

**BEFORE THE HEARING COMMISSIONERS
AT QUEENSTOWN**

IN THE MATTER of the Resource Management Act 1991
(**RMA**)

AND

IN THE MATTER of the proposed the Queenstown Lakes
District Plan pursuant to Part 2 of the First
Schedule to Act

ON BEHALF OF RCL Henley Downs Ltd (**RCL**)

**LEGAL SUBMISSIONS ON BEHALF OF RCL
12 SEPTEMBER 2018**

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1. These submissions are made on behalf of RCL in relation to chapter 29 Transport.
2. The detailed changes sought by RCL are set out in its submission and the evidence of Mr Daniel Wells.
3. These submissions focus on the restricted discretionary matters of discretion and assessment for High Traffic Generating Activities. As notified, discretion was restricted to “effects on the transport network” with the assessment matters contemplating the imposition of a financial contribution for road improvements beyond a development site, including a monetary sum:¹

any proposed improvements to the local transport network within or **beyond the site**, including proposed additions or improvements to the active and public transport network and infrastructure and the roads themselves, in accordance with Council standards and adopted infrastructure network development plans either within or beyond the site. This may be required by direct construction activities, or **by collecting funds towards a wider project** that would achieve the modal shift aim of the specific development, as promoted in the application;
[emphasis added]

4. This is counter to the advice of Mr Stuart Crosswell to the Queenstown Lakes District Council (**QLDC**):²

Council is moving away from the use of financial contributions, and the QLDC 2017-2018 contributions policy confirms this. This approach reflects a higher level move away from financial contributions that is occurring at a national level, whereby the Developer Provision of Public Transport and Active Modes Infrastructure ability of Councils to levy financial contributions under the RMA is being removed through the Resource Legislation Amendment Act 2017, effectivity coming into force by 2022. We therefore do not recommend using financial contributions under the RMA to fund provision of public transport and active mode infrastructure.

5. This policy shift away from financial contributions recognises the difficulties in applying such contributions in a transparent, certain, and equitable manner. These difficulties have resulted in considerable litigation and uncertainty for councils and developers.
6. The Resource Legislation Amendment Act 2017's removal of financial contributions in in April 2022 recognises that development contributions under the Local Government Act 2002 (**LGA**) provide a superior method for contributing to the funding of community infrastructure.

¹ PDP Chapter 29, rule 29.4.10

² S 42A report for Chapter 29, Appendix 2

7. The rebuttal evidence of Ms Jones recommends an improved drafting for the assessment matter:³

Whether and to what extent:

Any improvements to the transport network within **or in the vicinity** of the site are proposed, including additions or improvements to the active and public transport network and infrastructure and the roads themselves, in accordance with road controlling authority's standards and adopted infrastructure network development plans either within **or beyond** the site;
[emphasis added]

8. This drafting is a substantial improvement on the notified version as the reference to a financial contribution has been removed.
9. The criteria is recommended to apply to the "vicinity" beyond the development site. What constitutes the "vicinity" of the site is uncertain. There are considerable benefits to both Council and developers of providing certainty as to the scope of resource consent assessment. As such, RCL seeks amendments to the matters of discretion and assessment as below:

Discretion is restricted to:

Effects on the traffic network within the site

....

Assessment matters

....

Any improvements to the transport network within ~~or in the vicinity~~ of the site are proposed, including additions or improvements to the active and public transport network and infrastructure and the roads themselves, in accordance with road controlling authority's standards and adopted infrastructure network development plans ~~either within or beyond~~ the site;

10. This provides a bright line test that transport improvements may be assessed and conditions imposed only in respect of the development site. In addition to the certainty provided, this change reflects that off-site transport requirements are assessed and improvements made when land is zoned for development. As addressed in the evidence of Mr Wells, to then re-open offsite transport issues at a resource consent stage is inequitable and a de facto down zoning of land.⁴
11. Moreover, transport networks improvements beyond a development site are properly the domain of development

³ Rebuttal evidence of Ms Jones, Appendix 1

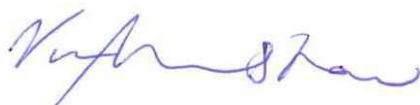
⁴ Evidence of Mr Wells at paragraph 19

contributions. The purpose of development contributions under the LGA is to:⁵

enable territorial authorities to recover from those persons undertaking development a fair, equitable, and proportionate portion of the total cost of capital expenditure necessary to service growth over the long term.

12. The QLDC 2017-2018 Contributions Policy states QLDC's intent to ensure the cost of growth sits with those who have created the need for that cost, rather than the community as a whole, by way of rating.⁶ To this end:
 - a. Development contributions are levied for developments depending on the transport demand characteristics of various development types; and
 - b. Growth related transport improvements are detailed and costed in the schedule to the contributions policy.
13. As such, growth related transport improvements will already be financed by developers. Section 200 LGA precludes development contributions being required where the developer will fund or otherwise provide for the same reserve, network infrastructure, or community infrastructure. If the Council requires off-site transport network improvements as a resource consent condition, then this will likely lead to disputes in respect of development contributions. The Council could rightly be accused of 'double dipping'.
14. The appropriate course is to have a principled delineation between the regimes of the RMA and LGA. Off-site transport improvements may still be offered as part of RMA consent applications by developers in appropriate cases. However, the plan should not provide a broad discretion to Council to require such.

DATE: 12 September 2018



Mike Holm / Vicki Morrison-Shaw
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⁵ Local Government Act 2002 s 197AA

⁶ QLDC 10 Year Plan 2018–2028 page 199