

Before the Hearings Commissioners at Queenstown

Under: the Resource Management Act 1991

In the matter of: Queenstown Lakes Proposed District Plan

Hearing Stream - 02

Chapter 21 (Rural Zone), Chapter 22 (Rural Residential & Lifestyle) and Chapter 23 (Gibbston Character Zone)

By: **Queenstown Lakes District Council**

STATEMENT OF EVIDENCE OF ANTHONY STUART MacCOLL

S0719-NZ Transport Agency-T02-MacColl A-Evidence



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Introduction and Qualifications

- (1) My name is Tony MacColl. I am a Senior Planning Advisor with the Dunedin Regional Office of the NZ Transport Agency (Transport Agency). I have been employed by the Transport Agency, and its predecessor Transit New Zealand (*Transit*), since 2007.
- (2) I hold the qualifications of Master of Resource and Environmental Planning from Massey University, and Master of Science from the University of Otago. I am a full member of the New Zealand Planning Institute. I have also completed the Making Good Decisions programme, and am an accredited Hearings Commissioner.
- (3) I am authorised to make the following comments on behalf of the Transport Agency.

Scope of Evidence

- (4) My statement will address the following matters:
 - the NZ Transport Agency – its statutory objective and role and the reason for its involvement in this process;
 - the strategic significance of the State highway system;
 - the NZ Transport Agency’s submission.

NZ Transport Agency

- (5) The Land Transport Management Act (LTMA) defines the objective of the Transport Agency as being to carry out its functions in a way that contributes to an affordable, integrated, safe, responsive, and sustainable land transport system (section 93).
- (6) The functions of the Transport Agency are defined in section 94 of the LTMA, and include among other things:
 - to promote an affordable, integrated, safe, responsive, and sustainable land transport system;
 - to manage the State highway system; and,
 - to assist, advise, and co-operate with approved organisations (such as regional councils and local territorial authorities).
- (7) When carrying out its functions, the Transport Agency must exhibit a sense of social and environmental responsibility, and when managing the planning and funding of transport activities, the

Transport Agency must give effect to the Government Policy Statement (GPS) on land transport funding.

- (8) The Transport Agency will also contribute to the objectives of the 'Connecting New Zealand: the government's policy direction for transport' and have regard to other policy documents and legislation such as the Government Roading Powers Act 1989, the Resource Management Act 1991, the Safer Journeys Road Safety Strategy and the Energy Efficiency and Conservation Strategy.
- (9) It is from this premise that the Transport Agency submitted on the Queenstown Lakes proposed District Plan.

Strategic Significance of the State Highway System

- (10) In a national context, State highways form an integrated national network of inter-regional and inter-district routes, and major urban arterials. While State highways form part of a wider roading network in New Zealand, the distinguishing functions of State highways among others are to:
- Connect major centres of population;
 - Provide access to ports, airports, major industrial areas, major primary production areas and major tourist areas; and
 - Service major urban corridors.
- (11) I am aware that caselaw has affirmed that the State highway network is a physical resource of national importance under the Resource Management Act 1991.¹

NZ Transport Agency Submission

- (12) The Transport Agency made submissions on the Rural, Rural Residential and Rural Lifestyle, and Gibbston Character Zone sections of the proposed District Plan. I do not propose to speak on every submission, rather I propose to highlight those matters that are of particular interest to the Transport Agency and those matters that had conflicting submissions. Some of these matters apply to all three proposed chapters.

¹ *Auckland Volcanic Cones Society Inc v Transit New Zealand* [2003] NZRMA 316 (HC) 327-328.

Rural (Chapter 21)

Reverse Sensitivity

- (13) Reverse sensitivity is the legal vulnerability of an established activity to complaint from a new land use. Reverse sensitivity arises when new sensitive land-uses (e.g. residential activities) locate in close proximity to a lawfully established activity that may emit some adverse effects (e.g. noise). For land transport network operators, including the Transport Agency, there is a risk that new activities (such as houses and schools) that choose to locate near to established roads or railways may object to the effects of the land transport network (such as noise and vibration) and take action against the operator. The same issues arise around ports, airports and other infrastructure. Nationally, the Transport Agency receives in the order of ten complaints each month about noise from the State highway network, as recorded in its Customer Relationship Management System (2014). Complaints predominantly relate to noise experienced by residents living near to a State highway.
- (14) The meaning of “effect” is defined in Section 3 of the Resource Management Act (1991). The Environment Court has held that reverse sensitivity is an adverse effect under the RMA. It follows therefore that there is a duty, the same as with any other adverse effect, to avoid, remedy or mitigate reverse sensitivity effects, in order to achieve the RMA’s purpose of sustainable management. The Transport Agency suggests there is a shared responsibility for managing reverse sensitivity noise effects because it is neither practical nor reasonable for any one party to assume sole responsibility. The Transport Agency, Councils and landowners/developers must all assume responsibilities. For new or altered State highways the onus falls on the Transport Agency to address noise effects, whereas for new and altered noise sensitive activities near State highways the responsibility lies with Councils to include appropriate land use controls in district plans and on landowners/developers to implement them.
- (15) The Transport Agency and local authorities have a collective duty to balance the operation of an effective, efficient and safe land transport system with the desire of landowners to develop their land as they wish, or to enjoy their property free from unreasonable interference and nuisance. As the effects of a State highway usually extend beyond the road designation, it is appropriate to control the establishment of new activities close to State highways to reduce potential conflicts and manage reverse sensitivity effects.

- (16) Local authorities can ensure reverse sensitivity is efficiently managed by ensuring district plan provisions:
- impose separation and setback distances between sensitive activities and the road edge (environmental buffer areas),
 - encourage non-sensitive land use to separate residential or other sensitive activities from major transport corridors (land use buffers),
 - require design and construction standards to achieve appropriate internal noise and vibration levels within effects areas.
- (17) The proposed Policies 21.2.1.3, 21.2.4.2 and Objective 21.2.4 all seek to manage reverse sensitivity effects. For this reason the Transport Agency submitted in support of them. The Section 42A Report recommends retaining these policies and objective as proposed, or with minor amendments only. The Transport Agency therefore supports the recommendation of the Section 42A Report.
- (18) The Transport Agency has developed a stepped approach to protect sensitive activities. This approach is based around buffer and effects areas. I have **attached** a diagram of the buffer and effects areas as **Annexure A** to this evidence. To achieve a reasonable level of acoustic amenity, all noise sensitive activities in rural areas should be located outside of a buffer area, providing a setback from State highways. Beyond the buffer area new buildings containing noise sensitive activities need to be designed and constructed to achieve reasonable indoor acoustic amenity.
- (19) The proposed Rule 21.5.2 establishes appropriate setbacks from the State highway and for this reason the Transport Agency supported this rule. However, the Transport Agency also suggested this rule be amended to protect those new dwellings located outside the environmental buffer area (setback area) but still within the road noise effects area. I have **attached** the Transport Agency's submitted requested change to Rule 21.5.2 as **Annexure B** to this evidence.
- (20) The Section 42A Report recommends that the Transport Agency use the notified resource consent process, or its affected party status for non-notified applications to achieve appropriate internal noise levels for noise sensitive activities within the noise effects area. The Transport Agency disagrees with this recommendation which is likely to result in some situations where road noise mitigation is not appropriately addressed e.g. in those situations where the Transport Agency is not deemed an affected party, where the Transport Agency is not notified of an application, or

those situations where Council or a Hearing Committee do not impose the Transport Agency's requested condition.

- (21) Furthermore, without including the Transport Agency's proposed design construction standard to Rule 21.5.2 users of the proposed District Plan may incorrectly assume that building outside the setback area is beyond the noise effects area, when this is not necessarily the case. The Transport Agency suggests that it makes sense to include the noise standard within this rule. This will ensure developers are aware of their obligations to address potential reverse sensitivity effects in general accordance with the objectives and policies of proposed Chapter 3 – Strategic Direction.

Gibbston Character Zone (Chapter 23)

- (22) The Transport Agency submitted in support of Rule 23.4.14 which promoted Controlled Activity status for retail sales of produce that is grown, reared or produced on-site. The Transport Agency submitted that it is appropriate to reserve control over access, vehicle location and carparking to ensure the safety and efficiency of the State highway is maintained. The Section 42A Report suggests that a Controlled Activity status is appropriate to ensure the activity is undertaken in a manner that mitigates or remedies adverse effects. The Transport Agency agrees and supports the recommendation of the Section 42A Report.

Reverse Sensitivity

- (23) The Transport Agency submitted in support of Rule 23.5.6 which establishes appropriate setbacks from the State highway. However, the Transport Agency also suggested this rule be amended to protect those new dwellings located outside the environmental buffer area (setback area) but still within the road noise effects area. The section 42A Report recommends the Transport Agency submission be rejected and that the standards promoted by the Transport Agency be implemented through the resource consent process, by way of condition. For the reasons outlined under Rural (Chapter 21) above, the Transport Agency suggests that the proposed amendment outlined in its submission be included to the proposed District Plan.

Written Approvals

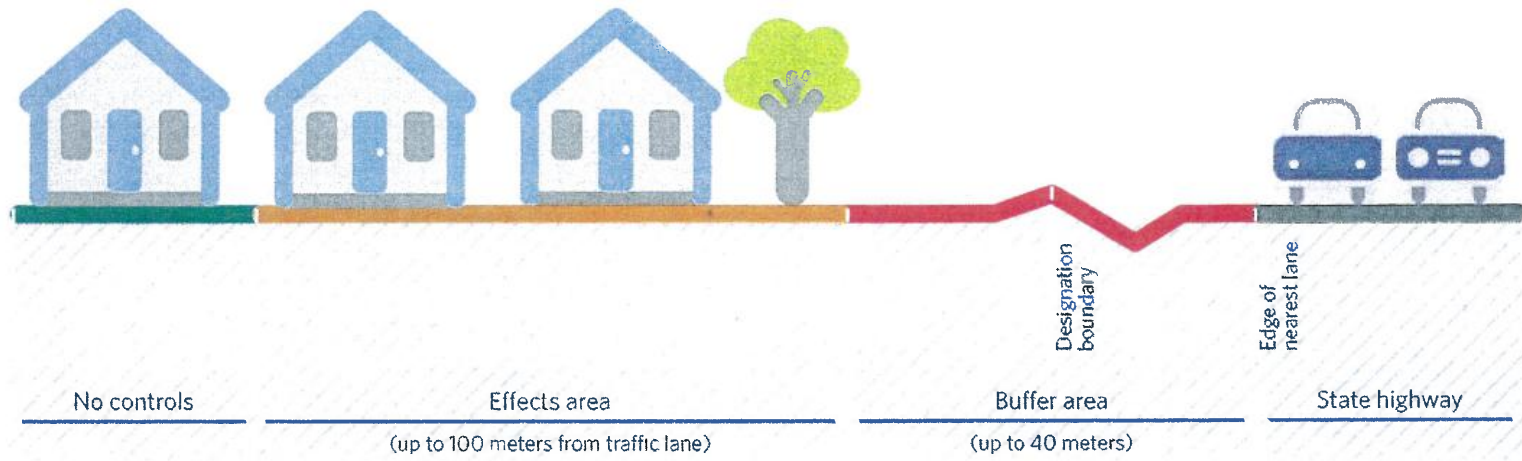
- (24) The Transport Agency submitted in opposition to Rule 23.6.2 which did not require applicants proposing winery and farm buildings to obtain the written approval of any persons. These activities are accorded Controlled Activity status in the proposed District Plan. Council proposed to reserve control over parking and access in respect of the impact on the safety and efficiency of State Highway 6. The Transport Agency submitted that it is inappropriate for Council to be making determinations over this and that it is the role of the Transport Agency, as the road controlling authority for State Highway 6, to assess accesses and their safety and efficiency on the State highway.
- (25) The Section 42A Report recommends amending Rule 23.6.2 to ensure the Transport Agency is deemed an affected party to those applications where the access is directly onto a State highway. Accordingly, the Transport Agency supports this recommendation which will enable the Transport Agency to sustainably manage the State highway.

Conclusion

- (26) The objective of the Transport Agency is to operate the State highway system in a way that contributes to an integrated, safe and sustainable land transport system.
- (27) For the reasons that I have stated, I recommend that if you are of a mind to adopt the proposed Chapters 21, 22 and 23 of the Queenstown Lakes proposed District Plan, that you do so subject to the aforementioned recommendations.
- (28) Thank you for your time and attention

Tony MacColl
20 April 2016

FIGURE 8: BUFFER AND EFFECTS AREAS



Appendix B

The Transport Agency's submitted requested change to Rule 21.5.2

Retain Rule 21.5.2 and add an additional Rule 21.5.2.1 as follows:

Any new dwelling, located within:

- 80 metres of the seal edge of a State Highway that has a speed limit of 70km/h and greater, or
- 40 metres of the seal edge of a State Highway that has a speed limit of less than 70 km/h.

Shall be designed, constructed and maintained to ensure that the internal noise levels for dwellings do not exceed 35 dB LAeq(1 hr) inside bedrooms or 40 dB LAeq(1 hr) inside other habitable spaces in accordance with AS/NZ2107:2000.