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By email: christina.smits@epa.govt.nz and elliot.dennett@epa.govt.nz

Heather Ash
Chairperson of the Silverlight Studios Expert Consenting Panel
Environmental Protection Authority
Level 10, Grant Thornton House, 215 Lambton Quay
WELLINGTON 6011

SILVERLIGHT STUDIOS

Introduction

1. We refer to Minute M-2 of the Silverlight Studios Expert Consenting Panel (the **Panel**) dated 12 October 2021, seeking our advice on the following questions:
 - (a) Is the impact of the Silverlight Studios Limited Application (the **Proposal**) on the availability of accommodation in the Wanaka / Upper Clutha area a matter to which the Panel must have regard under clause 31(1)(a) of Schedule 6 to the Covid-19 Recovery (Fast-Track Consenting) Act 2020 (**FTCA**)?
 - (b) Is the potential issue of the upwards pressure on housing prices / rents in the short term, identified by Market Economics in Appendix 16 to the AEE, a matter to which the Panel must have regard under clause 31(1)(a)?
2. We understand that the Proposal requires consideration as a non-complying activity overall.
3. In preparing this advice, we have reviewed the following documents:
 - (a) The Economic Assessment prepared by Market Economics dated 12 July 2021 attached as Appendix 16 to the Silverlight Studios Limited Application Assessment of Environmental Effects (**AEE**);
 - (b) The memorandum from Market Economics dated 20 August 2021 provided in response to the Panel's request to the Applicant made under clause 25, Schedule 6 to the FTCA; and
 - (c) Responses from several parties invited to comment (the Mount Barker Residents' Association, the Roberts Family Trust, the Luggate Community Association and Steve Grieve) relating to housing supply issues in the Wanaka / Upper Clutha greater area.

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Executive Summary

4. Our answer to both questions recorded at paragraph 1 above is yes. The potential impact of the Proposal on the availability of accommodation in the Wanaka / Upper Clutha area and the potential issue of upwards pressure on housing prices / rents in the short term are matters to which the Panel must have regard pursuant to clause 31(1)(a) of Schedule 6 to the FTCA.
5. We consider that the Proposal's potential additive pressure on the local housing market (and its impact on housing availability and housing affordability) is a relevant adverse effect to which the Panel must have regard. As discussed further below by reference to case law, such an effect has typically been viewed by the Environment Court as one with social, economic and potentially also cultural implications.

Discussion

6. Clause 31(1)(a), Schedule 6 provides that when considering a consent application in relation to a referred project, the Panel must, subject to Part 2 of the RMA and the purpose of the FTCA, have regard to "any actual and potential effects on the environment of allowing the activity". This is an equivalent requirement to section 104(1)(a) of the Resource Management Act 1991 (**RMA**).
7. The similarity in approach between the FTCA and RMA is also mirrored in the way in which an "effect" is defined in section 7(1) of the FTCA as having the meaning given in section 3 of the RMA. Section 3 of the RMA defines an "effect" as follows:

Meaning of "effect"

In this Act, unless the context otherwise requires, the term **effect** ... includes—

- (a) Any positive or adverse effect; and
- (b) Any temporary or permanent effect; and
- (c) Any past, present, or future effect; and
- (d) Any cumulative effect which arises over time or in combination with other effects—

regardless of the scale, intensity, duration, or frequency of the effect, and also includes—

- (e) Any potential effect of high probability; and
- (f) Any potential effect of low probability which has a high potential impact.

8. It is clear from this definition (and from clause 31(1)(a)) that potential effects, as well as effects of a temporary nature, fall within the meaning of an "effect".
9. As identified in the Panel's Minute M-2, the Economic Assessment by Market Economics Limited attached at Appendix 16 of the AEE¹, and the further Market Economics

¹ At pages 2 and 38.

memorandum dated 20 August 2021², identify short-term housing shortages and potential upward pressure on housing prices / rent (and therefore affordability) as potential adverse economic effects of the proposed development.

10. We consider that issues of this kind are potential economic, social and cultural effects that the Panel is required to have regard to under clause 31(1)(a). A key factor that leads us to this conclusion is that such impacts have been recognised by the Environment Court as relevant effects when considering consent applications and notices of requirement under the RMA in the past. We consider that the approach taken by the Environment Court in considering the effects of resource consent applications and notices of requirement under the RMA is equally applicable to the consideration of effects under the FTCA, noting again that the FTCA essentially adopts the RMA's definition and approach to assessment of "effects" on the environment.
11. The Courts have held that a sufficiently wide interpretation should be given to section 104(1)(a) to ensure that, in achieving the purpose of the RMA, all reasonably foreseeable effects, whether positive or adverse, can be considered by the consent authority.³ It has long been established that economic considerations (as opposed to the financial viability of a proposal) are matters to be had regard to under section 104(1) of the RMA.⁴ Similarly, social effects are well established as a class of effect under the RMA.⁵
12. In *Minister of Corrections v Otorohanga District Council*,⁶ the Minister sought to alter an existing designation to allow for the expansion of Waikeria Prison. Concerns were raised as to the potential social impact on vulnerable low income Māori families arising from a rapid influx of workers and their families, and in relation to the impact of competition for accommodation, housing or rental properties, with upward pressure on pricing, on the community.⁷ The Environment Court held in its Final Decision that the 'additive pressure' on local housing as a consequence of the expanded prison workforce and visitors would be an adverse effect, with social, economic and cultural implications. The Court stated:

[26] The prison expansion will give rise to increased competition for accommodation, housing and rental properties. The communities living in the surrounding towns are ranked well above average on the New Zealand Deprivation Index. The demand for accommodation associated with the prison will impact on housing availability and affordability and this is likely to have an effect, particularly on low income families. While there are other pressures in the housing market and the scale of effect cannot be quantified, "many" within the rental market will be affected.

...

[38] ... there are existing external pressures on the housing market affecting affordability and availability. The additive pressure on local housing, particularly

² At page 4.

³ *Aquamarine Ltd v Southland Regional Council* (1996) 2 ELRNZ 361 at 366.

⁴ See for example *NZ Rail Ltd v Marlborough District Council* [1994] NZRMA 70 at 88.

⁵ See for example *Minister for Children v Auckland Council* [2019] NZEnvC 131.

⁶ *Minister of Corrections v Otorohanga District Council* [2017] NZEnvC 213 (Interim Decision) at [56] onwards, and *Minister of Corrections v Otorohanga District Council* [2018] NZEnvC 25 (Final Decision) at [26] onwards.

⁷ *Minister of Corrections v Otorohanga District Council* [2017] NZEnvC 213 (Interim Decision) at [56].

on Māori, arising from the demands of the prison workforce and visitors will be an adverse effect. The scale of effect is unknown; whether it emerges will be influenced by the actions taken by Minister in response to the Community Impact Forum. While these tensions give rise to an effect on the environment – specifically the people and their communities and the social, economic and cultural conditions – they are not addressed directly under ss6-8 or for that matter the planning instruments.

13. In *West Coast Environmental Network Inc v West Coast Regional Council*⁸, which involved an application for resource consents to establish and operate an open-cast mine, the Court considered that potential difficulties that an influx of workers could have on housing, where there were existing issues with housing affordability and capacity in the district, were relevant effects:⁹

... we consider that adverse consequences in the housing market could be noticeable, and note the common evidence that families will experience stress. These are matters that need to be brought to bear in the overall outcome, along with the economic benefits the project will bring.

14. We note that this decision was partially overturned on appeal, although the appeal concerned the way in which the Environment Court had approached environmental offsets, and did not discuss (or overturn) the Court's findings as to the potential effects on housing of the proposed activity.¹⁰

15. In addition to the general resource management approach which provides for consideration of these types of effects, there are specific provisions of the FTCA which provide support for the view that the effects of a Proposal on the housing market are relevant effects. In particular:

- (a) Clause 11(a), Schedule 6 specifically requires that an AEE must address “any effect on the people in the neighbourhood and, if relevant, the wider community, including any social, economic, or cultural effects”.
- (b) Clause 9(1)(g), Schedule 6 requires every consent application for a referred project to include an assessment of the activity against *inter alia* the matters set out in section 19 of the FTCA. These matters include the project's economic benefits and costs for people or industries affected by Covid-19,¹¹ and the project's effect on the social and cultural well-being of current and future generations.¹²

16. In summary, we consider that the Panel must have regard to potential effects of the Proposal on housing availability and affordability, because:

- (a) These types of effects are recognised as relevant to effects assessments under the resource management regime, and the same considerations apply under the FTCA;

⁸ [2013] NZEnvC 47.

⁹ *Ibid* at [125].

¹⁰ *Royal Forest and Bird Protection Society of New Zealand Inc v Buller District Council* [2013] NZHC 1346.

¹¹ Section 19(a) of the FTCA.

¹² Section 19(b) of the FTCA.

- (b) Consideration of these matters is consistent with other provisions of the FTCA which recognise and require consideration of economic, social and cultural impacts of an application on the community; and
- (c) It is clear from both the wording of clause 31(1)(a) and general principles relating to consideration of effects, that a broad rather than narrow approach to assessing potential effects is required.

Yours faithfully
BROOKFIELDS



Matthew Allan / Lisa Wansbrough
Partner / Special Counsel

Direct dial: +64 9 979 2128 / +64 27 530 4556
email: allan@brookfields.co.nz / wansbrough@brookfields.co.nz