

**BEFORE THE QUEENSTOWN LAKES DISTRICT COUNCIL**

**IN THE MATTER** of the Resource  
Management Act 1991

**AND**

**IN THE MATTER** of Plan Change 50

**AND**

**IN THE MATTER** of submissions by Adam  
& Kirsten **ZAKI** and Carl  
& Lorraine **HOLT**

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**SUBMISSIONS OF COUNSEL FOR THE HOLTS AND ZAKIS**

**Dated: 16 January 2015**

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**MAY IT PLEASE THE COMMISSIONERS:**

1. Carl and Lorraine Holt and Adam and Kirsten Zaki (the "Submitters") applied to file late submissions on Plan Change 50. On 22 December 2014 their applications were granted. The Submitters have filed separate, but effectively identical, submissions and are presenting a joint case.
2. The Submitters own adjoining apartments at 40A and 40B Man Street. The Submitters are both based off-shore and come to Queenstown from time to time. Their apartments are new and high end. They command spectacular views over Lake Wakatipu from their position above the Crowne Plaza Hotel. Attached is a plan showing the Beach Street Block.
3. The Submitters do not oppose or seek to be heard upon the Plan Change as a whole. Their interest is in the Beach Street Block and parts of the Plan Change that affect it. Specifically, they wish to ensure any adverse effects upon their properties as a consequence of the further enabling of development in the Beach Street Block are regulated appropriately. Because the apartments are new and high-end it is unlikely that they will be replaced by any other use in the short to medium term.
4. The Submitters live next door to Peg Walker (36 Man Street), who has also submitted on the Plan Change (Submission 50/19). The concerns of Mrs Walker and the Submitters are for all intents and purposes identical.
5. Given the timing of this appearance I have had the benefit of seeing the parties' evidence, the caucusing notes and Council's supplementary evidence. Council's supplementary evidence allows me to focus upon the latest version of the Plan proposed by it.
6. You have also had the benefit of extensive legal submissions on the Plan Change process from both the applicant Council's counsel and counsel for various submitters. I do not propose to repeat or add to those submissions on general matters of law relating to the Plan Change process. The focus, given the limited time I have available will be upon the merits of the Submitters' position and concerns.
7. Accompanying these submissions is an affidavit of Bruce McLeod, a locally based surveying consultant. His affidavit attaches plans that demonstrate the

effects of 7m buildings on the Crowne Plaza Land to assist you to understand the effects the Submitters are concerned about.

8. The relief sought by the Submitters opposes the extension of the Queenstown Town Centre Zone. Their alternative relief asks that only Lot 1 DP 15037 be re-zoned Queenstown Town Centre Zone. This remains their position, but it is appropriate for me to acknowledge that the Submitters' concerns are effects-based. In other words, their concerns are not grounded in securing strategic development rights or Council's planning functions under section 31. Should an appropriate rule framework deal with the effects upon them, their concerns are likely to be addressed.
9. The Submitters have four major concerns:
  - a. Height;
  - b. Side yard setbacks;
  - c. Building Coverage;
  - d. Noise.

#### **The Crowne Plaza Interests**

10. As noted in the Assessment of Environmental Effects and other supporting documents, much to the Beach Street Block is occupied by the Crowne Plaza Hotel. All that land to the south-east of residential properties on Man Street (the "Crowne Plaza Land") is owned by interests associated with the Crowne Plaza Hotel<sup>1</sup> (IHG Queenstown Limited and Carter Queenstown Limited, see Submission 50/32).
11. The proposed rezoning of the Crowne Plaza Land to Queenstown Town Centre Zone seems to be a continuation of the efforts of its owners in around 2009 in Plan Change 10 – High Density Residential Zone. The Crowne Plaza Interests submitted on that plan change and sought to extend the Queenstown Town Centre Zone to incorporate their land. The argument was basically that the Crowne Plaza is a long established activity that is the western-most gateway to the town centre and its zoning should reflect that. Ultimately the submission did not succeed, but numerous site specific exceptions to the High Density Residential Rules were incorporated into the Plan by way of a consent

<sup>1</sup> Lot 1 DP 15037 and Sections 10, 11, 17 and 18 Block VIII Town of Queenstown, held in five separate CFRs.

order from the Environment Court.<sup>2</sup> Those amendments included Diagram 8 at Appendix 4 to the Plan. Otherwise a 7m height limit applies to the balance of the Crowne Plaza Land.

12. Council has been clear from the outset that it has no intention of changing the height limit of 7m for the Block (as a controlled activity for a site with a slope greater than 6 degrees under zone standard 7.5.5.3.v). There was a concern from the Submitters and Mrs Walker that the rules did not match the intent and the general 12m height limit for buildings in the Queenstown Town Centre Zone would apply. The position the Council evidence is now recommending improves the rule / standard and removes any potential uncertainty, so it is no longer a concern.
13. The Crowne Plaza Interests' position is not clear. Mr Edmonds has indicated his support for Council's current preferred approach, but I understand he has indicated his client may or may not choose to accept that position too.
14. The over-arching submission of the Submitters is there should be a resource consent process that they may participate in if any of the site or zone standards in the Plan are not complied with. The owners should be able to be involved in a contestable process that allows them to be heard on the effects upon them. The Crowne Plaza Interests have the ability to demonstrate their neighbours do not need to be involved through the notification processes in the Act (sections 95A to 95D). Council's recommendations in its evidence satisfy this submission.

#### **Partial Re-Zoning of the Beach Street Block**

15. You are required to have regard to the actual or potential effects of an activity when making a rule (s76(3)). It is submitted that Council as Applicant has failed to provide you with evidence as to the effects of the new rule framework on the Man Street residences. I am not alleging that there is a s32 failure per se, rather an evidential one, in that Council has not paid enough attention to those properties.
16. The s32 Report at page 11 confirms the rationale for re-zoning the Beach Street Block is based principally upon the location of the existing hotel. The enabling of commercial activities along the Beach Street frontage is highlighted. The AEE acknowledges at page 23 there will be some modest

<sup>2</sup> See the Submitters' Submissions at paragraph 6 for a list of exceptions applying to the Crowne Plaza land.

economic benefit from a change in use of the Man Street properties (from residential) over time. This analysis does not address the Submitters' properties and the fact they are unlikely to have their uses changed in the short to medium term because of the value of the properties.

17. There is also a lack of any meaningful analysis of the effects of the re-zoning of the Beach Street Block. It seems to be something of an afterthought, which is perhaps a reflection of the fact it was included in the Plan Change post-consultation. This is of concern because of the relationship between the Crowne Plaza site and the residential uses on Man Street. That relationship is presently recognised by the High Density Residential Zoning, with exceptions that are enabling of development on the Crowne Plaza land. The concern is that the analysis supporting the re-zoning has not properly considered this relationship.
18. The existing uses and possible effects of the rule may not have been adequately assessed and addressed by Council because of its focus on the Beach Street frontage<sup>3</sup>. While it has made exceptions for the noise rules and height, this is only tacit recognition of the mixed use in the Block. There has been a failure to consider the Man Street properties relationship with, particularly, the upper Crowne Plaza properties and what effect further enabling of development will have upon those properties. I am not submitting that s76 requires a site by site analysis, but here was have a proposed set of rules that have not been assessed against their potential effects upon what is proportionally a large part of the Beach Street Block. It would be unsound to place reliance upon the economic analysis prepared for the wider Plan Change for the Beach Street Block, although Council does not appear to be doing so.
19. So, it is submitted we are left in a position that the effects of the rules that accompany the re-zoning have not been adequately assessed. This makes your task of coming to a decision on whether the rules proposed for the Block are the most appropriate to achieve the objectives, and ultimately the purpose of the Act, difficult because you cannot be sure if rezoning (particularly) the rear of the Crowne Plaza site and the Man Street residences is the appropriate planning solution for the Beach Street Block.
20. It is submitted, that without that analysis, the justification for re-zoning the *entire* Beach Street Block is tenuous, when:

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<sup>3</sup> See for example the evaluation at p26 s32 Report.

- a. Its contribution to the wider resource management issue of the shortage of commercially zoned land in the town centre the Plan Change is addressing is modest.<sup>4</sup> The Crowne Plaza Land is already doing that job and the Man Street residences are considered to only make a modest contribution to the issue over time<sup>5</sup>. Even this is questionable because of the age and quality of the Submitters' apartments, making it extremely unlikely they would be refitted for commercial use or replaced with a commercial building or use; and
  - b. The justification in the Plan Change for re-zoning the Block is principally based on the existing hotel, which is almost entirely located on Lot 1 DP 15037. So if the intention is that the Crowne Plaza Hotel is a logical extension of the Town Centre Zone and it is this entranceway that needs to be recognised by rezoning, then it is only that site<sup>6</sup> that needs to be re-zoned.
21. The reality is that the contribution the Man Street properties and the upper Crowne Plaza land will make to the issues that the Plan Change is trying to address is very limited. So the reason for re-zoning the entire Block must at least partly be the dominance of the Crowne Plaza Interests' ownership. Without the necessary analysis of the relationship between the Man Street residences and the new zoning, that new zoning cannot be justified.
22. It is submitted that if what the Plan Change wants to achieve is "*consistency along Beach Street*", then it makes sense to rezone Lot 1 DP 15037 Queenstown Town Centre Zone, retaining the proposed noise and height exceptions. The balance of the Block should remain High Density Residential Zone. As I have already said, that zoning is enabling in itself, following the PC10 amendments to the Plan, so it is submitted that re-zoning is not required to use the land more efficiently and the Plan already enables the efficient development of the rear Crowne Plaza sites.

### **Alternative Relief**

23. In the event the principal relief sought by the Submitters is not granted and the entire Beach Street Block is re-zoned, I move now to the rules Council has recommended in its supplementary evidence.

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<sup>4</sup> See s32 of Report.

<sup>5</sup> See AEE at p23 summarising economic analysis.

<sup>6</sup> Lot 1 DP 15037.

### Side Yard Set Back

24. It is anticipated that any built form on the Crowne Plaza land will be orientated towards the Lake (to the south east) and without appropriate controls there would be little, if any, treatment on the north western wall of a new building. The Submitters and other residents of Man Street are therefore faced with the proposition that (putting to one side the height limit for now) their view would be of a concrete tilt wall.
25. Council is proposing a two metre side yard from the Submitters' boundary, see rule 10.6.5.1.iv.h. The Council's proposed side yard would enable some form of landscaping along that boundary, which is a matter that Council has retained control over for visitor accommodation<sup>7</sup>. The same control is not retained for other buildings under rule 10.6.3.2.i. Reservation of Council's control over landscape would assist here, but without a full s32 analysis it is difficult for you to do this, as it would apply to the entire Zone.
26. The section 32AA report correctly acknowledges a benefit of this proposed rule is a higher level of amenity for the residential users on Man Street. The costs are likewise acceptable and the rule the most appropriate way of achieving the objective and policy aims around amenity in the Zone.

### Height<sup>8</sup>

27. The Submitters agree that retention of the status quo of 7m height limit is appropriate and the simplification of the rule desirable (c.f. current zone standard at rule 7.5.5.3.vi and vii). They do not agree with the regulatory control being changed to a site standard.
28. Mr Kyle takes the view that a discretionary activity status is appropriate. He does not explain this further, but presumably this is because the discretionary activity status is consistent with the approach to height through the majority of the Town Centre Zone (i.e. as a site standard) and ensures that exceedances of that height limit can be assessed and, if necessary, notified (c.f. restricted discretionary activities and rule 10.6.4.i).

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<sup>7</sup> Rule 10.6.3.2.vi.e.

<sup>8</sup> It is noted that Mrs Walker, by her representative, withdrew her agreement to the amendment of height rule to a site standard, preferring retention of a zone standard, see email 10 December from Colin Walker c.f. Mr Kyle's Supplementary Evidence at 41.

29. Site standards are described at section 1.4 of the Plan (pages 1-2) as standards that are important, but not fundamental to the integrity of an area as a whole.
30. A zone standard on the other hand is considered to be fundamental to the environmental standards or character for a zone or area. This importance is acknowledged by the "*rigorous assessment*" that accompanies a non-complying activity resource consent application.
31. It is submitted the relationship between the height of buildings adjacent to the Man Street properties and the Man Street residential properties is a fundamental matter in relation to the environmental standards the Plan protects through, amongst other things, its objective and policy framework. For instance objective 10.1.3.1 and policy 1.3 (providing for a range of activities in the town centres, including residential) and objective 10.2.4.1 and policy 1.4 (minimising adverse effects).
32. It is noted that the issues identified in the Queenstown Town Centre Zone include views of and relationship with the Lake. It is submitted that relationship is fundamental to the character of the Beach Street Block. Certainly my instructions are that for the Submitters that view of the Lake is absolutely key to them and they have no hesitation describing it as fundamental to the use of their apartments. They tell me their living areas are orientated to the Lake and they are often on the deck to eat, relax and play with the kids.
33. The wider policy approach to encourage the efficient use of land in the Town Centre through high building coverage and height is not compromised by adopting a zone standard (rule) recognising this fundamental relationship. It is submitted that such a rule still implements the policies of the Zone (s76(1)(c)) because commercial uses are still enabled on the Beach Street Block.
34. Accordingly, if Sections 10, 11, 17 and 18 are not retained as High Density Residential, then it is submitted the proposed site standard should be returned to the zone standards at 10.6.5.2.i.a.

## Noise

35. The Submitters support the position of the Council in its supplementary evidence preserving the noise rules as found in the High Density Residential Zone. We know that the current noise controls work. There is no justification



for changing the status quo and Mr Kyle's conclusion in his supplementary evidence at paragraph 43 is supported.

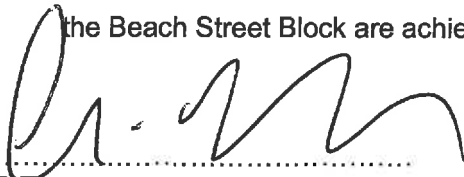
### **Building Coverage**

36. One of the more significant changes as a consequence of re-zoning is the increase of maximum building coverage to 80% of the site as a controlled activity (rules 10.6.3.2.i and 10.6.5.1.i.c), without notification (rule 10.6.4.i). It is submitted this is significant, but the s32 Report and AEE do not appear to analyse the change in the building coverage for the Beach Street Block.
37. The current zoning requires a non-complying activity resource consent for exceeding 70% of site coverage or a discretionary resource consent for between 65% and 70% of site coverage.
38. The Plan Change more or less retains the High Density Residential rules as to height and noise, presumably as an acknowledgment of the mixed uses in the Block. However it is submitted the policies that acknowledge protection of residential amenity (already highlighted) justify similar treatment for building coverage. More tightly regulated building coverage upon the upper parts of the Block is as desirable as controls upon height and noise, because it recognises the potential adverse effects high building coverage can have over the Man Street properties through increasing the built form upon their southern boundary, i.e. toward the Lake<sup>9</sup>.
39. Carrying through the building coverage provisions from the High Density Residential Zone and preserving the status quo mitigates adverse effects, as recognised at policies 10.1.3.1.3 and 10.2.4.1.4, while still enabling the development contemplated by policy 10.1.3.1.5. That policy recognises the "*essential amenity*" of the Queenstown Town Centre sits alongside the dense development of the Zone. In other words the Plan's theme that amenity is an essential part of the Queenstown Lakes' District social, cultural and economic fabric is carried through to this zone too.
40. While it is accepted building coverage would be less than otherwise contemplated for Queenstown Town Centre Zone it is once again submitted that an increased building coverage affects the relationship of the Man Street properties with the Lake by introducing a more prominent built form, and therefore detracting from it. Those effects can be readily mitigated in a small

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<sup>9</sup> See submissions above as to importance of the relationship with the Lake.

part of the Zone while still ensuring the "gateway" goals of the Plan Change for the Beach Street Block are achieved.

A handwritten signature in black ink, appearing to read 'C. P. Thomsen', written over a horizontal dotted line.

C P Thomsen  
Counsel for the Submitters

16 January 2015

