BEFORE THE HEARINGS PANEL
FOR THE QUEENSTOWN LAKES PROPOSED DISTRICT PLAN

IN THE MATTER of the Resource Management Act 1991
AND

IN THE MATTER of Stage 2 including variations to Stage 1 of the Proposed District Plan

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SUBMISSIONS OF COUNSEL FOR QUEENSTOWN CENTRAL LIMITED – SUBMITTER NO. 2460

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May It Please The Panel:

1. These brief submissions are on behalf of Queenstown Central Limited (QCL) in respect of its Submission 2460 and particularly the Stage 2 topics:
    - Verandas and Buildings Over Roads;
    - Accessory Parking Provisions – Industrial and Service Activities;
    - Cycle Parking and End of Trip Facilities;
    - Grant Road classification

2. QLC owns and is developing land between Grant Road and the Eastern Access Road included on the FF(B) Structure Plan Map as Activity Areas A, C1, C2, D and E. It played a significant role in the PC19 appeals to settle the Structure Plan and relevant Rules.

3. Mr Thompson's succinct statement of evidence on these subjects has been pre-circulated. He takes a refreshingly straightforward approach to each issue and the outcomes he opines to be optimal.

4. For completeness and the sake of efficiency, the relevant legal test to be applied to Plan-making is set out at **Appendix A**.

5. Ultimately, the question to be asked is whether the proposed provisions are the most appropriate or optimal for achieving the purpose of the Act. It is the position of QCL that Mr Thompson has "got it right" on each of these four issues.

Verandas and Buildings over Roads

6. QCL's position on this issue is that the proposed Rules 29.4.17 and 18 (Table 29.2) are appropriate because they are enabling of positive streetscape effects which might otherwise be lost if the consent threshold were any higher.

7. Mr Thompson opines that even though the Licence to Occupy approvals process remains to be satisfied, the inclusion of these rules provides greater certainty and better opportunity for "...activating the streetscape,... ."

8. The proposed rules enable Plan users to find valuable guidance when seeking to activate street frontages. They are well worth keeping – without amendment.

Accessory Parking Provisions – Industrial and Service Activities

9. QCL has submitted that minimum parking rates for industrial activities be based on either gross floor area (GFA) or full-time equivalent employees (FTE's).

10. Council has recommended adopting QCL's suggestion for industrial and service activities, but not for storage or warehousing.

11. Storage is included in the definition of service activity[1] but warehousing is not, nor is it separately defined.

12. Despite that definitional lacuna, Council recommends a different regime for warehousing.[2]

13. Warehousing typically involves large surface areas with low employee numbers. An optimal parking rate for warehousing should reflect this. To not provide for a rate based on FTE's for warehousing seems less than optimal if the objective is to provide a level of parking that relates well to the on-site activity.

14. The concern here is that over provisioning for parking is likely to be inefficient and uneconomic.

15. QCL submits that the Plan should not separate out warehouse activities from other industrial and service activities and apply a less than optimal rule for the provision of parking.

16. In this respect, Mr Thompson's recommendation has merit and should be adopted.

Cycle Parking and End of Trip Facilities

17. QCL is supportive of initiatives that promote cycling, but the extent to which rules proscribe minima for bike parking and end of trip facilities remains a concern despite the concessions made by Mr Croswell and Mr Adam for the Council in the rebuttal evidence.

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[1] ... Service Activity is "... the use of land and buildings for the primary purpose of the transport, storage, maintenance or repair of goods."

[2] ...See clause 29.9.19 in Table 29.5 on page 29-35 of the Transport chapter.

18. On the face of it, a generous provision for such facilities seems forward thinking but the concern is that rules which over-provide and are treated as a bright line ("binary" is the expression used by Messrs Adam and Croswell) will result in unnecessary expense for employment-creators if the rate of take up is lower than in Christchurch and Auckland.

19. QCL accepts that in future more people are likely to commute to and from places of work at Frankton than they do presently. However, in determining the extent of uptake of facilities, much depends on climate, topography and the availability of safe cycle trails / cycle ways versus the reliability of public transport.

20. Topography and climate at Queenstown generally favour an increase in cycle commuting but distance from residential nodes is less positive. Fernhill, Gorge Road and Arrowtown are sufficiently remote from Frankton to discourage cycling.

21. The Frankton Flats master planning process has recently been announced with a Frankton Masterplan Establishment Report released. Chapter 3 of the Report deals with Transport and Land Use Integration and includes a business case for a 'Queenstown Integrated Transport Programme'. The necessary work is to occur over the next 12 months or so, with a view to completion in late 2019.

22. Presumably, the interconnectivity between the Frankton Flats and other residential areas will be a key component of the proposed master planning. Integral to this will be the role of public transport. Cycleway connectivity (Active Travel) will also be at large with, "...a need for a more fine-grained network within Frankton."[3]

23. Against that background, it could be premature to be promulgating district plan rules as to minimum requirements for cycle parking and end of trip facilities that are the same or similar to Christchurch where there have been generations of cycle commuters. Queenstown lags well behind rates of cycle commuters in Christchurch and with this in mind, Mr Thompson sounds a note of caution as to a regime for Queenstown which will have little or no flexibility.

24. Mr Thompson acknowledges that in the rebuttal evidence some concessions are made but will say that minimum rates higher than those in Christchurch

[3] Rationale Report, July 2018, Rev 2.0, Page 11

and Auckland are still intuitively too high. Mr Thompson cautions that minima can have the effect of becoming a bright line against which Council witnesses take a binary, pass or fail approach.

25. Mr Thompson maintains that his Appendix 3 rates are a more reasonable starting point and that when combined with his additional assessment criteria – (d) and (e),[4] produce a more realistic and pragmatic regime – rather than a binary, pass or fail approach, as advocated by others.[5]

26. The concern here is the cost of creating locker rooms with changing and showering facilities (possibly at a rate higher than Christchurch and Auckland), that are never fully utilised. QCL advocates a more cautionary approach including a regime that incorporates a degree of flexibility.

27. Messrs Crosswell and Adam also recommend that Mr Thompson's suggestion that the conversion of existing buildings be exempt from the provision of cycling and end of trip facilities be rejected. QCL can accept their logic with respect to this matter, however, note that in some cases it will be impracticable to provide such facilities when having regarding to the design and layout of existing buildings. For that reason, QCL suggest that a further assessment criterion by added to give Council discretion over such circumstances.

28. The suggested wording for this criterion is as follows:

> "f. *In the case of existing buildings, the practicability of providing such facilities having regard to the layout and design of the site and building."*

Grant Road Classification

29. The issue of the classification of Grant Road was raised in the QCL's original submission but was not taken further by Mr Thompson in his evidence. Having reviewed the provisions further, QCL considers that the Road Classification table included as Schedule 29.1 to the Transport chapter could benefit from some clarification in respect of Grant Road.

30. Currently the table lists Grant Road as being an arterial road from "State Highway 6" to "Shopping Centre Entrance" and then a collector road from "Shopping Centre Entrance" to "End of Road".

31. QCL understands that the reference to "Shopping Centre Entrance" relates to the existing northernmost entrance to the Five Mile centre. In order to provide more certainty to the location reference, QCL suggests the reference

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[4] Thompson Statement, paragraph 6.9
[5] ...Crosswell and Adam

to "Shopping Centre Entrance" be changed to "Main Street (Road 8)" as Main Street (Road 8) is shown on the Frankton Flats B zone Structure Plan and is referred to in the Operative District Plan text, whereas "Shopping Centre Entrance" is not.

DATED this 19th day of September 2018

I M Gordon

Counsel for Queenstown Central Limited

APPENDIX A

1. The legal test of s 32 is well known and well traversed by various Court decisions. The issues were usefully described by the Court in its declaration decision in *Monk v Queenstown Lakes District Council* [2013] NZEnvC 156 as follows:

> [47] That is a generic assessment of the amended plan change, but of course each provision will need to be assessed individually (to the extent necessary) under section 32. That means that one of the primary matters for the court to consider on a substantive hearing of the appeal on PC39 would be to compare:
>
> (a) the status quo (i.e. a Rural General Zoning) of the Arrowtown South land with
>
> (b) the PC39 proposal; or
>
> (c) the submissions on PC39; or
>
> (d) something in between (a), (b) and (c)
>
> in the light of the relevant tests under the RMA for preparation of plan changes. In particular, as set out in *High Country Rosehip Orchards Limited v Mackenzie District Council*, that requires:
>
> [...]
>
> 8. ... Each proposed objective in [the] ... plan ... change ... **is to be evaluated** by the extent to which it is the most appropriate way to achieve the purpose of the Act;
>
> 9. The policies ... to **implement** the objectives, and the rules (if any) ... to implement the policies.
>
> 10. [Examination of] Each proposed policy or method (including each rule), **... having regard to its efficiency and effectiveness**, as to whether it is the most appropriate method for achieving the objectives of the district plan:
>
> (a) **taking into account**:
>
> (i) the benefits and costs of the proposed policies and methods (including rules);
>
> And
>
> (ii) the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules or other methods; ...
>
> [...]
>
> The ultimate issue for the substantive hearing would be which of the options (a) to (d) above better achieves, in respect to <u>each</u> objective, policy and rule, the purpose of the RMA when examined under those statutory tests.

2. As to the correct approach to be taken to s 32, the High Court has observed:[6]

> *Section 32*
>
> [44] Section 32 requires that, before adopting any proposed changes to policies, the Board must evaluate and examine whether, having regard to the efficiency and effectiveness, the changes are the most appropriate way of achieving the objectives of the Freshwater Plan.[7] In making that evaluation the Board had to take into account the benefits and cots of the proposed policies (ie "benefits and costs of any kind, whether monetary or non-monetary");[8] and the "risk of acting or not acting, if there is uncertain, or insufficient information" about the subject matter of the proposed policies.[9]

3. That s 32 requires a value judgement "as to what on balance, is most appropriate, when measured against the relevant objectives" is not new. It is the approach that the Environment Court has consistently been taking as evident by cases such as:

- *Eldarmos Investments Ltd* v *Gisborne District Council*[10]
- *Long Bay-Okura Great Park Society Inc v North Shore City*[11]
- *High Country Rosehip Orchards Ltd v MacKenzie District Council;*[12] *and*
- *Waterfront Watch Incorporated* v *Wellington City Council.*[13]

4. It is submitted that the task for the Panel involves its overall value judgment as to whether a proposed policy appropriately achieves the objective(s) and whether methods – rules, standards, and assessment matters enable successful implementation of the policies.

5. Likewise, in *Colonial Vineyard* the Court acknowledged that:[14]

> 'most appropriate' in section 32 suggests a choice between at least two options (or, grammatically, three). In other words, comparison with something does appear to be mandatory.

6. The overarching value judgement referred to above is whether the proposed provisions meet the purpose and principles of the Act. The final word on the Part 2 purpose and principles of the RMA is set out between paragraphs [21] to [30] of the Supreme Court's 2014 decision in *King Salmon*. No other interpretation is now available.

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6 *Rational Transport Society Incorporated & Anor v NZTA* CIV-2011-485-002259
7 Section 2(1)
8 Section 2(1)
9 Section 32(4)
10 [2005] NZEnvC 198.
11 EnvC A078/08, 16 July 2008.
12 [2011] NZEnvC 387.
13 [2012] NZEnvC 74.
14 *Colonial Vineyard Ltd v Marlborough District Council* [2014] NZEnvC 55 at [64].