <p>BENEFITS</p> <ul style="list-style-type: none"> ▪ Removes the need for a plan change altogether. ▪ If Council bore the cost of processing the consent the issue of time and cost of obtaining consent outweighing the benefits of short term rental is also addressed. 	
Appropriateness of Option	<ul style="list-style-type: none"> ▪ Less (or least overall) appropriate than Option (1), for the reasons identified above. ▪ This only a temporary option and does not provide a practical solution to an ongoing issue for the district.

Option Five	NON-REGULATORY METHODS
Objective: To enable visitor accommodation activities to occur while ensuring any adverse effects are avoided, remedied or mitigated.	
Efficiency and Effectiveness in Achieving this Objective	<ul style="list-style-type: none"> ○ Ineffective as non-regulatory methods in this case do not address the 'consenting dilemma'.
Associated Costs and Benefits	
<p>COSTS</p> <ul style="list-style-type: none"> ▪ Not a permanent or ongoing solution. <p>BENEFITS</p> <ul style="list-style-type: none"> ○ Nil. 	
Appropriateness of Option	Not appropriate.

From the above assessment, it is concluded that Option 2 is the “most appropriate” option in resolving this “consenting dilemma”. Option 2 promotes a permitted activity regime for the letting of a residential unit while the owner is on holiday. It is considered that provided this regime is restricted in terms of the time and number of days per year then this option is appropriate in achieving the purpose of the Plan Change.

8.0 Amendments to the District Plan

Amend the definition of "Visitor Accommodation (Definitions section), page D-11, as follows:

"VISITOR ACCOMMODATION

1. Means the use of land/or buildings for short-term, fee paying, living accommodation where the length of stay for any visitor ~~is not greater than 3 months~~ **is less than 28 consecutive days** at any time. This definition does not exclude the letting of individually owned residential units **except where stated below.**
2. Includes such accommodation as camping grounds, motor park, hotels, motels, boarding houses, guest houses, backpackers' accommodation, bunkhouses, tourist houses, and lodges.
3. Includes the letting of individually-owned residential units, in particular homestays for more than four guests but does not include homestay accommodation for up to four guests.
4. Includes some centralised services or facilities, such as food preparation, dining and sanitary facilities, conference, bar and recreational facilities if such facilities are associated with visitor accommodation activities set out in within the sense of (1)-(3) above.
5. **Excludes the single annual let of a residential unit to guests for a period less than 28 consecutive days for holiday accommodation purposes.**

Notes:

(1) The letting of a residential unit where the length of stay for any visitor is greater than 28 days at any time is exempt from the definition of visitor accommodation under clause (1) and therefore not applicable to clause (3) or (5).

(2) For the purposes of the exclusion in clause (5) where a site contains both a residential unit and a residential flat the exclusion shall apply to either the letting of the residential unit or the residential flat but not to both.

(3) For the purposes of the exclusion in clause (5) the term "annual let" shall mean the year starting 1st of July to the 31st of June the following year.

(4) For the purpose of the exclusion in clause (5) the term "holiday accommodation" shall mean a residential activity where an occupied residential unit is temporarily let to visitors while the occupier is away on holiday"

Note: Insertions are shown in **bold underlined**, and deletions are shown as ~~bold strikethrough~~.

9.0 Final Comments/Conclusion

It is proposed to amend the district plan as outlined in Section 8.0 of this report. Five alternatives to this preferred option have also been examined, with the “permitted activity” option assessed as the most effective and appropriate.

This report has considered the framework and legislation behind making a change to a district plan, and applied the provisions of section 32 in the preceding analysis. It is considered that this Plan Change has met the requirements set out in section 32 and in doing so also achieves the purpose of the Act and therefore can be adopted.