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Sent: Thursday, 6 May 2021 11:54 am
To: queenstownarterialsfastrack
Subject: Hall Family Trust

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Hi Alex,

Broadly, the Trust considers that the panel has made a decision that means the Trust's submission to obtain access to its land and to not have its land acquired have been granted on both counts. The Trust considers that the land requirement element of the conditions is acceptable. The Trust considers that the conditions of the consent are not satisfactory for the purpose of giving legal effect to the Panel's decision to provide access to the Hall Family Trust land in the form of the design proposed by the Council.

More specifically, condition 1 on the NOR and land use consent:

- a) refers to a "Land requirement plan" – this phrase appears in sentence case, denoting that it is merely functional and descriptive of the land that is to be acquired only. Therefore, the information in that report which does not pertain to the matter of land acquisition falls outside the scope of the legal effect of this condition. The part of the application which describes access to be provided to the Hall Family Trust land is contained within the transport report design modifications provided by BECA in the annexure to the Harrison Grierson Report dated 8 March. As such this condition is not binding on the Council to provide the access described in the BECA annexure in response to the Hall Family Trust submission.
- b) does not refer to the complete title of any document referred to in the decision or application – if it is intended to reference a specific document, such title reference is not accurate;
- c) uses the term "Land requirement plan" but this is not a direct reference to the specific title of any part of the application or decision document. The Council has not stated that the submission response documents amend or otherwise form part of its application. Therefore, the panel must expressly and accurately state matters in a condition of consent to create a valid and legally binding requirement to provide access for the Hall Family Trust as described by the Council in its response to submissions. The consent conditions are silent in relation to the requirement to provide the access to the Hall Family Trust land as proposed by the Council.
- d) the condition refers to multiple appendices, but the Hall Family Trust access design is described in an appendix to an appendix. The condition therefore does not define, describe or otherwise reference the title of source documents for the transport design. The access design that was presented in response to the Hall Family Trust submission was contained an appendix to a report. That particular appendix is not expressly referred to in the condition.
- e) the legal effect of condition 1 in the form and manner expressed does not make it a legal requirement for the Council to form access to the land parcels owned by the Hall Family Trust as described.
- f) For the reasons set out above, the condition is therefore not legally valid as it is not specific or certain and does not bind the Council to provide the formed access for the Hall Family Trust land that formed part of the decision of the Panel.

The particular points of the appeal would be under section 45(2)(b) of the Act and would allege that the error of law is that the terms of the condition specified are erroneous because they do not give legal effect to the terms of the decision made by the panel.

The relief sought would be that condition 1 is re-worded to adequately describe the legal requirement to provide access to the Hall Family Trust land in the following manner:

We propose the following wording for condition 1 (new wording highlighted, deleted text struck out):

(a) ~~Land requirement plans~~ in Appendices 4, 5 and 6 as amended by the Requiring Authority's Response To Comments (including the transport and road design amendments described within those appendices) provided under Schedule 6, Clause 18 dated 8 March 2021;

The relief sought in the alternative would be that the condition is otherwise worded to give effect to the decision of the Panel in a manner that the Court considers fit.

The Trust would attend mediation, but emphasizes its strong preference not to lodge an appeal and requests that the amendment is made to the Condition to address its concerns.

Regards,
KR

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