Before Independent Hearing Commissioners
In Queenstown

In the matter of the Resource Management Act 1991

And

In the matter of proposed Plan Change 50 to the Queenstown Lakes District Plan

Closing submissions for Queenstown Lakes District Council

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1 Introduction

1.1 These submissions address issues that have arisen during the course of the hearing and from closing submissions of other counsel. The matters covered are:

(a) Jurisdictional issues;

(b) Location of any convention centre;

(c) Consideration of alternatives;

(d) Restricted discretionary activities in the Beach Street block;

(e) Reduced rezoning proposals;

(f) The correct approach to traffic issues; and

(g) The use of different assumptions by Messrs McKenzie and Colegrave.

2 Jurisdiction

2.1 During the hearing the Committee requested further input from the Council in relation to various jurisdictional issues, namely jurisdiction to:

(a) Extend the Town Centre Zone to include land owned by Kelso Investments Ltd and Chengs Capital Investments Ltd;

(b) Extend the Town Centre Zone to include land owned by Queenstown Gold Ltd;

(c) Delete the Transitional Zone from the Man Street carpark area;

(d) Alter the zoning of the easternmost of the two Isle Street blocks to Town Centre zone.

2.2 As set out in the Council's legal submissions on the first day of the hearing, the Council's position is that the bipartite test in *Clearwater* should be used to determine whether submissions are "on" Plan Change 50 or not. The two enquiries to be made are therefore:

(a) Whether the submission is addressed to the extent to which the Plan Change alters the status quo; and

(b) Whether accepting the submission would permit the District Plan to be appreciably amended without real opportunity for participation by those potentially affected.

2.3 The purpose of the first limb of the test is to enable a plan change to be initiated "without necessarily opening up for re-litigation aspects of the plan which had previously been [past] the point of challenge".[1] This is necessary for the

1. *Clearwater*, para 65.

"progressive and orderly resolution of issues associated with the development of proposed plans". In *Motor Machinists* Kós J stated that this meant zoning extensions by submission would be limited to:[2]

> … incidental or consequential extensions of zoning changes … provided that no substantial further s 32 analysis is required to inform affected persons of the comparative merits of that change.

2.4 Kós J saw the potential for "incidental or consequential" zoning extensions as stemming from cl 10(2)(b)(i) of the First Schedule to the RMA, which provides that decisions on plan changes may include:

> matters relating to any consequential alterations necessary to the proposed statement or plan arising from the submissions.

2.5 Defining the line between a change that is consequential and a change that is beyond the scope of the Plan Change may sometimes be challenging, and to counsel's knowledge this subclause does not have any history of judicial interpretation. However it seems from Kos J's comments that His Honour considered "incidental" to be reasonably synonymous with "consequential" in this context. The Shorter Oxford English Dictionary definition of "consequential" is:[3]

> **Consequential**
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> **1.** Following, esp. as an (immediate or eventual) effect, or as a logical inference; of the nature of a consequence.
>
> **2.** Characterized by logical sequence or consistency. Now *rare*.
>
> **3.** Of consequence; important, significant. Now only of a person: having social consequence.
>
> **4.** Self-important.

2.6 The first sense of "consequential" corresponds closely with the first sense of "incidental":[4]

> **Incidental**
>
> **1.** Liable to happen to; naturally attaching to.
>
> **2.** Occurring as something casual or of secondary importance; not directly relevant to; following (up)on as a subordinate circumstance. **b** Of an expense or charge: incurred apart from the main sum disbursed. **c** Casually met with. *rare*.

2.7 In the Council's submission, the scope for "consequential" zoning extensions has to be kept quite narrow in order to avoid undermining the Council's ability to progress plan changes in an orderly and efficient way.

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2. *Motor Machinists*, para 81.
3. *Shorter Oxford English Dictionary* (Sixth edition, Oxford University Press, New York, 2007) Vol. 1, p 496.
4. *Shorter Oxford English Dictionary* (Sixth edition, Oxford University Press, New York, 2007) Vol. 1, pp 1351-2.

2.8 The purpose of *Clearwater*'s second limb is to prevent procedural unfairness to persons who would be more affected by a submission than by the notified Plan Change. As Kós J reasoned in *Motor Machinists*:[5]

> It would be a remarkable proposition that a plan change might so morph that a person not directly affected at one stage (so as not to have received notification initially under clause 5(1A)) might then find themselves directly affected but speechless at a later stage by dint of a third party submission not directly notified as it would have been had it been included in the original instrument. It is that unfairness that militates the second limb of the Clearwater test.

2.9 This is the situation which Kós J described in *Motor Machinists* in which the interests of people and communities could be overridden "by a submissional sidewind."[6] Kós J bore in mind the need to protect people from unforeseen "consequential" zoning extensions when he stated that they would only be permissible if no substantial further s 32 analysis was needed to inform affected persons.[7]

2.10 Mr Bartlett submitted to you that Kós J's *Motor Machinists* decision was unexpected, and instead referred you to paragraph 142 of the *Federated Farmers v Mackenzie District Council* case. That (lengthy) case is found at tab 4 of the case book. The relevant parts of it are succinct. At paragraphs 139-140 the Court sets out Kós J's "detailed consideration" of the scope issue in *Motor Machinists* and entirely adopts the broad principles from that decision.

2.11 The Court then considers the question at issue in this case, namely whether the Court should invoke its jurisdiction under s 293[8]. The passage to which Mr Bartlett referred you occurs in that context:

> Having made express reference to these issues in PC 13, the local authority cannot subsequently seek to disavow itself of the implications in this proceeding. I am reinforced in this view by the general pragmatism adopted by the Courts in determining whether a matter has been disclosed by a submission, which is applicable by analogy to the approach taken to what a plan change itself (or an appeal) discloses.

2.12 In the Council's submission, this discussion about whether the Court should direct changes to a Plan or consultation on those changes adds nothing of relevance to the tests discussed, and the accepted principles of*Clearwater*, as explained in *Motor Machinists*, are those that you should apply.

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5. *Motor Machinists*, para 77.
6. *Motor Machinists*, para 82.
7. *Motor Machinists*, para 81.
8. Section 293 allows the Environment Court, in the course of determining appeals on planning documents, to direct changes to a Plan to address any matter identified by the Court. No doubt because this power may give rise to questions of scope and procedural fairness, the section provides for the Court to make directions about consultation with not only parties, but other persons also.

Kelso Investments Ltd and Chengs Capital Investments Ltd

2.13 With regard to the first *Clearwater* test, the Council has not proposed any alteration to the zoning which applies to the Kelso and Chengs land, which is a moderate distance from the Plan Change 50 area. In the Council's view, Kelso and Chengs' submission is addressed to the extent that they would like the Plan Change to alter the status quo, rather than being addressed to the extent it does alter it. To paraphrase *Clearwater*, the zoning of the Kelso and Chengs land is an aspect of the plan that is past the point of challenge, and allowing Kelso's and Chengs' submission would open it up for re-litigation, undermining the Council's ability to resolve the proposed Plan Change in an orderly and progressive manner.

2.14 Plan Change 50 is a site-specific plan change. The matter before the Committee is the appropriateness of the proposed rezoning for the specific site. Submissions about the zoning of other sites are not submissions on the Plan Change.

2.15 In relation to the second *Clearwater* test, the question is whether any person could be adversely affected without due opportunity to become aware of that possibility and participate. That risk is possibly lower with regard to this site on account of it having Town Centre Zoned land to the south-west and south-east and Council land to the north, however there are residential scale buildings to the east. The owners of those properties might have submitted had they known that the Town Centre Zone might be extended to the Kelso and Chengs' land.

2.16 The fundamental consideration in relation to the Kelso and Chengs land is that it is well outside of the Plan Change area, untouched by Plan Change 50. It therefore fails the first *Clearwater* test. When notifying Plan Change 50, the Council had no intention of revisiting the zoning of this land. It did not factor it into any of the assessments that fed into the s 32 report, in terms of traffic, economics, heritage, geotechnical suitability, availability of services, urban design, landscape values and so on. It may be that a good case can be made out for extending the Town Centre Zone to the Kelso and Chengs' land (or not), but Plan Change 50 does not provide the forum for that discussion.

2.17 In the Council's view rezoning the Kelso and Chengs' land cannot legitimately be characterised as a "consequential" alteration to Plan Change 50. The rezoning of the Kelso and Chengs' land does not follow from or result from Plan Change 50. Kelso and Chengs can argue that their land is as suitable for rezoning as the Plan Change 50 area, or more so, but that would not make the rezoning of their land a necessary consequence of Plan Change 50.

Queenstown Gold Ltd

2.18 With regard to the first *Clearwater* test, the key fact is that Plan Change 50 does not apply to the zoning of the Queenstown Gold land. Therefore Queenstown Gold's submission seeking rezoning is not addressed to the extent to which Plan Change 50 alters the status quo. The Council had no intention of rezoning this land, or even reconsidering its zoning, as part of the Plan Change 50 process. None of the Council's evaluation of Plan Change 50 has factored in the rezoning of this land.

2.19 In relation to the second *Clearwater* test, the Queenstown Gold site currently enjoys a High Density Residential zoning with a Commercial Precinct overlay, as does the land to the immediate north and south. The land to the east is also part of the High Density Residential Zone but is not covered by the Commercial Precinct overlay. The land to the west, across Brecon Street, is part of the Plan Change 50 area. If the Queenstown Gold land were rezoned as Town Centre, the development controls would change, allowing for greater site coverage, height and so forth. This could affect the neighbouring sites, especially those remaining in the High Density Residential Zone. Those neighbours might have wished to submit but will not have done so, based on the notified Plan Change and the s 32 report.

2.20 The Council does not consider that rezoning the Queenstown Gold land would be a "consequential' alteration to the Plan Change for the same reasons as the Kelso and Chengs land.

2.21 The Council considers that the Queenstown Gold submission fails both the *Clearwater* tests.

Thompson, Hockey and Watertight Investments Ltd

2.22 These submitters sought four specific amendments to the rules proposed for the eastern Isle Street block:

(a) An increase in maximum site coverage to 80%;

(b) The removal of the requirement for a rear yard;

(c) The removal of the daylight control rule;

(d) Reinstatement of the height limit bonus to 15 metres where sites are amalgamated.

2.23 Following the joint witness conferencing on 9 and 10 February 2015 it became apparent that all of the planners involved in the proceeding would support rezoning of the easternmost of the Isle Street blocks to Town Centre, were there jurisdiction to do so.

2.24 The Council has given thought to whether the Town Centre Zone could be extended to the eastern Isle Street block. The Council considers it lacks the scope to support such a change of course.

2.25 There is no submission that seeks that this block be rezoned Town Centre.[9] It is currently zoned High Density Residential.

2.26 Even if there were such a submission, there are some quite substantial differences between the Queenstown Town Centre zone and the Isle Street subzone. There are a range of matters where the Town Centre Zone is more liberal, which would mean that any submission seeking a move in that direction would not be a submission "on" the Plan Change, but one seeking even more liberalisation than the Plan Change afforded owners.

9. The Hockey submission sought that the three properties that they own be rezoned to Town Centre, but this does not address the whole block.

2.27 One example is the approach to visitor accommodation. In both zones, visitor accommodation is a controlled activity, but in the Isle Street subzone there are additional matters of control in relation to:

(a) the location of buildings;

(b) the location, nature and scale of activities;

(c) the location of parking and buses and access; and

(d) noise.

2.28 Thus a change to the Town Centre zone would enable development without consideration of these additional matters, ie development might occur in the Town Centre Zone that would not occur in that way in Isle Street subzone. Another, example is the acoustic treatment of residential activities (including visitor accommodation). The Isle Street subzone provides that residential activities must incorporate acoustic insulation, aiming to create a better mixed use environment where residential activities are contemplated alongside (and indeed above) restaurants and bars. By contrast, there is no requirement for residential activities to acoustically insulate in the Town Centre zone, so that reverse sensitivity effects might arise in that zone that would be avoided in the Isle Street subzone. Even in a situation where there are no applications to breach the Plan's noise limits, the Isle Street subzone's requirement to acoustically insulate habitable rooms will mean that reverse sensitivity effects are better avoided than they would be in the existing operative Queenstown Town Centre zone. A full comparison of the differences between the zones is appended to these submissions as Annexure 2.

2.29 Even if there were a submission, and it were "on" the Plan Change, it would fail to meet the second *Clearwater* test in that it would permit the District Plan to be appreciably amended without real opportunity for participation by those potentially affected (such as the western Isle Street block owners).

2.30 By contrast, the Council considers that there is jurisdiction for the amendments it proposes:

(a) Site coverage: The operative zoning for the eastern Isle Street block is High Density Residential, which has a maximum site coverage of 45-65%. Plan Change 50, as notified, proposed increasing the maximum to 70%. The submitters' proposal to extend the maximum to 80% is therefore, strictly speaking, not "on" the plan change. It is also difficult to class it as consequential. It might potentially be considered sufficiently minor in that no substantial s 32 analysis would be required to inform affected persons, moderating the risk of procedural unfairness. In my submission the expanded site coverage sought would fail the first *Clearwater* test, but possibly pass the second.

(b) No rear yard: Mr Bird has recommended a suite of revised controls to address daylight, amenity and so forth. Mr Bird's recommendations include the deletion of the side yard requirement. The Council considers that the proposed revisions need to be treated as a package, as they involve some quid pro quo. In the Council's submission, the impact of deleting the 6 metre rear yard requirement on the overall density and pattern of development would be relatively significant, such that further

s 32 analysis would be required to inform potentially affected persons. The Council does not consider that the change would pass the second *Clearwater* test.

(c) No daylight control: As the control is a significant part of the package recommended by Mr Bird, the same comments apply.

(d) 15 metre height bonus for amalgamated sites: This was part of the notified version of PC 50, so there is no question that, considered alone, it passes the first *Clearwater* test. However, it was also deleted as part of the package of amendments proposed by Mr Bird. To that extent, it needs to be considered in the round with the other amendments. Mr Bird's package of amendments includes deleting the side yard requirements from the notified version of PC 50. Without some counterbalancing limits on the scale and density of development (such as the deletion of the height bonus, retention of rear yards and inclusion of the daylight control), there may be little scope to delete the side yards after all. The Council's submission is that where there has been a tradeoff between restriction and liberalisation, it is necessary to look at the overall result and then apply the *Clearwater* tests. In this case, any significant liberalisations in addition to those already contained in Mr Bird's package of amendments would necessitate a different s 32 analysis and be procedurally unfair to those affected parties who are not involved in the process.

Reid Investment Trust and Man Street Properties Limited

2.31 Mr Arnesen and Mr Freeman gave evidence on behalf of these two submitters, both seeking deletion of the Town Centre Transition sub-zone from the properties to the south of Man Street. That evidence suggests that the first *Clearwater* test could be met, with such a deletion able to be characterised as a "consequential" alteration to Plan Change 50.

2.32 Again, the Joint Witness Statement on planning and urban design records that all of the planning witnesses involved in the caucusing would support such a rezoning, were there scope to make it.

2.33 However, much evidence was given by submitters in the western Isle Street block that opposed any increase in height on the properties to the south of Man Street. In my submission, these submissions founder on the second *Clearwater* test, in that those landowners and occupiers of the western Isle Street block who were unaffected by any increase in height in the TCTZ upon notification of Plan Change 50 should not "*find themselves directly affected but speechless at a later stage by dint of a third party submission not directly notified*" to them.

3 Convention Centre Location

3.1 Without wishing to state the obvious, this is a hearing in relation to a Plan Change, not a resource consent application. The objective of that Plan Change is

> A high quality, attractive environment within the Lakeview sub-zone where new business, tourist, community and high density residential activities will be the predominant use.

3.2 The Plan Change is to enable subsequent development, all of which will need to be specifically considered through the resource consent process. The Plan Change provisions attached to Mr Kyle's February evidence facilitate the provision of a convention centre by providing restricted discretionary activity status for it. They do not provide a convention centre or assure that one will be built. The Council has been careful to evaluate Plan Change 50 on this basis. Although most assessments were undertaken assuming the construction of a convention centre (because such a stance provided a "worst case" envelope of effects), importantly the economic assessments were made on the basis of a convention centre proceeding under the zoning and also on the basis of a scenario without a convention centre. Mr Colegrave's assessment concluded that even in the absence of the development of a convention centre:[10]

> I estimated the economic impacts of construction for the default scenario to be:
>
> (a) $86 million of additional regional GDP,
>
> (b) 1,650 additional full-time jobs for 1 year, and
>
> (c) $65 million of additional household income.
>
> Further, I estimated the ongoing economic impacts of operations to be:
>
> (a) $177 million of additional regional GDP,
>
> (b) 2,370 additional full-time jobs, and
>
> (c) $121 million of additional household income.
>
> Beyond these headline numbers, the default scenario will also have a number of other benefits. In particular, it will provide a much needed expansion of the CBD, which in turn should help the district to achieve its long term tourism potential.

3.3 Dr McDermott concludes:[11]

> Increasing this sort of commercial capacity in QTC by adopting Plan Change 50 should lift confidence and investment in tourism and provide a platform for continuing income growth. It should boost rather than threaten activity in the traditional core which will remain the principle draw-card for visitors, including those accommodated in or visiting the new commercially-zoned precinct. I also expect that by contributing to tourism investment, employment, income in this way the rezoning will help to sustain the residential growth in Queenstown that in turn will sustain the expansion of retailing and associated commercial activity in Frankton.

3.4 The Plan Change is not dependent on a convention centre. Starting from that point, the Committee's preliminary view, expressed on our last hearing day, that

10. Para 4.5-4.7.
11. Para 7.

the location of the convention centre was not a matter for it comes as no surprise. That can be the only legally correct conclusion . As Mr Bartlett said, location of any convention centre is ultimately a matter for the person writing the cheque for that development. And as yet, we do not know the identity of that person. He or she will need to be happy with their design (including location) and content that the proposal is able to be consented under the Plan Change 50 framework.

3.5 In the end, Mr Bartlett for Brecon Street Partnership accepted this point, stating on our last hearing day that any location for the convention centre was acceptable to his client. It is the Council's submission that the Committee need not pay any further attention to this issue.

4 Consideration of alternatives

4.1 Mr Wells' evidence for Memorial Property Ltd questioned whether the Council had given due consideration to alternatives when preparing Plan Change 50.[12] He suggested a set of criteria for determining the order in which land should be included in the Town Centre Zone.

4.2 The need to consider alternatives arises out of the s 32 evaluation required by the RMA. This section has gone through a number of amendments over the years and no longer expressly refers to "alternatives" at all, but substantively it requires that:

(a) plan objectives be evaluated as to whether they are the "most appropriate" way to achieve the purpose of the RMA; and

(b) plan provisions be evaluated as to whether they are the "most appropriate" way to achieve the plan objectives.

4.3 Whether or not a site-specific Plan Change needs to be evaluated by reference to other potential sites has been the subject of some commentary from the Courts. The starting position can be found in the High Court's decision in *Brown v Dunedin City Council*, in which Chisholm J held:[13]

> I am satisfied that the theme running through the Environment Court decisions is legally correct: s 32(1) does not contemplate that determination of a site-specific proposed plan change will involve a comparison with alternative sites. As indicated in *Hodge*,[14] when the wording of s 32(1)(a)(ii) (and, it might be added, the expression 'principal alternative means' in s 32(1)(b)) is compared with the wording of s 171(1)(a) and clause 1(b) of the Fourth Schedule it appears that such a comparison was not contemplated by Parliament. It is also logical that the assessment should be confined to the subject site. Other sites would not be before the Court and the Court would not have the ability to control the zoning of those sites. Under those circumstances it would be unrealistic and unfair to expect those supporting a site-specific plan change to undertake the mammoth task of eliminating all other potential alternative sites within the district. In this respect a site specific plan change can be contrasted with a full district-wide review of a plan pursuant to s 79(2) of the [RMA]. It

12. Wells, paras 94-95.
13. [2003] NZRMA 420, paras 16-17.
14. *Hodge v Canterbury Agricultural and Pastoral Association*, Planning Tribunal, C1/96.

> might be added that in a situation where for some reason a comparison with alternative sites is unavoidable the Court might have to utilise the powers conferred by s 293 of the [RMA] so that other interested parties have an opportunity to be heard. However, it is unnecessary to determine that point.
>
> It should not be implied from the foregoing that the Court is constrained in its ability to assess the effects of a proposed plan change on other properties, or on the district as a whole, in terms of the [RMA]. Such an assessment involves consideration of effects radiating from the existing or proposed zoning (or something in between) of the subject site. This is, of course, well removed from a comparison of alternative sites.

4.4 However, that position was softened by subsequent Court decisions. In particular, it became accepted that when matters of national significance were involved (as described by s 6), it was permissible to consider alternatives. For instance, when proposed plan provisions would enable activities that would adversely affect an outstanding natural landscape, the question of whether provision could be made for such activities elsewhere should be asked. In *Director-General of Conservation (Nelson-Marlborough Conservancy) v Marlborough District Council* the Court stated:[15]

> It seems to us that whether alternatives should be considered depends firstly on a finding of fact as to whether or not there are significant adverse effects on the environment. If there are significant adverse effects on the environment, particularly if they involve matters of national importance, it is a question of fact in each case as to whether or not an applicant should be required to look at alternatives, and the extent to which such an enquiry, including the undertaking of a cost/benefit analysis, should be carried out.

4.5 The question was recently re-examined by the Supreme Court in the *King Salmon* decision. The Supreme Court considered the proposition that consideration of alternatives was "permissible but not mandatory", expressing its view that if alternatives could be relevant, it must be on some principled basis:[16]

> [170] This brings us back to the question when consideration of alternative sites may be necessary. This will be determined by the nature and circumstances of the particular site-specific plan change application. For example, an applicant may claim that that a particular activity needs to occur in part of the coastal environment. If that activity would adversely affect the preservation of natural character in the coastal environment, the decision-maker ought to consider whether the activity does in fact need to occur in the coastal environment. Almost inevitably, this will involve the consideration of alternative localities. Similarly, even where it is clear that an activity must occur in the coastal environment, if the applicant claims that a particular site has features that make it uniquely, or even especially, suitable for the activity, the decision-maker will be obliged to test that claim; that may

15. [2010] NZEnvC 403, para 690.
16. *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited* [2014] NZSC 38.

well involve consideration of alternative sites, particularly where the decision-maker considers that the activity will have significant adverse effects on the natural attributes of the proposed site. In short, the need to consider alternatives will be determined by the nature and circumstances of the particular application relating to the coastal environment, and the justifications advanced in support of it, as Mr Nolan went some way to accepting in oral argument.

[171] Also relevant in the context of a site specific plan change application such as the present is the requirement of the NZCPS that regional councils take a regional approach to planning. While, as Mr Nolan submitted, a site-specific application focuses on the suitability of the planning provisions for the proposed site, the site will sit within a region, in respect of which there must be a regional coastal plan. Because that regional coastal plan must reflect a regional perspective, the decision-maker must have regard to that regional perspective when determining a site-specific plan change application. That may, at least in some instances, require some consideration of alternative sites.

[172] We see the obligation to consider alternative sites in these situations as arising at least as much from the requirements of the NZCPS and of sound decision-making as from s 32.

[173] Dobson J considered that imposing an obligation on all site-specific plan change applicants to canvass all alternative locations raised the same practical concerns as were canvassed by Chisholm J in *Brown*. We accept that. But given that the need to consider alternative sites is not an invariable requirement but rather a contextual one, we do not consider that this will create an undue burden for applicants. The need for consideration of alternatives will arise from the nature and circumstances of the application and the reasons advanced in support of it. Particularly where the applicant for the plan change is seeking exclusive use of a public resource for private gain and the proposed use will have significant adverse effects on the natural attributes of the relevant coastal area, this does not seem an unfairly onerous requirement.

4.6 In the Council's submission, the Council has conducted itself properly. There is no suggestion in the case law that the Council has failed to adequately consider alternatives for the following reasons:

(a) The proposed Plan Change will not have a significant adverse effect on the environment or detract from any s 6 "matter of national importance";

(b) The Lakeview site's unique suitability for redevelopment and significant new activities, as a relatively "greenfield" site, is indisputable. There is no comparable site in the vicinity of the Queenstown Town Centre Zone;

(c) The location of the Isle Street Sub-Zone and the Beach Street block is similarly indisputable, given its location between the existing Town Centre Zone and the Lakeview site. No other site could provide the same connection.

4.7 Further, there is no suggestion in any of the case law that if another site were to be considered a better alternative, there would be jurisdiction to rezone that site instead. The question is only whether the proposed Plan Change area should be rezoned. That is one of the reasons why Chisholm J considered the consideration of alternatives to be futile in *Brown*. If the Committee considered that the purpose of the Act would be better served by not amending the objectives as requested, or that the objectives would be better achieved by not amending the provisions as requested, there would still be no jurisdiction to include alternative sites in the Town Centre Zone. Plan Change 50 can only be amended in accordance with submissions that are "on" the Plan Change.

5 Restricted discretionary activities in the Beach Street Block

5.1 Paragraph 8 of the closing submissions for IHG Queenstown and Carter Queenstown records that the most recent version of the Plan Change 50 provisions circulated by Mr Kyle would make all visitor accommodation or commercial activity a restricted discretionary activity. This provision came about because the Council listened to the concerns of submitters in relation to traffic effects during the first portion of the hearing last year.

5.2 The Council's proposal to change activity status to restricted discretionary activity for these major activities was discussed at the conferencing held in early December last year. The conferencing statement headed Conferencing Joint Statement to the Panel of Commissioners dated 9 December 2014 addresses this issue at issue 4(b) which records:

> It was agreed that the LV ITA provision would be extended to the Beach Street block for VA, CC and commercial over 400m^2.

5.3 That caucus statement (a copy of which is appended to these submissions as Annexure 1) is signed by various representatives, including John Edmonds, the planner for IHG Queenstown and Carter Queenstown. It was thus surprising for counsel for IHG Queenstown and Carter Queenstown to state that:

> There is no foundation in the Joint Witness Statement or the evidence to support such an "11th hour" amendment.

5.4 The Council accepts that the agreement was that the ITA provisions would apply to VA, to convention centres and to commercial over 400m^2. The provisions proposed by Mr Kyle do not apply to convention centres, which remain a full discretionary activity in the zone and not subject to this rule. However, the Council accepts that the wording of 10.6.3.2A(iii) should be amended to apply to commercial activities with a gross floor area of more than 400m^2, rather than commercial activities generally. The Rule would thus read:

> Commercial activities with a gross floor area of more than 400m^2 in the Lakeview sub-zone and Commercial Activities with a gross floor area of more than 400m^2 and Visitor Accommodation within land bounded by Hay, Beach, Lake and Man Streets.

5.5 It may be that the submitters themselves do not desire that amendment in zoning, but it is supported by planning evidence including that of its own witness in December last year.

6 Reduced Rezoning Proposals

Amended High Density Residential Zone Provisions

6.1 Counsel for Memorial Properties, Chris Mace and Queenstown Trust advanced to the Commissioners on 23 February an alternative approach to enabling a convention centre to locate in the area of Plan Change 50. His supplementary legal submissions on behalf of these submitters expand on this suggestion.

6.2 The provisions suggested would essentially allow a special type of high density residential zone that for a short period of time would allow a convention centre as a restricted discretionary activity. None of the supporting activities that are contemplated by the Lakeview subzone would be allowed. This proposal has not been supported by any evidence. It was never raised by Mr Wells, the planner for the submitters, although he has both given evidence to the Commissioners and participated in the joint witness conferencing on 9 and 10 February 2015.

6.3 None of the urban design considerations that have informed the Council's proposal and that strive to produce a welcoming precinct with vibrancy, bustle and a sense of place has informed the proposal. Whilst Mr Holm's proposal might be successful as a method to extinguish commercial competition, it will not result in the successful extension to the town centre that the Council seeks. It will not deliver the positive effects that the Council's Plan Change 50 provisions will achieve according to the evidence of Mr Colegrave and Dr McDermott set out above.

6.4 There are an almost endless number of ways the Council could have chosen to provide for a convention centre in Queenstown. It could have sought a resource consent, it could have designated, or it could have crafted any one of a number of Plan Changes. It devised Plan Change 50 not just to deliver Queenstown a convention centre, but to address acknowledged issues with a scarcity of appropriately zoned Town Centre land. The proposal Mr Holm advances would do nothing to achieve those ends. The Council seeks the Committee's view on the proposal it has advanced, and not some other pared-down notion, addressing only one out of a myriad of issues that its Plan Change seeks to address.

Ancillary Retail and Commercial Activities

6.5 Following its abandonment of the location of the convention centre as an issue, only three matters remained in contention between Brecon Street Partnership and the Council:

(a) The height that should be allowed on 34 Brecon Street;

(b) How much land should be zoned for town centre purposes; and

(c) Whether Mr Kyle's "cap" proposed on retail occurring in advance of defined predominant activities across the site should be replaced with a control on the western half of the site only requiring a resource consent for any retail that was not accessory or ancillary to those same predominant activities.

6.6 Following the Committee's request, Mr Munro has provided advice via the closing submissions as to definition of ancillary retail/ancillary commercial. This

very narrow definition would confine such activities not only to no more than 10% of the gross floor area of the primary activity, but would require that they have no means of customer access other than through the primary activity and that there be no signage or branding outside the primary activity.

6.7 To take the example of a café, located at the foot of a residential apartment block, Mr Munro's proposed controls would require not only size limitations, but that the café have no opening out onto the street or square adjacent and would limit entry to through the main doors. This would be akin to the situation with the restaurant in the Crowne Plaza, with which the Committee will be familiar. That restaurant, however, has signage and branding that is visible outside the Crowne Plaza Hotel. Mr Munro would preclude that also. Such an approach would tend to result in a series of silo-ised towers across the Lakeview site. It would be directly contrary to the Council's desire to create vibrant, welcoming public spaces that are enjoyable, safe and commercially successful. It would be directly contrary to many of the provisions of the Plan Change, such as those not only encouraging but requiring active frontages.

6.8 This definition and the unrealistic restrictions it comprises have no place in Plan Change 50.

6.9 Similarly, the desire by Brecon Street Partnership to confine development to their doorstep at the western end of the Lakeview site should be rebuffed. As Mr Bryce noted, the only economic evidence was that called by the Council in support of the rezoning. As set out above, that evidence shows the benefits the rezoning will bring to Queenstown, even without any convention centre development. There is no need to limit development in ways other than those the Council already proposes and therefore limit the economic benefits that will be delivered to Queenstown.

7 Traffic

7.1 The closing legal submissions from Remarkables Jet Ltd ("RJL") criticise the way in which traffic issues have been considered and addressed. The Council wishes to respond to five submissions that it submits are misguided or wrong:

(a) RJL's submission that "PC 50 is 'heavily reliant' on securing significant changes in travel behaviour";[17]

(b) RJL's characterisation of Mr McKenzie's evidence as accepting that the traffic is bad and stating that PC 50 will only make it marginally worse;[18]

(c) RJL's criticism that more modelling of different development scenarios has not been undertaken;[19]

(d) RJL's submission that integrated traffic assessments ("ITAs") will not enable cumulative traffic effects to be considered;[20]

17. RJL closing legal submissions, 9 March 2013, para 19.
18. RJL closing legal submissions, 9 March 2013, para 26.
19. RJL closing legal submissions, 9 March 2013, para 28.
20. RJL closing legal submissions, 9 March 2013, para 37.

(e) RJL's submission that there are parallels between PC 50 and the circumstances in *Thurlow Consulting Engineers & Surveyors Ltd v Auckland City Council*.[21]

Reliance on changes in travel behaviour

7.2 RJL's submissions place considerable emphasis on the notion that the Council's conclusions about the acceptability of traffic and parking associated with PC 50 are underpinned by an assumption that there will be an increased public uptake of public transport options. This is simply incorrect. As the traffic engineers' joint witness statement records:

> **TRAVEL DEMAND MANAGEMENT (TDM)**
>
> 14. Advice received from Council's traffic modelling consultants, Abley, confirms that the 2026 future base year traffic model *does not include any TDM assumptions*. The assumed reduction of 20% referred to in evidence to the hearing relates to other work being undertaken for the development of the transport strategy. Mr McKenzie requests that paragraph 8 of his supplementary statement of evidence dated 22 December 2014 be amended to reflect the fact that *there were no TDM discounts applied to any of the PC 50 traffic modelling scenarios*.)
>
> 15. Mr Kelly and Mr McKenzie *agree that this leads to some conservatism in the modelling*. (emphasis added)

7.3 Far from being "heavily reliant" on changes in travel behaviour, the Council's modelling is actually conservative in its exclusion of any such changes. RJL's closing submissions are contradicted by the agreed position of its own traffic expert.

Bad situation made worse?

7.4 In the Council's submission RJL's characterisation of the effect of PC 50 on traffic is overstated and unhelpfully simplistic. The concluding comments of the traffic engineers in their joint witness statements are:

> **ACCEPTABILITY OF TRAFFIC IMPACT**
>
> 25. As concluded in his evidence in chief … Mr McKenzie concludes that the expected traffic generated by the plan change 50 activities can be appropriately accommodated on the road network without significant effects. He refers to diagrams in Appendix E of his evidence in chief showing the limited areas of change in levels of service between the baseline and with the plan change 50 modelled scenarios (2026).
>
> 26. Mr Kelly observes that the charts at Appendix E of Mr McKenzie's evidence do indicate some level of deterioration of level of service as a result of additional traffic as a result of plan change 50. He notes that it is difficult to assess what this

21. RJL closing legal submissions, 9 March 2013, paras 41-49.

> means in terms of effects without information relating to delays at specific locations and travel times through the network.

7.5 These conclusions benefit from being considered in a pragmatic light. PC 50 will enable more people to live and work in close proximity to Queenstown's town centre. This has costs and benefits, but the Council considers that it is a beneficial strategy overall.

7.6 The Environment Court decision of Judge Thompson in *Landco Mt Wellington v Auckland City Council* provides comments that put evidence about the traffic effects of a proposed plan change in a realistic light:[22]

> [10] We need to begin this part of our decision by stating three clear premises. First, this appeal is not the opportunity to solve the traffic problems of Auckland City or even just the Tamaki Edge. The proposal stands or falls on its own merits, and its proponents are not required to resolve infrastructure problems outside its boundaries although they may be required to contribute, by way of financial contributions, to the cost of doing so.
>
> [11] Secondly, Auckland's population growth seems inexorable, and will occur over the projected timeframe, whether or not this proposal goes ahead. We understand those who say that we should not approve this proposal until the wider traffic infrastructure, already under pressure, has been upgraded sufficiently to absorb its projected output. In an ideal world that might be a viable course of action, but the world is not ideal. If 6000 people cannot be housed in Stonefields, the simple consequence will be that they will go elsewhere, almost certainly further away from the hubs of employment, education and recreation the City provides. They will have to travel further and for longer, placing even greater demands on the roading network and other transport infrastructure. That factor is no doubt one of those which led to the Stonefields site being identified as priority 1 for residential growth …
>
> [12] Thirdly, the evidence from the traffic engineers is that, as embodied in the Auckland Regional Land Transport Strategy 2005, it is accepted as no longer possible to continue to provide road space to vehicles, sufficient for congestion free movement. The corollary is that the region needs to introduce measures that reduce demand for travel, particularly by private vehicles. To that end, they regard congestion as, partly, an educative and motivating process to encourage non-car travel.
>
> …
>
> [18] We are certainly not sanguine about the traffic situation, but then nobody is. The best that can be said about it is that the expert evidence is that the traffic effects within and immediately surrounding Stonefields can be managed effectively. It is for the Council and the other roading and transport organisations to manage the wider network, and public transport, to cope with the present loads and future growth, wherever in the region that might occur.

22. [2009] NZRMA 132, 136, 138.

7.7 While these comments were directed at Auckland's growth and traffic issues, there are parallels with PC 50. The comments highlight the naivety in characterising any increase in congestion or parking difficulties as negative outcomes that need to be solved by PC 50:

(a) PC 50 is facilitating growth around the town centre, which reduces travel and parking needs relative to growth elsewhere;

(b) The inevitability of travel demands increasing alongside growth does not necessarily make growth undesirable. The Council would prefer to see the town centre area grow rather than see its roads and parking spaces emptier;

(c) Since at least 2007, traffic engineers have recognised that there can be a benefit in not solving congestion problems in order to encourage changes in travel behaviour.

7.8 I note that District Plans in at least Auckland, Wellington and Christchurch now include maximum parking provisions. This reflects a recognition that it is not necessarily desirable or even possible to try and build a way out of all such problems. Increased parking carries its own costs in terms of encouraging vehicular traffic, the disruption of the urban fabric by parking lots and the lost opportunity for more appropriate and desirable activities to use the space devoted to parking.

Modelling of development scenarios

7.9 RJL criticises the Council for relying on a single future development scenario to underpin its traffic modelling.

7.10 The Council does not accept that this is a valid or useful criticism. This is not a resource consent process where a specific proposal can be evaluated. PC 50 will enable development to occur, but the detail of the development to come can only be predicted in a broad and general way.

7.11 Mr McKenzie is satisfied that the future development scenario that informs the traffic modelling is realistic. It is not a "worst case scenario", neither is it a best case scenario. It does not make sense for PC 50 to be planned, funded and built around an unrealistic worst case possibility. Forward planning requires an evaluation of probabilities, not just possibilities. The Council does not accept that there is any significant value in modelling the traffic outcomes of scenarios that it considers less likely to eventuate.

7.12 Further, the fact that the future scenario that was modelled does not factor in any change in the uptake of alternative modes of transport does provide a measure of additional conservatism, as the Joint Witness Statement of the traffic engineers records.

Consideration of cumulative effects as part of Integrated Traffic Assessments

7.13 RJL has postulated that the ITAs required of each development application will only allow the potential effects of each such application to be considered at an individual, rather than cumulative level. This displays a basic misunderstanding about the type of information that will form part of an ITA. Each ITA will involve consideration of the effect of adding the proposed activity to the activities in the

existing environment. Thus in each ITA the cumulative effects, at that point in time, will be considered.

7.14 RJL's objection on this matter is intertwined with its claims about the inadequacy of the Transport Strategy, which its counsel has colourfully described as a "vacuous strategy bereft of any useful guidance" and "simply vague aspirations". These criticisms underscore RJL's misunderstanding of the role and place of the Transport Strategy. Such strategies, as their name suggests, fill a strategic and aspirational role. They are not static documents and are intended to evolve. The Transport Strategy will not just respond to PC 50, but to other private and Council-initiated plan changes, including the upcoming District Plan review. There is no logical reason to hold up PC 50 for the Transport Strategy while other plan change initiatives proceed regardless. The Transport Strategy will develop and evolve as needed.

Alleged parallels with *Thurlow*

7.15 In my submission *Thurlow* provides a caution that councils should turn their minds to traffic issues and ensure they have adequate evidence before them to perform their role.

7.16 The Council does not accept that PC 50 is deficient in this regard. It has based its approach to traffic issues upon professional, peer-reviewed advice which includes modelling of the predicted development enabled by PC 50. The fact that Mr Kelly for RJL does not agree on all accounts with Mr McKenzie, and the Council finds Mr McKenzie more persuasive, does not make the Council's unreasonable or derelict in its duties.

8 Different Approaches in Colegrave and McKenzie Evidence

8.1 The Committee sought clarification in relation to the differences between the evidence of Mr Colegrave and Mr McKenzie in terms of how they have assessed the effect of the convention centre in their respective fields.

8.2 Mr Colegrave's economic analysis of the Plan Change included the assessment of two development scenarios, the first including the development of the convention centre at the site, and the second, without the convention centre. The second scenario was considered to be necessary to quantify the positive effects (if any) of the Plan Change should the convention centre not be developed. It was considered important to assess both these scenarios for the section 32 analysis. Effectively his second scenario is a "worst case" assessment for positive economic benefits flowing from the Plan Change.

8.3 Mr McKenzie's Transportation Assessment for the Plan Change, and subsequently his evidence, assessed the transportation related effects of the Plan Change including a convention centre. He did not include an assessment of the Plan Change without the convention centre given this scenario would result in fewer vehicle movements. Mr McKenzie's assessment also therefore related to the worst case development scenario, albeit quite a different worst case scenario to that considered by Mr Colegrave. The worst case scenario from an economic perspective involves no development of a convention centre whereas the worst case scenario from a traffic perspective incorporates the construction of such a community facility.

9 Conclusion

9.1 The Council has presented to you a comprehensive case that supports the rezoning of the Lakeview site and surrounding blocks. The Plan Change would assist the Council in carrying out its functions to (in particular) allow the people and communities of Queenstown to provide for their social, economic and cultural wellbeing. The detail of the drafted provisions ensures that this urban renewal will occur with proper regard to and management of effects on the environment.

9.2 Mr Kyle's evidence of 18 February 2015 contains the precise wording the Council now seeks for the Plan provisions. That wording is in some areas, quite different from the Plan Change document originally publicly notified. The changes are a result of the Council and its advisors considering the various matters raised in submissions, the evidence of submitters to this hearings committee and having various discussions (including facilitated meetings) with submitters to try and address their concerns. A final analysis of these provisions in terms of s 32AA of the Resource Management Act is appended to these submissions as Annexure 3.

9.3 It has not been possible to please every interested party. Submitters have raised issues in relation to tenure and occupation of Council owned land that is subject to the Plan Change. While the Council understands the submitters' depth of feeling, the place of the camping ground and cabin occupiers are issues for other fora, not capable of assisting the Committee in evaluating the Plan Change provisions.

9.4 In terms of relevant submissions, the ambitions of the owner of 34 Brecon Street to achieve even more height than that granted by the Plan Change are not supported by the Council's expert advisors. In addition, the Council remains of the view, expressed in its opening legal submissions that the request for additional height is not a submission "on" the Plan Change and could prejudice other parties, thus failing both limbs of the *Clearwater* test.[23]

9.5 Further, the Isle Street owners and occupiers seek a range of outcomes from the status quo through to more liberalised development, some of which also suffer from scope difficulties as outlined in these submissions. Not all of the outcomes sought by submitters in relation to Isle Street can be achieved, but the position that the Council puts forward, in its view, best meets the Isle Street concerns while facilitating the Council's overall objective to expand the town centre to facilitate a broadening and deepening of the town's tourism offerings.

9.6 The Council seeks that the Plan Change provisions as attached to Mr Kyle's evidence be approved.

23. Refer in particular paras 3.19 and 3.22 of legal submissions for Queenstown Lakes District Council.