Under the Resource Management Act 1991 In the matter of an application by

S. Pursley RM 051107

Decision on Application for Resource Consent by J.G. Matthews a Commissioner appointed pursuant to Section 34A of the Act.

Decision of Commissioner J.G. Matthews on Application for Resource Consent

---

A. INTRODUCTION: THE APPLICATION

The applicant has applied for resource consent to operate an existing building complex at 8 Minaret Ridge, Wanaka for the provision of visitor accommodation for a maximum of 12 guests. The site is located within the Penrith Park (Special Zone), under the Partially Operative District Plan.

The buildings on the site are three in number, comprising two residential dwellings and a third building comprising a workshop, laundry and studio. None of the buildings are inter-connected. Each of the dwellings comprises garaging for three vehicles on the lowest level, accessed by a driveway from the road with two further stories incorporating living areas, and in each building three bedrooms. In one of the buildings there is a further area which will be used as a bedroom by the owner-occupier of the property and the other six bedrooms will be available for guests.

Seventeen submissions were received in opposition to the application including one late submission. The applicant was represented by Mr Michael Parker and the majority of the submitters were represented by Mr Chris Steven. The names of the submitters, and their representation, are set out in Schedule "A".

The application was heard at Wanaka on Thursday 11th May 2006.

I have considered the application, the reports prepared by staff officers, the submissions and evidence adduced on behalf of the applicant and submitters and I made a site visit to inspect the property.

B. CONSENTS REQUIRED

The applicant built the buildings on the subject property pursuant to a Resource Consent issued on a non-notified basis by the Council's contracted regulatory management company, Civic Corporation Limited. The validity of that Resource Consent was the subject of adverse comment by Mr Steven on behalf of the majority of submitters and formed the basis of a further submission, from him, on the matters which I should take into account. I will return to that point shortly. For present purposes, I record that he accepted that the validity of the decision was now beyond legal challenge. Accordingly no consent is required in relation to the buildings; it was the applicant's position that the consents required are:

(i) A discretionary activity resource consent for use of the existing buildings for visitor accommodation.

(ii) A restricted discretionary activity resource consent as a consequence of the fact that there is no provision on the site for a coach park.

The reporting planner, Daniel Curley was of the view that a non-complying activity resource consent was also required pursuant to Rule 12.7.3.4 as the proposed activity contravened zone standard 12.7.5.2(v) in regard to the nature and scale of activity exceeding 40 metres. This point, supported by Mr Steven, is that under Rule 12.7.3.3 visitor accommodation is listed as a discretionary activity but only as long as it complies with all the relevant zone standards, and the Zone Standard in Rule 12.7.5.2(v) for "non residential activities" provides that the nature and scale of those activities shall not exceed a maximum gross floor area of 40 square metres. At first sight that seems a logical enough proposition, but Mr Parker's argument was that this limitation of size could not have been intended to apply to visitor accommodation, as the definition of visitor accommodation confines it to this activity being carried out in relation to more than four guests. As this could not, it was submitted, practically be achieved in 40 square metres or less, it was submitted that it could not have been intended in the plan that visitor accommodation be within the category of non-residential activities to which Rule 12.7.5.2(v) applies. Mr Parker described this as a lacuna in the plan. I agree. He supported the

submission, which was also supported, I record, by Mrs Vining a consultant planner who gave evidence for the applicant, by reference to provisions in other parts of the plan, for example the low and high density residential section (section 7) which include visitor accommodation in the residential standards and specifically exclude visitor accommodation from the non-residential standards.

Notwithstanding the very evident impracticality of carrying on a visitor accommodation service for no fewer than five people in just 40 square metres, I think the wording of the plan is clear if unfortunate. An amendment may well be required to give this provision of the plan a more common sense application. For my part I will approach the matter on the basis that a non complying activity resource consent is required because the area to be occupied by the proposed activity exceeds 40 square metres. This may be seen as a conservative approach; in my view it is a correct if impractical application of the plan as it stands and I note that Mrs Vining in her evidence approached the matter on the basis that it was a non-complying activity. I will do the same.

C. STATUTORY PROVISIONS

The matter falls to be considered, as with all resource consents, under Section 104 of the Act which need not be reproduced here. It also falls for consideration under Section 104B which provides that after considering an application for a resource consent for either a discretionary or a non-complying activity a consent authority may grant or refuse the application, and if it grants it, it may impose conditions under Section 108.

Section 104D provides that a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either the adverse effects of the activity on the environment, other than any effect to which Section 104(3)(b) applies, will be minor or that the application is for an activity that will not be contrary to the Objectives and Policies of (in this case) the Proposed Operative District Plan (PODP).

Section 104 requires me also to consider the provisions of Part 2 of the Act and provides in subsection 2 that when forming an opinion for the purposes of subsection (1)(a) namely in relation to any actual and potential effects on the environment of allowing the activity, I may disregard an adverse effect of the activity on the environment if the plan permits an activity with that effect.

D. THE PERMITTED BASELINE

It was the case for the applicant that as the buildings on the site were the subject of an existing resource consent, which was not subject to challenge, they were part of the physical environment and therefore I should not consider any effects of those buildings when considering this application. The same applied to the landscaping and other physical aspects of the site.

The applicant frankly stated, through Mr Parker, that when she was first considering the development of this land, and her wish to erect buildings which would be suitable for a visitor accommodation operation, she approached Civic Corp and discussed the matter. According to the applicant the consequence of those discussions was that a two stage resource consent application process was adopted, the first in relation to the buildings, to be followed by a later application, the current one, in relation to the proposed activity to be carried out within them.

Whilst the applicant maintained that this was an open and legitimate approach Mr Steven criticized it, relying on a case *Bode v. Queenstown Lakes District Council and Golden Gate Lodge Limited* (CIV 2003-412-000291). In that case Civic Corp had given advice to the applicant, when faced with an application for both a development and activities to be carried on within it, that it should approach the matter on a two stage basis and thereby avoid the need for public notification. As this point only arose at the hearing, I reserved leave for Mr Parker to file a submission on it in writing after the close of the hearing. He did so. When that submission was received it was, as might have been expected, detailed and I therefore thought it appropriate to give Mr Steven an opportunity, of a similar length to that given to Mr Parker, to respond. He also responded. Mr Steven submitted that the only possible reason for making two applications was a strategic one namely, as he put it, getting the buildings up as a fait accompli and then dealing with the visitor accommodation issue later. He pointed out that when considering the first application for consent to build two residences on one site, Civic Corp had mistakenly thought that the land could be subdivided as of right and that was one of the bases for giving consent to two buildings being erected. That was wrong – the land is in a part of the Penrith Park's special zone which does not permit it, as of right, to be subdivided into areas below 3000 square metres as would have been required had a subdivision application been made. Mr Steven, promoting the view that on the basis of the *Bode* decision the approach made by the applicant was flawed, submitted that whilst I could not, obviously, make any

formal ruling in relation to the former consent I could exercise my discretion against considering the building as part of the existing environment, or the permitted baseline, and that I could also take into account the applicant's wrong approach to this matter under Section 104(1)(c) by which I may take into account any other matter which I consider relevant and reasonably necessary to determine the application. In support of this submission he cited a decision of the High Court in *New Zealand Suncern Construction Limited v. The Auckland City Council* HC105/96, judgment 23rd June 1997 (Fisher, J.). In that case the Judge expressed the view that so long as reliance upon the "other matters", referred to in this paragraph would promote the underlying objectives of the Resource Management Act, and as long as they did not conflict with any express criterion obviously intended to have priority, there would seem to be nothing to prevent them from taken into account.

Mr Parker in his submission said the ratio of the *Bode* decision was that a resource consent application which was filed for both construction of the commercial building for a retail liquor outlet, and for a café bar, was manipulated so as to avoid public notification in respect of one part of it, that application having first been filed as one application and then dealt with separately. In its compendious form the application would have been notified because of concerns particularly in relation to parking. It seems an officer from Civic Corp overstepped the mark by advising that the liquor outlet be dealt with as Part A and the café bar as Part B, the former on a non-notified basis and the latter on a notified basis. The High Court found that in the circumstances it was lead inescapably to the conclusion that it was a means to the end of non-notification, and that it was not the function of a planner with Civic Corp to suggest a method by which public participation in the process should be avoided. The Judge further found that it was not possible to sensibly divide the proposal into two parts and that an assessment of one part could not be made or divorced from the other.

Mr Parker decried any analogy with the present case. He submitted there can be no suggestion that the application filed in this case was to be or has been divided into two parts in order to avoid notification. His client did what he described as the right thing and consulted Civic Corp as to an acceptable process under the Act for the development of this land. There was nothing underhand. They were quite frank from the outset as to their ultimate intentions, that being the reason for there being two buildings and not one. There was no specific endeavor to achieve the end of non-notification.

An argument of this kind is really more suited to an application, had one been made, to set aside the earlier consent to build the buildings, and at this late point, on a proceeding seeking

the second part of the necessary consents for this operation, can only be of limited relevance. Mr Steven quite properly accepted that the relevance was confined. As I have said, he asked that the buildings not be part of the permitted baseline and that I take into account the course of this matter by the applicants and by Civic Corp as one of the additional matters under Section 104 which I am permitted to consider.

The difficulty I have with the argument presented by Mr Steven, is exactly where it takes the case. It seems to me the high point of his argument on this issue is that I should not take into account the present physical state of the property, virtually completely developed in accordance with the former consent, as part of the permitted baseline but rather should regard this application, I assume, as a greenfields application to build both the houses and carry on the activity within them – or at least, only as an application for consent to provide visitor accommodation in some unknown set of buildings. I cannot see the consequence of taking it into account under Section 104(1)(c), and as I understand the submissions made to me no specific consequence of so doing was put. If I assume, for a moment, that it is appropriate to adopt Mr Steven's point in relation to permitted baseline, I am nonetheless left with a discretion to disregard an adverse effect of the activity on the environment if the plan permits an activity with that effect. The plan clearly permits the building of a residence on this site. It does not permit the building of two residences. Neither however does it place a limitation on the size of a residence that can be erected. Thus it would have been possible for the applicants, had they chosen to do so, to build a six bedroom residence with a number of living rooms and, if they wished, two kitchens, six car garaging and extensive landscaping. They could have built an outbuilding comprising a workshop and a laundry and a studio. The only physical difference between that which could have been carried on as of right, and that which has been consented to, is that the residential part of the building has been divided into two pursuant to the former consent. If I adopt Mr Steven's submission, therefore, the permitted baseline differs from the existing environment only by that factor.

Given that the freedom of expression frequently seen in modern architecture will frequently involve a semi-modular approach to design, and that buildings of considerable dimension are already in existence in the Penrith Park zone and, given the size of the allotments and their value, are likely to be part of the built environment as the area develops, I think that there really is very little in the point. Further, to now completely disregard the development on the site, and to undertake the exercise of considering this application on the basis of a large hypothetical house and attendant landscaping, adds to the assessment process a profound air of unreality

and, given the only differences between the two scenarios is the separation of the 'large house' into two smaller houses it cannot in my view have any effect on the outcome.

In my view, in any event, this case differs significantly from *Bode* where a deliberate attempt was made to avoid notification; the evidence stops well short of providing a foundation for a similar finding.

E. THE APPLICANT'S PROPOSAL

The applicant wishes to use the two houses which have been built on the site to offer luxury short stay accommodation in six guest rooms with breakfast and other occasional meals provided by arrangement. The two buildings are on the sides of a courtyard. They are of contempory design. I was told that they are of the highest quality materials and are designed to form a harmonious group. Ms Pursley and her partner intend to live and work on the property and offer high quality accommodation with tariffs estimated at between $575 and $750 per room per night. The anticipated market is described as "self-drive couples" expected to stay an average of two or three nights. It was accepted by the applicant that although it is unlikely that all the accommodation will be occupied at the same time, very often, the assessment of effects of the intended activity must be made on the basis of full occupation.

Access for vehicles to the site is by two entrances and there are six carparks in two garages together with a further outdoor carpark. I observed, too, that on a short-term basis at least there is plenty of room for further parking on the side of the through driveway. I was told that the movement of vehicles and parking areas are screened acoustically, as well as visually (as I observed) from the road frontage and that the building, with double glazing, is well sound proofed in order to minimize the possibility of any noise disturbance from within the building.

There is no external swimming pool or spa pool. There is an outdoor area which could be used for entertaining, relaxing and dining, as would be expected in any home of the size and quality that might fairly be expected to be built in the Penrith Park area. On my observation, apart from the fact that the development of the site takes the form of three buildings separated from each other, there was nothing in the bulk dimensions or appearance of the development which would distinguish it from a residential development such as can be seen elsewhere in the Penrith Park area. The development does not look like a commercial property and has all the appearances of being a large home, though divided into two principle parts with a third adjacent studio and services building.

The building of a quality residence in this area may be carried out as of right. As I have observed, any distinguishing features between that which the applicant has built and a large and spacious home for family occupation is small indeed, and certainly confined to the fact that there is a gap of a few metres between the two principle buildings, though even then the buildings are visually joined by a covered walkway. The issue before me requires an assessment of the proposed activity which the applicant wishes to conduct on the site, and that is better assessed knowing the context in which it would take place.

F. THE PARTIALLY OPERATIVE DISTRICT PLAN

Penrith Park zone is dealt with under Part 12.6 of the District Plan. It is described as "valued as a high quality environmentally sensitive environment". The zone is visible from parts of the Wanaka basin and from the lake. It has high ecological values due to its proximity to Lake Wanaka and the Clutha outlet and it contains some locally important vegetation. The objectives of the zone are stated to be:

> "To enable the creation of low density residential development in a rural setting which is relatively close to Wanaka town centre."
>
> "To conserve the visual amenity of the locality to a significant degree."
>
> "To encourage a high standard of building design, appearance and landscape."
>
> "To avoid adverse effects of any development on the environment ensuring long term sustainable management of the area."

There are four policies. These are:

1. To ensure visual amenity of the Wanaka area is protected by controlling the intensity and the design of development.

2. To ensure visual compatibility with the Wanaka amenity through assessment of design and construction materials.

3. To provide for the establishment of low density visitor accommodation in a rural setting where low density development can demonstrate compatibility with the zone objectives and where the effects on the environment will be similar to low density residential development.

4. To ensure all buildings and accessory structures are sited on the property in an unobtrusive manner in harmony with the natural forms and features of the landscape.

In Part 12.7 a number of rules are set out, and a number of standards are set. Among the discretionary activities in Rule 12.7.3.3 is the provision of visitor accommodation provided it complies with all relevant zone standards. The zone standard set out in Rule 12.7.5.2(v) provides that the nature and scale of non-residential activities shall not exceed a maximum gross floor area of 40 square metres. This rule is far from clear. How the "nature" of a non-residential activity can have any relevance whatever to the gross floor area involved in it defies analysis. As noted earlier, too, there is a distinct aura of unreality about providing that the non-residential activity is not to exceed a maximum gross floor area of 40 square metres, in order to be a discretionary activity, when the definition of visitor accommodation applies only to the accommodating of more than four persons. Applied literally, that would be cramped accommodation indeed, and certainly not of a standard that the residents of the Penrith Park zone might find acceptable.

I have set out the four policies which apply in this zone. The first, second and fourth are of no relevance to the present application, but the third, relating to the establishment of low density visitor accommodation, clearly is. Whilst the policy refers to a "rural setting", there must be some doubt about whether, even given the large allotments provided for in this part of the zone, it is

truly a rural setting as that term is commonly applied. Certainly, it is a low density development and the matters to be determined, therefore, are whether this proposal is compatible with the zone objectives, and whether the effects on the environment will be similar to low density residential development. The only objective of relevance in this consideration is the fourth – to avoid adverse effects of any development on the environment ensuring long term sustainable management of the area.

With the operation of visitor accommodation there is potential for the creation of more noise than would be the case with a residential activity on the same site, a loss of privacy and an increase of traffic movements both by vehicle and on foot.

In relation to noise, it may be thought those staying at the facility, probably being holiday makers, may have a tendency to make a little more noise, a little more frequently, than permanent residents. It is difficult to assess whether that is likely to occur in this case. Certainly, the proposed accommodation is aimed directly at a more affluent tourist market and it was suggested that people within this group may be less inclined to generate noise than those in other sectors of the tourist markets, such as backpackers. I do not feel comfortable drawing that conclusion.

The noise generated by residents can of course cover an infinite range of possibilities as well. Some groups are more likely to focus their leisure time outdoors from which noise may emanate more readily, while some may tend to be indoors. It is sufficient in my view to say that this is a particularly difficult concept to analyse, but to the extent that any realistic assessment on this point can be made, it is weighted in favour of the applicant by the fact that there is no external swimming pool or spa pool, there are viewing decks and a relatively small outdoor terrace and garden, and no outdoor sports facilities such as a tennis court, all of which are factors which suggest that noise generated on the property from visitors is likely to be only very slightly different, if at all, from the noise which might reasonably be expected from a group of residents occupying the property.

A second potential source of noise is from the coming and going of vehicles. I think it realistic to expect that most visitors staying at this property would arrive and leave by car. It is likely that they would come and go during the day rather than staying at the property.

Again, however, it is difficult to assess the extent to which noise from this activity will differ from the noise generated from the traffic which might come and go from this house if used as a residence. As a residence it might be thought likely that it would be used by a large family who may all have vehicles and come and go to educational facilities, work, sports activities and soforth. There might be younger children without vehicles, but parental vehicles used to drop them off and collect them from a range of matters in which they may be engaged. Any kind of comparison with the traffic that might be generated from this visitor accommodation and the traffic that might be generated from a family of such size as could reasonably be expected to occupy a six bedroom home is extremely difficult to undertake without knowledge of the

composition of the family. Ms Hill the traffic engineer who reported on this application estimated that with six guest rooms, 63 vehicle movements per day may be produced, on the assumption there was a very active coming and going guest population with all rooms occupied. Using standard figures for residential units, she estimated that 47 additional movements per day could be expected at peak times as a result of the visitor accommodation use sought. Vehicle movements on the site will be well screened by the layout of the driveway and can be mitigated by planting. Any effect from the noise of vehicles, when compared with the noise of vehicles generated by a similarly sized residence, will in my opinion be no more than minor. I note too that it is intended to use the accommodation for visitors only during the summer and winter, and not in brief shoulder seasons of autumn and spring. A residence will generate vehicle movements all year. Any adverse effects of noise can be mitigated by a suitable noise management plan, and by proper control by a manager being present at all times.

Ms Hill also gave evidence that all the surrounding relevant roads are more than capable of handling traffic of that volume. I accept her evidence. I note that it was necessarily based on a degree of theoretical assessment which, whilst responsibly undertaken, may or may not truly represent what could be expected to occur, for the reasons I have canvassed when discussing noise. Again I find that any adverse effects of traffic will be less than minor.

A third potential effect of allowing visitor accommodation on this site is the lack of neighbourly affinity which might be expected in the community of full time residents. Whilst I accept that this is a real prospect, I note that the owners of the development intend that they should live on site and so they will be true neighbours in the residential sense to those around them, and the plan does provide for visitor accommodation which by definition means accommodation for more than four in number. These factors, combined with the fact that this is only intended as a seasonal operation, lessen any effect that might stem from a lack of neighbourly contact, and in my view render that effect less than minor.

Associated with this is the concept of loss of privacy. With more people potentially on the site, amounting in all to 14 (the owners plus 12 guests) it is possible that there will be a loss of privacy for adjacent properties, and passers by. In my view this will be no more than minor. The outdoor living areas are elevated above the road and the allotment on which the activity is proposed is over 3200 square metres in size meaning there are substantial setback distances between the existing neighbouring dwellings, and the same may be reasonably assumed for any future neighbouring dwellings. If future dwellings are built close to the boundary, the owners

of them will take upon themselves any invasion of their privacy that may stem from choosing to locate themselves so close to their neighbour. There is a natural tendency in an area such as Penrith Park to be looking towards the spectacular views of the lake and mountains rather than at neighbours houses. Considerable effort has been put into landscaping on the perimeter of the site, and indeed throughout other parts of the site as well, some of that with neighbours consent and cooperation. A suitable condition can be imposed in relation to landscaping to minimize any invasion of privacy that may be felt by the operation which is proposed.

G. PRECEDENT EFFECT

It was submitted that to permit this activity may create a precedent. I do not accept that submission. This application is being dealt with as a non-complying activity. Any other applicant wishing to utilize a property for visitor accommodation would face the same requirements for an application as in the present case. Given that visitor accommodation on terms is a discretionary activity in this zone I see no precedent effect in allowing the application, and nor do I see any prospect of any adverse effect on the integrity of the Partially Operative District Plan.

H. SUBMISSIONS IN OPPOSITION

A late submission was filed by A & A Spiers. It referred to adverse effects including noise, traffic hazards, and impact on values, as well as precedent effect.

No objection was taken to this late submission being admitted, and I am satisfied in terms of Section 37A that the submission may properly be accepted late. I so order under Section 37.

Mr Aaron Nichols presented a written submission on behalf of Elmhurst Limited, the owner of a property at 3 Briarbank Place, Penrith Park. He submitted that the intended use was not appropriate, being far more intense than that which was contemplated by the Penrith Park zone objectives and accordingly it would result in intensification and commercialization of use of the area which was not compatible with the sustainable management of the environment, and would inevitably result in damage thereto.

I note that the provision of visitor accommodation is not a commercial activity within the definition in the PODP. I have also observed that as a home of a similar size, or even larger, could be built on the site as of right, and could therefore accommodate at least the same

number of persons as are contemplated by this application, I think there is little intensification of use when compared with that which can be carried out as of right. Mr Nichols went on to submit that the development undertaken was, in its style and layout, more akin to a motel than might be expected for a very low number visitor accommodation proposal. Having inspected the site I do not accept that submission. The property is of domestic scale and design and quite unlike the kind of development more commonly seen as a motel. Mr Nichols went on to submit that the proposal creates flow of transient people through the area with no long term attachment to it and therefore no investment in protecting or preserving it. That I accept, but in my view the resident and operating owners would have a significant interest in protecting and preserving the area if for no other reason than the preservation of their own investment and the commercially viable operation of their visitor accommodation facility. This approach is evident in the development of the site to date.

Mr Nichols then submitted that it was not realistic to assume that those who would attend would always be of mature age and demeanor, as the applicant proposed. As a commercial operation he said it would be subject to "the dictates of the bottom line". Left as an open proposition, that is true. However, as I have indicated, I am satisfied that there can be imposed on a consent, if granted, a condition which would lead to a strong element of control to keep the operation within the bounds of the existing applicants intentions as to noise and the use of outdoor areas. If a subsequent applicant – or for that matter this applicant, with a change of heart – wished to carry on a different less controlled style of accommodation, it may be necessary for an application to be made once more to the Council. I accept however, that controls on the age of guests, and the amount they pay, cannot be imposed. The value of the investment, however, will almost certainly dictate the manner of operation of the intended business.

Mr Nichols then referred to the negative impact on the tranquility and aesthetic values of the Penrith Park area, particularly increase in vehicle movements which were likely to be early in the morning to tie in with tourist itineraries, and to involve tour buses and other heavy vehicles associated with the construction and operation of a short stay business. He said these adverse effects would be disproportionate to any economic benefit of 12 short stay visitors, to the area. I have already discussed the impact of vehicle movements, and assess them to be unlikely to be of any more than a minor adverse effect when compared with the vehicle movements that can be expected from the kind of group of residents than can reasonably expected to occupy this house or a home of similar size on the same site. I cannot envisage tour buses being involved, and deliveries of a commercial nature would be infrequent.

Mr Steven representing fifteen submitters, made a comprehensive submission and I have considered it with care. I have dealt already with parts 9 and 10 of his submission relating to the permitted baseline and the existing consent.

In summary the position of those submitters whom he represented is this:

1. The proposal is contrary to the Objectives and Policies of the Plan.

2. The adverse effects of the proposal will be more than minor (or that, at the least, I cannot be satisfied on the evidence that they will not be).

3. Even if the applicant gets past one or other of the threshold tests, consent should be declined.

4. The confidence of the Penrith community in the administration of the district plan has already been seriously undermined as a result of this process and granting consent will undermine it altogether.

5. Granting consent will create a precedent effect.

6. The Penrith Park zone is a special zone notable for the tight restrictions on commercial activity.

I have largely dealt with all issues covered in these submissions. I have referred to the Objectives and Policies of the Plan and the effects of the proposal. I have referred to matters of process, and issues of precedent effect, and I have noted that the operation of visitor accommodation is not a commercial activity as defined in the PODP, and is in fact allowed, on certain terms, as a discretionary activity – and can thus be expected to exist by those who choose to live in this zone.

Mr Steven drew my attention to the explanation and principle reason for adoption of the Penrith Park zone set out in paragraph 12.6.3 of the PODP:

“To create the residential type of development envisaged, the visual impact of subdivision and the establishment of uses on subdivided land must be controlled in such a manner as to avoid or

mitigate any adverse effects which may arise. In order to control the effects of development a strong emphasis has been placed upon the external appearance of buildings and their bulk and location."

Given that the current application relates to the use of the site, rather than its development, I am confined in my assessment of this paragraph to "the establishment of uses… must be controlled in such a manner as to avoid or mitigate any adverse effects which may arise". I note the reference which follows to a strong emphasis being placed on the external appearance of buildings and their bulk and location. I have already described the buildings as I find them to be – of domestic scale and appearance and well within the kind of size range that might be expected for substantial residences on a substantial site in a high quality residential zone such as this. I have listed the adverse effects which I believe need to be considered, and found that in each case any adverse effects will be less than minor. I have referred to mitigation of any adverse effects by conditions being imposed on the consent, if granted.

Mr Steven submitted in his paragraph 7 that the environment to be considered involved more issues than merely building density and appearance, noise, traffic and privacy. He referred to the definition of environment, in the Act, and to the definition of amenity values in the Act. He pointed out that there appears to be a commercial kitchen in the one of the buildings, a live in chef is intended, a bar is provided for, there is an entertainment area inside and out and there are six guest bedrooms.

Whether the kitchen should properly be described as commercial or not is a moot point. It contains stainless steel benches and appears to have relatively commercial looking equipment; on the other hand the applicant's counsel said it was not a commercial kitchen. This is a matter of opinion. A kitchen of the kind that I viewed could be used residentially or commercially. It was not of such a size that it would appear to be designed to accommodate more than one person cooking at a time. Little turns on this point, in my view. As to the bar, I was shown in one of the residences a small built-in shelf with a small sink and small tap, with a cupboard below and shelves above. This, evidently, was the facility described as a bar. No doubt it could be used for serving drinks, but it is very confined in dimension and it is not a bar in the commercial sense of that term, as I understand it. As to the other factors, I have already noted that all homes in this area are likely to have indoor and outdoor entertainment areas and six bedrooms is not out of the way for a home of the size and quality that already exists in the zone and can reasonably be expected to be built. I reject the submission therefore that the proposal, "is little different to a small private hotel".

Mr Steven went on to discuss noise. I have already referred to this; if there is any noise caused by guests on the property I am satisfied that it can be well controlled by a time limitation on outdoor activity, and by the acoustic properties of the building when guests are indoors.

Mr Steven indicated that there appeared to be no requirement that the owner / operator be present at any particular time, or for that matter at all. This, too, can be the subject of a condition.

Mr Steven referred to coach travel for visitors. I do not think that there can be a condition imposed on the consent which would limit access to this site by excluding visitors from arriving or leaving by coach, but it is clear that a bus tour operation is not planned or intended and the facility would be far too small for any such activity. There may be the odd small coach or minibus arrive to transport people to ski fields or other activities. Given the comments I have made earlier in this report I find in any effect of those matters, should they occur, will be less than minor.

Mr Steven submitted that to permit this activity would be adverse to the integrity of the Plan. I have already dealt with that point. In my opinion it overlooks the fact that those who reside in this zone can expect that there may be applications for visitor accommodation to be carried out and each of those, if made, will no doubt be dealt with on its merits and in accordance with the PODP, as this application is. This is not an application for a use which is completely out of zone; indeed, but for the lacuna in the wording this could well be regarded as a discretionary activity. If it were for consent to accommodate 5 persons, or so, in 40 square metres, it would be. As noted, that is more akin to backpackers accommodation.

Mr Steven then referred to the precedent effect of allowing this application. Again, I have dealt with this earlier in this decision. I acknowledge the principle, but cannot see that this creates a precedent in any way, for the reason already stated – every application will be dealt with on its own facts and merits and no doubt assessed against the relevant provisions of the Plan and the Act. It is not necessary to show that this site should be regarded as an exception. This site is but one of a number in the zone. What is important is to assess the effects of the proposal and then determine whether, taking into account the PODP and the Act, it should or should not be granted and if granted, whether conditions should be imposed to deal with any adverse effects that may be found. That is the correct approach; it is not necessary to find that there should be an exception to some other position which might otherwise apply.

Mr Graham Marsh who resides in Ridge Crest spoke of his purchase of a property in Penrith Park because he viewed it as a pleasant and serene open place to live. He regarded the development as a boutique hotel which was contrary to this and expressed concerns about the precedent effect. He saw the occupants of this property, if it proceeds as visitor accommodation, to be different from a large family residing in the same property and when this was discussed with him his response really came down to a perceived lesser risk of adverse effects from neighbours than would be the case with visitors. He said that when buying into a neighbourhood, one looks at the environment one is moving into, as he had, and his view was that this proposal is not consistent with the environment that he believed that he had bought into.

Mr Varney gave evidence. Much of his submissions reflected the same issues that were raised by Mr Steven. In addition he said that the appeal to purchasers of properties in this area is not only the open space and views but also the constraints on the level of activity that can be undertaken. As has become evident from earlier parts of this decision, visitor accommodation can be provided in this zone if a resource consent is obtained in accordance with the applicable principles. If people have bought in Penrith Park without understanding that this possibility exists, that is regrettable but the PODP is publicly available for scrutiny and contains the rules which apply to this application. Mr Varney noted that Penrith Park 2 zone provides for travellers accommodation but again, I can only refer him to the provisions of PODP.

Mr R.O. Boyd of Baker Grove presented his submission. Again, he largely referred to matters which had been canvassed by other submitters, and I need not repeat those matters here. Whilst I acknowledge his reference to the environmental values that are laid out in the Penrith Park zone part of the PODP, it is all the Objectives, Policies and Rules that I must take into account. Mr Boyd expressed the view that accommodation for 12 persons is not low density. I have covered this aspect of the matter earlier in this decision. Mr Boyd also referred to the building as a commercial one in some respects including fire exits, signs and alarms, provision for disabled access, wired safety glass in windows adjacent to stairwells and commercial kitchens. I have already summarised my impression of the building from my own inspection, and dealt with this point. All the above are within the site, and I do not think any are even visible from the road or neighbouring properties.

Mrs Stratford presented a written submission. Her property is to the rear of the subject property. Her concerns are noise and traffic, and the existence of a commercial operation in the neighbourhood.

I have considered all written submission made, in addition to the submission which were presented at the hearing.

I. PART 2 OF THE ACT

The purpose of the Act is to promote the sustainable management of natural and physical resources. Sustainable management is defined as "managing the use, development and protection of natural and physical resources in a way or at a rate which enables people and communities to provide for their social, economic and cultural wellbeing and for their health and safety while:

(a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations, and

(b) safeguarding the life supporting capacity of air, water, soil and eco-systems, and

(c) avoiding, remedying or mitigating any adverse effect of activities on environment.

In my opinion this proposal is consistent with promoting the sustainable management of natural and physical resources. Any adverse effects are in my opinion minor and can be adequately mitigated by the imposition of suitable conditions. In addition I am required to have regard to the relevant matters listed in Section 7 of the Act. These include the maintenance and enhancement of amenity values and the maintenance and enhancement of the quality of the environment. Having considered with great care the evidence put forward by the applicant and all the evidence and points carefully made by submitters both personally and through counsel representing the majority of them, I am satisfied that the amenity values of this neighbourhood can be maintained with this activity being carried on, subject to suitable conditions and that the quality of the environment can similarly be maintained. Whilst I acknowledge the genuinely held views of submitters about the way the consent applications relating to this site have been brought, and their equally genuinely held concerns about having a visitor accommodation establishment such as is proposed by the applicant with the Penrith Park zone, it must be remembered that some form of visitor accommodation is to be expected in that zone, that the

buildings and site development are entirely consistent with large scale residential development which is permitted and to be expected in the zone, and the number of guests (limited to two periods during the year and not at all times,) is generally consistent with low density residential development. I freely acknowledge the natural and physical qualities and characteristics of the area, its sense of open space and abundance of natural beauty through its views of the lake and mountains beyond. I do not think however that the appreciation of its residents of the pleasantness and aesthetic coherence of the area will be, to any significant degree at all, diminished if this proposal proceeds. In my view the proposal meets the intention of maintaining and enhancing amenity values and the quality of the environment. It has been and is to be sensitively carried out both in terms of the structures within which it will take place, the landscaping of those structures and the outdoor activity areas and indeed the very dimension of the site on which the activity is intended, which necessarily gives significant setbacks from neighbouring homes.

J. SECTION 104 and SECTION 104D

As required by Section 104, I have considered any actual and potential effects on the environment, all relevant provisions of the proposed plan, and all evidence presented to me, as summarised in this decision. Treating the matter, as I have, as one for a non-complying activity I find, for the reasons given, that the activity will not be contrary to the Objectives and Policies of the proposed plan and I further find that the adverse effects of the activity on the environment will be minor. The application therefore satisfies both tests of Section 104D(1) though it need only satisfy one or other of them.

When granting a consent I have power to impose conditions under Section 108 and for the reasons given in this decision it is appropriate to do so.

K. OUTCOME

I grant resource consent to the applicant to operate visitor accommodation at 8 Minaret Ridge, Wanaka pursuant to Section 104 of the Resource Management Act 1991 subject to the conditions attached to this decision as Schedule "A", which are imposed on this consent pursuant to Section 108.

Dated at Queenstown this day of 2006

J.G. Matthews
Commissioner

SCHEDULE OF CONDITIONS

1. The development shall be carried out in accordance with the plans stamped as "approved plans" and dated and the application as submitted, with the exception of amendments required by the following conditions of consent

2. Unless it is otherwise specified in these conditions, compliance with any monitoring requirement imposed by this consent shall be at the consent holders own expense.

3. The consent holder shall pay to the Council an initial fee of $100.00 for the costs associated with the monitoring of this resource consent in accordance with Section 35 of the Act.

4. Prior to the occupation of the proposed development the consent holder shall provide a noise management plan for the proposed development, for the approval of the Council. This plan shall include details on how potential noise effects from occupants will be addressed including any activities those occupants may be carrying out. The noise management plan shall also specify procedures should any complaint in relation to noise be received.

5. The consent holder shall ensure that there is no use of outdoor entertainment areas including balconies between 22:00 hours and 07:00 hours the following day.

6. No sound system speakers shall be located outside the buildings on the site or placed outside when in use.

7. The consent holder shall reside on the property at all times during which it is being operated as visitor accommodation.

8. The consent holder, or a person with full managerial authority in relation to the operation of the visitor accommodation, shall be present at the property at all times when paying visitors are present at the property.

9. The consent may only be exercised during the following periods:

23rd June to 7th October, inclusive, and

23rd November to 7th May the following year, inclusive.

10. Within ten working days of each annual 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 and which it is appropriate to deal with at a later stage.

(b) To avoid, remedy or 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.