

BEFORE THE QUEENSTOWN LAKES DISTRICT COUNCIL

IN THE MATTER of the Resource Management Act 1991 (the "Act")

AND

IN THE MATTER of the Queenstown Lakes District Proposed District Plan
Topic 05

EVIDENCE OF CHISTOPHER BRUCE FERGUSON

02 September 2016

Jacks Point Residential No.2 Ltd, Jacks Point Village Holdings Ltd, Jacks Point Developments Limited, Jacks Point Land Limited, Jacks Point Land No. 2 Limited, Jacks Point Management Limited, Henley Downs Land Holdings Limited, Henley Downs Farm Holdings Limited, Coneburn Preserve Holdings Limited, Willow Pond Farm Limited (#762 and #1275)

Jacks Point Residents and Owners Association (#1277)

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1. INTRODUCTION

- 1.1 My name is Christopher Bruce Ferguson. I hold the position of Principal with the environmental consultancy firm Boffa Miskell Limited. I am based in Queenstown and have been employed by Boffa Miskell since April 2015. I hold the qualification of a Bachelor of Resource and Environmental Planning (Hons) from Massey University.
- 1.2 The full details of my experience and qualifications are set out in my evidence in chief, dated 29 February 2016.
- 1.3 In preparing this evidence I have reviewed:
- (a) The reports and statements of evidence of other experts giving evidence relevant to my area of expertise, including:
 - (i) The s.42A report prepared by Ruth Evans (17 August 2016); and
 - (ii) The statement of Evidence of Dr Stephen Chiles (17 August 2016)
- 1.4 I have read the Code of Conduct for Expert Witnesses in the Environment Court Practice Note. This evidence has been prepared in accordance with it and I agree to comply with it. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

2. SCOPE OF EVIDENCE

- 2.1 I have been asked to prepare evidence on Chapter 36, Noise, of the Proposed District Plan ('**PDP**') by Jacks Point Residential No.2 Ltd, Jacks Point Village Holdings Ltd, Jacks Point Developments Limited, Jacks Point Land Limited, Jacks Point Land No. 2 Limited, Jacks Point Management Limited, Henley Downs Land Holdings Limited, Henley Downs Farm Holdings Limited, Coneburn Preserve Holdings Limited, Willow Pond Farm Limited and Jacks Point Residents and Owners Association ('**Jacks Point**'). For each of these clients I was involved in the initial assessment of the notified provisions, the preparation of submissions and further submissions.

3. EXECUTIVE SUMMARY

- 3.1 This evidence has been prepared for the hearing on Chapter 36 of the PDP. It addresses the relief sought in the submission from Jacks Point to recognise and provide for a separate noise standard within the Village and Education Innovation Campus ("**EIC**") Activity Areas of the Jacks Point Zone. I support the recommended amendments from the s.42a Report and the evidence by Dr Chiles in terms of the noise standard and hours to which that applies for the Village.
- 3.2 However, because of the nature of the commercial activities envisaged within the EIC, I consider it is also appropriate to impose the same noise standards in the EIC as are applied to the Village. In addition, I raise some concern with the lack of interpretation of the rules between the standards that apply to "Zones sound is received in" and the assessment locations "at any point within any site".
- 3.3 The s.42a report recommends the default status of any breach of noise standards be non-complying. Non-complying activity status does not align with the language of the higher order objective and policies which seek to manage the adverse effects of noise. In my view any breach of a noise standard would be more appropriately addressed as a restricted discretionary activity that would align with the higher order provisions and enable a more targeted assessment of effects.

4. SUMMARY OF THE RELIEF SOUGHT

- 4.1 The submission by Jacks Point sought to refine the noise standards under Rule 36.5.3 (notified version) as it applies to all of the Jacks Point Zone and to enable separate noise standards to be apply with the Village and EIC Activity Areas.
- 4.2 The particular amendments to Rule 36.5.3 sought by Jacks Point are:

Table 2	General Standards				Non-compliance Status
	Activity or sound source	Assessment location	Time	Noise Limits	
36.5.3	... Jacks Point Resort Zone, <u>except within the Jacks Point Village and EIC Activity Areas</u> (see also 36.5.17)	At any point within the Residences/ Residential Activity Areas	0800h to 2000h	50 dB L <small>Aeq(15 min)</small>	NC
			2000h to 0800h	40 dB L <small>Aeq(15 min)</small> 75 dB L <small>AFmax</small>	NC

- 4.3 The new standards proposed within the Jacks Point submission to apply within the Village and EIC are:

Table 2	General Standards				Non-compliance Status
	Activity or sound source	Assessment location	Time	Noise Limits	
36.5.3.1	Jacks Point Village and EIC Activity Areas of the Jacks Point Zone	At any point within the Residencies/ Residential Activity Areas	0800h to 2200h	50 dB L <small>Aeq(15 min)</small>	RD
			2200h to 0800h	40 dB L <small>Aeq(15 min)</small> 75 dB L <small>AFmax</small>	RD <u>Discretion is restricted to the extent of effects of noise generated on adjoining zones.</u>

- 4.4 The key changes sought in the submission are:
- To identify a separate standard for the Residential, Village and the EIC Activity Areas of Jacks Point Zone
 - To extend the daytime standard from 8:00pm to 10:00pm
 - To amend the status of any breach of the noise standard from being a non-complying activity to a restricted discretionary activity
- 4.5 The proposed rule sought to retain the assessment location for this noise standard at any point within the residential activity areas and sought to restrict discretion to the effects of noise generated on adjoining sites.
- 4.6 The reasons provided in support of these changes within the submission relate to the differing levels of amenity anticipated within the residential activity areas from that within the Village and the EIC.
5. **S.42A Report**
- 5.1 In response to the submission by RCL Queenstown Pty Ltd (#632) and Jacks Point (#762), the s.42A Report recommends changes to the noise provisions applying to Jacks Point, as follows:
- Deletion of Rule 36.5.3 establishing the noise standards across all of the Jacks Point and Millbrook Zones.
 - Transfer Rule 36.5.17, aiming to manage noise effects from the State Highway on activities within the Jacks Point Zone through internal insulation standards on any residential activities, into

Chapter 41 Jacks Point Zone, to be assessed at the substantive zone hearing.

- (c) Amending Table 2 standards to apply within “zones the sound is received in”, rather than to the “activity or sound source”.
 - (d) Amending Rule 36.5.4 (Rule 36.5.3 Revised proposal) to include the Jacks Point Zone Residential Activity Areas within the group of other largely residential zones retaining the same daytime and night-time noise limits and hours.
 - (e) Amending Rule 36.5.6 (Rule 35.5.5 Revised Proposal) to include the Jacks Point Zone Village Activity Area into a grouping of other activity areas from similar zones. In doing so this daytime noise limit increases from 50 dB to 60 dB, the night-time noise limit increases from 40 dB to 50 dB and the daytime hours are extended to 10:00pm. As with the residential activity areas the assessment location becomes “at any point within any site”
- 5.2 The acoustic evidence of Dr Chiles reasons that the noise limits under the notified Rule 36.5.3 are stringent for commercial activities and would not allow for some activities such as cafes with patrons sitting outside¹. For commercial activities, Dr Chiles considers a more lenient noise limit such as contained within Rule 35.5.6 (Notified version) would be more appropriate.

6. Evaluation

- 6.1 The Council’s revised provisions accept many of the changes sought within the submission by Jacks Point, including to identify a separate noise standard for the Village and to provide for extended daytime hours. In addition, the revised provision also seeks to apply more lenient noise limits within the Village. In principle, I support each of these changes and for the reasons set out in the Councils evidence. In my view the mixed use environment anticipated for the Jacks Point Village Activity Area would be more tolerant of higher noise levels without compromising the amenity values for this area. The revised noise limits recognise the potential for cafes, restaurant, education, and health care

¹ Paragraph 9.1(Page 13), Statement of Evidence of Dr Stephen Chiles, 17 August 2016

activities to operate within parameters that are more realistic to expected effects. It also helps to reinforce the vibrancy of the Village as a non-residential and commercial core to the wider Jacks Point Zone.

- 6.2 The issues which remain outstanding or arise as a consequence of the revised proposal are:
- (a) Addition of the EIC to the list of 'commercial' noise standards in 36.5.5;
 - (b) Clarification of how the noise standards are applied between the stipulated assessment locations and the zone or activity areas within which the sound is received ; and
 - (c) The status of any breach of the noise standards.
- 6.3 As outlined above, the Jacks Point submission sought to separate the Village and the EIC from the noise standards that are proposed to apply across all of the Jacks Point Zone. The evidence for the Council recognises the appropriateness of applying a different standard for commercial areas and provides for the Village through the amendments to Rule 36.5.5 (Revised proposal), but fails to consider the EIC also. The land within the EIC anticipates development of this area for business innovation, education, technology based activities, and healthcare activities². Taking into account the nature of these activities and the evidence of Dr Chiles, it would be appropriate to incorporate the EIC into Rule 36.5.5 (Revised proposal) along with the Village. I set out suggested amendments to revised Rule 36.5.5 in section 7 below.
- 6.4 Under the revised proposal, the assessment location identified within Table 2 for both the Jacks Point Residential Activity Areas (Rule 35.5.3 (Revised Proposal) and the Village Activity Area (Rule 36.5.5) is “at any point within any site”. Clarification Rule 36.3.2.7 states that the noise limits in Table 2 do not apply to assessment locations within the same site as the activity. When combined with the change to the wording of the column heading in Table 2 to apply the standards to the “zone the sound is received in”, my understanding of the rules is to require sound generators to comply with:

² Rule 41.4.9 Structure Plan – Activities, Chapter 41 Jacks Point, Proposed District Plan

- (a) The noise limits for sound beyond the site within which the activity is located and within the zone in which it is located; and
 - (b) The noise limits for sound beyond the site within which the activity is located and within any adjoining zone (where a standard is specified).
- 6.5 If my analysis of the provisions is correct, the interpretation of these rules is not well expressed in the standards or clarification at Rule 36.3.2.
- 6.6 To use the example of an activity located within the Jacks Point Village; this would be required to comply with the 60 dB³ daytime limited at the boundary of the site and the 50dB⁴ daytime limit at any point within any adjoining Residential Activity Area. I rely on the evidence of Dr Chiles that the more lenient standard proposed for the Village would not be undermined by the dual application of the standards required to be also met for sound received within any adjoining activity area.
- 6.7 Jacks Point made a general submission concerning the status of any activity in breach of the relevant noise standards that would apply to the Village and EIC, seeking restricted discretionary activity status, rather than non-complying. The submission proposed to limit the discretion to the effects of noise on adjoining zones.
- 6.8 Conceptually I do not understand why the status for a breach of noise standards should default to being a non-complying activity. The objectives that are proposed for Chapter 36 are succinct and seek to control the adverse effects of noise emissions to a reasonable level. When coupled with the objectives for the Jacks Point Zone (Chapter 41), they will enable the range of activities anticipated for the Village Activity Area to be carried out under a suitable framework of controls over noise. The language of the associated policies follows this general theme by seeking to manage subdivision, land use and development activities and to “*avoid, remedy or mitigate adverse effects*”. Adoption of a non-complying activity trigger for the majority of the zones within Chapter 36 is not in my view supported by the wording of the relevant objectives and policies.

³ Rule 36.5.5, Chapter 36 Noise, Revised Proposal

⁴ Rule 36.5.3, Ibid

6.9 I recognise that in the context of the changes proposed within the revised proposal to include the Village into Rule 36.5.5, these changes may be limited by the scope to make wider amendments to status within other zones. In the event scope is provided through submissions, I consider restricted discretionary activity status more appropriately aligns with the relevant objectives and policies.

6.10 By comparison, the Council is promoting restricted discretionary activity status for all subdivision within the s.42a report for Chapter 27 (Stream 4) where it is satisfied this status is appropriate to manage the actual and potential effects of that activity. Noise is an activity with much less complexity than subdivision and resulting in typically localise effects on the amenity values of people and communities. The scope of the discretion suggested for Rule 36.6.5 would, in effect, provide near unfettered scope to decline consent for activities breaching noise standards (extent of effects of noise on adjoining zones or activity areas). In my view, reliance on non-complying activity status for an assessment of a breach of the noise limits is unnecessary to implement the objectives of the plan.

7. REVISED RELIEF

7.1 Taking into account the revised provisions contained Appendix 1 to the s.42a Report and the evaluation above, I suggested amending the Revised Proposal, as follows:

Additions shown as underline and deletions are ~~strike through~~.

Table 2	Standard				Non-compliance Status
	Zones <u>or activity area</u> sound is received in	Assessment location	Time	Noise Limits	
36.6.5	Shotover Country Special Zone (Activity Areas 2a-2c and 3) Mt Cardrona Station Special Zone (Activity Area 1) Ballantyne Road Special Zone (Activity Area C) Jacks Point Resort Zone (Village <u>and EIC</u> Activity Area)	At any point within any site	0800h to 2200h	60 dB L Aeq(15 min)	<u>NCRD</u> <u>Discretion is restricted to the extent of effects of noise generated on adjoining zones or activity areas.</u>
	2200h to 0800h		50 dB L Aeq(15 min) 75 dB L AFmax	<u>NCRD</u> <u>Discretion is restricted to the extent of effects of noise generated on adjoining zones or activity areas.</u>	



Chris Ferguson 02 September 2016