

**Fred van Brandenburg.**

**Statement for the Hearings Panel**

**29 July 2020**

**Background.**

- 1 I am appearing and not calling expert evidence as I have already litigated this matter by submitting on stage 1 of the PDP process, appealing that process and attending mediation which was a significant cost to me. Because Council is now revisiting this issue I am forced to re-litigate this matter. I have also gone through a number of expensive consenting processes to obtain consent for the development of my property, and accordingly I am not in a position now to spend significant sums of money in continuing to pursue this matter, particularly given the recent impact of COVID 19 on the Queenstown economy.
- 2 Under the ODP my properties are zoned High Density Residential along with all of the properties south of Frankton Road. My properties were subject to Height restrictions under Rule 7.5.3.3.iv which restricted the height of buildings to one storey above the centre line of Frankton Road. This rule applied to properties from Cecil Road to the eastern boundary of my property.

**Brief History.**

- 3 My company FRJ is undertaking a development over two properties 595 and 567 Frankton Road. Under the ODP my properties are zoned High Density Residential along with all of the properties south of Frankton Road. I have a resource consent (RC) for a building (see attached.) Prior to my current RC this property had a consent governed by a 7m high control (latest was RM081099) and to be no higher than the height of Frankton Road. These restrictions produced a predictable design governed by the 7m high height plane rules such that – with the steepness of the site and the offset against Frankton Road (the yard space) the roof of any development ended up below the road. It was impossible for the building to have any presence as seen from the road. Sometime in 2014, I approached the Council to consider a more innovative design concept (the one that has now received consent.) Council agreed, and granted a dispensation which lead to granting an RC (RM150175, RM171383.) This became the genesis for Rule 7.5.3.3.iv – a discretion to allow an intrusion of a portion of the building to be above one story (above the centre line of Frankton Road) as an entrance feature. The balance of the site his leaves a gap to appreciate mountain views afar. (The RC also allowed the centre of the building to pass through the 7m height control plane.) In effect, at the Council's discretion, the consent on the basis of an innovative design.
- 4 Unbeknown to me, this rule from the **ODP** was not carried through into the notified version of the Proposed District Plan (**PDP**) in Stage 1 of the DPR. The Stage 1 decisions version of the PDP introduced height controls which were more restrictive than the rule that applied under the ODP. The Proposed District Plan Rules 9.5.3.1 and 9.5.3.3 limited the height of any building to the height above sea level of the nearest point of the road carriageway centreline. These rules applied to the whole of the HDRZ south of Frankton Road, as shown on the decision version of PDP Map 32.
- 5 I lodged a submission on Stage 1 of the District Plan Review (#520) which sought that ODP Rule 7.5.3.3.iv be carried through into the PDP, to apply to the same properties as under the ODP i.e. from Cecil Road to my properties, allowing these properties to build to one storey above the centre line of Frankton Road.

## **Mediation.**

- 6 I attended mediation to participate in a discussion as regards my appeal lodged in 2018. The panel wished to hear from me as to my attitude to this rule applying to other properties – particularly the adjacent property to the east. I told them I could not help them because I was unaware of any design (other than the design I sighted by the selling agents at that time) but was satisfied that the same rules that pertained to my property apply to theirs. And since I had obtained an RC for my property, I agreed to withdraw. If the case had been that Rules 9.5.3.1 and 9.5.3.3 applied to only the land from Cecil Road to my properties, I would not have agreed to withdraw those appeal points.
- 7 Following this mediation, Council has notified as part of Stage 3, a variation which removes the application of Rules 9.5.3.1 and 9.5.3.3 from the properties to the east of my properties.
- 8 Council has maintained the position that this addresses an obvious mapping error, in that the restrictions should not have been applied to the whole of the HDRZ south of Frankton Road and should only have applied to properties from Cecil Road to the eastern boundary of my property.
- 9 This is not simply a correction of a mapping error. It significantly changes the outcome of development and effects on landowners. The effects on my property of having the PDP rules apply to my land and not my neighbours' is significantly different than the effect of having the ODP rule apply to my land and not my neighbours'.
- 10 Council has insufficiently considered the effects of the variation, and I have not found any landscape evidence which explains why this height restriction should be imposed from my property towards Cecil Road and no to the east of my property.
- 11 If the application of Rules 9.5.3.1 and 9.5.3.3 to all of the HDRZ south of Frankton Road is simply a mapping error as maintained by Council, it is unclear why the error was not resolved at an earlier stage of the DPR process. The decisions version of Map 32 was publicly notified on 7 May 2018 and my appeal was mediated on 13 February 2019, however the Stage 3 Variation was not notified until 19 September 2019.
- 12 At no point during my mediation or following this, did Council indicate that the Frankton Road height rules would be reviewed. If this information has been shared with me, I would not have withdrawn my appeal points from my Stage 1 appeal. At the very least, if the council was contemplating to include the Variation in Stage 3 of the DPR I should have been informed.
- 13 My lawyers have written to council on my behalf regarding this issue and I have not been satisfied with the response we have received.
- 14 The actions of the council in notifying the Variation and failing to inform me of their intention to do so at or prior to mediation on his Stage 1 appeal means that I must now spend additional time and money to re-litigate matters which were already settled.

## **Relief Sought**

- 15 I would like either:
  - (a) The Stage 1 decisions version position is retained, where Rules 9.5.3.1 and 9.5.3.3 apply to all of the HDRZ land south of Frankton Road; or
  - (b) That Rules 9.5.3.1 and 9.5.3.3 be amended as sought in my Stage 1 submission and appeal to enable development on my properties to the extent enabled under the ODP; or

- (c) If the Variation is progressed, that it be applied to my properties also i.e. that Rules 9.5.3.1 and 9.5.3.3 do not apply to my properties.

- 16 Mr Matthee breaks his evidence into four topics – rejecting the mapping variation, amending the wording of the rules, extending the removal of the mapping annotation to include my land and general submission. I have addressed each of these topics below.

#### **Rejecting the mapping variation or amending the wording of the rules**

- 17 Mr Matthee's report provides that if the variation is rejected, the rule would require a discretionary activity resource consent in order to develop the land in accordance with the HDR zone purpose. It further states that this is not the intention of these rules and would in his view unduly restrict development and not allow for the efficient use of land within close proximity to the Town Centre, which is contrary to the purpose of the HDR.
- 18 My property is closer to the Town Centre and the same principles mentioned by Mr Matthee in regards to the HDR zone also apply to my property.
- 19 Mr Matthee acknowledges that the environmental outcomes these rules are seeking to achieve is to limit the impact of the building heights on views of Lake Wakatipu as viewed from Frankton Road (SH6A).
- 20 If the mapping annotation is removed from the sites to the east of my property, allowing those owners to build to a height of 7 or 12m depending on their site this will have a significant adverse effect on the views of Lake Wakatipu from Frankton Road.
- 21 When Council was drafting these rules, one can assume Council considered a rule was necessary along the south of Frankton Road restricting the height of buildings in this zone on both flat and sloping land, as the rule is to apply to both types of site. Council considered that any activity that did not meet this rule, would require discretionary consent – they did not see fit to limit this to a controlled consent. I submit, that the initial intention of Council was for this rule to apply along the whole area as notified, and that if a building did not comply with the height rules, Council retained the discretion to grant consent.
- 22 While Mr Matthee reports on a site visit, I contend that he is not an expert in landscape effects and Council has not provided any landscape evidence to support its position on the Variation.
- 23 Mr Matthee rejects the proposal that wording similar to the ODP rule wording is imposed on the Frankton Road Site (being the area the variation affects) based on similar arguments to those on rejecting the variation in its entirety. He also comments that varying the rules would make them difficult to administer because the rules would differ depending on whether they applied to the Frankton Road site or the rest of the mapping annotation. This would not make the application of the rules any more difficult, it would be two different rules for two different areas – as is proposed by the variation anyway.

#### **Extend the removal of the mapping annotation to include my land**

- 24 If the variation is not rejected in its entirety, as it should be, I seek the variation be amended so that the mapping annotation is removed from my land. I see no reason why my land should be treated differently than that of my neighbours to the east.
- 25 Again, council have not provided any landscape evidence to support the conclusions drawn by Mr Matthee that my land should be treated differently to my neighbours.