

**BEFORE THE HEARING COMMISSIONERS
FOR THE PROPOSED THE QUEENSTOWN LAKES DISTRICT PLAN
AT QUEENSTOWN**

**IN THE MATTER
of the Resource Management Act 1991**

**AND
IN THE MATTER
of Hearing Stream 15**

Statement of Evidence of John Bernard Edmonds on behalf of Millbrook Country Club Limited
Planning

6 August 2018

QUALIFICATIONS AND EXPERIENCE

1. My name is John Bernard Edmonds. I hold the qualification of Bachelor of Regional Planning from Massey University, and am a full member of the New Zealand Planning Institute. I have 25 years' experience in planning and resource management, spanning policy and resource consent roles in local government and as a private consultant. I spent five years at Nelson City Council and six years with the Queenstown Lakes District Council (QLDC), most of that time (1997-2001) as the District Planner. In January 2001 I commenced private practice as a consultant. I am a trustee of the Queenstown Trails Trust.

CODE OF CONDUCT STATEMENT

2. I have read the Code of Conduct for Expert Witnesses contained within the Environment Court Practice Note 2014, and (although this matter is not before the Environment Court) I have complied with it in the preparation of this evidence.
3. This evidence is within my area of expertise and I confirm I have not omitted to consider material facts known to me that might alter or detract from the opinions I have expressed.

SCOPE OF THIS EVIDENCE & STRUCTURE

4. I have been asked to prepare evidence by Millbrook Country Club Limited ('Millbrook'). I have read the relevant Section 42A reports and the Section 32 material, as well as the submissions and further submissions by other parties.
5. My evidence is structured to first address the submissions and further submissions, and second to provide a statutory context, and finally to reach a conclusion.

THE SUBMISSIONS

6. Millbrook lodged eight separate submissions to the second stage of the Proposed District Plan, including individual submissions to Earthworks (Chapter 25), Signs (Chapter 31), Open Space and Recreation (Chapter 38) and the Variation to the Millbrook Resort Zone (Chapter 43 - Visitor Accommodation).
7. The Earthworks, Signs, and Open Space and Visitor Accommodation submissions have been included within Submission 2295. The Visitor Accommodation submission has also been listed under Submission 2306.
8. The Officer s.42A reports (Wyeth – Earthworks, Bowbyes – Visitor Accommodation, Edgely and Galavazi – Open Space and Recreation, and Leith – Signs) are all responded to in this single brief.
9. Millbrook did not lodge any further submissions to any of these chapters.
10. The submissions are set out in the table below and include cross-referencing to a map that identifies the location of various submitters properties.

EARTHWORKS

11. Millbrook seeks three areas of relief; amendments to certain policies, an increase in the allowable volume of earthworks consistent with the Jacks Point Zone to 500m³ and an exemption for earthworks within the Golf and Open Space Activity Area.
12. MCC points of submission are identified at paragraphs 9.27 and 9.30 of the officer's report.
13. I acknowledge the comments made by the officer – that there are subtle differences between policies 25.2.1.3 and 25.2.1.2.
14. Policy 25.2.1.5 states “Design earthworks to recognise the constraints and opportunities of the site and environment.” I remain of the view that this is unnecessary and provides no beneficial assistance or direction.
15. The suggested alterations to Policy 25.2.2.1 is accepted.
16. The rules that apply to Millbrook are at 25.5.3 and impose a 300m³ limit over all earthworks activities in the Millbrook Resort Zone. MCC has sought the same rules that apply to the Jacks Point Zone should reasonably apply to Millbrook.

<i>25.5.11</i>	<i>Millbrook Resort Zone</i>
<i>Residential, Village, Resort Services, Landscape Protection, Landscape Protection (Malaghan) Activity Areas</i>	<i>500m³</i>
<i>Golf Course and Open Space, Recreation Facilities, Helipad Activity Areas</i>	<i>No Maximum</i>

17. The MRZ contains several sub-zones or Activity Areas, including the Golf Course and Open Space, Village and Residential. Millbrook still retains an undeveloped 7-hectare block of land that is identified as a Village Activity Area.
18. The Village activity Area is similar to the commercial zones that are listed at Rule 25.5.5 (Town Centre, Local Shopping Centre..) all of which have a 500m³ limitation.
19. MCC has sought a similar exemption to Jacks Point. The officer seeks to distinguish MRZ and JPZ at 12.39 by stating that the JPZ thresholds have been “carried over from the JPZ as notified”, and that his “expectation” was that Council has considered a separate set of rules for the JPZ. Further that the stand-alone rules reflect the “unique scale of the JPZ”.
20. To clarify;
 - a. the MRZ has always been exempt from earthworks rules, both in the operative plan, the plan amended by Variation 8 or Plan Change 49;
 - b. the advertised version of the MRZ (Chapter 43) did not contain any earthworks rules;
 - c. The MRZ is the primary resort zone, and is unique to the District;

21. Mr. Sunich, at paragraph 7.5 does nothing to distinguish the JPZ from the MRZ. He makes no attempt to explain how 500 dwellings, recreational, visitor and commercial activity can be “accommodated within Standard 25.5.3”. Mr. Wyeth simply adopts the same.
22. The 1,000m³ limit that applies throughout the rural area (25.5.6) or the unlimited volumes that are proposed for the JPZ golf course, education activities, lodge area and ‘education innovation campus’ are not assessed relative to the request by MCC for the Golf Course and Open Space Activity Area.
23. I note that the MRZ and JPZ have been bundled together in chapter 31 – Signage.

SIGNS

24. The Millbrook resort does not rely on either large or numerous signage – it has been carefully developed to minimise such effects. At the same time, it is appropriate that the rules enable an appropriate level of signage so that visitors and guests can safely navigate the property and locate the various activities. MCC sought the following amendments to the proposed Chapter 31 rules:
 - 31.9.5(a) to amend the purpose of the rule to refer to ‘building’ rather than a ‘business’ to ensure that the rule is not unintentionally restrictive;*
 - 31.9.8/9 to make provision for visitor accommodation signage in the MRZ;*
 - 31.6.7 clarify whether free-standing signs apply to the MRZ, and whether there is any restriction on their location or number;*
 - 31.6.6 whether the proposed ‘under-veranda sign’ rules apply to private land.*
25. The officer accepts that rule 31.9.5(a) should refer to buildings rather than a business.
26. Notified rules 31.9.8 and .9 provide for VA signage within the Visitor Accommodation Sub Zone. Millbrook’s submission was that such provision should also be made for VA signage within the MRZ, given it is the only resort zone in the district.
27. The reporting officer disagrees and says that signage for VA in the MRZ is captured by the combination of Rules 31.9.5 and .6. I understand that she considers that VA falls under Rule 31.9.6 - which provides for one sign per site with a maximum area of 0.5 m² provided it has no internal or external illumination.
28. The MRZ is the only resort in the District, and it is appropriate that the existing and future VA activities in this zone are able to display signs for that purpose. The submission identifies that the core of the MRZ is setback from public roads, and that MCC operate a strict internal design control process.
29. I consider that either Rule 31.9.8 should be amended to include such signage in the MRZ as a permitted activity, or rule 31.9.5 should be amended to refer to “signs for commercial activities, community activities, visitor accommodation activities complying with the following standards... ”.
30. I accept that Rule 31.8.9 may be deleted.
31. Rule 31.6.9 is titled ‘Under Veranda Signs’ and applies on a district-wide basis. The only purpose of the rule seems to be to manage the height of such signs above footpath levels. Given that there are no public foot paths and Millbrook I see little point in having this rule

apply to the resort, and it would be more appropriate that this rule be limited to public roads only.

VISITOR ACCOMMODATION

32. The proposed variation to Chapter 43 introduces a new definition of visitor accommodation which includes a restriction on the use of residential units for visitor accommodation purposes from 90 days to 28 days per annum.
33. The decision version of Chapter 43 (MRZ) lists visitor accommodation at Rule 43.4.3 as a permitted activity in the Village Activity Area, and discretionary elsewhere within the MRZ.
34. The Council granted MCC resource consent approval in 2013 (RM120485) for 150 parcels of land to be used for visitor accommodation purposes for up to 179 days per year. A copy of that resource consent is attached to this evidence. MCC have given effect to this consent and continue to do so.
35. The officer's report acknowledges that the purpose of the Millbrook resort differs from standard residential neighbourhoods and is focused on providing a high-quality resort experience for visitors.
36. MCC is New Zealand's leading resort, including restaurants, hotel and guest accommodation, as well as 27 holes of golf (with another 9 under construction), health spa, gymnasium, tennis courts, and driving range. The resort can be accessed by helicopter (it has its own registered helipad). The resort hosts the New Zealand golf open, conferences, weddings and numerous other incentive group bookings.
37. The officer acknowledges that both the consent status for visitor accommodation in the residential activity areas should be more enabling (restricted discretionary rather than non-complying), and also that there should be more than the 28 days per annum that are proposed for other zones. The officer concludes that a 42-day threshold be adopted, although there is no explanation why this number has been chosen.
38. The reason that the submission sought 179 days per annum is because the six-month period integrates well with the majority of owners at Millbrook who tend to use their properties on a part-time basis. This makes the properties available for people wanting to stay at the resort, which is in accordance with the overall objective of the zone of providing a visitor resort of high-quality.
39. This I note that at paragraph 9.141, the officer recognises that there should be a consistent approach adopted between the resort zones (MRZ and JPZ). I agree and consider that consistent approach should extend to the earthworks rules as well.

OPEN SPACE AND RECREATION

40. MCC make two points of submission on Chapter 38. The first point relates to the zoning of the Coronet Forest, and the officer agrees that it should be in the Nature Conservation Zone. That zoning will be consistent with the long-term management plan that the Council has resolved to adopt for the forest.
41. The second point of submission relates to Millbrook Park which is a 3-ha park located at the corner of Malaghans Road and Arrowtown-Lake Hayes Road. This area of land has been part of the Millbrook resort since its inception in the 1990s, and it has been included in the

Millbrook Resort Zone throughout that time. It has always been identified for golf and open space purposes under the Millbrook Structure Plan.

42. The park is used for cricket and contains a single 50 m² pavilion and associated car parking area at the western end of the park. A public walking Trail extends along the roadside of Malaghans Road.
43. The park was vested in the Council as part of the development of Millbrook West, as part of its reserve contribution. Millbrook actually gifted over 4000 m², in addition to its required contribution, to make up a usable sports field area for the community. The land was vested subject to a deed between Millbrook and the Council, which is set out in the submission. The Council has subsequently adopted a reserve management plan for this land (vested as a recreation reserve). The park is not designated in the District Plan. The Arrowtown – Lake Hayes Reserve Management Plan sets out seven policies for Millbrook Park:

Policy 15 Millbrook Park

- 15.1 The land shall be used only for sporting activities, either organised or informal sport/recreation.
- 15.2 Motorised sporting activities shall not be permitted (other than radio controlled aircraft powered by electricity)
- 15.3 No earthworks or planting shall be carried out on the land other than that required to give effect to the Reserve Development Plan as shown in Appendix 1.
- 15.4 All buildings will be designed in a manner consistent with Millbrook's design themes including building and roof shape, and exterior claddings and colours.
- 15.5 Planting on the land shall be consistent with that permitted at Millbrook.
- 15.6 Post and wire fencing only will be permitted on the land.
- 15.7 QLDC shall maintain all buildings, planting and grassed areas on the land to a high standard at all times.

44. The decision on chapter 43 identifies this land as part of the Millbrook resort zone (Golf and Open Space Activity Area). This underlying Millbrook zoning ensures that this area of land in conjunction with other land located immediately to the west will remain primarily as open space, where a very limited range of small structures associated with golf and recreation activity can occur such as a utility building.
45. It is now proposed that this land be zoned Active Sport and Recreation. This zoning has only been applied to two other sites in the Wakaktipu Basin: the Queenstown Recreation Ground and the Arrowtown sportsfield.
46. The purpose of the Active Sport and Recreation Zone is set out at page 38 – 8:

The Active Sport and Recreation Zone includes larger parks and reserves that are primarily used for organised sport and events, usually with associated buildings and structures. The zone primarily applies to open space that is easily accessible, used for indoor and outdoor organised sports, active recreation and community activities.

The Active Sport and Recreation Zone areas are designed and used for organised sport and recreation with toilets, changing facilities, car parking and turf or playing surfaces formally maintained to an appropriate standard for the relevant sports code. These include sports fields, hard-court areas, club facilities as well as associated infrastructure such as car parking and changing rooms.

Commercial activities accessory to sport and active recreation activities, such as those that provide food or beverage services to support recreational use, may be undertaken in appropriate locations within this zone.

In The Active Sport and Recreation Zone applies in the main urban centres and contain provisions that recognise the intensive use made of these areas, and the need to provide sufficient facilities to support these uses, while at the same time, providing for the open space and amenity values of a park or reserve within this zone, as well as avoiding or mitigating adverse effects on the surrounding areas.

47. This proposed zoning provides for a range of activities and buildings that can be established within the reserve that are inconsistent and at odds with the underlying Millbrook zoning, the deed that saw this land transferred to the Council, and the Reserve Management Plan. For example, buildings could be up to 10 m high with a floor area of 400 m² and setback only 6 m from either Malaghans or Arrowtown Lake Hayes Road.
48. If this proposed zoning is made operative, then it is quite feasible that the Council would also review the Reserve Management plan for Millbrook Park to ensure that the two are consistent with one another.
49. There are only three Active Sport and Recreation Zones in the Wakaktipu Basin (Millbrook Park being one of them), and the Council intends that these three areas are the key parks where buildings and organised sporting events will be held, where hard surfacing such as courts and car-parks will be developed, and where associated infrastructure will be encouraged to locate. Given that the Queenstown Recreation Ground is constrained by size and is unable to be developed further, and that similar constraints also apply to the Arrowtown Sports Ground – it is reasonable to assume (in fact it is the only logical conclusion available) that the Council has determined that all future sports related buildings and hard-surface areas are appropriate at the Millbrook Park.
50. However, Mrs Galivazi's report (paragraph 9.17) identifies that the Council has not yet undertaken a strategic review of all of its reserves or their intended future use, and it appears that is also the case for Millbrook Park.
51. In comparison, the Informal Recreation Zone provides for the following:

The Informal Recreation Zone applies to open space and recreation areas that are primarily easily accessible for the immediate community and visitors or within easy walking distance for residents within the area. It provides a basic informal recreation experience, including play opportunities (such as flat, kick-around space) and offers areas for respite and relaxation. In addition, the Informal Recreation Zone is intended to provide physical links to other areas (such as by cycle ways or pedestrian access ways).

The Informal Recreation Zone encompasses both small local parks and neighbourhood reserves, through to large open areas fronting the District's Lakes. It also encompasses small reserves that provide visual relief from the built environment. While some civic activities may take place on these reserves, it is anticipated that larger and more formal civic events will occur within the Civic Spaces Zones.

The Informal Recreation Zone accommodates a number of facilities, including public toilets, children's playgrounds, public barbeques, public art, car parks, tracks and general park furniture....

Buildings and structures located on the Informal Recreation Zone are generally limited to those that support informal recreation and are typically small-scale community buildings and structures....

52. The preferred relief is that Millbrook Park be removed from Chapter 38 and retained as part of the Millbrook Resort Zone.
53. The officer notes that excluding Millbrook Park from one of these new open space zones would “undermine this consistent zoning approach”, however Millbrook Park is unlike most other open space areas and parks in the district which are currently zoned either Rural General or included in one of the urban zones such as residential. As such those existing parks and reserves do not have a current zoned structure that provides oversight and management.
54. In this case the Golf and Open Space Activity Area sub-zone (of the Millbrook Resort Zone) in conjunction (if necessary) with the Reserve Management Plan provide an operative policy and rule framework that is appropriate, and in my opinion the most optimal outcome.
55. However, if the Commission does not agree then I consider that the next best alternative would be to include this land in the Informal Recreation Zone, as that proposed zone does not provide for large indoor sports buildings and similar structures that would be out of place in this area.

CONCLUSION

56. Millbrook Country Club submit that:
 - i. That Chapter 25 (Earthworks) be amended so that:
 - a. Earthworks within the Residential, Village, Resort Services, Landscape Protection, *Landscape Protection (Malaghan) Activity Areas* be increased to 500 m³ per annum; and
 - b. No limit applies to earthworks in the Golf Course and Open Space, Recreation Facilities, Helipad Activity Areas Area
 - ii. That Chapter 31 (Signs) be amended so that:
 - a. That Rule 31.9.5(a) be amended to refer to ‘building’ rather than a ‘business’;
 - b. That Rule 31.6.9 (‘Under Veranda Signs’) be amended to only apply to Council roads;
 - c. That Rule 31.9.8 be amended to include such signage in the MRZ as a permitted activity, or Rule 31.9.5 be amended to refer to “signs for commercial activities, community activities, visitor accommodation activities complying with the following standards... ”.
 - iii. That Variation to Chapter 43 (Visitor Accommodation) be amended so that:
 - a. The activity status of Rule 43.5.14 be amended to Restricted Discretionary status;
 - b. That the following matters of discretion be included with the rule:
 - noise mitigation

- provision and location of car parking
 - external lighting
 - centralised management of the holiday unit by the Millbrook country club
 - the scale of the activity
- c. Rule 43.5.14.1 be amended so that reference to 3 let's is deleted, and the total nights per annum is increased from 28 to 179.
- iv. That Chapter 38 be amended so that:
- a. The zoning of the Coronet Forest be amended to Passive Recreation Zone; and
 - b. The Zoning of the Millbrook Park be either withdrawn (ie. it returns to the Millbrook Resort Zone), or it be amended to the proposed Passive Recreation Zone.

Attachment 1 QLDC Resource Consent Decision – RM120485

QUEENSTOWN LAKES DISTRICT COUNCIL

DECISION ON AN APPLICATION FOR RESOURCE CONSENT

APPLICANT:	Millbrook Country Club Ltd
COUNCIL REFERENCE:	RM120485 – Re-issue
LOCATION:	Malaghans Road, Wakatipu Basin
PROPOSAL:	To use existing and future residential units at Millbrook for visitor accommodation as well as residential use to a greater extent than permitted under the District Plan
TYPE OF APPLICATION:	Land use
LEGAL DESCRIPTION:	Numerous individual titles – refer to application
ZONING:	Millbrook Resort Special Zone, and Rural General Zone
ACTIVITY STATUS:	Non - Complying
NOTIFICATION:	Publicly notified on the 20 th September, 2012
COMMISSIONERS:	David W Collins and Cath Gilmour
DATE ISSUED:	12 th December 2012 Re-issued 11 January 2013
DECISION:	Consent is granted, with conditions

UNDER THE RESOURCE MANAGEMENT ACT 1991

IN THE MATTER OF an application to the Queenstown-Lakes District Council by the Millbrook Country Club Ltd for consent to use existing and future residential units at Millbrook for visitor accommodation as well as residential use to a great extent that permitted under the District Plan.

Council File: RM 120485

DECISION OF DAVID W COLLINS AND CATH GILMOUR, HEARINGS COMMISSIONERS APPOINTED PURSUANT TO SECTION 34A OF THE ACT

RE-ISSUE

0. The application was considered under delegated authority pursuant to Section 34 of the Resource Management Act 1991 on 12 December 2012. This decision was re-issued by Commissioner Collins, as delegate for the Council, on 11 January 2013, pursuant to section 133A of the Resource Management Act 1991. It was re-issued in relation to two matters: firstly a typographical error on the list of conditions that should have referenced this consent, and secondly to provide reference to a letter of agreement between Millbrook Country Club Limited and Queenstown Lakes District Council concerning development contributions in advice note 1 and to attach the letter to this consent.

THE APPLICATION AND THE SITE

1. Consent is sought to change the use of residential units within and adjoining the Millbrook Resort Zone (MRZ) from residential dwellings to a mixed use of residential and visitor accommodation. Consent is also sought to breach associated requirements in relation to car parking dimensions, minimum road setbacks and maximum height. These breaches are sought for both existing residential units and sites yet to be developed.
2. The subject area encompasses the entire Millbrook Resort Zone (MRZ) with the exception of the 'V-Village' Activity Area located in the middle of Millbrook where mixed visitor accommodation and residential activity is already permitted, and residential properties on Mill Vista Lane at the southern end of Millbrook. The subject area also includes the Rural General (RG) sites that were created under resource consents RM110200 and RM100240 to the north of Millbrook and RM021095 to Millbrook's east.

3. As notified, the application related to 150 land parcels, including a large area of land in western Millbrook consisting of five lots that can potentially absorb significant development in the future, but as discussed below 13 of these properties have since been excluded.
4. Under the Queenstown Lakes District Plan, a maximum of 450 residential units are permitted in the MRZ. Each of the sites proposed for mixed residential and visitor accommodation use under this application will still count as a residential unit for this purpose. The three resource consents listed above allow 19 residential units on the subject RG land. The applicant's evidence at the hearing was that there are presently 158 completed residential units within the MRZ and it is anticipated that at full development there will be about 350, substantially less than 450 maximum permitted (plus the 19 residential units consented for the adjacent RG zoned sites). Obviously we have had to consider the implications of mixed visitor accommodation and residential use within the future development areas as well as within the existing developed areas.
5. Millbrook is a 200 hectare resort development commenced in 1993, situated on the south-west side of Arrowtown. Access into Millbrook is off Malaghans Road and, in general, the streets of Millbrook are quiet and narrow. Millbrook is characterised primarily by its open space, carefully controlled design of the buildings, European deciduous trees, and golf courses. It has a Structure Plan with areas for village (mix of visitor accommodation and residential), residences, recreational facilities, golf course and open space and a helipad.
6. The subject sites range in size, and the built form includes a combination of single, duplex, triplex and quadplex blocks. The eastern part of Millbrook is well established, with 143 residential units. Consents have been granted for 92 units in western Millbrook, including 17 in RG zoned land adjoining the MRZ, and 15 of these have been built. Millbrook Country Club Limited (MCCL) owns a significant portion of the subject land, especially the undeveloped land to the west. The remainder of the subject sites are in private ownership.
7. The Millbrook Resort Zone (MRZ) is irregular in shape and almost encloses pockets of RG land off Malaghans Road and Arrowtown-Lake Hayes Road. Rural General zoned land surrounds Millbrook, with the exception of Meadows Parks (also known as Butel Park) opposite Millbrook to the north, across Malaghans Road. Meadows Park is a relatively new residential area, consisting of a mixture of built and vacant sites.
8. There are other residential developments located within the Millbrook Resort that are not included in this application. They are on Mills Vista Lane and in the V – Village Activity Area, as shown on the attached plan.
9. The other nearby residential activity is on the Rural General land located on the western side of Arrowtown-Lake Hayes Road that adjoins the eastern boundary of Millbrook. While this development adjoins Millbrook, it has access directly off Arrowtown-Lake Hayes Road and is not integrated into the Millbrook Resort. All other residential development has significant separation from the Millbrook Resort.

NOTIFICATION

10. The application was publicly notified on the 20th of September 2012 and attracted 17 submissions from the following parties:

Submissions in opposition:

Queenstown Lakes District Council
Simon Rutherford
Graham Smolenski & Gabrielle Martin
Paul F. Rea
Oliham Trust
Raphael Yan & Eugenie Masfaen-Yan
Guy Pope – Mayell & Woodville Trust
J M Fleck
Malcolm Ramsay
E B & P K Allison
David Ian McAlpine
Aoraki Partnership Trust
J E Richardson
Lee Nicolson

Submissions in support:

Clews Family Trust
Alden Halse

A late submission was received from:

A T Hadlow

11. The late submission was received 5 working days after the submission period. There is power under section 37 of the Act to validate late submissions, but in the absence of any explanation or request for validation we consider, having regard to section 37A, there is no reason to do so. The submission does not raise any matter that would assist us in making a decision.
12. The submissions in opposition raise various concerns. Many oppose in principle the “blanket” approach taken and object to their properties being included. Some raise possible financial implications for property owners. One submitter, Mr McAlpine, requests that certain areas in East Millbrook are excluded, and also opposes the inclusion of the properties of his immediate neighbours. Another submitter, Mrs Nicolson, opposes the inclusion of the largely undeveloped West Millbrook, and questions the maximum 180 visitor nights per year sought.
13. The two submissions in support simply indicate support, just noting that visitor accommodation is seen as appropriate at Millbrook. We will address the matters raised by submitters below.
14. In response to the submitters’ concerns, the applicant amended the application (letter dated 12th November) to exclude the properties of the 13 submitters who sought that.

We have no doubt that this amendment is within the “scope” of the application as notified – it simply makes the proposal apply to fewer properties leaving the excluded properties with the status quo.

STATUTORY ASSESSMENT FRAMEWORK

15. The application has to be assessed under sections 104, 104B and 104D of the Act. Section 104 directs us to “*have regard to*” the effects on the environment of the activity and relevant provisions of various statutory documents, in this case just the operative Queenstown Lakes District Plan.
16. Consideration is “*subject to*” Part 2 of the Act, which sets out the purpose and principles of the Act. Relevant Part 2 matters in this case are the broadly enabling purpose set out in section 5, which is subject to provisos including the imperative to avoid, remedy or mitigate adverse effects on the environment, and some section 7 matters to which we are required to have “*particular regard*”. Relevantly in this case:

*“(b) the efficient use and development of natural and physical resources
(c) the maintenance and enhancement of amenity values”*
17. Section 104B provides that we may grant or refuse consent, and that consent may be granted subject to conditions imposed under section 108 of the Act.
18. Section 104D prescribes that consent may be granted for a non-complying activity (as this is) only if the adverse effects on the environment will be minor, and/or the proposal is not contrary to the objectives and policies of the District Plan. The Courts have provided guidance on what “minor” and “contrary to” mean in this context.
19. Section 104(2) provides that we may disregard an adverse effect where the District Plan permits an activity with that effect. This is part of what is termed the “permitted baseline”. In this case we have taken into account the effects of permitted residential use of the properties, and the effects of the limited letting permitted under the Council’s Registered Holiday Home Scheme.
20. Under the District Plan, letting a house out as a holiday home under the Councils’ registered Holiday Home Scheme is not defined as visitor accommodation. A property can become a registered holiday home only if it meets the following criteria:
 - It is let out for a maximum of 90 days a year;
 - It is a stand-alone or duplex residential unit; and
 - It complies with all the standards listed for registered holiday homes in Appendix 12 of the Queenstown Lakes District Plan. These standards include keeping records, providing smoke alarms, limiting occupancy to two adults per bedroom, and providing at least one off-street carpark.
21. This application proposes to exceed these limits by allowing each property to be let out for up to 180 days a year (later amended to 179). In addition, and there are existing

triplex and quadplex blocks included in this application and as notified the application would permit visitor accommodation use of future multi-unit developments. In the course of the hearing the applicants' representatives volunteered a condition of consent that the consent would not apply to future triplex and quadplex blocks.

22. There is no dispute about the relevant provisions of the District Plan, as set out in the planning report provided by Lakes Environmental (Ms Katrina Ellis):
23. The site is zoned Millbrook Resort Special Zone and Rural General under the District Plan.

The purpose of the Millbrook Resort Special is to provide for a visitor resort of high quality covering approximately 200ha of land near Arrowtown. Millbrook provides for recreational, commercial, residential and visitor activities and the general amenity of the Zone is one of higher density development enclaves located in the open rural countryside with well landscaped grounds. The Zone provides for golf courses and a range of other outdoor and indoor sporting and recreational activities. Hotel and residential accommodation are provided for, together with support facilities and services.

The purpose of the Rural General Zone is to manage activities so they can be carried out in a way that:

- *protects and enhances nature conservation and landscape values;*
- *sustains the life supporting capacity of the soil and vegetation;*
- *maintains acceptable living and working conditions and amenity for residents of and visitors to the Zone; and*
- *ensures a wide range of outdoor recreational opportunities remain viable within the Zone.*

The zone is characterised by farming activities and a diversification to activities such as horticulture and viticulture. The zone includes the majority of rural lands including alpine areas and national parks.

24. The proposal requires consent under the following rules:
 - A **restricted discretionary activity** consent pursuant of Rule 12.2.3.4 (iv) as the proposal breaches Site Standard 12.2.5.1 (i)(a) which requires that the use of the Residential Activities Area (R) is restricted to residential activities. Consent is sought to undertake visitor accommodation activities within the Residential Activity Area (R). Council's discretion is restricted to this matter.
 - A **restricted discretionary activity** consent pursuant of Rule 12.2.3.4 (iv) as the proposal breaches Site Standard 12.2.5.1 (ii)(b)(ii) regarding road setbacks. Consent is sought to use existing buildings within 20metres from Arrowtown-Lake Hayes Road as visitor accommodation. Council's discretion is restricted to this matter.
 - A **restricted discretionary activity** consent pursuant to Rule 14.2.2.3 (ii) as the proposal breaches Site Standards 14.2.4.1 (iii) regarding the size of parking

spaces. Two car parks breach the minimum required parking space dimensions and design for Class 2 users. Council's discretion is restricted to this matter.

- A **discretionary activity** consent pursuant to Rule 5.3.3.3 (iii) to carry out visitor accommodation within the Rural General Zone.
 - A **non-complying activity** consent pursuant to Rule 12.2.3.4 as the proposal breaches the Zone Standard 12.2.5.2 (ii)(a)(iii) regarding height. Consent is sought to utilise existing residential units and built future units that exceed 4 metres in height for visitor accommodation.
25. Overall, the application is considered to be a **non-complying** activity. It can be noted here that although non-complying status raises the section 104D "threshold tests" discussed above, in this case it just a technicality. We see no significance in the breach of Zone Standard 12.2.5.2 (ii)(a)(iii) relating to height because the effects of height are the same whether the building is used purely as a residence or partly for visitor accommodation.

THE HEARING

26. A hearing to consider the application was convened on the 22nd of November 2012. Immediately before the hearing we visited Millbrook to re-familiarize ourselves with the resort and to see recent progress. The following is a summary of the points we found particularly relevant in this evidence presented at the hearing. It will be convenient to comment on some of this in this section of our decision, with further commentary in the following section.
27. Prior to the hearing a report prepared under section 42A of the Act by the Council's regulatory agent, Lakes Environmental Ltd, was circulated to the parties. This was prepared by Ms Katrina Ellis, resource management planner. Ms Ellis attended the hearing and provided further comment and advice after the presentation of the applicant's case, but prior to the applicant exercising the right of reply. No submitters attended.
28. Mr Alistair Smith, planner, provided background information about the continuing development of Millbrook. He noted that the applicant has operated a rental scheme on behalf of property owners for over 15 years, without problems. Currently there are 43 units in the scheme. Prior to the hearing we had expressed interest in how this scheme operates and had been provided with occupancy records for two years and a copy of the rental agreement. At the hearing we noted that as these documents could be commercially confidential they will not form part of the Council's publicly accessible file, pursuant to section 42 of the Act.
29. Mr Smith discussed the concerns raised by the submitters and noted that what is proposed is not greatly different from what is now permitted under operative Plan Change 22, which set up the "registered holiday home" scheme. The differences are: single and two night lets would be permitted compared to the three night minimum, letting for 180

nights per year instead of 90, and existing triplex and quadplex units included whereas the registered holiday home scheme applies only to single and duplex residential units. We accept that the “permitted baseline” set by the registered holiday home scheme is an important consideration here.

30. Mr Smith described the “receiving environment” of Millbrook. Only nine homes are permanently occupied, clearly a very different situation from other residential areas in the District. Effectively, most people occupying residential units at Millbrook are visitors, whether they own units or not.
31. Turning to positive effects, Mr Smith emphasised a point made by Ms Ellis in her report that providing more flexibility for letting would allow more efficient use of the built resources involved – in accordance with section 7(b) of the Act. We see this as a significant factor in favour of consent.
32. Mr Smith discussed the set of conditions recommended by Ms Ellis and these were also commented on by the applicant’s other witness, Mr Ben O’Malley.
33. Mr O’Malley is the Property and Development Manager of Millbrook. He described the design controls at Millbrook and the Memorandum of Encumbrance in favour of the company registered on each title, which covers “...a variety of developmental and behavioural standards enforceable at the suit of Millbrook.” The encumbrance provides for financial penalties. Mr O’Malley explained how the encumbrance prevents individual owners from letting their properties other than through the company’s rental scheme, providing a high level of supervision and control. He noted that experience has shown that paying guests are no more likely to cause disturbance for others than owners enjoying their properties. Mr O’Malley indicated that in the event of any problems, Millbrook’s reception is open 24 hours a day, 7 days a week, and problems like noise can be dealt with very quickly by the duty manager. Again, we accept that this is quite different from the situation in other residential areas. In our assessment these unusual factors mean that consent would not create any kind of precedent for applications to extend the envelope of controls under the registered holiday home scheme.
34. Ms Malika Rose, Millbrook’s Property and Infrastructure Manager attended the hearing and commented on the issue of parking for guests. We had asked about the adequacy of parking if owners chose to not make their garages available to paying guests (perhaps using their garages to store vehicles or other things). In Ms Rose’s view there would always be adequate parking in the immediate area of each unit. We have imposed a condition making this explicit. She observed that many people renting accommodation at Millbrook do not bring a vehicle.
35. At the conclusion of the applicant’s case, Ms Ellis provided us with some commentary on the evidence and the discussions we had had with the applicant’s witnesses. She reiterated her view that although the proposal is a deviation from the Structure Plan for Millbrook, it generally supports the objectives and policies for the special zone. That is our impression too.

36. Ms Ellis discussed the submission by Mr David McAlpine, which included objection to neighbouring properties being included in the consent sought. We viewed the locality during our site visit, noting that Mr McAlpine's property is part of a duplex and the other unit is being used as a sales office. That does not contribute much to the residential amenities of the immediate vicinity and we can appreciate why Mr McAlpine opposes further commercial use of the property next door. The adverse effects of that would probably not be great, bearing in mind that the issue is just the potential of letting for 180 days per year instead of the permitted 90 days. However, it seems to us that Mr McAlpine can reasonably expect that when the sales office activity ceases the adjoining unit will be converted to normal residential use. We consider that this unit should be excluded from the consent. It would be helpful if the applicant could add this unit to the map provided at the hearing showing excluded areas and individual properties, so the map can be appended to this decision. The only other residential unit in the vicinity of Mr McAlpine's property is owned by another submitter and has been removed from the application.
37. Turning to Mr McAlpine's concern about the inclusion of some areas in Millbrook East, we note that the properties of submitters in these areas have been similarly removed from the application. Future buyers of properties in these areas can be expected to familiarise themselves with things like this resource consent.
38. The main difference of opinion between Ms Ellis and the applicant's planner, Mr Smith, was Ms Ellis' concern that inclusion of future residential units in a consent could lead to designs specifically for visitor accommodation use. We can see the point – if someone is building a unit with the intention of letting it for almost half the year they will no doubt consider how that can be fitted in with their own needs. However, we are not convinced that this is likely to lead to any problems. Owners will still want to make their unit as comfortable as possible for their own use, and will want attractive outdoor spaces etc. The Millbrook design guidelines and controls will still operate.
39. The only differences we can see would be perhaps a desire to provide for units to accommodate more people so as to maximise rental, and provision for storage of valuables. People designing a house with letting in mind might include a big lockable cupboard or even a room for storage of possessions they do not want to be available for paying guests, but that sort of thing would have no significant effect beyond the property. Provision of more, perhaps smaller, bedrooms would allow for higher occupancy, but the effect of that has to be balanced against the cost and inconvenience of requiring owners of future residential units to obtain resource consents.

ASSESSMENT

40. Our conclusions on some issues have been discussed above but there are other matters to be addressed. First, we should note that although Millbrook operates as a private resort with its own comprehensive set of controls, there are individual owners and there is still a need to assess whether this proposal for increased use of residential units for visitor accommodation would meet the purpose of the Act.

41. As already noted, we accept the argument that the controls and supervision at Millbrook, and the present use of almost all of the residential units as holiday homes, mean that the “receiving environment” and the effects of a greater emphasis on visitor accommodation are different from almost every other part of the District. In our assessment, while consent to use a property in a typical residential area for visitor accommodation for almost half the year could have significant adverse effects on immediate neighbours, that seems much less likely at Millbrook, which is specifically designed and zoned as a visitor resort. A major factor in this is the 24 hour / 7 days a week on-site supervision provided. We have required that to be maintained as a condition of consent.
42. We expressed concern about providing for one and two night stays, instead of the three night minimum and in exercising the right of reply Mr Smith indicated that the applicant would accept a limit on these very short stays. They are apparently unusual at Millbrook anyway. We would be more comfortable with a limit, on the grounds that guests staying only one or two nights could be expected to be more in “party mode” than people staying longer. A condition will be imposed limiting one and two night stays to 40 per property per calendar year. It will always be open to the consent holder to apply to change this condition under section 129 of the Act, in the light of experience.
43. We have considered whether we ought to impose a condition about the provision of parking. Demand for parking is not likely to be any greater when a property is occupied by visitors, but some owners may not make their garage available to guests, using it to store a vehicle or other items. In those situations generally guests will be able to park in front of the garage, but there may be a few situations where there is no room for this and no alternative to parking on public space nearby. Within Millbrook, apart from the main entry avenue these spaces are owned and controlled by Millbrook Country Club Ltd so we are satisfied that if there was a problem anywhere, the consent holder would have the incentive and ability to resolve it.
44. Similarly, we have considered whether we should require some sort of management plan detailing protocols for dealing with issues like noise and inconsiderate parking. After hearing Mr O'Malley's description of how Millbrook is managed, we are satisfied that is not necessary. It would just be duplication. Of course, in the unlikely event that management standards dropped and the Council started receiving complaints, the conditions on this consent could be reviewed under section 128 of the Act.
45. It should be mentioned that we see no real significance in the proposed breaches of District Plan requirements in relation to car parking dimensions, minimum road setbacks and maximum height. They appear to be designed to control a different sort of visitor accommodation. The existing development – car parking, building setbacks and building heights – are complying or consented and it is difficult to see why greater use by paying guests would make them inappropriate.
46. Clearly it is appropriate to exclude the properties of the submitters who asked to be excluded. While there is no requirement that a consent holder has to have an interest in the resources over which a resource consent has been granted, there would have to be exceptional circumstances to warrant imposing potential consequences of a consent such as an effect on valuation against the will of a property owner.

47. There was considerable discussion at the hearing about possible conditions. We have included some things in the attached conditions which are simply repeating key elements of the proposal put forward because it is likely that some property owners may refer to this decision in the future and not have access to the application.
48. The conditions specify a maximum of 179 nights of visitor accommodation use per year rather than 180 at the request of the applicant because under present Council rating and development contributions rules 180 would trigger a visitor accommodation development contribution and change in rating.
49. It was suggested at the hearing that the log of visitors should be provided to the Council quarterly rather than annually but we are satisfied that annually is sufficient to provide monitoring of the consent.

DECISION

50. Overall, we are satisfied that the purpose of the Act would best be met by granting consent, subject to the conditions set out below, which are designed to minimise potential adverse environmental effects. As discussed above, we are satisfied that the adverse effects on the environment would be minor, partly because of the high level of control and supervision at Millbrook. We are also satisfied that the proposal is not contrary to the objectives and policies for the Millbrook Resort Zone or the Rural General Zone. On the positive side, consent will enable both the owners of properties at Millbrook and their paying guests to meet their needs, in accordance with the purpose of the Act set out in section 5. Better use of the substantial but underutilized built resources at Millbrook is in accordance with section 7(b) of the Act.
51. Consent is hereby granted to Millbrook Country Club Ltd to increase the permitted level of visitor accommodation use of existing and future residential units within and adjoining the Millbrook Resort Zone (MRZ) , subject to the attached conditions.



David W Collins
Cath Gilmour
Hearings Commissioners
12th December 2012

RM120485 CONDITIONS

General Conditions

1. The consented activity shall be carried out in accordance with the application as submitted, except as required by the following conditions of consent.
2. The application consented is the application described in the notified application, as modified by the letter to Lakes Environmental from John Edmonds and Associates deleting 13 properties from the proposal.
3. In addition to those 13 properties, the property currently used as a sales office adjoining submitter David McAlpine's property is excluded. The consent holder shall provide an amended version of the plan presented at the hearing, which shows areas and properties included and excluded from this consent, amended to show this. The plan is to be attached to this decision and to form part of it.
4. No property shall be let for more than 179 nights per calendar year. A maximum of 40 of those nights shall be one or two night stays.
5. All rental activity shall be through the Millbrook Country Club rental scheme.
6. This consent shall not apply to future triplex and quadplex residential developments, but may apply to triplex and quadplex development completed at the date of this consent.
7. The consent holder will maintain a log of visitor accommodation provided under this consent and shall annually provide the Council with a schedule detailing which properties were in the rental scheme during the past year and the number of nights when each was used for visitor accommodation.
8. With the exception of the exemptions granted by this consent, the standards for "Registered Holiday Homes" in Appendix 12 of the Queenstown Lakes District Plan shall be complied with.
9. Each property may be let to only one party at a time, and not on a room by room basis.
10. Each property shall have at least one car park available for guests, either on-site or in the precinct (e.g. Foxes Rush).
11. Coaches are to use the coach parking available at Millbrook Resort and not collect or drop off passengers to individual sites.
12. A maximum of one residential unit or residential flat (as defined in the District Plan) per site may be used for visitor accommodation.
13. The consent holder will maintain a 24 hours / 7 days a week on-site reception service with a duty manager capable of dealing with any issues with visitors such as noise or inconsiderate parking. The contact telephone number of reception is to be displayed in each unit or included in information provided for guests.

Review

14. Within ten working days of each anniversary of the date of this decision the Council may, in accordance with sections 128 and 129 of the Resource Management Act 1991, serve notice on the consent holder of its intention to review the conditions of this resource consent for any of the following purposes:
 - (a) To deal with any adverse effects on the environment that may arise from the exercise of the consent which were not foreseen at the time the application was considered and which it is appropriate to deal with at a later stage.
 - (b) To deal with any adverse effects on the environment which may arise from the exercise of the consent and which could not be properly assessed at the time the application was considered.
 - (c) To avoid, remedy and mitigate any adverse effects on the environment which may arise from the exercise of the consent and which have been caused by a change in circumstances or which may be more appropriately addressed as a result of a change in circumstances, such that the conditions of this resource consent are no longer appropriate in terms of the purpose of the Resource Management Act 1991.

Advice Notes:

1. Properties used for visitor accommodation may be subject to development contributions and different rating – currently if they are used for visitor accommodation for more than 179 nights per year. A letter of agreement between the Millbrook Country Club Limited and Queenstown Lakes District Council, dated 9 November 2012, is attached to this consent.
2. The consent holder is liable for costs associated with the monitoring of this resource consent under section 35 of the Resource Management Act 1991 and shall pay an initial fee of \$100.

Properties specifically excluded from the consent application (RM120485)

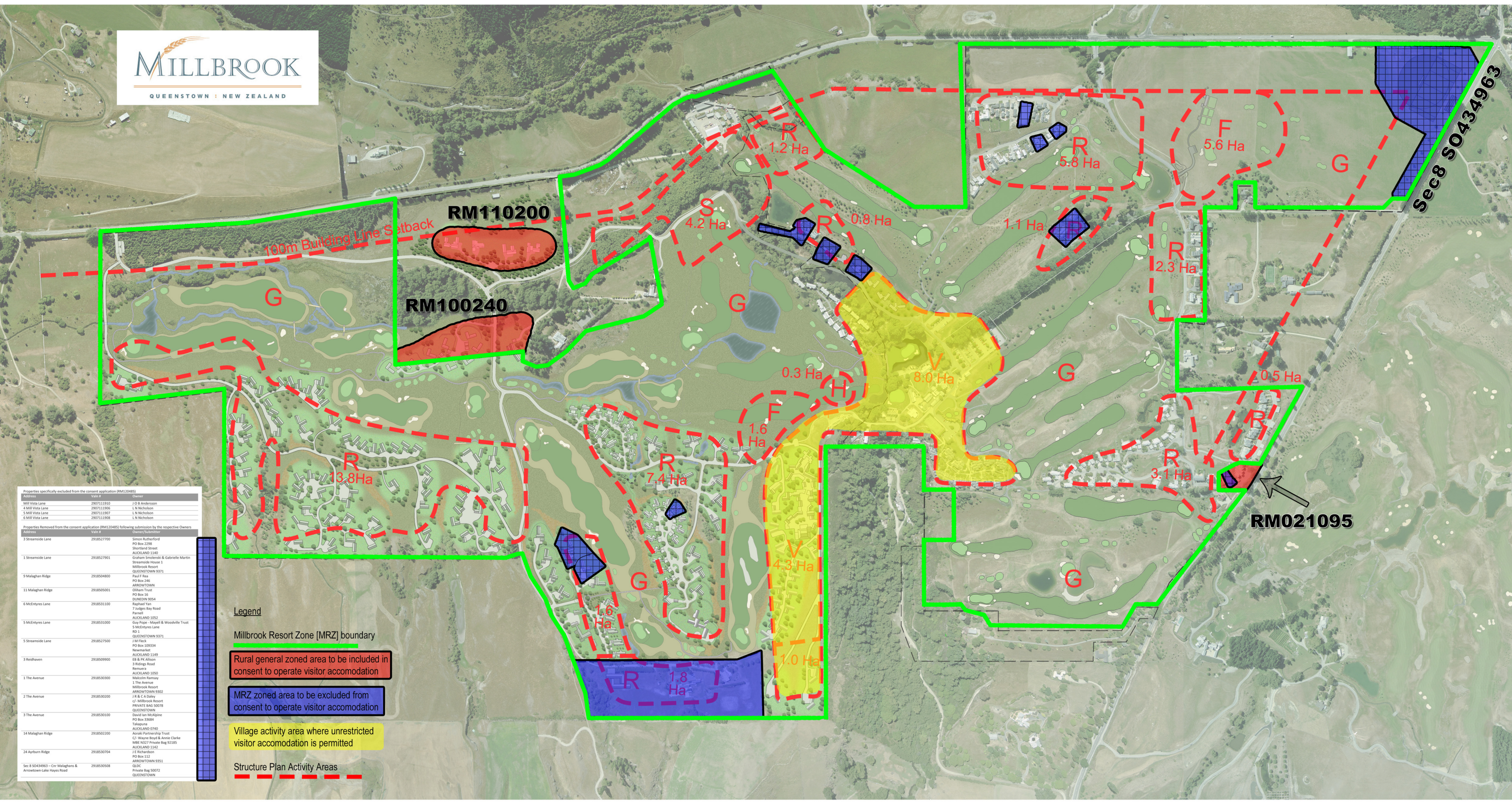
Address	Unit #	Owner
Muir Vista Lane	2907111910	J O B Anderson
Muir Vista Lane	2907111906	L N Nicholson
Muir Vista Lane	2907111907	L N Nicholson
Muir Vista Lane	2907111908	L N Nicholson

Properties removed from the consent application (RM120485) following submission by the respective Owners

Address	Unit #	Owner/Commissioner
3 Streamside Lane	2918527700	Simon Rutherford PO Box 2298 Shoreland Street AUCKLAND 1140
1 Streamside Lane	2918527901	Graham Simmonds & Gabrielle Martin Streamside House 1 QUEENSTOWN 9371
9 Malaghan Ridge	2918504800	Paul J Rea PO Box 246 ARROWTOWN
11 Malaghan Ridge	2918505001	Graham Trust PO Box 16 DUNEDIN 9054
6 McEnryes Lane	2918511100	Rapheal Tan 7 Judges Bay Road Remuera AUCKLAND 1052
5 McEnryes Lane	2918510100	Guy Pepp, Maxwell & Woodville Trust 5 McEnryes Lane RD 1 QUEENSTOWN 9371
3 Streamside Lane	2918527500	J M Fieck PO Box 10934 Newmarket AUCKLAND 1149
3 Redhaven	2918509900	EB & PK Allison 3 Redings Road Remuera AUCKLAND 1050
1 The Avenue	2918530200	Makara Ranney 1 The Avenue Millbrook Resort ARROWTOWN 9302
2 The Avenue	2918530200	J R & C A Dalry 1/2 Millbrook Resort PRIVATE BAG 50078 QUEENSTOWN
3 The Avenue	2918530100	David Ian McAlpine PO Box 3058 Takapuna AUCKLAND 0940
14 Malaghan Ridge	2918502200	Avon Partnership Trust C/- Wayne Boyd & Annie Clarke MIR 1037 Private Bag 92185 AUCKLAND 1142
24 Aythorn Ridge	2918530704	J E Nicholson PO Box 112 ARROWTOWN 9351
Sec 8 S0434963 - Cir Malaghans & Arrowtown Lake Hayes Road	2918530508	DAFC Private Bag 50072 QUEENSTOWN

Legend

- Millbrook Resort Zone [MRZ] boundary
- Rural general zoned area to be included in consent to operate visitor accomodation
- MRZ zoned area to be excluded from consent to operate visitor accomodation
- Village activity area where unrestricted visitor accomodation is permitted
- Structure Plan Activity Areas



+ MAP DEPICTING THE MILLBROOK RESORT ZONE [WITH ADDITIONAL INCLUSIONS AND EXCLUSIONS] FOR CONSENT TO OPERATE VISITOR ACCOMMODATION WITHIN THE MCCL RENTAL SCHEME
 REFERENCE : 6101 NOT TO SCALE 07 JAN 2013

9 November 2012

General Manager Finance/Deputy C.E.O
Stewart Burns
Queenstown Lakes District Council
Private Bag 50072
Queenstown
9348

Dear Stewart

Visitor Accommodation Agreement.

This letter of agreement is to clarify and record the agreement that was reached between Millbrook Country Club Limited (MCCL) and Queenstown Lakes District Council (QLDC) on 27 June 2011, regarding the charging of rates and development contributions for dwellings within the Millbrook Rental Scheme.

Resource Consent RM120485, is an application for blanket consent which covers all residential properties within Millbrook resort that do not sit within the Village Activity Area of the Millbrook Resort Zone (which allows for full VA as of right). Blanket consent has been applied for to simplify the registering and deregistering of properties in to the Rental Scheme so individual resource consents are not required in the future. The application closely aligns with the definition of a permitted 'registered holiday home' contained within the Queenstown Lakes District Plan but in order to maintain the status quo of the Rental Scheme operation, Consent needs to be sought for "visitor accommodation" (as there is no Mixed Use definition in the Plan) to be carried out from residential units to enable the following exceptions to a Registered Holiday Home:

- Maximum nights for single or multiple lets extended from 90 nights to 180 nights per year
- Allowing 1-2 night lets
- Allowing the use of residential units that are part of a triplex or quadplex (Fox's Rush & Settler's Way properties)

The parties wish to clarify the trigger points for Development Contribution top ups and also for Rates classification. For properties located within Millbrook Resort, QLDC herein agrees (irrespective of whether rentals are within triplex's or quadplex's, or single, two or a multi night lets) the points set out below and further agrees that such points can be incorporated into the Resource Consent RM120485 decision:

1. Any property that has multiple lets of not more than 90 cumulative nights per calendar year will not trigger any upgrade to development contributions and will be rated as Mixed Use
2. Any property that has multiple lets that exceed 90 cumulative nights per calendar year but fewer than 180 nights will trigger a mixed use DCN top up calculated as per the example emailed from yourself on 24 June 2011 (appended to this letter)

and will be rated as Mixed Use (as clarified and confirmed by Judy Jackson of the rating department at a meeting in February 2010).

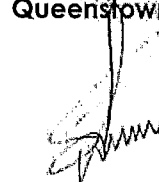
3. Any property that is let for 180 cumulative nights or more per calendar year will trigger a full Visitor Accommodation DCN top up and will be rated as full Commercial/Accommodation use.
4. Millbrook will advise all the residential owners of points 1 to 3 above and will also advise the same owners that should they wish to have their properties rented for 180 nights or more, they will be responsible for all necessary Consents and costs associated with doing so.
5. The granting of RM120485 itself will not trigger rates changes on every property included in the application, rather, charges will be as per points 1-4 inclusive and only applicable to those properties registered on the Millbrook rental scheme from time to time.
6. Millbrook will keep a log of all Visitor Accommodation carried out within the properties outside of the Village Activity Centre and provide a copy to QLDC on an annual basis which details the locality of the dwelling in the Rental Scheme and the number of nights each dwelling has been used for Visitor Accommodation.
7. All rental activity must be through Millbrook's own Rental Scheme. Private lets and other management companies do not have consent to operate. Millbrook will utilise all reasonable steps to ensure no un-consented letting occurs, including reporting any non-compliance to Council's enforcement department if the activities do not cease on request.

Agreed on behalf of
Millbrook Country Club Limited



Malika Rose
Property & Infrastructure Manager

Agreed on behalf of
Queenstown Lakes District Council



Stewart Burns
General Manager Finance/Deputy CEO