

**Before the Council's Hearings Panel at Cromwell**

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*Under:* the Resource Management Act 1991

*In the matter of:* Proposed Plan Change 12 to the Central Otago's  
District Plan

*between:* **Woioing Tree Holdings Limited**  
*Requestor*

*and:* **Central Otago District Council**  
*Local Authority*

*and:* **NZ Transport Agency**  
*Submitter*

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**STATEMENT OF EVIDENCE OF ANTHONY STUART MacCOLL**

**15 November 2017**

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**NZ TRANSPORT AGENCY**  
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### **Introduction and Qualifications**

- (1) My name is Tony MacColl. I am a Principal Planning Advisor with the Dunedin Regional Office of the NZ Transport Agency (Transport Agency). I have been employed by the Transport Agency, and its predecessor Transit New Zealand (*Transit*), since 2007.
- (2) I hold the qualifications of Master of Resource and Environmental Planning from Massey University, and Master of Science from the University of Otago. I am a full member of the New Zealand Planning Institute. I have also completed the Making Good Decisions programme, and am an accredited Hearings Commissioner.
- (3) Whilst I accept that this is not an Environment Court hearing, I have read and agree to comply with the Environment Court's Code of Conduct for Expert Witnesses contained in the Practice Note 2014. Unless I state otherwise, this evidence is within my scope of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express here.
- (4) I am authorised to make the following comments on behalf of the Transport Agency.

### **Scope of Evidence**

- (5) My statement will address the following matters:
  - the NZ Transport Agency – its statutory objective and role and the reason for its involvement in this process;
  - the strategic significance of the State highway system;
  - the NZ Transport Agency's submission.

### **NZ Transport Agency**

- (6) The Land Transport Management Act (LTMA) defines the objective of the Transport Agency as being to carry out its functions in a way that contributes to an affordable, integrated, safe, responsive, and sustainable land transport system (section 94).
- (7) The functions of the Transport Agency are defined in section 95 of the LTMA, and include among other things:
  - to promote an affordable, integrated, safe, responsive, and sustainable land transport system;

- to manage the State highway system; and,
  - to assist, advise, and co-operate with approved organisations (such as regional councils and local territorial authorities).
- (8) When carrying out its functions, the Transport Agency must exhibit a sense of social and environmental responsibility, and when managing the planning and funding of transport activities, the Transport Agency must give effect to the Government Policy Statement (GPS) on land transport funding.
- (9) The Transport Agency will also contribute to the objectives of the 'Connecting New Zealand: the government's policy direction for transport' and have regard to other policy documents and legislation such as the Government Rounding Powers Act 1989, the Resource Management Act 1991, the Safer Journeys Road Safety Strategy and the Energy Efficiency and Conservation Strategy.
- (10) It is from this premise that the Transport Agency submitted on the proposed plan change to the Central Otago District Plan.

#### **Strategic Significance of the State Highway System**

- (11) In a national context, State highways form an integrated national network of inter-regional and inter-district routes, and major urban arterials. While State highways form part of a wider roading network in New Zealand, the distinguishing functions of State highways among others are to:
- Connect major centres of population;
  - Provide access to ports, airports, major industrial areas, major primary production areas and major tourist areas; and
  - Service major urban corridors.
- (12) I am aware that caselaw has affirmed that the State highway network is a physical resource of national importance under the Resource Management Act 1991.<sup>1</sup>

#### **NZ Transport Agency Submission**

- (13) The Transport Agency's submission generally supported the intent of the proposed Plan Change 12 in principle but did

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<sup>1</sup> *Auckland Volcanic Cones Society Inc v Transit New Zealand* [2003] NZRMA 316 (HC) 327-328.

highlight some concerns which can be adequately resolved by amendments. I have read the Section 42A Report and am satisfied that the Transport Agency's submission has been accurately summarised and discussed. However, I propose to highlight matters of particular interest to the Transport Agency, and that are important to your deliberations on this matter.

***Reverse Sensitivity***

- (14) Reverse sensitivity is the legal vulnerability of an established activity to complaint from a new land use. Reverse sensitivity arises when new sensitive land-uses (e.g. residential activities) locate in close proximity to a lawfully established activity that may emit some adverse effects (e.g. noise). For land transport network operators, including the Transport Agency, there is a risk that new activities (such as houses and schools) that choose to locate near to established roads or railways may object to the effects of the land transport network (such as noise and vibration) and take action against the operator. The same issues arise around ports, airports and other infrastructure.
- (15) The meaning of "effect" is defined in Section 3 of the Resource Management Act (1991). The Environment Court has held that reverse sensitivity is an adverse effect under the RMA. It follows therefore that there is a duty, the same as with any other adverse effect, to avoid, remedy or mitigate reverse sensitivity effects, in order to achieve the RMA's purpose of sustainable management.
- (16) Landowners, therefore, have a duty to mitigate the effects of their activities on the State highway network. As the effects of a State highway usually extend beyond the road designation, it is appropriate to control the establishment of new activities close to State highways to reduce potential conflicts and manage reverse sensitivity effects.
- (17) The Transport Agency has developed a stepped approach to protect sensitive activities. This approach is based around buffer and effects areas. To achieve a reasonable level of acoustic amenity, all noise sensitive activities should be located outside of a buffer area, providing a setback from State highways. Beyond the buffer area new buildings containing noise sensitive activities need to be designed and constructed to achieve reasonable indoor acoustic amenity.
- (18) The proposed land use activities include residential activities which are activities that are sensitive to road noise. The proposed noise

sensitive activities appear to be located outside of the buffer area but within the wider State highway 'noise effects area'.

- (19) In view of the above, the Transport Agency suggests it is appropriate for Council to zone land so that new sensitive activities are not permitted near to existing State highways and rules should be imposed requiring sensitive activities near State highways to manage the effects from the State highway.
- (20) For the reasons outlined above the Transport Agency supported notified:
- Policy 4.4.2(h) which strongly discourages buildings in the Rural Resource Area,
  - Rules 4.7.5(vii) which affords a non-complying activity status for buildings in Rural Resource Area of the Wooing Tree Overlay Area,
  - Standard 4.7.6M which involves the management of the Rural Resource Area of the Wooing Tree Overlay so that it functions as an open space buffer from the adjoining State highways, and
  - Rule 7.3.6(xii)(b) which requires new buildings within 80m of SH6 and SH8B to be designed and constructed to meet the appropriate noise performance standard.
- (21) I suggest the above policy, rules and standards address the Transport Agency's concerns with regards to Council and future land owners addressing the potential reverse sensitivity effects from State highway traffic noise. Accordingly, I support the recommendation of the Section 42A Report that these provisions be retained as notified.

### ***Access***

#### ***Access Location***

- (22) The traffic impact assessment recommends the installation of a single lane roundabout at the SH8B/Barry Avenue intersection for the proposed rezoning development. The Transport Agency suggests the proposed plan change will result in an increase in cross State highway movements and that a roundabout is the most appropriate intersection treatment in this instance to maintain the safety, efficiency and functionality of the State highway. The Transport Agency also considers the Barry Avenue/SH8B intersection to be the best location for the access to the subject site. Accordingly, the Transport Agency agrees with this recommendation of the traffic impact assessment.

Roundabout Design

- (23) It is proposed that State highway vehicular access to the subject site is only permitted via the proposed roundabout. The Transport Agency submitted in support of provisions that restrict State highway access to this location as it creates an expectation that there shall be no other State highway accesses. I suggest this will also contribute to the sustainable management of the State highway and therefore support proposed Rule 7.3.(vi)(d).
- (24) Rule 7.3.6(vi)(d) also provides some technical requirements regarding the design of the proposed roundabout. The Transport Agency submitted that the exact technical design should not be included in this rule as technical standards and design requirements can change over time, as can the traffic volumes and the roading environment. If development is put on hold then the specified technical requirements may no longer be appropriate. The Transport Agency submitted Rule 7.3.6(vi)(d) should be amended to require the roundabout to be constructed to the Transport Agency's standards.
- (25) Mr Vivian in Paragraph [4.68] of his evidence opposes the deletion of reference to a single lane roundabout on the basis of fairness to the Requestor. The Transport Agency's concern is the future cumulative effect of other developments in the area should the Wooing Tree development be put on hold for some time. This is a legitimate concern given the recent population growth and potential future urban expansion in the area. It is unknown if the Wooing Tree development will proceed immediately or sometime in the very distant future. However, if adopted the Plan Change 12 provisions will remain in the District Plan until such a time as they are purposely removed through a district plan review.
- (26) I note Mr Carr in Paragraph [115] of his evidence also suggests a single lane roundabout should be specified in the plan change provisions. Mr Carr and Mr Vivian are both concerned that the Transport Agency may require the Requestor to construct a two-lane roundabout when a single lane roundabout would suffice.
- (27) As outlined earlier in this evidence, the Transport Agency's responsibility to contribute to an efficient, effective and safe land transport system in the public interest is set out in the Land Transport Management Act 2003.
- (28) As a Requiring Authority the Transport Agency has a duty to be fair and reasonable. The RMA prescribes the process for applicants to become requiring authorities. Section 167(4) of the RMA requires

the Minister, before approving an applicant as a requiring authority, to be satisfied (amongst other things) that:

*“The applicant is likely to satisfactorily carry out all the responsibilities (including financial responsibilities) of a requiring authority under this Act and will give proper regard to the interests of those affected and to the interests of the environment.”*

- (29) This pre-assessment of applicants is necessary because of the greater powers and responsibilities conferred to requiring authorities. Because of these duties and responsibilities the Transport Agency could not require a two lane roundabout if evidence indicated a single lane roundabout would suffice. At this time it appears unlikely that a two lane roundabout would be required, however this possibility should not be precluded. I am of the view that the Transport Agency should not be expected to inherit the liability of a two lane roundabout if this was required but the rules excluded it.
- (30) In view of the above statements I suggest it is appropriate to remove reference to a ‘single lane’ roundabout. The Planner’s Report concurs with this view and suggests that this will enable the roundabout to be constructed to an appropriate standard. Consequently, I support the recommendation of the Planner’s Report and suggest the following change to the Rule:
- 7.3.6(vi)(d) *No vehicle access is permitted from the Wooing Tree Overlay Area to the State highway except via a ~~single lane roundabout (incorporating a 44m diameter central island as recommended by Ausroads Guide to Traffic Engineering)~~ constructed to the NZ transport Agency’s standards at the corner intersection of SH8B and Barry Avenue.*

Roundabout Staging

- (31) Proposed Rule 7.3.6(vi)(e) restricts development to that residential component east of the Business Resource Area (2) until the proposed roundabout and pedestrian underpass has been completed and is operational, i.e. no new development west of and including the proposed Business Resource Area (2) is to be permitted until the roundabout and underpass is completed and operational. I suggest this staging of the development will contribute to the sustainable management of the transport system.
- (32) The Transport Agency also submitted on Rule 7.3.6(vi)(e) suggesting specific roundabout design requirements should not be included for the reasons outlined earlier in this evidence. The

Transport Agency also noted that the underpass recognised pedestrians only. However, it is likely that the underpass will also be utilised by cyclists and they should therefore be explicitly provided for in this rule. The Planner's Report concurs with this view. I therefore suggest Rule 7.3.6(vi)(e) should be amended to read:

*7.3.6(vi)(e) No new development (other than a new temporary access from the existing Wooing Tree Tasting Room to Shortcut Road or internally within the property to a new road to access Shortcut Road) west of and including the Business Resource Area (2) of the Wooing Tree Overlay Area shall be permitted until the ~~single-lane~~ roundabout referred to in Rule 7.3.6(vi)(d) and a pedestrian/cyclist underpass is completed and operational. Development that is permitted to occur shall be designed to connect to the single lane roundabout referred to in Rule 7.3.6(vi)(d) as the primary access to the State Highway once completed and operational.*

*Pedestrian/cyclist Underpass Location*

- (33) The Planner's Report recommends the pedestrian/cycle underpass should be located to the west of the Barry Avenue/State Highway 8B intersection to provide better connectivity to the Cromwell Town Centre. The Transport Agency does not currently have a view as to the best location for the pedestrian/cycle underpass.
- (34) The suggested location may well be the optimal location for the underpass. However, The Transport Agency suggests the best time to definitively determine the location is during the detailed design of the roundabout and underpass when connectivity, safety, efficiency, functionality and affordability will all be duly considered. Also, if the development is put on hold or not immediately progressed then the surrounding environment may change during the intervening period. What may be the best location now, may not necessarily be the best location at the time of development.
- (35) I also note that Mr Carr in Paragraph [95] of his evidence states that "there may be some technical impediment to locating it in this position and so until further site work has been carried out to show that it is feasible in this position, I consider that the location should remain flexible". I concur with this statement. In view of the above, I suggest the exact location of the pedestrian/cyclist underpass should not be explicitly provided at this time.



Pedestrian/cyclist Connectivity

- (36) The Transport Agency made a further submission in support of a submission requesting the provision of pedestrian and cyclist access through and beyond the subject site. I agree with the Planner's Report which anticipates that the underpass will become popular with pedestrians and cyclists who wish to travel between Cromwell Town Centre (and residential areas to the south) and the recreation resources which are available at McNulty Inlet. I therefore support the Planner's Report recommended amendment to Rule 7.3.6(vi)(f) to require provision for connectivity for pedestrians and cyclists from the underpass to Shortcut Road and McNulty Inlet beyond.
- (37) Mr Vivian in Paragraph [4.79] of his evidence suggests the existing provisions provide opportunity for connectivity of pedestrians through the site but they are lacking with respect to cycleways and possible connectivity to and beyond the site. Mr Vivian recommends the following amendment to Rule 7.3.3 and Rule 8.3.2
- "In the Wooing Tree Overlay Area, the provision for pedestrian and cyclist movement, including the provision of footpaths and cycling infrastructure."

I support this recommendation also as it builds on principles of Travel Demand Management by encouraging multi-modal transport solutions and recreational activities.

Connection to Shortcut Road

- (38) The Transport Agency submitted in support of the provision of a legal road through the plan change land to connect to Shortcut Road to the proposed roundabout. The Transport Agency anticipates that the proposed roundabout will provide safe movement of people to and from Cromwell Township across SH8B to Wooing Tree land and beyond. Providing connectivity and integrating transport and land use are important factors in the sustainable management of the transport system. For this reason it is important that this legal road is designed and constructed to an appropriate standard to accommodate the anticipated traffic movement. I therefore supports the Planner's Report recommended amendment to Rule 7.3.6(vi)(f).
- (39) The Transport Agency also notes that there is no proposal in Plan Change 12 to close the Shortcut Road/SH8B intersection. The Transport Agency agrees with the Planner's Report which states that any such proposal falls outside the scope of Plan Change 12 and would be subject to a separate statutory process. The

Transport Agency submitted on the Rule 7.3.6(vi)(f) to ensure this connection is formed to an appropriate standard to accommodate the initial and anticipated traffic as the proposed roundabout is likely to serve not only the plan change area but also the development of the wider area on the north side of SH8B.

### ***Business Zones***

- (40) The Transport Agency submitted on the Business Zone provisions in respect to State highway access and the staging and design of the roundabout as per the residential zone provisions. The Transport Agency notes the Planner's Report considers a significant adverse effect with respect to Plan Change 12 may be associated with the establishment of a retail area within the proposed Business resource Area (2) and that retail activity as proposed is inappropriate.
- (41) However, if Council are of a mind to adopt Plan Change 12 with the Business Resource Area (2) then the Transport Agency's requested amendments regarding the above matters will address its concerns with regards to transport. These matters were as follows:
- Support Rule 8.3.6(i)(b) – which restricts size of the floor area as a means to managing the demand to travel.
  - Amend Rule 8.3.6(xii)(a) – which restricts State highway vehicle access to a specific location so that the technical requirements regarding the design of the roundabout are not stipulated.
  - Amend Rule 8.3.6(xii)(b) – to remove specifics regarding the design of the roundabout and include cyclists as a user group of the underpass.
  - Support Rule 8.3.6(xiii) – which restricts size of the floor area as a means to managing the demand to travel.

### **Conclusion**

- (42) The objective of the Transport Agency is to operate the State highway system in a way that contributes to an integrated, safe and sustainable land transport system.
- (43) For the reasons that I have stated, I consider that the Committee should have appropriate regard to the matters raised in the Transport Agency's submission and in this Brief of Evidence.

**Tony MacColl**

15 November 2017