

BEFORE THE ENVIRONMENT COURT

Decision No. [2016] NZEnvC 99

IN THE MATTER of the Resource Management Act 1991

AND of appeals pursuant to clause 14 of the First
Schedule of the Act

BETWEEN WELL SMART INVESTMENT
HOLDING (NZQN) LIMITED
(ENV-2015-CHC-070)

MAN STREET PROPERTIES LIMITED
(ENV-2015-CHC-072)

IHG QUEENSTOWN LIMITED &
CARTER QUEENSTOWN LIMITED
(ENV-2015-CHC-074)

BRECON STREET PARTNERSHIP
LIMITED
(ENV-2015-CHC-076)

REMARKABLES JET LIMITED
(ENV-2015-CHC-077)

Appellants

AND QUEENSTOWN LAKES DISTRICT
COUNCIL

Respondent

Court: Environment Judge J R Jackson
Environment Commissioner J R Mills
Environment Commissioner W R Howie

Hearing: at Queenstown on 4 and 5 April 2016
(Final memorandum received 18 May 2016)



Appearances: G M Todd for Well Smart Investment Holding (NZQN) Ltd and
Man Street Properties Ltd
L Semple for IHG Queenstown Ltd & Carter Queenstown Ltd
R Bartlett QC for Brecon Street Partnership Ltd
J Young for Remarkables Jet Ltd
J C Campbell and B A Watts for Queenstown Lakes District
Council
W J Goldsmith for C Hockey, J Thompson and Watertight
Investments Ltd
C Thomsen for C and L Holt and A and K Zaki

Date of Decision: 18 May 2016

Date of Issue: 18 May 2016

DECISION

- A: Subject to B, under section 290(2) of the Resource Management Act 1991 the Environment Court confirms the decision of the Hearing Commissioners in respect of Plan Change 50.
- B: Under section 293 of the Act the Environment Court confirms, subject to Order C, the changes made by the Queenstown Lakes District Council (with the consent of the parties) to the operative District Plan as shown in these appendices:
- A: Changes to Section 10;
 - B: Amendments to Transport Rules in Section 14;
 - C: Ancillary Amendments;
 - D: Amended Maps 35 and 36; and
 - E: Indicative cross-section and plan view of the block bounded by Man, Hay, Beach and Lake Streets.
- C: In addition to the changes to Section 10 of the District Plan as shown in Appendix "A" the following rule 10.6.5.1(xiii) is added:



If there is a proposal to realign Cemetery Road along the northern boundary of the sub-zone and connecting to Brecon Street then it is deemed that this shall not comprise an exceedance of this site standard, nor alter any specific provisions applying to 34 Brecon Street which shall continue to apply following any consequential boundary adjustment. In the event of any inconsistency resulting, this rule shall prevail over any planning map which depicts the present boundaries of 34 Brecon Street.

D: Leave is reserved for any party to apply within five working days to correct any error in Orders A to C.

E: Costs are reserved.

REASONS

0. Introduction

[1] These proceedings on Plan Change 50 (“PC50”) to the operative district plan of the Queenstown Lakes District Council are about extensions to the Queenstown Town Centre Zone (“the QTCZ”). The appeals were set down for hearing in the three weeks commencing Monday 4 April 2016.

[2] On Friday 1 April 2016 the Registrar was advised that agreement had been reached between the parties on the Remarkables Jet Limited appeal and that agreement was likely to be reached on the other appeals also.

[3] Prior to and during the 4-5 April 2016 hearing, the parties presented the court with three consent memoranda that set out specific agreed amendments to the text of PC50. The agreed amendments have since been amalgamated into a single document for the court’s consideration.

[4] Further, during the hearing the court suggested several refinements to the text of PC50. In particular, we suggested the parties might consider:

- (a) reviewing the description of the Lakeview sub-zone in Section 10.2.2.iii to ensure it appropriately addresses the substantial reserve areas within that sub-zone;



- (b) removing the word “new” from objective (10.2.4.)3 and reordering the predominant uses so that visitor accommodation and high density residential activities appear ahead of convention centres;
- (c) deleting the words “and including” and removing the term “predominant uses” from rule 10.6.3.2A;
- (d) reviewing the inclusions and exclusions in rules 10.6.3.2A.i(b) and (c);
- (e) using “when” rather than “where” in rule 10.6.3.4.viii in relation to the point at which commercial activities in the Lakeview sub-zone exceed 6,500m² gfa.

[5] In addition the parties have noted:

- (a) that the PC50 text referred to “commercial recreation activities” rather than using the term “commercial recreational activities” which is defined by the district plan;
- (b) that the text and maps needed to be updated to consistently refer to the east and west Isle Street sub-zones.

[6] Those matters are addressed in an amalgamated draft order now lodged by consent together with a final consent memorandum about 34 Brecon Street (the subject of ENV-2015-CHC-076). The amendments set out and explained below have been agreed upon by the parties. The text shown in some cases already incorporates the changes set out on the consent memoranda previously lodged, with only the newest amendments shown underlined or struck through.

[7] However, notwithstanding the likely agreement between the parties the court heard evidence to satisfy itself that the objectives and policies of the district plan were not likely to be undermined by development under PC50. In particular the court was concerned with the scale of possible development above Queenstown Bay. There are any number of undesirable developments in overseas mountain resorts caused by buildings being allowed to grow too high and large for the context (e.g. in France: Les Menuires, Flaine Belleville, Samoëns, Superdévoluy; in Italy, Tonale). Of course we also recognise that brutalist architecture has in many parts of the world allowed the less



well-off to enjoy winter sports. However, that is not appropriate in and around Queenstown Bay as the objectives of the district plan make clear (see part 2 below).

[8] Consequently, this decision does four things:

- (1) it records the court's understanding of PC50 and the place of PC50 in the Council's resource management scheme going forward (since hearings on a replacement district plan are already in progress);
- (2) it sets out the most relevant objectives and policies in the operative district plan and how PC50 fits into these;
- (3) it records briefly the agreements on each of the appeals and some other procedural matters; and
- (4) it records the evidence on which the court relies in making a decision about whether changing the urban ring around Queenstown Bay in the way proposed achieves the objectives and policies of the district plan.

1. Background

The land covered by PC50

[9] PC50 seeks to rezone approximately 14.5 hectares of land from High Density Residential Zone (HDRZ) to QTCZ. The areas of land within PC50 as notified are:

- (a) approximately 10.7 hectares ("the Lakeview site") and also includes 1.1 hectares of residential land called "the Lynch block" which is the former site of the Queenstown Lakeview Holiday Park;
- (b) 0.6 hectares adjoining the Lakeview site and bounded by Thompson and Glasgow Streets ("the Thompson/Glasgow Street site");
- (c) 0.4 hectares at 34 Brecon Street ("34 Brecon Street");
- (d) 1.9 hectares, being the two blocks bounded by Camp Street, Isle Street, Man Street and Hay Street ("the Isle Street blocks");
- (e) 0.9 hectares in the block bounded by Lake, Beach, Hay and Man Streets, ("the Beach Street block").

An extended Queenstown Centre?

[10] PC50 appears to have come about through a combination of factors:



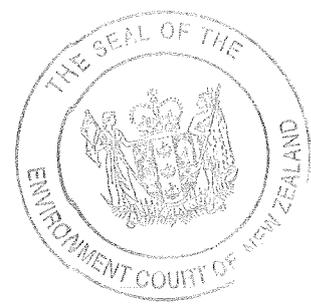
- the Council’s ownership of the Queenstown camping ground (“the Lakeview site”) underneath Bob’s Peak (holding the land partly as freehold and partly Recreation Reserve);
- the inefficient use of the Lakeview site for crib housing;
- the Council’s (2012-2015) wish to establish a convention centre in or close to central Queenstown; and
- the proximity of the Lakeview site to the QTCZ.

[11] In addition it has been recognised for some years in various reports that the QTCZ needs to expand. Most of those reports contemplated expansion to the northeast, on the flatter land towards Gorge Road. However, once the idea of a convention centre in Queenstown (as opposed to, say, Frankton) gained Council support, the Council commissioned reports culminating in a section 32 Report dated 26 August 2014 on PC50 which proposed that the Lakeview site be included in an extension of the QTCZ to the northwest.

[12] After notification of PC50, various parties made submissions seeking that their land be included in PC50. The Council’s section 32 Report had rather selectively identified some of this land but not the land of other submitters. So some submitters managed to have their land included after consultation (but before notification) and others missed notification or later inclusion — see the decision of the Environment Court in *Well Smart Investment Holding (NZQN) Ltd v Queenstown Lakes District Council*¹.

[13] Commissioners Ms Jane Taylor and Sir John Hansen wrote a comprehensive decision dated 16 June 2015 amending PC50, and dealing with some of the difficult issues such as whether the Lakeview sub-zone should be used primarily for affordable housing. We respectfully adopt and rely on much of that decision.

¹ *Well Smart Investment Holding (NZQN) Ltd & Ors v Queenstown Lakes District Council* [2015] NZEnvC 214. This decision has been appealed to the High Court.



The district plan review

[14] A new proposed district plan – stage 1 – was notified on 26 August 2015. Between April 2014 and August 2015, Council officers were involved in developing the framework for the proposed district plan and ultimately drafting the various chapters to be included in stage 1 of the review. Hearings have commenced.

The sub-zones established by PC50

[15] The sub-zones are shown on the amended planning maps 35 and 36 (see Appendix “D” to Order B).

Lakeview sub-zone

[16] The new sub-zone will provide for the expansion of the QTCZ over the 11.7 ha (approximately) Lakeview site, while including appropriate site and zone standards and land use controls to ensure the site is developed appropriately to maximise its potential and to complement the existing QTCZ.

[17] A proposed convention centre (the rules optimistically provide for the plural centres) is provided for as a restricted discretionary activity within this sub-zone. The policies and rules reserving the Council’s discretion to manage effects on the transportation network, landscaping and screening of outdoor storage, and parking, design and layout of buildings, noise effects and hours of operation, boundary setbacks and positive effects. An integrated commercial-mixed use development is planned for the Lakeview sub-zone. The sub-zone could accommodate visitor accommodation, high-density residential accommodation, and commercial activities, including some retail and hospitality and public recreation space. Large format retail activities are avoided within this sub-zone and some of the intricacies of the amendments now given to us are designed to ensure that outcome.

[18] Because the Lakeview sub-zone is largely undeveloped, a structure plan sets out the layout of the sub-zone. It seeks to ensure that the sub-zone integrates effectively and efficiently with the existing town centre. Maximum building height limits for buildings in the sub-zone are specified on a height limit plan. The structure plan has been developed by Fearon Hay, based on their master plan for the site. Mr Bird, who gave



evidence to the court, was engaged to carry out an “iterative peer review” of the structure plan and the associated district plan provisions for both the Lakeview sub-zone and the Isle Street sub-zones.

[19] The Commissioners’ decision on PC50 made several changes in response to submitter concerns. For the Lakeview sub-zone, new rules for the predominant uses were introduced, and the activity status for convention centres and visitor accommodation was changed from controlled activity to restricted discretionary activity. A new non-complying rule was included in the decision for all retail activities with a gross floor area greater than 400m² in the Lakeview and Isle Street sub-zones and, as we have said, some further changes have been made by consent.

[20] The underlying zoning of the western end (the Lynch block) of the Lakeview sub-zone was also changed from the notified QTCZ to the operative zone for this area, which is HDRZ, with activities restricted (generally) to visitor accommodation and high-density residential accommodation. The site coverage rule and maximum building height limits for this area are the same as those in the Lakeview sub-zone and the Lakeview sub-zone Height Limit Plan². For the Lynch block, the maximum building height has increased from 7-8m (depending on the gradient of the site) to 12m and the zoning remains as HDRZ. The PC50 provisions also require buildings be set back from Glasgow Street and apply a height plane angle restriction along the Glasgow Street boundary that matches the HDRZ rules. This was intended to manage the ‘edge effects’ with other HDRZ land bordering the PC50 area to the west, while still ensuring the block is appropriately developed to maximise its potential.

Isle Street sub-zones

[21] The plan change introduces the Isle Street sub-zones (West and East) within the QTCZ. These sub-zones extend the QTCZ by enabling complementary activities that will connect the commercial heart of Queenstown to the commercial, community and tourist activities along Brecon Street, and to connect with the Lakeview view sub-zone. These sub-zones will enable residential activities, visitor accommodation activities and commercial activities. As with the Lakeview sub-zone, there is no provision for large

² Figure 3 in the PC50 provisions.



format retail activities. The Isle Street sub-zones have been divided into separate blocks – East and West – with the West block enabling more increased built form and scale than the East block.

[22] Activities and the development of buildings in these sub-zones will be managed through the district plan to provide for a high quality mixed use-commercial environment where built development can take advantage of the sub-zones elevation. Specific bulk and location provisions have been developed to enable the intensification of built development in these sub-zones while providing an appropriate level of amenity for a mixed use environment.

[23] The Commissioners' decision on PC50 made several changes to the notified provisions, in response to submitters' concerns. The major change was the inclusion of the separate Isle Street sub-zone blocks, to better reflect the current activities within these blocks, whereby the East block is predominantly occupied by residential uses, while the West block is currently predominantly occupied with commercial and visitor accommodation uses.

Beach Street block

[24] The Beach Street block is located immediately adjacent to the QTCZ on two sides – Hay Street and Beach Street. The block accommodates a large visitor accommodation activity adjacent to Beach Street, and residential uses adjacent to Man Street. Extending the town centre zoning over this block will recognise longstanding hotel development and enable the development of further commercial activities that could enhance the Queenstown town centre.

[25] The notified provisions proposed for the Beach Street site were the existing QTCZ provisions without amendment, with the exception of noise limits and maximum building heights to ensure that the residential amenity of the dwellings adjacent to Man Street was retained. The Council's intention was to retain the current rules managing noise and maximum building height limits for this block.

[26] The Commissioners' decision on PC50 made changes to the provisions that relate to the Beach Street blocks. In the notified version of PC50, commercial activities



were permitted and visitor accommodation activities required a controlled activity resource consent. However, the Commissioners' decision on PC50 provides for visitor accommodation activities and commercial activities of an area greater than 400m² as restricted discretionary activities.

2. The relevant objectives and policies of the district plan

[27] Most of the general objectives and policies in section 4 of the district plan are too broad to be of much assistance here and in any event they are particularised in the later more focused provisions in Section 10 (Town Centres).

[28] However, before we turn to the latter we should mention Part 4.10 (Affordable and Community Housing). This contains a single objective³ to provide access to community housing or to a range of residential activity that contributes to housing affordability in the district. Its implementing policies are⁴:

- (4.10) 1.1 To provide opportunities for low and moderate income Households to live in the District in a range of accommodation appropriate for their needs.
- (4.10) 1.2 To have regard to the extent to which density, height, or building coverage contributes to Residential Activity affordability.
- (4.10) 1.3 To enable the delivery of Community Housing through voluntary Retention Mechanisms.

This is an important issue for Queenstown: we rely on the Commissioners' decision as to why PC50 does not focus on implementing these policies.

[29] Chapter 10 (Town Centres) consists of three relevant sets of objectives and implementing policies. Objective 3 is to maintain and enhance⁵ "... a built form and style within each town centre that respects and enhances the existing character, quality and amenity values of each town centre and the needs of present and future activities". Its implementing policies are⁶:

³ Queenstown Lakes district plan (September 2013) p. 4-59.

⁴ Queenstown Lakes district plan (September 2013) p. 4-59.

⁵ Queenstown Lakes district plan p. 10-7.

⁶ Queenstown Lakes district plan p. 10-7.



- (10.1.3) 3.1 To ensure a built form for each town centre which relates to and is sympathetic to the physical characteristics of the site and neighbourhood including climate, neighbours and topographical features.
- (10.1.3) 3.2 To provide for a building appearance which is responsive to and reflects the essential character and heritage of each town centre and the surrounding topography.
- (10.1.3) 3.3 To create a series of core areas within each town centre, and appropriate interconnections between them.
- (10.1.3) 3.4 To structure the town centres around the existing public spaces (including streets and lakes) and to relate its built form to the surrounding landscape and the built form of adjacent zones.
- (10.1.3) 3.5 To promote a built form which exhibits a sense of arrival and departure and to contain the town centres within clearly established boundaries.

[30] Objective (10)4 (Town Centre and Building Appearance) hopes for⁷ “Visually exciting and aesthetically pleasing town centres which reflect their physical and historical setting”. The implementing policies relevant to these proceedings are⁸:

- (10.1.3) 4.1 To promote an image for each town centre which reflects and respects the existing dominant building themes.
- (10.1.3) 4.2 To identify and implement controls which define appearance standards applicable to each town centre and which promote and, where appropriate, ensure harmony and compatibility of building design.
- ...
- (10.1.3) 4.7 To provide for the retention of the generally people scale of developments within the town centres.
- (10.1.3) 4.8 To identify opportunities for and promote the integration of public spaces, reserves and streets with developments to add visual interest and diversity to the appearance of the town centres.
- ...

[31] Objective (10)5 (Pedestrian and Amenity Linkages) is to provide⁹ “[a]n attractive, convenient and comprehensive network of pedestrian linkages within town centres”.

⁷ Queenstown Lakes district plan (June 2007) p. 10-8.

⁸ Queenstown Lakes district plan (June 2007) p. 10-9.

⁹ Queenstown Lakes district plan (June 2007) p. 10-10.



[32] After those objectives and policies the specific provisions for the Queenstown Town Centre (Section 10.2.4) are rather bland and not particularly helpful. PC50 proposes to introduce a QTCZ objective as objective 3 (so that existing objectives 3 and 4 are renumbered). It is:

Objective (10.2.4) 3 – A high quality, attractive environment within the Lakeview sub-zone where visitor accommodation, higher density residential, tourist, convention and community activities will be the predominant uses. Ancillary retail and ancillary commercial activities that are established in association with predominant uses are also provided for particularly where they meet demand arising from the intensification of use within the sub-zone.

3. The resolution of the appeals

Remarkables Jet Limited

[33] Most of the generic changes have been made in the resolution of this appeal. The changes are as described by the parties in their memorandum of 6 May 2016. We summarise them briefly with recent additions underlined and deletions struck-through.

Commercial recreation activities

[34] The district plan defines the term “commercial recreational activities”. PC50 used the term “commercial recreation activities”. This has been corrected to use the defined district plan term wherever it occurs¹⁰.

East and West Isle Street sub-zones

[35] References to the Isle Street sub-zone have been updated to refer to both the West and East Isle Street sub-zones in maps 35 and 36, the legend to the maps and in the relevant zone standard¹¹ and assessment matters¹².

Description of the Lakeview sub-zone (in Section 10.2.2.iii)

[36] The description of the “Lakeview Sub zone” in Section 10.2.2.iii has been amended to better address the reserve land within the zone and to better emphasise the place of higher density residential activities. The description now reads:

¹⁰ Queenstown Lakes district plan: section 10.2.2.ii, policies (10.2.4.)3.1, 3.4 and 3.6 and rules 10.6.3.2A.i(b) and (c).

¹¹ Zone standard 10.6.5.2.i(a).

¹² Assessment matters 10.10.2.i(c) and 10.10.2.xii.



(iii) Lakeview Sub-zone

The Lakeview sub-zone provides an extension to the Queenstown town centre. Geographically this sub zone forms the north-western boundary of the Queenstown town centre zone and is situated at a higher gradient affording extensive views across Queenstown Bay and beyond. The town centre boundary is formed by the Ben Lomond recreational reserve. The western extent of this sub-zone area is within the High Density Residential Zone. This allows for activities associated with that zone to establish more intensively according to the height, bulk and location controls that apply to the Lakeview sub-zone.

A structure plan for the Lakeview sub-zone establishes a broad development layout for this part of the town centre. Through the structure plan, public reserve areas and the square set the scene for a high quality urban environment ensuring that the area is a desirable place to live, work and meet.

The development of activities and buildings in this sub-zone will be managed through the District Plan to accommodate its predominant uses: that include higher density residential, visitor accommodation, a convention centre, commercial recreational and commercial, tourism activities, and higher density residential activities. Ancillary Retail and Ancillary Commercial activities that are established in association with these predominant uses are also provided for. High quality urban form and public spaces will be achieved via urban design, and bulk and location provisions, and those parts of the Structure Plan that provide reserve areas will be administered under the Reserves Act 1977.

Objective (10.2.4)3 for the Lakeview sub-zone

[37] Proposed objective (10.2.4)3 is amended to delete the descriptor “new” from the description of “predominant” uses in the Lakeview sub-zone. The list of “predominant” uses is reordered to give greater emphasis to visitor accommodation and higher density residential activities vis a vis convention centres. The new objective (with changes shown) is:

Objective 3 – A high quality, attractive environment within the Lakeview sub-zone where visitor accommodation, higher density residential, new-tourist, convention and community activities, visitor accommodation and high density residential activities will be the predominant uses. Ancillary retail and ancillary commercial activities that are established in association with predominant uses are also provided for particularly where they meet demand arising from the intensification of use within the sub-zone.



[38] The court questioned the term “predominant uses” in relation to this sub-zone (or anywhere) since it is rather a throwback to the Town and Country Planning Act 1977. The parties wish it to be used in the description of the Lakeview sub-zone and various objectives and policies to emphasise the desired land uses and we respect that. However, the term is no longer used within the rules. In particular rules 10.6.3.2A.i(a)-(c) have been amended.

[39] The primary reason for the change is that the predominant uses (as listed in rules 10.6.3.2A.i(a)-(c)) did not include all of the predominant uses described in the description of the Lakeview sub-zone and related objectives and policies, for example high density residential activities.

[40] Because it was never intended that rule 10.6.3.2A.i would apply to high density residential activities, which are permitted activities under PC50, it has been necessary to delete the inaccurate introductory words “and including”, as suggested by the court. Rule 10.6.3.2A.i now reads:

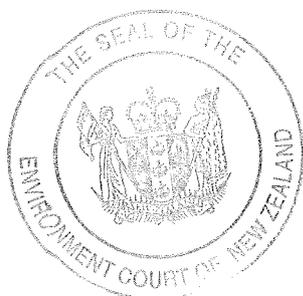
10.6.3.2A Restricted Discretionary Activities

i ~~Predominant Uses (as defined)~~ Within the Lakeview sub-zone and including:

[41] Removal of the term “predominant uses” from rule 10.6.3.2A.i necessitated some consequential changes to policies (10.2.4.)3.4 and 3.6. These changes tied both the policy requirement for an integrated traffic assessment and the policy relating to ancillary activities to the activities addressed in rule 10.6.3.2A.i(a)-(c) (rather than to the term “predominant uses”). The relevant policies are:

3.4 To encourage pedestrian links within and through the Lakeview subzone, and to the surrounding public spaces and reserves and manage traffic flows and need for car parking via integrated Traffic Assessments for convention centres, visitor accommodation, commercial recreational and commercial tourist activities ~~new predominant uses (as defined)~~, and larger scale non-ancillary commercial activities.

...



- 3.6 To enable commercial and retail floor space for ancillary retail activities and ancillary commercial activities established in association with convention centres, visitor accommodation, commercial recreational and commercial tourist activities ~~predominant uses~~ so as to meet demand arising from the intensification of use within the sub-zone and from growth more generally.

[42] Assessment matter 10.10.viii has also been amended to remove the now redundant term “predominant uses”.

[43] The parties explain that the term “predominant use” has also been consequentially deleted from the definitions section of the district plan and the definition of “ancillary retail or ancillary commercial activity” has also been amended so that it refers to the activities addressed in rule 10.6.3.2A.i(a)-(c) rather than relying on a definition of “predominant uses”. The changes are:

~~**Predominant Use:** means convention centre, visitor accommodation, commercial recreation and/or commercial tourist activities within the Lakeview sub-zone area, but excludes the existing Queenstown Municipal Camping Ground.~~

Ancillary Retail or Ancillary Commercial activity: means any retail or commercial use located within the Lakeview sub-zone that is on the same site as a ~~predominant use (as defined)~~ a convention centre, visitor accommodation or a commercial recreational and/or commercial tourist activity, or in a building housing a ~~predominant use~~ that activity, and whose use is incidental to that predominant use activity. The Ancillary Retail or Ancillary Commercial activities must be consented at the same time as the predominant use activity, being a convention centre, visitor accommodation or commercial recreational and/or commercial tourist activity.

[44] Importantly the redrawn provisions are designed to ensure that large scale retailing does not take over the Lakeview sub-zone.

Inclusions and exclusions in rules 10.6.3.2A.i(b) and (c)

[45] Rules 10.6.3.2A.i(b) and (c) have been amended so that the relationship between the inclusions and exclusions is clearer (34 Brecon Street is excluded from the rule altogether). The rules now read:



...

- (b) Visitor Accommodation (including any ancillary retail or ancillary commercial activities consented as part of a visitor accommodation development), excluding This does not apply to 34 Brecon Street (legally described as Lot 1 DP 27703);
- (c) Commercial recreational and/or commercial tourist activity (including any ancillary retail or ancillary commercial activities consented as part of commercial recreational or commercial tourist activity) with a gross floor area of more than 400m², excluding This does not apply to 34 Brecon Street (legally described as Lot 1 DP 27703);

Rule 10.6.5.2.viii

[46] Rule 10.5.4.3.viii has been improved by changing the word “where” to “when”, better reflecting the way in which the rule will apply:

- viii Retail and commercial activities within the Lakeview sub-zone (except 34 Brecon Street) ~~where~~ when existing or consented retail and commercial activities within that sub-zone (except 34 Brecon Street) exceed 6,500m². Ancillary retail and ancillary commercial uses are not included in the calculation of existing and consented retail and commercial activities and are excluded from the application of this rule.

Brecon Street Partnership Limited

[47] 34 Brecon Street is the only privately owned land at the eastern end of the PC50 area. It adjoins the Brecon Street Cemetery and Cemetery Road. Brecon Street Partnership Limited (“BSPL”) sought higher development and other changes. It has settled for a 15.5 metre height limit and restricted discretionary activity for development above that height. The parties agree that in principle it is desirable that Cemetery Road be realigned along the western boundary of 34 Brecon Street, to remove the present dog-leg configuration. That would involve a boundary adjustment at that location, and also one in respect of the redundant portion of road which would become part of 34 Brecon Street. There is presently no draft proposal which would identify the location of the new boundaries, but the existing length of frontage to Brecon Street is unlikely to change significantly.

[48] In the event of consequential boundary adjustments occurring, the landowner wishes to avoid any ambiguity or conflict as to whether the future 34 Brecon Street is the 34 Brecon Street contemplated by the court when it made its order settling PC50.



Accordingly, the parties have agreed that the following words be added to Chapter 10.6.5.1(xiii) Lakeview sub-zone Structure Plan:

If there is a proposal to realign Cemetery Road along the northern boundary of the sub-zone and connecting to Brecon Street then it is deemed that this shall not comprise an exceedance of this site standard, nor alter any specific provisions applying to 34 Brecon Street which shall continue to apply following any consequential boundary adjustment. In the event of any inconsistency resulting, this rule shall prevail over any planning map which depicts the present boundaries of 34 Brecon Street.

[49] The court agrees that is an appropriate addition.

Well Smart

[50] This appeal concerns land between the area of PC50 (see Attachment “A”) and Queenstown Bay. The sandwiched land, owned by the appellants Well Smart Investment Holding (NZQN) Limited and Man Street Properties Limited and another, is in a subzone of the QTCZ which is called, confusingly, the Queenstown Centre Transitional Zone (“the transitional subzone”). The purpose of this transitional subzone is to manage heights in it, so that buildings on the land do not unduly restrict sunlight and views to land downhill of it in Queenstown Bay.

[51] The appellants’ concern was that if buildings in the Isle Street block (across Man Street) area allowed to build up to 12 metres (three storeys) as contemplated by PC50 then the land in the Transitional Subzone should also have rights to develop higher.

[52] Few if any people dispute that some potential height increase is appropriate as we understand the issue, but the substantive question is how high? Regrettably, that question cannot be addressed at present because, as mentioned, in its procedural decision¹³ the court felt compelled by authority to rule that the submissions by Well Smart and others were not ‘on’ PC50 and thus could not be considered by the court. (In addition a conditional application to amend the (at present defunct) appeal has been the subject of submissions and a further procedural decision¹⁴ on the papers).

¹³ [2015] NZEnvC 214.

¹⁴ *Well Smart Investment Holding (NZQN) Ltd & Anor v Queenstown Lakes District Council* [2016] NZEnvC 74.



The Beach Street block

[53] This is the land bounded by Beach Street (on the waterfront heading towards Glenorchy) and Lake, Man and Hay Streets. Most of the land is owned by the appellants IHG Queenstown Limited & Carter Queenstown Limited and it is occupied by the two tiers of the Crowne Plaza Hotel and (uphill) by some staff accommodation for that hotel. The Man Street frontage of the Beach Street block is owned by two section 274 parties – the Holt and Zaki families – (and by one other landowner who took no part).

[54] There were three issues in relation to this block:

- (a) the appellants wanted development rights to build higher, and that was opposed by the section 274 parties;
- (b) the Council wanted a 7 meter height restriction on the titles of the Man Street frontage; and
- (c) the Holt and Zaki families wanted to retain their views.

[55] A complex arrangement has been entered into whereby all matters have been resolved by the changes in the Appendices to this decision (see for example Appendix “E” which gives an indicative cross-section and plan view of the block bounded by Man, Hay, Beach and Lake Streets).

4. Changing the frame around Queenstown Bay

[56] On the next two pages are plans extracted from the agreed version of PC50. They are:

Figure 2: Lakeview sub-zone Structure Plan; and

Figure 3: Lakeview sub-zone Height Limit plan.





Figure 2 Leakeview sub-zone Structure Plan

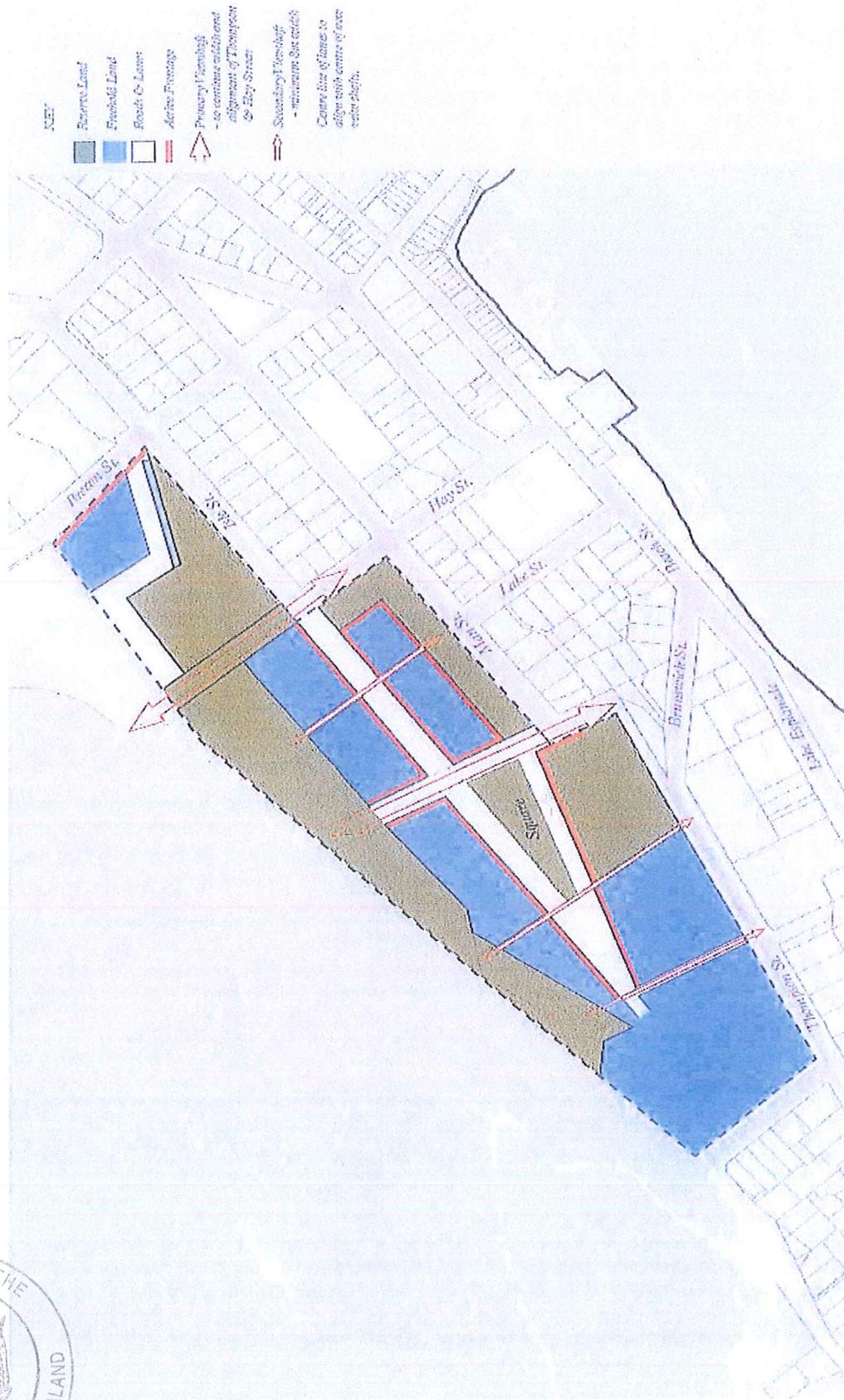
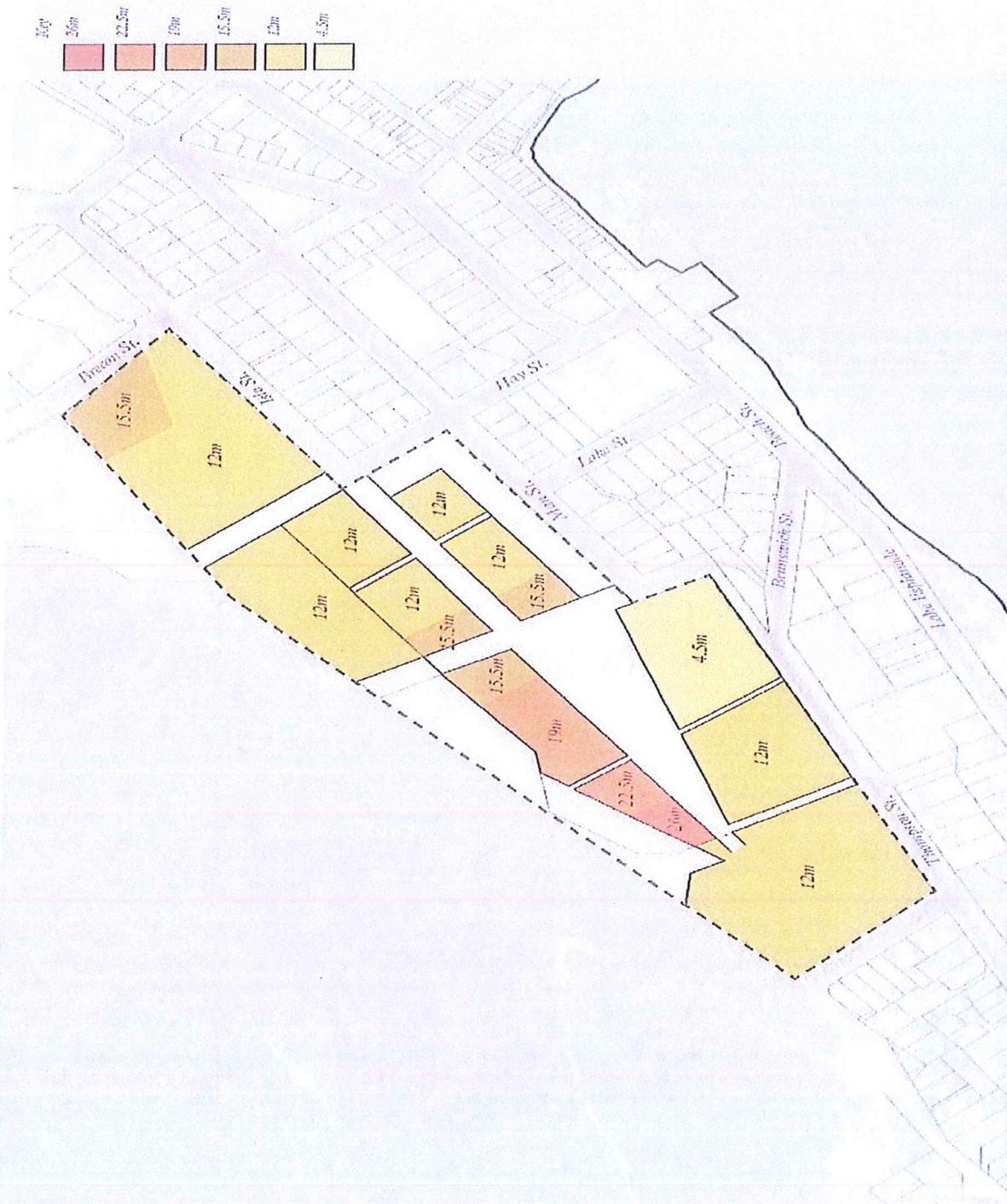




Figure 3 Lakeview sub-zone Height Limit Plan



[57] After reading the evidence in preparation for the hearing, the court was concerned that the evidence was light on the effects of the proposal on the frame which contains Queenstown Bay. Amongst other things the court was concerned about the height of buildings in the Lakeview sub-zone, and their height and density in the Isle Street sub-zones. It sought evidence from two urban designers who had (quite properly) lodged evidence restricted to the issues of concern to their clients. For the Council, Ms Campbell also sought to call Mr D R Weir an architect.

[58] Mr Weir referred to Figure 3 identifying the height of various buildings shown on bulk and mass scene simulations. This identifies a building on “Block 1”¹⁵ which is 26 metres high (for comparison a 12 metre high building provides three storeys). When the court asked for reassurance that a 26 metre high building would not be too high, Mr Weir answered¹⁶:

No, I put my reputation on it. Looking at that block it is rather large and there would be architectural language that you would use to make sure that it wasn't a flat mass, that this particular building block is developed, and looking at this I am regretful that we didn't show it more so. But through the process that we've been and the critique that we've had in our office and with other professionals we are happy with the outcome potentially.

[59] The urban designer Professor C A Bird agreed with Mr Weir: “I think he ... articulated things very well”¹⁷.

[60] On the mass shown on Block 1 the court asked Professor Bird¹⁸:

Q. ... You're satisfied as I understand it that the rules allow enough controls for the Council to ensure that building is broken up so it doesn't present just a flat profile facing the lake, is that correct?

A. I am ...

¹⁵ The small area coloured brick-red on Figure 3.

¹⁶ Notes of evidence p 11 line 26 et ff.

¹⁷ Notes of evidence p 23 at line 10.

¹⁸ Notes of evidence p 28 at line 32.



[61] When the court asked whether development would "... change the feel of the bay significantly"¹⁹ Professor Bird replied²⁰:

Well it will change the feeling of the bay that exists because it will be a ... different zone. It will be a town centre zone and I would expect that you would have some change ... because of the nature of the activities and what's going on in types of buildings. At the moment they're largely residential properties with obviously larger areas perhaps at ground that would grow trees. Town centres don't tend to have them as much between buildings. They often have them in parks or you know street trees and things like that. I don't have a concern for that.

[62] As for development in the Isle Street sub-zones he continued²¹:

... it doesn't concern me and I think it's probably more important if you're going to achieve a strong connection with the town centre that that isn't too suburban in its quality ...

Of course ... (to go back to the [figure] CAB 32 again) we're looking at blocks when ... the reality would be that each one of those blocks would probably be designed by a different architect so there'd be a huge variation even if there was a certain consistency in height ...

So again I would be very cautious about thinking that the effects of the blocks, the block illustration of CAB 32 was going to be damaging to Queenstown in any way.

[63] The court asked Professor Bird whether he was satisfied that the outcomes will provide an appropriate urban grain that will not damage the existing fine grain of urban Queenstown. The answer was unqualified²²:

... I'm absolutely satisfied and I'm also of the view in support of that statement that the urban grain will in reality be visually finer than what is depicted in these block diagrams. I'm absolutely convinced of that because it will have articulation, there will be ins and outs in the building forms, there will be variation in roofs, there will be shadows from bits that come out on the same elevation, there will be windows, doors, balconies, all sorts of things that will reduce the grain that is depicted – the rather coarse grain that is depicted in these block images ...

[64] When the court expressed its view that the ideal outcome for Queenstown would be that the visual amenity is improved rather than detracted [from], Professor Bird

¹⁹ Notes of evidence p 30 at lines 17-18.

²⁰ Notes of evidence p 30 at lines 21-29.

²¹ Notes of evidence p 31 at lines 1-3, 9-13 and 19-21.

²² Notes of evidence p 31 at lines 28-35 and p 32 at lines 1 and 2.



agreed “Absolutely”²³ and was of the opinion that as a result of the extensive [list] of assessment criteria that “... will result in a better outcome of ... architecture than has occurred in some parts of Queenstown in recent times”²⁴.

[65] At the court’s request Mr Bartlett QC called Mr I Munro, a resource manager and urban designer from Auckland. He observed²⁵ that separate resource consents are needed from buildings in the Lakeview subzone and for activities within them. The former are controlled activities but the predominant uses are restricted discretionary activities. (The latter contain quite complex criteria in rule 10.10.2).

[66] Mr Munro said there was a 2 metre roof height allowance (if all other standards are met) with “... the purpose of creating variation and interest [in] that upper termination”²⁶. Other factors relied on by Mr Munro to create texture in the frame around the Bay were that²⁷:

... there are a number of different landowners who will promote their own separate projects at different times, range and time scales. One of the key matters of control is landscaping and the need for landscaping to contribute the context. What doesn’t come through in those montages and I’m talking about the grey blobs if you like for want of a cruder term at each stage of development they’d be an expectation of landscaping, that that will include more than just low shrubs and as they grow and establish and mature as individual buildings come along I think you will see something that’s softer in reality than the montages ... I think to Mr Weir’s credit he was right not to start liberally adding potential trees because then they get attacked for hiding the buildings behind them but that’s something that isn’t shown in those documents that will also happen and might give you some comfort around that fine grain ...

[67] He said²⁸ “... plan change 50 promotes an outcome that will provide something of a wall – a strong word – a pronounce[d] mass of buildings ringing the historic town centre”, and then referred to the objectives of the operative plan seeking to preserve the

²³ Notes of evidence p 32 at line 13.

²⁴ Notes of evidence p 32 at lines 18-20.

²⁵ Notes of evidence p 38 at lines 20-22.

²⁶ Notes of evidence p 40 at line 18.

²⁷ Notes of evidence p 40 at line 23 et ff and p 41 at lines 1-2.

²⁸ Notes of evidence p 41 at lines 4-6.



character and heritage of the historic centre. He also said²⁹ (and we find this quite persuasive):

... emphasising the low rise historic core around that lakefront and keeping it low height and emphasising that low height with more visually pronounced taller buildings around it nestled into the base of Ben Lomond would evoke a response to people arriving by plane or looking from the various viewpoints that clearly emphasised to them there was a reason that foreground was kept low with the bigger height around it because it's counterintuitive. We're conditioned to think you'd expect the highest buildings right in the centre but by doing it in reverse I think that serves this objective by reflecting that historic core so for me it wasn't as simple as just saying what are the effects of these big buildings it's how do they relate to what's there now ...

[68] Mr Munro considered the taller buildings in the Lakeview subzone "... will be visible with the greatest amount of articulation and design ... I don't think in the context of what other buildings they see in Queenstown it will look particularly out of scale or large compared to some of the horizontally long hotel buildings that can be seen on the lakefront ..."³⁰.

[69] In relation to the Isle Street sub-zones, Mr Munro considered the fine grain of the extended QTCZ would be maintained by the horizontal division of "blocks and streets and lines"³¹ by the existing subdivision pattern³² and provisions against aggregation, and by the use of the urban design panel which "... has a reasonably successful track record ..."³³.

[70] To sum up the experts seemed satisfied that the new sub-zones would:

- ensure built form in the extended QTCZ which would relate to the physical characteristics of the sites and of the neighbourhood³⁴;
- provide for building appearances responding to the essential character and heritage of the existing centre³⁵;

²⁹ Notes of evidence p 41 at lines 14-24.

³⁰ Notes of evidence p 41 at lines 29-34.

³¹ Notes of evidence p 43 at line 1.

³² Notes of evidence p 43 at line 26.

³³ Notes of evidence p 44 at line 6.

³⁴ Policy (10.1.3)3.1.

³⁵ Policy (10.1.3)3.2.



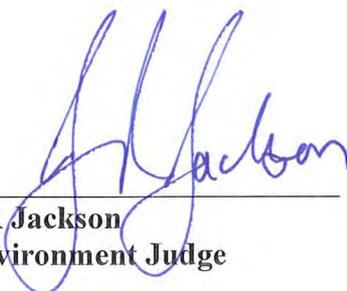
- a new core area³⁶;
- be structured around the existing public spaces³⁷;
- contain the town centre within enlarged but clearly established boundaries³⁸.

[71] There being no evidence to the contrary, on the basis of those assurances, and having regard to the Commissioners' decision, we consider that we have a bare minimum of evidence on which we judge that:

- proposed objective (10.2.4)3 is likely to achieve the higher level objectives and policies in the district plan, especially those in Section 10; and
- the other changes in Appendices "A" to "E" will appropriately implement the (amended) objectives and policies of the operative district plan.

We will make orders accordingly.

For the court:



J R Jackson
Environment Judge



³⁶ Policy (10.1.3)3.3.
³⁷ Policy (10.1.3)3.4.
³⁸ Policy (10.1.3)3.5.