

Before the Hearing Panel

under: the Resource Management Act 1991

and: submissions and further submissions in relation to the
Queenstown Lakes Proposed District Plan

Hearing Stream 13
Queenstown mapping

and: **NZ Transport Agency**
Submitter

Opening legal submissions on behalf of NZ Transport Agency

Dated: 14 July 2017

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OPENING LEGAL SUBMISSIONS ON BEHALF OF NZ TRANSPORT AGENCY

INTRODUCTION

- 1 NZ Transport Agency (*Transport Agency*) is a submitter (719) and further submitter (1092) on the Proposed Queenstown Lakes District Plan (*Plan*).
- 2 The Transport Agency is generally supportive of the Plan, however the Transport Agency has some concerns regarding specific re-zoning requests by a number of submitters in the Frankton and Jacks Point areas.
- 3 The Transport Agency's key concern is ensuring the safe and efficient functioning of the State Highway network, and related to this is an interest in ensuring that business and commercial development does not locate along areas of the State Highway that are not equipped to deal with the increased traffic movements associated with such activity. Additionally, the Transport Agency wants to ensure that the Plan does not permit new accesses directly onto the State Highway, as this process is governed by the Government Roding Powers Act 1989 (*GRPA*), which operates separately from the Plan.
- 4 These submissions will cover:
 - 4.1 A brief background on the Transport Agency's statutory role and functions;
 - 4.2 Summary of the Transport Agency's position at the date of hearing;
 - 4.3 Explanation of the interaction between the GRPA and the Plan, and the importance of the Plan not permitting State Highway accesses that are governed by external processes;
 - 4.4 Summary of the environmental effects that the Transport Agency is concerned about; and
 - 4.5 Responses to rebuttal evidence.

BACKGROUND

- 5 The Transport Agency is established by section 93 of the Land Transport Management Act (*LTMA*). Section 94 of the LTMA defines the objective of the Transport Agency as being to undertake its functions in a way that contributes to an effective, efficient and safe land transport system in the public interest.
- 6 The functions of the Transport Agency identified in section 95 of the LTMA include:

- 6.1 To contribute to an effective, efficient, and safe land transport system in the public interest;
 - 6.2 To manage the State Highway system, including planning, funding, design, supervision, construction, and maintenance and operations, in accordance with the LTMA and the GRPA;
 - 6.3 To assist, advise, and co-operate with approved organisations (which includes territorial authorities and regional councils).
- 7 The Transport Agency must also have regard to other relevant policy documents and legislation, such as the Government Policy Statement on Land Transport, the GRPA, the Resource Management Act 1991 (*RMA*), the Safer Journeys Road Safety Strategy and the Energy Efficiency and Conservation Strategy.
- 8 It is in pursuance of these objectives and functions that the Transport Agency submitted on the Plan, and has prepared evidence for this hearing.

TRANSPORT AGENCY'S POSITION AS AT DATE OF HEARING

- 9 The Transport Agency is generally supportive of the Queenstown Lakes District Council's (*Council*) position set out in the 1A, 1B and 1D section 42A Reports, as discussed in the evidence of **Tony MacColl** and **Tony Sizemore**.

Frankton Flats area

- 10 The Transport Agency was generally supportive of the transport evidence produced by Wendy Banks on behalf of the Council, with the exception of her recommendation that up to 10ha of rural or medium density residential land could be rezoned to business mixed use zone (*BMUZ*) in the area north of State Highway 6 between Hansen Road and Ferry Hill Drive. The Transport Agency opposes any rezoning to *BMUZ* in this area.¹
- 11 In her statement of rebuttal evidence on behalf of the Council, Wendy Banks has changed her view on the 10 hectares of land that could potentially be rezoned to *BMUZ*, based on the Transport Agency's evidence.² Ms Banks' view is now that residential zoning is more appropriate from Hansen Road to Ferry Hill Drive. The Transport Agency supports this position.
- 12 The Transport Agency is of the view that Medium Density Residential Zone (*MDRZ*) or High Density Residential Zone (*HDRZ*) would be appropriate for the area north of State Highway 6 between Hansens Road and Ferry Hill Drive, as explained in **Tony MacColl's** evidence in chief. The Transport Agency disagrees with Kimberley Banks'

¹ Evidence in chief of Tony Sizemore dated 9 June 2017, paragraph 18.

² Rebuttal evidence of Wendy Banks on behalf of QLDC dated 7 July 2017, at paragraph 4.17

recommendation for the rezoning of areas along the north side of State Highway 6 between Hansen Road and Ferry Hill Drive from medium density residential back to rural zone.³

- 13 As set out in **Tony Sizemore's** rebuttal evidence, the Transport Agency has had discussions with the Otago Foundation Trust Board (*Trust Board*) regarding temporary access to the proposed church from the State Highway. The Transport Agency supports the MDRZ zoning sought by the Trust Board on the basis that there will be no permanent access directly onto the State Highway associated with the zone change.

Jacks Point Area

- 14 The Transport Agency remains concerned at the lack of detail provided by Jardine Family Trust and Remarkables Station Limited regarding traffic effects and the creation of new access(es) to State Highway 6 to service the proposed expansion of the Jacks Point development.
- 15 The Transport Agency would need to be satisfied that additional accesses are necessary, and are designed in a way that promotes the safe and efficient functioning of the State Highway network before it would be in a position to authorise additional accesses. This process is governed by the GRPA, which operates outside of the District Plan.

LEGAL ISSUES ARISING

Relationship between GRPA and the Plan

- 16 As stated in both **Tony Sizemore** and **Tony MacColl's** evidence for the Transport Agency, section 91 of the GRPA gives the Transport Agency the authority to authorise new accesses onto limited access roads.
- 17 The parts of State Highway 6 affected by the re-zoning submissions in the Frankton Flats area and the Jacks Point area are limited access roads. Therefore, under section 91 of the GRPA the Transport Agency's authorisation must be obtained before a new access onto the State Highway can be constructed.
- 18 The Transport Agency's authority under section 91 exists outside of the District Plan, and cannot be set-aside through District Plan Rules. In considering Plan Change 19 of the Queenstown District Plan, the Environment Court found it appropriate to add an advice note to Policy 4.4 of the Plan, explaining the Transport Agency's powers under the GRPA in relation to access to a limited access road.⁴ This confirms the Transport Agency's position that the

³ Evidence in chief of Tony MacColl dated 9 June 2017, paragraph 64

⁴ *Queenstown Airport Corporation Ltd v Queenstown Lakes District Council* [2014] NZEnvC 54 at paragraph 12 and Policy 4.4. in Appendix A.

authorisation required under the GRPA exists outside of the District Plan, and cannot be subverted by District Plan Rules.

- 19 This position appears to have been accepted by Council, and a number of advice notes are included in the Proposed Plan that refer to the requirement to consult with and/or obtain authorisation from the Transport Agency's under the GRPA.⁵ The Transport Agency supports the retention of these advice notes, and maintains that it is important that the District Plan does not (through Structure Plans, Policies or Rules) purport to permit additional accesses directly onto the State Highway without the prior approval of the Transport Agency.

EFFECTS ON THE ENVIRONMENT

- 20 As noted in **Tony Sizemore** and **Tony MacColl's** evidence, the Transport Agency is concerned about potential adverse effects associated with the re-zoning submissions in the Frankton Flats area and the expansion of the Jacks Point Zone. These concerns can be summarised as:

- 20.1 Safety of road users and pedestrians, particularly with regard to proposed BMUZ zoning on the north side of State Highway 6 between Ferry Hill Drive and Hansens Road; and
- 20.2 Efficiency of the state highway network, and the lack of capacity for State Highway 6 to deal with additional business or industrial development in the area north of State Highway 6 between Ferry Hill Drive and Hansens Road;
- 20.3 Traffic effects associated with expansion of the Jacks Point zone and associated additional State Highway accesses required by this development.

RESPONSES TO REBUTTAL EVIDENCE

Kimberley Banks on behalf of the Council

- 21 **Tony MacColl** discussed Policy 8.2.9.2 relating to stormwater design at paragraph 18 of his evidence in chief, noting that the use of the word "encourage" instead of "provided" weakens this policy. Kimberley Banks responds to this point at paragraph 5.36 of her rebuttal evidence. Ms Banks notes that the provisions of Chapter 27 (subdivision) and Policy 9.2.8.1 are sufficient to ensure appropriate analysis of stormwater design and effects. **Mr MacColl** has advised that he accepts Ms Banks' position.

⁵ For example, Policy 8.2.9.4, and Policy 9.2.8.3 and 9.2.8.4 (as per amended version attached to Kim Banks rebuttal evidence dated 7 July 2017) and Policy 41.5.7 relating to Jacks Point Zone.

- 22 **Mr MacColl** discussed Policy 8.2.9.6 (MDRZ) relating to development of land fronting State Highway 6, requesting that the advice note to this Policy be reinstated, with amendment as follows:

Note: Attention is drawn to the need to consult with the New Zealand Transport Agency (NZTA) ~~to determine compliance with this policy prior to determining walking and cycling network design under this policy.~~

- 23 Ms Banks discusses this, and recommends accepting **Mr MacColl's** proposed amendment by inserting the advice note into Policy 9.2.8.5 (HDRZ).⁶ The Transport Agency supports this recommendation; however notes that in the event that any MDRZ should remain along the Stage Highway, the same advice note should also be inserted into Policy 8.2.9.6 (MDRZ) for consistency.
- 24 **Mr MacColl** in his evidence in chief requested amendments to Rule 8.4.11.3 to require consultation with the Transport Agency relating to development of land fronting State Highway 6. Ms Banks has noted that these amendments are not necessary because of the amended wording of Rule 9.6 relating to notification in the HDRZ.⁷ The Transport Agency agrees that these rules largely alleviate the concerns raised by **Mr MacColl**, however in the event that any MDRZ remains along the State Highway, the notification rules in the MDRZ chapter 8 (Rule 8.6) will need to be amended so that they are consistent with Rule 9.6, and include exceptions for notification of the Transport Agency.

Ruth Evans of behalf of the Council

- 25 **Mr MacColl** had raised a concern in his evidence in chief that there was not a clear connection between Rule 15.4.3.2 and the standards in Rule 15.5. Ms Evans has responded to this, noting that Advice Note 15.3.2.1 clarifies the position, by stating that where an activity does not comply with a Standard the activity status in the 'non-compliance' column shall apply.⁸ The Transport Agency is satisfied with this position.

Wendy Banks and Vicki Jones on behalf of the Council

- 26 As noted above, Ms Banks has changed her views in recommending a maximum of 10ha of BMUZ in the Frankton Flats area. Ms Banks view, in response to the Transport Agency's evidence, is now that residential zoning is more appropriate in this area.⁹ The Transport Agency supports this position.

⁶ Rebuttal evidence of Kimberley Banks on behalf of Council dated 7 July 2017 at paragraph 5.38.

⁷ K Banks, paragraph 5.39.

⁸ Rebuttal evidence of Ruth Evans on behalf of Council dated 7 July 2017 at paragraph 4.2.

⁹ Rebuttal evidence of Wendy Banks on behalf of Council dated 7 July 2017 at paragraph 4.17.

- 27 Ms Banks also agrees with **Tony Sizemore's** Transport Agency evidence that further industrial/commercial developments along Hansen Road based on left in left out configuration would be inappropriate.¹⁰ The Transport agency supports this position.
- 28 With regard to the Jacks Point Zone expansion sought by Jardine Family Trust and Remarkables Station Limited, Ms Banks notes that any additional Homestead Bay access should only be formed if modelling shows that the addition of another access is the most appropriate way of providing access to an expanded Jacks Point Zone, in terms of safety and efficiency of the roading network.¹¹ The Transport Agency supports this position.
- 29 Overall, Ms Banks maintains her position in opposition to the Jacks Point rezoning submission from Jardine Family Trust and Remarkables Station Limited because effects on transport networks are not known.¹² The Transport Agency agrees that further information is required before effects on transport networks can be properly assessed. This is also consistent with the position outlined in Vicki Jones' rebuttal evidence on behalf of the Council.¹³

Andy Carr on behalf of Jacks Point Residents and Owners Association (JPROA)

- 30 Mr Carr has raised a number of concerns with Jason Bartlett's traffic assessment for the proposed expansion of the Jacks Point Zone.
- 31 Mr Carr is concerned that the proposed restricted discretionary activity status for new accesses to the State Highway, or increased use of existing accesses, will not be sufficient to achieve safe and efficient highway network.¹⁴
- 32 Mr Carr suggests two possible alternative solutions:
- 32.1 the rules could include matter of discretion so that any application to intensify Homestead Bay must assess efficiency of the Woolshed Road intersection, making allowance for full development of the balance of the Jacks Point Zone;¹⁵ or

¹⁰ W Banks, paragraph 4.23

¹¹ W Banks, paragraph 6.22.

¹² W Banks, paragraph 6.23.

¹³ Rebuttal evidence of Vicki Jones on behalf of the Council, paragraph 3.31 and 3.32 – Ms Jones agrees with Mr MacColl and Mr Sizemore that there is insufficient information to determine whether addition accesses in the vicinity of Homestead Bay would provide the most appropriate traffic outcome; and that it is critical that the roading within the Homestead Bay area is well connected to the rest of the Jacks Point Zone.

¹⁴ Rebuttal evidence of Andy Carr on behalf of Jacks Point Residents and Owners Association dated 7 July 2017, at paragraph 34.

¹⁵ A Carr, paragraph 36.

32.2 the rules could make intensification of Homestead Bay a Discretionary Activity until an additional point of access is provided onto the highway.¹⁶

33 The Transport Agency would support either of these two suggested approaches. As mentioned in **Mr MacColl's** rebuttal evidence, the Transport Agency is not obliged to grant approval for additional accesses onto the State Highway where there is already sufficient existing access. Therefore, requiring additional State Highway access as a pre-requisite to development (as suggested by Mr Bartlett) may halt development if it cannot be established that additional State Highway access is necessary. Mr Carr's proposed 'second approach' overcomes this issue by allowing intensification of Homestead Bay as a Discretionary Activity, so that development may proceed even if it is established that additional access to the State Highway is not required.

34 Mr Carr raises a number of concerns with the absence of information regarding the effects of additional traffic loadings associated with the proposed development. The Transport Agency also echoes these concerns. As explained in **Mr MacColl's** evidence, the Transport Agency would require more information before they would be able to approve any additional accesses.

EVIDENCE/WITNESSES TO BE PRESENTED

35 **Mr Tony MacColl** will be providing planning evidence and **Mr Tony Sizemore** will be providing transport evidence on behalf of the Transport Agency.

CONCLUSION

36 The Transport Agency is generally supportive of the position taken by Wendy Banks and Kimberley Banks in their rebuttal evidence on behalf of the Council.

37 The key priorities for the Transport Agency are:

37.1 Ensuring that there is no rezoning to BMUZ or other commercial or industrial zoning on the north side of State Highway 6 between Hansens Road and Ferry Hill Drive; and

37.2 Ensuring that the policy and rule framework for the Jacks Point Zone allows for detailed assessment of effects on the transport network before development proceeds. While the Transport Agency ultimately retains the ability to grant (or refuse) additional State Highway accesses under the GRPA, from an integrated planning perspective it is preferable that the developments envisaged by the District Plan align with

¹⁶ A Carr, paragraph 36.

the safe and efficient functioning of the State Highway network.

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