Submission on Rural Chapters
Christine Byrch # 243

1 Overall Comment

I have illustrated my submission with examples from my own situation and experience, which is as a resident of the Rural Lifestyle Zone and neighbour of Matakauri Lodge. My intent with reciting these experiences is *not that they be revisited*, but to illustrate what I have learnt from these errors and experiences. It is important to learn from past experience. I must assume that Matakauri Lodge has not been afforded any special treatment, and that therefore, my experience will be applicable to other situations.

2 Provision for Omissions, Inconsistencies, Errors and So On

My overall impression of the PDP is that it is not quite ready for public comment and is definitely not yet of the standard I would expect of the primary planning document for the Queenstown Lakes District. It would benefit from professional editing.

A poorly written document will not provide unambiguous planning guidance, there will inevitably be omissions, inconsistencies, errors and so on. In the event that all of these are not resolved before the plan comes in to use, *I suggest that provision is made for some means of quickly resolving these problems/issues as they arise and are noticed once the plan is in use.*

3 Too Much Discretion

It is my view that there is too much that is discretionary in the PDP. It leads to uncertainty for residents, and relies on competent decision making. To have so much decided by bureaucrats leads to inconsistency, and a lot of time and expense for those who make and oppose resource consent applications.

No certainty

My home is within the Rural Lifestyle zone, and I wish to continue to live in a residential zone. However, my experience over the last nine years has been that I can not rely on the QLDC to uphold the Rural Lifestyle Residential zoning of the area in which I live. So that we can make plans for our future, my husband and I have repeatedly asked staff at LE / QLDC to clarify their understanding of the zoning and what level of development is appropriate in the zone and each time have been fobbed off with unsatisfactory or no response. Residents need to have some certainty, and this should be provided by the District Plan.

Competence of Decision Makers

Discretionary planning relies on the ability of decision makers. In an ideal world this might work, but decision making by real people does not lead to well informed and consistent decisions. And this I am sorry to say is my experience with decisions on

resource consents in this district. Aside from the actual decision making process, the standard of decision writing is poor. For example, RM 100669 allows for Matakauri Lodge to "establish and operate a small scale boutique dining activity for up to 10 visitors." Both the application and the consent allow for only 10 diners full stop, not for example, ten diners per day. Goodness knows how this has been interpreted in practice, certainly not as it is written. Further, condition 5 of RM 100804 allowing functions to be held at Matakauri Lodge states that "The hours of operation for functions shall be limited to 9am and 12am in the same day", and condition 11 of the same consent begins "Function guests shall be discouraged from brining [sic] their prvate [sic] vehicles to the site." I presume that three people have read each of these consents – one commissioner and two planners – but none have noticed these errors.

4 Private Plan Changes

The District Plan needs to lead planning in the Queenstown Lakes District. At this stage, the priority and focus of this District Plan Review should be preparing a clear and consise planning document. It is my view that Private plan changes should not be allowed as part of this review. The review should focus on planning for the future and the plan should dictate where there is and is not development. QLDC needs to learn from the past and avoid *ad hoc* development so that conflicts are avoided such as the airport and large retail centres amongst residential areas, mixing pedestrians and main roads and so on. Once the plan has been established, then is the time to deal with private plan changes, through the usual plan change process.

5 Chapter 21 Rural Zone

Informal Airports

It is my view that informal airports in the Rural Zone should be at least 500m from any formed road. The QLDC planner in his report states that this is not required as there is no problem with airports which are closer than 500m from a formed road. This is a completely different situation. Airplanes and helicopters are anticipated at an airport. They are not anticipated out in the rural areas and can startle unsuspecting road users.

Regarding frequency – the original frequency of 3 flights per week should be reinstated. More than 3 flights per week is not an informal airport, but a regularly used site.

Regarding the requirement for informal airports to be "500 metres from any other zone, formed legal road or the notional boundary of any residential unit of building platform not located on the same site" I note that this distance has been arrived at based on the helicopter noise standard which has not been adopted by QLDC. In fact, it is the opposite – the helicopter noise standard has been rejected. Therefore, this distance should be recalculated based on the accepted noise standard, and I think you will find that the distance should be increased.

6 Chapter 22 Rural Residential and Lifestyle Zone

Residential Living is Predominant Use

The Rural Lifestyle and Rural Residential (RL&R) zones are to provide for residential living. This is clearly their purpose and this purpose should not be diluted by trying to be all things to all people. It is my opinion that the plan should provide for certainty for and protect residential living rather than business growth and development.

Section 22.1 Zone Purpose should commence with an unambiguous statement of the purpose of these zones. For example, "the purpose of the Rural Residential and Rural Lifestyle zones is to provide for low density residential living."

Objectives and Policies

I have made comments on specific parts of the Rural Chapters in my original submission which I hope someone has read. I note the following:

The objectives and policies should be straight forward and add value to the plan. I note that a start has been made to write these objectives and policies more clearly, and QLDC should continue with this.

Policy 22.2.1.3 adds no value to the plan; contradicts policy 2.2.1.2; creates uncertainty, and should be deleted. There must be a minimum density or there is no certainty for the residents of the zone and the zone is inconsistent with its purpose which states "a minimum allotment size is necessary to maintain the character and quality of the zones"

Policy 22.2.1.4 – delete the word anticipated. Why only manage "anticipated activities" – surely there is a need to manage all activities?

Delete the word 'permitted' from policy 22.2.1.5. This should apply to all buildings.

Objective 22.2.2 should be "The predominant land uses within the rural residential and rural lifestyle zones are rural and residential." I do not believe that visitor and community activities are or should be predominant in these zones. The zone can be and should not be all things to all people. It is supposed to be a rural living zone.

22.2.2.3 has been reworded and its intent is weakened. I suggest that the policy finish with a full stop after 'industrial activities'.

Delete policy 22.2.2.4 and the proposed sub zone (more on this follows).

22.4.3 .2 Allowing 30% floor area growth of buildings outside of a building platform is a lot of growth – too much in my view.

22.4.13 Informal airports should be prohibited.

22.4.15 Any building within a Building Restriction Area that is identified on the planning maps should be prohibited. These areas should not negotiable. Table 4, rule 22.5.20 should be prohibited.

Delete the sentence "Except this rule does not apply to the visitor accommodation sub zones" from Rule 22.5.6.

7 - Building Activity and Building Use

I have received legal advice from Barrister Pru Steven that a building and its use are two distinct activities. This means, that both the building and its use must both have an activity status.

The ODP is muddled in this regard, and there are anomalies and omissions that cause problems, particularly with respect to buildings used for visitor accommodation, and has led to inconsistent decision making. For example:

- On our own property, a second building comprising one bedroom, one bathroom, one living area with kitchen bench, outside of a building platform, with a footprint of approximately 36m^2, was considered to be non complying.
- A 400m^2 building comprising a kitchen, laundry, living area, four bedrooms and four bathrooms on the Matakauri site, also not on a building platform, was considered as a controlled activity (RM 110297).
- A residential building not on a building platform on the Matakauri site was considered as a controlled activity (RM 130472).

When seeking clarification as to the status of buildings, we were advised by the then Manager - Planning and Development Marc Bretherton that a 'visitor accommodation building' (not its use) is a discretionary activity, despite a 'visitor accommodation building' not being mentioned or defined anywhere in the ODP.

The PDP does not address the problem in the ODP that buildings and their use both need an activity status, and in particular, that buildings not used for residential activities are not properly accounted for.

The PDP must be crystal clear with regards buildings and their use. It needs to be carefully reworded such that it is much clearer. I have not done this myself, but note here some issues that need to be rectified:

- Rule – Activity 22.4.6 muddles buildings and their use. A residential flat is a building, not its use, and so should be included in rules 22.4.2 and 22.4.3.

- Similarly, rule 22.4.11 mixing visitor accommodation activity with the building used for visitor accommodation. It lists visitor accommodation building as discretionary regardless of whether or not it is on a building platform. Yet 22.4.3.1 suggests that all buildings not on a building platform will be non complying. This is surely not how it should be in a residential zone – it should

not be more onerous to get consent for a building used as a residence than one used for visitor accommodation.

- The definition for residential flat is itself muddled. It begins with "Means a residential activity that comprises a self-contained flat …" but residential activity is defined as "Means the use of land and buildings …". That is, the definition itself mixes the building and its use.

- Regarding 22.5.7 Home occupation seems to assume that this activity will occur on a site that has a household living there. The definition of Home Occupation begins with "Means the use of a site for an occupation, business, trade or profession in addition to the use of that site for a residential activity." What if the activity is on a section that does not have a household? Does this mean rule 22.4.16 applies, regardless of the scale of the activity?

- There should be consistency between the VA definitions listed on the QLDC website and those in the PDP. For example, the QLDC definition allows for homestay guests to stay on the resident's property; whereas the DPD definition suggests that the homestay guests are within the resident's own home. The QLDC website defines homestay/bed and breakfast as: "Where the residents invite guests to stay on their property at the same time that they are in residence." The PDP defines homestay as: "Means a residential activity where an occupied residential unit is also used by paying guests."

- I think some of the confusion regarding buildings and their use arises from terminology ie residential activity, residential unit, residential activity are all similar sounding. The rules and definitions regarding buildings and their use need to be crystal clear and consistent with other definitions and terms used elsewhere by QLDC.

Also concerning buildings:

- Rule 22.5.2 states the maximum ground floor area of any building shall be 15% … - does this mean that you can have 6 buildings each with an area of 15% making a total of 90%? I suggest there needs to be some limit.

- Rules 22.5.11 and 22.5.12 refer to 'residential units' – should this be 'buildings'. As it stands there are no limits to buildings used for other purposes.

8 Matakauri Lodge / Accommodation Sub Zone

Visitor Accommodation Sub Zone Request

How is it that Matakauri Lodge has been invited to prepare this report as part of the District Plan review and have it circulated as a QLDC document? This is a question I

would like a response to. Another question is whether anyone at QLDC read this report before stamping it as a QLDC document?

The visitor accommodation sub zone is a misnomer. It has been included specifically to allow visitor accommodation on only two disconnected sites - the Matakauri Lodge site and another on Speargrass flat road. The document and arguments are very muddled; however, in essence it seems to opine that:

- development at Matakauri is beyond what is appropriate for the rural lifestyle zone
- because of the zoning, future expansion is expensive and uncertain.

Regarding the first point, this is true, and suggests that the level of development granted consent by QLDC should never have been allowed. At the time of granting the many consents allowing for development on the Mtakauri Lodge site, both Matakauri and QLDC have said that the development was consistent with the underlying zone. Neighbours and all those affected by the development knew better, believing that it is way in excess of what should have been allowed in a rural lifestyle zone. Now both QLDC and Matakauir Lodge agree with neighbours and those affected - such fickle opinions do not give confidence in Council's decision making or Matakauri's credibility.

Regarding the second point, the owners of Matakauri bought the property knowing it was in a Rural Lifestyle Zone and subject to that zone's rules and standards. This should have given them certainty. However, it is that the Council has not applied the zone standards to the Matakauri site that has lead to a lack of certainty for Matakauri, or their realization that there is a limit to the amount of development they will be able to get away with.

The Matakauri Lodge report states that the owners want certainty. As neighbours of the Matakauri site, we also want certainty. We live in what is supposed to be a rural lifestyle zone where the norm is one residential building per site. The only certainty that the proposed Visitor Accomodation subzone will give is that development on the Mtakauri Lodge site will continue unfetterd. The appropriate action of QLDC is to give others in the zone certainty by adhering to the standards of the Rural Lifestyle zone.

That the Council would now consider rezoning this site as a solution to the problem that they have created – namely a development that is far in excess of what is appropriate for the Rural Lifestyle zone – is laughable. It is not a plan change, but an exemption from the requirement to obtain resource consents for further development. Further, it is contrary to most of the Rural Lifestyle zone policies in the PDP, and so is not consistent with the underlying zone which I would have thought is a primary requirement of a sub zone.

What can be learnt from the Matakauri Lodge experience?

Queenstown Lakes District Council has granted numerous consents for the Matakauri Lodge site that allow for a scale of development that far exceeds that anticipated in the Rural Lifestyle Zone, the purpose of which is to provide for low density residential

living. That the scale of development at the Matakauri Lodge site is incompatible with the zone has (finally) been acknowledged by Matakauri's consultant and QLDC.

The question that needs to be asked is how was the Matakauri Lodge development allowed to become so large that it is incompatible with the underlying zone and what can we learn from this situation, and how can this experience be used avoid such situations in the future? I suggest that there are problems both with the ODP and its implementation. It is my opinion that the following have contributed to QLDC allowing a scale of development that far exceeds that anticipated in a Rural Residential Zone, and that these points should be redressed through the PDP.

- No assessment of cumulative effects

With respect to an assessment of cumulative effects, Marc Bretherton (correspondence in March 2014) advised that when assessing the effects of any proposed activity for which resource consent is required, the definition of effects must include all effects associated with all existing permitted & consented activities on the site, in addition to any proposed activities. That is, it must include an assessment of cumulative effects. Therefore, in the case of Matakauri Lodge, applying the correct definition of cumulative effects means that a resource consent application must include an assessment of the effects of whatever is proposed plus the effects of activities already consented, which for Matakauri Lodge should include the effects of commercial dining, commercial use of the health spa, commercial functions for up to 100 people, 32 overnight guests, six buildings some of which do not comply with zone rules and standards, plus activities recently granted consent which include a larger kitchen, expanded public dining areas and new visitor accommodation areas, and so on.

However, a review of various resource consents on the Matakauri Lodge site shows that neither the applicant nor the QLDC planner nor the commissioners have ever considered cumulative effects. Sometimes, Lakes Environmental / QLDC staff provided a comparison of whether the application being considered is consistent with what exists on site already (see for example RM 12008). Or they look at how buildings fit with other buildings in the area. But nowhere is there a transparent assessment of the cumulative effect of all the consented activities at the Matakauri Lodge site.

Recent advice from Tony Avery is that "if there was to be further applications for additional activities on the [Matakauri] site, then depending on the scale of those activities, the overall cumulative effects are likely to be an issue that will need to be carefully considered by the consent authority." This is an astonishing statement given that the RMA states an assessment of environmental effects must include an assessment of cumulative effects; it is not optional.

Consenting of activities without assessing cumulative impacts, has allowed 'environmental creep'; that is, a scale of development that has been allowed on an incremental basis that would never be approved if it had been applied for in one application. This suggests that one application that sought consent for all of activities

and developments presently on the Matakauri Lodge site in its totality, would be declined.

It is apparent that the requirement for an assessment of cumulative effects is not acknowledged or perhaps understood, by applicants, QLDC staff or commissioners. Therefore, I submit that you include a statement under Section 22.3.2 Clarification that clearly sets out the requirement for an assessment of cumulative effects as part of the assessment of environmental effects for all activities, and that a definition of cumulative effects is included in Chapter 2.

- Consents granted on a non notified basis

All but one of the resource consents granted to Matakauri Lodge since 1999, including those for non-complying activities, were granted on a non-notified basis providing no opportunity for affected parties to comment. Only one application was notified and that was only after Marc Scaife appealed its non notification at the High Court.

In response to the subsequent notification, well over twenty submissions were received opposing development at Matakauri Lodge, as it was considered to be too visible in a sensitive landscape. This suggests that the effects of the proposal were more than minor and that as the RMA specifies, the original application should have been notified. That resource consents are not notified allows affected parties and the general public no input into activities that do not fit with the overall purpose of the rural living zones.

A further problem with non notification of resource consents is that the more recent resource consents granted to Matakauri Lodge supersede previous consents granted with neighbours' approval given largely due to the comprehensive landscape conditions. These landscape plans were abolished with no thought to their origin.

Therefore, I submit that you include a statement under Section 22.6 Rules – Non-Notification of Applications stating that there will be:

- *a limited notification of applications for activities that supersede consents previously granted with neighbours approval;*
- *limited notification of applications for activities for which effects are assessed as minor and this assessment includes cumulative effects; and*
- *full notification of all non complying activities.*

- No consideration of site standard V Nature and Scale of Activities

The extent of non residential or non farming activity in the Rural Lifestyle Zone is, supposedly, constrained by site standard **v Nature and Scale of Activities,** which would limit the scale of such activities to something more akin to a home-stay operation, and which states:

> b) In the Rural-lifestyle Zone the maximum gross floor area of non-farming or non-residential activities shall not exceed 100 m².

This is a very significant and revealing threshold as to an appropriate scale of non-residential activity in the Rural Lifestyle Zone. It gives a clear indication of the scale of non-residential activities contemplated in the zone.

Yet the LE/QLDC planners consistently make no reference to this standard with respect to the development at Matakauri Lodge, and have considered buildings used to accommodate visitors as controlled activities, despite the ODP stating that buildings are only a controlled activity if they meet all zone and site standards.

Marc Bretherton's advice is that standard V is simply a 'trigger' for assessing effects:

> This is a site standard which says that in the RL zone, the maximum floor area for uses that are neither residential nor farming on a site, is 100m2.This means that if you have a reasonably sized use that is not residential or farming (the two main uses anticipated in the zone), then the Council will look at that activity and assess its effects.

I leave it to the Commissioners to suggest how to ensure all standards of the PDP are considered, and not ignored as with site standard V, and further, to suggest what the consequence of such a failure might be.

- ***Incremental consenting***

The owners of Matakauri Lodge have adopted a strategy of expanding their operation by 'incremental creep'. For example, Matakauri Lodge has obtained consent for public use of the health spa and public dining, both non complying activities. Consent for both activities was achieved by first seeking resource consent to upgrade facilities stating they would be for the use of over night guests, and then once consent for the upgrades had been granted, seeking resource consent for use of these same but now expanded facilities for use by the public.

Similarly, Matakauri Lodge has recently been granted consent to: expand the main lodge building and move the offices and kitchen to this new part of the building; to make a private dining room in the place of the old kitchen; and to make a new guest accommodation room in the place of the existing offices. The applications do not seek to increase the number of diners or the number of overnight guests. That Matakauri Lodge has obtained consent for a new guest accommodation suite and to expand kitchen and dining facilities, suggests to me that they do plan to increase visitor numbers and to increase the numbers of public diners, and that applications will be made for these activities.

This approach to obtaining resource consent is contrary to:

> the long standing principle that all resource consent applications necessary for a proposa ought [to] be made at the same time57. See *AFFCO NZ Ltd v Far North District Council* [1994] NZRMA 224.

Further, breaking down a development into several consent applications, and because QLDC misinterprets this requirement, an assessment of cumulative environmental effects is never asked for.

To avoid incremental consenting, I submit that a statement is included under Section 22.3.2 Clarification that clearly sets out the requirement that all consents for an activity or development must be applied for and considered at the same time.

- Activity status of buildings

As noted above, the activity status of buildings used for visitor accommodation is not made clear in the ODP. For example, LE planners believed that residential buildings not on a building platform are non complying whereas all other buildings (including those used for visitor accommodation) are controlled. Astonishingly, the LE planners saw no anomaly with this interpretation of buildings in a residential zone. Astonishingly, she saw no anomaly in this interpretation of a rule for a *residential* zone which makes it more difficult to be granted consent for a residential building than any other type of building.

The activity status of buildings, and the activity status of their use, need to be distinguished and made clear.

9 Informal Airports

Over the summer, helicopters have landed at the Jagged Edge guest house at the subdivision which is zoned Rural Lifestyle. Two helicopters landed morning and evening for several days in a row, staying on the ground for around 20 minutes each landing, and while on the ground, they kept their engines going. Heard from our property which is downhill and at least 1 km away from the landing site, the helicopters were incredibly noisy. I know that we were not the only residents to be worried by this noise as QLDC received several complaints regarding these landings. I note that these landings were illegal (ie no resource consent). I presume the only reason for these landings was the whim or convenience of those staying at the guest house. I do not think that the convenience of a few visitors justifies the effect of this activity on those people living and working in the surrounding area.

It is my view that 22.4.13 should categorise informal airports as a prohibited activity. There is no reason for helicopters or airplanes to be landing and taking off in residential zones, with the exception of emergencies, rescues and so on as provided for in 22.4.14.

22.4.14 also makes provision for activities ancillary to farming activities. Reference to farming activities should be deleted unless there are in fact farming activities in the RR&L zone.

I also note that there are no assessment standards listed for informal airports in the RR&L zone. I assume this is because QLDC is anticipating that this activity will be prohibited.