

QLDC Council
17 August 2017

Report for Agenda Item: 6

Department: Corporate Services

Cemetery Road (Queenstown) proposed road stopping and land exchange

Purpose

The purpose of this report is to consider a proposal to realign Cemetery Road, Queenstown and decide to publicly notify the proposal in accordance with the Local Government Act 1974.

Recommendation

That the Council:

1. **Note** the contents of this report;
2. **Agree** to stopping the section of Cemetery Road, Queenstown shown as areas 'B' and 'C' in the Cemetery Road (Queenstown) road stopping and land exchange plan (Attachment B) under sections 319 and 342 Local Government Act 1974;
3. **Delegate** officers to undertake the road stopping process, including public notification of the proposal, as set out under Schedule 10 Local Government Act 1974;
4. **Authorise** the disposal of Council land shown as area 'B' in the Cemetery Road (Queenstown) road stopping and land exchange plan (Attachment B) under section 117(3) Public Works Act 1981; and
5. **Delegate** the Chief Executive to finalise terms and execute the sale and purchase agreement between the Council and Brecon Street Partnership Limited.

Prepared by:



Paul Speedy
Manager Strategic Projects

2/08/2017

Reviewed and Authorised by:



Mike Theelen
Chief Executive

4/08/2017

Background

- 1 Revitalisation of the Queenstown Town Centre via intensification and enabling more diversified activities adjacent to the Town Centre has been one key objective identified by the Council and community to provide for and facilitate growth in the district¹.
- 2 Initiated by the Council in response to this identified objective, Plan Change 50 made alterations to the Town Centre Zone within the Operative District Plan to establish the Lakeview Sub Zone. The Lakeview Sub Zone (comprising both private and public land) provides an extension to the Queenstown Town Centre.
- 3 The Plan Change has allowed for a higher level of development of activities and buildings within the Lakeview Sub Zone. A range of District Plan controls relating to building, bulk and location, and measures which secure certain urban design outcomes are set out within the Sub Zone.
- 4 On 18 May 2016 the Environment Court issued its decision on Plan Change 50. In that decision specific reference was made to privately owned land (within the Sub Zone) at 34 Brecon Street, which adjoins the Brecon Street Cemetery and Cemetery Road.
- 5 During the Environment Court process the parties agreed in principle it would be desirable that Cemetery Road be realigned along the western boundary of 34 Brecon Street to remove the present 'dog-leg' configuration. Any realignment would involve a boundary adjustment² at that location and also one in respect of the redundant portion of road which would become part of 34 Brecon Street.
- 6 It was considered the boundary adjustment would enhance the experience and amenity of the Queenstown Cemetery by establishing a 'buffer' between the Cemetery and 34 Brecon Street.
- 7 In July 2016 Plan Change 50 was made operative and specific provisions to allow for a consequential boundary adjustment, should there be a Council proposal to realign Cemetery Road, have been included in the District Plan.
- 8 The owner of 34 Brecon Street (Brecon Street Partnership Limited) and officers have recently explored terms, subject to conditions, for such a proposal.

Comment

The Proposal

- 9 The proposal (depicted in Attachment A) intends to realign Cemetery Road, Queenstown by:

¹ An abbreviated statement encapsulating various community and Council strategic documents/initiatives including but not limited to: Tomorrows Queenstown (2002); Growth Management Strategy (2007); Town Centre Strategy (2009); Shaping our Future 'Economic Taskforce' (2011) and the Economic Development Strategy (2015).

² Separate process to Environment Court proceedings.

- a. stopping that section of the road forming a 'dog-leg' and intersecting Brecon Street near Isle Street (shown as areas "B" and "C" on the plan provided as Attachment B);
 - b. exchanging area "B" with the neighbouring landowner, Brecon Street Partnership Limited, for part of its land (shown as area "A" on the same plan); and
 - c. dedicating the exchanged land (area "A") as road in order to form a straight road, intersecting Brecon Street further away from Isle Street.
- 10 The owner of 34 Brecon Street and the Council have identified benefits arising from the proposal in relation to development on the site and meeting the objectives and policies specific to the Queenstown Town Centre.
- 11 In summary, these objectives seek to maintain and consolidate existing town centres, enhance the amenity, character, heritage and quality of town centres, and maintain and enhance a built form and style within each town centre that enhances the existing character. Objectives also seek to create visually exciting and aesthetically pleasing town centres and centres with attractive, convenient and comprehensive pedestrian linkages.
- 12 Particularly relevant policies include:
- a. Policy 3.2, which seeks to achieve an urban environment and built form that responds to the site's location and creates an attractive, vibrant and liveable environment that is well connected with the town centre;
 - b. Policy 3.3, which requires a high quality of built form and landscaping, which contribute to the visual amenity of the area;
 - c. Policy 3.4, which encourages pedestrian links within and through the Lakeview Sub Zone.
- 13 The realignment proposal will effectively ensure that any building development on 34 Brecon Street will be distanced³ from the Queenstown Cemetery and allow for establishment of a pedestrian linkage (alongside the Cemetery) into the Lakeview site from upper Brecon Street.

Process

- 14 The Local Government Act 1974 (LGA) governs the powers of Council to stop roads. The powers are expressly granted in sections 319 and 342, and the process is set out in Schedule 10. The process is summarised as follows:
- a. The Council prepares a plan showing the road to be stopped and lodges the plan with the Surveyor-General for approval;
 - b. The Council must notify the public (if approved by the Surveyor-General). The public has a right of objection. If an objection is received, clauses 5 to

³ Standard 20m road corridor.

8 of Schedule 10 set out the process to be followed through the Environment Court;

- c. On objections being resolved, or no objection having been received on expiry of the public notice, the Council issues a 'final public notice' declaring the road to be stopped, and forwards copies of the notice and the plans to the Surveyor-General;
- d. The Surveyor-General updates their records, and at that point the road is stopped. The Surveyor-General then gives the land a new description, and forwards the details to the Registrar-General of Land to update their records in accordance with s 38(2) of the Land Transfer Amendment Act 2002.

Ngāi Tahu right of first refusal

15 Cemetery Road was formed by Crown grant and is considered 'relevant land' under the Ngāi Tahu Settlement Claims Act (NTSCA).

16 The right of first refusal is normally triggered by Council "disposing" of relevant land, but the exchange of land (Area "A" for "B" Attachment B) for the purposes of roading falls within an exemption contained in section 50 NTSCA. This exemption provides that any land exchange under section 117(3) Public Works Act 1981 is exempted from the obligation to offer the land to Ngāi Tahu.

Commercial Agreement

17 The parties have reached agreed terms for the sale and purchase of property between the Council and Brecon Street Partnership providing for the contemporaneous transfer of the Council land to Brecon Street Partnership subject to various conditions of the agreement being satisfied. Each party acknowledges equal consideration for the performance of the other party's obligations which has included:

- a. A market valuation of the 34 Brecon Street land 'as is' and 'as if the proposal is complete'⁴;
- b. An infrastructure assessment on the impact of the proposal to existing roads and services.

18 Under the agreement the Council is obligated to undertake the process as summarised in paragraph 14 (above). Brecon Street Partnership is obligated to undertake:

- a. subdivision consent (and any other consents required for construction of road) applications;
- b. physical construction of new roading and relocation of services currently located in the Council land as required to service that land and other properties;

⁴ A purchase price of \$1.00 (plus GST, if any) has been agreed based on the valuation advice received.

- c. all required sign-offs and certifications, including (if applicable) section 224(c), and Code Compliance Certificates necessary for completion of all works required by the consents.
- 19 The agreement is conditional on Brecon Street Partnership, at its sole cost, obtaining such consents as may be required to enable the transfer of the property to the Council, and contemporaneously the transfer of the Council land to Brecon Street Partnership.
- 20 The Council will complete the public objection process, but then wait while Brecon Street Partnership undertakes its consent applications and the construction works before the land exchange takes place.
- 21 The alternative would be for the parties to undertake their processes simultaneously. This would result in a quicker settlement, but risks wasted costs for Brecon Street Partnership if public objections are received and Council accepts those objections and decides not to continue with the proposal.

Options

22 Option 1: Realign Cemetery Road as proposed.

Advantages:

- 23 It will promote a high quality, attractive environment within the Lakeview Sub Zone consistent with the objectives and policies of the District Plan;

Disadvantages:

- 24 If the Council receives an objection and either upholds the objection, or the objection is otherwise upheld by the Environment Court, there is a stand down period of two years before the Council can attempt to stop the same road again.

25 Option 2: Status Quo – Do nothing

Advantages:

- 26 Will provide immediate certainty to the owner of 34 Brecon Street of their boundary and the adjacent road configuration.

Disadvantages:

- 27 May result in 'land banking' or delay of private investment, particularly of high density residential and/ or hotel development, at 34 Brecon Street.
- 28 This report recommends **Option 1** for addressing the matter because it will enhance the amenity, character, heritage and quality of the Queenstown Town Centre.

Significance and Engagement

- 29 This matter is of medium significance, as determined by reference to the Council's Significance and Engagement Policy because the recommended option involves public notification of the road stopping and transfer of a non-strategic asset (property).

Risk

- 30 This matter relates to the strategic risk SR3 Management Practice - working within legislation, as documented in the Council's risk register. The risk is classed as moderate. This matter relates to this risk because the recommended option follows legislative processes detailed in the Local Government Act 1974 and Public Works Act 1981.

Financial Implications

- 31 Costs of \$20-\$25,000 can be expected to fulfil the Council's obligations under the proposal. These costs can be met within existing budgets otherwise there is no significant budget or cost implications resulting from the decision.

Council Policies, Strategies and Bylaws

- 32 The following Council policies, strategies and bylaws were considered:

- District Plan;
- Economic Development Strategy 2015;
- Vesting of Roads and Reserves Policy 2016;
- Property Sale and Acquisition Policy 2014;
- Road Naming Policy.

- 33 The recommended option is consistent with the principles set out in the named policy/policies.

Local Government Act 2002 Purpose Provisions

- 34 The recommended option:

- Will help meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses and provide for and facilitate growth in the District;
- Can be implemented through current funding under the 10-Year Plan and Annual Plan;
- Is consistent with the Council's plans and policies; and
- Would not alter significantly the intended level of service provision for any significant activity undertaken by or on behalf of the Council, or transfer the ownership or control of a strategic asset to or from the Council.

Consultation: Community Views and Preferences

35 The persons who are affected by or interested in this matter are the residents/ratepayers of the Queenstown Lakes District community, Te Rūnanga o Ngāi Tahu (Ngāi Tahu) and owners/ occupiers of land sharing a common title boundary with Cemetery Road. These include:

- a. Brecon Street Partnership Limited, registered proprietors of 34 Brecon Street;
- b. Queenstown Mini Golf Limited, lessees of the land at 34 Brecon Street;
- c. CCR limited, lessees of the holiday park on the adjoining reserve land;
- d. Lakeview cabin occupiers, tenants on the adjoining reserve land.

36 CCR Limited representatives have been advised of the proposal and will be further consulted regarding design and construction of the access way to the holiday park.

37 Members of the public can hold exclusive burial rights in the Cemetery, but would not be considered 'occupiers of adjoining land'. However, works affecting access to the Cemetery could invoke public concern and will need to be sensitively managed⁵.

38 General public notification including serving notice to the parties identified above will be undertaken under the requirements of Schedule 10 LGA.

Legal Considerations and Statutory Responsibilities

39 Legal advice been taken, and the recommended option is consistent with that advice.

Attachments

- A Cemetery Road (Queenstown) realignment plan
- B Cemetery Road (Queenstown) road stopping and land exchange plan

⁵ Particularly public or family members with a connection to the cemetery.

Attachment A

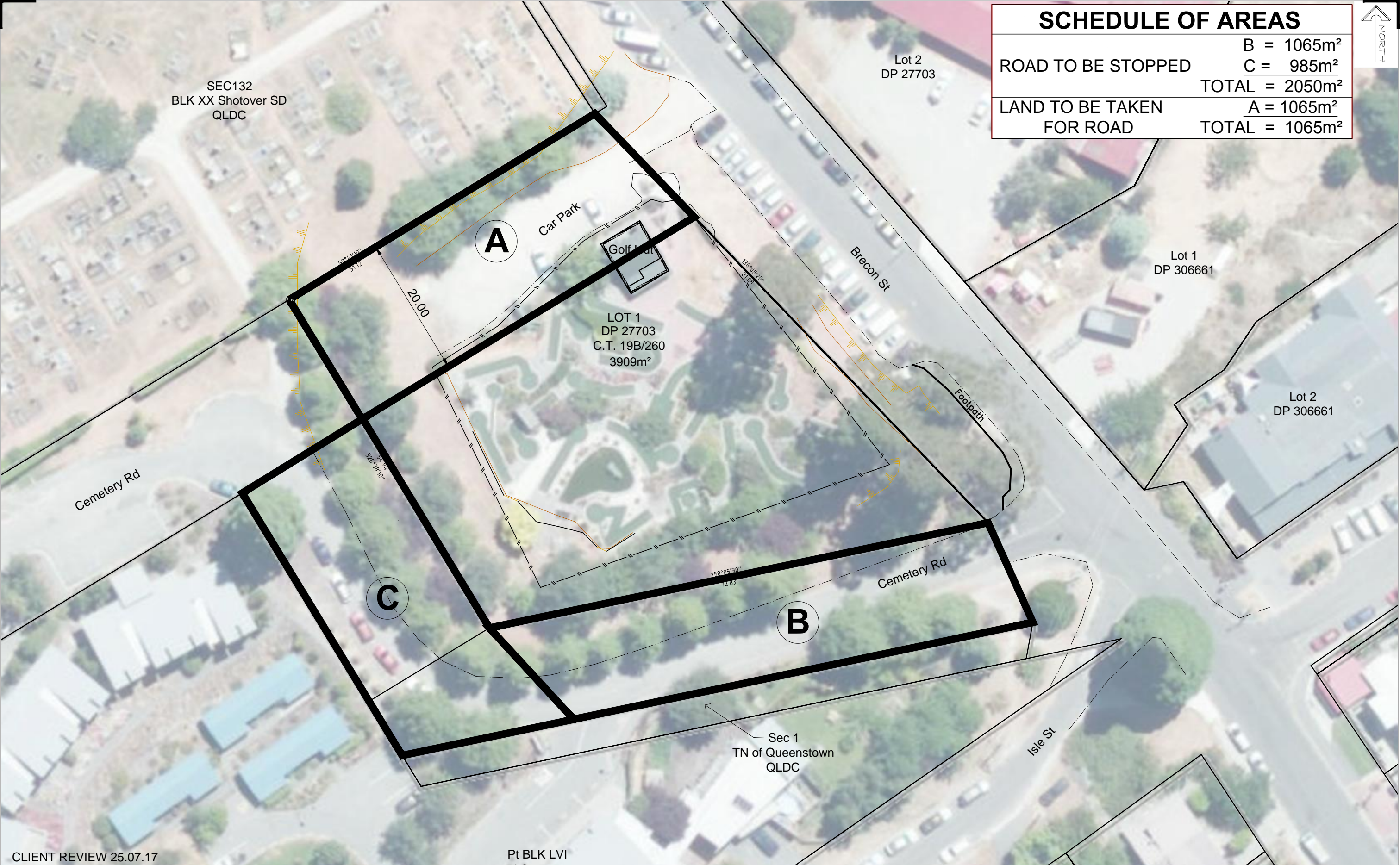
Cemetery Road realignment and land exchange proposal


Existing (indicative boundaries depicted)



Proposed





 <div>Clark Fortune McDonald & Associates Licensed Cadastral Surveyors - Land Development - Planning Consultants 309 Lower Shotover Road, P.O.Box 553 Queenstown Tel. (03)441-6044, Fax (03)442-1066, Email admin@cfma.co.nz Shop 2, Otago House, 475 Moray Place, P.O. Box 5960 Tel. (03)470-1582, Fax (03)470-1583, Email admin@cfma.co.nz</div>	Shotover Design Limited trading as				Rev.	Date	Revision Details	By	LOT 1 DP 27703 LAND SWAP AREAS CEMETERY ROAD (QUEENSTOWN) PROPOSED ROAD STOPPING AND LAND EXCHANGE										Client	Surveyed	Signed	Date	Job No.	Drawing No.
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									Notes: All dimensions shown are in meters unless shown otherwise. Any person using Clark Fortune McDonald drawings and other data accepts the risk of: - Using the drawings and other data in electronic form without requesting and checking them for accuracy against the original hard copy versions. - Ensuring the information is the most recent issue. Copyright on this drawing is reserved.										RWB	-	26.11.14	1:500 @ A3		
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