

BEFORE THE QUEENSTOWN LAKES DISTRICT COUNCIL

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER OF Plan Change 50 to the Queenstown Lakes District Plan

LEGAL SUBMISSION FOR MEMORIAL PROPERTY LTD

SUBMITTER 50/39

19 November 2014

1. Introduction

- 1.1 The Council's expert team, co-ordinated by Mr Kyle, are to be congratulated on a seamless presentation in support of PC 50.
- 1.2 The relevant legal tests applicable to PC50 have been summarised by counsel for the Council.
- 1.3 There are two key issues on which important evidence remains inadequate or non-existent. Without such evidence, it is submitted that PC 50 is fundamentally flawed.
- 1.4 The two key issues for which credible evidence is crucially lacking or elliptically vague are:
 - (a) The overall justification or rationale for such a major expansion to the existing town centre. The existing town centre is some 18 hectares. PC 50 adds another 15 hectares – effectively doubling its size as Mr Wells will outline. This expansion is in a scale and location which effectively reverses previous Council planning and policies and objectives for the town centre..
 - (b) The potential adverse effects of such an extensive change in particular, traffic (congestion and parking), and the potential long term consequences and impacts on the amenity, and economic well -being of the existing town centre.
- 1.5 These two issues are so important that It raises the question why PC50 has been driven in such haste and whether or not there may be some other purpose behind the highly professional veneer of economic and planning logic presented.
- 1.6 It would seem a fair guess that the real reason is an understandable desire to avoid delays in consenting a new convention centre on the Lakeview site - and the related desire to provide additional financial underpinning for a future developer of the centre by adding Lakeview sub zone land to the development mix.
- 1.7 There is nothing inherently wrong with this but the approach in PC50 appears a clumsy and unsubtle way of achieving such goals.
- 1.8 We have been told by Council in this hearing that the convention centre is not the issue – it may or may not happen – that PC 50 is still essential to defend the future commercial viability of Queenstown. This dismissal of any focus on the convention centre is, at best, somewhat disingenuous. In this context it is interesting to make the PC 50 rules which provides for “controlled activities” (10.6.3.2) to include a convention centre in the Lakeview sub-zone (10.6.3.2;vii) for which future resource consent applications will not need to be notified (10.7.4,(i)).
- 1.9 Thus, whatever else PC 50 may or may not achieve, it will clearly provide for a non – notified resource consent for the future convention centre on the Lakeview site.

2. Planning Evidence

2.1 Mr Wells will present planning evidence to demonstrate that the overall justification for a change of the magnitude of PC 50 is deficient both in logic and in RMA terms.

2.2 Mr Kyle in his executive summary presents his conclusions on the “primary planning questions” (para. 5) It is important to note that for justifications (i) and (ii) and (iii) Mr Kyle clearly relies on the evidence of two economic consultants who, in turn, have economically “modelled” the existing town centre. This economic evidence need to be treated with considerable caution not because it is necessarily wrong – but because the nature of economic modelling, including the assumptions made, can be inevitably unreliable as the key rationale for a plan change.

Mr Wells’ evidence raises the questions in relation to the key underpinnings of Mr Kyle’s evidence.

In turn:

(i) “demonstrable and pressing need” for additional commercially zoned land in central Queenstown

(ii) the risk of threat of “failing to act now” to address the “capacity issue” facing Queenstown

(iii) the implied threat of Frankton to the commercial viability or future of Queenstown

2.3 It is submitted that none of Mr Kyle’s primary planning justification for PC 50 bears any real scrutiny. At best they are worst theoretical case risk scenarios which are not consistent with practical reality on the ground or what would be readily achieved by far less radical or extensive zoning changes.

2.4 To the extent that these threats are real – they have arguably been handled, and are being handled, by past and current District Plan reviews. PC 50 is a rapid and major departure from years of past Council work on these issues.

3. Traffic Issues

3.1 The evidence of Mr Tim Kelly challenges the presentation of Messrs Mander and McKenzie. These two experts appear to take a somewhat benign view that traffic issues will work out in the end and that solutions are underway.

3.2 As Mr Kelly notes the assessments of traffic potentially generated by PC 50 are reliant on a “range of critical assumptions” which are unclear and which have not been subject to either sensitivity testing or comprehensive peer review.

3.3 As he notes “the accommodation of the additional travel demands arising from the development enabled by PC 50” is reliant on a “significant shift in travel behaviour away from private car use”. He makes similar comments with regard to parking noting ‘there is no parking strategy or any assessment of current parking supply’.

- 3.4 It is entirely possible that the complacency of council experts around traffic issues is based on their belief that very little commercial development will, in fact, happen with the new PC50 Town Centre zone. If this proves correct (and the only reliable test will be whether new investment is attracted to develop the “new” town centre) then PC 50 represents an inefficient allocation of physical resources to a spurious resource management outcome with the added risk of adverse effects elsewhere.
- 3.5 In this context it is notable that there is considerable ambivalence amongst council experts about the level of commercial development which will in fact occur in the new Town Centre zone. When questioned yesterday Mr Glenville spoke about his “model” suggesting somewhat vaguely that the main new developments would be “hotel” and a small amount of “high end retail”. Others such as Mr Bird have envisaged a mixed use with a nascent rival town centre focused on the imagined cafes and high end retail clustered around the triangular “square” and yet to be planned alleyways . How this limited scale and type of development resolves the “pressing need” and “capacity issues” identified by Mr Kyle as justifying a claimed urgent need for additional commercial space remains a mystery.
- 3.6 On this confused analysis may well most of the potential development of the land within PC 50 be predominantly higher density residential or visitor accommodation which could be readily provided by the existing high density residential zoning (with some amendments to allow higher buildings closer to the Ben Lomond back drop).

4. Resolution of Issues

- 4.1 It is the unenviable task of the Hearing Panel to weigh the evidence presented and make a final decision.
- 4.2 It is submitted that there is no credible justification for PC 50 as presented. It is difficult to see any compelling evidentiary basis for the additional commercial space provided by PC 50.
- 4.3 A plan change of the magnitude of PC 50 has considerable implications for the future of Queenstown and these should have been evaluated in a far more measured and systematic manner than has been presented.
- 4.4 It is apparent that, whatever may be claimed, the main driver of PC 50 is the desire to establish a convention centre on the Lakeview site and limit potential delays in granting resource consent for such a facility plus the financial contribution for the centre rezoning a large block of Council owned land may deliver.
- 4.5 There is nothing wrong in principle with that – but it is highly questionable whether in the effort to smooth the way for one project (however important) much broader planning risks should be borne by the existing town centre – and those residents and visitors who (a) value the special qualities and amenities of the existing town centre and (b) rely on an efficient and reliable transport/parking strategy as an essential element in that experience.

4.6 Counsel for the council summarised the legal framework for evaluating and determining plan change proposals (para 2.4).

4.7 It is submitted that PC 50
(a) will not “accord with” and “assist” Council so as to meet its statutory functions and obligations in particular the requirements of Section 5 of the RMA for reasons outlined in the evidence of Mr Wells. Indeed Council should be actively avoiding allocation of land through zoning to such imprecise objectives.

(b) will have potentially adverse effect on the amenity of existing town centre and environment. The serious traffic congestion and parking issues arising if PC 50 is developed to the full potential permitted by PC 50 would arguably be sufficient reason alone to not approve PC 50. In addition the potential effects on the existing town is simply unknown at this point of time – including economic, social and culture factors which make the existing town the special place it currently is.

(c) is a premature and wrongly located expansion of the town centre which should be substantially modified or declined– pending proper evaluation in the current District Plan review processes.

4.8 Finally the convention centre should not be regarded as an important factor in the determination of PC 50. As the Council experts themselves have reiterated it may or may not happen. Separate consent processes will ultimately apply to that project.

5. RMA Issues

5.1 In preparing a plan change to Council has the function of (section 31):

“the establishment of objectives, policies and method to achieve integrated management of the efforts of the use and development of land and associate physical resources”

5.2 This function is subject to the Part II relevant sustainable management requirements in section 5 :

“...managing the use, development and protection of physical resources in a way or at a rate which enables people and communities to provide for their social economic and cultural well-being... while “sustaining the potential of physical resources to meet the reality foreseeable need of future generations”

“avoiding remedying or mitigation any adverse effects of activities on the emit”

5.3 Section 7 requires that “particular regard” be given to:

(b) efficient use and development of physical resources

(c) maintenance and enhancement of amenity values

5.4 The section 32 evaluation required of the Council requires 32 (3) an examination as for whether objectives in a plan change are the most appropriated way to achieve the purpose of the RMA including an assessment of efficiency and effectiveness. This level of analysis required is simply lacking in ways asked by Mr Wells.

M C Holm

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