

BEFORE INDEPENDENT HEARING COMMISSIONERS
IN QUEENSTOWN

**IN THE MATTER OF THE RESOURCE MANAGEMENT ACT
1991**

AND

**IN THE MATTER OF THE PROPOSED PLAN CHANGE 50 TO
THE QUEENSTOWN LAKES DISTRICT PLAN**

CLOSING STATEMENT AND SPECIFIC CASE LAW

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Closing Legal Caselaw for Queenstown Lakes District Council Plan Change 50

1 The PC50 has failed to provide realistic , timely and holistic evidence.
The use of Consultants unfamiliar with Queenstown is an unfortunate and salutary lesson at ratepayers expense.

The question has to be addressed as to whether QLDC would accept a similar Application from a private developer where the QLDC PC50 application fails in so many requirements of further information requested.

Therefore My Request is that the Plan Change 50 is declined and used as preliminary consultation for the District 10 year review of the District plan

2 The following matters were particularly deficient in information.

The Ben Lomond Reserve Act

The Draft Transport Strategy 2007 & 2015

The Lakeview Camping Ground Lease

The District Plan 10 year Review 2015-2025 – Medium Density Residential Cumulative Noise Effects Information

Lynch Block Historic Precinct

Affordable Housing

The PC50 Structure plan

3 There is a distinct lack of appreciation of the cumulative effects and future effects of the massive PC50 proposal on the Queenstown CBD in every aspect that will have future, contemporaneous and cumulative effects to the entire Queenstown CBD commercial , tourism and residential areas.

4 The fragmented and piecemeal approach by QLDC to deliver continual and disparate District Plan Change review proposals after previous submission periods have closed are unreasonable to submitters but also objectionable for non submitters who find that the cumulative and combined changes to themselves are now required to be addressed

5 In KPF Investments v Marlborough District Council 2014 NZEnv Court 152 where the Court found there are no bottom lines and an overall broad judgement still applies for resource consents provided that ; *It is recognised that the weight be given to the relevant considerations , must be carefully allocated by reference to both the strong direction in Sections 6-8 and to any particularisation of those in the statutory instruments from National Policy Statements down to District Plans “*

6 In Queenstown Central v Queenstown Lakes District Council 2013 NZHC 817 the High Court overturned the Environment Court’s reading of the Plan as a whole when there were was a distictly relevant and specfic objective (with policies) related to the proposal in such circumstances the High Court commented; *It is not an overall judgement of some degree of the adverse effects of the proposal. The test is tougher . the activity must not be contrary to any of the objectives and policies.*



7 HIL v Queenstown Lakes District Council 2014 NZEnv C 177 (19th August 2014) The cumulative effects of development are required to be addressed including Outstanding Natural Features and to avoid subdivision or development on and in the vicinity of distinctive land forms and and landscaping features including;

Avoiding Cumulative Degradation. Avoid remedy or mitigate adverse effects of development on the landscape values of the district.

8 St Heliers Capital v Kapiti Coast District Council [2014] NZEnvC52 13 March 2014

***The proceedings were not so much about growth as about the most appropriate location for growth in the Paraparaumu Town Centre
The matter was dependent on the definition of growth and considered growth on the scale of the land area proposed to be rezoned (10.5ha) also as a relevant consideration to ensure growth is sustainably managed .***

***“pie in the sky elements in the proposal “
Strong traffic evidence that was not disputed
large addition to the Paraparaumu town centre . Consent Declined.***

9 Guilty as Limited V Queenstown Lakes District Council {2010} NZEnvC 191 (May 2010)

Precedent concerns given the level of inconsistency between the proposal and number of provisions in the District Plan . The question whether the consent would provide a planning precedent is in this case a relevant matter for the Court .

An ad hoc answer to a wider issue and a 4 fold increase to the District Plan existing limit for noise .

Failure to address 5 crucial planning issues . Consent Declined

The matter was a late submission by Basil Walker to the PC50 Commissioners to ensure that relevant cumulative noise was addressed by the Applicant

Future Environment

10 In Queenstown Lakes District Council v Hawthorn Estate Ltd 2006 NZRMA

Turning to the future environment as the Court of Appeal stated in Hawthorn it is also necessary to make a genuine attempt envisage the environment in which such future effects ,or effects arising overtime will be operating

11 The Application is significant in relation to the proximity to Ben Lomond Mountain and if consented will have visual dominance above the proposed PC50 extended CBD. The original discussion was for an application to have a proposed Plan Change for A convention centre and independent high density structure for affordable or workers housing on the freehold land .

12 Future Consents will be required from The Minister of Conservation for the allocation and division of the reserve land within the QLDC freehold land and the structure plan as presented has taken no consideration of the effects on specific Queenstown Icons.

A handwritten signature in black ink, appearing to be 'Basil Walker', is located in the bottom right corner of the page.

13 The Ben Lomond Reserve Act (BLRA) has been ignored and the building height applications of the PC50 will be severely compromised to comply strictly with the BLRA

14 The protected trees on Brecon street /Isle street corner and Lakeview Freehold and adjoining parks require future protection of the trees and tree root protection areas that will have demonstrable land and roading requirements effects to existing landform in affected areas

15 The operation of the **Lakeview Holiday Park** 25 year lease has been granted under urgency and secret by QLDC at a similar date to PC 50 with the lease copy provided to the Commissioners by Basil Walker .
The fact the lease is inextricably linked to the PC50 because the land contained in the lease is at the eastern or breacon street end of the PC50 Application and more appropriate to be rezoned without the impediment of the lease with significant compensation clause, ultimately a cost to the ratepayer .

16 The **affordable accomodation** within the PC50 application and outside of the boundaries has been subject to provocation by QLDC within the legal requirements of the existing leases but outside of the duty of care to tenants and the business community requiring employee accomadation.

17 The **QLDC Transport Strategy 2015** was vital information and not made available until after the hearing closed despite numerous opportunities for the previous 2007 Transport Strategy to be provided which subsequently has not a disimilar content on analysis. The.QLDC Inner Links Strategy 2015 has still recorded the Inner Links strategy as the leading strategy in the document .

18 The **Inner Links Strategy** is potentially flawed because the private land is subject to private hotel development and Resource Consent application and the Inner Links propsal will be extinguished by nonavailability of the required land.

This matter was only brought to the attention of the hearing by Basil Walker supplementary evidence and has since not been addressed by QLDC Counsel or expert witness.

19 The **PC50 Structure Plan** has determined that 5 modern Lakeview Holiday Park multimillion dollar buildings will have to be demolished to allow proposed roading and replaced elsewhere at greater replacement cost to comply with the Lakeview Holiday Park Lease and this cost and avoidable issue has not been addressed or discussed .

20 If the **Structure plan** was removed the **Convention Centre and the Lakeview Holiday Park** could collectively utilise the carparking land with appropriate management and the amenity buildings could remain as well as the QCC being able to be built without the land dissected by the road.



21 The Duty of Candour and Honesty

Rule 13.1 of the rules of Conduct and Client Care provides;

A lawyer has an absolute duty of honesty and must not mislead or deceive .

The absolute nature of this duty is significant . As in other areas of the law misleading does not require active conduct but failing to correct a misunderstanding impression or not bringing vital information to the Courts attention may be equally unacceptable .

Vernon v Bailey (no 2) [1997] 3 WLR 683 {1997}ER 614

22 The QLDC Council Executive and consultants have provided substantial information that has avoided the truth after robust scrutiny and clarification QLDC have refused to amend their position ;

- 1) A Non existent company on the NZ company register included in the Lakeview Holiday Park lease signed by all parties to the lease
- 2) The transport strategy was dated 7th January 2015 on all pages but was claimed to be unavailable for the hearing .
- 3) False information in regard to Lynch Block leases in perpetuity.
- 4) Removal of accuracy disclaimer from QLDC evidence pertaining to maps giving an impression the documents were valid and enforceable
- 5) The extensive opening legal submissions by the Applicant counsel from Meredith Connell items 3.3-3.20 in regard to being "on" the Plan Change 50 was disingenuous when cabins 163,165,168, 116,117,118,74,75,76 were outside of the boundary of Plan Change 50 and not "on" Plan Change .
- 6) After extensive post hearing meetings with QLDC, the evidence was ignored that a QLDC survey was commissioned (SO24298) to include the above cabins to be "on" Lakeview freehold, Reserve land and the Lynch Block however the survey was never actioned .
- 7) I consider the attempt to include the subject cabins falsely into Plan Change 50 as a deliberate Misconduct in Office and require that the matter be rectified and confirm the matter is now with the Tenancy Tribunal

23 Transportation Planning and Effects Case Law

I provide as attachment **The Transport Engineers Handy Update on Case Law** by Amanda Douglas LLB Partner of Wynn Williams Lawyers Christchurch [2013].

The document has case law on matters that I believe are relevant in a holistic approach to transport . It is my belief the issue that has to be fully understood and addressed with provisions that are relevant and fundamentaaly achievable,with the Frankton road being the first obstacle followed by parking and vehicle congestion now and for the foreseeable future

This problem has been exacerbated by the proposed QLDC District Plan Review a massive Medium Density rezoning and intensification of the traffic effects from suburban traffic through the CBD and immediate and adjoining Queenstown and PC50 residential areas with expectation of entering onto Frankton Road which will be severely compromised .

The full document is appended .



Summary of Transport Case Law

23.1 Ferrymead Retail Limited v Christchurch City Council

- **Granting consents in reliance on conditions that were inadequate**
- **Processing the application without sufficient information to enable the decision to be made**
- **Methods to determine trip/traffic generation.**

23.2 Sandspit Yacht Club Marina Soc Inc v Auckland Council

- **Provision of carparking not required for peak demand but overcatering avoided adverse parking effects**

23.3 Stacey v Auckland Council [2011] NZEnvC 109

- **Effect of traffic Noise on residential amenity**

23.4 Laidlaw College Inc v Auckland Council EnvC [2011] NZEnvC 248 Sept 2011

- **Update on Interim Decision Cumulative Traffic Effects**

23.5 NZ Retail Property Group v Auckland Council [2012] NZEnC 240

- * **The issue of whether the applicant should bear the costs of traffic improvements or mitigation where their development triggered improvements**

23.6 Envirowaste Services Limited v Auckland Council [2011] NZEnvC 130 et (131)

- **Witness Independence**
- **Independent expert witness was compromised as he performed most of his work for one client**

23.7 Blakely Pacific v Western Bay of Plenty DC [2011] NZEnvC354

Detailed reports and Realistic mitigation

The series of adverse effects identified, however how the outcomes recommended by the experts would be achieved was not explained .

23.8 Playground Events Ltd v Waikato District Council [2012] NZRMA 242 [2011] NZEnvC149

- **Differing views of Experts**
- **the Court held that the cumulative and precedent effects on the amenity values and rural character of the surrounding area would be adverse and significant and declined the consent**

23.9 Stirling v Christchurch City Council

- **Importance of Addressing All issues in Evidence**

24.0 Dye v Rodney District Council

- **Cumulative Effects**
- **Predicated upon an unstated fact; namely that the rules (and Methods) express decisions made in relation to agglomerate or accumulative effects of future retailing .**



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