

**BEFORE THE HEARING COMMISSIONERS
AT 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

BETWEEN **BRECON STREET
PARTNERSHIP LIMITED**

Submitter No 50/10

AND **QUEENSTOWN LAKES
DISTRICT COUNCIL**

Applicant

**CLOSING SUBMISSIONS OF COUNSEL
FOR BRECON STREET PARTNERSHIP LTD**

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R E Bartlett QC
Barrister
PO Box 4338, Auckland
DX CX 10258
Tel: (09) 307 9827
Fax: (09) 366 1599
bartlett@shortlandchambers.co.nz

CLOSING SUBMISSIONS OF COUNSEL FOR BRECON STREET PARTNERSHIP LTD

Scope of submission and cross submissions

1. As recorded by my client in its submission on the Plan Change as notified:

“PPC50 is supported in part as it is broadly appropriate to provide for the continued strategic development of Queenstown as the centre of the District into the future by way of appropriate intensification on land that is:

- ***well connected and, in particular, conveniently walkable to the existing centre’s core at the lakefront, but***
- ***also sufficiently set back from that core area that it can accommodate greater development height and intensity without significantly impacting on that successful and intimate character area.”***

2. The following relief was sought, focusing on the land at 34 Brecon Street:

*“(A) Amend the Plan Change including relevant provisions and diagrams to allow building heights **up to seven habitable storeys** on the site at 34 Brecon Street, and any such similar increase in maximum building heights between that site and the proposed sub-zone “peak” of 26m as is appropriate to maximise the long term capacity for growth in the sub-zone, and incorporate complementary bulk and location requirements so as to maintain suitable amenity on adjacent sites.*

*“(B) Amend the Plan Change including relevant provisions and diagrams to allow a superior urban design outcome relating to the **placement of Cemetery Road in the eastern part of the structure plan** to eventuate as a permitted activity, should such improvements be agreeable between the relevant land owners and the Council at the time of development.*

*“(C) Any further or other **consequential** amendments to the Plan necessary to achieve (A) and (B) above.*

*“(D) Amend the Structure Plan to indicate the most appropriate long term urban structure and built form outcomes in the zone, and/or amend clauses 10.6.5.1(xiii) and 10.6.5.1(xiv) to allow these to happen as **permitted activities**.*

- (E) Amend the height limit plan to provide for buildings at 34 Brecon St up to **19m as a controlled activity**, and amend 10.6.3.3, 10.6.4, and/or 10.6.5.1(xi)(d) so as to provide, as a **non notified restricted discretionary activity, buildings up to 24m** height. Discretion would be restricted to the relevant matters for the Lakeview sub-zone set out in 10.2.2, and ensuring the additional building height is designed to be visually recessive and add visual interest to the remainder of the building. An **alternative** to this could be to set the **restricted discretionary height limit at 22.5m** provided that 10.6.5.1(xi)(f) was also amended so as to **allow habitable space inside the 2m roof bonus**, and in consequence specify that roof plant may exceed this provided that it is no greater than an additional 3m in height, is no greater than 40m² in area, and is located at least 10m from any road boundary.
- (F) Amend Clause 10.6.5.1(i)(d) so that any building height greater than 19m at 34 Brecon St must comply with a **maximum building coverage of 70%**.
- (G) Amend the Structure Plan and Height Limit Plan to add a **building setback of 17m** from the existing southern boundary of the cemetery, **applying to all building height above 15m** (note: in the event that Cemetery Road was realigned in accordance with other submission points, all buildings would need to be clear of that road from the ground and no further setback would be required unless the road was narrower than 17m).
- (H) Amend Clause 10.6.5.1(xiv)(a)(d) to specify a **minimum 3.5m ground floor floor-to-ceiling height limit** so as to remove the uncertainty that exists around interfloor and service height in a floor-to-floor requirement, and ensure the most efficient possible use of space."

3. The further submission commented on 30 primary submissions lodged, and particular attention is drawn to the following:

Submitter	Submission content supported or opposed	S/O	Reasons for support or opposition
50/11/03 Queenstown Chamber of Commerce	Seeks to strategically stage the release of commercial capacity so it does not compete with the existing Queenstown CBD,	√	Because of the quantum of Town Centre Zoned land proposed by PC50 there is need to release it in stages prioritising land closest to the existing town centre
50/11/05 Queenstown Chamber of Commerce	Support the well-resourced provision of quality connections and the use of urban design techniques to ensure the connections between the PC50 area and the existing CBD, however, ensure that adequate resources are afforded to the development of quality urban design and	√	The PC50 will only be an effective extension of the Town Centre Zone if the pedestrian linkages from the existing town centre are convenient, safe and present an attractive public realm. This matter relates to the preceding item insofar as it cannot be expected that the walk between the

Submitter	Submission content supported or opposed	S/O	Reasons for support or opposition
	attractive and safe pedestrian linkages to the existing town centre from the site		existing town centre and the convention centre will be an attractive proposition if the land nearest the existing town centre is not developed first
50/15/03 NZIA Southern Branch	There appears to be no analysis of existing empty office space or land in the town centre. The town centre has taken a very long time to reach the density it is today and we query the need for such a significant expansion of the town centre . Our concern is that the expanded area of the town centre is too large as proposed and will grossly undermine the existing town centre	√	We too are concerned that the area proposed for PC50 is perhaps too large and consideration should be given to staged release of land, prioritising that which is closest to the existing town centre
50/15/04 NZIA Southern Branch	The submitter considers that the location of the conference centre is too far from the town centre for walking and the associated	√	We consider that the convention centre would ideally be located at the eastern end of the PC50 area, closer to the existing town centre.
50/20/03 Heritage New Zealand	The submitter requests that the effects of adjoining development on the setting of the cemetery should be taken into consideration as part of the change and considers it important that the cemetery is not marginalised by overly dominant buildings and lack of connection to the wider zone.	X	We consider that the cemetery is bounded by open space on the north and east, there is in fact little prospect of domination by development of 34 Brecon St in those circumstances. View shafts will continue to be available via Brecon St. Further, the issue is not of such significance to warrant constraint on development of the adjoining site

4. Brecon Street Partnership Ltd reiterates its support for:

- Extension of the town centre zoning;
- Express provision being made in the District Plan for the development of a large scale Convention Centre.

5. As detailed in the evidence, the seven storey height sought in the primary submission could be achieved with a limit of 22.5m entry, so long as provision was made to allow for habitable space to be permitted within the 2.5 metre roof bonus.

Location of Convention Centre

6. Brecon Street Partnership Ltd accepts the evidence and submissions of QLDC that despite Council's present locational preferences, the Lakeview zone provisions are not designed to favour any particular site for the establishment of the Convention Centre. Given that no potential

Convention Centre owner, developer, operator, project architect or user took part in the hearing, there is limited value in the parties debating which is objectively the best site within the Lakeview zone or in predicting where for commercially driven reasons its promoters may wish to establish it.

7. Brecon Street Partnership Ltd wishes to disclose to the Panel that its principals have property interests which could benefit significantly from the location of the Convention Centre on sites 1 or 2.
8. Mr Wilkinson developed Hotel St Moritz in the late 1990's and still retains management of the entire property as well as direct ownership of the bar/restaurant. A Convention Centre directly behind Hotel St Moritz would probably benefit this hotel more than any other in Queenstown.
9. The Chair's apparent incredulity that Mr Gibbs' preference for site 3 was coincidental with his client's ownership of 34 Brecon Street is noted. Mr Gibbs undertook significant extra research in response to point 2 of the 16 January directive and came to his own conclusions. It remains his professional view that proximity to the town centre should be a key factor in site selection for a Convention Centre.
10. The submitter records that from a commercial point of view it is indifferent as to where within the Lakeview zone a Conference Centre may be located. That is a separate issue from what is the appropriate degree of incremental expansion of the town centre at this stage.

Scale of Lakeview Zone

11. The Queenstown Chamber of Commerce and the NZIA primary submissions that were supported by my client's further submission queried the present need for an expansion of the town centre of the scale proposed by QLDC. The Panel has now heard the further evidence of John Kyle and David Gibbs in which each suggests a reduction in the extent of the Lakeview zone in which commercial and retail activities

may be undertaken – that is a way of dealing with the underlying concern.

12. The Chair invited a detailed proposal from Mr Munro as to what practical restrictions on retail activity could be imposed in respect of part of the zone. Based on Mr Munro's advice the following definition of ancillary retail/ancillary commercial is proposed:

"Ancillary Retail or Ancillary Commercial activity means a subordinate retail or commercial activity proposed to serve the needs of users of a primary activity occurring on that site. Examples include a restaurant or souvenir shop in association with a hotel. Ancillary Retail or Ancillary Commercial activities must:

- * be less than 10% of the gross floor area of the primary activity (individually or cumulatively); and*
- * have no means of customer access other than through the primary activity; and*
- * have no signage or branding other than inside the primary activity."*

13. If medium and high density residential use were to be the principal use at the western end of the Lakeview zone, provision for dairies would also be appropriate.
14. My client and its advisers accept that a Convention Centre could be designed and conditioned to be compatible with surrounding land uses of hotels and medium to high density residential. A full commercial zone should not be put into the District Plan as padding between the Convention Centre site and the town centre. Limiting the extent of future retail and office development within the Lakeview zone in terms of Mr Gibbs' advice would not constrain the choices available for location of the Convention Centre, but would meet concerns as to the risk of a disconnected retail node establishing within an oversized commercial expansion area.

15. No evidential basis has been advanced by QLDC to support the proposition that the areal extent of expansion of the town centre should be defined by what happens to be the most remote possible location for the establishment of a Convention Centre.
16. Because they are separate planning issues subject to different considerations, the submitter invites the Panel to address the Town Centre commercial expansion issue separately from the matter of providing for a Convention Centre within reasonable proximity to the existing town centre.

34 Brecon Street – height issues

17. The following evidence relates to this:

QLDC

- Clinton Bird – 10 November 2014
- Marion Read – 10 November 2014
- John Kyle – 10 November 2014
- Clinton Bird – 16 December 2014
- John Kyle – 19 December 2014
- Doug Weir – 18 February 2015
- John Kyle – 18 February 2015

Brecon Street Partnership Ltd

- David Gibbs – 21 November 2014
- Ian Munro – 21 November 2014
- David Gibbs - 15 January 2015
- David Gibbs - 20 February 2015
- Ian Munro – 20 February 2015
- Judge Kenderdine conferencing notes.
- Expert caucusing report.

18. The role of expert decision-makers operating in a planning context (particularly involving visual effects) was addressed in a typically forthright way by Judge Treadwell in Waste Management NZ Ltd and Others v Rodney District Council and Auckland Regional Water Board, W29/92:

“We do not consider that the possession of a degree in architecture or landscape architecture grants to the possessor of that degree an exclusive right to an aesthetic viewpoint. We do not for a moment suggest that Ms Buckland claimed such exclusiveness but it was claimed for her on behalf of the applicants by counsel. All persons, including the Tribunal, are able to have some views on the shape of a man-made edifice of this magnitude and, indeed, Ms Buckland herself sought to soften it by a veneer of vegetation designed to suggest something other than a smooth surface mound.”

19. In relation to the height of a future development at 34 Brecon Street, Council experts’ initial concerns included shading of the adjoining area and views from the presently adjacent cemetery (possibly to be separated by a realignment of the existing road).
20. Unexpectedly, at the final hearing Mr Bird gave emphasis to his concerns as to the quality of the landscape view from the base of the gondola – as experienced by those coming or going.
21. For the Brecon Street Partnership Ltd, Mr Gibbs and Mr Munro contended that the extent of shading would not be unduly adverse, and in any event it would be in areas where there is presently significant shading from trees. Unlike Mr Bird, they had formed their opinions in respect of the shading after undertaking a detailed shading analysis.
22. In the second round of caucusing, conducted by Environment Commissioner Oliver, a consensus was reached amongst the planners, designers and architects present that on its own shading would not be sufficient reason not to provide for the height recommended by Mr Gibbs.

23. In respect of the views, the Panel has photomontage evidence which depicts the situation from one viewpoint within the cemetery. Obviously that is not the unobstructed vista obtainable from the gondola or for that matter from the Steamer Wharf. Any building at 34 Brecon Street will obstruct views to some extent.
24. The Panel's legal assessment in terms of Part 2 RMA and sections 31 and 32 involves not treating that view as an end in itself, but in the context of:
 - other views readily available from public places in and around Queenstown; and
 - acknowledging the land at 34 Brecon Street is a significant physical asset to be developed in a sustainable way.
25. Section 31's purpose of "achieving integrated management of the effects of the use, relevant, or protection of land and associated natural and physical resources of the district" involves an integrated analysis – not one based on a single aspect of a proposed land use.
26. Despite the approach of the Supreme Court to the "overall judgment" approach articulated by Greig J in *New Zealand Rail Ltd v Marlborough District Council* [1993] 2 NZLR 641 in the recent decision of *EDS v The New Zealand King Salmon Co Ltd* [2014] NZSC 38, the Supreme Court's findings were specific to the wording of the New Zealand Coastal Policy Statement and a requirement to "avoid" any adverse effect. That is not relevant in this situation before the Panel and Greig J's words endure.
27. Determining the appropriate development intensity for 34 Brecon Street invites the exercise of an overall judgment and the application of a sense of proportion as to the issues raised by the parties' respective experts.
28. In that respect "sustainable" means not imposing undue or unnecessary constraints. Necessarily, it involves repudiating Mr Bird's incorrect test as to whether or not the effect on views from going to 24 metres would be "more than minor". The "more than minor" test is frequently used by

those who should know better as a form of shorthand test as to the RMA acceptability. “More than minor” comprises part of the gateway test in respect of non-complying activities and is one of the tests within the notification regime of section 95.

29. You are asked to prefer the opinions of my client’s witnesses as to the acceptability of the effect on views from the cemetery. The powerful landscapes will remain a significant feature.
30. Even a “significant” adverse effect on what is approximately a 30° arc of view from the cemetery should in the final evaluation be subordinate to the Part II duty to establish rules allowing for the sustainable development of 34 Brecon Street. The enjoyment of views from within 34 Brecon Street as developed may equally be seen as a relevant though not a determining factor.
31. Consenting authorities, in preparing their District Plans pursuant to the RMA, have the power to establish viewshafts where they are of particular quality or are affecting large numbers of people. In resource consent applications views may form part of the overall amenity being affected by a particular development. It is inappropriate in the context of plan making or consent granting to invent viewshafts. Were QLDC to incorporate specific viewshaft protections into its District Plan, the maintenance of an unimpeded 330° vista from the cemetery would be unlikely to be a high priority. Any such exercise would be required by the Act to consider possible economic effects resulting from restricting reasonable development of prime sites in the central area.

Conclusion

- Incorporating within the District Plan a provision to allow and promote the establishment of a Convention Centre within the Lakeview zone would be consistent with the purposes of the Act and would better enable QLDC to carry out its functions under that Act.

- The Convention Centre site need not be within a zone or sub-zone that allows unrestricted retail or commercial activity, given that it would be compatible with medium/high density residential and travellers' accommodation. The lack of evidence to support full commercial zoning for all of the Lakeview zone need not limit the locational options for the Convention Centre.
- The 34 Brecon Street site is well located relative to the existing town centre and should be included in this stage of its incremental expansion. The visual analysis establishes that the site is capable of absorbing buildings significantly higher than the 12 metres provided for in the Plan Change (subject to the imposition of the 70% site coverage control as proposed by the submitter).
- The distant/medium distance visual impact of providing for a 24 metre maximum height is not significant. Effects on the cemetery could be mitigated by the roading realignment proposed by the submitter that would have the additional benefit of improving the efficiency of traffic circulation in the Lakeview area as a whole.

R E Bartlett QC

9 March 2015