16/3/17

Stream 10 Hearing - submission of Niki Gladding (submitter 1170)

With regards to the definition of Visitor Accommodation.

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1. My name is Niki Gladding. My further submission to the Proposed District Plan (PDP) opposed submission 552 on behalf of Pounamu Holdings 2014 Ltd (Pounamu).

2. Today, I wish to speak against the definition of Visitor Accommodation (VA) that has been recommended to the Panel in the Section 42A report.
   That definition incorporates the relief sought by Pounamu (and also by Varina Propriety Ltd), as well as changes sought by the Millenium and Copthorne Hotels (679).

3. I submit that this amended (and non-notified) definition is ambiguous and, amounts to a *substantial* departure from both the operative definition and the version that was notified in the Proposed District Plan (PDP). It allows for a significant increase in what can be built or offered to customers by VA developments; and it essentially removes all limits to the number and type of people who can or would use those facilities and services.

4. The potential effects of the recommendation are significant given that the Council is essentially recommending commercial activity under the definition of VA without recommending changes to the matters over which Council has control (with regards to VA). The likely result is that the Council will be left without the planning tools to manage any actual or potential effects resulting from the implementation of the new definition; in which case, it would have failed to achieve its functions as prescribed in section 31(1) of the Act.
5. I will consider the above in more detail but at this point I would like to state the relief I seek:
   Either
   1. The panel rejects the recommended definition and accepts instead the definition that was notified in the PDP; OR
   2. If the Panel considers there is merit in the recommended definition, that it notifies the recommendation as a Variation to the PDP so that people living within and adjacent to VA zoned or sub-zoned land – and the wider public - have

a chance to submit on the changes N.B. in my opinion the criteria for bypassing the process in Schedule 1 has not been met (as the effects are certainly not minor nor do they correct any minor errors).

Interpreting the operative definition (which is for the most part the same as the notified definition):

6. Under the operative definition, Visitor Accommodation:

Means the use of land or buildings for short-term, fee paying, living accommodation where the length of stay for any visitor/guest is less than 3 months; and

i. ***Includes*** *such accommodation as camping grounds, motor parks, hotels, motels, boarding houses, guest houses, backpackers' accommodation, bunkhouses, tourist houses, lodges, homestays, and the commercial letting of a residential unit; and*

ii. ***May include*** *some centralised services or facilities, such as food preparation, dining and sanitary facilities, conference, bar and recreational facilities if such facilities are associated with the visitor accommodation activity.*

7. If we assume that the definition was intended to be unambiguous and uncomplicated then subsection (ii) simply deals with what ***may be included*** under the definition (in terms of buildings and services); whereas the ***use*** *of the land – "the activity" - is defined in the* ***first*** *paragraph i.e Visitor Accommodation "means the use of land or buildings for short term fee paying living accommodation..."*

8. So, if a person is not using the land or the buildings for the purpose of short term accommodation, then their use of the land must fall under another category defined in the plan: either "recreational", "commercial recreational", "service", "community", or "commercial"... And the legal opinions I have seen - without exception - take this approach.

9. If we take the example of Pounamu's Humbolt Room (which was the subject of an Environment Court Appeal in 2015): the use of that VA facility/conference room was considered by Simpson Grierson (at the request of Council), by two Environment Commissioners, and by the Environment Court in a procedural decision (Decision No. [2015] NZEnvC 151). N.B. APPENDIX 1 includes the relevant points within the decision.

10. All parties mentioned above considered that using the Humbolt Room for local meetings made the use a "community" activity; using the room as a Civil Defence base was considered to be a "service" activity; therefore, it follows that using the room for offering, provision or services should be defined as "commercial activity" rather than visitor accommodation - where

    COMMERCIAL ACTIVITY

    "Means the use of land and buildings for the display, offering, provision, sale or hire of goods, equipment or services, and includes shops, postal services, markets, showrooms, restaurants, takeaway food bars, professional, commercial and administrative offices, service stations, motor vehicle sales, the sale of liquor and associated parking areas. Excludes recreational, community and service activities, home occupations, visitor accommodation, registered holiday homes and registered homestays".

11. The Court did not make a ruling in this case but put Pounamu "on notice" that if more than a few persons, who were not staying overnight, were to use its conference facilities (aka the Humbolt Room) then it may be required to seek a further consent.

12. Judge Jackson also said *"I consider at this stage there is no point in making a ruling about whether people not staying the night but attending a conference would make the use of the Humbolt Room a commercial activity"*; he then went on to say that ***"At first sight it would*** *but there needs to be evidence that that is likely to happen".*

13. The point I'm trying to make is that there is no obvious error in the current definition nor is it ambiguous (i.e. it was not *meant* to allow for use of the facilities by persons not staying overnight and the definition does not suggest it).

14. What we have is an operative definition that does not suit the property developers who submitted in favour of the amendments because, of course, they would like to be able to do more on their land as of a right and with fewer constraints – and that's exactly what they would get under the recommended definition.

Concerns with the recommended definition:

15. Firstly, I'm concerned about the potential for loss of amenity in VA zones and more particularly in VA sub-zones (which are primarily residential). And that's because I don't believe Council will have the tools with which to control any adverse effects. By way of example: under current rules and definitions, commercial activity such as bars and restaurants and small shops are a discretionary activity within Glenorchy's

VASZ; Council can decline any commercial proposal with adverse effects or put in place any number of conditions to avoid or mitigate those effects. By contrast, under the recommended definition, bars, restaurants and small shops could be classed as VA if they were a part of a VA development. In that case, Council would be unable to decline an application (so long as it complied with zone rules and standards); and Council's control would be limited to setbacks, access, screening, landscaping and the external appearance of buildings. Matters such as hours of operation, would be outside of Council's control. And, in this case, the opportunity for public participation in decision-making could be reduced due to the shift in activity status from discretionary to controlled.

16. Secondly, given the above, the recommended definition would not allow Council to meet its prescribed functions under the Act or to achieve the purpose of the Act: to promote sustainable management.

17. Thirdly, the recommended definition does not do what it set out to do and that is remove ambiguity: I put it to the panel that the use of the phrase "primary role" is ambiguous in its current context: of what? of the whole facility? of the particular facility being used by that person not staying overnight?; and "others of a similar scale and nature" is likely to cause at least as much debate as there has been recently over the meaning and implications of the word "associated" within the current definition.

18. And fourthly, what these changes may well do in some zones is incentivise VA development at the expense of residential development - when residential development is in fact what we need to be incentivising (and there I'm thinking specifically of residential land with VA sub-zone overlay such as we have on the entrance to Glenorchy).

19. I'd also like to point out that the 'costs' and issues described above (which are not an exhaustive list) were not considered by Council in its evaluation report – and should have been.

The Alternatives:

20. If we retain the operative definition or choose the notified definition, the owners of VA developments such as Pounamu and Varina would simply be required to apply for commercial activity resource consents (as they are now). And through that consenting process council will retain the ability to assess and manage any effects of the activity and to turn down activities where significant adverse effect can not be

avoided or mitigated. An additional benefit of retaining the commercial consent process for these activities would be the at affected parties and the wider public are more likely to have the opportunity to submit on proposals than if the recommended definition is implemented.

21. If we choose to implement the notified version it may also be possible to alter the zone rules and controls *in appropriate zones* in order to free up the use of VA centralised facilities for persons not staying on site, without the owners having to seek commercial consent.

22. These options are both effective and efficient and would allow Council to meet the purpose of the Act by avoiding remedying or mitigating any adverse effects.

Appendix 1

[32] I agree with Ms Gladding that the other rules apply, so that if the building coverage approaches that figure (or even if it does not) the Council may alter any other variables[25] of the application under the controlled activity rule[26]. On the PHL application, which is a non-complying activity, the consent authority had power to alter the density too. Apparently in this case the site coverage is 33% as recorded above. That may not be a variable which is important to the outcome but I cannot decide that here.

Use of the Humboldt room

[33] The Humboldt room occupies 30% of the 560 m^2 commons building within Camp Glenorchy. The proposed use of the room is described in the applicant's AEE[27] as follows:

> The Humboldt room within the Commons Building will provide the ability to house small scale community and cultural events, as well as similarly small scale conferences within Camp Glenorchy. The Humboldt room will have the ability to accommodate different numbers of people depending upon the specific use. During a formal conference, the Humboldt room will accommodate up to 50 people, while for a more casual arrangement (i.e. speaker, showing of a film), this room will cater for up to 100 persons.

[34] "Commercial activity" is defined[28] as:

> Means the use of land and buildings for the display, offering, provision, sale or hire of goods, equipment or services, and includes shops, postal services, markets, showrooms, restaurants, takeaway food bars, professional, commercial and administrative offices, service stations, motor vehicle sales, the sale of liquor and associated parking areas. Excludes recreational, community and service activities, home occupations, visitor accommodation, registered holiday homes and registered homestays.

Ms Gladding is concerned that "… we cannot be certain what the Humboldt room will be used for, who will use it or how often", and that it may in effect be used for commercial activity.

[1170]

25 External appearance, setbacks, access, landscaping and screening.
26 Rule 9.2.3.2.iii.
27 Assessment of Environmental Effects para 6.4.
28 QLDC Definitions p. D-14.

[35] The Hearing Commissioners heard evidence that the Humboldt room might be used for local meetings or as a Civil Defence Centre. Neither of those would not be "commercial activity" because "community" and "service" activities are expressly excluded. But as far as I can see there is no other evidence recorded of off-site visitors. The Hearing Commissioners held:

> It was suggested that the use of the Humboldt Room for meetings, and for educational activities, was a commercial undertaking that was not provided for within the zone or the overlying VASZ. We were made aware of a legal opinion provided on this matter, which concluded that the proposed use of this facility was permitted under the zone rules. We note that the definition of visitor accommodation simply states that "... conference facilities ..." are included in the definition if they "are associated with" the visitor accommodation activity. We did not hear any evidence that might have persuaded us that the use of the Humboldt room was intended to operate as an independent standalone activity. Instead, it seemed clear that its use is to be primarily associated with the visitor accommodation business on the site, albeit that it may occasionally be made available for community purposes. Matters such as rating levels to be applied to any of the activities on the site are completely irrelevant to the assessment of an application for resource consent.

Given that finding I consider that at this stage there is no point in making a ruling about whether people not staying the night but attending a conference would make the use of the Humboldt room a commercial activity. At first sight it would, but there needs to be evidence that that is likely to happen.

[36] If the whole facility is built, and later it becomes apparent to Ms Gladding or anyone else, that the Humboldt room is being used for conferences at which more than a minimal number of attendees are not overnight guests, then she could apply to this court for a declaration or enforcement order. Conversely, the consent holder is on notice that if it arranges conferences at which more than a few (I leave this deliberately vague) attendees are not staying overnight, then it might need a further resource consent.

[37] Alternatively, this issue can be covered by evidence at the hearing if that is really necessary.