



## **DECISION OF THE QUEENSTOWN LAKES DISTRICT COUNCIL**

### **RESOURCE MANAGEMENT ACT 1991**

<b>Applicant:</b>	FII Holdings Limited
<b>RM reference:</b>	RM161212
<b>Location:</b>	145 Frankton-Ladies Mile Highway, Frankton
<b>Proposal:</b>	Land-use consent for a three year terms of storage of roading and drainage aggregate, storage of vehicles and equipment and construction of a fence.
<b>Type of Consents:</b>	Land Use
<b>Legal Description:</b>	Section 3, 5 Survey Office Plan 502556 contained in Record of Title 806429
<b>Zoning:</b>	Rural General (ODP)  Medium Density Residential (PDP)
<b>Activity Status:</b>	Discretionary
<b>Public Notification:</b>	9 August - 6 September 2017
<b>Commissioner:</b>	Wendy Baker
<b>Date:</b>	<b>13 May 2019</b>
<b>Decision:</b>	<b>Consent Is Granted, Subject To Conditions</b>

## UNDER THE RESOURCE MANAGEMENT ACT 1991

**IN THE MATTER OF** an application by FII Holdings Limited to use a site for storage of roading and drainage aggregate, storage of vehicles and construction of a fence for a duration of 3 years.

Council File: RM161212

### The Hearing and Appearances

#### Hearing:

19 March 2019, Queenstown

#### Appearances for the Applicant:

Maree Baker-Galloway: Legal Counsel

Chris Ferguson: Planner

#### Appearances for the Queenstown Lakes District Council:

Andrew Woodford: Planner

Michelle Snodgrass: Landscape Architect

#### Appearances for Submitters:

Phil Page: Legal Counsel

Carey Vivian: Planner

Jeremy Trevathan: Acoustic Engineer

### Abbreviations

The following abbreviations are used in this decision:

FII Holdings Ltd

‘the Applicant’

Queenstown Lakes District Council

‘the Council’

The Operative Queenstown Lakes District Plan

‘the ODP’

The Proposed Queenstown Lakes District Plan

‘the PDP’

Assessment of Environmental Effects

‘AEE’

Resource Management Act 1991

‘RMA’

The land subject to this application is referred to as ‘the site’.

The hearing was closed on 19 April 2019 once I was sure I had all the necessary information.

**DECISION OF QUEENSTOWN LAKES DISTRICT COUNCIL HEARING  
COMMISSIONER WENDY BAKER, APPOINTED PURSUANT TO SECTION 34A OF THE RMA**

**INTRODUCTION, BACKGROUND, PROPOSAL AND PRELIMINARY MATTERS**

1. I have been given delegated authority by the Queenstown Lakes District Council ('the Council') under s.34A of the Resource Management Act 1991 ('the RMA') to hear and determine the application by FII Holdings Ltd ('the Applicant'), determine any preliminary matters, and, if granted, to impose conditions of consent.
2. The application site is located at 145 Frankton-Ladies Mile Highway, Queenstown and it is legally described as Section 3, 5 Survey Office Plan 502556.
3. I undertook a site visit on the afternoon of 18 March 2019 accompanied by Mr Woodford during which I walked around the site and the exterior of the buildings. I also visited the neighbouring property at 163 Frankton-Ladies Mile Highway which is owned by the sole submitter in these proceedings.
4. The site and the surrounds have been set out in Section 3.0 of the AEE prepared on behalf of the Applicant and also in Section 2 of Mr Woodford's 42A, relying in part on the AEE. Mr Vivian considers this description accurate with the exception of reference to an abatement notice issued for breach of RM120123 in respect of use of the site for storage of materials and heavy goods vehicles. I accept Mr Vivian's point that RM120123 did not grant consent for storage and the abatement notice is therefore simply for breach of a rule in the ODP. Therefore Mr Woodford's description is adopted for this decision with the exception as set out in paragraph 3.10 of Mr Vivian's evidence.
5. At this point, I pause to address matters raised as preliminary points in a letter by Mr Page dated 5 March 2019. I addressed two of the matters in my Commissioner Minute of 11 March 2019. One matter remains to be considered "*As the application for consent did not seek consent under the rules of the Proposed Plan, consent cannot be granted*". Both Mr Page and Ms Baker-Galloway addressed me on this issue and I considered seeking further legal input. However, I consider I have enough information before me to reach a conclusion.
6. Mr Page seems to be putting to me that any application which during processing is subject to a situation where relevant rules take legal effect, must by definition require lodgement of a further consent. I find this contrary to the efficiency sought by the Act and cannot accept this is the intention. I do not find any of the cases he has referred me to indicate this to categorically be the legal interpretation that has been followed.
7. I prefer the arguments put to me by Ms Baker-Galloway that there is no aspect of this consent that was not sought in the application and that now requires consent as a result of parts of the PDP taking legal effect. Therefore it is within my discretion to consider that consent is required under both the ODP and the PDP and to grant (or decline) relevant consents.
8. In the event I am wrong and I could only consider granting or declining consent under the ODP, the applicant would be required to submit an application under the PDP which would then go through the RMA process in a very similar way as is currently occurring (noting that there have been some RMA amendments which are not overly relevant to this case). The activity status for which consent was required would change from discretionary to non-complying. Other than this final point, I consider there to be no difference in the process and to require another application

would be unnecessarily inefficient. However, for the avoidance of doubt, and for reasons set out below, IF section 104D were applicable (which I stress, it is not), it would not present a barrier to granting consent as one prong of the gateway test can be passed as I find and set out in this decision that the adverse effects of the proposal are no more than minor.

9. For these reasons I have determined the application under both the ODP and the PDP.
10. In reaching this decision I have considered:
  - (i) The application, its AEE and all its supporting document and plans;
  - (ii) The Council officer's s.42A report, with supporting reports attached to his s.42A report;
  - (iii) The pre-circulated evidence from the applicant;
  - (iv) The written submissions from the submitters to the application;
  - (v) The pre-circulated evidence from the submitter;
  - (vi) The submission from the applicant's and the submitter's Legal Counsel and evidence provided at the hearing;
  - (vii) The responses to my questions during the hearing process;
  - (viii) The Applicant's right of reply;
  - (ix) The site visit; and
  - (x) The relevant provisions of the Queenstown Lakes District Plan (ODP and PDP).

## NOTIFICATION AND SUBMISSIONS

11. The application was publicly notified on 9 August 2017 with submissions closing on 6 September 2017. One submission was received seeking consent be refused. Mr Woodford summarised the submission at paragraph 3.1 in his 42A report as follows

*Opposes the application for the following reasons:*

- *The use of the site for service activities (the activities proposed);*
- *The adverse effects, specifically (but not limited to) noise (no acoustic report has been provided), nuisance and amenity;*
- *The reliance on trees for visual screening that are located on the Universal land;*
- *The future conflict of the proposed activity with QLDC's provision of suitably positioned residential land use (significant weight requires to be given to the Proposed District Plan);*
- *Visual effects associated with the industrial nature of a 2.5m high fence spanning the length of FII's site with Universal; and*
- *The temporary nature proposed for the activity.*

12. I have addressed these points in the decision as relevant.

## STATUTORY MATTERS

13. The site is zoned Rural General Zone under the ODP. Stage 1 of the PDP rezoned this area to Medium Density Residential.
14. There was disagreement between the applicant and the council as to the rules to be triggered, although both parties deemed the overall application to require a discretionary activity resource consent.
15. The disagreement related to whether the proposed use of the site for parking vehicles requires a consent for outdoor storage of vehicles. Mr Vivian and Mr Woodford consider that parking of the heavy vehicles as proposed constitutes outdoor storage and I concur. My conclusion is based on the facts of the case; the vehicles are parked on the site when they are not needed elsewhere, they are not a solely mode of transport for residents or employees to and from the site, rather they are equipment used by the business which happen to be vehicles.
16. The reasons for consent are specified in detail within part 5.2 of Mr Woodford's s.42A report and are adopted for the purposes of this decision.
17. I note here that I am cognisant of the prohibited status contained within the Stage 1 decisions for bulk material storage pursuant to Rule 8.4.19. All parties agreed that this rule does not change the activity status in any event as the rule is not operative and was not in legal effect at the time the consent was lodged. All parties also agreed that even if it did have legal effect, the status due to an appeal having been lodged is discretionary in accordance with section 87B(1)(c).
18. New Zealand Transport Authority (NZTA) provided written approval for the proposal as the roading administrators of the state highway. Some clarification was provided at the hearing and no party disputed the validity of the approval, therefore all adverse effects on NZTA have been disregarded.

## LEGAL SUBMISSIONS AND EVIDENCE

19. Expert evidence from the applicant and the submitter was pre-circulated and read before the hearing. Both the applicant and the submitter presented legal submissions at the hearing. The following is a summary of the key issues raised and must be read in conjunction with the actual legal submissions, pre-circulated evidence and evidence presented at or after the hearing.
20. Mr Woodford's s.42a report was circulated prior to the hearing and was taken as read. He recommended consent be granted subject to conditions.

### For the Applicant

21. **Ms Baker-Galloway** provided legal submissions which she read out. She set out that the rezoning of the site to MDR has been appealed, seeking a Mixed Business Use Zone or similar, and that although the MDR provisions could be subject to material change, there is no possibility of the site's zoning reverting to Rural General or similar as this is outside the scope of the appeals. I divert here to consider this matter in order to avoid unnecessary assessment of the Rural General provisions. I concur with Ms Baker-Galloway on this point, although Mr Woodford when questioned considered that considerable weight should be given to the Rural General provisions. He provided no compelling reasons for this view. Mr Vivian in paragraph 8.1 of his evidence agrees with Mr Ferguson that little or no weight should be given to them. I have formed the view that whilst under s104 the objectives and policies of the Rural General zone are still relevant, little to no weight should be given to the Rural General provisions given there

is no possibility of them applying to the site going forward and for this reason I do not address them further in this decision.

22. Ms Baker Galloway stressed the three (3) year term limit was fundamental to the proposal, opining that the proposal is simply an efficient, short term and transitional use of this site. In her opinion, any future medium or high density residential development is not likely to occur in the next three years. In her reply she volunteered a further two conditions which would assist in the event development did occur; a specification of the proposed review condition relating to noise effects on any residential development at 163 Frankton-Ladies Mile Highway and also a condition precluding the exercise of the current consent concurrently with a future consent for the same site with Council reference RM180351 (which has not yet been determined).
23. With regards to Part 2 of the Act Ms Baker-Galloway considers that as the District Plan is not settled, Part 2 must be considered. She also sets out relevant policies from the National Policy Statement Urban Development Capacity (NPSUDC) and concludes it would be inconsistent with Policies PA1 and PA3 to limit the commercial use of this site as sought without very good reason.
24. She asserts that as this is a three year consent only, the impact on the existing environment and receiving environment is limited to that timeframe and therefore will not be a material consideration for any future application.
25. **Mr Ferguson** provided primary and supplementary evidence in which he stated that the noise effects have been assessed by Mr Malcolm Hunt (who was not in attendance) as being consistent with the amenity expectations of the area. Mr Ferguson considers that the effects on landscape will be slight. In his view the proposal must be assessed in the light of the planning framework which he describes as being in a state of flux. He advises that the only certainty in the planning framework is that the site will be located within the Urban Growth Boundary of the wider Queenstown Urban Area and not in an ONL.
26. Mr Ferguson quoted the relevant appeal to the PDP zoning of MDR by the submitter which seeks either High Density Residential or Mixed Business Use. Mr Vivian agreed at the hearing that Mixed Business Use was one of the options sought by the submitter. In Mr Ferguson's opinion that option would be entirely consistent with the proposed use. He stressed that nobody can predict what the final form of the zoning for the site or the adjoining land will be at this time.
27. Mr Ferguson raises concern with Mr Vivian identifying objectives within the MDR chapter that relate to residential activities and that are therefore in his view irrelevant. Instead, Mr Ferguson adopts the findings in this regard of Mr Woodford's 42A report. Mr Ferguson does not consider that the provisions of other potential zones being High Density Residential, Business Mixed Use can be considered as they are neither a Plan nor a Proposed Plan. I note here that I do not agree with Mr Ferguson on this point, and consider all objectives and policies with legal effect are part of a Plan or Proposed Plan. However, I take his point that the weighting they should be given is minimal due to the high level of uncertainty.
28. With regards to the NPSUDC, Mr Ferguson considers that its purpose is to provide sufficient urban development capacity to support housing and business growth. Not just housing.
29. Finally, Mr Ferguson comments on the Housing Infrastructure Fund (HIF) approved over this land and opines that the HIF does nothing more than support outcomes available through the current PDP zoning for this land.

### For The Council

30. **Mr Woodford** advised that in his opinion the adverse effects would be no more than minor. In particular he noted that this applied to the bulk, scale and location of the proposed building and associated activities, potential visibility and amenity effects, traffic and vehicle movements and cumulative effects. He considered the proposal consistent with the relevant objectives and policies of both the ODP and the PDP and that it promoted the overall purpose of the RMA.
31. Mr Woodford's 42A report contained an email exchange with Dr Stephen Chiles, Acoustic Consultant for the Council (not in attendance) confirming that the proposal would comply with the daytime rural general noise limits at the notional boundary of the dwelling at 163 Frankton-Ladies Mile Highway.
32. **Ms Snodgrass** provided evidence on landscape effects which related predominantly to the Rural General zoning of the site. In particular she confirmed that the site is not located within an Outstanding Natural Landscape.

### For the Submitter

33. **Mr Page** presented legal submission for Universal Developments Limited. He reiterated two of the issues raised in his earlier memorandum The first being that under section 104(3)(d) there is no jurisdiction to grant consent as it should have been publicly notified for a number of reasons; the notification decision was made only in respect of the ODP and under older RMA legislation; that special circumstances applied due to the prohibited activity status in the PDP and also due to the 'environment' granting this application may create against which future applications (in particular RM180351) are assessed.
34. I disagree with Mr Page on a number of points. Firstly, it appears he is omitting to consider the limited term sought of this consent of three years. I consider that both the arguments he makes for special circumstances would be of, or would be of more relevance if the consent were for an indefinite duration. In this case the environment will only exist for a maximum of three years and therefore will only be considered for that period. The prohibited status in the PDP is currently not settled and therefore defaults to a discretionary status which is not a special circumstance in my opinion. In my experience it is unlikely that this matter will be settled within three years and therefore again the timeframe is of considerable relevance to my forming an opinion on this matter.
35. Finally, how the notification was determined is of little relevance to section 104(3)(d) which simply states that "A consent authority must not (d) grant a resource consent if the application should have been notified and was not". As I find that there are no special circumstances and that the adverse effects of the proposal are minor in respect only of the neighbours served notice, I do not see any reason that this application should have been more widely or even publicly notified.
36. Mr Page raises a number of other matters which have been dealt with or mentioned elsewhere in this decision and are therefore not repeated here.
37. In respect of the HIF, Mr Page submits it is a relevant consideration under because consideration must be given to the NPSUDC based on which the funding was sought. He explained that the funding is conditional upon a yield of 1 dwelling/115m<sup>2</sup> which this proposal does not achieve. He submits that this proposal is therefore incongruent with Council's response to the NPSUDC. I questioned Mr Page on the timings of the required dwellings and understand there is no clear answer to when the dwellings are required to be delivered by to secure the funding. I consider



the HIF is a relevant consideration as an other matter, but I struggle with the evidence before me to give it any other status. As I see it the proposal does not affect the ability to provide dwellings (subject to relevant consents being obtained) at a density of 1/115m<sup>2</sup> after the three year term has expired.

38. **Mr Vivian** presented planning evidence on behalf of the submitter concluding that this proposal is an application for a service industry in an area that has been identified for residential purposes since August 2015. He considers that the proposal is inconsistent with the objectives and policies of the MDR zone which is particularly relevant as the proposal is prohibited under the MDR provisions. Mr Vivian also considers that the proposal will be inconsistent with the relevant objectives and policies of either of two alternate zoning options which may result from the appeals to the PDP, being High Density Residential or Business Mixed Use.
39. Mr Vivian pointed out that the proposal would generate significant adverse effects on the receiving environment which includes the future state of the environment as might be modified by the utilisation of rights to carry out permitted activities. He bases this on residential activity being a permitted activity under any of the future zoning scenarios; MDR, HDR or BMU.
40. The housing shortage in the district will be exacerbated in Mr Vivian's opinion by removing land that could readily be developed for residential activity for at least three years and may affect the Council's ability to use the HIF funding available
41. Mr Vivian concludes that on balance the proposal will not promote sustainable management of natural and physical resources.
42. I questioned Mr Vivian on a likely timeline for dwellings to be constructed at 163 Frankton Ladies Mile Road. His answer was that given the PDP resolution, the consenting, subdivision, infrastructure and construction it would likely be a minimum of 18 months to 2 years before dwellings could be occupied.
43. **Mr Trevathan** provided acoustic evidence on behalf of the submitter. He concludes that PDP residential noise limits would be exceeded at the upper floors of units in close proximity to the site. He advised that he does not know of any mitigation that would reduce these noise levels
44. At paragraph 32 of his evidence, Mr Trevathan sets out the parameters on which his conclusions are based and, at paragraph 33 an extra condition he considers is required. The Applicant has agreed to the inclusion of all these conditions.
45. **Right of Reply**
46. **Ms Baker-Galloway** provided me with her right of reply on 29 March 2019 all of which is covered earlier in this decision.

## PRINCIPAL AREAS IN CONTENTION

47. Having read and heard the evidence and submissions presented, I find that the fundamental matter in contention is whether the 3 year timeframe is sufficient mitigation of the adverse effect of future development. The arguments put forward in support of declining the application by Messrs Page, Vivian and Trevathan were not fundamentally disputed by the applicant or the council officers other than that because of the three year timeframe neither the adverse effects on the environment, nor the statutory implications would occur. For this reason I do not traverse the adverse effects of the proposal in this decision.

## EFFECTS

48. Taking into consideration the conditions which have been agreed to (volunteered) by the applicant, I summarise the potential adverse effects as follows:

- Exceedance of residential noise limits at upper floors of potential future dwellings at 163 Frankton Ladies Mile Road in close proximity to the boundary.
- Loss of land for residential use contributing to the housing shortage

### Permitted Baseline

49. Given the underlying Rural General zoning and the appeals to the MDR, the permitted baseline is extremely limited and in my view not helpful and I have therefore not taken it into consideration in my decision.

### Exceedance of noise limits

50. All noise experts are in agreement that the acoustic mitigation measures proposed will not sufficiently reduce noise such that residential noise limits will be achieved at the above ground floor levels of a future dwelling at 163 Frankton Ladies Mile Road. The applicant has volunteered a further review condition which would enable the Council to review the conditions of consent where this occurs. Given Mr Trevathan's evidence that he cannot think of any further mitigation measures that would assist in that regard, I consider the review condition is likely to be ineffective.

51. Mr Vivian helpfully provided me with an indicative timeline for such dwellings to be constructed at 163 Frankton Ladies Mile Road, being a minimum of 18 months and more likely 2 to 3 years. The exceedance will only occur for dwellings which are not screened from the subject site by other dwellings and which are screened from the State Highway by other dwellings. I did not receive evidence on how many dwellings this may be, but by virtue of the length of the boundary, it is a limited number. This means the worst case scenario is that there are a number of dwellings that for up to 18 months will experience increased daytime noise levels. Mr Ferguson considered it unlikely that dwellings would be occupied within the three year timeframe.

52. Mr Trevathan and Mr Hunt have stated that the noise level received at the upper levels of future dwellings would be 55 dB  $L_{Aeq}$  or more. The 'or more' has not been quantified by any party. I accept that without doubt this level of noise for 18 months would be annoying for potential future residents.

53. I prefer the judgment of Mr Ferguson that dwellings are unlikely to be occupied within the timeframe of this consent given the many physical and statutory 'hurdles' there are to get through. For this reason I conclude that the adverse effects will be insignificant in terms of noise exceedance.

### Loss of land for residential use

54. The proposal will restrict the use of the site for residential purposes, other than the dwellings currently on site, for the next three years. Given the housing shortage in this District and the direction provided by the NPSUDC, this is a potentially significant effect.

55. My consideration above of the timeframe for the occupation of dwellings on 163 Frankton Ladies Mile Road is essentially the same for the subject site. However, the granting of this

consent will restrict the ability to start with many of the physical aspects and these will be delayed until the three year term is over meaning occupation of dwellings on the subject site is realistically some 4 years away. Based the evidence of Mr Ferguson, I consider this will be no different to if this consent were not granted. Mr Vivian's evidence leads me to a different conclusion.

56. Again, I prefer the evidence of Mr Ferguson that the timeframe for developing residential units is likely to be at least three years. And on this basis I consider that an interim use of the subject site will not significantly contribute to the loss of residential land.

#### **Conclusion on effects**

57. Whilst I fully accept that long term use of this site for a service activity will have adverse effects, I consider that these are mitigated by the term of the activity proposed and I reach the conclusion that the adverse effects will be minor at most.

### **OBJECTIVES AND POLICIES**

#### **ODP**

58. The applicant assessed the objectives and policies of the ODP in Section 7.2 of the AEE. Mr Woodford addressed them in Section 8.3 of the 42a report. Mr Vivian provides an assessment at Section 8 of his evidence. Mr Woodford considers the proposal is aligned with the relevant objectives and policies of Parts 4 and 5, Mr Vivian concludes it is inconsistent. Mr Ferguson considers them irrelevant. I concur with Mr Vivian and Mr Ferguson. I consider that the proposal is inconsistent with the outcomes sought for the Rural General zone in the ODP and also that an assessment of the proposal against these provisions carries so little weight as to be insignificant.

#### **PDP**

59. Mr Woodford addresses the relevant provisions of the PDP in paragraph 8.3.2 of the 42A report. Mr Ferguson addresses them at paragraphs 36-44 of his evidence in chief. Mr Vivian addresses them at paragraphs 8.5 though 8.59 of his evidence traversing the MDR zone, the High Density Residential zone, the Business Mixed use zone and finally concluding that in Chapters 3 and 4 there is no policy support for the proposal.
60. Mr Woodford considers the proposal is generally aligned with those for MDR, Mixed Business Use and Noise. Mr Vivian concludes the proposal is inconsistent with the MDR, High Density Residential and Business Mixed Use provisions. I prefer the evidence of Mr Vivian as for the three year period it will be exercised the proposal does not protect residential amenity, nor does it align well with the Business Mixed Use provisions. However, these provisions are far from settled and little certainty can be derived from them.
61. The provision of Chapters 3 and 4 provide overarching objectives and policies. Mr Vivian at paragraph 8.55 states that these must be read in the context of the zones that are provided for. In this case given the zoning is far from agreed upon, I disagree with Mr Vivian. I consider these provisions should be looked at in the context of a plan which provides limited certainty and therefore overarching objectives and policies become more important as do other higher order planning documents. In this context, I prefer the opinion of Mr Ferguson that the proposal is consistent with the objectives and policies contained in Chapters 3 and 4. Again, these are subject to appeals and cannot be given full weight. Given the extent of the appeals is fairly limited I do give them significant weight.

### **Regional Policy Statement (RPS)**

62. Given the uncertainty in the ODP/PDP it is appropriate to look at the RPS. Mr Woodford has undertaken an assessment at 8.4 of the 42A report and concludes that the proposal is aligned with the objectives and policies of the RPS. As I have no other evidence before me, I accept Mr Woodford's opinion in this regard.

### **NPSUDC**

63. Mr Vivian addresses this at paragraph 9 of his evidence and sets out the unaffordability of houses in the district. This evidence is accepted, however, Mr Vivian does not link this back to the NPS. Mr Ferguson advises that Policy PA1 of the NPS is met, but does not address any further policies of the NPS. Ms Baker-Galloway in her opening submissions addressed me on Objective Group A and Policies PA3 and 4 concluding that the NPS supported commercial use of land as well as residential. I accept Ms Baker-Galloway's points, although without supporting evidence it is somewhat unfounded.
64. I find that the NPS is particularly aimed at residential development and that commercial is a small portion of it. On balance the proposal is neutral in my opinion in respect of the NPS

### **Conclusion on Objectives and Policies**

65. I conclude that on balance the proposal neutral with the objectives and policies of the relevant plans and that given the current uncertain state of the District Plan and that largely the objectives and policies are enabling rather than prohibitive, there are no key objectives and policies seeking to avoid this activity which should be given any significant weight.

### **PART 2 OF THE RMA**

66. For the avoidance of doubt I have considered Part 2 in its entirety. This is relevant in this case given the planning framework provides little certainty. Given my findings, I consider that this proposal achieves the purpose of the Act as use of the site as proposed for a period of three years will provide for an efficient use of this resource without limiting its future uses.

### **PLAN INTEGRITY AND PRECEDENT**

67. The proposal is for a limited term activity on a site which is in a state of planning flux with the ODP zoning of Rural General not being able to be restored within the scope of the appeals, and appeals seeking either MDR, High Density Residential or Business Mixed Use. This particular set of circumstances is unlikely to be reproduced and therefore the risk of granting or declining the application setting an undesirable precedent is de minimus.
68. Similarly, Plan Integrity is not affected by this application as the decision is based on a unique planning environment which will not exist for any significant length of time.

### **SECTION 104 DETERMINATION**

69. After undertaking a detailed consideration of the proposal in terms of the adverse effects its positive effects and the relevant district and regional policy frameworks (objective and policies), the RMA and the NPSUDC I have reached the conclusion that these are best served by granting of the consent subject to conditions.

**DECISION**

70. In exercising my delegation under sections 34 and 34A of the RMA and having regard to the foregoing matters, sections 104 and 108 of the RMA, I determine that resource consent is granted to use the site at 145 Frankton-Ladies Mile Highway, Queenstown for the storage of bulk material, vehicles and equipment and to erect a fence exceeding 2.5m on the site boundary with the property at 163 Frankton-Ladies Mile Highway subject to the conditions of consent set out in Appendix 1 for a maximum period of 3 years only.
71. The reasons for my decision have been set out in the sections above.



**Commissioner:** Wendy Baker

**Date:** 13 May 2019

**Appendix 1 – Consent Conditions**

## **APPENDIX 1 - CONSENT CONDITIONS**

### **GENERAL CONDITIONS**

1. That the development must be undertaken/carried out in accordance with the plans:

- 'Site Layout' Prepared by Boffa Miskell, Dated 18 April 2017, Rev 1

**Stamped as approved on 13 May 2019**

and the application as submitted, with the exception of the amendments required by the following conditions of consent.

2. This consent shall not be exercised and no work or activity associated with it may be commenced or continued until the following charges have been paid in full: all charges fixed in accordance with section 36(1) of the Resource Management Act 1991 and any finalised, additional charges under section 36(3) of the Act.
3. The consent holder is liable for costs associated with the monitoring of this resource consent under Section 35 of the Resource Management Act 1991.

### **Term of Consent**

4. This consent shall expire at the earliest of the following dates:
  - 13 May 2022; or
  - Upon grant and commencement (within the meaning of s116(1) of the Resource Management Act) of the resource consent for the establishment and operation of a new contractors depot as sought by consent RM180351.

### **Acoustic Fence**

5. Prior to the use of the site for the storage of vehicles or aggregate, the consent holder shall erect an acoustic grade fence along the boundary with 163 Ladies Mile Highway. The fence must be 2.5 metres in height (above ground level) and be clad with materials which achieve a minimum mass of 10kg/m<sup>2</sup> with no gaps in or under or under the fence. For the avoidance of doubt, the fence may be constructed of timber i.e. board and batten or plywood. The fence must have no holes or openings in or under the fence and shall be maintained for the duration of the consent.

### **Hours of Operation**

6. Hours of operation for vehicle movements (either for the purposes of vehicle storage or aggregate delivery to and from the site) and aggregate storage activities, shall be:
  - Monday to Friday (inclusive): 8.00am to 5.00pm.
  - Saturdays 9.00am to 1.00pm.
  - Sundays and Public Holidays: No Activity
7. No machinery or vehicles shall start up earlier than the specified times in Condition 6 of RM161212, and all activity on the site is to cease by the specified times in Condition 6 of RM161212.

### **Traffic movements**

8. All vehicle movements associated with the approved development shall not exceed fifteen (15) vehicles per week. For the avoidance of doubt one (1) vehicle movement is an inward or outward movement to or from the site. Of the total fifteen (15) vehicle movements authorised by this condition, ten (10) shall be movements associated with aggregate storage with the remaining five (5) movements associated with the vehicle storage activity.
9. The consent holder shall keep a record of all vehicle movements to and from the site, which shall be made available to Council if requested to ensure compliance with condition 8 above.
10. The consent holder shall ensure that all drivers of vehicles associated with the consented activity adhere to the following vehicle restrictions.
  - a) Do not use engine exhaust brakes on site;
  - b) Do not rev stationary vehicles unnecessarily;
  - c) Do not use horns unnecessarily;
  - d) On site speeds not to exceed 20 km/hr at all times.

### **Aggregate storage**

11. The consent holder shall ensure that any aggregate storage on site is contained within the identified aggregate storage area on the *'Site Layout Plan' prepared by Boffa Miskell Dated 18 April 2017 Rev '1* with the height of any aggregate pile not exceeding 3 metres in height.
12. At any one time only, one small wheeled loader not exceeding 7500 kg may operate on the site. The loader must be fitted with a broadband reversing alarm, not a tonal reversing beeper.

### **Vehicle storage**

13. All vehicles stored on the site shall be located within the area shown on *'Site Layout Plan' prepared by Boffa Miskell Dated 18 April 2017 Rev 1* as Heavy Vehicle Parking.
14. All vehicles stored on site shall be fitted with broadband reversing alarms and not tonal beepers.

### **Landscaping**

15. The Consent holder shall maintain all western boundary plantings on the site for the duration of the consent. Should any tree die or be caused to be removed, the consent holder shall replace the tree with a similar species of a minimum height of 3 metres at the time of planting within the next planting season.
16. The consent holder shall ensure that, if the existing tree plantings on the western boundary of 163 Ladies Mile-Frankton highway are removed within the 3 year consent period, a line of tree planting shall be implemented on the eastern boundary of the application site. The species shall be quick growing and planted at a spacing to ensure the aggregate and vehicle storage area is screened within 2 years of planting. Any tree that dies shall be replaced within the next planting season and maintained for the duration of the consent.

17. The consent holder shall ensure that all aggregate piles remain within the consented area and should such piles be visible from the Frankton-Ladies Mile Highway (State Highway 6, such piles shall be lowered in height to a level where they are no longer visible.
18. The consent holder shall maintain the earth bund and vegetation approved under RM150219 at all times during the duration of this consent.
19. The consent holder shall ensure that all other construction related materials, such as but not limited to materials, skips, bins, woodchips, soil piles, concrete piles, debris, and containers not approved as part of this consent shall be removed off site prior to the commencement of the activity.

### **Engineering Conditions**

#### ***General***

20. All engineering works shall be carried out in accordance with the Queenstown Lakes District Council's policies and standards, being QLDC's Land Development and Subdivision Code of Practice adopted on 3rd May 2018 and subsequent amendments to that document up to the date of issue of any resource consent.

*Note: The current standards are available on Council's website via the following link:*  
<http://www.qldc.govt.nz/planning/resource-consents/qldc-land-development-and-subdivision-code-of-practice/>

#### ***To be monitored throughout the consent period***

21. The site boundaries shall be clearly defined on the ground by a suitably qualified and experienced surveyor. The loading and stockpiling of materials shall be confined to the boundaries of the site as detailed on the 'Site Plan' approved under Condition 1 of RM161212, and all activities shall be wholly contained within the site boundaries.
22. The consent holder shall implement suitable measures to prevent deposition of any debris on Frankton-Ladies Mile Highway (State Highway 6) by vehicles and associated machinery moving to and from the site. The consent holder shall ensure tyres remain free of sediment and debris by utilising wheel washing equipment and/or constructing a gravel stabilised entrance and/or other similar measures. The entrance is required to be monitored and maintained by the consent holder to ensure any debris and sediment remain on the site. In the event that any material is deposited on Frankton-Ladies Mile Highway (State Highway 6), the consent holder shall take immediate action, at his/her expense, to clean the road.
23. The consent holder shall install measures to control and or mitigate any dust and these measures shall remain in place for the duration of the consent. Sprinklers, water carts or other similar measures shall be utilised on all relevant stockpiled materials to prevent dust nuisance in the instance of ANY conditions whereby dust may be generated.
24. The consent holder shall install measures to control silt run-off and sedimentation that may occur in accordance with QLDC's Land Development and Subdivision Code of Practice and 'A Guide to Earthworks in the Queenstown Lakes District' brochure, prepared by the Queenstown Lakes District Council. Special consideration shall be given to use of measures such as silt fencing, placement of straw bales or other similar measures to ensure that sediment laden stormwater does not enter any adjacent stormwater reticulation. All site management measures shall remain in place for the duration of the consent.



25. The consent holder shall ensure that contaminants resulting from carrying out the consented activity do not enter any stormwater reticulation over the duration of the consent. Appropriate collection, treatment and disposal measures are to be established to ensure containment of any potential contaminants.
26. Where fuel leaks or spillages occur, if any, the consent holder shall ensure that all spilt materials, contaminated soils and water is properly contained, pumped or removed into suitable holding containers to be removed from site and disposed of in an appropriate manner.
27. Any works near power lines, including extraction, processing and stockpiling activities, and the use of haul roads by construction traffic, shall be undertaken in accordance with any requirements of Aurora Energy/Delta, the Electricity Act and the New Zealand Electrical Code of Practice for Electrical Safe Distances NZECP 34:2001. The consent holder shall notify Delta prior to any gravel extraction or processing works commencing within the electricity easement or within 5m of power lines or power poles.
28. Any damage to all existing road surfaces and berms that result from work carried out for this consent shall be rectified by the consent holder immediately.

#### **Review**

29. Upon the receipt of information identifying non-compliance with the conditions of this consent, or the intensification of residential activity located at 163 Frankton Ladies Mile Highway, and/or 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 address the potential for any noise to exceed 50 dB  $L_{Aeq}$  at above ground floor levels of new residential dwellings at 163 Frankton Ladies Mile Road
  - c) To deal with any adverse effects on the environment which have arisen from the exercise of the consent and which were not properly assessed at the time the application was considered;
  - d) To avoid, remedy and mitigate any adverse effects on the environment which may have arisen 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.

### For Your Information

If your decision requires monitoring, we will be sending an invoice in due course for the deposit referred to in your consent condition. To assist with compliance of your resource consent and to avoid your monitoring deposit being used before your development starts, please complete the “[Notice of Works Starting Form](#)” and email to the Monitoring Planner at [RCMonitoring@qldc.govt.nz](mailto:RCMonitoring@qldc.govt.nz) prior to works commencing.

You may also have conditions that require you to apply for Engineering Acceptance. To apply for Engineering Acceptance, please complete the [Engineering Acceptance Application form](#) and submit this completed form and an electronic set of documents to [engineeringacceptance@qldc.govt.nz](mailto:engineeringacceptance@qldc.govt.nz) with our monitoring planner added to the email at [RCMonitoring@qldc.govt.nz](mailto:RCMonitoring@qldc.govt.nz).

If your decision requires a development contribution (DC) charge, we will be sending a notice in due course. To answer questions such as what is a DC charge, when a DC charge is triggered and timing of payments, please refer to this link. <http://www.qldc.govt.nz/planning/development-contributions/> If you wish to make a DC estimate calculation yourself, please use this link: <http://www.qldc.govt.nz/planning/development-contributions/development-contributions-estimate-calculator/> And for full details on current and past policies, please use this link: <http://www.qldc.govt.nz/council-online/council-documents/policies/policy-on-development-contributions-and-financial-contributions/>



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**Data Sources:**

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Projection: NZGD 2000 New Zealand Transverse Mercator

**QUEENSTOWN LAKES DISTRICT COUNCIL**

**APPROVED PLAN:  
RM161212**

**Monday, 13 May 2019**

**Legend**

- Tower and Transmission line
- Container
- Gravel Storage Area
- Heavy Vehicle Parking
- Residential Buildings
- Roof Structure
- Vehicle access
- Yard Area
- Earth Mound and Landscaping
- Cadastre
- Site Boundary

Structures and areas within the site are indicative

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