

**IN THE ENVIRONMENT COURT
AT CHRISTCHURCH
I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHĪ**

Decision No. [2024] NZEnvC 111

IN THE MATTER of the Resource Management Act 1991

AND an appeal under clause 14 of the First
Schedule of the Act

BETWEEN JAN-MARC SERVAAS SCAIFE

(ENV-2021-CHC-022)

Appellant

AND QUEENSTOWN LAKES DISTRICT
COUNCIL

Respondent

Court: Environment Judge J J M Hassan
Environment Commissioner J T Baines

Hearing: On the papers in Chambers at Christchurch

Submissions: M Scaife and C Byrch
M G Wakefield and S L Richardson for Queenstown Lakes
District Council
M Holm and L Ford for Matakauri Lodge Limited

Last case event: 1 March 2024

Date of Decision: 15 May 2024

Date of Issue: 15 May 2024

FINAL DECISION OF THE ENVIRONMENT COURT

A: We confirm the JWS provisions as the most appropriate, except where we
have specified otherwise. QLDC is to report to the court within 15 working

SCAIFE V QLDC – TOPIC 38 – FINAL DECISION



days proposing a reporting date for when it anticipates providing a final version of all provisions for the court's approval for inclusion in the PDP.

- B: Costs are reserved, but applications are not encouraged. Any application is to be made and served within 10 working days and any reply within a further five working days.

REASONS

Introduction

[1] This decision is on an appeal in the review of the Queenstown Lakes District Plan ('PDP') concerning Topic 38, subtopic 2 as to the proposed Rural Visitor Zone ('RVZ'). The appeal concerns the appropriate zoning of Matakauri Lodge, a boutique luxury lodge at 569 Glenorchy-Queenstown Road, Closeburn.

[2] Jan-Marc Servaas Scaife, the appellant, shares a right of way used to access the Lodge. Mr Scaife opposed the zoning of Matakauri as RVZ, seeking that it revert to Rural Living Zone ('RLZ') as was originally notified in the PDP. Although the appeal is in Mr Scaife's name, by consent he presented his case together with his partner, Ms Christine Byrch.

Interim decision

[3] The interim decision¹ determined that the Modified Rural Visitor Zone is the most appropriate zoning for Matakauri Lodge. The court also found that the provisions as recommended in closing submissions for Queenstown Lakes District Council ('QLDC') are the most appropriate, except insofar as otherwise specified. The court provided a preliminary view on the drafting of certain new and amended provisions to be included in the PDP. Directions were made for further expert witness conferencing and the provision of supplementary closing submissions on

¹ *Scaife v Queenstown Lakes District Council* [2023] NZEnvC 226.

matters of drafting.

Joint Witness Statement

[4] Planning conferencing involving Ms Vicki Jones (for QLDC) and Mr Scott Freeman (for Matakauri Lodge Limited ('MLL')) occurred on 21 November 2023, with a resulting Joint Witness Statement ('JWS') prepared by those experts.²

Submissions and further representation of Mr Scaife

[5] In their supplementary closing submissions and representations:

- (a) QLDC largely supports the drafting in the JWS, subject to some specified requested drafting refinements;
- (b) MLL supports the drafting in the JWS, and also QLDC's closing submissions; and
- (c) Mr Scaife makes some representations on some drafting matters, in his 9 December 2023 representations.

[6] In addition, Mr Scaife filed further representations, dated 29 February 2024, on matters concerning plan integrity. That was accompanied by a leave application in which he explains that he is concerned that the interim decision's findings are not sufficient or sufficiently clear.³

[7] The court is *functus officio* on all substantive findings and associated reasons, meaning we are not in a position to revisit them. However, on the matter of plan integrity, Mr Scaife is referred to [5], [12](b), [17] – [35], [65] – [81] and [82] in particular. Those set out why we find in favour of a modified RVZ as more appropriate, according to all the matters discussed, than RLZ. The balance of the interim decision then details our findings on specific aspects of a modified RVZ.

² Joint Witness Statement – Planning – Topic 38, subtopic 2 – Rural Visitor Zone, dated 22 November 2023.

³ Mr Scaife's leave application is dated 1 March 2024.

In short, matters of plan integrity are effectively addressed in those findings in that we find the RVZ appropriate, including for achieving relevant PDP objectives.

46.1 Purpose

[8] The interim decision found that the Zone Purpose statement should be amended as follows:⁴

The principal activities in the Zone are small scale and low intensity visitor accommodation and related ancillary commercial activities and commercial recreation activities ~~and recreational activities~~.

Determination

[9] That clarification to the purpose statement is reflected in the drafting in the JWS and is now confirmed as the most appropriate for inclusion in the PDP.

Pol 46.2.1.4

[10] The interim decision found that a better option than extending Pol 46.2.1.4 to Matakauri RVZ would be to add the following new bespoke policy to Ch 46 (or to similar intent):⁵

- 46.2.1.4A Ensure the nature and scale of the combined activities in the Matakauri Rural Visitor Zone maintain amenity values beyond the Zone by managing:
- a. the capacity of visitor accommodation;
 - b. the nature and scale of commercial recreational activities including by managing group sizes individually and cumulatively within individual and total visitor caps;
 - c. the nature and scale of any commercial activities, retail or

⁴ *Scaife v Queenstown Lakes District Council* [2023] NZEnvC 226, at [136].

⁵ *Scaife v Queenstown Lakes District Council* [2023] NZEnvC 226, at [143].

service activities; and

- d. any incremental or other cumulative effects of those matters on those amenity values.

[11] The JWS records the experts agree the drafting of this Policy in the interim decision is appropriate.⁶

[12] Limb (a) works in tandem with new standards 46.5.WW and 46.5.XX, both of which set caps on total guest and visitor numbers. Limb (b) also works in tandem with those caps, but for commercial recreational activities. QLDC submits that, given limb (a) is intended to operate alongside these stated caps, a reference to visitor caps or numbers would be appropriate. That is so that it is clear that this policy limb is related to those caps – rather than to any other built form standard i.e., total gross floor area. QLDC submits this could be achieved by modifying limb (a) to read:

- a. the capacity of visitor accommodation, including by managing total visitor numbers;

[13] QLDC submits that this drafting amendment would bring limb (a) better into line with limb (b), remove potential for uncertainty, and provide more express policy support for the standards incorporated in new r 46.5.WW and r 46.5.XX. QLDC considers that non-exclusive drafting is preferable (i.e., using the word “including”) so that there is no inadvertent exclusion of the matters of discretion in r 46.5.XX.

[14] Mr Scaife submits that, in order to manage the nature and scale of the combined activities, it is necessary to manage the nature and scale of individual activities. He further submits the policy should also refer to buildings, as these can

⁶ JWS, at [5.1].

impact on amenity. He suggests the following amended clause (a) and new clause (e):

- a. the nature, scale and capacity of visitor accommodation
- ...
- e. the location, scale and density of buildings.

[15] Mr Scaife submits that, for activities with a controlled or restricted discretionary status in the Matakauri RVZ, Pol 46.2.1.4A should carry through to the matters to which control or discretion is restricted. That is so that the effects on amenity from all activities are considered, not just the activity for which consent is sought. For example, Mr Scaife submits Standard 46.4.7(g) should refer to the effects of the *combined activities* in the Matakauri RVZ on amenity values beyond the zone.

Evaluation and determination

[16] QLDC's recommended refinements better reflect the intentions of the provision and the court's related findings in the interim decision. Mr Scaife's suggestions would go beyond those findings.

[17] Therefore the wording of new Pol 46.2.1.4A as included in the JWS is confirmed as the most appropriate subject to the following refinement:

- a. the capacity of visitor accommodation, including by managing total visitor numbers.

Pol 46.2.2.2, 46.2.2.3, 46.2.2.5, 46.2.2.X

[18] The interim decision found appropriate all other refinements and additions

proposed to the Ch 46 policies in the QLDC closing version, namely:⁷

- (a) amendments to Pol 46.2.2.2 to add Pol 46.2.2.2c concerning the positioning and/or screening of buildings in the Matakauri RVZ to be “reasonably difficult to see” beyond the Zone boundary;
- (b) amendments to Pol 46.2.2.3 including to provide bespoke direction to Pol 46.2.2.3.c as to building separation and planting;
- (c) amendment to Pol 46.2.2.5 (as to provision for buildings that exceed the bulk and location standards) so it does not apply to Matakauri RVZ together with the addition of Pol 46.2.2.X as follows:

46.2.2X Provide for buildings in the Matakauri Rural Visitor Zone that exceed bulk, scale or minimum separation distance standards, only when any adverse effects, including cumulative effects, can be mitigated, including through:

- a. In Outstanding Natural Landscapes, siting buildings so that they are reasonably difficult to see from beyond the boundary of the Zone;
- b. Building design and screening (including through vegetation); and
- c. Design and control of other aspects associated with buildings, including earthworks, car parking, fencing, and landscaping.

- (d) addition of Pol 46.2.2.X as follows:

46.2.2.X In the Matakauri Rural Visitor Zone, avoid buildings that exceed the combined maximum total ground floor area specified in Rule 46.5.3.4.

[19] The JWS notes that Pol 46.2.2.3 and 46.2.2.4 have been inadvertently merged. The wording commencing “Manage ...” needs to be renumbered as Pol 46.2.2.4. Thereafter, the experts consider the changes to Pol 4.2.2.4 drafted by the

⁷ *Scaife v Queenstown Lakes District Council* [2023] NZEnvC 226, at [144].

court are considered appropriate.⁸

[20] The JWS notes that the numbering 46.2.2.X appears twice in the provisions:⁹

- (a) in relation to first Pol 46.2.2.X, the experts consider the words “in Outstanding Natural Landscapes” are not necessary as the whole of the Matakauri RVZ is in an Outstanding Natural Landscape. The experts therefore agree these words should be deleted; and
- (b) the second Pol 46.2.2.X needs to be distinguished from the earlier one that has the same number.

[21] No party opposes those recommended refinements.

Evaluation and determination

[22] We agree with the planners’ recommendations. Pols 46.2.2.2, 46.2.2.3, 46.2.2.5, 46.2.2.X in the interim decision are to be refined accordingly.

Approach to findings on rules

[23] Our following findings on the appropriate rules do not follow a strict numerical sequence. Instead, we deal with matters according to various themes and issues.

Should rr 46.4.2 and 46.4.3 or bespoke rules apply to Matakauri RVZ?

[24] The interim decision made provisional findings concerning the structure of certain activity class rules in Table 46.4. Associated with our findings concerning related activity standard we found that Matakauri RVZ should not be addressed

⁸ JWS, at [6.1].

⁹ JWS, at [6.2] – [6.3].

by:¹⁰

- (a) r 46.4.2, which prescribes visitor accommodation as a permitted activity, but instead by a new r 46.4.2A;
- (b) r 46.4.3 which prescribes permitted activity status for commercial recreational activities and ancillary onsite staff accommodation, but instead by a new r 46.4.3A.

JWS

[25] In their JWS, the planners invite the court to reconsider whether that restructuring of the rules is appropriate. They explain how it would be unnecessary and inconsistent with the overall design of this part of the PDP. They point out that one aspect of that design is that an activity listed as permitted under Table 46.3 will only be so if all standards are met.

Submissions

[26] As noted, parties have substantive differences on the nature of activity classes and associated standards, as we address shortly. Those matters aside, no party submits that the planners are wrong in their understanding of these drafting matters.

Evaluation and determination

[27] We accept the explanation given by the planners of these technical drafting aspects, and reflect that in our overall findings on drafting outcomes, to which we return later in this decision.

¹⁰ *Scaife v Queenstown Lakes District Council* [2023] NZEnvC 226, at [160] and [161].

Recreation including commercial recreational activities

[28] In Table 46.4 of the decisions version of the PDP:

- (a) r 46.4.3 prescribes commercial recreational activities and ancillary onsite staff accommodation to be a permitted activity (subject to complying with associated activity standards); and
- (b) r 46.4.4 prescribes “recreation and recreational activity” to be a permitted activity.

[29] Our interim decision found that:¹¹

- (a) r 46.4.3 should be amended to exclude Matakauri RVZ;
- (b) a new r 46.4.3A should be added that specifies commercial recreational activities and ancillary onsite staff accommodation as a permitted activity in the Matakauri RVZ provided that r 46.5.WW is not breached; and
- (c) r 46.4.4 should be amended to not apply in the Matakauri RVZ.

[30] The interim decision identified a concern with the permitted status afforded to “recreation” and “recreational activity” by r 46.4.4. We observed that Obj 46.2.1 makes no reference to “recreational activities”, other than “commercial recreation”. We noted that these classes of activity are not defined by the PDP and it is unclear what it encompasses beyond the defined “commercial recreational activities”.¹² Hence, the interim decision found that r 46.4.4 should be amended to exclude its application to Matakauri Lodge, i.e.:¹³

Recreation and recreational activity except in the Matakauri Rural Visitor Zone.

¹¹ *Scaife v Queenstown Lakes District Council* [2023] NZEnvC 226, at [160] and [161].

¹² *Scaife v Queenstown Lakes District Council* [2023] NZEnvC 226, at [132] – [136].

¹³ *Scaife v Queenstown Lakes District Council* [2023] NZEnvC 226, at [136].

[31] Associated activity standards are specified in the PDP Table 46.5. In this table, standard 46.5.7 pertains to commercial recreational activity. There are no standards specified in the table for what r 46.4.4 prescribes as “recreation and recreational activity”.

[32] The interim decision found that new r 46.5.7.4 should be as recommended in the QLDC closing version with the exception that contravention of 46.5.WW should trigger non-complying, rather than restricted discretionary, activity status.¹⁴ In particular, for commercial recreation activity that is undertaken outdoors, the interim decision found that QLDC’s proposed r 46.5.7.4 is the most appropriate for achieving relevant objectives (six persons within the zone, per day (inclusive of guides or instructors)).¹⁵

JWS

[33] In their JWS, while not commenting on the court’s findings concerning r 46.4.4 itself, the planners recommend that, as a consequence of it, a non-complying activity classification rule along the following lines should be added:¹⁶

46.4.20	Recreation and recreational activity in the Matakauri Rural Visitor Zone	NC
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Submissions

QLDC & MLL

[34] QLDC invites the court to reflect further on our findings concerning r 46.4.4.

¹⁴ *Scaife v Queenstown Lakes District Council* [2023] NZEnvC 226, at [159].

¹⁵ *Scaife v Queenstown Lakes District Council* [2023] NZEnvC 226, at [165].

¹⁶ JWS, at [7.2].

[35] In particular, counsel enquire as to whether the court may not have appreciated that while PDP Ch 2 does not define the term ‘recreation and recreational activity’ used in Ch 46, it separately defines both these terms and also includes related definitions as follows:¹⁷

Recreation	Means activities which give personal enjoyment, satisfaction and a sense of wellbeing.
Recreational activity	Means the use of land and/or buildings for the primary purpose of recreation and/or entertainment. Excludes any recreational activity within the meaning of residential activity.
Recreational Tracks	Means a sealed or unsealed pathway or greenway within Council controlled reserves that is used for informal or organised recreational purposes such as walking, cycling, horse-riding, or fitness.
Recreation Facility	Means a facility where the primary purpose is to provide for sport and recreation activities and includes recreation centres, swimming pools, fitness centres and indoor sports centres but excludes activities otherwise defined as Commercial Recreation Activities.

[36] Secondly, QLDC responds to the court’s observations concerning the scope of what is already encompassed in the PDP definition of “Visitor Accommodation”. Counsel agree that this definition is likely broad enough to encompass informal recreation that is offered to visitors and guests at Matakauri Lodge. However, they point out that this may not capture all forms of informal recreation. That is in particular where it is not a service specifically offered, but is instead initiated by guests (i.e., where guests take a walk, jog or undertake another

¹⁷ Ch 2 – Definitions, pages 2 – 28.

recreational activity, that is not a service provided by the lodge/operator).

[37] QLDC submits that, on that reading of the PDP, were Matakauri RVZ to be removed from r 46.4.4, that could render any recreation or recreational activity undertaken there a non-complying activity other than where it forms part of the Visitor Accommodation offering.

[38] QLDC acknowledges that the court may also be concerned that there are no associated standards for recreation and recreational activity in r 46.4.4 so as to ensure they remain “small scale and low intensity”. On this aspect, counsel invites the court to leave r 46.4.4 to continue to apply to Matakauri RVZ but to include in the RVZ purpose statement in provision 46.1 the addition that the court proposed in the interim decision, namely:

...The principal activities in the Zone are small scale and low intensity visitor accommodation and related ancillary commercial activities. ...

[39] QLDC submits that this amendment is appropriate to align with Obj 46.2.1, and that it is consistent with the definition of “recreation” in any event.

[40] MLL supports the Council’s closing submissions on these matters, including the plan integrity issues relating to the non-complying activity status of r 46.4.20.

Mr Scaife

[41] In regard to commercial recreational activities, Mr Scaife is concerned that, whilst scale is managed under the proposed provisions, the “nature” of commercial recreation is not. Related to that, he is concerned as to the lack of clarity as to how such recreation differs from “recreational facilities” provided for in the visitor accommodation definition.

[42] As for activity status, Mr Scaife proposes a cascade whereby commercial

recreation for up to six people per day is a discretionary activity, and beyond that number, is non-complying. Part of his rationale for having discretionary, rather than a more permissive activity class (e.g., controlled) is that there is no specific activity to base controls on. Further, discretionary activity status would allow decision makers, when considering an application for commercial recreation, to consider cumulative effects on amenity of the combined activities in the Matakauri RVZ, as Pol 46.2.1.4A suggests they should.

[43] Mr Scaife submits that there is nothing to suggest commercial recreation will or should be restricted to the outdoors. He submits the word “outdoors” should be deleted from r 46.5.7.4.

[44] As for the standards in Table 46.5, Mr Scaife submits that r 46.5.7.2 needs to apply to the Matakauri RVZ. That is in light of proposed r 46.5.7.4 setting a maximum six-person cap on outdoor commercial recreational activity. At present, that rule has the effect of excluding specified other RVZ areas from r 46.5.7.1. Rule 46.5.7.1 is to the effect that commercial recreational activity undertaken outdoors shall not involve “more than 30 persons in any one group”.

Evaluation and determination

[45] The issues raised by the interim decision concerning r 46.4.4 are not satisfactorily answered by simply adding words of explanation to provision 46.1 Purpose as QLDC suggests. A zone purpose statement is neither a PDP objective nor a standard. Explanatory text would serve little if any purpose in any relevant enforcement context.

[46] Nor is the issue about activities of the scale referred to by QLDC, namely guests choosing to take a walk or go on a jog. Those are examples of *de minimis* activity that the law does not seek to regulate. Rather, we are concerned with the uncertain application of a permitted activity class that has no associated standards and is fundamentally unclear in its resource management purpose, given that r 46.4.3 is concerned with “commercial recreational activities”.

[47] To maintain the integrity of a spot zone approach of the nature of the RVZ, it is particularly important that activity classes and standards do not leave fundamentally uncertain what is anticipated in terms of activities that can have associated off-zone impacts. That is particularly the situation here where there are residential enclaves in the immediate neighbourhood of the Lodge.

[48] We are less troubled by r 46.4.3 as to commercial residential activities, as that rule operates in association with standards and “commercial” has a clear ordinary meaning.

[49] However, if that rule sat in tandem with r 46.4.4 for which there are no associated standards, there would be significant potential for uncertainty and associated conflict in the administration of the PDP. In particular, for any recreation at scale, there would be potential for confusion and conflict about whether this was “commercial” or akin to commercial in nature. Trying to establish which rule pertained to such an activity could be highly problematic. That puts at risk neighbouring amenity values and plan integrity.

[50] We do not accept QLDC’s submissions that this is ameliorated by the noted PDP definitions. Guests choosing to undertake their own recreational event at Matakauri under r 46.4.4 may well regard it as giving them “personal enjoyment, satisfaction and a sense of wellbeing”. Those within earshot beyond the zone may experience it as adversely impacting on their amenities.

[51] As for r 46.5.7.2, we find it would not be appropriate to add reference to Matakauri RVZ, notwithstanding our confirmation of the addition of r 46.5.7.4. That is primarily because the latter rule can sit appropriately with r 46.5.7.1 in regard to any commercial recreational activity that extends over more than one day. Nor was this amendment, as proposed by Mr Scaife, recommended in the JWS.

[52] We do not accept the other drafting suggestions from Mr Scaife as necessary or appropriate. For commercial recreational activities, we see no

justification to depart from the findings in our interim decision. Restricted discretionary activity classification would be triggered if the activity both involves more than six persons “within the zone” and is undertaken outdoors. Whilst we acknowledge that rule would not limit indoor commercial recreational activities, we note that non-complying status is triggered under r 46.5.WW if the total numbers cap (110) is exceeded. Given other rules, including those that govern the scale and configuration of buildings, we find that proposed rr 46.4.3 and 46.5.7.4 are the most appropriate for achieving related PDP objectives.

[53] However, for the reasons given in the interim decision we confirm our finding that r 46.4.3 is not justified and is inappropriate for achieving those objectives. QLDC may well wish to further reflect on the looseness of r 46.4.3 for other spot zone contexts. However, that is within its responsibility as planning authority so we take that no further.

[54] We do not accept the recommendation in the JWS as to the addition of a further r 46.4.20 to prescribe “recreation and recreational activity” to be a non-complying activity. Such an addition is not warranted given the last rule in Table 46.4 (to the effect that any activity not listed is non-complying).

Activity classes and standards as to people numbers

[55] Our discussion on rules concerning people numbers encompasses both the activity classification rules in Table 46.4 and related standards.

The interim decision

[56] In addition to the various activity class rules in Table 46.4, the interim decision found that new associated standards in rr 46.5.XX and 46.5.WW should be added to the following effect:¹⁸

¹⁸ *Scaife v Queenstown Lakes District Council* [2023] NZEnvC 226, at [157] – [158].

	Table 46.5 - Standards	Non-compliance status
46.5.XX	<p>For visitor accommodation, buildings in the Matakauri Rural Visitor Zone must be of a size and configuration that does not allow;</p> <p>46.5.XX.1: more than 45 overnight guests to be accommodated in the Zone; or</p> <p>46.5.XX.2: in addition to overnight guests more than 20 persons at any one time or 45 persons per day to be on site for any activity that is ancillary to visitor accommodation.</p>	<p>[RD]¹⁹ if rule 46.5.WW is not breached.</p> <p>NC if rule 46.5.WW is breached.</p> <p>Discretion if [RD] is restricted to:</p> <ul style="list-style-type: none"> a. Location, nature, scale and intensity, including cumulative adverse effects and reverse sensitivity effects; b. Hours of operation; c. The extent and location of signage; d. Transport and access; e. Noise; and f. Effects on amenity values from the location, nature, scale and intensity of activities undertaken in the zone and from any increase in traffic generation, or associated parking, access, and manoeuvring of vehicles.
46.5.WW	<p>Total guest and visitor numbers in the Matakauri Rural Visitor Zone:</p> <p>46.5.WW.1: the combined total maximum number of guests and/or visitors for visitor accommodation and commercial recreational activities and ancillary onsite staff accommodation is [100/110] persons per day.</p>	NC

¹⁹

As noted in the JWS, this draft rule in the interim decision included a typographical error “RC” rather than RD (referring to restricted discretionary activity).

[57] In rr 46.5.XX.1 and 46.5.XX.2, the interim decision preferred the numerical caps recommended by QLDC over others.²⁰

[58] In r 46.5.WW, the interim decision specified a provisional cap in the range of 100 – 110 persons per day, recording that the cap would be determined in that range in light of supplementary closing submissions.²¹

The JWS

[59] Regarding the right-hand column of standard 46.5.XX, the planners recommend that the activity status can be simply stated as “RD” (i.e., restricted discretionary activity). There is no need for the references to “if rule 46.5.WW is not breached” and “NC if rule 46.5.WW is breached”. Rule 46.5.WW is already to that effect, and the additional words add confusion.

[60] Regarding Standard 46.5.WW, the JWS records several points of agreement and no disagreement.²²

[61] They agree that up to 50 overnight guests is appropriate as a restricted discretionary activity. That is on the basis that, within the specified matters for discretion in r 46.5.XX, there would be capacity to undertake a thorough assessment of amenity effects through the consent process for all visitor accommodation.

[62] As for the court’s indicative range of the global people “cap” for triggering non-complying activity status, the planners recommend that this be at the upper end of that range i.e., 110 persons. They offer several reasons:

- (a) relevant policies, including Pol 46.2.1.4A, are comprehensive in how they would pertain to the consideration of consent applications,

²⁰ *Scaife v Queenstown Lakes District Council* [2023] NZEnvC 226, at [162].

²¹ *Scaife v Queenstown Lakes District Council* [2023] NZEnvC 226, at [167].

²² JWS, at [8.1] – [8.2].

- including with respect to off-zone amenity values;
- (b) standard 46.5.XX provides for 90 persons per day, subject to r 46.4.7 or r 46.5.3 (comprising overnight guests and persons using activities ancillary to Visitor Accommodation, such as the restaurant);
- (c) r 46.4.3 and standard 46.5.7.4 allow for up to six persons per day to be engaged in outdoor commercial recreation;
- (d) staff accommodation (e.g., a couple residing on site) is provided for subject to r 46.4.7 or standard 46.5.3 (and to the global cap);
- (e) subject to r 46.4.7 or standard 46.5.3, the provisions therefore provide for up to 98 persons on any given day; and
- (f) given the strict constraints on building in the Matakauri Rural Visitor Zone, it is highly unlikely that the staff accommodation will be larger than the minimum required or that any indoor recreation will be developed on site.

[63] The planners agree that, for clarity and consistency with Standard 46.5.XX, the standard should refer to “overnight guests” and “day visitors”, rather than simply “guests” and “visitors”.

Submissions and representations

QLDC and MLL

[64] QLDC and MLL essentially endorse the JWS on these matters.

Mr Scaife

[65] Mr Scaife is concerned about the risk of ongoing increases in the numbers of people at the Lodge for various purposes.

[66] As part of the approach to addressing this risk, he proposes a cascade of activity class rules for inclusion in Table 45.5. He also proposes a cascade approach to limits on overnight staff accommodation. His preferred approach to

that matter would be for the number of staff staying overnight to be subsumed in the visitor accommodation numbers. As an alternative, he proposes a rule limiting the onsite staff accommodation to two people. He offers associated drafting (with some gaps) as follows:

- | | |
|--------------|--|
| Rule 46.4.2A | <p>Visitor Accommodation in the Matakauri Visitor Zone</p> <p>46.4.2A.1 Overnight accommodation for guests and staff (other than identified in Rule 46.4.y and 46.4.z and 46.5.ww).</p> <p>46.4.2A.2 Use of facilities ancillary to visitor accommodation by guests not staying overnight (other than identified in Rule 46.4.y and 46.4.z and 46.5.ww).</p> <p>Activity status – Controlled</p> <p>Control is reserved to ...</p> |
| Rule 46.4.y | <p>Visitor Accommodation in the Matakauri Rural Visitor Zone</p> <p>46.4.y.1 More than a total of 32 guests and staff staying overnight.</p> <p>46.4.y.2 More than 12 at a time or 20 per day non overnight guests using facilities ancillary to visitor accommodation.</p> <p>Activity status – Discretionary or Restricted Discretionary</p> |
| Rule 46.4.z | <p>Visitor Accommodation in the Matakauri Rural Visitor Zone</p> <p>46.4.z.1 More than total of 45 guests and staff staying overnight.</p> <p>46.4.z.2 More than 20 (?) at a time or 44 (?) per day non overnight guests using facilities ancillary to visitor accommodation.</p> <p>Activity status – Non Complying</p> |
| Rule 46.4.3A | <p>Commercial recreation activities within the Matakauri Rural Visitor Zone</p> <p>Activity Status – Discretionary (or Restricted Discretionary).</p> |

Evaluation and determination

[67] The matter of the maximum numbers of overnight guests and limits on other visitor numbers is discussed in various parts of the interim decision. The position of QLDC and Ms Jones’ related evidence is summarised at [88] – [93]. MLL’s position is summarised at [104] – [107]. Mr Scaife’s proposal for new rules on these matters is summarised at [119] – [121] (including as to the gist of Ms Jones’ evidence on related matters) and [124]. That is together with various other points raised by Mr Scaife on other provisions.

[68] At [126], the court finds that the “QLDC closing version” provisions are the most appropriate for achieving relevant PDP objectives, subject to some exceptions. Those exceptions extended to “associated guest and visitor cap rules”, where our findings are at [149] – [156]. In light of Mr Scaife’s above-noted suggestions, we record our following findings:

[155] By contrast, Mr Scaife’s version of these provisions would control people numbers, rather than building configuration per se. We acknowledge QLDC’s closing submission as to the administrative challenges that can be presented with people-number standards. Whilst building dimension and configuration standards are a helpful proxy for the management of the scale of activity undertaken at a site, we acknowledge that such standards are not a complete answer. On the other hand, we find Mr Scaife’s people numbers control approach would go too far in those terms, in that this approach would create significant administrative uncertainty. As we have noted, nor do we find QLDC’s approach of mixing building configuration and people number controls helpful.

[156] Our provisional view is that a more workable and effective approach involves amendments to both Table 46.4 – Activities and Table 46.5 – Standards as follows. We start with the caps in Table 46.5.

[69] At [157] and following, we went on to discuss various cap and standards. These included:

- (a) a total guest and visitor numbers cap, in r 46.5.WW, of “[100/110]” persons per day, triggering non-complying activity status if contravened; and
- (b) a building size and configuration restricted discretionary activity standard for visitor accommodation buildings, in r 46.5.XX, set with reference to numbers of guests and other persons (i.e., not more than 45 overnight guests, not more than 20 persons at any one time and 45 persons per day).

[70] The drafting in the JWS reflects those findings and provisional views. As part of the proposed RVZ provisions, those include:

- (a) r 46.5.WW as above-described, proposing the non-complying triggering cap be specified as 110; and
- (b) restricted discretionary activity r 46.5.XX also as above-described (but somewhat refined for better clarity).

[71] Mr Scaife’s alternative approach is closely similar to what he earlier proposed and about which we noted concern that this would create “significant administrative uncertainty”.

[72] We appreciate that the administrative efficiency and effectiveness of standards and other rules is a matter of degree and judgment. However, as opposed to draft r 46.5.WW, Mr Scaife’s drafting would lead to significantly greater and unwarranted administrative complexity.

[73] A single global ‘people’ cap exceedance of which would trigger non-complying activity status, has a virtue of relative simplicity and measurability. In those terms, it is a helpful measure for maintaining the integrity of the RVZ, as expressed through relevant objectives and policies.

[74] In contrast, a regime of cascading activity classifications triggered by whether persons are overnight guests, or staff staying overnight or various classes

of day visitor would involve materially more administrative and accounting complexity. As we noted in the interim decision, the effects of a land use or activity of this nature are not simply measured as a people equation. Certainly people contribute, but we adjudge that dimension as already effectively built into the suite of standards and controls that our interim decision signalled and as the JWS effectively provides for.

[75] Hence, we find this set of provisions as drafted in the JWS the most appropriate for inclusion in the PDP.

Remaining matters

Rules 46.4.5 and standard 46.5.8

[76] The JWS notes that r 46.4.5 and standard 46.5.8 (informal airports) both refer to r 46.4.20. The experts agree that this cross reference is incorrect and should refer to r 46.4.19 (as numbered in their provisions). The experts suggest this error has likely arisen from re-numbering during drafting but has been present in the versions since those attached to both briefs of planning evidence.²³ No party opposes these refinement recommendations.

Rule 46.5.7

[77] Regarding standard 46.5.7, the planners recommend a minor change from “RVZ” to “Rural visitor zone” and the addition of the word “and”. We agree.

Evaluation and determination

[78] We agree with the planners’ recommended drafting refinements. Rules 46.4.5, 46.5.7 and standard 46.5.8 are to be refined accordingly.

²³ JWS, at [7.3].

Conclusion and directions

[79] Except as we have otherwise discussed, the refined recommended provisions in the JWS (‘JWS provisions’) reflect the findings in our interim decision. On the basis of the interim decision and our further findings herein, therefore, we confirm the JWS provisions as the most appropriate except where we have found otherwise. Specifically, our findings on drafting matters differ from the JWS provisions (and the preliminary drafting in the interim decision) in the following respects:

- (a) r 46.4.2 is not to include the words “except in the Matakauri Rural Visitor Zone”, but is otherwise confirmed;
- (b) r 46.4.2A as proposed in the interim decision is not to be included in the PDP, hence being deleted from Table 46.4;
- (c) r 46.4.3 is not to include the words “except in the Matakauri Rural Visitor Zone”, but is otherwise confirmed;
- (d) r 46.4.3A as proposed in the interim decision is not to be included in the PDP, hence being deleted from Table 46.4;
- (e) r 46.4.4 is to continue to include the words proposed in the interim decision, namely “except in the Matakauri Rural Visitor Zone” and is hence confirmed on that modified basis;
- (f) rr 46.4.19A and 46.4.19B, as proposed in the interim decision, are now rejected and are not to be included in Table 46.4;
- (g) r 46.4.20 as proposed by the JWS is rejected and hence is not to be included in Table 46.4 (the last rule in the table therefore being restored as being r 46.4.19; and
- (h) rr 46.5.WW and 46.5.XX are to be included in the PDP according to the drafting of the JWS.

[80] This decision is final on all matters concerning the appeal which, on the basis explained, is **allowed in part**. QLDC is to report to the court within 15 working days proposing a reporting date for when it anticipates providing a final version of all provisions for the court's approval for inclusion in the PDP.

[81] As stated in the interim decision, costs are reserved although not encouraged.²⁴ In particular, parties may well consider the outcome lands somewhere between their respective cases. Any application is to be made and served within 10 working days and any reply within a further five working days.

For the court



J J M Hassan
Environment Judge



²⁴ *Scaife v Queenstown Lakes District Council* [2023] NZEnvC 226, at [180].