

**Before the Hearings Panel
For the Queenstown Lakes Proposed District Plan**

Under the Resource Management Act 1991 ('**RMA**')

In the matter of District Wide Hearing Stream 15 – Visitor Accommodation

**Statement of evidence of Ainsley Jean McLeod for Airbnb – Planning
(submitter 2390 and further submission 2768)**

Dated 6 August 2018

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1 Qualifications and experience

- 1.1 My full name is Ainsley Jean McLeod. I am a director and planner of Ainsley McLeod Consulting and have held this position since April 2018. My previous role was a Technical Director of Planning at Beca Limited, where I worked for 18 years.
- 1.2 I hold the qualifications of a Bachelor of Arts (Geography and Anthropology) and a Master of Regional and Resource Planning, both from the University of Otago. I am a full member of the New Zealand Planning Institute.
- 1.3 I have over 22 years' experience in planning practice, during which time I have undertaken a broad range of both consenting and policy planning work including advice in relation to the preparation of policy documents from a national through to a territorial local authority level. I have also prepared, and processed, numerous applications for resource consent and notices of requirement for designations, including for activities in Queenstown Lakes District. I am familiar with the Proposed Queenstown Lakes District Plan ('**Proposed District Plan**'), to the extent that I have prepared submissions on Stages 1 and 2 and presented evidence on Stage 1 matters. I have acted as an expert witness on a number of occasions.
- 1.4 I have been engaged by Airbnb to provide expert planning evidence in relation to Airbnb's submission on the Stage 2 of the Proposed District Plan, and particularly the proposed visitor accommodation provisions insofar as they relate to residential visitor accommodation and homestay activities.

2 Code of conduct

- 2.1 Although this matter is not before the Environment Court, I confirm that I have been shown a copy of the Environment Court's Code of Conduct for Expert Witnesses, and have read that document. I confirm that I agree to comply with the Code of Conduct. I have outlined my expert qualifications above. I confirm that in this statement I address matters within my area of expertise and that I have undertaken sufficient research and data analysis to form the views and opinions that are expressed in my evidence. I confirm that I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

3 Scope of evidence

3.1 My evidence addresses the following:

- a Airbnb's submission and further submissions on the proposed visitor accommodation provisions;
- b the recommendations included in the Section 42A Report of Amy Bowbyes on Behalf of Queenstown Lakes District Council – Visitor Accommodation ('**Section 42A Report**')¹ that are relevant to the relief sought in Airbnb's submission;
- c the provision of visitor accommodation and giving effect to the NPSUDC;
- d the potential adverse effects of residential visitor accommodation and homestays;
- e compliance, monitoring and enforcement;
- f other statutory considerations and relief; and
- g conclusion.

3.2 For the purpose of my evidence I rely on the evidence of **Mr Brent Thomas** filed by Airbnb in respect of the Proposed District Plan.² Mr Thomas' evidence includes an overview of Airbnb, and describes how Airbnb operates and contributes to the Queenstown Lakes District economy.

3.3 I have also reviewed the following documents insofar as they are relevant to the relief sought by Airbnb:

- a the Section 42A Report;
- b Queenstown Lakes District Proposed District Plan Section 32 Evaluation Stage 2 Components October 2017 for Visitor Accommodation Chapter 2 Definitions and Consequential Variation to Proposed District Plan ('**Section 32 Evaluation**')³;

¹ Section 42A Report, 23 July 2018.

² Thomas, 6 August 2018.

³ Section 32 Evaluation Report, 2 November 2017.

- c Statement of Evidence of Robert Heyes on Behalf of Queenstown Lakes District Council – Visitor Accommodation: Economics;⁴
 - d National Policy Statement on Urban Development Capacity 2016 (**'NPSUDC'**);
 - e Proposed Regional Policy Statement for Otago 2015 (**'Proposed ORPS'**);
 - f Queenstown Lakes District Council District Plan Fact Sheet - Visitor Accommodation;
 - g Queenstown Lakes District Council Report for Planning and Strategy Committee 'Housing and Business Development Capacity Assessments';⁵
 - h Queenstown Lakes District Housing Development Capacity Assessment 2017 (**'Housing Development Capacity Report'**);⁶
 - i Queenstown Lakes District 'Development Contributions and Financial Contributions Policy';⁷
 - j 'A General Guide to Using Your Residential Property for Paying Guests in the Queenstown Lakes District';⁸
 - k 'Visitor Accommodation and Residential Amenity in High Density Residential Zone: Discussion Paper on Residential Coherence';⁹
 - l Submissions that have been supported or opposed by Airbnb's further submissions; and
 - m further submissions that have been made on Airbnb's original submission.
- 3.4 My analysis and consideration of the relief sought by Airbnb is informed by the statutory framework for decisions on the proposed District Plan set out in the RMA and the on-going guidance provided by the modified Long Bay test.¹⁰ This statutory framework is generally set out in the Section 42A Report and I will not

⁴ Heyes, 23 July 2018.

⁵ Agenda Item 1, 10 May 2018.

⁶ Final draft prepared by M.E Consulting, 27 March 2018.

⁷ Queenstown-Lakes District Council, 28 June 2018.

⁸ Queenstown-Lakes District Council, August 2017. See <https://www.qldc.govt.nz/assets/Uploads/Services/Rates/QLDC-Guide-to-Short-Term-Accommodation.pdf>

⁹ Hill Young Cooper, 2008. See

https://www.qldc.govt.nz/assets/OldImages/Files/District_Plan_Changes/Plan_Change_23_downloads/Associated_Research_Document_s/4_Residential_Coherence_Assessment.pdf.

¹⁰ *Long Bay – Okura Great Park Society v North Shore City Council* EnvC A078/2008, 16 July 2008, at [34], *High Country Rosehip Orchards Ltd v Mackenzie District Council* [2011] NZEnvC 387 and *Colonial Vineyard v Marlborough District Council* [2014] NZEnvC 55.

repeat it here.¹¹ I also acknowledge that the Hearings Panel is required to undertake a re-evaluation of changes to the proposal under Section 32AA of the RMA and I therefore address the relevant matters in Section 32(1)-(4) where appropriate to do so.

4 Airbnb's submission and further submissions

- 4.1 Airbnb's submission opposes, in its entirety, the notified visitor accommodation provisions that are part of the Proposed District Plan and seeks that the provisions be withdrawn.¹² The submission states that residential visitor accommodation should be able to operate for any length of stay without the need for a resource consent¹³ and that no registration, rates or levies should apply to homestays.¹⁴
- 4.2 If Airbnb's primary relief is not accepted, the submission seeks the following alternate relief:
- a an amendment to the definition of 'residential visitor accommodation' to delete reference to the length of stay by a paying guest;¹⁵
 - b the deletion of standards that apply to residential visitor accommodation and permitted activity status for residential visitor accommodation in all zones;¹⁶
 - c an amendment to the definition of 'homestay' to delete reference to registration, rates and levies;¹⁷
 - d the deletion of standards that apply to homestays and permitted activity status for homestays in all zones;¹⁸ and
 - e amending the non-notification provisions to apply to residential visitor accommodation and homestays.¹⁹
- 4.3 Airbnb's submission is generally supported by the further submission made by Brian Reeve²⁰ for reasons including a lack of evidence of adverse effects and the "misuse" of the NPSUDC.

¹¹ Section 42A Report, 23 July 2018, paras. 5.1 to 5.3.

¹² Submission reference 2390.1.

¹³ Submission reference 2390.2.

¹⁴ Submission reference 2390.4.

¹⁵ Submission reference 2390.3.

¹⁶ Submission reference 2390.6.

¹⁷ Submission reference 2390.5.

¹⁸ Submission reference 2390.7.

¹⁹ Submission reference 2390.8.

²⁰ Further submission reference 2730.

4.4 Airbnb's submission is opposed by the further submissions made by Bachcare Holiday Homes and Bookabach²¹ on the basis that the submission lacks clarity in terms of the relief sought. Airbnb's submission is also opposed by the further submission made by Queenstown Airport Corporation²² to the extent that the relief sought may result in the removal of provisions relating to activity sensitive to aircraft noise determined as part of Stage One of the Proposed District Plan. In this regard, I understand that the relief sought in Airbnb's submission is not intended to have the consequence of removing aircraft noise protections or other standards that might apply to a residential activity in any given zone.

4.5 Airbnb's further submissions:

- a oppose the relief sought in the submissions made by Darby Planning LP²³ and Glendhu Bay Trustees Limited²⁴ on the basis that the relief sought could have the unintended consequence of imposing more stringent than notified provisions residential visitor accommodation activities;
- b oppose the submission made by Rosemary Hill (Four Seasons Motel)²⁵ that supports the visitor accommodation provisions and seeks a "*fair and equal playing field for all*" including registration and other building compliance matters;
- c oppose the submission made by Hospitality New Zealand Central Otago Branch²⁶ that, alongside supporting the proposed provisions, seeks the implementation of an "*appropriate level of commercial rates*" and an appropriate compliance and regulation;
- d oppose the submission made by Ngāi Tahu Property Limited²⁷ to the extent that the submission's general support of the proposed residential visitor accommodation provisions includes support for situations where residential visitor accommodation requires resource consent.
- e oppose the submission made by Trilane Industries Limited²⁸ that supports the proposed visitor accommodation provisions.²⁹

²¹ Further submission references 2704 and 2705.

²² Further submission reference 2759.

²³ Submission references 2376.6, 2376.55, 2376.57 and 2376.58.

²⁴ Submission references 2382.24 and 2382.25.

²⁵ Submission references 2035.1, 2035.2, 2035.3, 2035.4.

²⁶ Submission references 2556.1, 2556.3 and 2556.5.

²⁷ Submission references 2336.34 and 2336.37.

²⁸ Submission reference 2409.2.

²⁹ It is noted that the Trilane Industries Limited submission does not give reasons.

4.6 The matters raised in Airbnb's further submissions are addressed in my evidence that follows except insofar as the original submissions made by Rosemary Hill and Hospitality New Zealand Central Otago Branch are related to matters that sit outside of the RMA functions of territorial authorities, as set out in Section 31 of the RMA. I understand that this is the case in respect of registration of residential visitor accommodation (for instance, for rating purposes) and building compliance and as confirmed, in regard to rates and bed taxes, in the Section 42A Report as follows:

*"In my view this matter is outside the scope of matters to be addressed by the PDP as the striking of rates is a separate function of Council and is not subject to the Schedule 1 RMA process. I understand that the introduction of a tourist tax is currently being considered by Central Government."*³⁰

5 The Section 42A Report recommendations

5.1 The Section 42A Report generally recommends that Airbnb's submission be rejected and comments specifically as follows:

*"In response to Airbnb's (2390) submissions, I discuss my views regarding the relationship of the VA provisions with the NPS-UDC at paragraphs 5.18 to 5.32, above, and I disagree with the submitter's conclusions. The NPS-UDC aims to ensure that planning decisions enable the supply of housing needed to meet demand. The PDP achieves this through zoning land for certain activities. For instance, in zones where the zone purpose and objectives are to provide for residential activities, it is appropriate to place limitations on non-residential activities. RVA is not a residential activity and therefore, in my view, it is appropriate that it should be subject to limitations so that the principal activity occurring in that zone is residential."*³¹

5.2 As I understand it, the conclusions reached in the Section 42A Report are generally that *"the proposed visitor accommodation provisions assist with ensuring that residential units are predominantly used for residential activities, rather than for short term letting for visitors"*³² and this approach therefore assists in giving effect to the NPSUDC.³³ Further, the Section 42A Report seems to generally conclude that the proposed visitor accommodation provisions are necessary to manage the adverse effects of residential visitor accommodation and homestays on residential amenity, residential cohesion and as a result of traffic and parking.

³⁰ Section 42A Report, para. 12.13.

³¹ Section 42A Report, para. 9.46.

³² Section 42A Report para. 5.26.

³³ Section 42A Report, para. 5.27.

5.3 The remainder of my evidence considers the proposed visitor accommodation provisions alongside the Section 32 Evaluation rationale for the provisions and Section 42A Report recommendations.

6 Residential visitor accommodation and giving effect to the National Policy Statement on Urban Development Capacity

6.1 The NPSUDC includes a number of objectives and policies that provide direction to decision makers, and impose requirements on councils, in order to recognise the national significance of:

- “(a) urban environments and the need to enable such environments to develop and change; and*
- (b) providing sufficient development capacity to meet the needs of people and communities and further generations in urban environments.”*

6.2 The Section 42A Report identifies Policies PA1 – PA4 as being most critical to the ‘implementation’ of the NPSUDC in district plans and therefore provides an analysis of these Policies as they relate to the proposed visitor accommodation provisions. I address these Policies below.

Policy PA1

6.3 Policy PA1 reflects a territorial authority’s function under Section 31(1)(aa) of the RMA and requires that *“local authorities shall ensure that at any one time there is sufficient housing and business land development capacity”*. The Policy goes on to say how this is achieved in the short, medium and long-terms. ‘Development capacity’ is defined by the NPSUDC as follows:

- “**Development capacity** means in relation to housing and business land, the capacity of land intended for urban development based on:*
- a) the zoning, objectives, policies, rules and overlays that apply to the land, in the relevant proposed and operative regional policy statements, regional plans and district plans; and*
 - b) the provision of adequate development infrastructure to support the development of the land.”*

6.4 The parameters for how and when local authorities assess development capacity is also set out in subsequent policies in the NPSUDC.

6.5 Queenstown Lakes District Council (**‘Council’**) has recently (and following the public notification of the proposed visitor accommodation provisions) completed housing and business development capacity assessments that are required by

the NPSUDC.³⁴ The Section 42A Report notes that “*Council’s Housing and Business Development Capacity Assessments as part of implementing the NPS-UDC have incorporated demand for holiday homes and related types of residential accommodation as being part of the capacity which needs to be provided*”.³⁵ In my opinion this understates the approach taken to assessing capacity as it relates to residential visitor accommodation to the extent that it is not made clear that the Housing Development Capacity Report includes residential properties used for short and medium-term rental (investment properties).

- 6.6 Activities akin to those encompassed by the proposed residential visitor accommodation (including holiday homes and investment dwellings for short and medium-term rental)³⁶ are addressed in the Housing Development Capacity Report with the Report confirming that:

*“The NPS-UDC recognises the different components of demand and requires assessment of the sufficiency of housing capacity for the wider market, including both demand from resident households, and **demand from absentee owners of holiday dwellings/investment properties**.”*³⁷
[my emphasis]

- 6.7 The Council officer’s report to the Planning and Strategy Committee that summarises the key findings in the Housing Development Capacity Report concludes:

*“The assessment shows a consistent pattern where district total housing capacity is well in excess of demand, for both the urban area and the total district as a whole, in the short, medium and long-term. This includes allowance for the margins required by the National Policy Statement and assessment under a medium and high growth outlook (which spans Council’s growth projection). At a high-level, this satisfies Policy A1 of the National Policy Statement.”*³⁸

- 6.8 This conclusion is also consistent with the earlier Section 32 Evaluation that states the following:

“The dwelling capacity evidence presented to the hearings panels for both streams 12 and 13 illustrates that there is sufficient feasible development capacity for residential development in the shore, medium and long term to give effect to PA1. This analysis was based on dwelling demand figures which incorporated a portion of ‘unoccupied dwellings’ which reflect both

³⁴ Housing Development Capacity Assessment 2017 Queenstown Lakes District, M.E Consulting, 27th March 2018 – Final Draft and Business Development Capacity Assessment 2017 Queenstown Lakes District, M.E Consulting, 15th March 2018 – Final Draft.

³⁵ Section 42A Report, 23 July 2018, para. 5.25.

³⁶ The QLDC Housing Development Capacity Report acknowledges that there is a blurred distinction between holiday homes and investment properties.

³⁷ QLDC, Housing Development Capacity Report, page 94.

³⁸ Report for Agenda Item 1, Planning and Strategy Committee, 10 May 2018, para. 37.

*vacant or empty houses, as well as houses used for visitor accommodation.*³⁹

- 6.9 It is therefore my opinion that, in assessing housing development capacity, the Housing Development Capacity Report clearly contemplates demand for activities that would fall within the proposed definition of residential visitor accommodation and goes on to conclude that capacity for housing, including housing for residential visitor accommodation, is in excess of demand. In this regard, I also note that the capacity is considered in excess of demand where capacity has been assessed in the absence of the more stringent proposed visitor accommodation provisions.
- 6.10 Notwithstanding the findings set out in paragraphs 6.5 to 6.8, the Section 42A Report concludes that the visitor accommodation provisions are appropriate and necessary to give effect to the NPSUDC.⁴⁰ I understand that this conclusion is based on a view that:
- a restricting the use of whole houses for visitor accommodation will maintain residential housing capacity;⁴¹
 - b residential visitor accommodation (as proposed to be defined in the same provisions) is not a residential activity and, the NPSUDC is given effect to by objectives and policies that provide for residential activities so that providing for residential visitor accommodation requires limitation to allow for the principal activity in the zone;⁴² and
 - c the Housing Development Capacity Report does not consider “*rapid and sustained growth of short term letting in residential areas*”, whereas sections 12 and 13 of the evidence of Mr Heyes does.⁴³
- 6.11 In my opinion, the proposed restrictions are not appropriate or necessary to give effect to Policy PA1 of the NPSUDC because the Housing Development Capacity Report confirms that housing capacity, inclusive of holiday homes and investment properties, exceeds demand in the short, medium and long-term across a range of growth scenarios. For this reason and for the reasons set out below, I therefore do not agree with the conclusions set out in paragraph 6.10(a) to (c) above:

³⁹ Section 32 Evaluation, 2 November 2017, para. 5.28.

⁴⁰ Section 42A Report, 23 July 2018, paras. 5.25 to 5.27 and 9.46.

⁴¹ Section 42A Report, 23 July 2018, para. 5.27 that references paras. 5.31 and 5.32 of the Section 32 Evaluation, 2 November 2018.

⁴² Section 42A Report, 23 July 2018, para. 9.46.

⁴³ Section 42A Report, 23 July 2018, para. 5.26.

- a the assumed need to restrict visitor accommodation (not confined to residential) is based on the Section 32 Evaluation that pre-dates the Housing Development Capacity Report and is itself based on a number of assumptions that are not consistent with the Report, nor clearly founded on the evidence of Mr Heyes;
- b assuming that residential visitor accommodation is not a residential activity for the purposes of the NPSUDC;
 - i is inconsistent with the housing capacity assessment undertaken for the same purpose that includes activities that are residential visitor accommodation in its definition of 'housing demand'⁴⁴; and
 - ii prematurely relies on the proposed visitor accommodation provisions (by virtue of the proposed definition of residential visitor accommodation) to provide rationale for the same provisions;
- c section 12 and 13 of Mr Heyes' evidence does not arrive at any conclusions that suggest "*rapid and sustained growth of short term letting*" in Queenstown Lakes District, nor is there any suggestion that such a scenario would cause housing demand (including demand for residential visitor accommodation) to exceed capacity;
- d as set out in the evidence of Mr Thomas,⁴⁵ Mr Heyes conclusions are not sufficiently certain nor based on reliable data, such that the conclusions in the Section 42A Report can be supported; and
- e in arriving at a conclusion that the provisions are necessary to give effect to the NPSUDC, the Section 42A Report has applied the concept of 'development capacity' to the capacity of existing housing stock rather than to the capacity of land for urban development (as set out in the definition of 'development capacity' in the NPSUDC).

Policy PA2

- 6.12 Policy PA2 of the NPSUDC requires local authorities to satisfy themselves that other infrastructure required to support urban development (as defined by the NPSUDC) are likely to be available.

⁴⁴ QLDC, Housing Development Capacity Report, page 59.

⁴⁵ Thomas, 6 August 2018, Section 6.

6.13 The Section 42A Report reiterates the Section 32 Evaluation and concludes:

“The VA provisions implement this policy by managing the use of land to assist with ensuring that visitor accommodation activities do not create problematic levels of demand for development infrastructure.”⁴⁶

6.14 To the extent that it applies to residential visitor accommodation and homestays, I do not agree with the Section 42A Report in this regard because:

- a no distinction is made between visitor accommodation and residential visitor accommodation and homestays, such that the demands on other infrastructure of hotels and motels are equally, and inappropriately, attributed to the use of a residential property for short term accommodation;
- b the report addressed demand for development infrastructure, rather than other infrastructure;
- c the Section 42A Report does not identify any particular demands on infrastructure that are specific to residential visitor accommodation or homestay activities, whereas it is Mr Thomas’ evidence that Airbnb guests use development and other infrastructure in the same or similar way to their hosts and other residents;⁴⁷ and
- d notwithstanding question of addition infrastructure demand, the Section 42A Report fails to consider or give any weight to the way in which such demand is currently managed outside of the RMA through rates increases (for tourism promotion and the maintenance and improvement of “*things like roads, waste disposal and recreational facilities*”) and, in some cases, development contributions (for “*infrastructure costs such as water, wastewater, roading and reserves*”).⁴⁸

6.15 In my opinion, specific district plan provisions to manage residential visitor accommodation and/or homestays are not necessary to give effect to Policy on the basis that the use of a residential property for such activities does not create any greater demand on other infrastructure, as defined by the NPSUDC,⁴⁹ when compared to the use of the same property for other residential purposes.

⁴⁶ Section 42A Report, 23 July 2018, para. 5.28.

⁴⁷ Thomas, 6 August 2018, para. 6.2.

⁴⁸ ‘A General Guide to Using Your Residential Property for Paying Guests in the Queenstown Lakes District’ dated August 2017.

⁴⁹ “**Other infrastructure** means:

- a) open space;
- b) community infrastructure as defined in the Local Government Act 2002;
- c) land transport as defined in the Land Transport Management Act 2003, that is not controlled by local authorities;
- d) social infrastructure such as schools and healthcare;
- e) telecommunications as defined in the Telecommunications Act 2001;

Policy PA3

6.16 Policy PA3 is as follows:

“When making planning decisions that affect the way and the rate at which development capacity is provided, decision-makers shall provide for the social, economic, cultural and environmental wellbeing of people and communities and future generations, whilst having particular regard to:

- a) Providing for choices that will meet the needs of people and communities and future generations for a range of dwelling types and locations, working environments and places to locate businesses;*
- b) Promoting the efficient use of urban land and development infrastructure and other infrastructure; and*
- c) Limiting as much as possible adverse impacts on the competitive operation of land and development markets.”*

6.17 The Section 42A Report identifies Policy PA3 as directly relevant to the visitor accommodation provisions and does not specifically state a conclusion in relation to giving effect to the NPSUDC but notes that *“the VA provisions seek to strike a balance between providing flexibility for the provision of visitor accommodation, whilst ensuring that it does not adversely affect the supply of residential housing types in suitable locations”*.⁵⁰ The Section 32 Evaluation concludes that Policy PA3 is given effect to by:

*“ .. giving primacy to the residential use of dwellings (as opposed to commercial use) to improve housing supply and affordability. This approach may also limit adverse effects on the local development market whereby the extraordinary returns to be gained from carrying out VA in and around the District’s outstanding natural landscapes and other attractive tourism offerings may be reduced, thus potentially reducing the attractiveness of housing as a speculative investment choice.”*⁵¹

6.18 I do not agree with these conclusions reached in the Section 42A Report and the Section 32 Evaluation for the following reasons:

- a the reports do not make any distinction between the provision of visitor accommodation and residential visitor accommodation and homestays;
- b given that housing capacity exceeds demand (including capacity for residential visitor accommodation) there are unlikely to be adverse effects on

f) energy; and
g) other infrastructure not controlled by local authorities.”

⁵⁰ Section 42A Report, 23 July 2018, para. 5.29.

⁵¹ Section 32 Evaluation, 2 November 2017, para. 5.34.

housing supply such that constraints on particular uses of residential properties are warranted;

- c imposing substantial constraints on the extent of use of residential properties for homestay and residential visitor accommodation purposes is less efficient use of existing housing stock that may otherwise remain empty apart from occasional use as a holiday home;
- d there is no evidence of the suggested 'extraordinary gains' and adverse effects on the local development market, in fact, in his evidence Mr Heyes concludes:

"The extent to which growth in the RVA sector has put upward pressure on property purchase prices depends on the extent to which RVA revenue has enabled or encouraged property owners to maintain possession of properties rather than sell them – thus constraining the supply of properties for purchase. Unfortunately, there is insufficient information to determine the scale of this."⁵²

6.19 In my opinion, new or more stringent district plan provisions to manage residential visitor accommodation and/or homestays are not necessary to effect to Policy PA3 because:

- a such provisions unnecessary constraint the choices that must be provided for under Policy PA3(a) and as such are less likely to give effect to the NPSUDC as compared to the status quo;
- b the use of a residential property for residential visitor accommodation or a homestay does not compromise the efficient use of urban land and infrastructure when compared to other residential uses of the same property;
- c there is no evidence of an adverse impact on the land and development market as result of the use of a residential property for residential visitor accommodation or a homestay.

Policy PA4

6.20 Policy PA4 requires decision-makers, when considering the effects of urban development, to take into account:

- "a) *the benefits that urban development will provide with respect to the ability for people and communities and future generations to provide for their social, economic, cultural and environmental wellbeing; and*

⁵² Heyes, 23 July 2018, para. 10.9.

b) *The benefits and costs of urban development at a national, inter-regional, regional and district scale, as well as the local effects.*"

6.21 In this regard, the Section 42A Report generally concludes that the "VA provisions give effect to this policy by giving primacy to the use of dwellings for residential activities, and providing for non-residential activities as a secondary or ancillary use".⁵³

6.22 In my opinion, and having regard to my conclusions in relation to the effects of residential visitor accommodation and homestay activities in paragraph 7.18, this Section 42A Report conclusion fails to demonstrate how the benefits (as described in Policy PA4(a) are taken into account in the proposed visitor accommodation provisions (including in the accompanying Section 32 Evaluation).

Conclusion in respect of giving effect to the NPSUDC

6.23 In all, and for the reasons set out above, it is my conclusion that the proposed visitor accommodation provisions are not appropriate or necessary to give effect to the NPSUDC. Further, I consider that the proposed provisions have the effect of constraining choices and reducing efficiency in a manner that is inconsistent with Policy PA3(a) and PA3(b) of the NPSUDC.

7 The potential adverse effects of residential visitor accommodation and homestays

7.1 The Section 42A Report generally concludes that residential visitor accommodation and homestay activities require regulation to manage their adverse effects, as follows:

*"The s32 report has shown that the existing planning regime has been neither effective nor efficient in managing the adverse effects of this activity. The operative regime of 90 nights' short-term letting of Registered Holiday Homes in all zones has resulted in adverse effects on residential amenity and cohesion. It also threatens to adversely impact on the availability of housing for occupation by residents. A revised planning framework is considered necessary, ..."*⁵⁴

7.2 It is my understanding that the adverse effects that the proposed visitor accommodation provisions seek address are the following:

- a the adverse impact of the availability of housing for long-term residential accommodation;

⁵³ Section 42A Report, 23 July 2018, para. 5.30.

⁵⁴ Section 42A Report, 23 July 2018, para. 9.19.

- b the adverse effects on residential amenity, residential cohesion and character;
- c the adverse effects associated with traffic and parking.

7.3 The Section 42A Report and Section 32 Evaluation generally allude to the positive contribution a 'home-sharing economy'⁵⁵ makes to the wider economy and conclude that it is appropriate to provide for the positive effects of residential visitor accommodation specifically in High Density Residential Zones.⁵⁶

The adverse impact of the availability of housing for long-term residential accommodation

7.4 I do not agree with the conclusion reached in the Section 42A Report that "*if not appropriately regulated, RVA will likely impact on the supply and availability of accommodation for residents ...*" [my emphasis]. The Section 42A Report arrives at the same conclusion in relation to "unrestricted homestay activities".⁵⁷ In my opinion this conclusion:

- a Is not supported by the evidence of Mr Heyes. The Section 42A Report references section 13 of Mr Heyes' evidence. My understanding of this evidence is that Mr Heyes does not conclude that there is a 'likely' impact on the availability of housing for long-term rental, rather he finds that the outlook for the residential visitor accommodation is influenced by a number of factors including the rate of growth;⁵⁸
- b Is not supported by the conclusion of the Housing Development Capacity Report, discussed earlier in my evidence, that capacity (including for residential visitor accommodation and homestays) exceeds demand in the short, medium and long-terms across a range of growth scenarios;
- c Does not consider the extent to which residential visitor accommodation would be made available for longer-term rental as opposed to being left vacant, noting that the Section 32 Evaluation states that "*anecdotal evidence from Council's Enforcement Officer's suggest that units consented to be used for 90 days are seldom available for the remaining 275 days of the year*"⁵⁹, and there is no evidence that this pattern would be altered by the proposed provisions; and

⁵⁵ Section 42A Report, 23 July 2018, paras. 6.6 and 6.7.

⁵⁶ Section 32 Evaluation, 2 November 2017, page 48.

⁵⁷ Section 42A Report, 23 July 2018, para. 9.52.

⁵⁸ Heyes, 23 July 2018, paras. 13.1 and 13.2.

⁵⁹ Section 32 Evaluation, 2 November 2017, page 55.

- d While acknowledging the need to take a precautionary approach, does not give any consideration to the probability of the effect or the scale of the effect, including whether the impact would be discernible or insignificant.

Adverse effects on residential cohesion and character

7.5 The adverse effects of visitor accommodation are set out in the greatest detail in the Section 32 Evaluation where 'residential cohesion and character' and 'residential amenity' are identified as resource management issues. In terms of residential cohesion, the Section 32 Evaluation relies on a Plan Change 23 discussion document⁶⁰ conclusion that 'intermixing' visitor accommodation activities with residential development tends to adversely impact the integrity of community cohesion, possibly resulting in noise and parking issues and reduced feeling of safety.⁶¹

7.6 The Section 32 Evaluation concludes that:⁶²

*"Taking into account the nature, scale, intensity and location of short term residential VA activities across the District and their rate of growth as identified by Infometrics, it is **reasonable** to conclude that the character and cohesion of the District's residentially zoned land will continue to be affected by VA activities. The extent to which VA affects residential cohesion is likely to be related to scale, intensity and location."*

Despite the extent of residential VA growth experienced since Plan Change 23 was developed, there is no clear evidence that VA is having direct adverse effects on parking availability, noise, built form, or safety that can be distinguished from what would otherwise occur with permanent residential activities in these areas. The effects are more subtle in nature and relate to the neighbourhood feel and sense of safety from a combination of factors such as high numbers of empty, dark houses at night, more transient residential populations, businesses and agencies having significant trouble housing new staff, as well as families and workers having trouble settling in the District on a long term basis."⁶³

7.7 I do not agree with the conclusion reached in the Section 32 Evaluation, and relied upon in the Section 42A Report, for the following reasons:

- a I consider that the ability to rely on the Plan Change 23 discussion document is limited on the basis that:
 - i the discussion document does not distinguish between visitor accommodation, residential visitor accommodation or homestay

⁶⁰ Hill Young Cooper, Discussion Paper prepared in relation to Plan Change 23.

⁶¹ Section 32 Evaluation, 2 November 2017, para. 6.27.

⁶² It is noted that similar conclusions are made in relation to homestay activities at paragraphs 9.52 where it is concluded that residential cohesion is a matter that requires addressing in the planning framework.

⁶³ Section 32 Evaluation, 2 November 2017, paras. 6.29 and 6.30.

activities and therefore it is not possible to understand the potentially very different nature, scale and intensity of effects of these activities on residential cohesion;

- ii the discussion document relates to the High Density Residential Zone in the Operative District Plan only and cannot be assumed to apply equally to the Queenstown Lakes District as a whole;
- b I do not consider it 'reasonable' to conclude that there are adverse effects on residential cohesion when it is also concluded that there is no evidence of effects;
- c 'trouble' housing new staff does not contribute to a lack of residential cohesion;
- d no consideration has been given to the impact of the proposed provisions on residential cohesion, for instance, a consequence of a more stringent approach to the number of nights a property can be occupied by paying guests could be a higher number of empty, dark houses at night and conversely providing a more enabling approach to residential visitor accommodation may have a positive effect by contributing to character and a sense of permanent population;⁶⁴
- e as set out in the evidence of Mr Thomas, residential visitor accommodation and homestay activities occur at existing residential properties and are used by guests in a same or similar or intensity to the way in which a property may be used by a more permanent occupant.⁶⁵

7.8 Based on the above, it is my conclusion that there is no evidence of adverse effects of residential visitor accommodation or homestay activities on the residential cohesion of existing neighbourhoods. In this regard, I note that the Section 42A Report concludes that residential cohesion and character are not an issue in rural zones⁶⁶ and, consistent with my opinion in relation to residential areas, I agree.

⁶⁴ This is particularly the case noting the existing high percentage of unoccupied dwellings in Queenstown Lakes District as set out in Mr Heyes' evidence at paragraph 9.9.

⁶⁵ Thomas, 6 August 2018, para. 6.2.

⁶⁶ Section 42A Report, 23 July 2018, para. 10.1.

Adverse effects on residential amenity

- 7.9 In terms of adverse effects on residential amenity, the Section 42A Report references the Section 32 Evaluation that identifies noise, disturbance and nuisance effects as adverse effects associated with visitor accommodation, with no distinction made for residential visitor accommodation or homestay activities). The Section 32 Evaluation states that:

*“Visitor accommodation activities **could** result in additional noise and other nuisance effects as properties used exclusively for this type of activity are more likely to accommodate larger groups on holiday. This is **more likely** to be the case where owners are not present on the site of the VA activity (i.e. for whole house/apartment listings). Infometrics has shown that most Airbnb listings are whole house/apartment properties where owners are **not likely** to be present. People may be **less likely** to moderate their actions and respect their neighbours if they were living permanently in the area than if they were visitors.*

*The transitory nature of VA, combined with a holiday town atmosphere **can mean** social norms of behaviour are set aside by the visitors. The nature, scale and intensity of comings and goings associated with properties used for VA activities **are likely** to be different to those used purely for residential purposes.”⁶⁷ [my emphasis]*

- 7.10 I do not agree with the Section 32 Evaluation in relation to effects on residential amenity because the Evaluation:
- a does not conclude with certainty the extent of possible adverse effects of visitor accommodation on residential amenity (particularly when compared with other residential activities) and instead considers that the behaviour of visitor accommodation guests sufficiently distinguishes visitor accommodation from residential activities in terms of noise and disturbance, despite the lack of complaints data to support this conclusion;⁶⁸
 - b fails to acknowledge that the noise associated with visitor accommodation is subject to the same standard in Chapter 36 as would apply to other activities and as such, adverse noise effects does not warrant an additional regulatory response; and similarly
 - c does not recognise that residential visitor accommodation and homestay activities are confined in scale and intensity by the range of standards that apply in zones throughout the district to manage any adverse effects on

⁶⁷ Section 32 Evaluation, 2 November 2017, paras. 6.31 and 6.32.

⁶⁸ Section 32 Evaluation, 2 November 2017, para. 2.6.

amenity values, including building coverage, density, landscaping, setbacks and building length.

- 7.11 It is therefore my opinion that residential visitor accommodation does not have adverse effects on residential amenity. The adverse effects identified as rationale for necessitating the regulation of residential visitor accommodation are adequately managed by the existing standards in the Proposed District Plan and are not discernibly different from those of other residential activities.

Adverse effects associated with traffic and parking

- 7.12 The Section 42A Report concludes that the notified standards that apply to residential visitor accommodation are overly restrictive and that a default to 'non-complying' activity status where the standard is an inappropriate threshold on the basis that the effects of not achieving compliance with the standard. The Section 42A Report goes on to conclude:

“However, in my view it is appropriate to restrict the generation of movements by heavy vehicles, coaches and buses due to adverse effects on traffic safety, the efficient operation of the roading network. Any proposal to breach the rule could be considered on its merits and in the specific context of the traffic environment of the site, access and the connecting roading network. In my view the rule is clear that the restriction would not capture taxis and vans (including shuttles), and movements from these vehicles would not be restricted by the rule. I therefore recommend that the rules restricting the number of vehicle movements to 8 trips per day are deleted, I recommend that the rule restricting vehicle movements by heavy vehicles, coaches or buses is retained with minor amendments to the notified drafting.”⁶⁹

- 7.13 The recommended revised provisions include a standard in the rules that apply to homestays and residential visitor accommodation requiring that those activities “must not generate any vehicle movements by heavy vehicles, coaches or buses to and from the site”. Where compliance is not achieved, the activity would require resource consent, including for a non-complying activity in some zones.
- 7.14 I agree with the conclusion in the Section 42A Report that a standard restricting the number of vehicle trips associated with residential visitor accommodation and homestays is overly restrictive and inappropriate. I do not agree with the Section 42A Report in relation the proposed standard that would apply to heavy vehicles and similar conclude the such a standard is overly restrictive and inappropriate for the following reasons:

⁶⁹ Section 42A Report, 23 July 2018, para. 9.99.

- a As identified in terms of private vehicles in the Section 32AA evaluation,⁷⁰ it is not clear that the movement of heavy vehicles associated with residential visitor accommodation and homestays is materially different to other residential activities and permitted activities on any given zone;
- b The Section 42A Report relies on a conclusion that “*these types of vehicles are more likely to generate adverse effects ...*”⁷¹ [my emphasis], rather than any particular evidence to support a conclusion that the effects significant and/or are greater than for other residential activities and permitted activities. On the contrary, the Section 32 Evaluation notes that very few complaints about Airbnb properties are received by the Council.⁷² I consider that the recommendation based on ‘assumed’ adverse effects has significant and inappropriate implications when a non-complying activity resource consent is required for any non-compliance;
- c The restriction imposed by the standard could similarly apply to the residential activity of a property owner (and require resource consent for a non-complying activity in some zones), such as for example:
 - i when an owner of a property that is used as residential visitor accommodation has large furniture or appliances delivered;
 - ii when the owner or operator of a homestay receive delivery of firewood or gas bottles to a homestay;
 - iii when the owner of a property has non-paying guests who elect to be picked up by a bus or coach as part of holiday experience; and
- d The proposed standard posed substantial challenges in terms of compliance, monitoring and enforcement.

7.15 Based on my conclusions in paragraph 7.14 above, I am of the opinion that the proposed standard for heavy vehicles associated with residential visitor accommodation or homestay activities is not efficient or effective and is not necessary or appropriate to achieve the purpose of the RMA.

Positive effects

7.16 The Section 42A Report concludes that:

⁷⁰ Section 42A Report, 23 July 2018, Appendix 4 and Section 32AA Evaluations, pages 3 and 4.

⁷¹ Ibid.

⁷² Section 32 Evaluation, 2 November 2017, para. 2.6.

“Visitors participating in the home-sharing economy also positively contribute to the wider economy through their visitor spend, as well as the revenue gained by businesses providing services that directly support the home-sharing operation, such as property management, cleaners and gardeners. Acknowledging the many benefits of the home-sharing economy, the variation does not seek to ‘stamp out’ this type of accommodation, rather it seeks to more effectively manage the associated adverse effects. Traditional forms of visitor accommodation also make a significant contribution to the District’s economy, and are also subject to district plan requirements to manage adverse effects.”⁷³

- 7.17 This conclusion is consistent with the evidence of both Mr Heyes and Mr Thomas, who similarly identify positive economic benefits and also describes benefits in terms of augmenting accommodation supply, supporting growth and providing choice in the tourism market.⁷⁴

Summary of actual and potential effects

- 7.18 Based on my opinion set out above, it is my conclusion that residential visitor accommodation and homestay activities operate within the same envelope of adverse effects as other residential activities, and generally cannot be easily distinguished. This character, intensity and scale of this ‘envelope’ is maintained by the range of District Plan standards that apply to residential activities across all zones in Queenstown Lakes District. As such, it is my conclusion that the any adverse effects of residential visitor accommodation and homestay activities are acceptable and effectively able to be managed by existing standards such that further regulation is not appropriate or necessary.

8 Compliance, monitoring and enforcement

- 8.1 The ‘District Plan Fact Sheet – Visitor Accommodation’ states that the *“proposed provisions seek to provide a clearer framework which better balances the negative and positive effects of visitor accommodation activities and **can be more easily enforced**”* [my emphasis]. The Fact Sheet describes how lawfully established businesses will have existing use rights but notes that these rights:

“may not apply if there is inadequate information to confirm lawfulness, if an activity ceases for more than 12 months, or if the effects of the activity are not the same or similar as when the business was established.”

- 8.2 It is not clear to me how the proposed visitor accommodation provisions achieve the objective of being easier to enforce. I envisage some challenges in monitoring or confirming compliance with:

⁷³ Section 42A Report, 23 July 2018, para. 6.7.

⁷⁴ Heyes, 23 July 2018 and Thomas, 6 August 2018.

- a the standards that state that residential visitor accommodation or homestays must not generate any heavy vehicle movements on the basis that:
 - i a single vehicle movement may be a delivery or 'drop-off' that occurs over a matter of minutes on an irregular basis;
 - ii the host may not have advanced warning that a heavy vehicle is visiting their property (as opposed to another vehicle type).
- b the standards limiting the total guest nights per 12 months in terms of:
 - i how a host is able to prove compliance with the standard;
 - ii where the 12 month period is measured from;
 - iii how a residential visitor accommodation or homestay activity is identified in situations when not listed on websites such as Airbnb.

8.3 I also note that in some circumstances, firm enforcement of the provisions may inadvertently 'capture' other activities. For instance, a single failed residential tenancy, where a rental agreement or lease is terminated within 90 days would result in a 'residential activity' becoming 'residential visitor accommodation'. This means that the 'residential visitor accommodation' provisions would apply and any heavy vehicle movements (including a furniture removal truck) would trigger the need for a resource consent. The same would apply to accommodating an international student, nanny, board paying family member or other employee whereby a 'residential activity' would become a 'homestay'.

8.4 In terms of the ability for existing operators to rely on existing use rights, I am of the view that this too is fraught for the reasons set out in paragraph 8.2 above and also because determining where existing use rights cease presents a challenge in:

- a deciding where the effects are no longer the same or similar in character, intensity or scale under Section 10(1)(a)(i) of the RMA, for instance it is not clear whether existing use rights would cease where heavy vehicle movements increased or if a permitted alteration to an existing dwelling results in an additional bedroom available for guests;
- b deciding that the use has been discontinued for 12 months (Section 10(2) of the RMA) in situations where a host does not, or cannot, receive paying guests for any number of reasons including lack of demand, property repairs

or renovations or because the property is otherwise occupied (including for longer-term rental).

- 8.5 It is my view that these compliance and enforcement challenges are a result of the potentially intermittent nature of the activities and the ‘blurred distinction’ between residential activities (including holiday homes), residential visitor accommodation and homestays that has been highlighted in the Housing Development Capacity Report⁷⁵ and by me in terms of the fact that the potential adverse effects of the activities do not differ. Further, I note that it is entirely possible that a single residential property could accommodate a residential activity, residential visitor accommodation and homestay activities all within a single year.

9 Other statutory considerations and relief

Proposed Otago Regional Policy Statement 2015

- 9.1 Section 74(2)(a) of the RMA requires regard to be had to a proposed regional policy statement when changing a district plan and Section 75(3) requires a district plan to give effect to an operative regional policy statement. The Section 42A Report provides a commentary as to the status of the Proposed ORPS and gives ‘significant weight’ to the relevant provisions.⁷⁶ I agree with this conclusion.
- 9.2 The Section 42A Report goes on to identify objectives and policies of the Proposed ORPS that are relevant to the proposed visitor accommodation provisions and considers the extent to which the proposed provisions give effect to the Proposed ORPS.
- 9.3 Objective 1.1, and accompanying Policy 1.1.1 and Policy 1.1.2, directly reflect Section 5 of the RMA and seek to provide for the economic, social and cultural wellbeing and health and safety of Otago’s people and communities.⁷⁷
- 9.4 The Section 42A Report concludes that the visitor accommodation provisions give effect to the Proposed ORPS in this regard because:

“ ... the suite of provisions seek to ensure that RVA and Homestay activities are enabled in the most appropriate locations and recognise that this type of activity is important to the District’s overall success in terms of its growing tourist economy. Balanced against this, the provisions also seek to ensure that the nature and scale of RVA and Homestay activities are controlled in the District’s core residential zones to assist in improving the community’s

⁷⁵ Queenstown Lakes Housing Development Capacity Report, page 95.

⁷⁶ Section 42A Report, 23 July 2018, paras. 5.36 to 5.38.

⁷⁷ Reproduced in full in the Section 42A Report, 23 July 2018, para. 5.40.

access to secure and reasonably priced residential accommodation. The proposed permitted baseline in these locations would continue to provide people with the ability to obtain supplementary income from this activity while also managing the creep of commercial type activities and their associated adverse effects on residential character and cohesion.”⁷⁸

- 9.5 Based on my earlier conclusions that the proposed provisions are not appropriate or necessary to manage adverse effects on housing supply or on residential cohesion, and that the use of existing residential properties for residential visitor accommodation and homestays have positive economic effects, it is my conclusion that proposed provisions have the effect of somewhat frustrating the extent to which Objective 1.1 of the Proposed ORPS is given effect to.
- 9.6 Objective 4.5, and accompanying Policy 4.5.1 of the Proposed ORPS are provisions that are particularly to give effect to the NPSUDC and seek that urban growth and development is well designed; occurs in a strategic and coordinated way and integrates with adjoining environments.
- 9.7 I have addressed the extent to which the proposed provisions are necessary for the Proposed District Plan to give effect to the NPSUDC and my conclusions apply similarly to Objective 4.5 of the Proposed ORPS. That is, the use of existing residential properties for residential visitor accommodation does not compromise housing capacity in Queenstown Lakes District and provides for the efficient use of existing housing stock. As such, it is my conclusion that the proposed visitor accommodation provisions are not appropriate or necessary to give effect to Objective 4.5 and Policy 4.5.1 of the Proposed ORPS.
- 9.8 Policy 5.3.3 of the Proposed ORPS is as follows:

“Policy 5.3.3 – Distribution of commercial activities

Manage the distribution of commercial activities by:

- a) Enabling a wide variety of commercial, social and cultural activities in central business districts, and town and commercial centres;*
- b) Enabling smaller commercial centres to service local community needs;*
- c) Restricting commercial activities outside of a) and b) when such activities are likely to undermine the vibrancy and viability of those centres;*
- d) Encouraging the adaptive reuse of existing buildings.”*

- 9.9 The Section 42A Report concludes that the proposed ‘enabling regime’ would give effect to this Policy but does not give particular consideration to clause (d) to

⁷⁸ Section 42A Report, 23 July 2018, para. 5.41.

the extent that adaptive reuse could include the evolving use of existing residential properties in response to a 'sharing economy'.⁷⁹ In my opinion, the proposed provisions are not particularly necessary or relevant to giving effect to Policy 5.3.3.

- 9.10 The Section 42A Report also identifies Policy 5.3.6, that addresses outdoor recreation and tourism within outstanding natural features and landscapes, as relevant and concludes that the provisions give effect to the Policy because they do not provide a specific exclusion.⁸⁰ In my opinion Policy 5.3.6 is not relevant to the proposed visitor accommodation provisions because these provisions do not address or distinguish activities in outstanding natural landscapes or features.
- 9.11 In all, it is my conclusion that the proposed residential visitor accommodation provisions are not necessary to give effect to the Proposed ORPS and have the potential to limit the extent to which the economic well-being of Otago's people and communities is provided for under Policy 1.1.1.

Other provisions of the Proposed District Plan⁸¹

- 9.12 In addition to my evidence below in relation to the notified visitor accommodation provisions,⁸² I acknowledge that the Proposed District Plan includes Chapter 3 Strategic Directions that sets out the overarching strategic direction for the management of growth, land use and development. The Section 42A Report identifies the relevant provisions of Chapter 3 (decisions version) that are relevant to the proposed visitor accommodation provisions.⁸³ I agree that these policies are relevant and comment as follows:
- a The proposed visitor accommodation provisions are not necessary to deliver a prosperous, resilient and equitable economy (Objection 3.2.1);
 - b The socioeconomic benefits of residential visitor accommodation and homestays (located in residential properties across Queenstown Lakes District) would be better realised with a less stringent RMA regulatory regime (Objective 3.2.1.1 and Objective 3.2.6);

⁷⁹ Section 42A Report, 23 July 2018, para. 5.42.

⁸⁰ Section 42A Report, 23 July 2018, para. 5.44.

⁸¹ It is noted that many of the provisions of the Proposed District Plan (Stage One) are subject to appeals to the Environment Court.

⁸² McLeod, 6 August 2018, paras. 9.14 to 9.17.

⁸³ Section 42A Report, 23 July 2018, paras. 5.47 and 5.48.

- c Enabling residential visitor accommodation and homestays in rural areas contributes to a diversification of land uses (Objective 3.2.2 and Policy 3.3.21);
 - d Using the existing housing stock for residential visitor accommodation and homestay activities does not impact on urban growth objectives nor compromise logical urban development (Objectives 3.2.2 and 3.2.2.1); and
 - e Objective 3.3.1 confine visitor industry facilities to urban areas and in some situations only where consistent with subordinate zone objectives and policies.⁸⁴ In this regard, I address the proposed zone provisions below and conclude that provisions for the management of residential visitor accommodation and homestay activities are not necessary.
- 9.13 The Section 42A Report goes on to identify further provisions in Chapter 4 Urban Development as relevant to the proposed visitor accommodation provisions.⁸⁵ These provisions relate to the establishment of urban growth boundaries and development within those boundaries. I do not consider that these provisions are relevant to the matters traversed in Airbnb's submission, being the use of existing residential properties for residential visitor accommodation or homestay activities.

Section 32 considerations

- 9.14 Section 8 of the Section 32 Evaluation includes a consideration of the extent to which the proposed objectives are the most appropriate way to achieve the purpose of the RMA and begins by stating that the "*identification and analysis of Issues has helped to define how Section 5 of the RMA should be articulated. This has informed determination of the most appropriate objectives to give effect to Section 5 of the RMA in light of the issues*".⁸⁶
- 9.15 In my opinion, this reliance on the 'issues' identified earlier in the Section 32 Evaluation renders the conclusions as to the most appropriate way to achieve the purpose of the RMA fatally flawed. Such that, for the reasons set out below, it is my conclusion that the proposed visitor accommodation provisions are not necessary and are not the most appropriate way to achieve the purpose of the RMA.
- 9.16 In this regard, the Section 32 Evaluation identifies housing availability, impacts on residential amenity, residential cohesion and character and traffic and parking as

⁸⁴ This Objective is subject to a number of appeals and as such I consider that it should be given limited weight.

⁸⁵ Section 42A Report, 23 July 2018, para. 5.49.

⁸⁶ Section 32 Evaluation, 2 November 2018, page 47.

the key issues that require addressing in the proposed visitor accommodation provisions (as they relate to residential visitor accommodation and homestay activities). As set out in my evidence, these matters do not appear to be genuine resource management issues that are appropriate or necessary to address in the context of the Proposed District Plan and in order to achieve the purpose of the RMA. For instance:

- a there is no evidence that residential visitor accommodation and homestay activities have an adverse impact on housing capacity or residential amenity and cohesion (include through traffic and parking) when compared to other residential activities and as such the management of effects is not required in achieving the sustainability management purpose of the RMA; and
- b conversely, residential visitor accommodation and homestay activities are demonstrated to contribution to the economic wellbeing of people and communities such that inappropriate constraints on these activities may not as effectively achieve the RMA's purpose.

9.17 At a broader level, I consider that the Section 32 Evaluation, does not adequately:

- a contemplate the rationale for non-complying activities status in many situations (when compare to a less stringent activity status), nor the reasons for variability between zones;
- b quantify the extent to which additional resource consent requirements might impose development contributions and additional costs under the Council's Development Contribution Policy (or its predecessors) that specifically applies to 'mixed use accommodation';⁸⁷
- c consider, as a reasonably practicable option under Section 32(1)(ii), including residential visitor accommodation and homestay activities within the definition of 'residential activities' such that the effects are managed to be akin all residential activities, noting that this option differs from the somewhat fanciful suggestion at Option 4 that all visitor accommodation be permitted without recourse to standard to manage form, nature, scale or intensity;⁸⁸

⁸⁷ Queenstown Lakes District 'Development Contributions and Financial Contributions Policy', 28 June 2018, page 209.

⁸⁸ Section 32 Evaluation, 2 November 2017, page 55.

- d consider the extent to which the provisions are efficient and effective in terms of administration, including compliance, monitoring and enforcement as set out in Section 8 of my evidence above.

Functions of territorial authorities

- 9.18 Section 74 of the RMA requires the preparation of a district plan to be in accordance with the functions of a territorial authorities set out in Section 31.

These functions include:

“(a) the establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district:

(aa) the establishment, implementation, and review of objectives, policies, and methods to ensure that there is sufficient development capacity in respect of housing and business land to meet the expected demand of the district.”

- 9.19 Given my conclusions that the effects of residential visitor accommodation and homestay activities do not differ from those of residential activities and therefore do not required specific or different management; and residential visitor accommodation and homestay activities do not compromise development capacity in the Queenstown Lakes District (noting that the proposed provisions relate to the development of existing housing stock rather than ‘development capacity’ that is defined as capacity of land for urban development), I am of the opinion that the specific management of such activities is not necessary in terms of the Council’s statutory functions.

Proposed Relief

- 9.20 Based on the conclusions reached in my evidence, I do not consider the proposed visitor accommodation provisions⁸⁹ insofar as they apply to residential visitor accommodation and homestay activities are appropriate or necessary or necessary in their current form. It is my view that the effects of such activity are the same in character, intensity and scale as other residential activities on the basis that their form and scale will be managed by the same standards in the Proposed District Plan. In my opinion, including residential visitor accommodation and homestays in the definition of ‘residential activities’ addresses the ‘blurring’, intermittent and interchangeable nature of the activities while ensuring a

⁸⁹ As recommended for amendment in Section 42A Report, 23 July 2018, Appendix 1.

consistent management of effects by being clear that the same standards apply, including where a residential unit may require a resource consent.

9.21 I therefore support:

- a amending the definition ‘residential activity’ as follows (my amendments are shown in blue. The Section 42A Report amendments are shown in red and proposed provisions shown in black);

“Residential Activity	Means the use of land and buildings by people for the purpose of permanent residential accommodation, including all associated accessory buildings, recreational activities and the keeping of domestic livestock. For the purposes of this definition, residential activity shall include Community Housing, emergency, refuge accommodation, <u>holiday homes, residential visitor accommodation and homestays</u> and the non-commercial use of holiday homes . Excludes visitor accommodation, residential visitor accommodation and homestays .”
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- b the deletion of provisions (including objectives, policies and rules) that direct the management of residential visitor accommodation and homestay activities as distinct to residential activities; and
- c the consequential addition to advice notes in the ‘residential unit’ rules to advise that additional rates and development contributions might apply to residential visitor accommodation and homestays.

10 Conclusion

- 10.1 The Section 32 Evaluation sets out that the proposed visitor accommodation provisions have been promulgated to address housing availability and development capacity and to manage adverse effects on residential amenity and residential cohesion.
- 10.2 Since notification a comprehensive housing capacity assessment has been undertaken. This assessment concludes that housing capacity (including housing used for residential visitor accommodation and homestays) in Queenstown Lakes District exceeds demand in the short, medium and long terms under a number of growth scenarios.
- 10.3 I have given consideration to the potential adverse effects of residential visitor accommodation and homestay activities on residential amenity and residential cohesion and have concluded that any adverse effects are not distinguishable

from those of other residential activities and therefore do not require specific management, beyond the various standards included in the Proposed District Plan to manage residential amenity including, for example, density, form and noise standard.

10.4 I have therefore concluded that the proposed visitor accommodation provisions (as they relate to residential visitor accommodation and homestay activities) are not necessary, efficient, effective or appropriate to give effect to the NPSUDC and the Proposed ORPS, and therefore achieve the purpose of the RMA.

10.5 Instead, I support the clear inclusion of residential visitor accommodation and homestays⁹⁰ in the definition of 'residential activities' to ensure that any potential adverse effects are managed in the same manner as other residential activities. It is my opinion that such an approach is a more appropriate way to enable people and communities to provide for their economic wellbeing while managing effects and therefore achieve the purpose of the RMA.

Ainsley Jean McLeod

6 August 2018

⁹⁰ Noting that these activities are also subject to further provisions in terms of the Building Code, and Council rates and development contribution policies.