

QUEENSTOWN LAKES DISTRICT COUNCIL

Hearing of Submissions on Proposed District Plan

Report 13

Report and Recommendations of Independent Commissioners
Regarding Chapter 42 – Waterfall Park

Commissioners
Denis Nugent (chair)
Robert Nixon
Calum MacLeod

TABLE OF CONTENTS

1.	PRELIMINARY MATTERS	2
1.1	Introduction	2
1.2	Analysis of Submissions	2
1.3	Non-Substantive Recommendations.....	2
2.	OVERALL RECOMMENDATION	4

Appendix 1: Recommended Chapter 42

1. PRELIMINARY MATTERS

1.1 Introduction

1. The Waterfall Park Resort Zone is a small resort zone bisected by Mill Creek and adjoined on three sides to the north, east, and west by the Millbrook Resort Zone. It has a structure plan providing for four activity areas, being “Village”, “Residences”, “Resort Services”, and “Open Space and Recreation Passive Recreation”.
2. The Hearings Panel’s recommendations on Chapter 42 are limited as the only relevant submission was a submission made by Mr Kain Froud¹ lodged in support of the Chapter as notified. Mr Froud did not appear.
3. A more extensive submission made by Ayrburn Farm Estate Ltd² sought that the adjoining land to the south be also zoned Waterfall Park and that similar provisions are provided for residential activities. The relief was part of a bundle of options presented by the submitter that also included a request to rezone this adjoining land from a Rural to a Rural Residential zoning and promote an associated concept development Plan. This submission has become a submission on the Stage 2 Variations as provided for by Clause 16B(1) of the First Schedule. The further submissions on the Ayrburn³ Farm Estates submission have similarly been transferred.
4. Given this context, our recommendations are very brief. The only evidence we heard was a brief presentation on planning matters from Ms Vicki Jones, the reporting officer. A Section 32 report accompanied Ms Jones’ Section 42A Report. In view of the very limited scope of submissions, we adopt this report and we do not consider that any further assessment is necessary under section 32

1.2 Analysis of Submissions

5. Mr Kain Froud supported the chapter as notified, as the submitter has done with other chapters without expanding any further. We recommended Mr Froud’s submission be accepted in part as Chapter 42 is subject to a number of recommended minor changes to ensure consistency in formatting and style with the rest of the PDP.

1.3 Non-Substantive Recommendations

6. Several changes are recommended to the Chapter as notified and these are included in the version attached as Appendix 1. We consider all of these changes to be non-substantive and that the Council can make these changes under Clause 16(2) of the First Schedule.
7. The first of these is adopted from Ms Jones’ recommendations and is accepted. It is to amend Objective 42.2.2 so that it is phrased as an ‘outcome’ statement, consistent with the Panel’s Fourth Procedural Minute dated 8 April 2016. The objective is recommended to be amended as follows:

“Development that avoids adverse effects on Mill Creek and ecological values”.

8. The second is to amend the Table in Part 42.3.1 to refer to the correct chapter numbers now that the Stage 2 Variations have been notified.

¹ Submission 19

² Submission 430

³ FS1010, FS1050, FS1082, FS1084, FS1099, FS1129, FS1133 and FS1146

9. The third matter concerns an amendment to the headings of 'Clarification' and 'Advice Notes' under Clause 42.3.2 Clarification. We consider these provisions are in fact an explanation of how to use the rules, as they determine the status of an activity. Accordingly, we recommend that the word "Clarification" be replaced with the words "Interpreting and Applying the Rules", and that the subheading "Advice Notes" be deleted. There are no changes to the subsequent text itself, or the potential regulatory impact of these provisions, and for these reasons, the recommended changes are not considered substantive.
10. The next amendments relate to three rules classifying activities as controlled activities⁴. They concern activities and buildings in all structure plan activity areas for recreation facilities, administration facilities, and structures for the retention of water; for buildings in specified structure plan activity areas; and for activities and buildings in the Village Activity Area. It was put to us that the matters to which control is reserved, relating to natural hazards in these rules, be amended so that the 'assessment matters' were distinguished and separated from the matters to which control is reserved. Currently there is an extremely long final 'matter of control' which reads:

"Where a site is subject to any natural hazard and the proposal results in an increase in gross floor area: an assessment by a suitably qualified person is provided that addresses the nature and degree of risk the hazard(s) poses to people and property, whether the proposal will alter the risk to any site, and the extent to which such risk can be avoided or sufficiently mitigated".
11. The amendment proposed in the officer's report would logically break up this somewhat convoluted matter of control into its various components. However, it was proposed that a further subheading of "assessment matters" be added immediately following the matters of control. While we understand that it is necessary to specify the matters to which control is reserved, we do not consider it is appropriate to have a separate subheading following these entitled "assessment matters". Instead, we propose that these be replaced by three additional matters of control with respect to natural hazards under each of these rules, as set out in Appendix 1. We are satisfied that there will not be any changes to the regulatory impact of the rules, and any assessments of resource consents made under them.
12. Ms Jones noted that Rules 42.5.1 and 42.5.7 contained underlined text, presumably to either draw the matter to the readers' attention or to emphasise the importance of the qualifier/ text in the rule. She recommended that the underlining be removed because all rules are of equal status and this manner of drafting was inconsistent with the remainder of the PDP. She contended that the change was not considered substantive – we concur and agree with her amendment and recommend it be accepted.
13. Consistent with the approach being taken with other chapters of the PDP, Ms Jones proposed that the words "all of" be removed wherever the phrase "control is reserved to *all of* the following" as used in Chapter 42 for controlled activities. We concur with this amendment, but, consistent with other chapters, we also recommend removal of "the following". In addition, Rule 42.5.4 contains the phrase "*Glare shall comply with all of the following*", which raises the same issue. We consider that only the word 'Glare' is required as a heading, and that the standards following that heading should be numbered. We are satisfied that these amendments are not substantive.

⁴

Rules 42.4.4, 42.4.5 and 42.4.6 Updated 7/3/2018 NC

14. Ms Jones also proposed the removal of the words "....and so as...." in the text under the first bullet point of Rule 42.5.4 to improve its legibility. The first bullet point of the rule currently reads:

"All fixed lighting shall be directed away from adjacent roads and properties, and so as to limit effects on the night sky".

15. It is difficult to understand how (even as amended) that directing lighting away from adjacent roads and properties will necessarily have the effect of limiting light spill into the night sky. We are aware that the issue of controlling light spill into the night sky (and the potential *vires* of rules that could be added to achieve this) has also arisen elsewhere in other chapters of the PDP. While no submissions have been made on this part of the rule as a whole, we consider the rule can be clarified by inclusion of the word 'downward'. We also note, consistent with the approach the Panel has taken in other hearing streams, that it is views of the night sky that are to be protected, not the sky itself. Thus, we recommend the phrase be amended to read:

"and downward so as to limit effects on views of the night sky."

16. This change is not considered substantive.
17. A final matter is the use of the term "written consent" in Section 42.6. The correct term is "written approval"⁵. We recommend "consent" is replaced with "approval".
18. This change is not considered substantive and can be made under Clause 16(2) of the First Schedule to the Act.

2. OVERALL RECOMMENDATION

19. We recommend the Council –
- Accept Submission 19 by K Froud in part: and
 - Make the amendments we have recommended above under Clause 16(2) of the First Schedule to the Act; and
 - Adopt Chapter 42 in the form attached in Appendix 1.

For the Hearing Panel



Denis Nugent, Chair
Date: 19 March 2018

⁵ Refer Sections 95D, 95E and 104 of the Act

Appendix 1: Recommended Chapter 42



42 WATERFALL PARK



42.1

Purpose

The purpose of the Waterfall Park Zone is to provide for the development of a visitor resort comprising a range of visitor, residential and recreational facilities, sympathetic to the natural setting. The site lies within a high quality scenic environment adjacent to the Millbrook Resort Zone.

In terms of natural features the focus of the site is the waterfall located towards the centre of the site. The existing recreational areas and amphitheatre are located adjacent to the waterfall and continue along part of Mill Creek. Development limits are imposed in the zone given its scenic and environmental qualities. Development shall conserve and enhance the natural and scenic values contained within the property and its setting.

42.2

Objectives and Policies

42.2.1 **Objective – Visitor, residential and recreation facilities and activities developed in an integrated manner with particular regard for the natural and scenic values of the setting.**

Policies

- 42.2.1.1** Ensure that the external appearance of buildings and other structures are appropriate to the location with particular regard to the site's natural and scenic values.
- 42.2.1.2** Require all development to be located in accordance with the Structure Plan.
- 42.2.1.3** Protect and enhance the important natural features on the site.

42.2.2 **Objective – Development that avoids adverse effects on Mill Creek and ecological values.**

Policies

- 42.2.2.1** Ensure sewage disposal, water supply and refuse disposal services are provided so as not to adversely impact on water or other environmental qualities on or off the site.
- 42.2.2.2** Protect and enhance Mill Creek as an important brown trout spawning habitat.

42.3

Other Provisions and Rules

42.3.1 District Wide

Attention is drawn to the following District Wide chapters.

1	Introduction	2	Definitions	3	Strategic Direction
4	Urban Development	5	Tangata Whenua	6	Landscapes and Rural Character
25	<i>Earthworks</i>	26	Historic Heritage	27	Subdivision
28	Natural Hazards	29	<i>Transport</i>	30	Energy and Utilities
31	<i>Signs</i>	32	Protected Trees	33	Indigenous Vegetation
34	Wilding Exotic Trees	35	Temporary Activities and Relocated Buildings	36	Noise
37	Designations	Planning Maps			

42.3.2 Interpreting and Applying the Rules

42.3.2.1 A permitted activity must comply with all the rules listed in the activity and standards tables, and any relevant district wide rules.

42.3.2.2 Where an activity does not comply with a Standard listed in the Standards table, the activity status identified by the Non-Compliance Status column shall apply. Where an activity breaches more than one Standard, the most restrictive status shall apply to the Activity.

42.3.2.3 The following abbreviations are used within this Chapter.

P	Permitted	C	Controlled	RD	Restricted	Discretionary
D	Discretionary	NC	Non-Complying	PR	Prohibited	

42.4

Rules - Activities

	Activities located in the Waterfall Park Zone	Activity status
42.4.1	Activities which are not listed in this table	NC
42.4.2	In the Residences Area (R) of the Structure Plan Dwelling, Residential Unit	P
42.4.3	Dwelling, Residential Unit, Residential Flat not otherwise identified	D
42.4.4	<p>In all Structure Plan Activity Areas</p> <p>Recreation Facilities (noting that in areas shown as O/P on the Structure Plan recreation facilities shall not include buildings or structures)</p> <p>Administration activities for administering and servicing of other facilities within the zone, including storage, maintenance and depot facilities</p> <p>Structures for the retention of water (not located within a waterbody)</p> <p>Control is reserved to:</p> <ul style="list-style-type: none"> a. general: <ul style="list-style-type: none"> i. location and external appearance of buildings; ii. setback from roads; iii. setback from internal boundaries; iv. vehicle access and street layout; v. outdoor living space; vi. street scene including landscaping; vii. enhancement of ecological and natural values; viii. provision for internal walkways, cycle ways and pedestrian linkages; and ix. noise. b. natural hazards where the proposal results in an increase in gross floor area: <ul style="list-style-type: none"> i. the nature and degree of risk the hazard(s) pose to people and property; ii. whether the proposal will alter the risk to any site; and iii. the extent to which such risk can be avoided or sufficiently mitigated. 	C

	Activities located in the Waterfall Park Zone	Activity status
42.4.5	<p>In all Structure Plan Activity Areas (except for the Open Space, Landscaping and Passive Recreation Activity Area O/P)</p> <p>Buildings</p> <p>Control is reserved to:</p> <ul style="list-style-type: none"> a. the external appearance of the building and coherence with surrounding buildings; b. natural hazards where the proposal results in an increase in gross floor area: <ul style="list-style-type: none"> i. the nature and degree of risk the hazard(s) pose to people and property; ii. whether the proposal will alter the risk to any site; and iii. the extent to which such risk can be avoided or sufficiently mitigated. 	C
42.4.6	<p>In the Village Area (V) of the Structure Plan:</p> <p>Visitor Accommodation</p> <p>Licenced Premises integrated with Visitor Accommodation</p> <p>Theatres, conference, cultural and resort facilities and office and administration activities that are ancillary to Visitor Accommodation</p> <p>Community Activities (limited to creches and other child care facilities integrated with Visitor Accommodation)</p> <p>Educational Facilities</p> <p>Control is reserved to all:</p> <ul style="list-style-type: none"> a. general <ul style="list-style-type: none"> i. location and external appearance of buildings; ii. setback from roads; iii. setback from internal boundaries; iv. vehicle access and street layout; v. outdoor living space; vi. street scene including landscaping; vii. enhancement of ecological and natural values; viii. provision for internal walkways, cycle ways and pedestrian linkages; and ix. noise. b. natural hazards where the proposal results in an increase in gross floor area: <ul style="list-style-type: none"> i. the nature and degree of risk the hazard(s) pose to people and property; ii. whether the proposal will alter the risk to any site; and iii. the extent to which such risk can be avoided or sufficiently mitigated. 	C

	Activities located in the Waterfall Park Zone	Activity status
42.4.7	Licenced Premises not otherwise identified	PR
42.4.8	Manufacturing and/or product assembling activities	PR
42.4.9	Fish or meat processing	PR
42.4.10	Fibreglassing, sheet metal work, bottle or scrap storage, motorbody building or wrecking, fish or meat processing (excluding that which is ancillary to a retail premises such as a butcher, fishmonger or supermarket), or any activity requiring an Offensive Trade Licence under the Health Act 1956.	PR
42.4.11	Factory Farming	PR
42.4.12	Any activity requiring an Offensive Trade Licence under the Health Act 1956	PR

42.5 Rules - Standards

	Standards for activities located in the Waterfall Park Zone	Non-compliance Status
42.5.1	Setbacks No building or structure shall be located closer than 6m to the Zone boundary, and in addition: No building shall be located closer than 7m to Mill Creek.	D
42.5.2	Residential Capacity In the Waterfall Park Zone the maximum number of residential units shall be limited to 100.	NC
42.5.3	Building Height The maximum height of buildings shall be: a. visitor accommodation, (including facilities integrated with and ancillary to Visitor Accommodation) - 8 m; b. residential buildings - 8m; c. all other buildings and structures - 4m.	NC

	Standards for activities located in the Waterfall Park Zone	Non-compliance Status
42.5.4	<p>Glare</p> <p>42.5.4.1 All fixed lighting shall be directed away from adjacent roads and properties, and downward so as to limit effects on view of the night sky.</p> <p>42.5.4.2 Any building or fence constructed or clad in metal, or material with reflective surfaces shall be painted or otherwise coated with a non-reflective finish.</p> <p>42.5.4.3 No activity shall result in a greater than 3.0 lux spill, horizontal and vertical, of light onto any property located outside of the Zone, measured at any point inside the boundary of the adjoining property.</p>	NC
42.5.5	<p>Maximum Total Site Coverage</p> <p>The maximum site coverage shall not exceed 5% of the total area of the Zone. For the purposes of this Rule, site coverage excludes bridges and roads and parking areas.</p>	NC
42.5.6	<p>Fire Fighting</p> <p>A fire fighting reserve of water shall be maintained of a capacity sufficient to service the Zone. The storage shall meet the New Zealand Fire Service Firefighting Water Supplies Code of Practice 2008.</p>	NC
42.5.7	<p>Atmospheric Emissions</p> <p>There shall be no indoor solid fuel fires, except for:</p> <p>a. feature open fireplaces in the clubhouse and other communal buildings including bars and restaurants.</p> <p>Note: Council bylaws and Regional Plan rules may also apply to indoor and outdoor fires.</p>	NC
42.5.8	<p>Retail sales</p> <p>No goods shall be displayed, sold or offered for sale from a site except:</p> <p>a. goods grown, reared or produced on the site;</p> <p>b. within those areas of the Structure Plan identified as the Village Centre.</p>	NC

42.6

Rules - Non-Notification of Applications

42.6.1 All applications for Controlled activities and Restricted Discretionary shall not require the written approval of other persons and shall not be notified or limited-notified.

42.7

Structure Plan

