

APPENDIX H
CONSENT DECISIONS

DECISION OF THE QUEENSTOWN-LAKES DISTRICT COUNCIL

RESOURCE MANAGEMENT ACT 1991

APPLICANT:	Quail Rise Estate Limited
RM REFERENCE:	RM090658
LOCATION:	Ferry Hill Drive, Quail Rise, Queenstown
PROPOSAL:	Erect a dwelling
TYPE OF APPLICATION:	Land use
LEGAL DESCRIPTION:	Lot 50 DP27480, contained in Certificate of Title 284174
ZONING:	Quail Rise Special Zone, Open Space G Activity Area
ACTIVITY STATUS:	Non-complying
NOTIFICATION:	Publicly notified
COMMISSIONERS:	David W Collins and Christine Kelly
DATE:	3rd May 2010
DECISION:	Consent is declined

UNDER THE RESOURCE MANAGEMENT ACT 1991

IN THE MATTER OF an application by Quail Rise Estate Limited to the Queenstown-Lakes District Council for land use consent to erect a dwelling in the Open Space G Activity Area of the Quail Rise Special Zone at Ferry Hill Drive, Quail Rise.

Council File: RM 090658

DECISION OF DAVID W COLLINS AND CHRISTINE KELLY, HEARINGS COMMISSIONERS APPOINTED PURSUANT TO SECTION 34A OF THE ACT

THE APPLICATION AND THE SITE

1. This application was publicly notified as a proposal for two dwellings and a subdivision to create two rural-residential sized lots. That proposal has since been modified so that now only the dwelling on the area identified in the application as proposed lot 1 is proposed, and no subdivision is now proposed. Other modifications to the application are: additional planting is proposed around the proposed dwelling, covenants are volunteered to prevent any further residential development on this or any other Open Space G land in the applicant's ownership unless the zoning is changed, and a Land Management Covenant is proposed for the upper part of the application site.
2. Plans submitted with the application show that the dwelling proposed would be single storey (6.5 metres above ground level at the apex) with attached garaging. Vehicle access would be from an existing private accessway – Abbottswood Lane – which has a formed width of six metres. Substantial earthworks would be required to form the building platform and driveway, and a two metres high earth bund is proposed above the dwelling to protect it from potential debris flow.
3. The application originally proposed two dwellings and an application for subdivision to facilitate this was filed concurrently. Revised plans were filed on the 11th February 2010. While the revised plans generally (and substantially) reduce what is proposed, the proposed earthworks cut is increased by 1 metre and the proposed fill is increased by 400mm. This triggers the earthworks rule in the District Plan which specifies a maximum depth of fill of 2 metres - 2.4 metres maximum depth of fill is

now proposed. We are satisfied however that the application remains within the scope of what was advertised because the greater earthworks relate to the proposed earth bund and building platform and once the bund and dwelling are in place there are unlikely to be any significant environmental effects compared to the effects of the bund and dwelling on this part of the site in the application notified.

4. The application includes a "Landscape Concept Plan" showing an area for "tree planting" with a specification of tree species and spacings proposed, and an area of "shrub planting", which would have mixed native shrubs and grasses.
5. The proposed dwelling would connect to existing services in Abbottswood Lane and the evidence was that there is capacity in those systems for an additional dwelling.

SUBMISSIONS

6. Public notification of the application attracted five submissions, all requesting that consent is declined. Only one of the submitters, Mr David Ovendale, attended the hearing and after hearing the applicant's legal submissions Mr Ovendale indicated he believed he must withdraw his submission (presumably for the legal reasons advanced by the applicant's counsel) and left the hearing.
7. We were left with 3 submissions from an individual, a trust and two companies, all with interests in Quail Rise or adjoining land, all of whom express concern about the prospect of development in the Open Space G Activity Area. As these parties did not attend the hearing, we do not know if the change from two dwellings to one dwelling changes their stance on the application, but we presume not as they were advised of the amendments to the application and they did not withdraw their submissions.
8. The fifth submission was from the Otago Regional Council, and indicated *"To summarise, Council considers that there is insufficient information contained in the current application to ensure that the proposed mitigation measures are appropriate or will not create offsite adverse effects."*

STATUTORY ASSESSMENT FRAMEWORK

9. As discussed below, the application has the status of a non-complying activity and therefore has to be considered under sections 104, 104B, and 104D of the Act. Section 104 directs us to consider the actual and potential effects on the environment of the proposal, and the relevant provisions of applicable statutory documents – in

this case the Partially Operative District Plan, and the provisions of the Otago Regional Policy Statement relating to natural hazards.

10. Section 104B provides that we may grant consent, refuse consent, or grant consent subject to conditions.
11. Section 104D provides that in the case of a non-complying activity, we may grant consent only if the proposal will meet one or both of what are commonly referred to as the "*threshold tests*": either the adverse effects on the environment will be minor, or the proposal will not be contrary to the objectives and policies in the District Plan. There has been guidance from the courts on what "*minor*" and "*contrary to*" mean in this context.
12. Consideration under section 104 is "*subject to*" the purpose and principles of the Act set out in Part 2 of the Act. A relevant Part 2 matter here is the sustainable management of resources purpose of the Act set out in section 5, which is broadly enabling but subject to provisos including the imperative of avoiding, remedying, or mitigating adverse effects of activities on the environment.
13. As discussed below, section 6(b) within Part 2 is also relevant. It reads:
"The protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development." This is relevant because the proposed dwelling would be seen in the foreground of views of Ferry Hill, which is recognized in the District Plan as an Outstanding Natural Feature (ONF).
14. Other relevant Part 2 matters in this case are section 7(b) "*the efficient use and development of natural and physical resources*" and section 7(c) "*the maintenance and enhancement of amenity values.*"

THE HEARING

15. A hearing to consider the application was convened on the 15th March 2010. The applicant company was represented by Mr Jim Castiglione and Ms Jane Laming. Evidence was given by Mr James Hadley – civil engineer, Mr Robin Rawson – landscape architect, and Mr Carey Vivian – planner.
16. We had the benefit of comprehensive reports from the Council's regulatory agent, Lakes Environmental Limited, prepared by Mr Tim Williams – planner, Ms Helen

Mellsop – landscape architect, and Ms Annemarie Robertson – engineer. These reports had been pre-circulated to the parties.

17. Rather than summarizing the case for the applicant, the submissions and the section 42A reports from Lakes Environmental Ltd, we will discuss the legal submissions and the evidence and reports under a series of headings below.

DISTRICT PLAN PROVISIONS

18. The application site is within the Open Space G Activity Area within the Quail Rise Special Zone. Consent is required under the following rules:
 - A restricted discretionary activity consent pursuant to Rule 12.15.5.1(iii)(1)(b) because the total volume of earthworks (1,879 m³) exceeds the 100m³ per site maximum.
 - A restricted discretionary activity consent pursuant to Rule 12.15.5.1(iii)(1)(b) because the area of proposed earthworks (2,150m²) exceeds the 200m² maximum standard.
 - A restricted discretionary activity consent pursuant to Rule 12.15.5.1(iii)(2)(b) because a maximum earthworks cut of 3.4 metres is proposed exceeding the 2.4 metres maximum in the standard.
 - A restricted discretionary activity consent pursuant to Rule 12.15.5.1(iii)(2)(c) because the maximum depth of fill of 2.4 metres proposed exceeds the 2 metres maximum depth standard.
 - A non-complying activity consent pursuant to Rule 12.15.3.4(vii) because a building is proposed within the Open Space G Activity Area.
 - A non-complying activity consent pursuant to Rule 12.15.5.2(i) because the subject site is part of Lot 6, DP300296 where a maximum of 44 residential units are permitted and 54 residential units have already been created.

STATUS OF THE SUBMITTERS

19. Mr Castiglione drew our attention to encumbrances on the titles of properties in Quail Rise which prohibit submissions or objections to subdivision and development applications made by the applicant company. He submitted that Queenstown Holdings Property Limited v QLDC (C1198) is authority that “...*a non-objection covenant constitutes written approval.*” We are not convinced that the circumstances here are the same as in the Queenstown Holdings Property Limited case because in that case the covenants specified the type of development (a supermarket) which covenantors were prevented from opposing, while here the

encumbrances do not indicate that the coventors (or previous owners) gave approval to this particular proposal. We appreciate that the applicant company may have other legal remedies if these submitters have acted unlawfully by lodging submissions, but our concern is just whether they should be discounted as Mr Castiglione advocates on the grounds that they are effectively written approvals. We do not believe they should be discounted, but we wish to make it clear that the outcome of this decision would be the same whether or not those submissions were taken into account.

20. That is partly because the submission from Slant Investments Limited is not affected by the encumbrance argument. At the time of notification, Slant Investments Limited owned the property to the west of the application site, but has apparently sold it since. Mr Castiglione submitted that because the submission refers to adverse effects on that property and the submitter no longer owns the property, the submission is no longer relevant. We have difficulty with that argument because we see nothing to prevent Slant Investments Limited from pursuing the submission in opposition on behalf of the new owner. In fact, there may even be a contractual obligation to do so.

THE "PERMITTED BASELINE"

21. Mr Vivian's evidence noted that the District Plan would permit fences and walls up to two metres in height, the planting of vegetation except wilding species, structures less than 5m² in area and two metres in height, earthworks within the relevant site standards relating to area exposed and heights of cut and fill, and structures such as play equipment related to outdoor recreational activities. We accept that, although it does seem unlikely that any owner of this land would have a need for solid walls, or that there would be any economic incentive to plant something like an orchard or have the need even for the small shed permitted. We do not see the permitted baseline as providing a useful comparison for the much more substantial structure and earthworks proposed.

POSITIVE EFFECTS

22. Consent for this dwelling would enable a household to meet its needs for a pleasant living environment. The weight we can give to that is however limited because we have no evidence that households are presently unable to meet their needs in this area, or the wider district, because of a shortage of building sites.

22. In our assessment the proposal represents "*efficient use and development*" of resources (section 7(b) of the Act) in that according to Ms Robertson's engineering report "*...there is capacity in existing water and sewer networks*" that could be used and Abbottswood Lane has capacity for the additional traffic.
23. It was argued on behalf of the applicant company that consent would enable better management of this 1.1 hectare property. That is possible, depending on the energy and aspirations of the future owners, but bearing in mind that the adjoining land above the site to the south-west is owned by the applicant company, fragmentation of ownership could equally make management more difficult.

GEOTECHNICAL ISSUES

24. This proposal raises two geotechnical issues: the short term matter of potential problems during creation of the building platform, driveway, and protection bund, and the long term issue of the potential for debris flow and stormwater to affect the proposed dwelling or other physical resources. With earthworks of this scale, there is always the danger of problems if there is heavy rain at the time when large areas are exposed and cut faces are unsupported. There is considerable experience in this District in managing this risk however and we are satisfied that with standard conditions and good engineering practice and supervision, this risk is acceptable.
25. Turning to the wider issue of the general stability of this hillside, there is no dispute that this area is prone to shallow slips. A major storm event in 1999 apparently led to debris flows which blocked watercourses and caused flooding.
26. The submission from the Otago Regional Council refers to the geotechnical investigations that have been carried out for the applicant company (and were included in the application), but questions whether there is sufficient information to give confidence that the mitigation measure of a substantial planted bund above the dwelling would be appropriate. More specifically, the submission mentions that maintenance of the structure would be important and suggests that the bund could actually create instability through slope loading. The submission also raises the concern that deflection of overland flood and debris flows could adversely affect adjacent properties.
27. Dealing with the last point first, Mr Hadley assured us that the bund would not divert debris and water towards the garage on the neighbouring property to the north. It

must therefore be intended to divert water and debris in the other direction - towards Abbottswood Lane. In minor storm events we understand the bund is intended to stop slip material from moving further but we have a concern that in a major event the effect of the bund would be to concentrate more water and debris at a single point.

28. Although no representative of the Otago Regional Council attended the hearing, a letter to Lakes Environmental Limited dated 5th March 2010 was tabled. The letter expressed the view that a plan change would be the more appropriate process for considering whether this land is suitable for residential development, through a wider natural hazard assessment of the area. A further letter dated 12th March 2010 reiterated the Regional Council's position that "*...there is insufficient information contained in the application to ensure that the proposed mitigation measures are appropriate, and will not exacerbate adverse effects at or beyond the subject site.*"
29. Ms Robertson's report expressed confidence in the modified design of the bund (further information provided on the 11th February 2010, with copies sent to submitters), but reiterates one of the points made in the Otago Regional Council submission: "*... whether it is preferable for the risk to be avoided altogether.*" Overall, while we accept that the engineering solution proposed would probably protect the proposed house and would be unlikely to create problems for adjoining properties except at times of very exceptional storm events when there is an existing and unpredictable hazard anyway. Still, our perception is that it is better to avoid building in areas where such substantial protection works are necessary.

EFFECT ON LANDSCAPE

30. We accept that it is not appropriate to classify the application site in terms of the landscape classifications applied when assessing development in the Rural General Zone. The evidence from both the applicant's landscape architect, Mr Rawson, and the Lakes Environmental landscape architect, Ms Mellsop, was that the proposed house would have little effect on the recognized Outstanding Natural Feature (ONF) of Slope Hill above a Quail Rise Special Zone. The house and associated planting would only be marginally visible from viewpoints on the other side of the Shotover River and would just form part of the urbanized foreground to views of Slope Hill.
31. The significant landscape effects would be effects on the landscape and amenities of the immediate area of the application site. The application site is a steep grassed

hillside with some Lombardy poplars and other lesser scattered vegetation. It has an attractive hummocky terrain with similar landscape character to the land above and on either side. We have no doubt that the application site contributes significantly to the rural outlook and amenities of the Quail Rise residential area. That is not diminished by the fact that, as Mr Castiglione pointed out, the public has no right of access to the land.

32. The question then is whether the proposed house would detract from this. For the applicant it was argued that the house would fill a gap in the row of houses forming the urban edge. The same could be said for building on a neighbourhood reserve.
33. After looking at the site from Ferry Hill Drive, we consider that the gaps between the houses along the contour are important for the glimpses they afford through to the open hillside behind and above. Abbottswood Lane provides such a glimpse, but the main, and we believe the most important, view of the application site from Ferry Hill Drive is across the corner of the applicant site where the dwelling would be sited. The proposed house would mean that a rural view would be replaced by an urban element. The necessary bund and the planting required on and around the bund to assist its function would also impede the view of the rural hillside from Ferry Hill Drive and undermine the landscape character of the application site.
34. We are concerned too about the effect of activities that could be expected within the curtilage area of the house, such as storage of boats etc, children's play equipment, barbeque areas and gardens. The amended Landscape Concept Plan shows the large area for such activities extending the length of the Abbottswood Lane frontage. When we questioned this, it was volunteered that the defined curtilage area it could be reduced to just extend to the south end of the bund. Even with curtilage activities confined to that north-east corner of the property, we consider that the contribution to the amenity of Ferry Hill Drive would be substantially diminished because these "domestic" elements would be in the foreground of the view shaft from Ferry Hill Drive into the site.

THE PROVISIONS OF THE QUAIL RISE SPECIAL ZONE

35. The provisions for this zone are set out in Part 12.14 of the Partially Operative District Plan. At 12.14.3, Objective 1 for the zone reads:

"To enable the development of low density residential activities in conjunction with planned open space and recreational opportunities."

36. The most relevant policies under this objective read:
- “1.1 To ensure development is carried out in a comprehensive manner in terms of an appropriate strategy and to ensure that activities are compatibly located.*
 - 1.2 To ensure that open space is maintained and enhanced through appropriate landscaping in the absence of buildings and other structures.*
 - 1.3 To ensure open space is developed in a comprehensive manner.*
 - 1.4 To avoid any deviation to the Structure Plan for the zone.”*
37. In our assessment the application is directly contrary to this objective and these policies. It is clear from the Structure Plan and the fact that Rule 12.15.3.4(vii) makes building in the Open Space G Activity Area non-complying, that the District Plan intends Quail Rise to develop according to a comprehensive plan and that this property is not intended to be available for residential development.
38. It was suggested at the hearing that the activity area boundary at this point is anomalous. That may be the case, but we are reluctant to question elements of a comprehensive plan supported by such clear policies through a resource consent process. Any alterations to the Structure Plan should be assessed comprehensively through the private plan change, which we understand is in the course of preparation.
39. Objective 2 for the zone reads:
- “To conserve and enhance the physical, landscape and visual amenity values of the Quail Rise Zone, adjoining land, and the wider environment.”*
40. Relevant policies include:
- ”2.1 To ensure the external appearance of buildings and other structures are appropriate to the area.*
 - 2.2 To avoid activities that are incompatible with and/or compromise the amenity of the Quail Rise Special Zone, through appropriate rules.*
 - 2.3 To avoid activities and development that have the potential to adversely affect the openness and rural character of the zone, adjoining land, and the wider environment.*
 - 2.4 To avoid buildings in areas of high visibility.”*
41. We read this objective and these policies as again emphasizing the comprehensive intention of the special zone. While the external appearance of the proposed building

would be appropriate, its siting in an area intended to remain open would undermine the amenity and rural character provided by this particular part of the Quail Rise Special Zone. It would be highly visible from within the zone.

42. The third objective in the Quail Rise provisions in the District Plan reads:
“Servicing to avoid adverse effects on the landscape, lakes, rivers and ecological values.”
43. The single policy under this objective simply clarifies that the services referred to are sewage disposal, water supply and refuse disposal.
44. Mr Carey’s evidence and Mr William’s report both referred to some objectives and policies in the District Wide part of the District Plan. In our assessment they are of far less relevance than the specific objectives and policies for this area discussed above.
45. For the purpose of the section 104D “threshold test” we are required to take an overall view of the objectives and policies in the District Plan. It is appropriate to give more weight to the more specific objectives and policies than to the more general ones applying to the whole District. Arguably the proposal is not in direct conflict with the District wide objectives and policies, but as discussed above we consider there is direct conflict with Objective 2 for the Quail Rise Special Zone and policies 1.1, 1.2, 1.3, 1.4, 2.2, 2.3, and 2.4. In our assessment the proposal is clearly contrary to the objectives and policies in the District Plan.
46. Turning to the alternative “threshold test”, we are mindful that the test does not involve a weighing of positive and negative effects – simply an assessment of whether adverse effects would be more than minor. We accept that as the possibility of adverse effects from the proposed bund are somewhat speculative and in any case would not be disastrous, geotechnical effects can be regarded as minor. As discussed above however we believe the effects on the immediate landscape and amenities of the Quail Rise residential area would be significant and accordingly we have come to the view that the proposal cannot meet either of the “threshold tests” in section 104D of the Act.
47. Even if the proposal had passed the threshold test, we would have been concerned about the effect of consent on the integrity of the District Plan and the likelihood that

consent would create an unfortunate precedent. Our reading of the Plan is that the Quail Rise Zone is based firmly on the comprehensive design of the Structure Plan. Mr Carey noted that consents had been granted for some lot boundaries to not follow the subzone boundaries shown on the Structure Plan, but as far as we are aware those lots have also had encumbrances on the titles to ensure compliance with the intent of the Structure Plan – specifically, that buildings are not constructed on areas intended to be left open. The present application presents a much more direct conflict with the Structure Plan.

48. Mr Castiglione volunteered a condition backed up by covenants “...to prohibit residential building resource consents (sic) being made for the site or any other G Activity Area within the applicant’s ownership until Plan Change 37 has been determined.” That would eliminate the precedent effect for the applicant company’s land, however there are already other owners with Open Space G Activity Area land and the offered covenants would not cover their properties.

DECISION:

For the reasons set out above, consent is hereby declined.

Handwritten signature

David W Collins
Christine Kelly
Hearings Commissioners
3rd May 2010

File: RM080930
Valuation Number: 2907147600

12 September 2008

Parshelf 49 Ltd
Att: Brett Giddens
C/- Lakes Consulting Group Ltd
PO Box 2559
QUEENSTOWN 9348

Dear Sir

DECISION OF THE QUEENSTOWN LAKES DISTRICT COUNCIL

RESOURCE MANAGEMENT ACT 1991

PARSHELF 49 LIMITED - RM080930

We refer to your application for land use consent under Section 88 of the Resource Management Act 1991 to construct and site a garage/storage building to be utilised for non commercial wholly residential activities within the road boundary setback. The application was considered under delegated authority pursuant to Section 34 of the Resource Management Act 1991 on 11 September 2008. This decision was made and its issue authorised by Jane Sinclair, Independent Commissioner, as delegate for the Council.

The subject site is located at 179 Frankton-Ladies Mile Highway (SH6) and is legally described as Lot 1 DP 308784.

Under the Partially Operative District Plan the site is zoned Rural General and the proposed activity requires:

- A **discretionary** activity pursuant to Rule 5.3.3.3[i](a) for the addition, alteration or construction of any building; and any physical activity associated with any building such as roading, landscaping and earthworks.
- A **non complying** activity pursuant to Rule 5.3.3.4(a)(vi) whereby the proposed activity will result in buildings being sited 6m from the road boundary and within the required 50m road boundary setback required pursuant to Zone Standard 5.3.5.2 [ii] .

Overall, the proposal was considered as a **non-complying** activity.

The application was considered on a non-notified basis in terms of Section 93(1)(b) whereby the consent authority were satisfied that the adverse effects of the activity on the environment will be minor and in terms of Section 94(2) whereby no persons were, in the opinion of the consent authority considered to be adversely affected by the activity.



Decision

Consent is GRANTED pursuant to Section 104 of the Act, subject to the following conditions imposed pursuant to Section 108 of the Act:

General Conditions

- 1 That the development be carried out in accordance with the plans (**082-08-PLAN-7, 082-08-PLAN-7 Trees to be Retained, TOTALSPAN Elevations/layout– stamped as approved 11 September 2008**) and the application as submitted, with the exception of the amendments required by the following conditions of consent.
- 2 That unless it is otherwise specified in the conditions of this consent, compliance with any monitoring requirement imposed by this consent shall be at the consent holder's own expense.
- 3 The consent holder shall pay to the Council an initial fee of \$100 for the costs associated with the monitoring of this resource consent in accordance with Section 35 of the Act.

Landscaping and Design

- 4 Final exterior colours of the building shall be submitted to Queenstown-Lakes District Council for approval prior to development commencing. Approved colours shall appear appropriately recessive (less than 36% light reflectance value) in the context of the surrounding landscape over all seasons of the year, and should be in the natural range of greens or greys.
- 5 Those trees identified within the area denoted "trees to be maintained" on the plan stamped as approved 11 September 2008 shall be retained as such and if any tree should die or become diseased it shall be replaced with same or similar species within the first planting season.

Provision of Services

- 6 All engineering works shall be carried out in accordance with the Queenstown Lakes District Council's policies and standards, being New Zealand Standard 4404:2004 with the amendments to that standard adopted on 5 October 2005, except where specified otherwise.
- 7 Prior to the commencement of any works on the land being developed the consent holder shall provide to the Queenstown Lakes District Council for review and approval, copies of specifications, calculations and design plans as is considered by Council to be both necessary and adequate, in accordance with Condition (6), to detail the following engineering works required:
 - a) The provision of a stormwater disposal system that is to provide stormwater disposal from all impervious areas within the site. The proposed stormwater system shall be designed by a suitably qualified professional as defined in Section 1.4 of NZS4404:2004 and subject to the review of Council prior to implementation.
- 8 Prior to the occupation of the building, the consent holder shall complete the following:
 - a) The completion of all works detailed in Condition (7) above.
 - b) Any power supply and telecommunications connections to the building shall be underground from existing reticulation and in accordance with any requirements/standards of Aurora Energy/Delta and Telecom.

Review

- 9 Within ten working days of each anniversary of the date of this decision the Council may, in accordance with Sections 128 and 129 of the Resource Management Act 1991, serve notice on the consent holder of its intention to review the conditions of this resource consent for any of the following purposes:



- (a) To deal with any adverse effects on the environment that may arise from the exercise of the consent which were not foreseen at the time the application was considered and which it is appropriate to deal with at a later stage.
- (b) To deal with any adverse effects on the environment which may arise from the exercise of the consent and which could not be properly assessed at the time the application was considered.
- (c) To avoid, remedy and mitigate any adverse effects on the environment which may arise from the exercise of the consent and which have been caused by a change in circumstances or which may be more appropriately addressed as a result of a change in circumstances, such that the conditions of this resource consent are no longer appropriate in terms of the purpose of the Resource Management Act 1991.

Advice Note

The Council may elect to exercise its functions and duties through the employment of independent consultants.

Reasons for the Decision

Proposal

Land Use Consent is sought to construct a garage/storage building at a site adjoining the Frankton – Ladies Mile Highway (SH6). The application describes the structure's dimensions as 23.9m in length, 11.8m in width and 6.3m in height. The building has roller doors on the northern and eastern sides, two windows opening along the rear of the building, and sky lights within the roof. The applicant describes the structure as being clad in coloursteel and rendered in natural, recessive tones. The building will be orientated lengthways parallel to SH6 and will be sited 6m from the road boundary. Given the required setback from the road boundary is 50m and the application proposes a considerably reduced setback of 6m, it is for this reason that consent is required.

The structure will be used for storage of the "applicant's vehicles (cars, trucks and boats), general equipment, and odds and ends". It is considered that such use is consistent with what is defined as encompassing 'residential activities'.

The application site is a rectangular 9155m² lot on the northern side of the highway opposite Glenda Drive and the Frankton industrial area. A thick conifer shelter belt lines the road boundary and behind this are a dwelling, shed, garage and glasshouse. Conifers have also been established on the eastern boundary. The majority of the site is in grass and the boundaries are fenced with post and wire.

The site is part of a visual amenity landscape, as defined by Environment Court Decision C203/2004, and is shown as such in the landscape categorisation maps appended to the District Plan (Appendix 8A – Map 1).

Effects on the Environment

Land, Flora and Fauna

The structure will be constructed upon what is currently a modified grassed area. No removal of existing trees or features is proposed, however some earthworks will be necessary to establish the footings and foundation of the structure. These earthworks are described as comprising the movement of no more than 300m³ within an area less than 500m² and as such do not trigger the need for specific earthworks consent.

It is considered that any effects pertaining to land, flora and fauna will be de minimus.

Infrastructure

Although no mention is made in the application of what services or connections are proposed, it is considered that sufficient provision/capacity for services exist in the area.

Should the applicant desire to connect the structure to services, it is considered appropriate to enable such by way of conditions of consent to ensure that such connections are to the satisfaction of council.

As such, no adverse effects are anticipated with regard to infrastructure.

Natural Hazards

The proposal will not exacerbate or be subject to any previously identified natural hazards.

People and Built Form

The activity proposed will occur on Rural General land and will also trigger rules pertaining to boundary setbacks, specifically being within the 50m road boundary setback.

Given the desired locale of the proposed activity and the potential for adverse effects, a landscape assessment report was requested as part of the consideration of the proposed activity. The resultant assessment conducted by Lakes Environmental's Landscape Architect is included below and puts into context those potential effects identified above.

"The site is part of a visual amenity landscape, as defined by Environment Court Decision C203/2004, and is shown as such in the landscape categorisation maps appended to the District Plan (Appendix 8A – Map 1). The relevant landscape assessment matters for the application are therefore to be found in Part 5.4.2.2 (4) of the District Plan. I have applied these assessment matters and have the following comments to make.

The proposed shed replaces an existing building on the site but will be less visible from the Frankton-Ladies Mile Highway, as it will be set further back from the site access. The road is somewhat below the proposed shed site and only glimpses of the structure would be available through the conifer shelter belt. If a recessive exterior colour such as a dark grey or green is used for the shed I consider the structure would have no adverse effects on the natural or pastoral character of the landscape.

The proposed shed would be partly visible from the unformed legal road to the east and from neighbouring dwellings in this direction. This could include some future dwellings in Stage 6B of the Quail Rise subdivision. Visibility would be greater in winter when intervening deciduous trees are not in leaf. Conifer planting on the eastern site boundary and proposed tree planting on the eastern side of the shed will partially screen and soften views of the structure from these vantage points if an appropriate species is used. I consider a recessively coloured shed would have no significant adverse effects on the natural or pastoral character of views from the dwellings or from the unformed road. The shed would not interfere with visual access to open space from neighbouring properties. It would also be consistent with traditional rural elements.

The proposed structure is located within the 50-metre road boundary setback along the Frankton-Ladies Mile Highway. It therefore infringes zone standard 5.3.5.2(ii) and is a non-complying activity in this respect. I consider the proposal would have no significant adverse effects on the amenity of the approaches to Queenstown as it replaces an existing structure of similar scale and will be only minimally visible from the road.

Since the shelter belt lining the road is an important mitigating element for the proposal, I consider an amended site plan should be submitted specifying retention and ongoing maintenance of these trees. The proposed species of the tree planting to the east of the shed should also be shown".

Given the physical characteristics of the site, the context of the immediate surrounds and the finite nature of the activity, it is not anticipated that the proposed works will result in a more than minor effect to amenity, views and outlook.

The findings of the Landscape Assessment are accepted and therefore it is considered that the effects will be minor and that no parties will be adversely affected by the proposed activity.

Culture

The proposal does not affect any known heritage, archaeological or cultural items on site.

Traffic Generation and Vehicle Movements

Access to the site will be achieved via the sites existing vehicle crossing onto SH6. The structure is in an elevated position compared to the ground level along SH6. It would appear that historical works to lower the level of SH6 and lessen the crest of the hill have resulted in the ground level of the site remaining elevated above SH6. The applicant will utilize the existing vehicle crossing onto the site, hence any potential effects will be no greater than as occurs as of right. As the structure will be constructed behind an established row of trees which provide effective screening, and it is a requirement of consent that such screening be retained and maintained, the effects of the activity upon adjoining SH6 will be nil. In this regard it is not necessary to consult with the NZ Transportation Agency.

Given the proposed structure is required in association with an established residential activity, it will not generate additional vehicle movements than are expected to occur on site as of right. Adequate provision for parking exists on the site and no material adverse effects are anticipated with regards to traffic generation and vehicle movements.

Nuisance

Some noise and dust can be expected in association with the proposed works during construction of the structure. It is considered that given the garage is of a pre-fabricated design and sufficient separation exists between the site and adjoining residential properties to sufficiently mitigate any effects associated with noise and dust. Such potential effects can be considered minor and conditions sufficient to mitigate any potential adverse effects are regarded as appropriate.

Overall, the adverse effects on the environment of the activity for which consent is sought will be no more than minor.

Policies and Objectives

The objectives and policies most relevant to the application are contained in Part 5 of the Partially Operative District Plan. The relevant policies and objectives aim to:

Objective 1 - Character and Landscape Value

To protect the character and landscape value of the rural area by promoting sustainable management of natural and physical resources and the control of adverse effects caused through inappropriate activities.

- 1.1 *Consider fully the district wide landscape objectives and policies when considering subdivision, use and development in the Rural General Zone.*
- 1.6 *Avoid, remedy or mitigate adverse effects of development on the landscape values of the District.*
- 1.7 *Preserve the visual coherence of the landscape by ensuring all structures are to be located in areas with the potential to absorb change.*

It is considered that the height, proposed design controls on cladding materials and colours as well as the provision of a landscape plan and maintenance of existing vegetation will mitigate any potential adverse effects of the proposed development on the surrounding visual amenity landscape.

Objective 3 - Rural Amenity

Avoiding, remedying or mitigating adverse effects of activities on rural amenity.

- 3.3 *To avoid, remedy or mitigate adverse effects of activities located in rural areas.*

The proposed structure will be sited in a similar position to the existing tunnel/green house on the site. This siting is well elevated in comparison owing to the adjoining SH6 having been lowered over time

to remove the crest of the hill. It is considered that the siting of the structure 6m from the road boundary on a comparatively elevated position behind existing vegetation to be maintained along a stretch of highway bordered along one side by industrial land and the locale typified by dwelling/structures sited within 50m of SH6 will as a consequence have a comparatively minor effect.

Overall, it is considered that the proposal is consistent with the relevant assessment matters, policies and objectives located within Part 5 Rural Areas of the Partially Operative District Plan.

Other Matters

Local Government Act 2002: Development Contributions

In granting this resource consent reference was made to Part 8 Subpart 5 Schedule 13 of the Local Government Act 2002 and the Council's Policy on Development Contributions contained in Long Term Council Community Plan (adopted by the Council on 25 June 2004).

This proposal is not considered a "Development" in terms of the Local Government Act 2002 as it will not generate a demand for network infrastructure and reserves and community facilities.

For the forgoing reasons a Development Contribution is not required.

Administrative Matters

The costs of processing the application are currently being assessed and you will be advised under separate cover whether further costs have been incurred.

Should you not be satisfied with the decision of the Council, or certain conditions, an objection may be lodged in writing to the Council setting out the reasons for the objection under Section 357 of the Resource Management Act 1991 no later than 15 working days from the date this decision is received.

You are responsible for ensuring compliance with the conditions of this resource consent. The Council will contact you in due course to arrange the required monitoring. It is suggested that you contact the Council if you intend to delay implementation of this consent or reschedule its completion.

This resource consent is not a consent to build under the Building Act 1991. A consent under this Act must be obtained before construction can begin.

Please contact the Council when the conditions have been met or if you have any queries with regard to the monitoring of your consent.

This resource consent must be exercised within five years from the date of this decision subject to the provisions of Section 125 of the Resource Management Act 1991.

If you have any enquiries please contact Aaron Burt on phone (03) 450 0322.

Prepared by
LAKES ENVIRONMENTAL LTD

Reviewed by
LAKES ENVIRONMENTAL LTD

Aaron Burt
PLANNER

Paula Costello
PLANNER

File:RM060574
Valuation: 2910223100

2 August 2006

Southern LC Limited
C/- Scott Freeman Consulting
PO BOX 1081
QUEENSTOWN

Dear Sir / Madame

DECISION OF THE QUEENSTOWN LAKES DISTRICT COUNCIL

RESOURCE MANAGEMENT ACT 1991

SOUTHERN LC LIMITED – RM060574

We refer to your application for land use consent under Section 88 of the Resource Management Act 1991 to place buildings/structures on an existing site. The application was considered under delegated authority pursuant to Section 34 of the Resource Management Act 1991 on 2 August 2006. This decision was made and its issue authorised by Jane Sinclair, Independent Commissioner, as delegate for the Council.

The subject site is located at 27-34 Margaret Place, Frankton, Queenstown. The site is legally described as Lot 18 and Lot 19 DP 19871, and held on Certificates of Title OT13B/921 and OT13B/920.

Between 31 August and 14 September 1998 the decisions on submissions to the Proposed District Plan were progressively released. Section 88A of the Resource Management Act 1991 requires all applications received after notification of decisions to be assessed in terms of these decisions and any amendment thereto. Under these decisions the site is zoned Industrial and the proposed activity requires resource consent for the following reasons:

- 1 A **controlled activity** consent pursuant to Rule 11.2.3.2. with regard to buildings. Council's control is with respect to landscaping, external appearance and visual impact on the streetscape.
- 2 A **non-complying activity** consent pursuant to Rule 11.2.3.4 (v) Any activity which is not listed as a prohibited activity and does not comply with one or more of the zone standards shall be a non-complying activity.

The proposal does not comply with Zone Standard 11.2.5.2 9(ii) Noise, non-residential activities shall be conducted so that the following noise limits are not exceeded at the boundary of this zone:

- 0800 – 2000hrs 60dBA L
- 2000 – 0800hrs 50dBA L and 70dBA L

The proposal complies with all other Site and Zone Standards, therefore overall the proposal was considered as a **non-complying** activity.

The application was considered on a non-notified basis in terms of Section 93(1)(b) whereby the consent authority were satisfied that the adverse effects of the activity on the environment will be minor and in terms of Section 94(2) whereby no persons were, in the opinion of the consent authority considered to be adversely affected by the activity.

Decision

Consent is GRANTED pursuant to Section 104 of the Act, subject to the following conditions imposed pursuant to Section 108 of the Act:

Conditions

- 1 That the development be carried out in accordance with the plans **(1. Site Plan, 2. Elevations stamped as approved on 19 July 2006)** and the application as submitted, with the exception of the amendments required by the following conditions of consent.
- 2 That unless it is otherwise specified in the conditions of this consent, compliance with any monitoring requirement imposed by this consent shall be at the consent holder's own expense.
- 3 The consent holder shall pay to the Council an initial fee of \$100 for the costs associated with the monitoring of this resource consent in accordance with Section 35 of the Act.
- 4 Before leaving the subject site trucks involved in the proposed activity shall be washed down to remove dust and sediment.
- 5 Within 8 weeks of the resource consent being granted, the consent holder shall submit for the approval of the Council an Assessment of Environmental Noise Effects and Noise Management Plan prepared by a suitably qualified and experienced acoustic consultant. Once approved, this will become the current approved Noise Management Plan.
- 6 Prior to the operation of the concrete batching plant and equipment, the consent holder shall ensure that any noise mitigation measures required to be installed or implemented as part of the Noise Management Plan shall be provided.
- 7 The consent holder shall ensure that all activities conducted on the site shall be carried out in accordance with the Noise Management Plan and comply with the following noise limits when measured at the boundary of the Quail Rise Residential Zone situated directly across State Highway 6:
 - Daytime 0800 – 2000 hours 50dBA L
 - Night time 2000 – 0800 hours 40dBA L and 70dBA L

Noise levels shall be measured and assessed in accordance with NZS 6801:1991 and NZS6802:1991.
- 8 The consent holder shall ensure that the activities conducted on the site are carried out only between the hours of 6am – 8pm Monday to Saturday inclusive.
- 9 The consent holder shall ensure that aggregate brought onto the site is only unloaded from trucks into the storage bin only during the hours of 8am – 8pm Monday to Saturday inclusive.



Review

- 10 Within ten working days of each anniversary of the date of this decision the Council may, in accordance with sections 128 and 129 of the Resource Management Act 1991, serve notice on the consent holder of its intention to review the conditions of this resource consent for an of the following purposes:
- (a) To deal with any adverse effects on the environment that may arise from the exercise of the consent which were not foreseen at the time the application was considered and which it is appropriate to deal with at a later stage.
 - (b) To deal with any adverse effects on the environment which may arise from the exercise of the consent and which could not be properly assessed at the time the application was considered.
 - (c) To avoid remedy or mitigate any adverse effects on the environment which may arise from the exercise of this consent and which have been caused by a change in circumstances or which may be more appropriately addressed as a result of a change in circumstances, such that the conditions of this resource consent are no longer appropriate in terms of the purpose of the Resource Management Act 1991.
- 11 As part of the review clause stated in Condition 10 of this consent, the Council may have the acoustic assessment and noise mitigation plan audited at the consent holder's expense.

Advice Note

- 1 The Council may elect to exercise its functions and duties through the employment of independent consultants.
- 2 This consent does not include signage, any signage erected on the site may require additional resource consent.

Reasons for the Decision

Proposal

Land use consent is sought to place buildings/structures associated with a concrete production plant on a site located on Margaret Place, in the Frankton Industrial area.

It is proposed to place a control room covering 48m² in area and industrial plant (hopper, two silos, and two stock bins) along the northern boundary of the subject site. A truck wash is also proposed along the eastern boundary.

The proposed control room is a portacom office and will be used to cater for staff who will manage the operation. A car park has been allocated for this office (dimensions 6.0m x 2.5m) on the south side of the new proposed truck wash.

It is proposed to construct the hopper from dull galvanised steel, and the control room and silos from grey/white metal materials. The proposed structures/buildings will have a maximum height of 6 metres.

A concrete slab (with bitumous finish) access ramp is proposed to be erected in front of the hopper to provide vehicle access/regress to the plant.

The proposal states the plant will be run by electricity, and will not involve any crushing.

Effects on the Environment

Land, Flora and Fauna

There is no existing vegetation on site, and the earthworks required are very minimal (40m³ with no cut or fill near any boundaries or above 2 metres in height) therefore, the proposal is considered to have de minimus environmental effects in terms of land, flora and fauna.

Infrastructure

The site has existing water supply, effluent disposal, power supply and telecommunication services, and no further environmental effects are anticipated in these areas with the proposal.

The environmental effects in terms of pollution are considered to be de minimus. The processing operation includes the recycling of water through a waste water clean out pit. This method ensures that all recycled water is channelled back into the system and no untreated waste water will be discharged into the Council reticulation.

Natural Hazards

There are no effects anticipated in relation to natural hazards.

People and Built Form

As stated in the application by placing the buildings/structures to the rear (north) of the site, the operation will be of low visual impact. The proposed buildings/structures will be enclosed on the site by existing large scale industrial buildings to the east and south and an earth mound and the State Highway to the north. These existing buildings act to obstruct any views from Margaret Place and the earth mound inhibits views from the State Highway. Therefore effects in terms of views, outlook and streetscape are considered de minimus.

There are no set back requirements in the Industrial area and the proposed structures/buildings are to have a maximum height of 6 metres. Therefore shadowing, privacy and dominance effects are considered to be de minimus.

The buildings/structures are practical and industrial looking in nature, they will be constructed from dull galvanised steel to reduce any glare and in recessive colours of grey and white. Other businesses in the area have buildings/structures that are constructed in similar materials, colours, and scales and they also have noticeable amounts of vehicle movements to and from their sites. There is another concrete production plant in close proximity to the subject site and many other activities involving heavy vehicles. Therefore, the proposal is considered to be in keeping with the character and amenity of the area.

Landscaping has not been included in the proposal. Due to the nature of the site and the activities that exist on the site and will be carried out on the site it is considered that the absence of landscaping does not cause any adverse environmental effects.

The buildings/structures are aesthetically industrial and it is considered that the minimal amount of landscaping that could be put in place would not realistically contribute any softening to this look.

Taking into account the layout of the site with the large existing wash bay and shed on the south boundary, it would not be possible to place potential landscaping here landscaping would have to be positioned further back in the site closer to the new proposed structures/buildings, and would mean that any proposed landscaping would not be viewable outside the site and therefore not provide any benefit.

Culture

There are no environmental effects anticipated with the proposal in term of culture.

Traffic Generation and Vehicle Movements

Additional vehicle movements will be generated with the proposal however it is considered that the level of trucks will not pose a safety issue and is an anticipated part of the industrial area.

Vehicles are to access the site via the existing (9 metre wide) crossing point on Margaret Place along the southern boundary of the site. An unobstructed vehicle manoeuvring space has also been proposed within the site to ensure that vehicles are not required to reverse manoeuvre onto Margaret Place.

The District Plan requires a loading area to be provided, a complying area has been set out on site as shown on the site plan. It is 8 metres in length, 3.5 metres in width, with unobstructed height.

Adequate on site parking has been provided and a reserve area of 20 meters depth has also been provided on site to allow for the lay-up of articulated trucks.

For the above mentioned reasons the effects of traffic generation and vehicle movements are considered no more than minor.

Nuisance

In a process such as this which uses aggregate and other substances the effects of dust could potentially be adverse, however this is considered to have been adequately mitigated through the production process proposed which involves the aggregate going directly from the truck into the hopper with little chance of dust to escape in between. The proposal also includes a truck wash which is to be used each time a truck leaves to remove any dust that may have collected on it.

The process despite being relatively quiet for a concrete batching plant (as stated in the application) the site is located on the industrial zone boundary and is likely to exceed the noise levels permitted in the District Plan. However for the following reasons there is not considered to be any parties which are adversely affected by the noise levels and the environmental effects are considered to be less than minor.

The landowners of the subject site also own the adjacent site to the west, and to the east of the subject site is a storage yard. Rule 11.2.5.2 in the Industrial Zone section of The Plan refers to noise limits at the boundary of the zone not the boundary of the site, this indicates that the rule is aimed at the effects on parties outside of the zone and not those within it. The Plan is enabling activities which are necessary to the community but relatively noisy to be grouped together, and anticipates a higher level of noise in contrast to other zones (11.1.4 (ii)).

The noise will be intermittent and is considered to be adequately mitigated through the location of the site and the conditions of consent recommended by CivicCorp's Environmental Health Officer. The nearest residential area to the site is Quail Rise Estate (approximately 80 metres away), and these houses are further separated from the subject site by a large earth mound and State Highway 6.

Overall, the adverse effects on the environment of the activity for which consent is sought will be less than minor.

Policies and Objectives

The Partially Operative District Plan recognises the need to provide industrial areas especially with "the expansion in tourism and associated increase in resident population, there is an emerging local construction and development industry." A set of policies and objectives aimed at achieving appropriate development in industrial areas is contained in Part 11 of the Partially Operative District Plan and they are applicable to this consent.

The proposal is considered to be in keeping with surrounding environment and zoning, and sympathetic to the character and amenity of the area, therefore it is also considered to be in accordance with policies and objectives of the District Plan, in particular:

Part 11, Objective 1 – Business and Industrial Activity - A range of industrial locations which accommodate a variety of appropriate activities, including the maintenance and consolidation of existing business areas.

Policy 1.1 To enable a wide range of activities to establish throughout the business and industrial areas.

Part 11, Objective 3 – Effect on Amenities – Minimisation of the effects of business and industrial activities on neighbours, other land use activities and on visual amenities.

Policy 3.3 To promote design and layout of new business and industrial areas sensitive to the amenity of neighbouring activities.

Overall the proposal is considered consistent with the relevant objectives and policies.

Other Matters

Local Government Act 2002: Development Contributions

This proposal will generate a demand for network infrastructure and reserves and community facilities.

In granting this resource consent, pursuant to Part 8 Subpart 5 and Schedule 13 of the Local Government Act 2002 and the Council's Policy on Development Contributions contained in Long Term Council Community Plan (adopted by the Council on 25 June 2004) the Council has identified that a Development Contribution is required.

An invoice will be generated by the Queenstown Lakes District Council. Payment will be due prior to commencement of the consent, except where a Building Consent is required. If a Building Consent is required, then payment shall be due within 90 days of the issue of the Building Consent, or prior to the issue of the Code of Compliance certificate under the Building Act, whichever comes first.

The costs of processing the application are currently being assessed and you will be advised under separate cover whether further costs have been incurred.

Should you not be satisfied with the decision of the Council, or certain conditions, an objection may be lodged in writing to the Council setting out the reasons for the objection under Section 357 of the Resource Management Act 1991 not later than 15 working days from the date this decision is received.

You are responsible for ensuring compliance with the conditions of this resource consent. The Council will contact you in due course to arrange the required monitoring. It is suggested that you contact the Council if you intend to delay implementation of this consent or reschedule its completion.

This resource consent is not a consent to build under the Building Act 1991. A consent under this Act must be obtained before construction can begin.

Please contact the Council when the conditions have been met or if you have any queries with regard to the monitoring of your consent.

This resource consent must be exercised within five years from the date of this decision subject to the provisions of Section 125 of the Resource Management Act 1991.

If you have any enquiries please contact Lauren Barnett on phone (03) 450 0301.

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