



Environmental Protection Agency
By email to: Silverlight.Fasttrack@epa.govt.nz

Edgar Planning Ltd
1 Kamahi Street
Wanaka 9305

Attn: Elliott Dennett

28 January 2022

Dear Elliott,

**COVID-19 Recovery (Fast-Track Consenting) Act 2020 - Silverlight Studios Accommodation - Draft
Conditions**

Thank you for the opportunity to provide comment on the Expert Consenting Panel's draft conditions for the Silverlight Studios Accommodation proposal. We comment as follows:

Condition 12

Condition 12 does not specify what the pre-commencement meeting is intended to achieve, and it is unclear why it must be held 15 working days prior to the commencement of construction of the accommodation units. The applicant/consent holder will hold meetings with lead contractors and appropriate Council representatives as necessary, being standard practice. QLDC will be engaged through the building consent process and through draft Conditions 11 and 18 such that Council will be aware that the fit out of the accommodation units is commencing and have oversight. Condition 12 is therefore considered unnecessary and should be deleted.

Condition 14

Condition 14 is of particular concern to the applicant as it excludes visitor accommodation as a permitted use of the accommodation units. While the visitor accommodation use is secondary to the worker accommodation function, it is an integral part of the viability and success of the proposal, and was specifically listed in the Silverlight Studios' amended referral order.

As has been described in the FTCA for the accommodation project and the wider Silverlight Studios project, the business model for the studios is that they will be leased on a long term basis by film production companies who will then produce multiple film and television projects for the duration of that lease. In order to maximise the productivity of the lease it is expected that projects will overlap or run concurrently however given production cycles it is inevitable that there will be peaks and troughs in terms of the

numbers of cast and crew on site. Generally the number people engaged on site ramps up gradually through the pre-production phase, peaks during production and then tapers off during wrap and post production.

The proposed accommodation is intended to cater for up to 30% of the film production workforce through the peak of production and therefore there is likely to be surplus accommodation available when projects are in the pre and post production phases, even if multiple projects overlap during those phases.

It is expected that the onsite accommodation will appeal to cast and crew that are coming to Silverlight Studios for specific projects of a limited duration with longer term crew transitioning into accommodation in the wider community. In order to accommodate the shorter term cast and crew during those peak production periods it will be necessary to keep the accommodation open and available rather than filling it with longer term onsite employees.

In addition there is the potential that a particular production may be cancelled, postponed or cut short for a variety of unforeseen reasons with the accommodation going from full to empty almost overnight. It would take a number of months for a replacement production to get up and running with the onsite workforce ramping up over time.

Rather than leaving the accommodation empty it is proposed to let any surplus accommodation as short term visitor accommodation. The short term visitor accommodation use can be flexible and represents an efficient and sustainable use of resources.

Cast and crew engaged in the film industry have certain expectations in terms of the level of accommodation provided. The Silverlight Studios accommodation units will therefore be fitted out to a high end standard. The construction of up to 300 high end apartments adds a significant cost to the overall project. Silverlight Studios is working with investors to fund the construction of the development. The potential for the accommodation units to sit empty, or not at full capacity, for an extended period of time will present a significant risk to investors. It is possible that, without the ability to let the accommodation units as visitor accommodation, the accommodation element may be seen by investors as too risky a proposition.

Silverlight Studios remains committed to ensuring that any adverse effects on the District's accommodation market are minimised and the proposed accommodation project will be key to achieving

that however if the conditions of consent prohibit the secondary visitor accommodation use it may compromise the applicant's ability to give effect to the consent and therefore minimise the benefits of the wider development and the consent holder's ability to mitigate the effects of the wider development in terms of effects on the accommodation market. Further, the on-site worker accommodation is vital to the operation of the studios. If the on-site worker accommodation cannot be financed because the secondary visitor accommodation use has been prohibited the viability of the entire project could be compromised. So, while the financial viability of the wider project is not reliant on visitor accommodation element in an operational sense, from a funding perspective it is vital given its role in risk mitigation for investors.

In the absence of commentary from the Panel regarding their position on the visitor accommodation element it is unclear why it has been excluded from Condition 14. The FTCA and its supporting assessments, along with the further assessment provided in response to the Panel's further information requires do not identify any adverse effect associated with the visitor accommodation component that cannot be appropriately mitigated or would be any greater than those associated with the accommodation proposal as a whole or the wider development.

Noise, activity and vehicle movements associated with the accommodation can be suitably managed regardless of whether the accommodation is accommodated by the onsite workforce or visitors to the District. The visitor accommodation use will not exacerbate any adverse effect on the wider accommodation market as the primary use of the accommodation will continue to be for the onsite workforce and will only be made available for visitor accommodation at such times as it is not required for that primary purpose. Further, as outlined above, the visitor accommodation component will mitigate perceived financial risk for investors and will therefore support the funding and construction of the accommodation units, thus securing the mitigation that those units will provide in terms of effects on the wider accommodation market. It is considered that the mitigation that the primary purpose of the accommodation will provide will far outweigh any adverse effect that its secondary use will create albeit that no significant or unacceptable adverse effect has been identified.

In terms of comments from the various parties that have been invited to comment on the accommodation proposal we note the following:

- The comments of the Mt. Barker Residents Association do not identify any specific adverse effect associated with the visitor accommodation component but rather outline a general opposition to

tourism activities that have already been consented on site and claiming that tourism or visitor accommodation related jobs are of no value to the District's economy.

- While the Queenstown Airport Corporation raise concerns relating to reverse sensitivity those effects are not specific to the visitor accommodation component and can be appropriately avoided or managed.
- Queenstown Lakes District Council note that the accommodation is *"unlikely to result in significant issues over and above those anticipated through the wider Silverlight Studios proposal"* which has since been approved although Council do note potential effects in terms of traffic and noise. Council also notes that the secondary visitor accommodation use *"is likely to provide benefits in regard to both tourism and alleviating the competing demands on existing housing stock elsewhere in the District."*
- Waka Kotahi NZTA accept the conclusions of the applicant's traffic assessment in terms of the appropriateness of the traffic management and access upgrade conditions and effects on the roading network (which would appear to address QLDC's concerns in this regard) however they do raise concerns, from a strategic planning perspective, regarding the inclusion of the visitor accommodation element in terms of consistency with the Queenstown Lakes Spatial Plan and the precedent it may create for visitor accommodation proposals in the wider area.

No other comment received in relation to the accommodation proposal raises concerns specific to the secondary visitor accommodation use.

In terms of consistency with the Queenstown Lakes Spatial Plan Waka Kotahi's concerns appear to relate to the wider development becoming a mixed use urban area. The wider development as consented comprises a wide mix of activities and will be a contained node of urban development regardless of whether the accommodation proposal is approved. It is considered that the inclusion of the secondary visitor accommodation use will not materially change the outcome of the development in terms of its character or amenity and it is considered that the proposal is well contained such that, while it will be urban in nature, it will be perceived as sprawl or ribbon development along the State Highway and the inclusion of the visitor accommodation component will not change this.

With regard to precedent the proposal is unique within the District and nationally. It is difficult to conceive a development that, in terms of its scale and mix of activities, would be comparable to the Silverlight Studios proposal and could use the Silverlight project to justify the establishment of a resort style

development in the vicinity of the site. Precedent effects must be considered in the context of the proposal as a whole, not by isolating the ancillary visitor accommodation element.

Overall, Silverlight's concerns are that it must be feasible to consistently make large scale film and television productions in the region and to do that without placing significant pressure on the local accommodation market Silverlight Studios must be able to house cast and crew on-site when needed. In order to justify the fit out of 300 high end apartments (which will be capable of accommodating the intended proportion of cast and crew during peak production) to investors there must be the ability to use those accommodation units for visitor accommodation should there be a surplus of available accommodation on site.

Further the ability to provide visitor accommodation if/when the accommodation units are unoccupied by film production workers will provide stability and certainty for Silverlight Studios staff that are taken on to manage, clean and maintain the accommodation (estimated at 30 staff members) and ensure that the purpose of the Act in terms of the creation of employment is fully realised.

As noted above, there are negligible additional environmental effects generated as a result of ancillary visitor accommodation use. Absent any environmental effect, other matter listed in section 108AA RMA, or agreement from the Applicant, I understand that condition 14 is therefore likely to be inconsistent with that section¹, and consequently, inconsistent with the purpose of the FTCA, being to support economic recovery and certainty of ongoing investment in New Zealand.

If the Panel's concerns regarding the inclusion of the visitor accommodation component relate to the ability to monitor and manage the primary and secondary uses of the accommodation units, it is considered that Condition 14 can be amended as follows to provide more clarity (additions shown underlined and deletions shown ~~struck through~~):

14. *The accommodation units within buildings located in the Venice, Paris or New York precincts must only be made available to ~~people employed~~ employees, contractors, students, or associated personal, in construction and use of the FTC00027 Project site for:*
- a. film or television productions and ancillary support activities; and*
 - b. educational and training activities ancillary to Condition14(a) activities.*

¹ Per the advice from Anderson Lloyd in respect of condition 14, dated 28 January 2022.

- c. Where there is no demonstrable need for accommodation units to be provided for the needs specified in 14(a) and (b), any surplus accommodation units may be made available as visitor accommodation. 'Demonstrable need' in this condition may be confirmed by way of the Consent Holder keeping a worker accommodation register, to be provided upon request, to the Queenstown Lakes District Council.

Condition 25

The proposal relates to the provision of onsite accommodation units only. Draft Condition 25 as it is currently worded could be taken to apply to large scale on-site social functions more generally and as such would impose restrictions on a development that has already been consented and is not the subject of this application. Condition 25 as it is currently worded therefore appears to go beyond the scope of the proposal.

Yours sincerely,
Edgar Planning Ltd,



Scott Edgar
Director

28 January 2022

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Dear Elliot

SSL Accommodation consent condition response – FTC000054

- 1 This letter responds to draft conditions of consent in respect of the SSL Accommodation Application (**Application**). While comments on a number of conditions have been provided, this response principally deals with concerns relating to proposed conditions 14 and 25, being the use of accommodation units for ancillary visitor accommodation, and on-site social functions.
- 2 SSL sought clarification in respect of the nature of concerns of the Expert Consenting Panel (**ECP**) relating to use of the accommodation units for ancillary visitor accommodation.¹ Unfortunately, no formal response was received in respect of the issues raised in that correspondence.
- 3 For the reasons set out in this letter, conditions 14 and 25 as currently proposed, are considered to be unnecessary, vague, and otherwise unlawful in accordance with s108AA RMA. For these reasons, SSL requests these conditions be amended as set out below.

Environmental effects of ancillary visitor accommodation use

- 4 Condition 14 sets a requirement that only people **employed** in construction and use of the SSL project (and for specified activities) may utilise the accommodation units provided. This is problematic for SSL for the following reasons:
 - (a) Employed has a narrow meaning, and effectively limits other appropriate principle accommodation users, such as contractors, family / other support personnel to workers, and students.
 - (b) Limiting visitor accommodation of the available units when there is no demand for worker accommodation (be it because of seasonal effects, project demands, or other accommodation sources being more suitable / available) presents a wastage of available resources and an unsustainable business / investment model.
- 5 The only specific visitor accommodation related comments received were from the Queenstown Lakes District Council (**QLDC**) and Waka Kotahi comments, in respect of traffic and transport related effects, precedent, and consistency with the District Plan. By way of further brief response, it is noted:

¹ By letter dated 25 January 2022, Edgar Planning Limited.

- (a) The ability to use vacant accommodation units only in the circumstance of there being no 'need' for onsite worker use does not change the nature of the proposal from 'large scale special employment' to 'a mixed urban area'.² The ability for visitors to use empty units, already constructed, simply allows an already built resource to ensure it remains commercially viable and protected through diversification. There is no change in built form as a result of this ancillary use that could mean it is considered to read as a mixed urban development rather than a studio film complex with supporting activities and attractions.³
- (b) While visitor accommodation is not necessarily 'anticipated' in the District Plan Rural Zone, nor is a major film studio complex. This proposal as a whole is unique in all respects. Ancillary use of available and constructed units only under certain circumstances, does not make the proposal any less consistent with District Plan outcomes, other than potentially easing the load on a stretched Upper Clutha housing market, which currently supports residential visitor accommodation uses.
- (c) The concept of precedent is that earlier decisions provide an expectation of like treatment, not an absolute entitlement. This is in the context of where there are the same or similar factual matrices under consideration.⁴ It is difficult to imagine that a similar scale proposal could occur within the area, proposed under the FTCA, and with a similar fact matrix, and the equivalent 'demonstrable and significant benefits in terms of employment and economic stimulus for the Otago region and beyond, as the SSL proposal'⁵. The FTCA process in itself is selective, unique, and requires significant 'pre-proposal' work before being invited to apply under the Act. Interested parties such as QLDC and Waka Kotahi would have the opportunity to have input on whether other future proposals should be referred for fast track processing. Allowing ancillary visitor accommodation, while ensuring that availability and affordability of accommodation and housing in the District is mitigated, cannot set a precedent concern beyond that which has already been created through the broader proposal being approved.
- 6 Environmental effects associated with visitor accommodation use, as opposed to worker accommodation, are limited in nature to: demands on services, traffic and transport, and residential amenity.
- 7 Any effect on residential amenity is obviously not relevant in this Application, and effects on services and traffic and transport have adequately been addressed in response to comments, and through conditions of consent. The QLDC comment notes that no traffic / transport peer review has been undertaken, and the Waka Kotahi comment confirms that it agrees with the SSL traffic assessment conclusions, including that: 'there is little difference in terms of traffic effects at the site access between using the proposed accommodation for worker and/or visitor accommodation'.
- 8 Logically that leaves SSL with the assumed issue being related to ensuring that the accommodation units are available for principle use as worker accommodation. SSL remains committed to ensuring this outcome is achieved, and in ensuring that the proposal as a whole minimises any adverse effects on available accommodation and the housing market in the District. To this end, the following amended condition of consent is volunteered:

² As reference d in the Waka Kotahi comment at page 3.

³ The Panel Decision report on the Silverlight Studios main proposal acknowledges these legitimate ancillary activities at [18]: "The complex will also provide the opportunity for New Zealanders and international tourists to be exposed to movie making. The film studio complex will operate as a tourism destination with museums and film related attractions, including restaurants in the recreated parts of cities and villages."

⁴ *Stirling v Christchurch CC*, HC Christchurch CIV-2010-409-2892, 19 September 2011.

⁵ Panel Decision Report at [568].

14 The accommodation units within buildings located in the Venice, Paris or New York precincts must only be made available to ~~people employed~~ employees, contractors, students, or associated personal, in construction and use of the FTC000027 Project site for:

- a. film or television productions and ancillary support activities; and
- b. educational and training activities ancillary to Condition 14(a) activities.
- c. Where there is no demonstrable need for accommodation units to be provided for the needs specified in 14(a) and (b), any surplus accommodation units may be made available as visitor accommodation. 'Demonstrable need' in this condition may be confirmed by way of the Consent Holder keeping a worker accommodation register, to be provided upon request, to the Queenstown Lakes District Council.

Lawfulness of conditions – condition 14

- 9 Legislative and case law requirements relating to conditions of consent imposed are relevant. Specifically, section 108AA RMA reads:

108AA Requirements for conditions of resource consents

- (1) A consent authority must not include a condition in a resource consent for an activity unless—
- (a) the applicant for the resource consent agrees to the condition; or
 - (b) the condition is directly connected to 1 or more of the following:
 - (i) an adverse effect of the activity on the environment;
 - (ii) an applicable district or regional rule, or a national environmental standard;
 - (iii) a wastewater environmental performance standard made under section 138 of the Water Services Act 2021; or
 - (c) the condition relates to administrative matters that are essential for the efficient implementation of the relevant resource consent.

- 10 As noted above, there are no environmental effects associated with ancillary visitor accommodation use, and without SSL agreement to condition 14, it is therefore unlawful.

Condition 25 – limitations on large scale and on site social functions

- 11 Condition 25 provides:

No large-scale on-site social functions, including those that may have amplified music and the consumption of alcohol, are to be undertaken within the light and dark pink areas shown on the plan labelled SI – RC - 09 ...

- 12 SSL is concerned with this draft condition on the following basis:

- (a) The condition is highly uncertain and could, as currently worded, apply to any scale of legitimate site-based meetings, events, and other gatherings associated with the broader proposal.
- (b) The condition is not effects-based in that it does not relate to any District Plan noise or other amenity standards. No evidence has been provided to justify the imposition of this condition and it therefore remains contrary to section 108AA RMA.
- (c) The condition is unlawful in that it is beyond what is otherwise permitted in the District Plan, considering that Temporary Events potentially anticipate gatherings of up to 500 people, subject to permitted standards such as noise and waste management.

- (d) Assuming the only environmental effect of concern associated with gatherings is related to noise and residential amenity, these effects are already adequately and comprehensively controlled through conditions of consent under (LI2021/2), including by:
- (i) Operational hours of operation;
 - (ii) Management plans;
 - (iii) Noise and vibration;
 - (iv) Light spill and lighting;
 - (v) Temporary filming activities controls;
- (e) A condition relating to gatherings, also goes beyond the scope of the Application, being limited just to the effects associated with development and use of accommodation units.

13 For the above reasons, SSL requests that this condition be deleted.

Yours faithfully
Anderson Lloyd



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