

Attachment B:

Legal advice on the utilisation of Council Reserve (namely Stanley Street)
for the purposes of Council Accommodation



21 February 2013

Partner Reference
Duncan Laing - Wellington

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For: Philip Pannett

QLDC
22 FEB 2013
QUEENSTOWN

Ballarat/Stanley Street Classification

Attached is our opinion dated 24 September 2012 in final form, originally emailed in draft to Scott Figenshow on that date.

We confirm we have completed the work requested by you on this matter and there are no outstanding invoices. A summary of the work we carried out on your behalf was included in, or accompanied our invoice already provided.

Future Action

All our work papers and correspondence regarding this matter will now be archived, but can be reopened at short notice if required. Unless we hear otherwise from you, or from any government agency responsible for processing the transactions associated with this material, it will be destroyed 7 years from the date of this letter.

If you have any questions about our file retention policy, please telephone us.

Thank you for your instructions.

Yours faithfully
SIMPSON GRIERSON

Donna Hurley
Senior Associate

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24 September 2012

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QLDC
22 FEB 2013
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For: Scott Figenshow

PRIVILEGED AND CONFIDENTIAL
SENT BY EMAIL

Dear Scott

Status of Ballarat Street Community Centre Site

1. We refer to your Request for Legal Services dated 4 September 2012.

Instructions

2. You have asked us to provide our opinion regarding the current status of land on which the Ballarat Street Community Centre (and other adjoining land) is located (**Affected Land**), and the processes the Council would need to undertake to change the status of the land to accommodate one or more of the following uses on the Community Centre Land:
 - 2.1 Council office accommodation;
 - 2.2 Library;
 - 2.3 Conference Centre (incorporating food and liquor sales); and
 - 2.4 Carparking.
3. This letter:
 - 3.1 Describes the circumstances surrounding the Council's acquisition of Affected Land (to the extent that it is currently owned by the Council);
 - 3.2 Summarises the current status of the Affected Land;
 - 3.3 Discusses the implications arising from the fact that some of the Affected Land is vested as a reserve under the Reserves Act 1977 (**Act**);
 - 3.4 Sets out in detail the processes that the Council would need to follow to change the status/classification of any part of the Affected Land;
 - 3.5 Considers other issues regarding the status of the Affected Land that might impact on the Council's ability to accommodate the proposed uses on that land.

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Summary

4. The Affected Land is vested in two separate owners – the Council (in relation to Areas A, B, C and E as described in our attached table) and the Crown (in relation to Areas D and F as described in our attached table). To complete the proposed development of the Affected Land, it will need to be held in the same ownership. Therefore, it will be necessary to reach agreement with the Ministry of Education for a transfer of Areas D and F to proceed with the proposed development of the Affected Land. Areas D and F could be acquired from the Crown under section 50 of the Public Works Act 1981 (PWA), or by a land exchange (possibly under section 15 of the Act).
5. All parts of the Affected Land should have the same status if it is to be developed as part of a comprehensive project. At present, the different parts of the Affected Land have differing status as follows:
 - 5.1 Area A – local purpose reserve (site for community centre and carparking), subject to the Act;
 - 5.2 Area B – local purpose reserve (community centre site), subject to the Act;
 - 5.3 Area C – fee simple land vested in the Council for "roading purposes", subject to the PWA;
 - 5.4 Area D – fee simple land vested in the Crown for "education purposes", subject to the PWA;
 - 5.5 Area E – fee simple land vested in the Council for no stated purpose;
 - 5.6 Area F - fee simple land vested in the Crown for "education purposes", subject to the PWA.
6. In proposing a re-development of the Affected Land, the Council is acting in its capacity as the administering body of the reserve (for Areas A and B) and can use the land for purposes consistent with the Act.
7. In our opinion, it is arguable that the proposed uses are not consistent with the purposes for which Areas A and B are held, and on that basis, there is a risk that a Court might uphold a challenge to the proposed uses.
8. If the proposal proceeds on the Affected Land, and the Council wishes to preserve the status of the land as a reserve, we recommend that the purposes be amended to a purpose that better fits the proposed uses.
9. In our opinion, there are two potential options to ensure all of the Affected Land has the same status, assuming Areas D and F can be acquired from the Crown. The options are:
 - 9.1 Revoke the reserve classification for Areas A and B;
 - 9.2 Classify Areas C – F as a reserve using the processes set out in sections 14 and 16 of the Act.
10. There are factors that might complicate both of these options as a long term solution. However, we consider that revoking the reserve status of Areas A and B and moving the land outside the jurisdiction of the Act will provide greater flexibility for its long term

management and use for the proposed development. This is based on the proviso that it is possible to revoke the reserves status.

11. There are various options to revoke the reserve status of Areas A and B. In particular:
 - 11.1 Revocation of reserve status under the Act. However, this would result in Areas A and B reverting to Crown ownership under section 25(1) of the Act and for that reason, it is not recommended in the present circumstances;
 - 11.2 Setting apart Areas A and B for a different local work under section 52(4) of the PWA. While that would have the effect of revoking the reserve status, it is only available if the land is designated for the new public work in the District Plan. At present, Areas A and B are subject to a designation for the existing reserve purpose of "community centre".
 - 11.3 If other methods of revocation are unachievable, it might be possible to revoke the reserve status of Areas A and B by a local bill.

Circumstances surrounding the Council's acquisition of Affected Land and its current status

12. The Affected Land is separately described in five computer registers, with one further area of land not described in a computer register.
13. The attached table separately identifies the land in each computer register as Areas A-F.

Area A

14. Area A is currently occupied by the Arts Centre Building, Queenstown Performing Arts Centre, and metered carparking.
15. Area A is currently described in Computer Freehold Register (CFR) 25218 and is vested in the Council as local purpose (site for community centre and carparking) reserve, subject to the Act. *Gazette* notices for both Areas A and B indicate that the land is held "in trust" by the Council. In our opinion, the reference to the Land being held "in trust" is unlikely to be significant to the proposed uses of the Affected Land. This is reflected in section 26(2) of the Act, relating to all land vested in local authorities by the Crown as reserve. Section 26(2) states:

"(2) *All land so vested shall be held in trust for such purposes as aforesaid*
..."

16. Area A was acquired by the Council in 1982 when it was set apart by the Crown pursuant to the Land Act 1948 as a reserve for local purpose (site for a community centre) and vested in the Council in trust for that purpose under the Act. We understand that the vesting was partly to fulfil arrangements between the Crown and the Council dating from 1971, when the primary school located at the site was moved to a new site that was part of Queenstown Domain.¹ In 1983, an area of stopped road (section 17 Block XVI Town of Queenstown), was added to the title at which time it became subject to the same status. The reserve classification purpose was changed to local purpose reserve (site for community centre *and carparking*) in 2002.

¹ *Hood v A-G* CA 16/04

Area B

17. Area B is the "Ex Pool Site" and is currently used as metered carparking. Area B is currently described in Computer Interest Register (CIR) 1998 and is vested in the Council in trust for a local purpose reserve (site for a community centre).²
18. Area B was vested in the Council in April 2000 by the Crown by *Gazette* Notice under the Act, and as stated above is held as local purpose reserve (Community Centre Site).

Area C

19. Area C was formerly the site of a teacher's residence that corresponded with the former use of the wider site for education purposes. It is held for "roading purposes" but has not been declared to be legal road.
20. Area C was acquired by the Council by *Gazette* Notice following an agreement between the Council and the Crown under sections 20 and 50 of the PWA. Section 50 of the PWA provides for the transfer of land held for a public work from the Crown to a local authority (and vice versa) and its implications are discussed further below. We understand that Area C was acquired with the intention of vesting it as legal road to extend Melbourne Street to join with Henry Street.

Area D

21. Area D is the current site of the Queenstown Playcentre. It is vested in the Crown and is held for education purposes. Area D is currently described in CIR 356192. There is nothing to indicate that Area D is subject to the Act, and we would not expect it to be. However, in our opinion, Area D is currently held for a public work, and will be subject to the PWA.
22. The Affected Land, and in particular Area D (and Area F), were considered by the Court of Appeal in *Hood v A-G*.³ The case dealt with the question of whether Areas D and F should have been offered back to the Hood family as former owners.
23. The Court considered the application of arrangements made in 1971 between the Crown and the Council that suggested that both parties intended that the Affected Land (including Areas D and F) would be vested in the Council as reserve once it was no longer required by the Crown for educational purposes. These arrangements were acknowledged and affirmed by the Crown in subsequent years and partially given effect to by the transfer of Area A in 1982.
24. In *Hood*, the Court accepted that the arrangements between the Council and the Crown from 1971 were not binding, and their fulfilment was a matter of policy for the Government.⁴ However, it was acknowledged by the Court that the Council has operated on the basis that the arrangement would be honoured and had received many assurances to that effect from the Crown.⁵

2 Amongst other things, a computer interest register is issued as a unique identifier to record a proclamation or *Gazette* notice that has been registered against Land (see section 7(1)(e) of the Land Transfer Automation Amendment Act 1998. A computer interest register is different from a computer freehold register, but in these types of situations, a computer freehold register for land described in a computer interest register can be obtained by registering an order for a new computer register with LINZ.

3 CA 16/04

4 Paragraph [89]

5 Paragraph [98]

Area E

25. Area E is an area of open space and is currently described in CFR OT10A/635. No purpose is recorded on the CFR and we have not reviewed any information that might indicate that it is subject to the Act.
26. Area E is vested in the Council (as successor to The Queenstown Borough Council). It was originally vested in The Queenstown Borough Council in 1984 by *Gazette* Notice under section 54(1)(d) of the Land Act 1948. That section provides for the allotment of land without competition, when the land is "*insufficient in area for public sale or lease, or is for any other reason suitable only for use in conjunction with other land*".

Area F

27. Area F is part of the Queenstown Playcentre site in addition to Area D.
28. Area F is not described in a CIR or CFR. Although it forms part of the same overall "site" as Area D, it was not included in the same *Gazette* Notice that set Area D apart for education purposes and we have not reviewed any documents that confirm the status of that Area F.
29. As noted above, we understand from the Council that Area F is managed by the Ministry of Education together with Area D and is used as the site for the Queenstown Playcentre.

Implications of the Reserves Act 1977 in relation to Areas A and B

30. In proposing a redevelopment of the Affected Land, the Council is acting in its capacity as the administering body of the reserve (Areas A and B). As the administering body, the Council's primary concern is whether the proposal falls within the purpose for which the reserve is classified.

Suitability of current classification

31. The Council is entitled to use Areas A and B for purposes consistent with the Act. In particular, it can use the reserve to do such things considered necessary or desirable for proper management, administration and control of the reserve *for the purpose specified in its classification*. Section 61 of the Act sets out the specific powers that the Council has as the administering body of the local purpose reserve, to exercise its functions under section 40 of the Reserves Act 1977 to give effect to the principles set out in section 23.
32. The *Reserves Act Guide*⁶ (**Guide**) further clarifies the purpose of local purpose reserves stating that they are to provide areas for educational, community, social or other local purposes specified in the classification.
33. The Guide also states that sub-classification applied to local purpose reserves may be for any local purpose, and as a consequence, local purpose reserve is the most flexible classification available from that point of view.
34. The principles of section 23 of the Act are generally focused on the provision of the site for the local purpose or purposes specified in the particular classification. In the present situation, that is as a site for a community centre and carparking for Area A,

⁶ *Reserves Act Guide* Appendix 8d, page 8/39.

and as a community centre site for Area B. Therefore, it is necessary to consider what is meant by the purpose "community centre site" and whether any or all of the proposed uses for the Affected Land fall within that purpose so that the specific uses would be authorised under the Act based on the present classification and purpose. If they do not fall within that purpose but are the primary uses of the land then such a use could be unlawful in terms of the Act, and the purpose would need to be changed to correspond with the use.

What is a community centre?

35. The *Shorter Oxford Dictionary* defines a "community centre" as "(a part of) a building providing social, recreational, and educational activities for a neighbourhood." This indicates that a community centre is a building that is used for neighbourhood or local community activities rather than city wide activities.
36. While the term "community centre" is not used in the Act, the term "community building" is used, with reference to the power of leasing of local purpose reserves under section 61(2A) of the Act. In our opinion, it is likely that the meaning of the terms "community centre" and "community building" are synonymous, and it is relevant that the reference to "community building" in section 61(2A) provides specific examples of community based uses for local purpose reserve (being playcentre, kindergarten, plunket rooms, or other like purposes).
37. Based on the information we have been provided, we understand that the proposed development of the Affected Land would involve some or all of the following uses:
 - 37.1 Council office accommodation;
 - 37.2 Library;
 - 37.3 Conference Centre (incorporating food and liquor sales);
 - 37.4 Carparking.
38. Arguably the uses set out above could be distinguished from traditional community centre uses, which we would expect to focus primarily on facilities used by non-profit groups for community and neighbourhood activities, including community halls and community rooms.
39. In our opinion, there is a risk that, if the use of the Affected Land for the proposed uses were challenged on the basis that the uses are not authorised by the classification purpose under the Act, a court might hold that the above uses are not consistent with a community centre. In reality, the likelihood of such a challenge may be relatively low, but we cannot entirely discount it. Therefore, if the proposal did proceed on the Affected Land, we recommend that (subject to our further comments below regarding land status) the purposes for Areas A and B are changed to an alternative purpose. We set out the process to change the purpose and suggest suitable alternative purposes below.

7 Shorter Oxford English Dictionary, 6th ed., Oxford University Press 2007, pg. 467

Council offices and library

40. For completeness, we note that the Council has previously received advice from Macalister Todd Phillips Bodkins⁸ (**Macalister Todd**) regarding uses on the Affected Land, which concludes that a "community activity" on reserve can include local government offices. It states that:

...there is ... a very clear pathway to be able to argue that ...community activity includes Local Government offices."

41. This advice appears to be based on the definition of "community activity" in the proposed District Plan which includes local government offices and community centres. In our opinion, despite this definition (which relates to a different context than the definition of a "community centre" for the purposes of reserve classification), Council administrative offices do not fall comfortably within the definition of a "community centre" in the traditional sense, and the risk of a challenge remains.
42. In our opinion, the definition of "community activity" in a manner that includes both community centres and local government offices in the district plan, does not make them one and the same. It simply means that they share the common element for district planning purposes of both being *"the use of land and buildings for the primary purpose of health, welfare, care, safety, education, culture and/or spiritual wellbeing"*.
43. In our opinion, it does not logically follow from this that a local government office is a community centre for the purposes of classification as local purpose reserve under the Act, and as we have already stated, we consider that there is a risk that such conclusion could be successfully challenged.

Conference Centre

44. Generally we would expect a conference centre to incorporate large and small meeting and function rooms, together with bar and café facilities. Macalister Todd has correctly stated in its opinion that the Act does not exclude reserves being used for commercial gain and concluded that it may be possible to include facilities such as cafés and bars, provided they are not the dominant purpose of the facility⁹.
45. We agree that there is no express prohibition on the operation of a commercial business, such as a café within facilities located on reserve. However, any proposal that incorporates such activities would need to include a detailed assessment of the proposal and the extent of, and reasons for, including commercial activities, to assess the level to which commercial activities complement the primary purposes of the reserve, rather than being primary purposes themselves.

Suitable wording for a new purpose

46. In terms of what an appropriate purpose might be, if it is decided to proceed with the proposal and change to a purpose that better fits the proposed uses, we would recommend either:
- Local purpose (civic buildings, conference facilities and carparking) reserve; or

⁸ Undated opinion from Kevin Phillips to Ken Grousmett titled *Queenstown Community Centre*.

⁹ Macalister Todd also refers to the leasing power in section 601 of the Local Government Act 1974 as authority for the Council to obtain a commercial gain from a reserve. We have not considered the relevance of that particular statutory provision in our advice as it was repealed with effect from 1 July 2003.

- Local purpose (civic and conference facilities and carparking).

as incorporating all of the proposed uses currently identified, in general terms.

47. This is on the basis that the term "civic buildings" is wide enough to encompass Council office accommodation and library facilities.

Process to change classification purpose

48. Under section 24A(1) of the Act, the Council may change the purpose for which a local purpose reserve is held, within its classification as a local purpose, by giving notice in the *Gazette*. However, before the purpose is changed, under section 24A(2) public notification in accordance with the process in section 119 of the Act is required unless the purpose of the change is to bring the specific purpose for which the reserve is classified into conformity with the district plan or a resource consent. At present, Areas A and B are subject to a designation for their current classification, so it is likely that any change to the purpose would need to be publicly notified, unless the designation is changed prior to a change of purpose.
49. Every person that claims to be affected by the proposed change of purpose has a right of objection to the change within one month after the date of first publication of the notice of the proposal. If any objections are received, the Council must consider them as soon as practicable.

Ability to use reserve for an additional or secondary purpose

50. We note that the Council has also been referred to the Court of Appeal decision in *Attorney-General v Ireland and Langwell*,¹⁰ in which it was held that the Department of Conservation had acted within its powers in establishing an area office for its staff on North Head, Devonport, an historic reserve.
51. In that case, the Department had decided to use the historic buildings on the reserve for this purpose, partly in order to ensure the preservation of those buildings, and partly in order to provide accommodation for its staff which was not otherwise available in its Auckland premises.
52. Section 58 of the Act permitted the administering body to use buildings on the reserve as residences or offices for the proper management of the reserve and to do such other things as necessary or desirable for the proper administration of the reserve. An application for judicial review was made on the basis that the use of buildings on the reserve to administer other reserves was not a permitted purpose.
53. The Court of Appeal, in overturning the High Court, decided that the proposed use achieved a statutory purpose (administration of the particular reserve), and the additional purpose (administration of other reserves) did not prejudice the purpose and was not unlawful. The Court held that the Act did not limit the purposes to those specifically stated and did not declare other purposes as invalid. It was held that purposes not included in the statute were not invalid or improper provided they did not thwart or frustrate the policy of the Act.
54. The Court quoted with approval the reasoning in *Padfield v Minister of Agriculture, Fisheries & Food* [1968] AC 997, where it was said:

10 [2002] 2 NZLR 220.

*"That careful wording [in Padfield] reminds us that purposes not within the statute are not necessarily "invalid" or "improper"; the additional pursuit of such other purposes may not thwart or frustrate the policy of the Act in question...Is there anything in that Act [the Reserves Act] to indicate that the other purpose, or effect, in this case is prohibited so long as the statutory purpose is being pursued (and in fact achieved) and is not in any way compromised by the other purpose? No such prohibition appears in the express terms of the statutory provisions themselves....If the power is exercised for that reserve and for the statutory purpose, it may **also** be exercised for other areas and purposes so long as the statutory purpose is not prejudiced? We can see no indication in the legislation that other non-prejudicial purposes are prohibited".*

55. In our opinion, it is unlikely that the *Ireland* case would assist in the present situation, to authorise the use of Areas A and B for the proposed uses, unless the proposed development is able to incorporate the statutory purposes (community centre and carparking) in such a way that they are not compromised.
56. In the *Ireland* case, the statutory purpose and ancillary purpose were very similar: providing an administration office for the particular reserve and providing an administration office for reserves in general. However, in the present circumstances, the purposes are arguably quite different. While we have not seen any plans for the proposed development, we would expect that the development will be dominated by the office accommodation, library and conference centre, with any traditional community centre type activities and uses being ancillary or secondary uses as space and primary use permit.
57. On that basis, in our opinion it will be likely that those uses will compromise the statutory purpose (to the extent that they are not considered to come within that purpose) and there could be a risk that a Court might consider them to be unlawful, if the purpose is not changed.

Option of revoking the reserve status of Areas A and B

Reserves Act revocation

58. As an alternative to changing the purpose of the reserve classification for Areas A and B, the Council could consider revoking the reserve status under section 24 of the Act. However, in the present situation, we do not consider that would be an effective solution. This is because, in our opinion, if the reserve status is revoked, it is likely that Areas A and B would revert to Crown ownership under section 25(1) of the Act.
59. Section 25(1) states:

Upon the revocation of the reservation of any public reserve or of any part thereof pursuant to section 24 of this Act, the land comprised therein shall, if vested in the Crown or in any local authority or trustees deriving title from the Crown, become Crown land available for disposal under the Land Act 1948, and in any other case may be disposed of in such manner and for such purpose as may be specified by the Minister.
60. The Council originally derived title to Areas A and B from the Crown. Therefore, it appears that section 25(1) would apply if the reserve status of Areas A and B is revoked and title to the land would revert to the Crown for disposal.
61. There are other options for effectively revoking the reserve status of Areas A and B without the land reverting to the Crown, and we consider them below.

Setting apart (section 52 PWA)

62. Section 52(4) of the PWA allows the Minister of Land Information¹¹ (upon receipt of a written request from a local authority) to, by *Gazette* notice, to declare land that is held by the local authority and is required for another work to be undertaken by that local authority, to be set apart for that other local work.
63. However, under section 52(5), a public reserve cannot be set apart for another public work to be undertaken by the same local authority, unless the land is designated for that public work in the district plan. We have reviewed the Queenstown-Lakes District Plan and note that Area A (but not Area B) is designated as Local Purpose Reserve (Community Centre). The term "community centre" is not defined in the District Plan and in our view, as discussed in relation to the Reserves Act issues above, there is some risk associated with concluding that the proposed uses come within the meaning of community centre. Therefore, in our opinion, section 52 is not currently available to set Areas A and B apart for the proposed uses.
64. If the Council did appropriately designate the Affected Land under the district plan, in our opinion, it could *then* set Areas A and B apart under section 52.
65. The process under section 52 is relatively straightforward and the decision is ultimately made by the Minister for Land Information. The basic requirements are:
- 65.1 If all of the land in Areas A and B is set apart, no survey plan would be required.¹² We would expect this to be the case, but for completeness, we note that, if part of Areas A and B were set apart, then the relevant part would need to be identified on a Survey Office Plan that would have to be prepared by a Licensed Cadastral Surveyor.
- 65.2 Under section 52(7), a declaration must be given by the Chief Executive to the effect that the Council is authorised by law to undertake the work "*for which it is proposed to set the land apart*".
- 65.3 Under section 52(6), a written request is required to be signed by the Chief Executive stating the following particulars:
- (a) The land affected;
 - (b) The work for which the land is currently held (reserve and education purposes); and
 - (c) The work for which it is proposed the land be set apart (civic and conference facilities).
- 65.4 The procedures set out above assume that the Council has first resolved to make a written request to the Minister to set the land apart.

Local legislation

66. Conceivably, it *might* be possible to deal with revocation of the reserve status of Areas A and B, without re-vesting in the Crown in a local bill. A local bill would usually require

11 The Minister for Land Information has been delegated authority to exercise the powers of the Minister of Lands for the purposes of the PWA.

12 Section 32 PWA.

the co-operation of a local Member of Parliament, support from relevant stakeholders and would take a minimum of six to twelve months from introduction to the House, to Royal Assent. The Department of Conservation would need to be consulted and in our opinion, a local bill is unlikely to proceed if it is being used as a means to avoid the statutory processes discussed above because they are perceived as being too difficult or time consuming.

Other issues

Acquisition of Areas D and F from Crown

67. At present, the Council does not own Areas D or F. Therefore, to incorporate that land into its development, it would need to acquire it from the Crown. As noted in the background, historically both the Crown and the Council have operated on the basis that former assurances that the Crown would transfer this land to the Council for reserve when it is no longer required for educational purposes would ultimately be honoured. However, to complicate factors, the Court of Appeal has determined in *Hood v A-G*¹³ that the arrangements are not binding. Additionally, there is no suggestion, at the present time that Areas D and F are no longer required for education purposes, as they are still being used as the site of the Queenstown Playcentre.
68. In our opinion, provided agreement can be reached with the Crown, there are two options for acquisition:
- 68.1 Transfer of Areas D and F under section 50 of the PWA; or
- 68.2 An exchange of land (involving Areas D and F) with other land in Queenstown owned by the Council, and suitable for use by the Ministry.

Transfer of Areas D and F under section 50 of the PWA

69. Section 50 provides for the transfer of existing public works from the Crown to a local authority. It provides:

50 *Transfer of existing public works*

- (1) *Notwithstanding anything to the contrary in this Act or in any other Act, but subject to section 40 of this Act, any existing public work or part of any existing public work may be disposed of by the Minister to a local authority, or by a local authority to the Minister or another local authority, for a public work, whether of the same kind or not, if reasonable provision for satisfying the requirements of the public interest in that work will continue to exist.*
- (2) *Any agreement relating to the sale and purchase of a public work pursuant to this section may contain such provisions as the Minister and the local authority, or the 2 or more local authorities, think fit.*
- (3) *If any agreement under this section involves a change of the ownership of any land, the land may be taken by the local authority or the Minister, as the case may require, by declaration under section 20 of this Act, and the provisions of this Act as to the disposal of land held for a public work shall not apply.*

70. Section 50 is concerned with the transfer of existing public works. Before it can be invoked, there must be:
- 70.1 An existing public work;
 - 70.2 The disposal must be to another authority for a public work, of the same or a different kind; and
 - 70.3 Reasonable provision for satisfying the requirements of the public interest in "that work" must continue to exist.
71. In our opinion, it is likely that all of the above criteria could be met. However, there is potentially an issue relating to the continued provision of a playcentre, either as part of the development, or at an alternative site, as there is nothing to indicate that Areas D and F are no longer required for educational purposes (the playcentre).

Land Exchange – (Areas D and F)

72. The Council and the Crown could reach agreement for the Council to acquire Areas D and F from the Crown in exchange for an alternative site currently owned by the Council (if such a site can be identified and is readily available for exchange).
73. Section 15 of the Act specifically provides for the exchange of reserve land (although, it would also be possible to exchange "other" Council owned land that is not vested as reserve).
74. If an exchange of reserve land takes place under section 15, the status of the existing reserve is automatically uplifted at the same time as the exchanged land is declared to be reserve.
75. In our opinion, for an exchange of reserve land to be feasible, the other land would need to be at least equivalent in terms of a combination of factors such as size, locality, financial value and amenity value to justify an exchange under the Act, and the Council would need to go through a rigorous process to determine the relative merits of the two pieces of land for reserve purposes. If non-reserve land is proposed for an exchange, any inequality in the relative values for the land could potentially be addressed by provision of an additional cash payment to provide for equality of exchange.
76. The Minister of Conservation's power to authorise an exchange under section 15 of the Act is delegated to the Council only when title to the land was *not* derived from the Crown. Therefore, in the present situation, whether the delegation would apply or not will depend on the acquisition history of any reserve land identified as suitable for exchange.
77. Public notice of exchange of reserve land is required and objections may be made. An exception to public notification exists if there has been a change to the operative district plan under the Resource Management Act 1991 to enable the exchange to be made.

Consistent status for Affected Land

78. In our opinion, if the Council wishes to develop the Affected Land for the proposed purposes as part of a seamless development, it would be preferable for all of the Affected Land to have the same status.

79. Therefore (subject to the Council being able to acquire Areas D and F from the Crown), there are two potential options:
- 79.1 Revoke the reserve classification for Areas A and B and ensure that all of the Affected Land is set apart under section 52 of the PWA for the same purpose, and that the purpose covers all of the proposed uses; or
- 79.2 Classify areas C, D, E and F as local purpose reserve and ensure that all of the Affected Land is classified for the same purpose, and that the purpose covers all of the proposed uses.
80. We discuss these options further below.

Revoke Reserve Classification of Areas A and B

81. As we have concluded above, there are practical difficulties associated with revoking the reserve classification of Areas A and B under section 24 the Act, because ownership of the land would revert to the Crown. However, if a designation is obtained for the proposal, the land could be set apart under section 52 of the PWA. That process would require the consent of the Minister of Conservation. As discussed above, a third alternative would be a local Bill. As historically the Crown and the Council have proceeded on the basis that the land would vest in the Council as reserve any process to revoke the reserve status would need to be handled carefully, and with the full support of the Crown.

Classification of Areas C, D, E and F

82. In terms of section 14 of the Act, the Council can by resolution declare any land vested in it to be a reserve. This would apply for Areas C and E, provided that the Council reasonably concludes that those areas would be better used as reserve, as part of the proposed development, than for the purposes for which they are currently held (being roading and open space).
83. Under section 14(2), the Council must advertise its notice of intention to pass a resolution and call for objections, unless the District Plan provides for the use of the land as a reserve, or the land is designated as a proposed reserve under an operative district plan. As noted earlier, only Area A is subject to a designation at present. Accordingly, unless a designation is obtained, public notice will be required.
84. In terms of section 14(3), the Council must forward its resolution declaring the land to be reserve (which should clearly state the classification) to the Department of Conservation together with any objections and the Council's comments on those objections. Section 14(4) states that the Minister shall consider the matter and then gazette the reserve, or refuse to do so. We note that the Minister's powers to gazette the resolution are delegated to local authorities under the current delegations granted to local authorities.
85. Once the Council's resolution has been gazetted, the land is deemed to be classified for the purpose stated in the resolution as provided for in section 16(2) of the Act.
86. To the extent that any land is not already vested in the Council (Areas D and F), the process to classify reserve is set out in section 16 of the Act. Section 16(1) provides for the Minister of Conservation to classify reserve by notice in the *Gazette*.

87. Before classifying a reserve under section 16(1), the Minister must give public notice of the proposed classification and consider any objections and submissions received unless:
- 87.1 The classification is for substantially the same purpose for which the reserve was held and administered before the commencement of the Act (for a reserve that existed at that time); or
 - 87.2 The intended use of the land conforms to the operative district plan; or
 - 87.3 The proposed classification is a condition subject to which the land was acquired for reserve purposes; or
 - 87.4 The land is classified under section 16(2C) or section 16(2D) of the Act (neither of which would apply in the present situation).

Assessment of options

88. There are some practical issues associated with both of these options, but, provided it is intended to obtain a designation for the proposed development, it may be preferable to set all of the Required Land apart under the PWA, removing Areas A and B from the application of the Act. In our opinion, there may be potential difficulties with revocation because all past dealings with the Crown have been on the basis that, once the land is no longer needed for education purposes it will become "reserve". This issue would need to be carefully managed with the Crown.
89. In our opinion, moving the Affected Land outside the application of the Reserves Act will provide greater flexibility to the Council in terms of future planning, management and use of the land, including the ability of the Council to enter into arrangements with third parties, such as leases and other similar arrangements.
90. In particular, if the Council wished to enter into a lease in respect of any part of the Affected Land that was classified as reserve, it would be constrained by the terms of the Act. In particular, section 61 of the Act would apply to any lease of local purpose reserve.
91. Section 61 contains two different leasing powers described in section 61(2) and section 61(2A). Section 61(2) contains a general leasing power that would apply to a lease of (for example) a café or bar operation located on local purpose reserve (provided that it is determined that such a lease is necessary or desirable as required by section 61(1)). It states:

The administering body, in the case of a local purpose reserve that is vested in an administering body, is hereby declared to be a leasing authority of that reserve for the purposes of the Public Bodies Leases Act 1969.

92. If the Council wished to grant a lease under section 61(2) to (for example) a commercial operator, in our view, it would need to comply with the requirements of the Public Bodies Leases Act 1969 (**PBLA**) (in its capacity as administering body of the reserve, rather than in its capacity as a territorial authority).¹⁴
93. The leasing powers in the PBLA are set out in section 7 of the PBLA and allow a leasing authority to enter into a number of different types of leases or tenancies.

¹⁴ The PBLA no longer applies to territorial authorities in that capacity, but it does apply to administering bodies under section 61 of the Act.

However, the powers in section 7 need to be read subject to section 8(1), which provides:

Except so far as this Act otherwise provides, every lease granted under this Part of this Act shall be sold by the leasing authority by public auction or public tender, of which public notice has been given.

94. Therefore, apart from limited situations, (which we discuss below) any lease granted under Part 1 of the PBLA must be granted by public auction or tender. This could present a problem for the Council if it had identified a preferred supplier and did not wish to enter into a publicly contestable process.
95. Section 8(6) provides a limited exception to the requirement to grant a lease by public auction or tender and allows a lease by private contract for:
- 95.1 A tenancy at will;
- 95.2 Any term not exceeding five years; or
- 95.3 A term determinable at any time by the leasing authority by six months' notice or any shorter notice.
96. Section 61(2A) contains an additional leasing power and states:
- In addition to the powers of leasing conferred by subsection (2) of this section, the administering body, in the case of a local purpose reserve that is vested in the administering body, may lease all or any part of the reserve to any person, body, voluntary organisation, or society (whether incorporated or not) for any of the following purposes:*
- (a) *community building, playcentre, kindergarten, plunket room, or other like purposes; or*
- (b) *farming, grazing, cultivation, cropping or other like purposes.*
97. In our view, it would be possible to grant a lease of part of the Affected Land for Queenstown Playcentre under section 61(2A), if agreement is reached to acquire Areas D and F from the Crown, and accommodate the Playcentre as part of the development, rather than relocating it to a new site.
98. If the Affected Land is set apart under the PWA rather than the Act, the above leasing restrictions would not apply. The PWA leasing power is contained in section 45 of the PWA. Section 45 allows the Council to grant a lease of land held for a public work on such terms and conditions as it thinks fit, providing greater scope to enter into a commercial lease.

Relevance of Ngai Tahu Claims Settlement Act 1998

99. In addition to being subject to the Act, Areas A and B are also subject to Part 9 of the Ngai Tahu Claims Settlement Act 1998 (NTCS).
100. Part 9 of the NTCS Act provides for certain disposals of land to which the Part applies, to be subject to a requirement that a purchase or lease of the land is first offered to Te Runanga o Ngai Tahu (Ngai Tahu). It generally applies to land vested in the Crown, or vested in another person by the Crown under the Act (or another Act) as reserve.

101. Section 49 of the NTCS Act states:

A Crown body (or a body that was a Crown body on 21 November 1997 or, if later, on the date which the body first acquired the relevant land concerned) must not dispose of or attempt to dispose of any relevant land except in accordance with this Part.

102. At the present time, the Council's proposal for the Affected Land, does not involve a "disposal" of any part of the Affected Land, as that term is defined in the NTCS Act. If the proposal changed in such a manner that it did amount to a "disposal", then it would be necessary to consider the implications of the NTCS Act.

103. It is possible that the proposal could involve acquisition of Areas D and F from the Crown (and therefore be a disposal by the Crown). There is nothing on the computer register for Area D that indicates that land is subject to the NTCS Act. Area F does not have a computer register. Part 9 does not generally apply to the vesting of a reserve by the Crown, but if acquisition of Areas D and F is contemplated, we recommend that further assurances be sought from the Crown regarding the potential application of Part 9 of the NTCS Act.

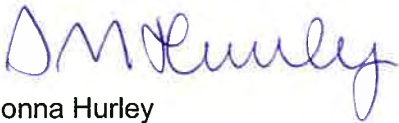
Conclusions

104. Our conclusions are set out in the Summary on pages 2 and 3.

Next Steps

105. Once the Council has determined whether, or how, it wishes to proceed, we would be happy to assist further.

Yours faithfully
SIMPSON GRIERSON



Donna Hurley
Senior Associate

TABLE OF AFFECTED LAND
Ballarat Street and Stanley Street – Land Status

Area	Legal Description	Status	Current Registered Interests	QLDC Acquisition History
A	7438 square metres Section 1-2, 9 Block XVIII and Section 14-17 Block XVI Town of Queenstown CFR 25218	Local purpose (site for community centre and carparking) reserve	• Subject to Part 9 of Ngai Tahu Claims Settlement Act 1998 • Electricity Transformer Easement over part marked A on DP 310918 in favour of Dunedin Electricity Limited created by Transer 5333681.1 • Covenant pursuant to section 108(2)(d) of the Resource Management Act 1991	• Set apart by Crown pursuant to the Land Act 1948 as a reserve for local purpose (site for community centre) vested as reserve under the Reserves Act in trust for that purpose • Section 17 added to title subject to same reservation – stopped road – in 1983 • Gazette Notice (2002 pg 2447) changed classification to local purpose (site for community centre and carparking) reserve
B	1668 square metres Section 1 SO Plan 19720 CIR 1998	Local Purpose Reserve (Community Centre Site)	• Subject to Part 9 of Ngai Tahu Claims Settlement Act 1998	Gazette Notice (2000 pg 950) under the Reserves Act 1977, vested in QLDC by Crown in trust for a local purpose reserve (site for a community centre) in April 2000.
C	Section 2 Block XVI Town of Queenstown CFR 471453	Held for Roading Purposes	• Nil	Gazette Notice (2009 pg 743) acquired by agreement from the Crown under sections 20 and 50 of the Public Works Act 1981 for roading purposes.
D	1720 square metres Section 4-5 Block XVIII Town of Queenstown CIR 356192	Held for Education Purposes	• Nil	Vested in Her Majesty the Queen – not currently owned by QLDC.

Area	Legal Description	Status	Current Registered Interests	QLDC Acquisition History
E	681 square metres Section 10 Block XVIII Town of Queenstown CFR OT10A/635	None noted on CFR	• Subject to section 5 Coal Mines Act 1979 • Subject to section 8 Mining Act 1971	Note: name of registered proprietor is "The Queenstown Borough Council". QLDC successor under reorganisations. Vested in QLDC by Crown by Gazette Notice under section 54(1)(d) of the Land Act 1948 (allotment of land without competition).
F	Section 3 Block XVIII Town of Queenstown No CIR or CFR and not subject to the same gazettal process as the land described as Area D above	Held for Education Purposes?	• None known	Vested in Her Majesty the Queen – not currently owned by QLDC.

