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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Legal submissions for Queenstown Lakes District Council

MEREDITH | CONNELL
BARRISTERS AND SOLICITORS

Solicitors:
J C Campbell
PO Box 2213, Auckland 1140, DX CP24063
Ph: 09 336 7500, Fax: 09 336 7629
Janette.campbell@meredithconnell.co.nz

1 Introduction

1.1 Queenstown is a magnet for tourists and holiday makers and the centre of business in the District. Its town centre is the hub for these activities, right in one of New Zealand's most spectacular settings.

1.2 From the Council's perspective, it is imperative that the Queenstown town centre makes the most of its advantages and opportunities. It wants to see the level of investment and high quality of redevelopment that can be observed in the existing town centre expanded, providing further economic growth and employment for the District in its key town centre. The natural spatial constraints on the town centre mean that appropriate areas for expansion of the town centre are limited.

1.3 The Lakeview site, with its proximity to the existing town centre zone, magnificent views, large area and low level of existing investment, presents the Council with a unique opportunity to design and facilitate a desirable and needed extension of the town centre zone. It is the only site near the town centre that can readily facilitate the development of any future convention centre, which would enhance the range of services the town offers to visitors.

1.4 The contrast between the level of investment and use of the town centre and the Lakeview site is stark: the Lakeview site is grossly underutilised at present. To the Council's mind, the Lakeview site provides a one-of-a-kind opportunity to add new drawcard activities and developments to Queenstown's town centre.

2 Legal framework for plan changes

Process

2.1 Under the RMA district plan changes proceed down one of two procedural paths depending on whether they are:

(a) proposed by the local authority, in which case the procedure is set out in Part 1 of the First Schedule to the RMA; or

(b) requested by any other person (known as a private plan change), in which case the procedure is set out in Part 2 of the First Schedule.

2.2 Pursuant to cl 21 of the First Schedule, the private plan change process in Part 2 of the First Schedule does not apply to a district plan change initiated by the local authority:

Part 2

Requests for changes to policy statements and plans of local authorities and requests to prepare regional plans

21 Requests

(1) Any person may request a change to a district plan or a regional plan (including a regional coastal plan).

...

(4) Where a local authority proposes to prepare or change its policy statement or plan, the provisions of this Part shall not apply and the procedure set out in Part 1 shall apply.

2.3 Queenstown Lakes District Council has adopted the procedure in Part 1 of the First Schedule to the Act.

Merits

2.4 The legal framework for evaluating and determining plan change proposals has been summarised in a variety of ways throughout the life of the RMA. A detailed synthesis of all of the statutory requirements can be found in *Colonial Vineyard Ltd v Marlborough District Council*.[1] However a perhaps more workable distillation can be found in the Environment Court's recent decision *Man O' War Station Ltd v Auckland Council*:[2]

> The relevant factors have been summarised in subsequent decisions of the Court including in *Fairley v North Shore City Council*.[3] Whilst alert to differences in the detail of the relevant law from time to time, we adopt that summary which reads as follows:
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> > "In the circumstances of this Council initiated Plan Change, the otherwise lengthy list of factors to be analysed can be compressed. We consider whether the terms of the Plan Change:
> >
> > •Accord with and assist the Council in carrying out its functions so as to meet the requirements of Part 2 of the Act
> >
> > •Take account of effects on the environment; and
> >
> > •Are consistent with, or give effect to (as appropriate) applicable national, regional and local planning documents."
>
> We adopt this framework together with Section 32 when determining the current appeals.

2.5 As regards the requirement for plans to give effect to applicable national and regional policy statements, the Supreme Court's recent *King Salmon* decision should be borne in mind:[4]

> ... it is difficult to see that resort to pt 2 is either necessary or helpful in order to interpret the policies, or the NZCPS more generally, absent any allegation of invalidity, incomplete coverage or uncertainty of meaning. The notion that decision-makers are entitled to decline to implement aspects of the NZCPS if they consider that appropriate in the circumstances does not fit readily into the hierarchical scheme of the RMA.

2.6 As the Environment Court stated in *Cook Adams Trustees Ltd v Queenstown Lakes District Council*:[5]

> ... it now seems that resort should be had to Part 2 of the Act only if there is a problem with any of the statutory documents we have to consider.

2.7 Therefore if a policy statement to which the district plan must "give effect" is applicable, it should be implemented rather than reconsidered in light of Part 2. The approach of the majority of the Supreme Court in *King Salmon* is to assume that the Part 2 considerations are

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[1] [2014] NZEnvC 55, para 17.
[2] [2014] NZEnvC 167, paras 8-9.
[3] [2010] NZEnvC 208, para 7.
[4] [2014] NZSC 38, (2014) 17 ELRNZ 442, [2014] 1 NZLR 593, [2014] NZRMA 195, at para 90.
[5] [2014] NZEnvC 117, para 18.

reflected in the applicable policy statement, rather than second-guess that judgement. As I will come to later in my submissions, this has some relevance to the question of historic heritage issues.

3 Jurisdiction: submissions not "on" the plan change

3.1 Clause 6 of the First Schedule to the RMA provides that:

> Once a proposed policy statement or plan is publicly notified under clause 5, the persons described in subclauses (2) to (4) may make a submission on it to the relevant local authority. (emphasis added)

3.2 Therefore the plan change process does not provide scope for submissions to be made if they are not *on* the plan change, and there is no jurisdiction for the Committee to consider such submissions.

3.3 The Council submits that aspects of a number of the submissions that have been received are not "on" the plan change. I will summarise the submissions in question, set out the case law governing the issue and then offer the Council's conclusions.

Questionable submissions

3.4 The Council requests that the Committee give consideration to whether or not it has jurisdiction to listen to the following submissions:

(a) Submission 50/03 by Reid Investment Trust, to the extent that it seeks to delete the Town Centre Transition Sub-Zone from the District Plan;

(c) Submission 50/08 by Robins Road Ltd, to the extent that it seeks to extend the Town Centre Zone to include the Gorge Road and Robins Road corridors;

(d) Submission 50/10 by Brecon Street Partnership Ltd, to the extent that it seeks to increase the height limit applying to 34 Brecon Street from 12m to 26m;

(e) Submission 50/38 by Queenstown Gold Ltd, to the extent that they seek to alter the zoning of Lot 1 DP306661and Lot 2 DP27703 to Isle Street Sub-Zone or Town Centre Zone;

(f) Submission 50/25 by Tim McGeorge, to the extent that it seeks to extend the plan change are to include the block of land bound by Lake Street, Man Street, Thompson Street and Brunswick Street;

(g) Submission 50/27 by Man Street Properties ltd, to the extent that it seeks to amend the height limit rules in the District Plan that apply in the Town Centre Transition Sub-Zone;

(h) Submission 50/35 by Kelso Investments Ltd and Chengs Capital Investments Ltd, to the extent that it seeks to extend the Town Centre Zone to the area bound by Shotover Street, Stanley Street, Gorge Road, Horne Creek and Designation 232;

(i) Submission 50/43 by Joy Veint, to the extent that it seeks to extend the Town Centre Zone to the Gorge Road area;

(j) Submission 50/44 by Douglas Veint, to the extent that it seeks to extend the Town Centre Zone to the Gorge Road area; and

(k) Submission 50/45 by Janet Sarginson, to the extent that it seeks to extend the Town Centre Zone to the Gorge Road area.

Case law on whether submissions are "on" a plan change or not

3.5 The leading authority for many years on this issue has been the High Court decision of William Young J in *Clearwater Resort Ltd v Christchurch City Council*.[6] The case involved a district plan change that introduced a new policy discouraging urban residential development within a certain noise contour around an airport, but did not change any rules relating to subdivision or land use in the zone around the airport. The question was whether submissions seeking to re-draw the noise contour were on the plan change. William Young J said that the question of whether a submission was "on" a variation posed a question of "apparently irreducible simplicity but which may not necessarily be easy to answer in a specific case".[7] He identified three possible general approaches:[8]

(a) a literal approach, in terms of which anything that is expressed in the variation is open for challenge;

(b) an approach in which "on" is treated as meaning "in connection with"; and

(c) an approach "which focuses on the extent to which the variation alters the proposed plan".

3.6 William Young J rejected the first option (which had been favoured in the Environment Court decision under appeal). He considered that allowing any part of a plan to be open to challenge, merely because it had been referred to by the plan change, was too idiosyncratic. Everything would depend on what happened to be referred to by the text of the plan change.[9]

3.7 He rejected the second option because "it would be difficult for a local authority to introduce a variation of a proposed plan without necessarily opening up for re-litigation aspects of the plan which had previously been [past] the point of challenge".[10]

3.8 William Young settled on the third option. His reasons are well set out in the recent High Court decision of Kos J in *Palmerston North City Council v Motor Machinists Ltd*:[11]

> In adopting the third approach William Young J applied a bipartite test.
>
> First, the submission could only fairly be regarded as "on" a variation "if it is addressed to the extent to which the variation changes the pre-existing status quo". That seemed to the Judge to be consistent with the scheme of the Act, "which obviously contemplates a progressive and orderly resolution of issues associated with the development of proposed plans".
>
> Secondly, "if the effect of regarding a submission as 'on' a variation would be to permit a planning instrument to be appreciably amended without real opportunity for participation by those potentially affected", that will be a "powerful consideration" against finding that the submission was truly "on" the variation. It was important that "all those likely to be affected by or interested in the alternative methods suggested in the submission have an opportunity to participate". If the effect of the submission "came out of left field" there might be little or no real scope

[6] AP34/02.
[7] Para 56.
[8] Para 59.
[9] Paras 62-63.
[10] Para 65.
[11] [2013] NZHC 1290, paras 53-55.

> for public participation. In another part of paragraph [69] of his judgment William Young J described that as "a submission proposing something completely novel". Such a consequence was a strong factor against finding the submission to be on the variation.

3.9 Consequently, William Young J rejected the submissions for being outside the scope of the plan change.

3.10 The *Clearwater* decision was subsequently subjected to some challenge or at least attempted dilution by the Environment Court in *Naturally Best New Zealand Ltd v Queenstown Lakes District Council*.[12] The case related to a plan change to create a special resort zone at Jacks Point, and whether submissions from landowners outside the plan change area requesting inclusion within the new zone were "on" the plan change. Judge Jackson proposed an alternative scope test:[13]

> I therefore hold that a submission may seek fair and reasonable extensions to a notified variation or plan change. The criteria as to fairness and reasonableness include answering such questions as:
>
> (a) what is the scope of the plan change or variation?
>
> (b) what is the extent of the submission in proportion to the plan change or variation?
>
> (c) does the submission relate to the notified variation or plan change?
>
> Clearly no single criterion - beyond the general formula of fairness and reasonableness - is correct. Each case has to be determined on its facts, bearing in mind this is essentially a procedural not a substantive issue.

3.11 Subsequent to both *Clearwater* and *Naturally Best*, the High Court (Ronald Young J) had another opportunity to consider the question of when a submission was on a plan change in *Option 5 Inc v Marlborough District Council*.[14] The case related to a plan change affecting the Blenheim town centre. The question was whether submissions seeking for extra land to be included within the new central business zone were on the plan change or not. Ronald Young J adopted the *Clearwater* approach:[15]

> I consider the appellant's suggested approach ... to assessing whether a submission is on a variation is too crude and fails to appreciate the importance of this jurisdictional gate. Simply because there may be an adjustment to a zone boundary in a proposed variation does not mean any submission that advocates expansion of a zone must be on the variation. So much will depend upon the particular circumstances of the case. In considering the particular circumstances it will be highly relevant to consider whether, as William Young J identified in *Clearwater*, that if the result of accepting a submission as on (a variation) would be to significantly change a proposed plan without a real opportunity for participation by those affected then that would be a powerful argument against the submission as being "on".
>
> In this case the amended Variation 42 would change the zoning of at least fifty primarily Urban Residential 1 properties to CBZ. Some of these properties already had a partial CBD zoning but most did not. These properties will have their zoning fundamentally changed therefore without any direct notification to the property owners and therefore without any real chance to participate in the process by which their zoning will be changed.
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> ...

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[12] Environment Court, C49/2004.
[13] Paras 19-20.
[14] (2009) 16 ELRNZ 1.
[15] Paras 34-35, 37.

> This conclusion strongly favours the conclusion that the submission by the McKendrys was not on the variation.

3.12 Unfortunately the *Option 5* decision did not refer to *Naturally Best* and therefore to some extent left its challenge to *Clearwater* unanswered, at least directly. That situation was remedied last year by Kos J's *Motor Machinists* decision.

3.13 In *Motor Machinists* Palmerston North City Council had notified a plan change that readjusted its Inner Business and Outer Business Zones, which included bringing some residential land into the Outer Business Zone. An adjacent landowner submitted that their land should also be included.

3.14 Kos J took the opportunity to deliver a thorough judgment on the issue, considering the legislative history and the case law, which must now be considered the leading authority. He completely rejected the *Naturally Best* decision (which had been applied by the Environment Court in the decision appealed) in favour of the *Clearwater* approach:

> ... that the approach taken by the Environment Court in *Naturally Best* of endorsing "fair and reasonable extensions" to a plan change is not correct. The correct position remains as stated by this Court in *Clearwater*, confirmed by this Court in *Option 5*.

3.15 Kos J's comments on the two limbs of the Clearwater tests are instructive, particularly where he comments on whether zoning extensions by submission will always be out of scope or not:[16]

> For a submission to be on a plan change, therefore, it must address the proposed plan change itself. That is, to the alteration of the status quo brought about by that change. The first limb in *Clearwater* serves as a filter, based on direct connection between the submission and the degree of notified change proposed to the extant plan. It is the dominant consideration. It involves itself two aspects: the breadth of alteration to the status quo entailed in the proposed plan change, and whether the submission then addresses that alteration.
>
> In other words, the submission must reasonably be said to fall within the ambit of the plan change. One way of analysing that is to ask whether the submission raises matters that should have been addressed in the s 32 evaluation and report. If so, the submission is unlikely to fall within the ambit of the plan change. Another is to ask whether the management regime in a district plan for a particular resource (such as a particular lot) is altered by the plan change. If it is not then a submission seeking a new management regime for that resource is unlikely to be "on" the plan change. That is one of the lessons from the *Halswater* decision.[17] Yet the *Clearwater* approach does not exclude altogether zoning extension by submission. Incidental or consequential extensions of zoning changes proposed in a plan change are permissible, provided that no substantial further s 32 analysis is required to inform affected persons of the comparative merits of that change. Such consequential modifications are permitted to be made by decision makers under schedule 1, clause 10(2). Logically they may also be the subject of submission.
>
> But that is subject then to the second limb of the *Clearwater* test: whether there is a real risk that persons directly or potentially directly affected by the additional changes proposed in the submission have been denied an effective response to those additional changes in the plan change process. As I have said already, the 2009 changes to Schedule 1, clause 8, do not avert that risk. While further submissions by such persons are permitted, no equivalent of clause 5(1A) requires their notification.

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[16] Paras

[17] *Halswater Holdings Ltd v Selwyn District Council* (1999) 5 ELRNZ 192 (EnvC). This decision provided the RMA springboard for the High Court's decision in *Clearwater*.

> To override the reasonable interests of people and communities by a submissional side-wind would not be robust, sustainable management of natural resources. Given the other options available, outlined in [78],[18] a precautionary approach to jurisdiction imposes no unreasonable hardship.
>
> [83] Plainly, there is less risk of offending the second limb in the event that the further zoning change is merely consequential or incidental, and adequately assessed in the existing s 32 analysis. Nor if the submitter takes the initiative and ensures the direct notification of those directly affected by further changes submitted.

3.16 Palmerston North City Council's appeal was allowed, reversing the Environment Court's decision to allow the submission. The handful of Environment Court decisions since *Motor Machinists* have all followed this decision, and last month its approach was adopted by Gendall J in the High Court in *Federated Farmers of New Zealand (Inc) Mackenzie Branch v Mackenzie District Council* .[19]

Recommended conclusions

3.17 The submissions questioned by the Council fall into three categories:

(a) Those seeking for additional areas to be re-zoned – the "Area Submissions" (submissions 50/08, 25, 35, 38, 43, 44 and 45);

(b) That seeking increased height limits – the "Height Submission" (submission 50/10); and

(c) Those seeking to amend or delete an element of the operative District Plan that the plan change does not propose to amend – the "Amendment Submissions" (submissions 50/03 and 27).

3.18 In the Council's view, none of these submissions are "on" the plan change. The Council has reached this conclusion by applying the legal principles in the *Clearwater* decision, as supported by the *Option 5* and *Motor Machinists* decisions.

3.19 According to *Clearwater t*he first matter to be considered is whether the submissions address the extent to which the plan change alters the status quo. The Area Submissions seek to alter the zoning that applies to areas for which the plan change preserves the status quo. The Height Submission is addressed to the extent that the submitter would like the plan change to alter the status quo, rather than to the extent that it does so. The Amendment Submissions are addressed to elements of the District Plan for which the plan change does not alter the status quo.

3.20 As noted in *Motor Machinists*, a useful question can be whether or not the requested change raises matters that should have been addressed in the s 32 report. With respect to the Area Submissions, extension of the plan change area would have broadened the analysis required in terms of services and safety, and might have seriously altered the analysis in terms of

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[18] Para 78: " Where a land owner is dissatisfied with a regime governing their land, they have three principal choices. First, they may seek a resource consent for business activity on the site regardless of existing zoning. Such application will be accompanied by an assessment of environment effects and directly affected parties should be notified. Secondly, they may seek to persuade their council to promulgate a plan change. Thirdly, they may themselves seek a private plan change under Schedule 1, Part 2. Each of the second and third options requires a s 32 analysis. Directly affected parties will then be notified of the application for a plan change. All three options provide procedural safeguards for directly affected people in the form of notification, and a substantive assessment of the effects or merits of the proposal."

[19] [2014] NZHC 2616, para 139.

urban design, landscape, economic and traffic issues. In relation to the Height Submission, height changes of the nature proposed would certainly have featured in the urban design and landscape assessments. The Amendment Submissions would likely have required analysis of noise and height-related issues, given the focus of controls in the Town Centre Transitional Sub-Zone. The Council does not consider that any of the proposed changes fall into the "incidental or consequential" category described in *Motor Machinists*.

3.21 The second matter to be considered under the *Clearwater* approach is whether accepting the submission in question would "permit a planning instrument to be appreciably amended without real opportunity for participation by those potentially affected". The Council submits that if the plan change area were amended in accordance with any of the Area Submissions, that it would be unfair to those with property in the immediate vicinity of the extensions. Such parties would not have apprehended such a zoning extension or the effects it would have on them, and thus would not taken further part on the plan change process. Such parties would not have the benefit of any s 32 analysis of the potential changes, which is contrary to the procedure envisaged by the legislation. There is nothing about any of the Area Submissions that cogently distinguishes them from the very similar submissions that were disallowed by the High Court in *Option 5* and *Motor Machinists*.

3.22 Similarly, the Height Submission would appreciably alter the development controls applying to 34 Brecon Street, for instance raising new shading or dominance issues for nearby properties and urban design or landscape issues of broader concern. Impacted parties would not be aware of any such potential effects and would not have had the benefit of any analysis of such changes under s 32.

3.23 If the Amendment Submissions were accepted they could enable development with noise and height-related impacts that were unforeseen by neighbours who assumed that the plan change did not affect the controls on properties in their zone or sub-zone.

3.24 Fundamentally, as recognised in *Clearwater*, the Council needs to be able to initiate a plan change without opening up the remainder of the plan for re-litigation, and members of the public need to be able to assess a plan change, with its accompanying s 32 analysis, and make a safe decision about whether or not to participate any further. Allowing any of the Area, Height or Amendment Submissions would be inconsistent with those needs.

3.25 In *Motor Machinists* the High Court commented that taking a "precautionary approach" to the question of jurisdiction imposes "no unreasonable hardship",[20] because other options are available to parties who seek opportunities that are not within the scope of a plan change. That logic is especially compelling in the present circumstances, as the Council is in the process of preparing a review of the entire District Plan. That process will give any aggrieved submitters an opportunity to engage with the Council regarding the zoning of their properties. Parties are also free to seek private plan changes or resource consents if they think the Council has not gone far enough.

4 Submissions relating to trade competition or its effects

4.1 Several submissions[21] on Plan Change 50 express concerns about the possibility of additional commercial activities provided for by the town centre expansion detracting from commercial activities in the existing town centre zone.

[20] Para 78.
[21] Submissions 50/11, 15, 31, 40, 49 and 50.

4.2 Section 74(3) states that:

> In preparing or changing any district plan, a territorial authority must not have regard to trade competition or the effects of trade competition.

4.3 The RMA also includes a safeguard against such submissions being made in cl 6(4) of the First Schedule, which precludes any person who might "gain an advantage in trade" through a submission on a plan change from submitting unless they are directly affected other than by trade competition. That is not an issue that the Council intends to pursue at this stage (but it reserves its position otherwise).

4.4 The Courts have drawn a distinction between submissions that raise trade competition issues between competing businesses and submissions that allege more significant effects on communities. In the Supreme Court's decision in *Discount Brands Ltd v Westfield (New Zealand) Ltd*, Blanchard J explained the benchmark for such submissions:[22]

> ... social or economic effects must be "significant" before they can properly be regarded as beyond the effects ordinarily associated with trade competition on trade competitors.

4.5 The Council submits that any of the submissions raising concerns about the effect on existing town centre businesses of added competition from businesses in the town centre expansion need to be examined in this light. Issues that do not reach the *Westfield* benchmark of social or economic significance must be disregarded.

4.6 Dr McDermott's evidence is that the additional commercial activities provided for by the plan change will not even be a detriment to the existing Queenstown town centre, let alone be so significant as to pass the *Westfield* benchmark. If the Committee accepts that evidence then it will not be necessary to divine the line between trade competition effects and significant social and economic effects.

5 Historic heritage

5.1 Several submitters have suggested retention of the "cribs" presently located on Council-owned land in the Lakeview site on the basis of their historic heritage.

5.2 While it is true that the Council does not intend for the plan change provisions to require either the removal or the retention of the cribs, it is fair to say that the Council anticipates the market taking up the opportunity to redevelop and maximise the crib sites, which would involve their removal.

5.3 While the cribs naturally have a place in Queenstown's history, which is acknowledged in the Council's evidence, the Council's view regarding the cribs is coloured by several additional factors:

(a) The cribs on the "Reserve Block" are all located within that part of the Reserve Block that is administered as a "municipal camping ground" ("MCG").[23] The use of MCG for cribs providing long term accommodation on long term leases is difficult to reconcile with the MCG purpose.

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[22] [2005] 2 NZLR 597; (2005) 11 ELRNZ 346; [2005] NZRMA 337 (SC), at para 120.

[23] In 1953 the purpose of this area was changed by Order in Council 6312 to a "reserve for a municipal camping ground" (1953 NZG p 29).

(b) Queenstown is, on average, one of the coldest towns in the country. The cribs are not constructed to a standard that suits Queenstown's climate. It is readily apparent that they would score poorly in terms of health and energy efficiency. The Council does not want to continue as the landlord of such substandard housing.

(c) The cribs are an inefficient use of a limited resource, namely prime sites adjacent to the town centre. They are not only inefficient as an economic proposition, which is an opportunity cost borne by the ratepayers, but also in terms of their low intensity relative to the area of land they occupy.

5.4 The expiry of the crib licences, in conjunction with the plan change, provides an opportunity to address all of these issues.

5.5 The Council proposes that the cribs be fully documented before removal, and to the extent it is commercially practicable, that they be relocated for reuse elsewhere. [A commercial arrangement is already in place for some relocation and reuse.] Thus any adverse effects on historic heritage will be mitigated. The Council notes that the Heritage New Zealand submission contemplates such an outcome without disapproval.

5.6 Section 75(3)(c) of the RMA states that district plans must "give effect" to regional policy statements. Policy 9.5.4 of the Otago Regional Policy Statement is:

> 9.5.4 To minimise the adverse effects of urban development and settlement, including structures, on Otago's environment through avoiding, remedying or mitigating:
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> ...
>
> (d) Significant irreversible effects on:
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> ...
>
> (v) Heritage values;

5.7 Consistent with the Supreme Court's *King Salmon* decision, it is submitted that the correct approach to the Council's s 6(f) obligation to "recognise and provide for ... the protection of historic heritage from inappropriate subdivision, use, and development" as "a matter of national importance" is to assume that it is articulated by this Policy. It would not be correct to revert to Part 2 when the regional policy statement clearly addresses the issue.

5.8 Policy 9.5.4 provides that "significant irreversible effects" on heritage values are to be avoided, remedied or mitigated. From the Council's perspective, the effects of removal of the cribs will not be significant in terms of Queenstown's historic heritage, but should the Committee disagree, the Council submits that any effects will be appropriately mitigated through documentation.

6 Reserves

6.1 In order to implement the plan change, the Council will first need to exchange some of the Lakeview land that is owned freehold by the Council for an equal area of land held and administered as reserve land by the Council. That is a separate process governed by s 15 of the Reserves Act 1977, requiring the approval of the Minister of Conservation.

6.2 The proposed plan change provisions protect the planned reserve configuration by way of rules controlling roading and subdivision, requiring that those activities be undertaken in accordance with the Council's master plan for the Lakeview site.

6.3 The Queenstown Lakes District Plan currently designates reserves with a range of generic management options. That method is not proposed in relation to the reserve areas that will result from the exchange and the plan change. Rather, the reserves will be managed by way of specific reserve management plan formulated in accordance with s 41 of the Reserves Act. That process includes consultation, submissions from members of the public and a hearing.

7 Visual representations of plan change

7.1 The Council has prepared a number of visual representations of what development might look like if the development opportunities provided by Plan Change 50 were implemented. These representations are intended to demonstrate any potential adverse effects that could result from the proposed changes to zonings and development controls and do not represent the exact development which the Council intends or anticipates. These representations take two forms; first simple beige boxes that show possible bulk and location only. Second, the type of development that is anticipated with the urban design factors built into the plan change, which will deliver a much more considered and appealing end result.

7.2 Some of the visual representations include a red line showing the height of development contemplated by the existing development controls. To be clear, and for the benefit of submitters, the Council is not claiming that development up to the red line enjoys any permitted baseline status. The permitted baseline doctrine is only relevant to resource consent applications. Plan formulation does not and should not fixate on what is permitted as of right. Planning anticipates that activities that need resource consent may occur. When assessing the effects that a plan change might have on the environment, it is correct to consider the sort and scale of development that could feasibly result from the existing plan provisions, not just that which is permitted as of right. The red line in the visual representations shows only the maximum height that the existing plan rules would tend to facilitate, so that it can be fairly compared with the maximum height that the proposed rules would likely enable.

8 Urban design controls

8.1 One of the ways the plan change seeks to secure good urban design outcomes is by classifying all buildings as controlled activities, with control reserved over specified relevant matters.[24] A very similar regime applies to convention centres.[25] Submission 50/15 by the New Zealand Institute of Architects, Southern Branch, requests that the listed matters be replaced with "a positive review by the QLDC Urban Design Panel".

8.2 The Council has some concerns with this proposal. The first is whether it constitutes an unlawful delegation of the Council's functions. Taking precedent from the Court of Appeal's decision in *Turner v Allison*,[26] it is long-established law that when formulating resource consent conditions, the Council can only delegate its certification functions, not any judicial or arbitral functions. While the applicability of *Turner v Allison* to plan provisions, rather than consent conditions, is not the subject of any case of which I am aware, the principle seems to be equally applicable. A positive review from the urban design panel might be veering from the realm of certification to the realm of judicial function.

8.3 The Council's second concern relates to certainty and efficiency of administration. It is well established that permitted activities have to be clearly defined so that parties can readily

[24] Rule 10.6.3.2(vi).
[25] Rule 10.6.3.2(vii).
[26] [1971] NZLR 833 (CA), 856-7 per Richmond J.

determine whether or not the activity they propose requires approval.[27] While this is, again, not quite the same situation, as all buildings comprise a controlled activity in the plan change area, the guiding principle of certainty is demonstrated by this requirement. The Council is concerned that if it were to replace the urban design criteria in its plan with reference to an urban design panel, applicants could not know what was required or expected of developments without first consulting with the panel. This would make the plan's requirements and intentions somewhat inaccessible and unclear.

8.4 The Council considers it would not be appropriate to require that developments receive a positive review by an urban design panel in a district plan provision. However, the Council may well utilise an urban design panel during the processing of a resource consent application. Such a process is not precluded by the proposed provisions of the plan change. The Council envisages utilisation of an urban design panel being a matter of process, rather than a legal requirement.

9 Witnesses

9.1 The Council calls the following witnesses:

(a) Paul Speedy, Manager, Strategic Projects and Support at Queenstown Lakes District Council. Mr Speedy will explain the background to the plan change and describe the plan change. He will provide an overview of the Reserves Act process that the Council will also need to use to develop the Lakeview site, explain the situation with cabins currently on the Lakeview site, the consultation undertaken to date, the Council's main housing affordability initiatives and the reasons why the Council proposes to allow for licensed premises to apply for resource consents in the Lakeview area.

(b) Clinton Bird, Director of Clinton Bird Urban Design Limited. Mr Bird will explain the urban design analysis that has gone into the plan change provisions. He supports the objective to extend the Queenstown Town Centre westward onto this land and confirms that the enabled maximum building heights are both respectful of and responsive to the Queenstown landscape. He sets out his view that the urban design framework for the Lakeview sub zone identifies the key urban design ingredients necessary to achieve a high quality and integrated extension of the existing Queenstown Town Centre while at the same time enabling a high degree of development flexibility. Mr Bird also discusses some amendments that he recommends to the Isle Street sub-zone, having considered the wide ranging (and often directly opposed) views expressed by submitters.

(c) Phil McDermott, Independent Planning Consultant. Dr McDermott concludes that the functions of Queenstown Town Centre (primarily for visitors) and of Frankton (primarily for residents) are different and therefore not in competition with one another. Dr McDermott concludes that the nature of activities likely to locate in the area proposed for rezoning will not have any adverse consequences for the existing town centre but that it will increase the depth and diversity of the tourist offering in the town to add substantially to activity levels within the existing centre.

(d) Marion Read, Landscape Architect. Dr Read describes the site and identifies the important aspects of the character and visual amenity of the landscape in which the plan change is located. She concludes that the broader landscape will remain dominated by the natural lake and surrounding mountain features.

[27] *Ruddlesden v Kapiti Borough Council* (1986) 11 NZTPA 301 (HC).

(e) Hayden Cawte, Archaeologist. Dr Cawte considers the impact of the plan change on its heritage and archaeological features . Dr Cawte recommends that the status of Glenarm Cottage be considered as part of the District Plan review and that the heritage values of the cribs along Thompson Street be recorded. In respect of submissions, Dr Cawte recommends that each development proposal adjacent to the cemetery be considered for its effects upon that heritage resource. Overall he concludes that the plan change preserves historic heritage from inappropriate use and development.

(f) Denis Mander, the Transport Policy and Stakeholder Manager at Queenstown Lakes District Council. Mr Mander confirms the development of a town centre strategy for transport and the Council's strategic direction to encourage significantly greater use of cycling, walking and public transport.

(g) Glenn Davis, Principal Environmental Scientist at Davis Consulting Group. Mr Davis recounts his preliminary site investigation in relation to site contamination. He records that it is highly unlikely there are contaminants in the sites' soils that present a risk to human health from development and the subsequent intended land uses.

(h) Nigel Lloyd, Civil and Environmental Engineer. Mr Lloyd explains his conclusions, that there are no geotechnical constrains or reasons why development of the sort facilitated by the plan change could not proceed, subject to appropriate investigations and design at the time of development.

(i) Andrea Jarvis, Civil Project Engineer. Ms Jarvis considers the infrastructure demands that will be generated by redevelopment in accordance with the provisions of the proposed plan change. Her conclusion is that most infrastructure is adequate to service the plan change area, although there will need to be some upgrades to stormwater infrastructure in particular to facilitate development.

(j) Fraser Colegrave, Economist. Mr Colegrave addresses economic questions specifically raised by the required evaluation in terms of s 32 of the RMA. Mr Colegrave estimates the direct and indirect effects of construction and development of the plan change area on regional GDP, incomes and employment as well as examining effects, concluding that the plan change is likely to deliver positive economic impacts.

(k) John Kyle, Planner. Mr Kyle will address the principal planning issues that are raised by the plan change, including those raised in submissions. He concludes that the objective of the plan change is consistent with meeting the purpose of the Resource Management Act, having considered the relevant matters contained in s32. Having made various recommendations based on submissions lodged, the provisions that he attaches to his evidence are those that best achieve that objective.

(l) Don McKenzie, Traffic Engineer. Mr McKenzie investigates and assesses the traffic implications of the proposed plan change, concluding that the plan change will enable all the parking and traffic demands to be accommodated and integrated within the surrounding transport network of Central Queenstown without compromising its functions, capacity or safety.

(m) Stephen Chiles, Acoustics Engineer. Dr Chiles considers the appropriate noise limits for the plan change areas, and re-examines his earlier conclusions in light of submissions and further submissions made. He gives his opinion that the provisions recommended will enable the activities envisaged, at the same time providing

appropriate protection for noise sensitive activities both within and around the plan change area.

10 Conclusion

10.1 The Council seeks that the Commissioners approve the plan change and that the detailed provisions attached to the evidence of Mr Kyle be those that are adopted.