

**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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**SUPPLEMENTARY LEGAL SUBMISSIONS FOR JOHN THOMPSON,  
SUBMITTER NUMBER 24**

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## Response to Supplementary Evidence of John Kyle

### *Glenarm Cottage*

- 1 Mr Kyle addresses Glenarm Cottage in paragraphs 21 – 23 of his supplementary evidence.
- 2 Mr Thompson's submission supported the plan change provisions which Mr Kyle now recommends be amended (namely rule 10.6.3.2.i and a new assessment matter) requiring that building design take into account the heritage values of Glenarm Cottage.
- 3 Mr Kyle notes that his recommendation is subject to there being jurisdiction to make changes of this nature. It is not apparent on my review of the submissions, or the summary of submissions, that any submitter sought changes of the nature recommend by Mr Kyle. There is no scope in my view.
- 4 Furthermore, if such a provision were to be considered, it should be carefully drafted to address an actual problem or issue. If it is drafted too widely, it requires unnecessary effort and cost to be incurred by applicants.
- 5 Mr Kyle's proposed addition to the rule itself is unnecessary. Rule 10.6.3.2.i already specifies that council has control over building design. The suggested addition of the words "including adverse effects on the heritage values of Glenarm Cottage" unnecessarily duplicates and complicates the rule.
- 6 Mr Thompson's 5 Man Street property is adjacent to the site of Glenarm cottage, but the cottage itself is a considerable distance away from the boundary shared with Mr Thompson's property (approximately 20 m – see aerial photograph **attached** as appendix 1). At that distance an applicant should not be required to go through any assessment on the effects of design on a neighbouring building. The proposed assessment matter (page 10-66) is worded too broadly, and is unnecessary. If there is scope at all to make any changes specifically addressing Glenarm Cottage, which we submit there is not, good planning requires a much more tightly drafted assessment matter, with a proximity prerequisite (set based on expert advice), so it is limited to the actual adverse effect that may need to be addressed. That would be an efficient and effective way to ensure the actual potential issue is addressed.

***Extension of TCZ provisions to block bounded by Man, Brecon, Isle and Camp Street***

- 7 At paragraph 36 Mr Kyle addresses the option of zoning the eastern Isle Street block "Town Centre", noting that this was discussed in conferencing. He notes there are scope issues with this option. I submit there is no impediment in terms of scope for pursuing this option.

*Summary of scope analysis*

- 8 In summary, there is clear cut scope for the Town Centre provisions to simply be extended over the block bounded by Isle, Brecon, Man and Camp Street, in combination with the height related provisions notified for the "Isle Street sub-zone" (12m height, 2 m height bonus and 15.5m option for sites over 2000m<sup>2</sup>). Mr Thompson would support such an outcome.

- (a) The plan change was notified as an **extension of the Town Centre zone**
- (b) In relation to the Isle, Brecon, Man and Camp Street block Mr Thompson submitted in support of the plan change extending the Town Centre zone including the specific height provisions for the Isle Street sub zone. He sought amendments to specific Isle Street sub zone provisions that brought the Isle Street sub-zone provisions back in line with the Town Centre provisions.
- (c) The Isle Street sub-zone provisions on which he sought no changes are very minor.

- 9 In determining whether there is scope the key test is whether an informed and reasonable member of the public might have anticipated such an outcome when considering the plan change and the submissions lodged. Mr Thompson's submission gives scope for changes that would arise from simple extension of the Town Centre except for very minor ones (additional controls over Visitor Accommodation, setback from road, and no parking in front yards.) Given these are comparatively minor provisions, the manner in which the plan change was notified and that the general substance of Mr Thompson's submission is that the provisions for the Isle Street block should be largely the same as Town Centre, there is scope for the QLDC to make a decision simply extending the Town Centre over the Isle, Brecon, Man and Camp Streets block along with the height

provisions (2 m height bonus and discretionary option for 15.5m 2000m<sup>2</sup> sites) proposed for the Isle Street sub-zone originally.

*Scope analysis - detail*

- 10 The public notification notice stated:

*Queenstown Lakes District Council gives public notice as of 15<sup>th</sup> September 2014 that it has prepared the following Plan Change to the District Plan: Plan Change 50 - Queenstown Town Centre Zone Extension.*

*The purpose of the Plan Change is:*

*To provide **for an extension to the existing Queenstown Town Centre Zone** through the rezoning of:*

- The Council-owned Lakeview site;*
- Some privately owned land adjoining the Lakeview site and bounded by Thompson and Glasgow Streets;*
- 34 Brecon Street site;*
- Two additional blocks bounded by Camp Street, Isle Street, Man Street, and Hay Street (the '**Isle Street blocks**'); and*
- The Lake Street/Beach Street/ Hay Street/ Man Street block (the '**Beach Street block**').*

***It is proposed that both the Lakeview site and Isle Street blocks will be rezoned Queenstown Town Centre Zone and will form sub-zones to the Queenstown Town Centre Zone.***

- 11 The public notification makes it clear that the principle effect of the PC 50 is that land including the Isle Street block is being rezoned as an extension of the Town Centre Zone. The scope for simply extending the Town Centre provisions arises from the plan change as notified in combination with Mr Thompson's submission.
- 12 Mr Thompson's submission is in support of PC 50's proposed extension of the Town Centre provisions over the Isle Street block and in addition requests that the standard Town Centre zone provisions apply in the Isle Street sub zone in respect of:
- (a) 10.6.5.1.i.e re site coverage
  - (b) 10.6.5.1.xv re noise from sale of liquor
  - (c) 10.6.5.1.iv.g setback from site boundaries
  - (d) 10.6.5.1.xi.i recession planes
- 13 Mr Thompson sought deletion of 10.6.5.2.iv (retail to not exceed 400m<sup>2</sup>).

- 14 The leading cases on the question of scope arising out of a proposed plan change and submissions support the position that there is scope to simply extend the Town Centre zone in conjunction with the proposed Isle Street specific height provisions (12m height, 2m height bonus and option for 15.5m height for 2000m<sup>2</sup>):
- (a) The question to determine is whether a matter was "fairly and reasonably" raised in submissions. This assessment is to be "approached in a realistic and workable fashion rather than from the perspective of legal nicety". (*RFBPS v Southland DC* [1997] NZRMA 408 (HC) at page 413)
  - (b) If an informed and reasonable member of the public, having studied the submissions, should have appreciated the local authority might make the amendment, such an amendment is within scope. (*Noel Leeming Appliances Ltd v North Shore CC (No 2)* (1993) 2 NZRMA 243 (PT), at p 250 and *Foodstuffs (Otago Southland) Properties Ltd v Dunedin CC* (affirmed on appeal), applying *Nelson Pine Forest Ltd v Waimea CC* (1988) 13 NZTPA 69 (HC), at p 73).
  - (c) Even if relief is not specifically requested in a submission, as long as the submission had in substance raised the issue there is scope (*Johnston v Bay of Plenty RC* EnvC A106/03 at page 10).
- 15 To conclude, Mr Thompson, and other submitters, submitted in support of the material provisions of the Town Centre provisions (plus Isle Street specific height provisions) being imposed on the Isle Street blocks.
- 16 The provisions of the plan change that make a distinction between the Isle Street sub-zone and the standard Town Centre zone provisions, on which Mr Thompson did not seek amendments (with the exception of height), are:
- (a) Policy 1.5 To enable a mixed use environment within the Isle Street sub-zone to provide for commercial activities and high density residential activities.
  - (b) 10.6.3.2.iii (controlled activity - Visitor Accommodation) – Isle Street Sub Zone to have same additional controls as the Town Centre Transition sub zone
  - (c) 10.6.5.1.iv.e setback from road boundaries

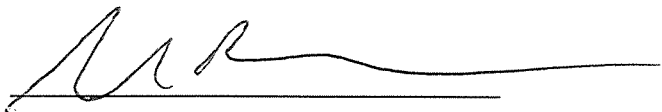
## (d) 10.6.5.1.iv.f no parking in front yards

- 17 If council simply extended the Town Centre provisions to the Isle Street area, without any of the Isle Street sub zone provisions, the above provisions would cease to exist. Given these are comparatively minor provisions, and that the general substance of Mr Thompson's submission is that the provisions for the Isle Street block should be largely the same as Town Centre in combination with the Isle Street specific height provisions (12m height, 2m bonus and option for 15.5m for sites 2000m<sup>2</sup>), there is scope for the QLDC to make a decision simply extending the Town Centre over the Isle Street blocks, and adding the Isle Street sub zone height provisions.
- 18 Putting aside scope, substantively Mr Kyle does not support the amendments to the Isle Street sub-zone provisions Mr Thompson seeks (whether they be imposed by extension of the Town Centre provisions or amendments to the sub-zone), on matters such as building coverage and setbacks, primarily on the basis that he considers they are "important to the preservation of existing and future amenity values and serve to confirm my view that the Isle Street sub-zone provisions are a better fit for the land in question than the TCZ provisions". (paras 36 – 40). On this point, Mr Kyle does not address or respond to the fact that the block's existing and future amenity values are not those of a principally residential block. The majority of the block is owned by 4 parties. I **attach** again the plan of the block showing ownership and current use as appendix 2. Its "amenity values" and likely future use is very different to the adjacent Isle Street sub-zone block and is well placed to incorporate the extension of the town centre. Mr Kyle has not addressed the fundamental difference in the present and likely future character of the two different Isle Street sub-zone blocks. I submit this is an important consideration, and it justifies simply extending the Town Centre provisions to Mr Thompson's block, along with the proposed Isle Street sub-zone height provisions.
- 19 Mr Kyle considers it undesirable to split the Isle Street block as it would "add complexity" (paragraph 38). With respect, the simple extension of the Town Centre zone to Mr Thompson's block would not add complexity – it would be a much simpler outcome. Mr Kyle criticises "spot zones", but Mr Thompson is not advocating for a spot zone, to the contrary his submission all along has been that the Isle Street sub-zone should not be materially different to the Town Centre zone provisions.

*Conclusion*

20 In conclusion, Mr Thompson continues to support the plan change. His block is the logical extension of the town centre. This could be very simply done by extending the town centre provisions to his block, and adding in the specific height provisions originally notified for the Isle Street sub-zone.

16 January 2015

A handwritten signature in black ink, appearing to read 'Maree', followed by a long horizontal line.

Maree Baker-Galloway/Warwick Goldsmith

Counsel for John Thompson





SHOWN CONTOURS ARE DERIVED  
FROM QLDC LIDAR DATA

MAJOR CONTOUR  
(5.0m INTERVAL)

MINOR CONTOUR  
(1.0m INTERVAL)

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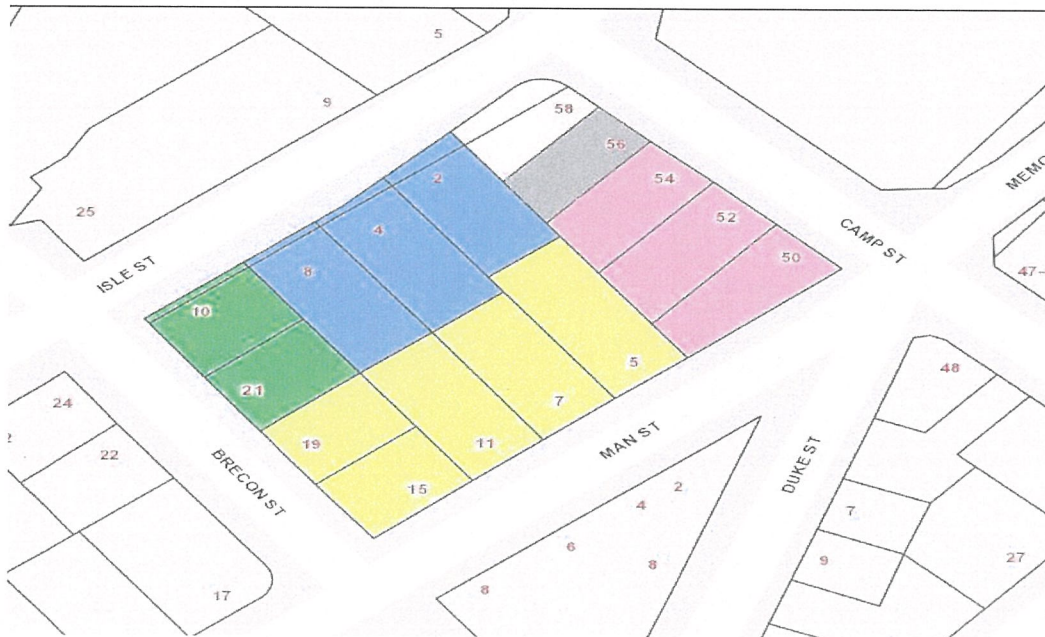
## CONTOUR PLAN

Client	J L Thompson	Surveyed	Signed	Date	Job No.	Drawing No.
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		Drawn	Signed	Date	Scale	Sheet 01
		RWB		20.11.14	1:500 @ A1	1:1000 @ A3
		Designed	Signed	Date	Datum & Level	Rev.
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## Appendix 2



**Yellow:** Thompson Properties – Residential / Vacant

**Pink:** Residential (Watertight – Submitter 33)

**Green:** Dairy Guesthouse – Visitor Accommodation, Hotel - Submitter 26)

**White:** Consented Office

**Blue:** Visitor Accommodation, Backpackers (Hockey – Submitter 36)

**Grey:** Residential (Private Dwelling)