

**Wanaka Community Board
22 June 2017**

Report for Agenda Item: 9

Department: Planning & Development

Road Dedication – Quartz Development Group Limited – Grandview Stage 3 Subdivision, Hawea

Purpose

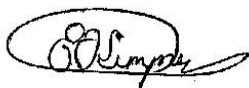
The purpose of this report is to consider accepting two roads to be transferred to Council subject to a 'no complaints' covenant within Stage 3 of the Grandview subdivision, Hawea.

Recommendation

That the Wanaka Community Board:

1. **Note** the contents of this report;
2. **Recommend to Council** that it accept Grandview Road and Sentinel Place, currently described as Lot 45 DP 325203, to be transferred to QLDC subject to the following:
 - a. Obtaining an indemnity from Quartz Development Group Ltd (and its directors and shareholders) in relation to any costs incurred by Council arising from any potential enforcement of the 'no complaints' covenant against Council.

Prepared by:



Liz Simpson
Team Leader Subdivision and
Property

6/06/2017

Reviewed and Authorised by:



Tony Avery
General Manager, Planning
and Development

9/06/2017

Background

- 1 Quartz Development Group Limited (**Quartz**) has asked Queenstown Lakes District Council (**Council**) to accept a the transfer of a future road in a new

subdivision (shown in Attachment A) subject to restrictive Land Covenant 8095711.1, a copy of which is annexed to this report at Attachment B (**Covenant**)

- 2 This type of covenant can be considered high risk in terms of Council's 'Vesting of Roads and Reserves Policy', and so under normal circumstances it would be required to be removed prior to the transfer of road to Council.
- 3 However, Quartz have advised it is highly unlikely that they will be able to remove the covenant from the land to dedicate as road due to another party (Willowridge Developments Limited (**Willowridge**)) refusing to surrender the covenant. Willowridge is the owner of the land which benefits from the covenant. Willowridge has been approached by the applicant and has so far refused to have the covenant removed.
- 4 In order for Quartz to be able to complete Stage 3 of the Grandview subdivision, the road must either be transferred with the covenant remaining or the road will be required to remain in private ownership.

Comment

- 5 This report is to resolve an unforeseen issue regarding Willowridge not being amenable to removing a private covenant from the area to be transferred as road.
- 6 Council is satisfied on the basis of legal advice received from that it is highly unlikely that Willowridge would be able to successfully enforce the covenant on Council for the reasons detailed below.
- 7 The covenant provides that the Grantor "shall not submit in opposition to any relevant authority or permit any agent employee or other representative to submit in opposition". Council in carrying out its regulatory function of processing resource consent applications or reviewing submissions on the District Plan does not "submit in opposition" at any stage of these process. It is Council's legal advisor's (Lane Neave's) view that Willowridge could not enforce this part of the covenant against Council in its regulatory capacity.
- 8 The covenant further provides that the Grantor shall not "*support any submission in opposition*". Again, Council in carrying out its regulatory function of processing resource consent applications or reviewing submissions on the District Plan does not technically "support" submissions. Rather, it considers, assesses, and makes decisions based on submissions received. It is Lane Neave's view that Willowridge could not enforce this part of the covenant against Council in its regulatory capacity.
- 9 Notwithstanding the above advice, Lane Neave has recommended that Council seek an indemnity from Quartz so that Council is fully indemnified in the unlikely event that Willowridge do attempt to enforce the covenant against Council. The proposed wording is shown in Attachment C.
- 10 This indemnity would be required to remain in place until all of the Willowridge land was fully subdivided down. Lane Neave's view is that once the land has been fully subdivided down into residential lots, the risk of the covenant being enforced becomes almost zero.

11 In terms of road ownership as these roads will serve 90 lots it is undesirable to have this road remain in private ownership.

Options

12 Option 1 Accept the road to be dedicated subject to obtaining an indemnity from Quartz (and its directors and shareholders) in relation to any costs incurred by Council arising from any potential enforcement of the 'no complaints' covenant against Council.

Advantages:

13 Quartz can complete their 90 lot development, alleviating the demand for new residential sections.

14 Any costs arising from Willowridge trying to enforce the covenant can be secured against Quartz.

15 Road is vested, as is normal practice, in Council.

Disadvantages:

16 Willowridge could attempt to enforce the Covenant against Council.

17 If Quartz went into receivership/is wound up, then this indemnity is worthless.

18 Option 2 Do not accept the transfer and require the road to remain in private ownership.

Advantages:

19 No risk of Willowridge enforcing the covenant against Council.

20 Road remains in private ownership, so no maintenance costs for Council.

Disadvantages:

21 A private road serving more than 90 lots is against Council policy (accesses serving more than 12 lots are required to be vested).

22 There is the possibility that the road could in the future be transferred to Council anyway if there are issues with its management and maintenance.

23 This report recommends **Option 1** for addressing the matter for the reasons outlined above.

Significance and Engagement

24 This matter is of medium significance, as determined by reference to the Council's Significance and Engagement Policy because accepting a road to be dedicated with a high risk interest is inconsistent with Council's policy on vesting Roads and Reserves.

Risk

- 25 This matter relates to the strategic risk SR3 Management Practice - working within legislation, as documented in the Council's risk register. The risk is classed as moderate. Decision-making on this matter has followed proper processes and the recommendation is considered reasonable.
- 26 The risk is considered mitigated by seeking an indemnity clause, thereby transferring the risk through to Quartz and its directors and shareholders.

Financial Implications

- 27 There should be no cost implication based on the indemnity clause

Council Policies, Strategies and Bylaws

- 28 The following Council policies, strategies and bylaws were considered:

- <http://www.qldc.govt.nz/assets/Uploads/Council-Documents/Policies/Reserves-and-Campgrounds/Vesting-of-Roads-and-Reserves-Policy-2016.pdf>

- 29 This policy governs the vesting of roads and reserves and its purpose is to minimise prejudice to the Council from the transfer of land to the Council.
- 30 The recommendation is contrary to the policy for the reasons outlined in this report.
- 31 This matter is not included in the 10-Year Plan/Annual Plan and is not required to be.

Local Government Act 2002 Purpose Provisions

- 32 The recommended option:

- Will help meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses by providing a timely decision for dedication of a road;
- Is consistent with the Council's plans and policies apart from the vesting of Roads and Reserves Policy as identified herein; and
- Would not alter significantly the intended level of service provision for any significant activity undertaken by or on behalf of the Council, but it will result in the transfer the ownership or control of a strategic asset (road) to the Council which is considered appropriate in this case.

Consultation: Community Views and Preferences

- 33 No external consultation undertaken and not considered required

Legal Considerations and Statutory Responsibilities

34 Legal advice was sought and has been discussed in the report.

Attachments

- A Location of land and Plan of Subdivision for the Quartz land
- B Covenant 8095711.1
- C Indemnity wording

Attachment A – Location of land and Plan of Subdivision for the Quartz land

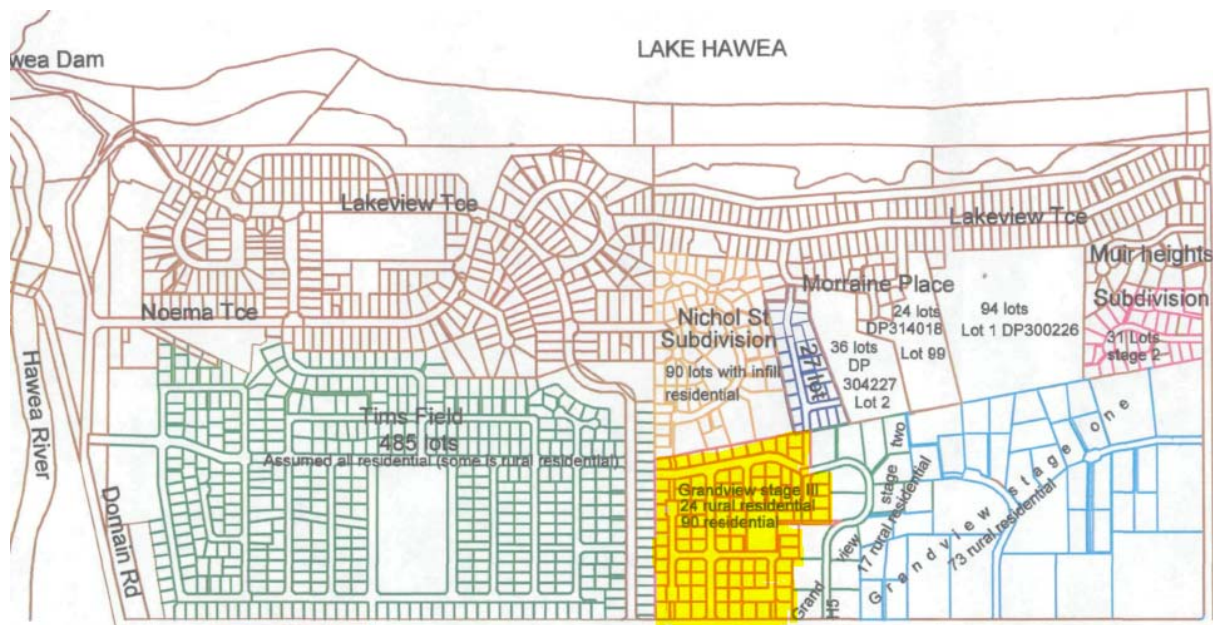
Location of land, sites are adjacent to Cemetery Road, Hawea



Note:

- Quartz Land - Grandview Rd and Sentinel Place are the roads to be transferred subject to the restrictive covenant.
- Willowridge land is to the west of Capell Avenue.

Plan of Subdivision



Note: Highlighted yellow area is the Quartz subdivision

Attachment B: Covenant 8095711.1

Easement instrument to grant easement or profit à prendre or create land covenant
 Sections 90A and 90F, Land Transfer Act 1952

2003/0100EF
 Approved
 Registrar-General of Land

Land registration district
 OTAGO

BARCODE

Grantor *Surname(s) must be underlined or in CAPITALS.*
 STREAT DEVELOPMENTS LIMITED

Grantee *Surname(s) must be underlined or in CAPITALS.*
 WILLOWRIDGE DEVELOPMENTS LIMITED

Grant* of easement or profit à prendre or creation or covenant
 The Grantor, being the registered proprietor of the servient tenement(s) set out in Schedule A, grants to the Grantee (and, if so stated, in gross) the easement(s) or profit(s) à prendre set out in Schedule A, or creates the covenant(s) set out in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule(s).

DATED this 12th day of December 2008

Attestation

Signed by Streat Developments Limited by its Directors

 Christopher Garth STREAT

 Garth William STREAT
 Signature [Common Seal] of Grantor

Signed in my presence by the Grantor


 Signature of Witness
 Witness to complete in BLOCK letters (unless legibly printed)
 Witness name: A.M. Evans.
 Occupation: Retired
 Address: 26 Lennox Terrace, Christchurch.

Signed by Willowridge Developments Limited by its Director

 Allan Stuart DIPPPIE
 Signature [Common Seal] of Grantee

Signed in my presence by the Grantee

 Signature of Witness
 Witness to complete in BLOCK letters (unless legibly printed)
 Witness name:
 Occupation:
 Address:

Certified correct for the purposes of the Land Transfer Act 1952

 (Solicitor for) the Grantee

* if the consent of any person is required for the grant, the specified consent form must be used

THIS INSTRUMENT IS REGISTERED IN THE LAND REGISTRY OF OTAGO ON 12 DECEMBER 2008 AT 10:00 AM. THE REGISTERED INSTRUMENT NUMBER IS 2008/0100EF. THE INSTRUMENT IS REGISTERED IN THE REGISTER OF EASEMENTS AND PROFITS A PRENDRE. THE INSTRUMENT IS REGISTERED IN THE REGISTER OF EASEMENTS AND PROFITS A PRENDRE. THE INSTRUMENT IS REGISTERED IN THE REGISTER OF EASEMENTS AND PROFITS A PRENDRE.

Annexure Schedule 1

2002/6038EF
Approved
Registrar-General of Land

*Easement

Dated 12/12/2008

Page 3 of 3 pages

* Insert type of instrument.

Continue in additional Annexure Schedule if required.

Not to object to further residential development or rezoning of land:

1. The Grantor shall not submit in opposition to any relevant authority or permit any agent employee or other representative to submit in opposition or support any submission in opposition to any future application for any resource consent for any purpose made by the Grantee or supported in part or in full by the Grantee to any relevant authority to:

- a.) Subdivide or develop residentially any land owned by the Grantee or any party nominated by the Grantee which is part or all of the land contained in Certificates of Title 362103.
- b.) Any change or variations to or review of any Council plan (including any re-zoning whether or not initiated by the Council) in respect of the residential development of any land owned by the Grantee or any party nominated by the Grantee which is part or all of the land contained in Certificates of Title 362103.

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

2002/6038EF Approved Registrar-General of Land

Attachment C: Indemnity wording as proposed by Lane Neave

Quartz Development Group Limited, its directors, and its shareholders indemnify (with effect from the date of road dedication) Queenstown Lakes District Council against any loss, claim, damage, expense, liability or proceeding suffered or incurred at any time subject to the below time limitation by Queenstown Lakes District Council occurring as a result of, or resulting directly from any enforcement or attempted enforcement of Land Covenant 8095711.1 against the Queenstown Lakes District Council as grantor under that instrument. The obligations and liabilities of each director and shareholder of Quartz Development Group Limited shall be joint and several with the obligations and liabilities of Quartz Development Group Limited.

This indemnity shall remain in place until all of the land comprised in certificate of title 362103 has been sold or disposed of by Willowridge Developments Limited or has been fully developed into residential/commercial or such other arrangement where further development is not anticipated.