

**BEFORE THE ENVIRONMENT COURT
AT CHRISTCHURCH
I MUA I TE KOOTI TAIAO O AOTEAROA**

ENV-2018-CHC-184

UNDER of the Resource Management
Act 1991

AND

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

BETWEEN **Gibbston Valley Station
Limited**

Appellant

AND **QUEENSTOWN LAKES
DISTRICT COUNCIL**

Respondent

JOINT STATEMENT ARISING FROM EXPERT PLANNER CONFERENCING

GIBBSTON VALLEY RESORT ZONE

11 May 2020

A. INTRODUCTION

1. This joint statement is the outcome of planner expert witness conferencing (by phone and email, given the current Covid-19 restrictions) in respect of the relief/ amendments sought by Gibbston Valley Station Limited (**GVS**) by way of an application for rehearing of certain parts of the consent order decision on the Gibbston Valley Resort Zone Chapter 45 (**GVRZ**).
2. The planners had previously agreed a joint statement dated 18 October 2019 which formed part of the package of material supporting the grant of consent orders for the GVRZ. Consent orders were issued on 27 November 2019.
3. The conferencing sessions were not facilitated by an Environment Commissioner.
4. The planners have however read, and agree to abide with, Appendix 3 to the Environment Court Practice Note 2014, which comprises the Protocol for Expert Witness Conferencing
5. This joint statement has been prepared in accordance with Section 4.7 of the Environment Court Practice Note 2014.
6. The planning experts who participated in conferencing and the parties for whom each planner provided advice for are set out below.
 - (a) Mr Craig Barr for Queenstown Lakes District Council; and
 - (b) Mr Brett Giddens, for Gibbston Valley Station.
7. The planners' qualifications and experience are set out in Annexure B to the JWS of 18 October 2019.

B. ISSUES DISCUSSED

8. The planners discussed the following issues, which they understand were agreed to be put to the Court by GVS and the Council:
 - (a) The correction of drafting errors in Rule 45.4.6, so as to remove the permitted activity status for Residential Visitor

Accommodation (**RVA**) within Activity Area 1 (**AA1**), Activity Area 2 (**AA2**) and Activity Area 4 (**AA4**).

- (b) Whether visitor accommodation activity within AA2 should include a greater proportion of residential activity as a permitted activity.
- (c) Subject to any clarification or refinement made in this JWS, the planners have also relied on:
 - (i) the matters previously considered and discussed, and their position as stated in their previous JWS of 18 October 2019;
 - (ii) the affidavit of Mr Hunt of 17 April 2020, sworn in support of GVS' application for rehearing; and
 - (iii) the affidavit of Mr Giddens of 17 April 2020, affirmed in support of GVS' application for rehearing.

C. THE RVA ERROR IN RULE 45.4.6

- 9. RVA as defined¹ means the use of a residential unit including a residential flat by paying guests where the length of stay by any guest is less than 90 nights.
- 10. Residential Activity in AA1, AA2 and AA4 is a non-complying activity pursuant to Rule 45.4.5. It is therefore not logical or proper to provide for RVA as a permitted activity when residential activity is not contemplated within AA1, AA2 or AA4.
- 11. The planners are agreed that:
 - (a) Residential Activity was not intended to be expressly provided for in AA1, AA2 and AA4 (which the rules do not provide for²); and

¹ Proposed District Plan Chapter 2 Definitions.

² Rule 44.5.4 identifies that residential activity within AA1, AA2, AA4, PL, LM and OSR Activity Areas is a non-complying activity.

(b) RVA was also not intended to be expressly provided for in AA1, AA2 and AA4, and that it was an error for Rule 45.4.6 to have listed RVA in those activity areas as a permitted activity.

12. Accordingly, the planners support the deletion of AA1, AA2 and AA4 from Rule 45.5.16 as follows:

| | | |
|---------------|---|---|
| 45.4.6 | Residential Visitor Accommodation in AA1, AA2, AA3, AA4, AA5 and AA6 unless otherwise stated. | P |
|---------------|---|---|

D. WHETHER VISITOR ACCOMMODATION ACTIVITY WITHIN AA2 SHOULD INCLUDE A GREATER PROPORTION OF RESIDENTIAL ACTIVITY AS A PERMITTED ACTIVITY

13. The planners are agreed that this is the one “substantive” issue arising from the GVS application for rehearing.
14. Rules 45.4.4 and 45.4.5 respectively identify where residential activity is permitted or non-complying in the GVRZ.
15. Rule 45.5.16 (standards) provides for residential activity within visitor accommodation buildings in specified activity areas only, being AA3, AA5 and AA6. In addition, sub-limbs (a) and (b) of Rule 45.5.16 limit any residential activity to not more than 180 nights per year and to the owners of the buildings.
16. Mr Giddens emphasised in his affidavit³ that the intent was (and remains) for Visitor Accommodation to be the primary use of such a unit. In practice, it is anticipated that such units will be managed by the GVS management company for visitor accommodation to the public, and that public visitor use would take priority if the demand was there for it. As Mr Hunt describes the process at [11] of his affidavit:

... **We do not want to see empty units if there are no “public” guest wanting to use them at a particular time.** In this situation, the owners of a unit could stay in their unit (for a limited period of time). **They would have to prebook the unit if they want to use it and the Gibbston Valley Management Company would approve this, if their unit was available.** In the situation where their units are available, we would let the owners know so that they could then determine whether they wanted to utilise their units at these times. They would pay a fee to stay in their units. This fee would be a reduced rate from what a guest would pay. We

³ Affidavit of Mr Giddens of 17 April 2020

also recognise that the market for these units will primarily be Auckland, Australia, and potentially the west coast of the USA. These people will look at an investment property as one where they can come and stay for a period in the winter, and possibly the summer or the other seasons depending on their interests. Therefore, the 180 day (or six month) period allowable for an owner to use their visitor accommodation unit gave us confidence that **if the units were not being used by the public**, the owners would have an opportunity to stay in them and keep the resort busy.

17. Mr Giddens was of the opinion that residential activity (limited to the owners of those units and to not more than 180 nights per year) could be applied to AA2 without any policy or effects implications (refer [34]). Mr Giddens set out the key planning framework of the GVRZ provisions in support of this position from [13]-[23], and the reasons for his opinion from [32]-[33].
18. Mr Barr considers it is critical that for the GVRZ to achieve its objective (Objective 45.2.1) and to accord with the definition of resort, that those activity areas of the GVRZ that are principally intended to provide for visitor industry related activities do so, particularly in the context that AA3, AA5, and AA6 specifically provide for 78 residential units⁴.
19. While each resort zone needs to be considered on a case by case basis, an important contextual factor in Mr Barr's opinion is that AA2 is developed as articulated by the purpose statement for each activity area as set out at 45.1.3 of the GRVZ text, being a development node to build upon the existing Gibbston Valley Winery, accommodation and lodge development that primarily includes visitor accommodation, wintery activities and commercial activity.
20. For these reasons Mr Barr holds reservations about permitting residential activity in AA2. He does not consider it was intended for residential activity as provided for within AA3, AA5 and AA6, to the extent specified in Rule 45.5.16, to be applied as a blanket standard for all Visitor Accommodation activities across the GVRZ. Mr Barr is of the opinion that the appropriateness of any such allowance needs to be assessed on a case by case basis in the context of the overall balance of land uses in the resort zone.
21. The provision for residential activity within AA2 was not the subject of specific discussions prior to the finalisation of the rule package for the

⁴ Planning Joint Witness Statement Proposed Gibbston Valley Resort Zone 18 October 2019.

GVRZ because at that time GVS was not seeking residential activity to be permitted in AA2. Mr Barr had approached his consideration of the overall provisions for the GVRZ on the basis that AA2 would not have any provision for residential activity and that it would be used primarily for hotel and visitor industry activities that were unfettered by Residential Activity (even to a limited extent for owners). This would maintain the GVRZ as a resort that provides principally for visitor accommodation and onsite visitor activities with a low proportion of Residential Activity.

- 22.** However, Mr Barr can support some residential activity that is ancillary to, and overall subordinate to visitor accommodation and other visitor industry related activities within AA2.
- 23.** Mr Giddens did not consider, in the context of AA2, and the GVRZ as a whole, an additional constraint as necessary. He considers that the primary activity will remain Visitor Accommodation, rather than a de-facto residential activity for owners. Mr Giddens opinion on this was reinforced by the evidence of Mr Hunt at [17] that: *“... we would not expect most owners to utilise the exemption for the full allowable period, and not for each year.”*
- 24.** A range of methods were considered including the introduction of a cap on the net floor area for Visitor Accommodation Units used for residential activity in in AA2 was considered by both planners. Mr Giddens was concerned at increasing the complexity of the amendments to rules, unnecessarily, and creating potential issues for its interpretation (if not enforcement) later on. Mr Giddens considered that a control dictating a net floor area per unit could have unintended consequences of guiding the design of future built form (being driven by achieving yield rather than through good design) and would be confusing to administer given AA2 also ready contains two standards that relate to building coverage (which differs in practice from net floor area).
- 25.** The planners agree on a standard to limit the number of visitor accommodation units that can also be used for residential activity, limited to 180 days per year and undertaken by the owners of those visitor accommodation units, to not more than 85 units. This is intended to address Mr Barr’s concerns as identified above, as well as Mr Giddens’ concerns about the potential complexity and interpretation of any additional rule such as a limit on the floor area of visitor accommodation

units where residential activity would be permitted.

26. Both planners agree that the rule package ensure that the GVRZ maintains the definition of “resort”. This is because limiting the quantum of visitor accommodation units to 85 within AA2 provides sufficient certainty to Mr Barr and Mr Giddens that AA2 will be developed in a manner that achieves Objective 45.2.1, and in particular Policy 45.2.1.2. Notably, the definition of “resort” seeks to maintain a low average density of residential development (as a proportion of the developed area) within the zone. In this case, limiting the quantum of visitor accommodation units that can be used for residential activity (and limited to the owners of those units and to not more than 180 nights per year) would conservatively be in the order of 40% of the total anticipated development area of AA2.
27. On this basis, the planners agree that the following amendment is appropriate:

| | | |
|----------------|---|----|
| 45.5.16 | Residential Activity within visitor accommodation buildings | NC |
| | <p>a. Within those visitor accommodation buildings in AA2, AA3, AA5 and AA6 where residential activity is not provided for by Rule 45.5.15, residential activity shall be limited to <u>that undertaken by the owners of the units for not more than 180 nights per year per unit.</u></p> <p>b. Within AA2, residential activity permitted by Rule 45.5.16.a shall be limited to <u>85 visitor accommodation units.</u></p> <p>a. Not more than 180 nights per year; and b. Residential activity undertaken by the owners of the buildings.</p> | |

E. CONSEQUENTIAL AMENDMENTS

28. The planners are agreed, given the amendments recommend above, that the following consequential amendments are required to Rules 45.4.4 and 45.4.5 to identify that residential activity is permitted in AA2 (subject to the standards in Rule 45.5.16):

| | | |
|--------|--|----|
| 45.4.4 | Residential Activity in Activity Areas <u>AA2</u> , AA3, AA5, AA6 and AA8 that comply with the standards in Table 2. | P |
| 45.4.5 | Residential Activity in Activity Areas AA1, AA2, AA4, AA7, PL, LM and OSR. | NC |

29. The planners consider these to be logical and appropriate to ensure that there is consistency in the rule framework and no provisions that introduce ambiguity in respect of AA2.
30. Although provision for residential activity has now been recommended as appropriate for AA2, the planners do not support reference to RVA for AA2, because residential activity is ancillary, and visitor accommodation is permitted in any case.

F. MATTERS DISAGREED

31. Other than the difference in opinion recorded above, the planners do not disagree on any other matters.



Craig Barr



Brett Giddens

DATE: 11 May 2020