

28 January 2022

Environmental Protection Agency
By email: silverlight.fasttrack@epa.govt.nz

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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
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