



**DECISION OF THE QUEENSTOWN LAKES DISTRICT COUNCIL**

**RESOURCE MANAGEMENT ACT 1991**

<b>Applicant:</b>	<b>Amazing Properties Limited</b>
<b>RM reference:</b>	<b>RM140601</b>
<b>Location:</b>	17 Mathias Terrace, Arthurs Point
<b>Proposal:</b>	Visitor Accommodation
<b>Type of Consent:</b>	Land Use
<b>Legal Description:</b>	Lot 30 DP 329180 held in Computer Freehold Register 119164
<b>Zoning:</b>	Low Density Residential
<b>Activity Status:</b>	Restricted Discretionary
<b>Notification:</b>	Limited Notification
<b>Commissioner:</b>	Commissioner Denis Nugent
<b>Date Issued:</b>	22 April 2015
<b>Decision:</b>	Consent Granted with Conditions

IN THE MATTER

of the Resource  
Management Act 1991

AND

IN THE MATTER

of an Application for  
Resource Consent to  
Establish Visitor  
Accommodation by  
Amazing Properties  
Limited – RM140601

## **DECISION OF COMMISSIONER DENIS NUGENT**

### **Introduction**

1. I have been appointed by Queenstown Lakes District Council to hear and decide this application under s.34A of the Resource Management Act 1991.

### **Hearing and Site Visit**

2. The hearing took place on 23 February 2015 in Queenstown. I undertook a site visit of the applicant's property immediately prior to the hearing.

### **Appearances**

#### For the Applicant

Mr Campbell Bevan, Director

#### Submitters

Mr Don Millar on behalf of himself and his wife

Mr Zane Kaihe on behalf of himself and his wife

#### Council Officers

Ms Sarah Duffy, Planner

Ms Paula Costello, Senior Planner

Ms Louise Powell, Secretary

### **The Application and Site**

3. The applicant seeks consent for the use of a family home in Arthurs Point as visitor accommodation. The site is at 17 Mathias Crescent and is legally described as Lot 30 DP 329180 held in Computer Freehold Register 119164. The property is a rear site of 1165m<sup>2</sup> and contains a two-storey, 5 bedroom modern

home with attached double garage. There is also a small building in the south-eastern corner of the property which has been used as a sleepout. The dimensions of this building were not provided but on inspection it proved to be barely large enough to contain a double or queen-size bed.

4. The application sought consent for use of the property by a maximum of 14 people, comprising up to 10 adults and 4 children. During the course of the hearing the applicant reduced the maximum number to 12 persons.
5. As lodged, the proposal was that the property be used for visitor accommodation every night of the year. The applicant volunteered that this be reduced to a maximum of 200 nights per year.
6. I note also that the site contains large outdoor areas, with a barbeque area to the west of the dwelling and children's play equipment to the north of the dwelling. The applicant undertook during the hearing to move the trampoline located at that time in the southeast corner, to the northern area also.

### **Surrounding Environment**

7. Mathias Terrace is within the Arthurs Point residential area. The properties generally comprise large residential lots of 900-1000m<sup>2</sup> each, containing a single dwelling. This description typifies the sites adjoining the applicant's property to the east, south and west. The property adjoining to the north is a large lot of some 4,200m<sup>2</sup> accessed off Atley Terrace. It also contains a single residence.
8. Mathias Terrace comprises a narrow carriageway with swales separating the carriageway from footpaths (on one side only). On-street parking invariably involves utilising part of the swales to ensure the carriageway is not blocked. Mathias Terrace provides no through access. That contributes to residential amenity values of the area.

### **Reasons for Application**

9. The site is zoned Low Density Residential. Visitor accommodation is a restricted discretionary activity (Rule 7.5.3.4(i)) with discretion limited to:
  - (a) *The location, external appearance and design of buildings;*
  - (b) *The location, nature and scale of activities on site;*
  - (c) *The location of parking and buses and access;*
  - (d) *Noise, and*

(e) *Hours of operation.*

10. I note that visitor accommodation is listed in the rule for discretionary activities rather than the rule which lists restricted discretionary activities. However, the rule itself is clear that discretion is restricted. However, the assessment criteria listed in Rule 7.7.2(viii) include some matters which go beyond the matters to which discretion is restricted. I presume that is an error and will ignore those additional assessment criteria.
11. As applied for the application also required consent for the sleepout to breach the internal boundary setback. With the change of the application to remove the use of that building for accommodation, that consent is no longer required.

**Statutory Provisions**

12. The relevant provisions of section 104 are:

- (1) *When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to—*
- (a) *any actual and potential effects on the environment of allowing the activity; and*
- (b) *any relevant provisions of—*
- (i) *a national environmental standard:*
- (ii) *other regulations:*
- (iii) *a national policy statement:*
- ...
- (v) *a regional policy statement or proposed regional policy statement:*
- (vi) *a plan or proposed plan; and*
- (c) *any other matter the consent authority considers relevant and reasonably necessary to determine the application.*
- (2) *When forming an opinion for the purposes of subsection (1)(a), a consent authority may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect.*

...

(3) *A consent authority must not,—*

(a) *when considering an application, have regard to—*

...

(ii) *any effect on a person who has given written approval to the application:*

...

(5) *A consent authority may grant a resource consent on the basis that the activity is a controlled activity, a restricted discretionary activity, a discretionary activity, or a non-complying activity, regardless of what type of activity the application was expressed to be for.*

(6) *A consent authority may decline an application for a resource consent on the grounds that it has inadequate information to determine the application.*

(7) *In making an assessment on the adequacy of the information, the consent authority must have regard to whether any request made of the applicant for further information or reports resulted in further information or any report being available.*

13. Under s.104C I am only able to consider those matters to which discretion is restricted. On that basis, I may grant or refuse consent. If I grant consent, I may impose conditions under s.108 but only for those matters over which the exercise of discretion is restricted, as set out above.

### **Summary of Evidence**

14. Mr Bevan very briefly outlined the application. He set out an alternative complying use which he considered would have greater effects than this proposal. He also noted he was committed to using a management plan to mitigate adverse effects.
15. Mr Millar lives at 19 Mathias Terrace. This site is in front of the applicant's property and has the access to the applicant's property along the western boundary. Mr Millar noted that he and his wife chose their property in 2007 as it was in a suburb of local residents. He explained that the applicant's property was acquired in 2013 and that every new renter of it has a party on the first

night and that people concentrate outside near the sleepout in the evenings. He contended that the property was used for 179 nights in 2014. He was particularly concerned about use of the sleepout, noting it was less than 1m from his boundary and faced the bedrooms in his house.

16. Mr Kaihe lives at 3 Larkins Way. His property adjoins the applicant site's eastern boundary. He told me he had moved into their house in 2006. He listed the following aspects of use of the applicant's property which caused concern:
  - a) Large parties;
  - b) Commercial product launches;
  - c) Littering by guests, including onto adjacent properties; and
  - d) Loud music.
17. Mr Kaihe considered the visitors using the applicant's property had no respect for the surrounding residential community. He also opposed the shed being used as a sleepout, noting it faced the bedrooms in their house also.
18. In reply Mr Bevan stated that he considered the lack of a management plan as part of the problem and offered to develop one. He also offered the following changes to the application:
  - a) Not use shed as sleepout;
  - b) Move trampoline to front (i.e. north side) of house;
  - c) Remove stereo;
  - d) Make property manager available 24 hours per day;
  - e) Change maximum tenancy to 12 people – 8 adults and 4 children.
19. These changes were in addition to the matters volunteered after lodgement of the application which were set out on page 3 of the s.42A Report.
20. Following the hearing, I circulated a Memorandum on the same day asking the applicant to provide a set of conditions it considered appropriate and a draft management plan, including an explanation as to how such a management plan could be enforced.
21. On 3 March last the applicant responded to this Memorandum. Given that the submitters were representing themselves I considered it preferable to

reconvene the hearing to enable them to respond to this as well as provide the opportunity for discussion between Mr Bevan and the submitters. Unfortunately Mr Bevan was not available until late April. In those circumstances I had the applicant's proposal circulated to all submitters and set a timetable for responses and reply. Messrs Millar and Kaihe and Ms Duffy provided comments by 20 March and Mr Bevan's reply was received on 1 April 2015. I will deal with the contents of these within the discussion of effects of the proposal.

### **Effects of the Proposed Activity on the Environment**

#### Permitted Baseline

22. Permitted activities include permanent residential use of the property, a home business employing up to 3 full-time employees not resident of the site, and a limited form of holiday rental. It is this latter activity that Mr Bevan emphasised the applicant would revert to if consent were to be refused.
23. The definition of visitor accommodation in the District Plan provides an exemption from the term for the use of Registered Holiday Houses for commercial letting purposes for up to 90 days in each calendar year. Registering as a Registered Holiday House is a purely administrative procedure not requiring a resource consent. Thus, this exemption is a permitted activity.
24. The definition of visitor accommodation also defines it as a tenancy of less than 3 months. Thus any tenancy of 3 months or more falls to be considered a residential use of the property, and therefore is also permitted.
25. It is also relevant to consider how the Zone Standards for noise are applied. There are two applicable rules in the Low Density Residential Zone, Rules 7.5.5.3(xii) and 7.5.6.3(vii) which apply to visitor accommodation and non-residential activities respectively. No specific noise standards apply to residential activities.
26. I consider it relevant to consider the effects of these permitted activities in considering the effects overall of the proposed activity.

#### Noise Effects

27. It was clear that existing use of the property had been causing adverse noise effects on the neighbours. These effects appeared to derive from stereo equipment and outdoor use of the southwest area in the vicinity of the sleepout, particularly in the evenings.

28. Mr Bevan volunteered to remove the existing stereo and volunteered a condition limiting any stereo equipment to that not exceeding 50 watts output. For that to be meaningful it should be clear that the 50 watts output is the maximum total of all channels.
29. Mr Bevan also volunteered to move the trampoline to the north side of the house and to cease using the sleepout for accommodation. These factors should reduce the use of that area by guests in the evenings. However, because my discretion includes the location of activities on the site, it is possible to impose a condition prohibiting the use of that area after certain hours, or at all times.
30. Ms Duffy suggested that requiring compliance with the relevant noise standards in the District Plan would be a more appropriate way to control noise than limiting the size of stereo.
31. The application detailed steps taken to address potential noise issues by provisions in the tenancy agreement including the ability to evict tenants if neighbours contacted the property manager about noise issues.
32. I accept that short-term tenants in visitor accommodation on holiday are likely to have a different attitude to noise and the times noise may occur than permanent resident neighbours, who have work and school commitments. The provisions of the District Plan recognise this by imposing defined noise standards for visitor accommodation. However, whether an activity complies with those noise standards or not does require monitoring by the neighbours. It is not a matter easily monitored on an on-going basis by the Council.
33. In my view, the applicant has made some positive moves to attempt to deal with potential noise issues. I consider these can be improved by clearer statements in the management plan and by limiting the use of the southeast corner of the property after 8pm, which is the time the noise standards impose night-time noise levels.

#### Parking and Access

34. The application notes that in addition to the double garage there is on-site parking for a further 4 cars, albeit informally. A car is provided on-site and the application states this is rented by most tenants. No provision is made for bus parking and there is not likely to be demand for any given the maximum occupancy.



35. Submitters raised issues with cars belonging to persons visiting the property (i.e. not occupants, but visiting the occupants) parking on verges with effects on traffic and pedestrian safety. Ms Duffy suggested this could be dealt with by limiting the number of visitors to the property. The assessment criteria for visitor accommodation require consideration of a number of aspects of parking and access. In my view, these are directed to ensuring the effects arising from parking are contained on-site, and not distributed around the adjoining streets. I consider it would be appropriate to impose a condition requiring that all parking relating to guests or their visitors be located on-site. If that limits the number of visitors, so be it.
36. The boundary between the applicant's accessway and the Millar property is screened with a hedge and the accessway is slightly lower than the ground level on the Millar property. I do not consider that vehicles parking on the accessway would seriously disrupt the amenity values of the Millar property. The level of use of the access if this consent were granted would not be dissimilar to that which could be expected from permanent residential use of 17 Mathias Crescent.
37. I conclude that with the application of conditions relating to parking and visitor numbers, the parking and access effects will be little different from that allowed by the permitted baseline.

#### Other Residential Amenity Values Affected by Nature and Scale of Activity

38. A component of the amenity values of a residential neighbourhood is having neighbours and developing relationships with those neighbours. This includes the degree of privacy neighbours afford each other. The short-term residence of people using visitor accommodation reduces that sense of neighbourliness, and if those short-term residents are not mindful of the residential values of the area within which they are located a severe diminution of residential amenity values can occur.
39. With a purpose built visitor accommodation facility, such as a motel, then separation distances from neighbours and on-site management can minimise the potential for such adverse effects on residential amenity values. Where visitor accommodation is to occur within a dwelling erected for permanent residence with no on-site management, the consent holder can be expected to ensure the management of the property emphasises to tenants the importance of minimising the adverse effects on the neighbours.

40. To this end, I consider the Management Plan for the property should contain guidance to management and tenants of the responsibilities they have as neighbours, and the Management Plan should form part of the tenancy agreement.
41. I also consider that the 24 hour per day access to the property manager by the neighbours and the Council will enable a rapid response if the activities on the site are disruptive of amenity values.
42. With those conditions in place I conclude the adverse effects will be minor.

#### Positive Effects

43. I consider that any positive effects of the proposal accrue solely to the applicant.

#### **Provisions of Statutory Documents**

44. I was not made aware of any relevant provision of a national policy statement or the regional policy statement.
45. Ms Duffy listed the relevant objectives and policies of the District Plan and the relevant assessment criteria. All of these really relate to the effects of the proposal. I am satisfied that in considering the effects of the proposal I have adequately covered the relevant provisions of the District Plan.

#### **Overall Consideration**

46. There are no provisions of sections 6 or 8 that are relevant. Within section 7 of the Act, the only relevant provision is s.7(c) relating to amenity values. I have already had particular regard to those in the context of considering the effects of the proposal.
47. I am satisfied that, providing the scale of the activity is limited and adequate conditions control the effects of the proposal, then consent can be granted. I discuss below the details of the conditions.

#### **Conditions**

48. In his right of reply at the hearing, Mr Bevan offered the following conditions:
  - a) No use of sleep-out;
  - b) Move trampoline to front (north) of house;

- c) Remove stereo;
  - d) Make property manager available to neighbours 24 hours per day;
  - e) Change tenancy to 12 people (8 adults and 4 children).
49. In response to my request that the applicant set out in writing the conditions it proposed Mr Bevan added or amended the following:
- a) The maximum number of paid nights to be 200 nights per calendar year;
  - b) No use of stereo exceeding 50 watts of output;
  - c) Visitors to the property that are additional to the tenants be limited to 10 persons at any one time;
  - d) Rubbish bins to be on the street (i.e. off the site) for a maximum of 24 hours per week;
  - e) Upon check in, the property manager must ensure a printed version of the terms of tenancy are always available to all tenants at all times;
  - f) Outdoor entertainment areas to be restricted to between the hours of 7 am and 10 pm, 7 days per week;
  - g) Each tenancy must be checked in and checked out by the property manager in person;
  - h) House rules information document and conditions of consent to be included in the compendium.
50. In replying to the comments provided by Messrs Millar and Kaihe and Ms Duffy on his proposed conditions, Mr Bevan appeared to resile from the condition limiting occupancy to 12 that he offered at the hearing. He has suggested that it should be 12 persons with no distinction as to age as he already has bookings that exceed 8 adults.
51. The application invited reference to the website advertising the property for rental and the contents of the website relating to this property. I have referred to that material. I note that one of the bedrooms has three single beds and is described as perfect for three children. Another bedroom is listed as containing a queen-size bed and a single bed and recommended for a couple and child. These descriptions suggest to me that the accommodation is not designed for 12 adults, but rather 8 adults and 4 children, as Mr Bevan suggested at the

hearing, or in the alternative 10 adults, with additional capacity for two children.

52. I consider the intensity of use, represented by the number of tenants at any one time, goes a long way to determining the potential effects of the activity on the neighbours. On balance, I consider the accommodation should be limited to 12 people, no more than 10 of whom may be adults.
53. There were a number of minor changes suggested by Ms Duffy which Mr Bevan largely agreed with. In my view some of these changes really are a matter of distinguishing between the conditions of consent and the management plan to give effect to the conditions. I have reviewed the comments of the applicant, the submitters and Ms Duffy regarding conditions. I have taken all of those into account in drafting what I consider to be an appropriate set of conditions set out in Appendix A.
54. I have also taken Mr Bevan's draft management plan and adjusted that to achieve the conditions. The conditions require the lodgement of a management plan to certify that it complies with the conditions. The applicant is able to take my draft and amend it further if necessary, so long as it continues to achieve the conditions.

### **Decision**

55. Pursuant to s.104C of the Resource Management Act 1991, consent is granted to Amazing Properties Limited to use 17 Mathias Terrace, Arthurs Point, described as Lot 30 DP 329180 held in Computer Freehold Register 119164, for visitor accommodation, subject to the conditions listed in Appendix A.



Denis Nugent  
22 April 2015

## Appendix A – Conditions

### General Conditions

1. That the development must be undertaken/carried out in accordance with the the application as submitted and amended during the hearing, with the exception of the amendments required by the following conditions of consent.
2. This consent shall not be exercised and no work or activity associated with it may be commenced or continued until the following charges have been paid in full: all charges fixed in accordance with section 36(1) of the Resource Management Act 1991 and any finalised, additional charges under section 36(3) of the Act.
3. The consent holder is liable for costs associated with the monitoring of this resource consent under Section 35 of the Resource Management Act 1991 and shall pay to Council an initial fee of \$240. This initial fee has been set under section 36(1) of the Act.
4. Prior to the activity commencing the applicant is to provide the Council with the name, address and full contact details of the property manager, including how that manager may be contacted 24 hours per day. If the manager is to change, the changed details are to be provided to the Council prior to the change occurring.
5. The maximum number of occupants shall be twelve (12), of which no more than ten (10) shall be adults.
6. The property may be used for visitor accommodation for no more than 200 nights per calendar year.
7. The building located in the southeast corner of the property is not to be used as visitor accommodation.
8. All activities on the site are not to exceed the following noise limits, as measured in accordance with NZS 6801:2008 and assessed in accordance with NZS 6802:2008, at any point within any other site:

(i)	Daytime	(0800 to 2000 hrs)	50 dB $L_{Aeq(15\ min)}$
(ii)	Night-time	(2000 to 0800 hrs)	40 dB $L_{Aeq(15\ min)}$
(iii)	Night-time	(2000 to 0800 hrs)	70 dB $L_{AFmax}$
9. No outdoor activities shall occur in the southeast corner of the property, i.e. behind the garage, between 2000 and 0800 hrs (8 pm to 8 am).
10. No use of outdoor entertainment areas shall occur between 2200 and 0700 hrs (10 pm and 7 am).
11. All vehicle parking, including those belonging to people visiting tenants, shall be parked on the site.

12. That the property manager maintain a record of all tenancies in the form of a register containing the name and contact details of the main occupant, number of occupants and the days/nights of occupancy.
13. That such register be available for inspection by the Council at all times.
14. That on the 31<sup>st</sup> March, 30<sup>th</sup> June, 30<sup>th</sup> September and 31<sup>st</sup> December each year the consent holder send the Council a copy of the register for the previous three months along with a listing of all forward bookings at that date.
15. That the applicant prepare a Management Plan and forward it to the Manager: Resource Consents at the Council for certification that it complies with the following:
  - a. It is to contain the details required by Condition 4;
  - b. It is to detail the measures to be taken to ensure compliance with Conditions 6, 7, 8, 9, 10 and 11;
  - c. It is to detail other measures to be taken to ensure the use of the property as visitor accommodation has minimal adverse effects on the surrounding residential amenities.
16. The activity may not commence until the Management Plan has been certified in accordance with Condition 14.
17. If the Management Plan required by Condition 14 is amended, the amended version is to be provided to the Council's Manager: Resource Consents for certification as required by Condition 14. Until such certification is received, the operating Management Plan remains in force.
18. Within five (5) working days of the Management Plan or an amended Management Plan being certified in accordance with Condition 14 the applicant is to provide a copy to the registered owners of each of the properties adjoining 17 Mathias Terrace.

## **Appendix B – Draft Management Plan**

This Management Plan applies to the use of 17 Mathias Terrace, Arthurs Point (Lot 30 DP 329180 held in CFR 119164) as visitor accommodation in accordance with resource consent RM140601.

### Property Manager

The Property Manager of this visitor accommodation is: \_\_\_\_\_

His/her address is: \_\_\_\_\_

Email: \_\_\_\_\_

She/he may be contacted 24 hours per day on the following phone numbers:

\_\_\_\_\_

If he/she cannot be reached, then this alternative contact number may be used:

\_\_\_\_\_

The Property Manager shall have the following responsibilities:

On check-in of tenants:

- To provide the tenants with a copy of the House Rules;
- To check that the shed/sleepout is locked and unavailable for use by tenants;
- To check that the number of tenants does not exceed twelve (12) and that the number of adults does not exceed ten (10);
- To check that the tenants have not brought their own stereo equipment, or if they have brought such equipment, to impound it for the term of the tenancy;
- To have all adult tenants read the full terms of the tenancy agreement;
- To check that the on-site compendium contains a copy of the House Rules, a copy of the conditions of resource consent RM140601.

On servicing and other visits:

- To ensure that rubbish bins do not remain on the street for more than 24 hours. As the rubbish collection day is Thursday, this may require a visit on Thursday or Friday.
- To check that the number of tenants does not exceed twelve (12) and that the number of adults does not exceed ten (10);

### House Rules

- There shall be no more than ten (10) visitors (that is, not tenants) present at any one time.

- There shall be no use of the outdoor area behind the garage between 8 pm and 8 am.
- There shall be no use of any other outdoor entertainment areas between 10 pm and 7 am.
- Any noisy activities should only occur inside after 8 pm with windows and doors closed.
- All vehicles, including those used by visitors are to be parked on the site, not on the street.
- Rubbish bins are to go out on Thursdays and be brought back in as soon as possible after being emptied.

#### Other Matters

- The trampoline and children's play equipment is to remain located on the north side of the house.
- A low wattage stereo, not exceeding a total of 50W over all channels, is to be provided on site.
- A sign will be placed on the door leading to the south-east outdoor area stating "**This outdoor area is not to be used between 8pm and 8am daily**".
- The property owner is to instigate the following measures to ensure bookings do not exceed 200 nights per year: to be completed by applicant