

**BEFORE THE HEARINGS COMMISSIONERS
APPOINTED BY THE QUEENSTOWN LAKES DISTRICT COUNCIL**

UNDER the Resource Management Act 1991

IN THE MATTER of a submission on Te Pūtahi Ladies Mile
Variation to the Proposed District Plan

BY **LADIES MILE PET LODGE LIMITED**
Submitter

STATEMENT OF EVIDENCE OF SCOTT FREEMAN

19 October 2023

Statement of evidence of Scott Freeman

Introduction

- [1] My name is Scott Anthony Freeman. I reside in Queenstown. I am a Director of Southern Planning Group Limited, a Queenstown based resource management planning consultancy. I hold the degree of Bachelor of Planning from the University of Auckland. I have 26 years' experience in the field of resource management planning.
- [2] I have previously worked for the Queenstown Lakes District Council (Council) and later Civic Corporation Limited from 1997–1999. During this period I was employed as a consents planner responsible for processing a variety of land use and subdivision consents on behalf of the Council.
- [3] Since late 1999, I have been practising as a resource management planning consultant, primarily within the Queenstown Lakes District. I formed Southern Planning Group in 2003.
- [4] Throughout my professional career, I have been involved in a range of resource consent and policy matters. I have made numerous appearances in front of various district and regional councils and the Environment Court.
- [5] From the variety of working roles that I have performed as described in the preceding paragraphs, I have acquired a sound knowledge and experience of the resource management planning issues that are faced in the Queenstown area and the wider District.

Code of conduct for expert witnesses

- [6] I confirm I have read the Code of Conduct for expert witnesses contained in the Environment Court of New Zealand Practice Note 2023 and that I have complied with it when preparing my evidence. Other than when I state I am relying on the advice of another person, this evidence is within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

Scope of evidence

- [7] I have been instructed by Ladies Mile Pet Lodge Limited (the Submitter) to give expert planning evidence in respect of its submission on Te Pūtahi Ladies Mile Variation (Variation) to the Proposed District Plan (PDP) by the Council.
- [8] The matters that my evidence will address are as follows:
- a) Description of the Site.
 - b) Submissions from the Submitter.
 - c) Waka Kotahi NZ Transport Agency – Notice of Requirement (RM221060)
 - d) The notified provisions of the Variation
 - e) Section 42A Report
 - f) Key Evidence Points (Key Crossing & Crossing Curtilage Area Overlay)
- [9] I note that where applicable, I rely upon the opinions of Mr Andy Carr who has provided transportation evidence on behalf of the Submitter.

Description of the Site

- [10] The Submitters site has the physical address of 465 State Highway 6 (Frankton – Ladies Mile Highway). The site is legally described as Lot 1 DP 12822 and Lot 16 DP 12921. The site has an area of 1.2141 hectares.
- [11] The site adjoins and is located on the northern side of State Highway 6. The rectangular shaped site is located approximately in the mid-section of Ladies Mile. The site contains a residential dwelling that the Submitters reside in. The site also contains a long-term established pet lodge that has facilities for both dogs and cats.

Submissions from the Submitter

[12] The Submitter lodged a primary submission (reference #78) and a further submission (reference #142) on Te Putahi Ladies Mile Variation to the PDP.

[13] The submissions raise a number of issues in relation to the Variation. However, my planning evidence will concentrate on two key points, being the Key Crossing and Crossing Curtilage Area Overlay that are annotated on the Structure Plan (General) that directly and indirectly affect the site.

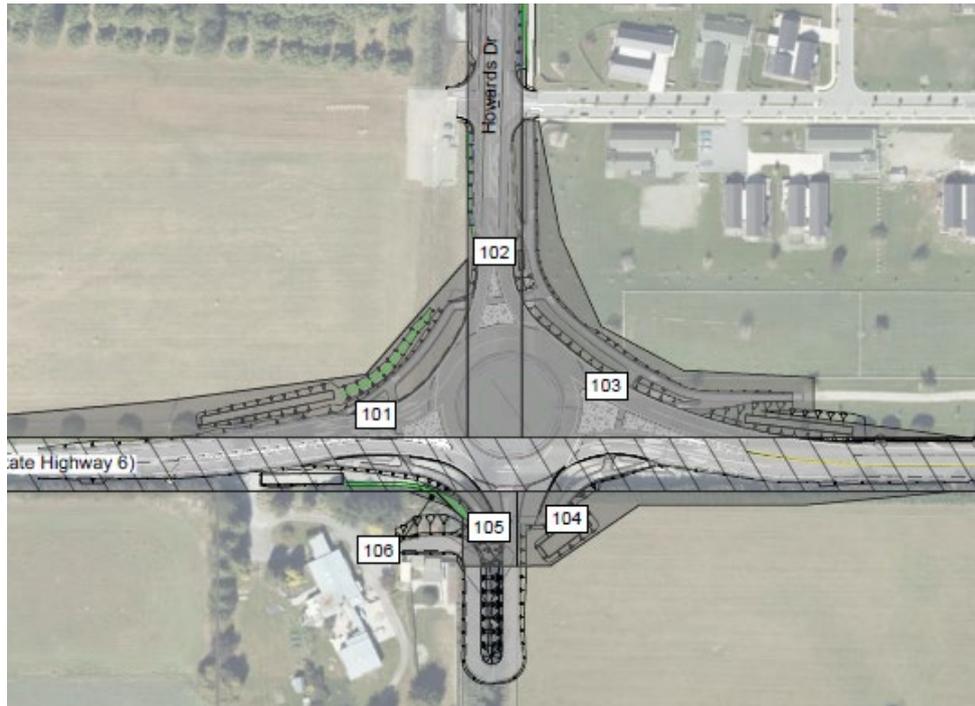
[14] I note that I was not involved in the preparation or lodgement of the submissions.

Waka Kotahi NZ Transport Agency – Notice of Requirement (RM221060)

[15] Waka Kotahi NZ obtained a Notice of Requirement (RM221060) that authorised the upgrading of the existing T intersection of State Highway 6 and Howards Drive to improve transport connections, safety and to accommodate growing traffic volumes. In summary, RM221060 authorised the following works at the State Highway 6/Howards Drive intersection:

- a) The construction of a 3 leg roundabout;
- b) Associated landscaping; and
- c) Road lighting and service relocation.

[16] A site plan from RM221060 illustrating the proposed intersection upgrade is indicated below:



- [17] It is noted that a small sliver of the Submitters land will be acquired by Waka Kotahi NZ in order to allow the intersection upgrade to proceed.
- [18] With the upgraded intersection, alternative access to the Submitters site will occur from the new northern leg of the roundabout. I am advised that until that leg (Collector Road C) is constructed, agreement has been reached between Waka Kotahi NZ and the Submitter that temporary access will be provided via the currently unformed legal road along the western boundary of the submitters site

The notified provisions of the Variation

- [19] Under Provision 49.1, the purpose of the Te Putahi Ladies Mile Zone (Zone) is as follows:

The Te Pūtahi Ladies Mile Zone implements the Spatial Plan and Te Pūtahi Ladies Mile Masterplan by providing a planning framework designed to achieve an integrated urban environment. The purpose of the Zone is to ensure efficient use of land for the provision of housing within an integrated, well-functioning, and self-sustaining urban community, that is inclusive of communities in nearby zones.

[20] Subdivision and development within the Zone is guided by an overarching Structure Plan, which indicates where development is enabled (or restricted), combined with key roading/access connections and an open space network.

[21] Due to protecting the safety and efficiency of State Highway 6, the Structure Plan limits access to this roading network to key locations. Under Provision 49.1 in terms of transportation related considerations, the following is stated:

the provision of transport infrastructural works, including public transport infrastructure, prior to development is key to avoiding adverse effects from increased private vehicle trips on State Highway 6 through shifts to other transport modes. Private vehicle ownership is discouraged by maximum carparking rates.

[22] The following discussion will focus on the planning provisions within the Variation that directly affect the Submitters site.

[23] Via the Variation Zoning Plan, the site is contained within a Commercial Precinct. The Zone Purpose describes that the Commercial Precinct is centrally located within the Zone and provides a focal point for commercial activities and amenities to serve the resident community, while at the same time not undermining the role of the commercial areas at Frankton or the Queenstown Town Centre. It is noted that the site is currently contained within the Rural Lifestyle Zone under the PDP.

[24] Based on the Zoning Plan, Structure Plan (General) and Structure Plan (Building Heights), the following are denoted on such plans and thus affect the site:

- a) Building Restriction Area
- b) Sub-Area D
- c) Crossing Curtilage Area Overlay
- d) Major Active Travel Route
- e) Proposed Intersection

- f) 13m height limit
- g) 24.5m height limit

[25] It is noted that the Key Crossing that connects land on the opposite side of State Highway 6 adjoins the State Highway 6 boundary of the site. It is understood that the Key Crossing itself does not protrude into the Submitters site based on the Structure Plan – General annotations. However if the Key Crossing is provided by an underpass as the Variation supporting documents contemplate then it is inevitable (based on the opinion of Mr Carr) that the ramps (and potentially supporting infrastructure) for the underpass will protrude into the Submitters site.

[26] Objective 49.2.3 specifically addresses the Commercial Precinct. Objective 49.2.3 and the supporting policies seek the following:

- a) Enable a range of small scale commercial activities (other than one medium sized supermarket).
- b) Avoid a range of commercial activities that undermine the function and role of other commercial centres.
- c) Enable residential activities in above ground floor scenarios.
- d) Enable development to be built to considerable building heights.
- e) Require flexibility for floor to ceiling heights for ground floor levels within buildings.
- f) Requiring acoustic insulation within critical listening environments.

[27] Following on from the activities that are enabled or to be avoided as outlined in Objective 49.2.3, the listed activities and development standards that apply within the Commercial Precinct generally permit such activities as residential (above ground floor) offices, education facilities, retail, community facilities, commercial activities. There are a range of activities that are not provided for within the Commercial Precinct, with such given either a non-complying or prohibited activity status.

[28] Subject to compliance with all standards, all buildings within the Commercial Precinct require at least a restricted discretionary activity consent. The matters of discretion for buildings within the Commercial Precinct are wide ranging in terms of dealing with such matters as design, spatial layout, connectivity and landscaping.

Section 42A Report

[29] I have considered the Section 42A Report that has been prepared by Mr Jeff Brown on behalf of the Council, together with the recommended amendments to the notified version of the Variation. The focus of my consideration in terms of the Section 42A Report relates to the key submission points addressed in my evidence.

[30] Dealing with the Submission and the key points of my evidence, in paragraph 11.209 of the Section 42A Report, Mr Brown noted that earlier versions of the Zone Structure Plan (this is assumed to be pre-notification of the Variation) did have the Key Crossing being located within the Submitters land. The notified version of the Variation indicates that the Key Crossing only lies within the State Highway 6 roading corridor. Mr Brown further states in this paragraph that the Key Crossing is accessible to pedestrian and cyclists without needing to access across any part of the Submitters land and in paragraph 11.210, Mr Brown states that the only aspect of the Structure Plan that does affect the Submitters site is the Crossing Curtilage Area Overlay.

[31] In paragraph 11.211, Mr Brown states that the Crossing Curtilage Area Overlay does not form part of the 'infrastructure triggers', and as such, the current pet lodge can continue to operate without affecting such infrastructure triggers.

[32] I will address the comments by Mr Brown below.

Key Evidence Points - Key Crossing Point/Crossing Curtilage Area Overlay

Variation Overview

- [33] In accordance with the Hearings Panel Directions 1, the key matters of dispute between the Council and the submitter are succinctly addressed below. The key evidence points relate to the Key Crossing and the Crossing Curtilage Area Overlay and the effect that such has on not only the Submitters land, but the wider implementation of the Variation.
- [34] As outlined above, the front portion of the site that adjoins State Highway 6 is affected by the Crossing Curtilage Area Overlay (and other annotations on the Structure Plan). As noted above, the Key Crossing annotation does not physically protrude into the site.
- [35] An aerial photograph has been prepared that indicates by overlay a number of the annotations from the Structure Plan that affect the site, with the screenshot being illustrated below:



- [36] Specifically, the screenshot indicates the following:

- a) The 10m Amenity Access Area that protrudes 10m into the site from the State Highway boundary.
- b) The 25m Building Restriction Area within the site when measured from the State Highway boundary.
- c) The 30m Crossing Curtilage Area Overlay, when measured from the 10m Amenity Access Area.

[37] From the above, the Crossing Curtilage Area Overlay protrudes a further 15m into the site when compared to the 25m Building Restriction Area.

[38] The purpose of the Key Crossing Point and Crossing Curtilage Area Overlay is to facilitate active connections for the land located on either side of State Highway 6, for both pedestrians and cyclists. It is understood that the Variation also seeks to provide other at-grade crossings over State Highway 6.

[39] From a policy perspective, Objective 49.2.6 (and supporting policies) is a 'travel/transportation' related objective. Policy 49.2.6.2(b) requires multiple pedestrian and cycle crossings of State Highway 6, Lower Shotover Road and Howards Drive at locations that support integration with public transport within walking distance of residential areas. Policy 49.2.6.4(b) clearly states that the preference is the provision of an underpass in the location of the Key Crossing. Policy 49.2.6.5 (Section 42A Report version) seeks to avoid development where specific transport infrastructural works have not been completed.

[40] The standards that implement Policy 49.2.6.5 in relation to the Key Crossing are Rules 49.5.33, 49.5.50 and 49.5.56. Each of these standards, while referring to different Sub-Areas, all state the following (based off the Section 42A report – new text underlined):

*Staging development to integrate with transport infrastructure
Development*

(except for utilities, the specified transport infrastructural works and other physical infrastructure) development within the Te Pūtahi Ladies Mile Sub-Areas shown on the Structure Plan shall not occur

prior to all the corresponding transport infrastructural works listed below being completed. For the purposes of this rule, “completed” means when the works are physically completed and are able to be used for the intended purpose.

- [41] Based on Rules 49.5.33, 49.5.50 and 49.5.56, aside from infrastructure related physical works, no other development can occur within Sub-Areas C and E (High Density Residential Precinct), D (Commercial Precinct) and J (Open Space Precinct) without the Key Crossing being formed and operational. A non-complying activity resource consent will be required if Rules 49.5.33, 49.5.50 and 49.5.56 are breached (and an ‘avoid’ policy comes into effect).
- [42] It is noted that there is flexibility to vary the location of the Key Crossing via Rule 49.5.15 by 30m (although a 40m variation is mentioned in other rules). The screenshot above indicates that irrespective of whether the Key Crossing can move 30m or 40m in either direction, the crossing will still adjoin the Submitters land.
- [43] Within Chapter 27 (Subdivision and Development), there is the same policy approach (Policy 27.2.24.6) of avoiding subdivision where the key transportation infrastructure has not been established.
- [44] The following issues are addressed in relation to the Key Crossing and Crossing Curtilage Area Overlay.

Preference/Rationale for an Underpass for the Key Crossing

- [45] It is clear that there is a preference for an underpass in the location of the Key Crossing. This is evidenced by Policy 49.2.6.4(b) where this is articulated by the words *preferring the provision of an underpass for the Key Crossing indicated on the Structure Plan.*
- [46] Mr Carr in his evidence (paragraph 28), states that it is commonly accepted amongst transportation planners that pedestrians and to an extent cyclists, typically endeavour to travel in a manner that reduces the journey length, and as such, when planning these modes of travel, that routes are devised that minimise distance.

- [47] Mr Carr in his evidence (paragraph 29) states that underpasses have an inherent flaw because they have significantly longer walking/cycling times due to the length of the approach and departure ramps. Mr Carr also notes that there are issues with changes in level when passing through an underpass.
- [48] Mr Carr in his evidence (again in paragraph 29) states that there needs to be a clear rationale as to why an underpass is the optimum solution in any particular location, and that he cannot find any rationale as to why an underpass (in a general sense) has been proposed in the Council documents that support the Variation.
- [49] Mr Carr notes (paragraph 30) that the Section 32 report clearly establishes that at-grade crossings are appropriate, and at grade signalised crossings of the highway are proposed on the northern, western and southern side of the intersection with Howards Drive. Mr Carr then notes therefore that there is no safety related reason for the need for an underpass that adjoins the site.
- [50] Mr Carr (paragraph 31) after assessing the Section 42A Report, understands that the rationale for the location of the Key Crossing/underpass, is that this location provides a direct route between the Commercial Precinct, future high school and the Council Community/Sports Hub and Lake Hayes Estate. However, Mr Carr notes that if the Submitter's land cannot be used, the Key Crossing Point (and underpass), is not the most direct route to move back and forth across State Highway 6.

Alternative Location for the Key Crossing/Underpass

- [51] Mr Carr has canvassed the consideration of an alternative location for the underpass. This is on the basis that the high school is not 'fixed' and the fact if the Submitters site remains as a pet lodge for a continued long period of time, then there will be practical and legal issues with establishing the northern ramp to the underpass on the Submitters site, in the location of the current Key Crossing.

[52] Mr Carr notes that if the continued presence of the Submitters pet lodge business is taken into account, along with the uncertainty associated with the location of the key pedestrian and cyclist attractors, then Mr Carr does not see any transportation justification for preferring the Key Crossing/underpass in the presently proposed position. Mr Carr concludes that it would be his preference for the Key Crossing (and underpass) to be located to the west of Howards Drive.

Practical Considerations

[53] As stated above, Mr Brown notes that as the Key Crossing only lies within the roading corridor of State Highway 6, then pedestrians and cyclists can use the Key Crossing without needing to access across any part of the Submitters site.

[54] Mr Carr has provided some calculations as to how an underpass will work in practice, especially providing an underpass that is the easiest and most practical to use. Mr Carr states that the underpass will sit 4m below ground and that the gradient cannot exceed 1 in 12 (in order to meet the Building Act requirements). This scenario will mean that the access ramp on the northern side of the underpass will need to be 48m in length. The 48m length cannot be accommodated within the legal confines of State Highway 6, unless a number of 90 degree turns are proposed (which from a best practice perspective, should be avoided) from the Key Crossing.

[55] So unless 'bends and angles' are provided within the roading corridor of State Highway 6, then the Submitters land will need to be used for the northern ramp that ventures out of the underpass.

[56] The 48m ramp on the northern side of State Highway 6 will need to use the bulk of the Crossing Curtilage Area Overlay length on the Submitters site. Under this scenario, this would make sense as to why the Crossing Curtilage Area Overlay is required on the Submitters site. Alternatively it follows that if the underpass exit ramp did not need to use Submitters site (and all pedestrians/cyclists would also not need to use the Submitters site as stated by Mr Brown), then why is there the need for the Crossing Curtilage Area Overlay on the Submitters site?

Other Considerations

- [57] While the Key Crossing is not located on the Submitters site, the Crossing Curtilage Area Overlay is, which makes sense as the overlay will address the physical situation of a long northern ramp coming out of the underpass under State Highway 6. The use of the Submitters land under this scenario has a number of implications for not only the Submitters, but the Variation as whole.
- [58] The Submitters site is in part a long term commercial operation in the form of a pet lodge. If this operation remains in place for the foreseeable future (or even long term) as I understand is the current owners intention, then there are physical constraints within the Submitters site that will highly impede either the construction of a 48m northern ramp, and if not, the efficient flow of pedestrian and cyclists through the site to the adjoining properties/road (running east-west). The main impediment affecting either the construction of the northern ramp or the flow of people through the site are existing buildings. Further, if the Submitters choose not to redevelop their site, the triggers within Rule 49.5.37 (buildings for non-residential activities) and Rule 49.5.37 (consistency with the Structure Plan) do not come into play in terms of requiring and co-ordinating pedestrian and cyclist movements.
- [59] Based on the above and despite the fact that the Variation seeks to denote and provide for a major active crossing into and from the Submitters site, there is no guarantee that the ability to form and use an underpass in this location will be borne out, especially if the Submitter (or any future landowner) decides to 'sit still' with the current land uses and buildings on the site.
- [60] The further issue is that future development within Sub-Areas C, D, E and J are effectively in a stalemate scenario, whereby no development can occur unless the Key Crossing is constructed and operational or a non-complying activity consent can be obtained to enable development before the underpass is constructed. The other alternative is a temporary crossing point at grade. Ignoring the Open Space Precinct, the most intensive residential zone (High Density Residential) within the Variation and the Commercial Precinct will be placed on hold until a resolution is

reached on the Key Crossing as presently proposed. Whilst non-complying activity consents could theoretically be obtained to develop within Sub-Areas C, D, E and J, there are two key issues that come into play. Firstly, the non-complying activities application(s) have to deal with a policy that seeks to 'avoid' such consents being issued, and secondly, providing key transport infrastructure prior to development occurring in certain areas of the Variation is one of the backbones of the Variation (on the basis that infrastructure and development are integrated). If the Key Crossing remains in its presently proposed position, and if the Submitter sits still on their land, these outcomes will no doubt frustrate other developers who are seeking to develop their land sooner rather than later.

[61] In my opinion, it is wholly correct to ensure that infrastructure and development are integrated, and thus I agree with the approach adopted in the Variation. However, development of large tracts of land within the Variation are in effect being set up to be stalled, unless the Key Crossing as currently proposed is actioned. In my view, this is not an optimal planning outcome. As such, and as outlined below, I consider that an alternative location should be defined for the Key Crossing, a location that is not affected by an existing commercial operation and buildings.

[62] Dealing with the Submitter's land, in my opinion, the Council has failed to have sufficient regard to the economic loss, loss of future development design flexibility and potential reduction in development rights on the basis of the current location of the Key Crossing and the Crossing Curtilage Area Overlay, if such features were not adjoining or located on the Submitters site. Because as long as the Crossing Curtilage Area Overlay exists on the site, then any development within this area will be subject to a restricted discretionary activity consent pursuant to Rule 48.4.19. Unless there is a definitive design proposed for the underpass associated with the Key Crossing as presently proposed, then there could be difficulty obtaining consent under Rule 18.4.19 and Rule 49.5.37, as one of the matters of discretion under this rule are the effects on the Key Crossing. In short there is no certainty afforded to the owners

as to what might be required so therefore they have to assume development of the land the subject of the overlay may be frustrated.

[63] Further, the Council has failed to recognise that the requirement to provide for the underpass in this location would amount to a de facto designation, and one where the financial responsibility for what is a public work that would be borne by the landowner and not the Council. One would have thought if a landowner's land was to be zoned for a public work then either it should be subject to a Designation or some development incentive granted as compensation.

[64] In my opinion, and based on Mr Carr views, I consider that the Key Crossing should be moved to a position to the west of the Howard's Drive intersection (with the subsequent removal of the Crossing Curtilage Area Overlay on the Submitters land). While this alternative will involve other private landowners, the benefit of this approach is that existing buildings will not inhibit the proposed underpass. Further, the private land that adjoins either side of State Highway 6 to the west of Howards Drive are significantly sized land parcels and to the south is "protected" by setback conditions of the consent for the Queenstown Country Club.

[65] Alternatively, if Mr Brown is correct when he states that no pedestrians or cyclists need to use the Submitters land when exiting the Key Crossing to gain access to the Major Travel Routes, then the Crossing Curtilage Overlay should then be removed from the Submitters land.

Conclusion

[66] I generally agree with the integrated infrastructure approach as proposed in the Variation provisions. However, due to how the subject Variation provisions (as detailed above) have been promulgated in terms of the Key Crossing in the chosen location, it means that there will be difficulties for not only the implementation of the Variation, but also for the Submitters.

[67] Failure to construct the Key Crossing will frustrate the developers not only within the High Density Residential Precinct and Commercial Precinct, but also within the Open Space Precinct. Developing these

Sub-Areas before key infrastructure is in place goes against one of the key goals of the Variation.

- [68] If an underpass is provided within the Key Crossing and a more practical, safe, efficient and straight ramp protrudes to the north into the Submitters land, then there will be significant implications as to the workability and pedestrian/cyclist connectivity from this ramp, based on the exiting buildings located on site (if such remain long term). There will also be implications for the Submitter in terms of a loss of design flexibility, reduction in development potential and costs.
- [69] I agree with the analysis of Mr Carr, in that there is an alternative option for the placement of the Key Crossing (and underpass), with this alternative option being to the west of Howards Drive.
- [70] Finally, if Mr Brown is correct in that no pedestrians or cyclists need to use the Submitters land when exiting the Key Crossing to gain access to the Major Travel Routes, then the Crossing Curtilage Area Overlay should then be removed from the Submitters land.

Scott Freeman