

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

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Attachment A Extract of Lakes Weekly Bulletin (No. 485, 3 - 9 February 2015)

Introduction

1. Remarkables Jet Limited (RJL) submits that Plan Change 50 (PC50) must be rejected because it fails to adequately address critical transportation and traffic issues. These are issues of significant public interest that will impact on all ratepayers and residents. In fact, the CEO of the Queenstown Lakes District Council (QLDC or **the Council**) made the following comments in a recent response to comments from a member of the public regarding traffic congestion¹:

"However, shifting the location of pedestrian crossings will not address **the fundamental challenge that traffic volumes are much greater than our current roading network can carry. Any long-term solution will have to include convincing more people to use public transport rather than bringing their cars into town.**"

[Emphasis added.]

The evidence discloses that very few people use public transport and that the Council has no idea how it will convince more people to use public transport.

2. Mr Kelly's² evidence provides a concise review of the shortcomings. The following matters are of particular concern to RJL:
 - (a) There is no evidence from which the Committee could draw any confidence that a 20% shift from car travel to other modes could ever be achieved. It is not clear if this is 20% of traffic now, or also includes the strong growth predicted for the future. The draft Queenstown Town Centre Transport Strategy (**the Transport Strategy**) provides little hard evidence of measures that might deliver the troublingly aspirational goal of a 20% shift from car travel to other modes;
 - (b) Mr McKenzie's evidence focuses on the marginal change in adverse effects arising from PC50 and, in doing so, avoids any genuine acknowledgment of the scale of the existing traffic issue. The substance and pith of Mr McKenzie's evidence seems to be that PC50 is acceptable because it is only making a huge problem a bit worse. RJL struggles to understand how that approach could be considered to be an example of "sustainable

¹ See the extract of the Lakes Weekly Bulletin (No. 485, 3 - 9 February 2015) at **Attachment A** of these submissions.

² T Kelly EIC, 14 November 2014.

management". Clearly it is an unsustainable approach to the transportation and traffic issues that Queenstown faces; and

- (c) Mr Kelly's review of the "Analysis Methodology and Assumptions" gives further cause for concern. Given the significance of transportation and traffic issues for Queenstown, it is surprising that TDG's Integrated Transportation Assessment (ITA):
 - (i) was not peer reviewed;
 - (ii) was not sensitivity tested;
 - (iii) assessed only one development scenario; and
 - (iv) contained conflicting traffic generation figures.

These issue are addressed in more detail below.

3. RJL has reviewed the submissions of counsel for Memorial Properties Limited (**MPL**) (dated 20 February 2015) and largely concurs with them. RJL agrees that it is difficult to distil the strategic basis for PC50, the 50 year planning horizon is absurd, the break neck speed at which PC50 has been advanced has only served to diminish or preclude public participation, and that there is no evidence of a critical unfulfilled demand for additional commercial space. However, RJL doubts that PC50 can be salvaged.
4. If PC50 were a private plan change, it would have been rejected by the Council or subject to requests for further information³. No private entity would be permitted to advance a town centre expansion in the same manner.

The Resource Management Act 1991

5. The legal requirements have been covered by various counsel and need not be traversed again. Quite clearly, sections 5 and 7 RMA are highly relevant to PC50.

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See clauses 23 or 24 of the First Schedule to the Act.

6. The Supreme Court in **Environmental Defence Society Inc v New Zealand King Salmon Company Ltd**⁴ traversed the meaning of Part 2. There, the Supreme Court emphasised the need to read section 5 as an integrated whole in terms of its sustainable management purpose. Of particular relevance is the meaning given to "while" in the context of the definition of "sustainable management":

Statutory background – Part 2 of the RMA

[21] Part 2 of the RMA is headed "Purpose and principles" and contains four sections, beginning with s5. Section 5(1) identifies the RMA's purpose as being to promote sustainable management of natural and physical resources. The use of the word "promote" reflects the RMA's forward looking and management focus. While the use of "promote" may indicate that the RMA seeks to foster or further the implementation of sustainable management of natural and physical resources rather than requiring its achievement in every instance, the obligation of those who perform functions under the RMA to comply with the statutory objective is clear. At issue in the present case is the nature of that obligation.

...

- [24] We make four points about the definition of "sustainable management":
- (a) First, the definition is broadly framed. Given that it states the objective which is sought to be achieved, the definition's language is necessarily general and flexible. Section 5 states a guiding principle which is intended to be applied by those performing functions under the RMA rather than a specifically worded purpose intended more as an aid to interpretation.
 - (b) Second, as we explain in more detail at [92]–[97] below, in the sequence "avoiding, remedying, or mitigating" in subpara (c), "avoiding" has its ordinary meaning of "not allowing" or "preventing the occurrence of". The words "remedying" and "mitigating" indicate that the framers contemplated that developments might have adverse effects on particular sites, which could be permitted if they were mitigated and/or remedied (assuming, of course, they were not avoided).
 - (c) Third, there has been some controversy concerning the effect of the word "while" in the definition. **The definition is sometimes viewed as having two distinct parts linked by the word "while".** That may offer some analytical assistance but it carries the risk that the first part of the definition will be seen as addressing one set of interests (essentially developmental interests) and the second part another set (essentially intergenerational and environmental interests). **We do not consider that the definition should be read in that way. Rather, it should be read as an integrated whole. This reflects the fact that elements of the intergenerational and environmental interests referred to in subparas (a), (b) and (c) appear in the opening part of the definition as well (that is, the part preceding "while").** That part talks of managing the use, development and

protection of natural and physical resources so as to meet the stated interests – social, economic and cultural well-being as well as health and safety. The use of the word “protection” links particularly to subpara (c). In addition, the opening part uses the words “in a way, or at a rate”. These words link particularly to the intergenerational interests in subparas (a) and (b). **As we see it, the use of the word “while” before subparas (a), (b) and (c) means that those paragraphs must be observed in the course of the management referred to in the opening part of the definition. That is, “while” means “at the same time as”.**

[Emphasis added]

As such, the Committee must be sure that PC50 manages traffic and transport effects now. The Council's proposal to deal with those effects later must fail to achieve the purpose of the Act. We simply don't know what is proposed as a response to the traffic issues. For example:

- (a) Under the heading "What is proposed, and when will it happen" of the Transport Strategy there is not one clear statement of what is actually proposed. All we have is an indication that "general carparking" is a low priority, but not even a preliminary evaluation of the consequences of discouraging carparking (such as shoppers being encouraged to use Frankton where parking is plentiful and free⁵); and
- (b) The proposed projects in Appendix 2 do little to allay RJL's concerns. Oddly, the Transport Improvements Fund is proposed to be funded by car parking revenue. In terms of the 20% shift from car travel to other modes, there are no projects that could be described as aggressive or remotely likely to be the catalyst for such a significant behavioural change.

- 7. Further, section 32 requires the Council to evaluate whether the objectives of PC50 are the most appropriate way to achieve the purpose of the RMA and whether the provisions of PC50 are the most appropriate way to achieve the objectives.
- 8. It bears emphasis that PC50 proposes an additional 15ha to the existing Queenstown Town Centre (QTC). It effectively doubles its current size and is therefore a considerable expansion of the QTC, in terms of both scale and significance. A section 32 evaluation report is to “contain a level of detail that

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See T Kelly EIC, 14 November 2014, para 26.

corresponds to the scale and significance” of the effects anticipated to occur by implementing PC50.

9. The orthodox approach to such a significant expansion would be to prepare and include a CBD-wide transport strategy from the outset. It would be a foundation document. Traffic and transport is a significant issue for PC50 and RJL submits that the absence of a proper transport strategy for PC50 is fatal to the proposal, particularly in the context of a town centre already experiencing significant traffic congestion, let alone the potential increase in traffic that will inevitably arise from a doubling of the size of the QTC.
10. The absence of the long-promised Transport Strategy not only for the CBD but also the fast expanding Frankton, Remarkables Park, Queenstown Airport, and Shotover areas is a principal reason why RJL did not engage a traffic expert for this hearing. The Transport Strategy was only made available on 23 February 2015 ahead of the Council's extraordinary meeting held on 26 February 2015. The timing of the release of the draft Transport Strategy only serves to further impugn the PC50 process and the continued marginalisation of proper public input.

Evidence on traffic effects and the Transport Strategy

11. It is noteworthy that although the AEE is completely silent as to the Transport Strategy and TDG's ITA only refers to it generally and in very vague terms⁶, it is however, not surprisingly, regularly referred to in other evidence for the QLDC. In short, a document that was of little to no relevance to the notified plan change is now quite extensively relied upon, but was not available at the hearing. The reconvened hearing adjourned on 16 February 2015 but, as noted, the Transport Strategy was not made publicly available until 23 February 2015.

⁶

For example, at page 14 of the ITA:

“Alongside the further development of those Town Centre parking and multi-modal Transport Strategy responses, the Lakeview Plan Change offers the opportunity for Queenstown to develop the sort of pedestrian-focussed central area successfully created within other major centres elsewhere in New Zealand. The further development of the Town Centre transport and parking strategies over the coming planning period as part of and aligned with the Council's Inner Links programme will help to positively align the Town Centre's parking and transport management philosophies with the demand managed approach that is being adopted within the Lakeview sub-zone.”

And at page 30 of the ITA:

“Further work will be required with respect to the way in which future development within the Lakeview sites aligns with the Transport Strategy work of the QLDC for the Town Centre including the ongoing extension and updating of the Town Centre's parking management strategy necessarily incorporating consideration of the overall parking supply...and parking pricing strategies...”

12. The transport evidence for QLDC⁷ focused on the following themes:
 - (a) Walking and cycling;
 - (b) Public transport accessibility;
 - (c) Traffic generation; and
 - (d) Parking.
13. Denis Mander's statement of evidence discusses the Transport Strategy (which was not yet available to submitters) but is of no material assistance. Instead, his evidence refers to the "ambition" of the Transport Strategy to propose measures that will encourage cycling, walking, and public transport. Mr Mander states that the approach to traffic in PC50 is "entirely consistent with this broader Council strategy". However, notwithstanding PC50's potential for significant traffic effects, there is no discussion as to how it will implement these aspirations. Mr Mander's evidence concludes:
 - "5.1 The Council is presently committed to completing a draft town centre Transport Strategy by February 2015. This strategy is to report back a programme of transport demand measures aimed at creating the transport mode shift necessary to delay the need for construction if the Inner Links road project beyond 2018. As such it is expected that it will comprise a programme of measures including parking management and public transport improvements.
 - 5.2 Plan Change 50's provisions are consistent with that ambition."
14. The scale and significance of PC50 should have meant that the Council would have undertaken careful and extensive analysis as to the various effects of the plan change. The lack of an overarching transport strategy throughout the process is problematic at the very least. How can the Committee determine the appropriateness of PC50 under the relevant RMA tests when there is no higher level strategy/analysis in relation to transport?
15. Tim Kelly recognised this issue. He identified the scale and significance of PC50 as giving rise to the potential for the plan change to "significantly increase" travel

⁷ D McKenzie EIC, 10 November 2014.

demand, traffic volumes, and overall levels of demand for parking. RJL shares these concerns.

16. With reference to the traffic “themes” referred to above at paragraph 11, we submit that the traffic evidence for the Council is totally inadequate, for the reasons that follow.

Walking and cycling and public transport accessibility

17. The Council’s evidence states that a “key guiding principal [sic] behind the proposed Plan Change is the integration of sustainable travel modes into the development of the site”.⁸ Mr McKenzie concludes that to “support and maximise pedestrian movement” between the QTC and the Lakeview site the following two “key features” should be incorporated “within both the Plan Change itself as well as within Council’s overall Town Centre Transport Strategy”, which includes a pedestrian way-finding strategy⁹, adequate parking in the Lakeview subzone, and the incorporation of a Travel Plan for convention centre(s) in the Lakeview subzone.¹⁰
18. Mr McKenzie also considers that PC50 can be supported by the local public transport network. He considers that PC50 will ensure sustainability and growth of the public transport network through increased demand for (and use of) public transport in Queenstown¹¹.
19. Mr Kelly, on the other hand, notes the “significant growth in population and transportation demands”.¹² Mr Kelly’s evidence includes data from Statistics NZ and suggests, interestingly, that despite the moderation of car ownership, use and traffic volumes for the 2013 year and the slight increase in use of other modes of travel (bus, walking and cycling), the numbers in relation to other modes of travel remain very low.¹³ For example, from 1996 to 2013 between 0.6% and 1.3% of the population used the bus. Therefore, in order for PC50 to accommodate additional traffic demands, PC50 is “heavily reliant” on securing significant changes in travel behaviour.¹⁴ Yet, rather startlingly, PC50 provides nothing in respect of how travel behaviour will be changed or when it will be changed.

⁸ D McKenzie EiC, 10 November 2014, para 6.1.

⁹ D McKenzie EiC, 10 November 2014, para 6.9.

¹⁰ D McKenzie EiC, 10 November 2014, section 6.

¹¹ D McKenzie EiC, 10 November 2014, para 7.2.

¹² T Kelly EiC, 14 November 2014, para 11.

¹³ T Kelly EiC, 14 November 2014, paras 12-19.

¹⁴ T Kelly EiC, 14 November 2014, para 19.

20. The Council's 2007 Wakatipu Transport Strategy (WTS) also had aspirational goals and provided for a high frequency bus service, priority lanes on Frankton Road, and a Kelvin Heights ferry service.¹⁵ However, very little progress has been made in relation to this. Subsequently, the Inner Links Project was undertaken. This has now been put on hold while the Council investigates further options for constraining traffic demands in the QTC in order to defer (or avoid altogether) the need to implement the Inner Links Project. On any measure, the promise of "changes in travel behaviour" is essentially empty and certainly not an adequate basis upon which to promote a significant extension of the QTC.
21. Importantly, and as noted by Mr Kelly,¹⁶ the Council's analysis generally indicates that without additional road capacity, traffic problems can only be avoided if there is a shift of 20% of car travel to other modes. The Travel Demand Management (TDM) measures to achieve this major goal were touted to be included in the Council's Transport Strategy. They are not.
22. Having reviewed the Transport Strategy, the issue of reducing vehicle driver trips by 20% is only mentioned once (in Appendix One). There is no direction as to how this 20% figure is to be measured. It is not clear whether the 20% relates to the current volumes of traffic or is based on future traffic growth plus the projected PC50 volumes. The "strategies" to implement the principles¹⁷ are largely aspirational, rather than directive. It is, in our submission, a vacuous strategy bereft of any useful guidance.
23. The other measures aimed at promoting alternative methods of travel are:
 - (a) The promulgation of transport information. This will "raise awareness of traffic choices and increase functionality" through better access to information.¹⁸ It is unclear (and there is a lack of research to demonstrate) how this will assist in reducing vehicle traffic by 20%; and

¹⁵ T Kelly EIC, 14 November 2014, paras 20-27.

¹⁶ T Kelly EIC, 14 November 2014, para 23.

¹⁷ See Section 5 of the Transport Strategy.

¹⁸ See para 7.3 of the Transport Strategy.

- (b) Improvement of public transport services.¹⁹ Guidelines to be adopted to assist in this regard are to develop public transport services in line with the Otago regional public transport plan.

- 24. These measures are simply vague aspirations that generally restate long held goals that have not been fulfilled or are unable to be fulfilled.

Traffic generation

- 25. Mr McKenzie's evidence outlines what he considers to be the likely development under PC50 over a 10-12 year planning horizon and concludes that the additional traffic generated under PC50 can be readily accommodated on the existing road network²⁰. Mr McKenzie's evidence states that the indicative development scenarios upon which his calculations are based are "conservative scenarios"²¹.

- 26. As recorded in the Joint Witness Statement (transport) dated 13 February 2015 (JWS), Mr Kelly and Mr McKenzie continue to disagree on two aspects of the land use assumptions:

- (a) Mr Kelly raised concerns that there could be significant retail activities occurring with units below the 400m² GFA threshold and as a result, the Council may have real difficulties in assessing cumulative effects when determining a number of concurrent consent applications.²²
- (b) As corollary to this, Mr Kelly's evidence expresses concern that the assumptions necessary for undertaking this sort of analysis have not been clearly stated, nor have they been subject to critical review through sensitivity testing and peer review.²³ Mr McKenzie is of the view that as the key modelling inputs were reviewed by Beca another review is not appropriate. Mr Kelly agrees that although the underlying town centre traffic model was subject to a peer review, the application of that model to PC50 assessments was not, and should have been.²⁴

¹⁹ See para 7.4 of the Transport Strategy.
²⁰ D McKenzie EiC, 10 November 2014, paras 8.2-8.3.
²¹ D McKenzie EiC, 10 November 2014, para 8.3.
²² JWS, para 12.
²³ T Kelly EiC, 14 November 2014, para 31.
²⁴ JWS, paras 18-20.

The issue of cumulative effects is salient. Mr McKenzie's thesis is to accept that that situation is bad, but responds by stating its only marginally worse with PC50. Putting to one side Mr Kelly's concerns with the methodology by which Mr McKenzie reaches his conclusions, the conclusions remain concerning. Why would the Council promote a plan change that exacerbates an existing issue in such an important location for Queenstown, the QTC, in the absence of a clear strategy to deal with that issue. It simply makes no sense.

27. RJL shares the concerns of Mr Kelly and submits that the traffic analysis provided in the section 32 report, clearly falls short of the standard required for a plan change of the scale of PC50.
28. Mr Kelly's evidence identifies a particular difficulty in assessing the traffic effects of PC50, being the difference between what development the plan change can enable and what, in fact, actually occurs.²⁵ In Mr Kelly's opinion, in such situations the appropriate analytical approach is to "consider a range of credible development scenarios, and assess the likelihood of effects at the limits of this range".²⁶ As his evidence states, the importance of this process is that it enables the identification of effects that respond particularly to variation in land use assumptions. The proposed provisions can then be reconsidered accordingly.
29. Fundamentally, the section 32 analysis is flawed as the critical assumptions upon which the analysis is premised are not stated. The lack of clarity in the analysis has meant that an independent traffic expert was unable to determine the validity or the reliability of the conclusions reached in the ITA. RJL was not prepared to engage an independent traffic expert without first receiving the Transport Strategy.
30. Mr Kelly also notes that the "avoidance of future problems is reliant upon diverting some 20% of travel demand to other modes of travel".²⁷ The Transport Strategy does not provide any real guidance in this regard.

Parking

31. Mr McKenzie considers that PC50's emphasis on integrating sustainable transport modes is appropriate. Mr McKenzie considers that with a policy of parking provision

²⁵ T Kelly EIC, 14 November 2014, para 35.

²⁶ T Kelly EIC, 14 November 2014, para 35.

²⁷ T Kelly EIC, 14 November 2014, para 49.

and management being developed across the wider Queenstown area, the parking demands of the proposed subzones can be effectively managed".²⁸

32. Mr Kelly agrees with the ITA insofar as it recommends an unconstrained parking provision to be inappropriate in a town centre environment. He also agrees that activities such as the proposed convention centre and residential accommodation "should provide on-site parking with other activities not being required to provide any minimum level of parking".²⁹ That being said, however, it does **not** mean that other activities enabled under PC50 will not generate a demand for parking. The demands placed on the already likely inadequate "pool of shared parking" in the QTC will therefore increase.³⁰ That is logically the case.
33. The ITA acknowledges this issue, however, it has failed to assess the supply and demand within the confines of the existing situation and determine whether the shared parking resource can absorb the additional demand.³¹
34. Quite rightly, Mr Kelly is critical of the Council's approach of relying on the shortfall of CBD parking spaces as an incentive for people to take up alternative modes of travel. RJL agrees with this observation.³² This approach runs a very real risk of undermining the QTC generally and certainly will be detrimental to the intended outcomes of PC50. Shoppers will go to Frankton.

Conclusions on traffic

35. RJL agrees with the conclusions of Mr Kelly in his evidence and submits that the analysis undertaken by and for the Council in respect of the traffic effects of PC50 is inadequate for the following reasons:
 - (a) The ITA assessments are reliant on a range of "critical assumptions" that are unclear and have not been subjected to sensitivity testing nor peer review;
 - (b) There has been no recognition that other credible development scenarios exist for which the generation of traffic activity (and parking demand) will be greater than what has been assessed;

²⁸ D McKenzie EIC, 10 November 2014, paras 9.2-9.20.

²⁹ T Kelly EIC, 14 November 2014, para 51.

³⁰ T Kelly EIC, 14 November 2014, para 52.

³¹ T Kelly EIC, 14 November 2014, para 53-54.

³² T Kelly EIC, 14 November 2014, para 55.

- (c) Almost all of the traffic analysis is predicated on a significant shift in travel behaviour away from private car use and towards alternative means of transport;
 - (d) The measures to achieve such a shift were to be outlined in the Transport Strategy. However, the Transport Strategy (which was not available at the time of hearing) does not include any measures on how this shift will be achieved; and
 - (e) Likewise, the reliance PC50 places on a shortage of carparking as a means to encourage a change in travel behaviours is poorly placed. This has not been informed by any relevant supply/demand assessment.
36. These key points raised by Tim Kelly have not been adequately addressed in supplementary evidence for the Council. The JWS highlights the outstanding areas of disagreement.
37. Interestingly, Mr McKenzie's supplementary evidence (and John Kyle's) emphasises the requirement on each individual development application to also prepare an integrated transport assessment which will include a "comprehensive travel plan". As noted by counsel for MPL in his interim submissions³³, the result of this is that the potential effects of each application are considered at an individual, rather than cumulative, level. The reality is that the Council's experts have no proper response to this issue and merely seek to defer proper consideration of it. However, the time is now and the Council's decision to promote PC50 should have brought focus to the district's transportation planning rather than deferment.
38. Submissions and evidence made on behalf of a number of the submitters to PC50 had relied on Council statements that the Transport Strategy would include properly structured, comprehensive strategies to address the consequences of the increased traffic activity and parking demands resulting from PC50. In this regard, the draft Transport Strategy is woefully inadequate.
39. It is not clear what the potential traffic impacts are of allowing such a significant expansion of the QTC. In particular, the Council has not satisfactorily explained how

³³ See section 3.0 of the interim legal submissions of counsel for MPL.

the substantial increases in traffic that will be generated are to be managed. The lack of information and evidence in this regard has meant that Mr Kelly was unable to draw any meaningful conclusions as to the scale of effects. Further, the Council has not taken any opportunity to provide further information which could address these gaps. Rather, the Council's remedy for a lack of an overarching transport strategy is to suggest an approach of assessing traffic impacts incrementally on a case-by-case basis.

40. Without a strategic framework for addressing the traffic effects and as a means to aid in changing travel behaviours, PC50 will not meet its objectives and will likely undermine the existing QTC. It follows that the planning for the QTC will become increasingly reactive which will run contrary to both the objectives of PC50, but is also an inefficient and unsustainable use of resources. In terms of **Environmental Defence Society Inc v New Zealand King Salmon Company Ltd** noted above, traffic effects have not been addressed "at the same time" as development of PC50. They are being left for another day.

Thurlow Consulting

41. Not surprisingly there is very little case law addressing the absence of an proper assessment in the context of a significant plan change. That is not surprising because a proper assessment is an essential part of a plan change and, therefore, is almost always undertaken.
42. However, the Environment Court grappled with the issue in **Thurlow Consulting Engineers & Surveyors Ltd v Auckland City Council**³⁴, which dealt with an appeal against Plan Change 32 (PC32). PC32 sought to increase the development potential in two low-density residential areas in the Albany Structure Plan Area, by reducing the minimum lot size. During the processing of PC32 it was confirmed that the existing roading network in the wider area was not adequate to cater for this increased development. The Council in its decision considered this roading issue to be critical and introduced a new rule to delay further development until improved roading was in place.
43. Thurlow Consulting Engineers & Surveyors (**Thurlow**) appealed the decision on the basis that the new rule was uncertain and unenforceable, and sought to have it

³⁴

[2012] NZEnvC 082.

deleted. In the course of the hearing, the Environment Court made a number of statements in relation to the inadequate transport assessment (emphasis added):

“[7] A particular criticism made by a number of submitters to PC32 as notified, including NZTA and the Auckland Regional Council, was that no Integrated Transport Assessment (“ITA”) had been undertaken to determine the extent of the transport issues and the mitigation work needed in relation to the additional development rights. After the close of submissions the Council responded by commissioning an ITA report which was made available to submitters prior to the Council hearing. The ITA report confirmed the need for some essential road upgrading in the wider Albany area...

...
[9] We consider that the submitters’ criticisms of the Council’s preparation and processing of PC32, and in particular the lack of an adequate assessment of transport issues prior to notification of the plan change are well founded. We agree with the submissions by Mr Hinchey and Mr Maassen that further information on traffic effects should have been available before PC32 was notified. All parties may have benefitted from this information being available prior to notification. However in the circumstances the appropriate information was made available and was considered by all parties prior the Council hearing of submissions and decisions. It has been further considered in this hearing. Although this process was not ideal, we are satisfied that all parties have had a fair opportunity to consider the information and be heard on the matter.”

44. Quite clearly, the present circumstances are even less than “ideal” than the situation faced in the **Thurlow** case. In the **Thurlow** case, by the time of the Council hearing, the “*appropriate* information” was available and was considered by the parties and the Council during the hearing. Conversely, in relation to PC50, there is a clear lack of an adequate ITA because there was no Transport Strategy, and none of the subsequent evidence or reports put forward by the Council rectifies this.

45. Judge Harland allowed the appeal in the **Thurlow** case and also reserved the Court’s decision on costs. **Thurlow** subsequently applied for costs to the tune of \$269,566.28.³⁵ The argument by counsel for **Thurlow** for costs can be summarised as follows:³⁶

(a) This is an exceptional case that warrants full indemnity costs because:

(i) the absence of appropriate transportation infrastructure to support PC32 should have been obvious to the Council; and

³⁵ See **Thurlow Consulting Engineers & Surveyors Ltd v Auckland City Council** [2012] NZEnvC 097 (the **Costs Decision**).

³⁶ See paras 8 and 9 of the **Costs Decision**.

- (ii) the clear solution to remedy the deficiency would be to delay the plan change and secure an appropriate solution.
 - (b) The aggravating factors that are present include:
 - (i) the traffic and transport problems in the area were well understood by the Council prior to PC32 being notified; and
 - (ii) the inadequate transport analysis of PC32 as part of the statutory analysis was a serious flaw which was drawn to the Council's attention early on in the process.
46. The Court stated relevantly:
- “[15] We agree that there were substantial process failures by the Council, which occurred during the preparation and processing of this plan change. The failure to undertake an Integrated Traffic Assessment prior to the promulgation of the plan change when obviously traffic issues would be of concern was a significant failure. This failure was rectified by the steps taken subsequently by the Council and as outlined above, full evidence was presented about the various transport solutions to the obvious problem that an increased subdivision enablement would create a transport problem.
- ...
 [19] Because of the above, it is appropriate for there to be a departure from the usual situation where costs are not awarded against a Council in plan change appeals, and for an award of costs to be made in favour of Thurlow against the Council.”
47. In another vein, we note the decision of Judge Thompson in the **Landco** case.³⁷ This decision dealt with a plan change to enable development of high to medium density residential activities in the old Mt Wellington quarry. Of the adverse effects of the proposal, traffic was significant. The Court noted that as part of the overall development, Landco (the developer) was undertaking itself (or is fully or partially funding) very substantial work on the roading network immediately surrounding the site.³⁸
48. The Court stated that “with this work done...the effects of the traffic to be generated are manageable...there was no qualified evidence to dispute the consensus view of the experts that, while not perfect, the proposal could be made to work”.³⁹

³⁷ **Landco Mt Wellington Ltd v Auckland City Council** Environment Court Decision No. A035/07.
³⁸ **Landco** at para 14.
³⁹ **Landco** at para 15.

49. In contrast, the transport analysis on PC50 is so inadequate and unclear that Mr Kelly was unable to determine whether the effects would or would not be manageable. The Council evidence for PC50 does not tell us anything and the Transport Strategy is so highly theoretical it does not properly address any of the issues the evidence claims it will.

The PC50 process generally

50. The speed at which PC50 has been progressed has compromised all parties' abilities to consider the evidence and the plan change in a comprehensive manner. RJL has attempted to participate in the process, but has found it very difficult. It has been unable to properly engage expert evidence in the compressed timeframes and, therefore, has had to rely on Mr Kelly.
51. The Council, as yet, has not provided any justification for the haste at which the plan change has been pushed through. Moreover, there is no credible evidence relating to the urgent need for the expansion of the QTC. The Town Centre provisions will again be considered later this year when the District Plan Review is notified and may be subject to further change. It does not seem like an efficient use of council resources to run the two processes separately.
52. To this end, and as RJL noted in its submission on PC50, the purpose of the plan change is unclear, and in particular, it is not clear whether the primary objective is the expansion of the Town Centre or whether it is a plan change to enable the convention centre primarily.
53. RJL retains the view that there is no clear resource management rationale for such a significant expansion of the QTC across to the Lakeview site. It is therefore easy to attribute the haste driving the PC50 process to a desire to ensure a faster consenting process for the proposed convention centre at the Lakeview site. Under PC50, a convention centre at the Lakeview site is a controlled activity and, as counsel for MPL noted in his opening submissions, whatever else PC50 does or does not achieve it will clearly provide for a non-notified resource consent for the Council's future convention centre.
54. Finally, we reiterate that RJL is not a trade competitor. Rather, RJL is a CBD investor in wharf, future jet boating, and tourism facilities. It is concerned that PC50

will adversely effects the CBD. As noted above, one of those concerns is the potential for shoppers to shop at Frankton due to insufficient parking in the CBD.

55. RJL does, however, share the same directors as Remarkables Park Limited (RPL). It is well known that a convention centre is proposed at Remarkables Park. RJL understands that counsel for MPL may have suggested that a convention centre at Remarkables Park was unlikely to occur. That is incorrect. To the extent that it assists the Committee, we advise that Takitimu Queenstown Limited has already lodged an application for resource consent to construct a building for the purposes of operating a convention centre on land owned by RPL and is actively pursuing that application. A convention centre is a controlled activity within the Remarkables Park Zone, so consent must be granted.
56. The outcome of PC50 has no bearing on the proposed convention centre on RPL land. That consent application will be pursued irrespective of whether the QLDC convention centre goes ahead or not.

Conclusion

57. The Committee's task is to decide which zone is better; the High Density Residential Zone or the proposed PC50 zoning.
58. These submissions focus on traffic and transportation because the associated environmental effects arising from PC50 are greater than the High Density Residential Zone. However, the benefits of the High Density Residential Zone cannot be dismissed. In particular, the High Density Residential Zone can deliver affordable housing to a district with much publicised affordability issues. The Council could develop the land it owns for affordable accommodation. Further, it is residential land located near the CBD and, therefore, the same traffic and transportation issues do not arise.
59. Turning back to traffic and transportation issues, Mr McKenzie's evidence makes it clear that PC50 is inferior to the High Density Residential Zone at Appendix E. The levels of service are lower with PC50. The ITA suggests that the difference is negligible, however that is not supported by any analysis of the levels of service.

However, it can be inferred that level of service "D" may be acceptable as the ITA states⁴⁰.

"LOS D is generally considered to be acceptable performance for an urban arterial intersection at peak times"

Accordingly, it can be inferred that levels of service E and F are unacceptable.

60. Para 5.1.2 of the ITA states:

"LOS is a subjective measure of the way in which a network is operating, given the traffic demands that are placed on it. It is a concept developed by American engineers, and has been generally internationally adopted. It has been used in this study to measure the performance of both roads and intersections. The LOS boundaries have been assessed using the Highway Capacity Manual boundaries".

61. In the absence of any comment on levels of service in the evidence or reports, we have reviewed the Highway Capacity Manual (2000). It states⁴¹:

"Levels of service are defined to represent reasonable ranges in control delay.

LOS A describes operations with low control delay, up to 10 s/veh. This LOS occurs when progression is extremely favorable and most vehicles arrive during the green phase. Many vehicles do not stop at all. Short cycle lengths may tend to contribute to low delay values.

LOS B describes operations with control delay greater than 10 and up to 20 s/veh. This level generally occurs with good progression, short cycle lengths, or both. More vehicles stop than with LOS A, causing higher levels of delay.

LOS C describes operations with control delay greater than 20 and up to 35 s/veh. These higher delays may result from only fair progression, longer cycle lengths, or both. Individual cycle failures may begin to appear at this level. Cycle failure occurs when a given green phase does not serve queued vehicles, and overflows occur. The number of vehicles stopping is significant at this level, though many still pass through the intersection without stopping.

LOS D describes operations with control delay greater than 35 and up to 55 s/veh. At LOS D, the influence of congestion becomes more noticeable. Longer delays may result from some combination of unfavorable progression, long cycle lengths, and high v/c ratios. Many vehicles stop, and the proportion of vehicles not stopping declines. Individual cycle failures are noticeable.

LOS E describes operations with control delay greater than 55 and up to 80 s/veh. These high delay values generally indicate poor progression, long cycle lengths, and high v/c ratios. Individual cycle failures are frequent.

LOS F describes operations with control delay in excess of 80 s/veh. This level, considered unacceptable to most drivers, often occurs with oversaturation, that

⁴⁰ ITA at page 25, second paragraph, final sentence.

⁴¹ Page 10-15 to 10-16 of the Highway Capacity Manual (2000).

is, when arrival flow rates exceed the capacity of lane groups. It may also occur at high v/c ratios with many individual cycle failures. Poor progression and long cycle lengths may also contribute significantly to high delay levels.”
[Emphasis added.]

62. It is clear that:

- (a) There is nothing worse than level of service F;
- (b) Level of service E is also very poor; and
- (c) There is an appreciably greater area of the roading network coloured E and F under the PC50 scenario.

Further, all of the above occur even without remedying Mr Kelly's reservations in respect of methodology and absence of a peer review.

63. Given the significant traffic issues confronting the district, the Council's approach is all the more baffling. On any reasonable assessment, traffic and transport should have been key inputs into PC50.

64. It is submitted that on the information available PC50 must be rejected. It is not better than the High Density Residential Zone because it exacerbates an existing and significant environmental issue and seeks to replace potential affordable housing land with commercial activities for which there is no demonstrated demand. Furthermore, there are potentially significant consequences for the CBD. Parking restrictions may result in shoppers going to Frankton. If CBD accommodation is full with conference attendees, tourists may be forced to find accommodation elsewhere (potentially at Frankton).

65. R JL seek that PC50 be rejected.

Dated the 9th day of March 2015



J D Young / R A Davidson

Counsel for Remarkables Jet Limited

ATTACHMENT A

Extract of Lakes Weekly Bulletin (No. 485, 3 - 9 February 2015)

LAKEs WEEKLY

BULLETIN

FIRST ON THE STREET

No 485
3rd - 9th Feb 2015

JOBS
INSIDE

WWW.LWB.CO.NZ • BUY • ACCOMMODATION • SELL • INFORMATION • JOBS • ENQUIRIES@LWB.CO.NZ

The first big gig of the year at Gibbston Valley last Saturday kicked off what will be another important major event program for the Wakatipu. The impact such events have on the district was evident by the number of over 50 year old rockers hitting Queenstown's bars and night clubs well past their usual bed time on Saturday night. Or dusting themselves off with a visit to Arrowtown on Sunday where the parking situation meant every verge of every road was being utilised as the town burst at the seams.

Now our attention moves on to something completely different this weekend with the Rural Games at Queenstown's Recreation Ground. And I really do not know quite what to make of it. With an events schedule including gum boot throwing, speed milking, cherry stone spitting, coal shovelling, gold panning, wood chopping and what will surely be the photo opportunity of the year for Queenstown - "the running of the wools".

At midday on Friday, a few hundred sheep will be let loose in the streets of Queenstown. Will they have horns and are we, the public, expected to run with them in a Pamplona style stampede? I guess we will find out on Friday. Whatever happens, the rest of the world will see Queenstown can have some fun and let loose because this weekend promises to be Gore, with upturned collar, meets Taihape, dressed in flannel. No room for stuffy private jet types, unless they like sheep.

But the event I'm most looking forward to is not even officially coming to Queenstown. The Cricket World Cup starts next week and although Queenstown missed out, or in my opinion did not try nearly hard enough to secure hosting rights, the fact remains we are set to benefit by default. Compared to the hype and expectations that came with the 2011 Rugby World Cup, this tournament is about to sneak up on New Zealand big time. Queenstown will not get the spot light and intensive three day influx that goes with hosting a game. However Christchurch, Nelson and Dunedin are fully booked out around the games they are hosting and cricket fans will surely be detouring via Queenstown in-between games held in the South Island.

The worldwide audience numbers are massive, particularly into India but also other major tourism markets like England and Australia. And how is Queenstown going to get our brand out to the tens of millions? Through golf of course, thanks to some of the biggest names in cricket confirmed as starters in the New Zealand pro-am at The Hills and Millbrook in March.

Cleverly and strategically held towards the business end of the Cricket World Cup, the NZ Golf Open is bound to get the New Zealand tourism machine into top gear with such cricketing greats as Sir Ian Botham, Sir Viv Richards, Ricky Ponting, Brian Lara and Shane Warne confirmed as starters in the Pro Am. If those names mean nothing to you, please do yourself a favour and hit google or simply pack your bags, head to the airport, and leave the country for the next six weeks. In the meantime, I have some spitting, tossing and chopping practice to do in readiness for a townie challenge to my rural countrymen this weekend at the Rural Games. Bring on the sheep.

Scott Stevens
editor@lwb.co.nz



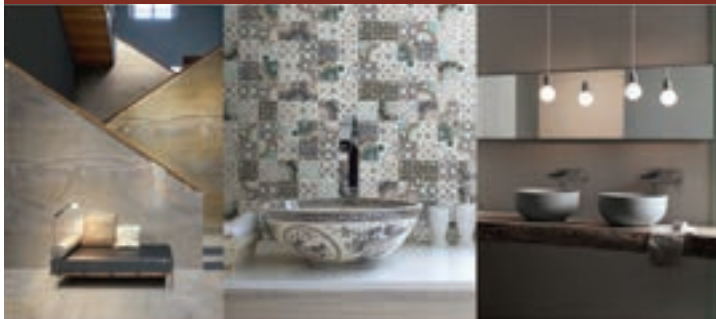
Nicole McLean as Dandini, Richard Thomas as The King, Nicky Busst as Cinderella and Fiona Stephenson as Prince Charming at Remarkable Theatre's Cinderella Pantomime in the Park at QT Garden's on Sunday

(Photo: Jodi Walters)

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Wind



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Little Wind



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WINNER

Diabolical Customer Service

In recent weeks one thing that has really surprised me is the absolutely terrible customer service I have received in retail stores around Queenstown. Shop assistants in stores in the last few weeks I have been in, first of all never even bat an eyelid at me first off whilst entering and browsing the shop, never mind an even small attempt at making yourself look interested. A smile and a hello would be nice to acknowledge I am here.

For example, whilst searching for a new bag with my girlfriend in one retail store, not one of the three employees downstairs acknowledged us or asked us for any help. After having to find help by ourselves (to the girl standing right next to us making herself look 'busy' hanging clothes up) we asked if there was a different sized bag we were wanting. I was shocked to hear the response of just a "No", which pretty much translated as 'No and I couldn't care less'. Not a 'No, I'm sorry, maybe I can show you something similar', just the response and then carried on hanging clothes up. Won't be buying anything from here then.

Or how about the time we were across the road at a main rival of the above. I don't care if it's 6.55pm and you close in 5 minutes pal. I could be a paying customer and actually buy something that would make you look a bit less of a waste of space and make you look like you've managed to sell me something. I'm sure your boss would

want the same. Or what about employees in another retail store in town, more bothered about what they look like whilst laughing and joking between all of the three of them behind the counter, not noticing they have a customer waiting to go into the locked changing rooms. It's ok I'll come and ask myself. Maybe I can join in the very important conversation you're having whilst I'm there.

All of these may not sound much to some, and I am not normally one to complain. However the main thing that bothers me is the fact that a lot of people are willing to do a lot of things to get a job in Queenstown. Not everyone can get one here, it can be pretty hard. I remember the struggle myself very well; however thankfully have now had employment for 1.5 years here.

I don't know much about retail, however I do know I could do a damn sight better job than some of you wasters currently stealing a living in employment now, and know a lot of people out there could do as well. Respect your position you are in, not everyone is as lucky as you. This is not obviously directed at everyone out there, however some of you need to take a step back and realise that people could be queuing up for your job outside if it was available.

A Disgruntled Shopper

The Rhythm Of The Roundabout

It's true, a few tourists get confused by the first roundabout they come across when visiting NZ, but for most of us they're an easy and efficient way to negotiate our way around our town. There's an easy flow to them, and a nice rhythm without the need for impatient-red, foot-down-amber, or please-stay-green (!!!) lights. At least this is the case in many places in NZ.

But here in Queenstown this wonderful rhythm of the roundabout is upset by the number of pedestrian crossings located in close proximity to the roundabout. Countless times I've seen cars negotiate their way successfully through a roundabout only to be stopped half-a-car-length into their direction of choice by a pedestrian crossing - it's ludicrous!

Many times when I've witnessed this event, the cars following are stopped mid-roundabout, which creates some of that mass traffic frustration town-wide during peak times.

Instead of the notion of traffic lights, why can't existing pedestrian crossings just be moved a couple of car lengths down the street? Or in some cases, why aren't pedestrians prevented from crossing directly at roundabouts (at points like outside the i-Site/Station Building) by simply placing knee high barriers to channel pedestrians to safer places to cross the street either with the aid of zebra lines, or without, and leaving traffic to negotiate the roundabout without the added stress of worrying what pedestrians may do?

Sick of Town Planning Stupidity

Response QLDC

It is true that some pedestrian crossings create an unnecessary congestion point, and the Council is looking at this as well as many other factors that influence traffic build ups in central Queenstown.

However, shifting the location of pedestrian crossings will not address the fundamental challenge

that traffic volumes are much greater than our current roading network can carry. Any long-term solution will have to include convincing more people to use public transport rather than bringing their cars into town.

Cheif Executive Adam Feeley

ASK ME

Have you been boating this summer?



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FACEBOOK/WEBSITE COMMENTS

Editorial - Issue 484

The reason why there are lots of boats in Frankton Arm, and so few out in the main lake, is because when it cuts up, the main lake can get very nasty and dangerous, especially if you are in a small boat....

Mr Greeny

Couldnt agree more Scott - bring it on!!

Geoff

The Queenstown we know and love is dying in front of us... No longer can we boat, kayak and enjoy the Shotover as Ngai Tahu now apparently own and control it... No more access to Remarks as Nzski have closed access, what's the marina gonna be like in private hands... Queenstown belongs to NZ not the big money men...

Matthew

This marina is going to be a parking lot for rich peoples boats. Guaranteed locals won't be able to afford it, would love to know the predicted mooring cost, nor do those that already have a passion for boating need it. But one things for sure, my fav chill out spot by the lake looking at the Remarks will be being ripped up by dredgers and will be no more soon. Time to find a new spot I guess.

Jason

No idea why we "celebrate" a private project that has no intentions to "help" boating but to make money and possibly take it overseas. Typical blue ribbon.

Dario

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