

DECISION OF THE QUEENSTOWN-LAKES DISTRICT COUNCIL

RESOURCE MANAGEMENT ACT 1991

Applicant:	iFLY INDOOR SKYDIVING NEW ZEALAND LTD
RM reference:	RM150766.
Location:	27 Brecon Street, Queenstown
Proposal:	To construct a building to be used for a commercial recreation activity, specifically the operation of an indoor skydiving activity. Land use consent is also sought in respect to breaches relating to the height of the building, continuous building length and noise as well as associated transport/parking standards, earthworks and signage.
Legal Description:	Lot 1 Deposited Plan 306661 held in Computer Freehold Register 26037.
Zoning:	High Density Residential Sub-Zone A (Brecon Street Commercial Precinct (Operative District Plan)
Activity Status:	Non-complying Activity
Notification:	4 November 2015.
Closing Date of Submissions	2 December 2015
Commissioner:	Commissioner A. Henderson
Date:	26 February 2016
Decision:	Consent is granted subject to conditions

UNDER THE RESOURCE MANAGEMENT ACT 1991

IN THE MATTER OF an application by iFly Indoor Skydiving New Zealand Ltd to construct a building to be used for a commercial recreation activity, specifically the operation of an indoor skydiving activity. Land use consent is also sought in respect to breaches relating to the height of the building, continuous building length and noise as well as associated transport/parking standards, earthworks and signage.

Council File: RM150766

DECISION OF QUEENSTOWN LAKES DISTRICT COUNCIL HEARINGS COMMISSIONER A. HENDERSON, HEARING COMMISSIONER APPOINTED PURSUANT TO SECTION 34A OF THE ACT

The Proposal

1. I have been given delegated authority to hear and determine this application by the Queenstown Lakes District Council ("Council") under section 34 of the Resource Management Act 1991 ("the Act") and, if granted, to impose conditions of consent.
2. The application (RM150766) has been made by iFly Indoor Skydiving New Zealand Ltd to construct a building to be used for a commercial recreation activity, specifically the operation of an indoor skydiving activity. Land use consent is also sought in respect to breaches relating to the height of the building, continuous building length and noise as well as associated transport/parking standards, earthworks and signage.
3. The proposed indoor skydiving activity is described in detail in Section 3.1 of the AEE prepared by John Edmonds and Associates. I rely upon that description for the purposes of this decision, and note the key elements as follows:
 - Construction of a vertical wind tunnel creating a cushion of air in an enclosed space on which people can float. The wind tunnel creates a stable, safe wall-to-wall airflow which makes it impossible to fall off the air column. The wind is generated by a fan above the flight chamber and is cycled down the sides of the tunnel, underneath the flight chamber, and up through the floor at speeds between 150 and 250kmph, lifting flyers into the air. The flight chamber is enclosed, with a stainless steel trampoline style base.
 - The building is specifically designed to provide for the functional requirements of the activity, comprising three levels – a 222m² basement area, 563m² ground floor area, and a 104m² mezzanine area.
 - The building has a 563m² footprint, and site coverage of approximately 27%.
 - The building's maximum length is approximately 39m, and its width approximately 18m.
 - Based upon the plan provided by Aurum Survey, the maximum height of the building is 15.3 metres above ground level.

- The building will be externally clad in a range of materials, including vertical metal tray, clear glass and aluminium joinery, plastered block, colorcote metal and pre-cast concrete panels.

Site Description

4. A full description of the site and surrounds are provided in sections 2.1 – 2.4 of the Applicant's AEE, and I rely upon this description, noting that it accords with my observations from my site visit. The activity is generally surrounded by a range of non-residential activities, including indoor and outdoor mini golf, an electricity substation, a medical centre and café on the adjoin site, and the Queenstown Volunteer Fire Brigade to the east. The surrounding area also includes Skyline Gondola, a kindergarten and preschool, and various other non-residential activities.
5. The site is legally described as Lot 1 Deposited Plan 306661, held in Computer Freehold Register 26037.

Notification and Submissions

6. Notification of the application on 4 November 2015 drew eight submissions within the statutory submission process, three in opposition to the application and three in support and two neutral submissions. One late submission was received after the statutory submission period. The matters raised in all of the submissions were summarised in the section 42A report as follows.

Name	Location of Submitters' Property	Summary of Submission	Relief Sought
Shane Zeederburg on behalf of Queenstown Medical Centre	Occupier of 9 Isle Street, Queenstown	<p>Neither in support or opposing. Raises several issues in respect to:</p> <ul style="list-style-type: none"> • Noise – acoustic report based on assumptions and elements of the plant were still being finalised so not assessed; • Shading/Privacy; • Parking; • Site Access; and • Geotechnical and Sound Engineering 	<p>Sufficient noise mitigation not reliant on impacted premises having doors and windows closed.</p> <p>Management of construction noise in the construction management plan.</p> <p>Comprehensive modelling of potential shading should be provided.</p> <p>Consideration should be had to potential 'look down' privacy issues given the height of the building.</p> <p>Should additional parking not be available on site possible mitigation could be reduction of</p>

			<p>the 180 and 240 minute parking bays in Isle and Brecon Streets to no more than 60 minutes and extension of 10 minute bays to 30 minutes.</p> <p>Construction management plan to be clear no access from medical centre site as would require closure of ambulance service.</p> <p>Geotechnical conditions and sound engineering to be included if consent granted.</p>
Deborah Torrington on behalf Queenstown Physiotherapy	Occupier of 9 Isle Street, Queenstown	<p>Neither in support or opposing.</p> <p>Raises several issues in respect to:</p> <ul style="list-style-type: none"> • Shading - proposed building will reduce light in the workplace further; • Noise – expected noise levels do not include the external mechanical plant, air circulation tunnel and traffic noise; and • Parking – already receive complaints about not enough parking for clients 	<p>Further investigation into noise sources should be carried out to ensure minimal noise pollution.</p> <p>Isle Street parking time restrictions should be addressed so they are all P60 will assist in ensuring parking is available, convenient and accessible.</p>
Graham Wilkinson on behalf of Brecon Street Partnership Limited	Owner of 34 Brecon Street, Queenstown	<p>In support.</p> <p>Considers despite the volume of tourist traffic, the upper portion of Brecon Street is unutilised and neglected. It has a distinct ‘temporary’ feeling with relatively low cost attractions and activities. The iFly will act as a catalyst to encourage further, substantial development of the link between central downtown and the gondola. iFly is an innovative and unique development which matches Queenstown’s adventure capital</p>	Grant application.

		image and branding.	
Goji Limited	Occupier (Bespoke Kitchen) of 9 Isle Street, Queenstown	<p>Opposed to the proposal.</p> <p>Raises several issues in respect to the proposal breaching Site and Zone standards.</p> <p>Objects to the impact of the proposal on environment in the area including extensive shading, non-complying noise, congestion and visual effects.</p> <p>Concerned about accuracy of height and ground levels and accurate dimensions of setbacks.</p> <p>This type of activity is not suited for a downtown urban environment better suited to urban fringes.</p>	<p>Change the proposed plans.</p> <p>Provision of details in drawings would aid in everyone understanding the proposal better.</p>
Simon Deaker	20 Lomond Crescent, Queenstown	<p>Opposed to the proposal.</p> <p>iFly proposal is not suitable for the city centre location. Brecon Street should develop into smaller commercial operators or boutique traders offering hospitality and retail. Scale of iFly too big and bland and breaches height restrictions. Will create additional congestion. Would like to see developments which complement the existing Bespoke Kitchen Café, Taco Medic etc as opposed to something which would lessen outlook and ambience.</p>	Decline application.
Rusty Lewis	6034 Courtyard Drive, Suite 135, Austin Texas USA	<p>In support.</p> <p>Has extensive background in industry and has seen many facilities built and operate successfully by iFly and have shown to be a tremendous asset to every community they serve and will continue to do so in Queenstown.</p>	Grant application.
Murray Frost of the Frost Foundation Limited	Owner of 9 Isle Street, Queenstown	<p>Opposed to the proposal.</p> <p>Raises several issues in respect to the proposal breaching Site and Zone standards.</p> <p>Will also impact on the Bespoke Kitchen (café) end of 9 Isle Street the</p>	<p>Require proposal to comply in all respects to the current QLDC planning requirements or change the proposed plans.</p> <p>Recommends</p>

		<p>most and there will be impacts on the environment in this area in terms of congestion, shading, non-complying noise and visual effects.</p> <p>Also raises concerns about the height and ground levels with documentation not giving accurate setback dimensions.</p> <p>Current proposal appears to have more breaches than original proposal.</p>	<p>conditions specifically in respect to the requirement of an independent surveyor to survey the site and carry out monitoring in respect to boundary of site, heights, building lengths and recession planes.</p> <p>Provision of details in drawings would aid in everyone understanding the proposal better.</p>
<p>Bernard Cleary representing Queenstown Gold Limited (owner of site and adjoining property to the north)</p>	<p>Garden View Court, Church Street, St Julians, Malta</p>	<p>In support.</p> <p>The proposal will benefit Queenstown. It will be a key tourism attraction and will help cement Queenstown as adventure capital of the world. Fun activity for locals and source of employment. Will enhance the character of the area.</p>	<p>Grant application.</p>
<p>Paul Early, New Zealand Parachute Organisation</p> <p>LATE SUBMISSION</p>	<p>86 Gloria Avenue, Te Atatu Peninsula, Auckland</p>	<p>In support.</p> <p>Will provide a New Zealand facility.</p> <p>Will benefit entire population of New Zealand's sky diving community. Youth and personal development opportunity. National advantages – tourism income and supporting services. Will have a positive benefit for New Zealand sky diving and the Queenstown region with the provision of a unique facility.</p>	<p>Grant application</p>

7. I note that section 37 of the Act enables me to waive the requirement within which a submission may be received. I have considered the late submission of the New Zealand Parachute Organisation, and agree with the section 42A report that the matters it raises are generally covered in other supporting submissions, and its acceptance will not prejudice any other party. I therefore accept this late submission pursuant to section 37A(1) of the Act.

8. The matters raised in the submissions are addressed where relevant later in this decision.

The Hearing

9. A hearing to consider the application was convened on 2 February 2016. In attendance were:

- (a) The Applicants, represented by Ms Emma Beyer and Mr Patrick Framel (iFly Indoor Skydiving), Mr Ben Farrell (planner, John Edmonds and Associates), Mr Peter Soundy (Peak Projects), Mr Simon Adnitt (Architect, Walker Architects), Mr Jason Barlett (traffic engineer, Bartlett Consulting), Mr Steve Skelton (landscape architect, Baxter Design Group); and Dr Jeremy Trevathan (acoustic engineer, Acoustic Engineering Services).
 - (b) Council Officers, being Ms Liz Hislop (Senior Planner), Ms Paula Costello (Council Urban Designer) and Ms Jo Fyfe (Resource Consents Team Leader);
 - (c) Submitters Mr Murray Frost and Mr Vile (Goji Ltd).
10. I had the benefit of a section 42A report prepared by Council's planner, Ms Liz Hislop. Based upon her assessment of the application, the evidence presented and the urban design input of Ms Costello, Ms Hislop recommended that the application be granted provided that the following matters were addressed:
- Changes to the cladding colour such that the building would appear less visually dominant within the surrounding environment;
 - A reduction in the area of signage including specifically the blue iFly corporate colours; and
 - A reduction in the glazed/screens on the elevation facing Brecon Street such that it does not appear as a large sign/billboard and is more in keeping with the 'human scale' of the streetscape.

Summary of Evidence Heard

11. The following is a brief outline of the submissions and evidence presented. This summary does not detail all of the material that was advanced at the hearing, but captures the key elements of what I was told. The material generally reinforced the matters included in the application and submissions, and the pre-circulated evidence. Where relevant, I address specific issues in my assessment.

Council Officer Introduction

12. **Ms Hislop** introduced the application and identified that:
- An issue had arisen in relation to the maximum height of the building. The maximum height of the proposed building was not shown on the plans provided with the application, despite the Council requesting cross sections prior to the hearing. Correspondence with the Applicant had confirmed that the building had a height of 15.35m above the original ground level, which was higher than identified on the plans provided with the application.
 - Amendments to the design, as agreed following the completion of the section 42A report, had not been shown on the plans (changes relating to cladding and colours); and
 - The Urban Design Panel reports had not been made available to the Council and the section 42A report was therefore completed with no consideration of the UDP reviews, although the assessment of the Council's Urban Designer, Ms Costello, had been taken into account in the preparation of the report.
13. **Ms Paula Costello**, the Council's Urban Designer, spoke following Mr Adnitt's presentation for the Applicant. She confirmed that the changes made on the Applicant's amended plans address the issues raised in the section 42A report. She considered that the building will be dominant in the streetscape of Upper Brecon Street, and would have moderate adverse effects. She considered that overall, change will occur in the area, and that change will have greater building heights than provided for at present. Although the Applicant considered the building to be of a high quality in terms of urban design, Ms Costello considered there should be a greater

relationship with the medical centre. She considered that the proposal was consistent with some of the key objectives in the Plan relating to a vibrant town centre, and supported the separate courtyard area, noting that the final design should be subject to a detailed plan to be provided prior to construction.

Procedural Matter

14. **Mr Farrell** addressed the issue relating to the building height. He identified that the only oversight was the proper identification of the maximum breach of the maximum height on the plans, and confirmed the Applicant's view as being:
 - The drawing and assessments relied upon in the Application are based upon the correct height of the building. The heights are shown in relation to specific RL heights which are accurate; and
 - The public notice identified that the building exceeded the maximum height and was sufficient in any event to draw attention to the non-compliance.
15. Mr Farrell explained that the confusion over the maximum heights had arisen in part over the uncertainty around the interpretation of 'Ground Level' in the plan. The Applicant had undertaken research in to the ground level matter and would clarify this through evidence, and at the conclusion of the hearing undertook to provide a survey plan confirming the ground level and spot heights of the building.
16. **Mr Frost** considered that it was hard to determine what the actual height of the building was if the ground level was not known.
17. Having discussed the matter with the parties, I am satisfied that there is no scope issue arising from the omission of the maximum height on the Plans. The Applicant has confirmed that the relationship of the building to the maximum RL is correct, and importantly the RL was shown on the Plans. This means that the shading diagrams prepared by the Applicant are correct, and the failure to identify the maximum breach does not mean that the plans are based on an incorrect assumption. Had they been incorrectly drawn and resulted in a greater degree of shading across additional properties, there may well have been a scope argument. Similarly, if it had been the case that the applicant's effects assessment had been based upon an incorrect height, then similarly a scope argument may have arisen. Neither situation eventuated. For these reasons, I am satisfied that no party is prejudiced by the omission of the maximum extent of the breach, and it is therefore appropriate to proceed with the determination of the application.

Applicant's Evidence

18. **Mr Ben Farrell** introduced the application and the evidence to be led for the Applicant. He also circulated a set of amended drawings.
19. **Ms Emma Beyer** is the Managing Director of iFly indoor Skydiving NZ. She provided an overview of the project, and discussed the feasibility studies and site selection process that considered and subsequently discounted numerous sites around Queenstown on the basis that they were either commercially unviable due to location or construction constraints or were unavailable. She noted in particular that a location outside of the CBD would require significant additional resource on a daily basis in order to transport a high volume of clients throughout the day, and would necessitate additional staff and vehicles, and put the operation at risk of delays due to traffic factors.
20. Ms Beyer also noted that in larger centres, a location on the periphery could be appropriate, but in Queenstown a central location was critical in order to be near to the target market. She concluded that while the site is not without some planning and construction challenges, it is the most logical and appropriate site for the development, particularly noting the many tourist

offerings in the vicinity. Ms Beyer also noted that the structure itself is prescriptive, as a large building is needed to circulate the air, and the dimensions cannot be adjusted

21. **Mr Patrick Framel** is the Vice President of Development at iFly Indoor Skydiving. He discussed iFly's track record in a number of countries, including Dubai, Canada, England, Brazil, Australia and the United States. He noted that no facility had failed since the company was first established in 1998. He identified the various benefits to Queenstown that the operation would provide, noting that an average iFly has some 150,000 customers annually, and creates approximately 20 jobs at construction stage with approximately 25 – 35 part and full time jobs once operating. There are other benefits as well, with education programmes for schools also a feature of operations.
22. In response to a question, Mr Framel indicated that the operation was 24 hours, and that the activity was the same irrespective of the time it occurred. He also noted that corporate events were catered for, although these were expected to be a smaller part of the Queenstown operation.
23. **Mr Simon Adnitt** spoke to evolution of the design of the facility, and noted that additional height had been added as a result of discussions with the Urban Design panel. He also noted that trees had not been accounted for in the preparation of the shadow diagrams. The permitted baseline had been modelled. He confirmed that the building height was described in terms of RLs and were therefore accurate.
24. In his pre-circulated evidence, **Dr Jeremy Trevathan** concluded that the noise effects of the proposal would be minor. He provided some additional evidence at the hearing in response to concerns raised in the evidence of Mr Frost in relation to the night time noise limit at the medical centre boundary. He noted that the most significant item of noise-generating plant would be the chiller identified on the plans, and had modelled this assuming no mitigation. The analysis concluded that a moderate level of mitigation would be required to ensure the noise complied with the 50dB LAeq noise limit, and that options would include chiller selection and planting or construction of screening.
25. **Mr Jason Bartlett**, the Applicant's traffic engineer, noted that the parking shortfall was a factor of the floor area of the development. The site was based upon large plant and a low public floor area. As the parking demand in the zone was driven by floor area, there were a large number of car parks required despite much of the site not accommodating members of the public.
26. **Mr Ben Farrell** addressed the matter of the ground level. He indicated that following the Applicant's research, a plan provided by Mr Bruce McLeod of Aurum Survey Consultants correctly identified the relevant ground level on the site, based upon the interpretation of a survey undertaken in 2000 as part of the development of the Medical Centre. The plan identified areas of cut and fill, and the original ground underneath. Spot heights provided at these locations identified the actual height of the proposed building, and Mr Farrell agreed that the Application should be amended by deleting the maximum height referred to in the Application and s42A report. He noted that the technical height of the building would be increased in some parts of the site, and decreased in others, as a result of the historical cut and fill, but confirmed that as these changes were technical only the original assessments remained valid. Mr Farrell also tabled a set of draft conditions based upon those provided in the section 42A report.

Submitters

27. **Mr Frost** spoke to his submission and acknowledged that the Applicant had made efforts to address his concerns. He noted that the building would be large and imposing. With respect to Council's urban design evidence, Mr Frost agreed that the building and the site have specific demands, and as the building's design could not be specifically changed, this suggested the site may be inappropriate. He also agreed that there was a need for more of a relationship with the medical centre, noting that Ms Costello had referred to 'moderate' adverse effects. Mr Frost

noted that the Urban Design Panel had unduly influenced the application, and had driven a solution based solely on the relationship of the building with the street rather than neighbours. He considered the additional height improves the appearance of the building from the street only, and not the neighbouring sites.

28. Mr Frost noted he had visited an international iFly facility and noted that fans generated the greatest noise, and considered that something large was needed to generate up to 250kmph velocity within the vertical tunnel. He considered that Condition 23 should retain the reference to 'exactly' so that boundaries were not pushed, and that spot heights should be identified. He also considered that ongoing noise monitoring should be required in order to demonstrate compliance with the noise limit.

Officers

29. **Ms Hislop** confirmed that the section 42A report does not refer to the Urban Design panel reports, as the Applicant has requested these remain confidential. Her report therefore drew on the Urban Design assessment of Ms Costello. Ms Hislop noted that she agreed with the conditions tabled by Mr Farrell, apart from the deletion of 'exactly' from Condition 23, which referred to the requirement of a surveyor's certificate to confirm that the building was located 'exactly as proposed in the application'. She was confident that 'exactly' would still enable a degree of error to be taken into account given the plans include reference to a margin of error. She also noted that this was standard wording applied to many consents addressing buildings that reached or breached the maximum height in a particular zone.
30. Following a discussion with **Dr Stephen Chiles**, the Council's noise expert, Ms Hislop agreed that a condition relating to ongoing monitoring of noise was unnecessary, and that the noise condition included in the section 42A report was appropriate given the applicant had confirmed it could comply with the night time noise limit of 50dB. The Applicant would be required to meet this on an ongoing basis.
31. Overall, Ms Hislop noted that the matters identified in the section 42A report had been addressed, and taking into account the evidence and the urban design input of Ms Costello, confirmed her recommendation that consent be granted subject to conditions.

Applicant's Right of Reply

32. **Mr Farrell** spoke to the matters that had been raised in the hearing, and called upon **Mr Adnitt** and **Mr Framel** to address specific matters.
33. **Mr Adnitt** considered that the building design appropriately took into account the medical centre, noting that the angled façade adjoining that boundary limited shading and allowed sight lines out of the café/courtyard. He noted that the shading diagrams showed little shading on the café /courtyard in any event and overall considered that the effects of the height of the building had been mitigated. He did not agree that the application had been driven by the Urban Design Panel.
34. **Mr Framel** noted that the site selection had been a three year process. Other sites had been too constrained, too far away or unavailable for purchase. He also noted that the Dallas facility referred to by Mr Frost was twice the mass of the Queenstown facility, and that the Queenstown facility would be the smallest commercial flight chamber to date. It also operated on one fan as opposed to two, and the only noise would be from the chiller.
35. **Mr Farrell** concluded that the urban design issues are countered by the appropriateness of the use on the site, and that the practical constraints of the building have been mitigated as best and as practically as possible. He noted that Ms Costello had referred to 'ideal' design outcomes, and considered that there was no test in the Act for 'ideal' outcomes. The test is effects based, and in this case he considered the effects test to be satisfied.

District Plan Provisions

Proposed District Plan

36. Section 86[b](1) of the Act states a rule in a proposed plan has legal effect only once a decision on submissions relating to the rule is made and publicly notified. An exemption to this is section 86[b](3) in which case a rule has immediate legal effect in certain circumstances including if the rule protects or relates to water, air or soil.
37. The Proposed District Plan ("PDP") was notified on 26 August 2015. The site is shown on Proposed Map 36 as being located within the Town Centre Zone. I agree with the section 42A report that there are no rules in the Proposed District Plan having immediate legal effect that are relevant to this application.

The Operative District Plan

38. The relevant provisions of the Plan that require consideration can be found in Part 4 (District Wide), Part 7 (Residential Areas), Part 14 (Transport), Part 18 (Signage) and Plan Change 49 (Earthworks).
39. Resource consent is required for the following reasons:

Part 7 (Residential Areas)

- A **controlled** activity resource consent pursuant to Rule 7.5.3.2(iii)(a) and (b) buildings for non-residential activities and commercial recreation activities. Council's control is in respect to matters listed in Assessment Matter 7.7.2 (iii).
- A **restricted discretionary** activity pursuant to Rule 7.5.3.4 as the proposal breaches site standard 7.5.5.2(vii) in regard to continuous building length in the High Density Residential Zone. It is proposed to construct a building which has a width of 18m and a length of 39m. Council's discretion is restricted to this matter.
- A **non-complying** activity pursuant to Rule 7.5.3.5 as the proposal breaches zone standard 7.5.6.3(iii) in regard to building height.
- A **non-complying** activity pursuant to Rule 7.5.3.5 as the proposal breaches zone standard 7.5.6.3(vii) in regard to noise. It is proposed that the noise associated with the activity will comply with daytime noise limits except at Caddy Shack mini golf immediately to the north of the site. Noise associated with the activity will comply with night time noise limits except at Caddy Shack mini golf to the north, Outdoor mini golf to the west, Queenstown Medical Centre to the south and the substation site to the east if the nearest car parks are used during night time.

Part 14 (Transport)

- A **restricted discretionary** activity pursuant to Rule 14.2.2.3 as the proposal breaches site standard 14.2.4.1(i) in regard to the number of on-site parking spaces with 26 car parking spaces required. It is proposed to provide 13 car parking spaces. Council's discretion is restricted to this matter.
- A **restricted discretionary** activity pursuant to Rule 14.2.2.3 as the proposal breaches site standard 14.2.4.1(iv) in regard to the driveway width. The proposed access is 3.6m wide versus the 5.5m width required by the District Plan. Council's discretion is restricted to this matter.
- A **restricted discretionary** activity pursuant to Rule 14.2.2.3 as the proposal breaches site standard 14.2.4.1(vii) in terms of reverse manoeuvring. When car parking is full

vehicles require an additional reverse manoeuvre to leave site in a forward direction. Council's discretion is restricted to this matter.

- A **restricted discretionary** activity pursuant to Rule 14.2.2.3 as the proposal breaches site standard 14.2.4.1(xi) in terms of the size of the loading area. A loading area is provided as a shared drop off & pick up space and has a 5m depth versus the 6m required by the District Plan. Council's discretion is restricted to this matter.
- A **restricted discretionary** activity pursuant to Rule 14.2.2.3 as the proposal breaches site standard 14.2.4.2(vi) in terms of the distance of the vehicle crossing to an intersection. A proposed new crossing point will be 6m wide and provided with compliant sight distances. It is located further away from Isle Street than the existing crossing point but 24m from the intersection instead of 25m. Council's discretion is restricted to this matter.

Part 18 (Signage)

- A **discretionary** activity resource consent pursuant to Rule 18.2.5 (Table 2, Serial 1) for the proposed signage which exceeds a maximum area of 0.5m². Serial 4 requires that any sign that does not comply with Serial 1-3 is a discretionary activity. The proposed total area of signage is 30.787m² of iFly signs and 128m² of corporate iFLY blue colour totalling 152m² of signage (minus the area of sign 4, 6.6m²).

Plan Change 49 (Earthworks)

- A **restricted discretionary** activity pursuant to Rule 22.3.2.3 as the proposal breaches site standard 22.3.3(i)(a) in regard to the maximum total volume of earthworks exceeding that specified in Table 22.1 which is 400m³ in this Zone. It is proposed to carry out 4,240m³ of cut and 120m³ of fill across 1,740m² of the site. Council's discretion is restricted to this matter.
- A **restricted discretionary** activity pursuant to Rule 22.3.2.3 as the proposal breaches site standard 22.3.3(ii)(b)(i) in regard to the height of cut exceeding 2.4m. It is proposed to carry out a maximum cut height of 7.2m. Council's discretion is restricted to this matter.
- A **restricted discretionary** activity pursuant to Rule 22.3.2.3 as the proposal breaches site standard 22.3.3(ii)(b)(ii) in regard to the height of any fill exceeding 2m. It is proposed to carry out a maximum depth of fill of 3.1m. Council's discretion is restricted to this matter.
- A **restricted discretionary** activity pursuant to Rule 22.3.2.3 as the proposal breaches site standard 22.3.3(ii)(b)(iii) in regard to the vertical height of any cut or fill being greater than the distance of the top of the cut or the toe of the fill from the site boundary (except where retained). The proposed earthworks along the northwest boundary adjoining the Caddy shack mini golf will trigger this rule. Council's discretion is restricted to this matter.

40. I note that the application states the application site is subject to an appeal to Plan Change 50 to rezone this site. This appeal has since been refused and has no bearing on this application or site.

41. Overall, I agree with the section 42A report that the application is to be assessed as a **non-complying** activity.

Relevant Statutory Provisions

42. This application must be considered in terms of Section 104 of the Act.

43. Subject to Part 2 of the Act, Section 104 sets out those matters to be considered by the consent authority when considering a resource consent application. Considerations of relevance to this application are:

- a) *any actual and potential effects on the environment of allowing the activity; and*
- (b) *any relevant provisions of:*
 - (i) *A national environmental standards;*
 - (ii) *Other regulations;*
 - (iii) *a national policy statement*
 - (iv) *a New Zealand coastal policy statement*
 - (v) *a regional policy statement or proposed regional policy statement*
 - (vi) *a plan or proposed plan; and*
- (c) *any other matters the consent authority considers relevant and reasonably necessary to determine the application.*

44. In addition, Section 104D (Particular Restrictions on non-complying activities) states that:

- (1) *Despite any decision made for the purpose of section 95A(2)(a) in relation to adverse effects, a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either –*
 - (a) *the adverse effects of the activity on the environment (other than any effect to which section 104(3)(a)(ii) applies) will be minor; or*
 - (b) *the application is for an activity that will not be contrary to the objectives and policies of-*
 - (i) *the relevant plan, if there is a plan but no proposed plan in respect of the activity; or*
 - (ii) *the relevant proposed plan, if there is a proposed plan but no relevant plan in respect of the activity; or*
 - (iii) *both the relevant plan and the relevant proposed plan, if there is both a plan and a proposed plan in respect of the activity.*

45. Following assessment under Section 104, the application must be considered under Section 104B of the Act. Section 104B states:

- After considering an application for a resource consent for a discretionary activity or non-complying activity, a consent authority –*
- a) *may grant or refuse the application; and*
if it grants the application, may impose conditions under section 108.

46. The application must also be assessed with respect to the purpose of the Act.

47. Section 108 empowers me to impose conditions on a resource consent.

48. Section 104(3)(b) requires that I have no regard to effects on people who have given written approval to the application. No written approvals have been provided as part of the application.

49. In reaching my decision I note that I have taken into account all of the information provided with the application, the section 42A report and appended assessments, the pre-circulated evidence and the evidence presented at the hearing. I undertook a site visit on 1 February 2016. I have also considered the provisions of the relevant plans, and Part 2 of the Act.

Permitted baseline, existing environment and receiving environment

50. The section 42A report notes that in the High Density Residential Sub-Zone A (Brecon Street Commercial Precinct), buildings up to three residential units are permitted provided they comply with the Site and Zone Standards. However, consents are required for buildings for non-residential and commercial recreation activities, and I concur that the permitted baseline is therefore of little relevance, although I note that Mr Adnitt modelled the shading effects of a permitted building, which I address later.

Assessment

51. Planning evidence was provided by Ms Hislop for the Council via the section 42A report, and by Mr Ben Farrell for the Applicant. No other party provided expert planning evidence, and by the end of the hearing it was clear that the two planning experts were in agreement that the adverse effects were minor or less, with Ms Hislop acknowledging the matters of concern in her original assessment, including the urban design matters raised by Ms Costello, had been satisfactorily addressed.
52. There was no expert evidence provided at the hearing from any other party. Given the level of agreement on the effects of the proposal among the experts, I address the relevant effects briefly in the following paragraphs in the order in which they were addressed in the section 42A report.

People and Built Form

Urban Design

53. The section 42A report, drawing from advice received from the Council's Urban Designer, Ms Costello, identified a number of issues relating to urban design matters. Ms Costello's view was that the height and form of the building in tandem with the position and topography of the site would be dominant in the area and give rise to adverse visual effects. She also noted, however, that these effects could be reduced to an acceptable level through changes to cladding colour. These changes were made by the Applicant, and both Ms Costello and Ms Hislop confirmed that the changes addressed the outstanding matters identified in the section 42A report. I accept this evidence and consider that the Urban Design matters have been appropriately addressed. I also note that there is some overlap between the urban design concerns and the height of the building, and I address these issues below.
54. There was some criticism by Mr Frost that the Urban Design Panel had focussed solely on the relationship of the building to Brecon Street, and that recommendations of the Urban Design Panel and resulted in some additional height being added to the building, which appeared to be in contradiction to the maximum height controls provided for in the Operative Plan. As I understand it, the Urban Design Panel is charged with considering design matters and sits outside of the District Plan assessment process, so is not necessarily bound by the various built form controls in the Plan. It assists the Council in ensuring the developments exhibit good design and are responsive to the area within which they sit.
55. In this case, the building's bulk is driven by the functional need of the activity. I accept that apart from external changes to the building's appearance, there is little that can be altered as the height is necessary to accommodate the vertical wind tunnel and fan. The principal issue therefore is whether the building can be absorbed on the site and the effects appropriately managed.
56. Mr Adnitt described the design responses to the concerns raised by the submitters and in the Council's assessments. Despite Mr Frost's concern that the focus had been on the relationship with Brecon Street, Mr Adnitt explained how the southern façade of the iFly building has been designed in order to minimise effects on the adjacent site. Design elements have been included to ensure that sight lines out of the café and outdoor courtyard are maintained, and the shading diagrams indicate that there will be no more than minor effects on the medical centre.

57. The Applicant has made amendments to the building's external appearance in direct response to the concerns raised by Ms Costello, and has also indicated that the application had been prepared in accordance with Crime Prevention through Urban Design (CPTED) principles. This includes accepting changes to the landscaping at the street frontage of the site, and amending the colour scheme proposed for the signage to ensure that the signage is not dominant.
58. Having considered the evidence of Mr Adnitt, and taking into account the fact that the bulk of the building is dictated by its function, I am satisfied that the urban design concerns originally identified in the section 42A report have been appropriately addressed.
59. No urban design or planning evidence was provided by any other party in relation to urban design matters, and I accept Ms Hislop's overall view that the building can be absorbed into the site and surrounding area.

Height

60. The maximum height of the building is 15.3m above finished ground level as identified on the plan provided by Aurum Survey following the adjournment of the hearing. It was common ground that the height of the building is required to accommodate the vertical wind tunnel and fans, and there is little ability to alter this.
61. Buildings that are over height have the potential to cause adverse effects, particularly in relation to visual effects and shading on adjacent properties. To assist in considering these effects, the Applicant provided shading diagrams for the shortest and longest days, the two equinoxes between these dates and a comparison with a permitted baseline of 7m for these times.
62. I accept Ms Hislop's view that whilst the proposed building will cast shading on the building at 9 Isle Street to an extent which is more than would occur for a building of 7m in height, this degree of additional shading will not be significant. Based upon the shading diagrams, I agree that any shading will result in effects which are no more than minor.
63. Concern was also raised that the proposed height of the building could result in loss of outlook and privacy for surrounding properties, and in particular 9 Isle Street, which sits below the site in elevation. Ms Hislop noted that the Medical Centre is south facing, not north facing, so this main outlook is not affected by the proposed building. I also note Mr Adnitt's description of the design that the southern façade of the iFly building was angled to limit shading on the Medical Centre and to allow sight lines out of the café and courtyard. Noting that no party provided any expert evidence to the contrary, I agree with Ms Hislop that overall any effects in respect to the height of the building in terms of shading, outlook and privacy will be no more than minor.

Continuous Building Length

64. The proposed building has a continuous building length of 18m (width) and 39m (length). I accept Ms Hislop's assessment that the proposed building does not breach the 2m boundary setback and allows a practical and efficient use of the site, and that the design of the building incorporates interest and different angles and heights into the façade which breaks up the bulk normally anticipated with a continuous building length breach. I agree that there will be no more than minor adverse effects arising from the building's length.

Signage

65. The section 42A report considered that the proposed signage was excessive, particularly due to concerns that the large areas of iFly's 'corporate blue' would dominate the facades of the building. The Applicant presented a set of amended plans at the hearing, which included changes to the proposed signage that reduced the area of blue background. I note that Ms Hislop accepted that the amendments addressed her concerns, and I agree. The area of signage now proposed is in keeping with the scale of the building, and I accept Ms Hislop's confirmation that the changes to the signage proposed will reduce the visual dominance of the

signage to an acceptable level.

Noise

66. The proposed development will give rise to noise effects, and Mr Frost considered that these would be significant based upon his observations of the iFly operation in Dallas, Texas. However, as Mr Framel noted, the Dallas Operation is twice the size of the proposed Queenstown operation, and operates two fans as opposed to the one that is proposed in Queenstown. He also noted that the Dallas operation is adjacent a large highway where noise mitigation is less important.
67. Dr Trevathan's evidence noted that his noise modelling had shown that with a moderate level of mitigation, compliance with the 50 dB noise limit could be achieved. The mitigation could be achieved by selection of an appropriate chiller, or construction of screening around the chiller. He noted that without mitigation, there may be minor non-compliances at other sites such as the adjacent Caddy Shack indoor golf facility and the Fire Station.
68. A question arose as to whether conditions of consent should require regular monitoring of the noise from the site. However, following input from Dr Chiles, it was agreed that as the applicant had confirmed they could comply with the 50 dB limit, there was no need to impose such an onerous condition. The conditions of consent proposed required compliance with the 50 DB limit, and it is up to the holder of a consent to ensure appropriate measures are taken to ensure this compliance.
69. The conditions tabled by Mr Farrell included a requirement in respect to the plant requiring a report prepared by an acoustic specialist be submitted to Council demonstrating sound levels from the mechanical plant comply with night time noise, and if not for appropriate mitigation to ensure this. I agree this is appropriate.
70. Overall I note that both Dr Trevathan (for the Applicant) and Dr Chiles (for Council) agreed that the noise effects would be minor, and that they could be appropriately controlled by conditions of consent. No other party provided any noise evidence to the contrary, and I accept therefore the evidence of the two acoustic experts, and consider overall that any noise effects will be less than minor.

Transport

Parking

71. A total of 13 parks are to be provided on site, which is 13 short of the minimum required in the District Plan. Mr Bartlett noted that the calculation of parking associated with commercial activities is based upon total floor area. In the case of the iFly proposal, however, a large part of the floor area is devoted to plant, and the public floor area is a smaller proportion of the total footprint. Mr Bartlett's view was that there will be sufficient parking on the site to service the activity, and this view was shared by Mr Wardill for the Council in his review of the application.
72. Mr Framel indicated that there is a relatively quick turnaround of patrons on the site, with the total experience lasting around 90 minutes. Mr Wardill recommended a number of on-site parking controls in order to ensure that on-site activity based parking is available on a regular basis. These controls are:
- signage/markings dedicating four onsite parking stalls to staff only;
 - P10 parking restriction signage for one onsite car park for the shared pick up/drop off/loading zone activities;
 - P90 parking restriction signage for the remaining eight onsite spaces including the disabled user space; and
 - Give Way signage and markings to provide priority single lane access.
73. The P90 restriction for the majority of the parks accords with Mr Framel's evidence relating to the duration of the experience for patrons. Both Mr Wardill and Mr Bartlett were satisfied that

the proposed conditions were appropriate to manage any potential adverse parking effects, and I accept their view, and conclude that effects in respect to parking will be no more than minor.

Access, manoeuvring, loading and car park lighting

74. The width of the proposed access into the site is 3.6m as opposed to the 5.5m width required by the District Plan and AS/NZS 2890.1.2004, being the standard for Off Street Parking Facilities. Mr Wardill's assessment considers that the access aisle has provision for up to 5m of space for passing when required as it is shared with a pedestrian walkway delineated as a painted pedestrian zone. I also note that the applicant proposes give way controls within the car park's 7m aisle width.
75. Both Mr Bartlett and Mr Wardill agree that there will not be any effects arising from the proposed access arrangement, and that appropriate conditions of consent can be imposed to ensure that the give way and markings controls are provided. I accept this advice.
76. The accessible parking space is 3.6m wide, with a 7m aisle (as opposed to the Plan requirement of an 8 metre aisle). Both traffic experts were agreed that there would be no adverse effects arising from this shortfall, acknowledging that the space is parallel to a pedestrian zone that can provide greater manoeuvring when required for stall users, thereby minimising the effects. I accept this advice and agree that unsafe traffic outcomes are unlikely.
77. The loading area proposed for the site also has a minor shortfall in depth. It is provided as a shared drop-off and pick-up space, and at 5m deep is 1 metre short of the depth required by the District Plan. The nature of the activity is such that large vehicles are unlikely to access the loading space, and I accept the views of Mr Wardill and Mr Bartlett that the breach will not have transport effects on the usability and operation of the car park.
78. It was noted by Mr Wardill that when the car parking area is full, vehicles require an additional reverse manoeuvre to leave site in a forward direction, which breaches the Plan's manoeuvring standards. Mr Bartlett addressed this in the traffic assessment, where he noted that vehicles could use either the accessible car park or the pick-up/drop off park, as these parks are likely to be vacant much of the time. Mr Wardill concurred with Mr Bartlett's evidence that it would be unlikely that a vehicle could not turn within the on-site car park area, and overall that the lack of a specific turning area will have no transport effect on the operation of the on-site access or the adjacent Brecon Street. In the absence of any expert transport evidence from any other party I rely upon the views of Messrs Bartlett and Wardill.
79. The proposed new crossing point is 24m instead of the required 25m away from the Isle street intersection. I accept the view of the traffic experts that this is a minor breach and that there will be no anticipated transport impacts on Brecon Street.
80. The conditions tabled by Mr Farrell at the hearing draw upon those in Ms Hislop's report, and include conditions setting out the appropriate design standards for the transport related aspects of the proposal. I agree with the traffic experts that overall any effects in terms of access, manoeuvring, loading and car park lighting will be less than minor.

Earthworks

81. A total of 4,360m³ of earthworks over an area of 1,740m² with a maximum fill depth of 3.1m and maximum cut height of 7.2m is proposed in order to facilitate the development of the activity on the site.
82. Ms Hislop's report notes that the proposed earthworks are a temporary activity which will change the landform of the site to allow for the proposed construction of the building. I agree that the earthworks could give rise to adverse environmental effects in terms of dust, silt and

sedimentation, as well as adversely affecting stormwater channels, particularly noting that the site is relatively small, with existing developments on all boundaries.

83. The section 42A report notes that Mr Wardill, the Council's engineer, has concluded that earthworks for this development are feasible and that they will neither result in any land instability beyond the site boundaries nor result in any adverse effects on neighbouring properties provided the recommended conditions are applied. I accept this advice, and agree with Ms Hislop's conclusion that any adverse effects from the proposed earthworks can be appropriately managed and mitigated through conditions such that they will be no more than minor.

Services and easements

84. Located within an established urban area, the site is serviced with water, sewer and stormwater connections. Mr Wardill has recommended a condition requiring full engineering details of water, sewer and stormwater services and connections be provided to Council, for further review, prior to starting works onsite, and I consider this is appropriate.
85. As identified in the section 42A report, several stormwater drains belonging to Council and originating within the subject site drain into the northeast corner and the adjacent Queenstown Medical Centre site. These drains will be directly affected by the locations of the proposed building and car park area. Mr Wardill's advice was that this can be addressed at the commencement of the earthworks in order to determine exactly what these drains service and how best to re-route stormwater services. In order to ensure this occurs, Mr Wardill recommended several conditions including the requirement to provide an easement in gross over all Council drains.
86. The proposed excavations will also affect services to the adjacent mini golf site, which is also owned by the subject lot owner. These services will likely require re-routing to accommodate the proposed building and temporary sheet piling, and Mr Wardill has recommended a number of conditions to ensure that rights to services via easements are retained at all times for relocated service locations. Mr Wardill also recommends that any proposed power and telecommunication connections are provided underground to the new building in accordance with the network provider recommendations.
87. No party disputed Mr Wardill's view, or proposed alternative conditions. Having considered the section 42A report and Mr Wardill's report, I am satisfied that any effects in terms of services and easements will be less than minor.

Hazards

88. Based on Mr Wardill's advice, Ms Hislop considered that any effects related to natural hazards would be no more than minor. There was no evidence to the contrary and I accept this view.

Culture

89. I accept the evidence that the site is not known to be of archaeological or culture significance. However, the applicant has volunteered a condition in respect to protocol to be followed should archaeological or taonga items be discovered during earthworks, and I consider this is appropriate.

Summary of effects

90. Overall, having considered the evidence presented at the hearing, the application and supporting reports, the submissions and the amended plan provided subsequent to the hearing, I am satisfied that the adverse effects of the proposed activity will not be more than minor. I therefore consider that the proposal meets the effects threshold in section 104D(1)(a) of the Act. I consider that conditions of consent can be imposed that will be sufficient to ensure that

any adverse effects are appropriately avoided, remedied or mitigated.

Objectives and Policies of the Operative District Plan

91. I have considered the detailed assessments of the objectives and policies of the Plan as set out in the Application, the section 42A report and the evidence of the planning experts.
92. The relevant chapters of the District Plan are Part 4 (District Wide), Part 7 (Residential Areas), Part 14 (Transport), Part 18 (Signage) and Plan Change 49 (Earthworks), and the relevant provision addressed below.
93. In addition, the provisions of the Proposed District Plan (PDP), Chapter 3 (Strategic Directions) and Chapter 12 (Queenstown Town Centre) must be assessed as the Council notified the PDP on 26 August 2015 and submissions closed on 23 October 2015 as such consideration must be given to these provisions. Submissions have been received in respect to Chapter 12 (Queenstown Town Centre) which relate to the Objectives, Policies and Rules of this proposed zone and as such these provisions of the PDP are not considered operative.

Operative District Plan

94. Objective 2 in section 4.9 (District Wide – Urban Growth) of the Operative Plan, in relation to existing urban areas, seeks urban growth which has regard for the built character and amenity values of the existing urban areas, and enables people and communities to provide for their social, cultural and economic wellbeing. This Objective is followed by Policy 2.1 which seeks to ensure that growth and development within the existing urban areas protects or enhances the built character and amenity of the existing residential areas and small townships. Objective 4 relates to business activity and seeks a pattern of land use which promotes a close relationship and good access between living, working and leisure environments. Policy 4.3 seeks to recognise and promote the established commercial character of the Commercial Precinct which contributes to its ability to undertake commercial, health care and community activities without adversely affecting the character and amenity of the surrounding environment.
95. The proposed iFly development is located within an existing urban area that accommodates a large number of commercial activities, and a central location places the activity in the heart of the Applicant's target market. While Ms Costello considered that the development would have moderate effects from an urban design perspective, overall both she and Ms Hislop were satisfied that the design changes made the Applicant appropriately addressed the urban design issues such that any adverse effects on the amenity of the streetscape and surrounding area would be no more than minor. Being located in the midst of a number of established commercial activities is consistent with the purpose of the Commercial Precinct. Overall I agree with the section 42A report that the proposal is not contrary to these provisions.
96. Part 7 of the Operative Plan relates to the residential zones. Objective 3 seeks to provide pleasant living environments within which adverse effects are minimised while still providing the opportunity for community needs. The Objective is implemented by Policies including Policy 3.4 which seeks to ensure the external appearance of buildings reflects the significant landscape values and enhance a coherent urban character and form as it relates to the landscape, and Policy 3.13 which requires an urban design review to ensure that new developments satisfy the principles of good design.
97. Prior to the Applicant amending the design of the proposed building, the section 42A report considered that the building did not reflect significant landscape values or enhance the coherent urban character and form as it relates to the landscape. While the underlying zoning is residential, I agree with the section 42A report that this should be considered in the context of the site being within a Commercial Precinct. I also note that there is little residential activity in the immediate vicinity. The Applicant has also submitted their design to the Council's Urban Design panel, and made additional changes in response to that report.

98. The Applicant made changes to the outward appearance of the building in response to the concerns raised initially by the planner and Urban Designer to address their concerns regarding the suitability of the building in the context of the site and surrounding area. Having considered the evidence and the changes made by the Applicant, I agree with Ms Hislop's overall view that the building can be accommodated on the site, and that the proposal is not contrary to the above provisions.
99. Ms Hislop's report also addressed the relevant provisions from Chapters 14 (Transport), 18 (Signage) and Plan Change 49 Earthworks). Her overall view was that the proposal was consistent with these provisions, and I accept that evidence.

Proposed District Plan

100. Ms Hislop addressed the relevant objectives and policies from the proposed District Plan, and noted that the proposal was not contrary to the objectives and policies in respect to Chapter 3 (Strategic Direction). I agree with this view, noting also that Mr Farrell agreed with Ms Hislop.
101. Chapter 12 of the Proposed Plan deals with the Queenstown Town Centre. Objective 12.2.2 seeks development that achieves high quality urban design outcomes and contributes to the town's character, heritage values and sense of place. This objective is supported by Policy 12.2.2.2 which requires development to:
- Maintain the existing human scale of the Town Centre as experienced from street level through building articulation and detailing of the façade, which incorporates elements which break down building mass into smaller units which are recognisably connected to the viewer; and
 - Contribute to the quality of streets and other public spaces and people's enjoyment of those places; and
 - Positively respond to the Town Centre's character and contribute to the town's 'sense of place'.
102. I agree with Ms Hislop's view that the proposal is not contrary to these provisions. The building's bulk is a response to the functional need of the activity. The changes made to the design, as explained by Mr Adnitt, achieves a high quality outcome, and ensure that the building relates appropriately to Brecon Street through the use of glazing, landscaping and changes to the signage that result in a building that does not detract overall from the Brecon Street streetscape. The commercial activity contributes to the 'sense of place' in that it reinforces the character of the upper Brecon Street area and the node of commercial activity it supports. Overall I accept Ms Hislop's view that the proposal is not contrary to these provisions.

Summary of Findings

103. Overall, I agree with Ms Hislop and Mr Farrell that the proposal is not contrary to the relevant provisions of the Operative and Proposed District Plans, and therefore consider that the proposal satisfies the second threshold test in section 104D(1)(b).

Other Matters

104. As a non-complying activity, the issue of precedent must be considered. Requiring particular consideration is the proposed maximum height of the building being 15.3m at a site where 7m is anticipated. In order to be able to rely on a precedent, an application would be required to exhibit similar characteristics. Given that the height of the building is a direct response to the nature of the proposed vertical wind tunnel, I consider it unlikely that a future applicant could provide that it had unique characteristics similar to the iFly application. It would also have to demonstrate that it had a similar shape and topography as the subject site, as well as other

factors. For these reasons, I consider that unless a similar application is made on a site with similar characteristics, this application is not precedent setting.

Part 2 Matters

105. Section 5 states that the purpose of the Resource Management Act is “to promote the sustainable management of natural and physical resources”. “Sustainable management” means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while —
- (a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
 - (b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
 - (c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment.
106. Section 7 requires that I have particular regard to a range of matters. I am satisfied that the evidence presented on behalf of the Applicant, and that of the Council reporting officers, has demonstrated that these matters are appropriately addressed.
107. There are no particular Treaty of Waitangi issues (Section 8) that need to be taken into account in relation to this application.
108. For the reasons set out in this decision, I consider the application to be consistent with relevant matters in Part 2 of the Act, and overall to achieve the purpose of the Act.

Determination

109. Consent is sought to construct a building to be used for a commercial recreation activity, specifically the operation of an indoor skydiving activity. Land use consent is also sought in respect to breaches relating to the height of the building, continuous building length and noise as well as associated transport/parking standards, earthworks and signage.
110. Overall, the activity was assessed as a non-complying activity under sections 104, 104B and 104D of the Act.
111. The Act seeks to avoid, remedy and mitigate adverse effects associated with developments. I consider that the adverse effects of this application can be appropriately avoided, remedied or mitigated, and accordingly I am satisfied that the test in section 104D(1)(a) is met.
112. I further find that the proposal is not contrary the relevant objectives and policies of the District Plan, and accordingly I am satisfied that the test in section 104D(1)(b) is also met.
113. Accordingly, I determine that Consent be GRANTED pursuant to sections 104B and 104D of the Act subject to the attached conditions which are imposed under section 108 of the Act.
114. Dated at Queenstown this 26th day of February 2016.



Andrew Henderson

Hearings Commissioner

CONDITIONS OF CONSENT: RM150766

General Conditions

1. That the development must be undertaken/carried out in accordance with the plans:

Walker Commercial Architects

- Location Plan', iFly Queenstown - Drawing No RC100
- Site Topo, iFly Queenstown - Drawing No RC101
- Site - Basement Plan' iFly Queenstown - Drawing No RC102
- Site – Ground Floor Plan' iFly Queenstown - Drawing No RC103
- Site – First Floor Plan' iFly Queenstown - Drawing No RC104
- Site – Roof Plan' iFly Queenstown - Drawing No RC105
- South Elevation' iFly Queenstown - Drawing No RC201 Rev 2
- West Elevation' iFly Queenstown - Drawing No RC202 Rev 2
- North Elevation' iFly Queenstown - Drawing No RC203 Rev 2
- East Elevation' iFly Queenstown - Drawing No RC204 Rev 2
- Cross Section B – iFly Queenstown - Drawing No RC1001

Aurum Survey

- Building Heights – Drawing 2959.65.1B
- iFly Queenstown Earthworks - Drawing 2959-1R-1B
- iFly Queenstown Sections - Drawing 2959-1R-2B
- iFly Queenstown Sections - Drawing 2959-1R-3B

Baxter Design Group

- iFly Indoor Skydiving NZ Ltd – Indicative Master Plan' Ref 2564 – CP02
- iFLY Indoor Skydiving NZ Ltd – Indicative Planting Palette' Ref 2564 – CP03

stamped as approved on 26th February 2016, and the application as submitted, with the exception of the amendments required by the following conditions of consent.

- 2a. This consent shall not be exercised and no work or activity associated with it may be commenced or continued until the following charges have been paid in full: all charges fixed in accordance with section 36(1) of the Resource Management Act 1991 and any finalised, additional charges under section 36(3) of the Act.
- 2b. The consent holder is liable for costs associated with the monitoring of this resource consent under Section 35 of the Resource Management Act 1991 and shall pay to Council an initial fee of \$240. This initial fee has been set under section 36(1) of the Act

Landscaping

3. The approved landscaping plan shall be implemented within the first planting season of approval, and the plants shall thereafter be maintained and irrigated in accordance with that plan. If any plant or tree should die or become diseased it shall be replaced within the next available planting season.

Urban Design

4. Prior to commencement of any works on site the consent holder shall provide to the Council's Monitoring Team detailed design plans for the small forecourt area at the front of the building to

ensure this area provides amenity and a pleasant space fronting the building. These details are to be approved by the Council's Urban Designer.

Engineering and Construction Conditions

5. Hours of operation for earthworks shall be:
- Monday to Saturday (inclusive): 8.00am to 6.00pm.
 - Sundays and Public Holidays: No Activity

In addition, no heavy vehicles are to enter or exit the site, and no machinery shall start up or operate earlier than 8.00am. All activity on the site is to cease by 6.00pm.

General

6. All engineering works, including the construction of retaining walls, shall be carried out in accordance with the Queenstown Lakes District Council's policies and standards, being QLDC's Land Development and Subdivision Code of Practice adopted on 3rd June 2015 and subsequent amendments to that document up to the date of issue of any resource consent.

Note: The current standards are available on Council's website via the following link: <http://www.qldc.govt.nz/planning/resource-consents/qldc-land-development-and-subdivision-code-of-practice/>

To be completed prior to the commencement of any works on-site

7. Prior to commencing works on site, the consent holder shall submit a traffic management plan to the Road Corridor Engineer at Council for approval. The Traffic Management Plan shall be prepared by a Site Traffic Management Supervisor. All contractors obligated to implement temporary traffic management plans shall employ a qualified STMS on site. The STMS shall implement the Traffic Management Plan. A copy of the approved plan shall be submitted to the Principal Resource Management Engineer at Council prior to works commencing.
8. At least 7 days prior to commencing excavations, the consent holder shall provide the Principal Resource Management Engineer at Council with the name of a suitably qualified professional as defined in Section 1.7 of QLDC's Land Development and Subdivision Code of Practice who is familiar with the '*Geosolve Limited, Geotechnical Report for Resource Consent, Lot 1 DP 306661, Brecon, Queenstown*' (dated August 2015, GeoSolve Ref: 150292), and who shall supervise the excavation procedures and ensure compliance with the recommendations of this report.
9. The owner of the land being developed shall provide a letter to the Principal Resource Management Engineer at Council advising who their representative is for the design and execution of the engineering works and construction works required in association with this development and shall confirm that these representatives will be responsible for all aspects of the works covered under Sections 1.7 & 1.8 of QLDC's Land Development and Subdivision Code of Practice, in relation to this development.
10. Prior to the commencement of any works on the site the consent holder shall provide to the Principal Resource Management Engineer at Council for review and certification, copies of specifications, calculations and design plans as is considered by Council to be both necessary

and adequate, in accordance with Condition (6), to detail the following engineering works required:

- a) The provision of a water supply to the development. This shall include an Acuflo CM2000 as the toby valve. The costs of the connection shall be borne by the consent holder.
- b) The provision of a foul sewer connection to the development. The costs of the connection shall be borne by the consent holder.
- c) The provision of a connection from all potential impervious areas within the development to the Council reticulated stormwater disposal system. The individual lateral connections shall be designed to provide gravity drainage for the entire area within each lot. Details shall include proposed changes to all Council stormwater drains affected by the development.

It is noted the existing stormwater drains located onsite will require locating to determine exactly what upstream sites they service, if any.

- d) A lighting plan shall be prepared by a suitably qualified lighting specialist in accordance with Council's road lighting policies and standards including the *Southern Light Strategy* and shall be submitted to Council for approval. The lighting level for the onsite car park shall be designed to cater for a P11a lighting standard as defined in AS/NZS 1158.3.1:2005, unless agreed otherwise by the Principal Engineer for Council. All lighting installed shall be privately maintained and isolated from the Council's lighting network circuits.
- e) An updated Construction Management Plan from the Contractor and Engineer for the development. This plan shall use as the basis, the '*Draft Construction Management Plan*' for *iFLY Indoor Skydiving Facility*, from *Peak Projects*, dated 21 September 2015.

11. Prior to commencing any work on the site the consent holder shall install a construction vehicle crossing which all construction traffic shall use to enter and exit the site. The minimum standard for this crossing shall be a minimum compacted depth of 150mm AP40 metal that extends 10m into the site. Wooden planks or similar shall be provided to protect the footpath and kerb from damage caused by construction traffic movements, in accordance with "A Guide to Earthworks in the Queenstown Lakes District" brochure, prepared by the Queenstown Lakes District Council.

Note: No construction entrance will be supported if there is any conflict with the ambulance service to/from Isle Street.

12. The consent holder shall install measures to control and/or mitigate any debris, dust, silt run-off and sedimentation that may occur, in accordance with QLDC's Land Development and Subdivision Code of Practice and in accordance with the updated Construction Management Plan, reviewed by Council in Condition 10(e) above. These measures shall be implemented **prior** to the commencement of any earthworks on site and shall remain in place for the duration of the project, until all exposed areas of earth are permanently stabilised.

To be monitored throughout earthworks

13. The earthworks, batter slopes, and retaining shall be undertaken in accordance with the recommendations of the report by '*Geosolve Limited, Geotechnical Report for Resource Consent, Lot 1 DP 306661, Brecon, Queenstown*' (dated August 2015, GeoSolve Ref: 150292),
14. All temporary retention systems shall be installed to avoid any possible erosion or instability.
15. The consent holder shall implement suitable measures to prevent deposition of any debris on

surrounding roads by vehicles moving to and from the site. In the event that any material is deposited on any roads, the consent holder shall take immediate action, at his/her expense, to clean the roads. The loading and stockpiling of earth and other materials shall be confined to the subject site.

16. No earthworks, temporary or permanent, are to breach the boundaries of the site except for the vehicle crossing works and service connection works within the road reserve.

On completion of earthworks and prior to construction of the building

17. On completion of earthworks within the building footprint and prior to the construction of the building, the consent holder shall ensure that either:

a) Certification from a suitably qualified engineer experienced in soils investigations is provided to the Principal Resource Management Engineer at Council, in accordance with NZS 4431:1989, for all areas of fill within the site on which buildings are to be founded (if any). Note this will require supervision of the fill compaction by a chartered professional engineer;

or

b) The foundations of the dwelling shall be designed by a suitably qualified engineer taking into consideration any areas of uncertified fill on-site.

Prior to commercial operation

18. Prior to the commercial operations in the building, the consent holder shall complete the following:

a) The submission of 'as-built' plans and information required to detail all engineering works completed in relation to or in association with this development at the consent holder's cost. This information shall be formatted in accordance with Council's 'as-built' standards and shall include all Roads (including right of way and access lots), Water, Wastewater and Stormwater reticulation.

b) The completion and implementation of all certified works detailed in Condition (10) above.

c) The construction of a 6m wide sealed vehicle crossing that shall be constructed from Brecon Street to the development to Council's standards and located at least 24m from the Isle Street intersection

d) The construction and sealing of all vehicle, pedestrian manoeuvring, and at least 13 onsite car parking stalls to Council's standards and as shown on *Walker Commercial Architects, Drawing RC103, Revision 1*, submitted with the application. All onsite parking, pedestrian and loading areas shall be clearly and permanently marked out with provision made for stormwater disposal. Specifically this shall include the following:

i) Signage dedicating four onsite parking stalls to staff only.

ii) P10 parking restriction signage for one onsite car park for shared pick up/drop off/loading zone activities.

iii) P90 parking restriction signage for (all remaining) eight onsite parking spaces combined with painted markings to the disabled user space.

iv) Give way signage and markings to provide priority single lane access.

v) All signage and road markings shall be in accordance with MOTSAM (Manual of Traffic Signs and Markings) requirements.

- e) A Computed Easement Plan shall be submitted to Council for approval showing details of any necessary easements to legalise changes to infrastructure service alignments that pass across Lot 1 DP 306661. This shall include:
 - i) New Easements for relocated services to Lot 1 DP 306661 and Lot 2 DP 27703. For clarity this is necessary to ensure appropriate timing for cancellation of Easement Instruments 5183050.5 relating to redundant/relocated services.
 - ii) A s243e to cancel existing Easement Instruments 5183050.5 shall be signed subsequent to completion of Condition 18(e)(i) as it relates to Lot 1 DP 306661 and Lot 2 DP 27703.
 - iii) Easements in gross shall be created for all Council drains within the site.

Once approved by Council, the easements shall then be registered on the Computer Freehold Register for the lots, prior to operation of the development. A covenant shall also be registered on the title in accordance with Condition 19(a) below advising that these easements cannot be cancelled or varied without prior written approval from Council.
- f) Any power supply and/or telecommunications connections to the building shall be underground from existing reticulation and in accordance with any requirements/standards of the network provider's requirements.
- g) All redundant service laterals shall be removed and capped within the road reserve.
- h) The existing vehicle crossing shall be removed and the footpath shall be reinstated. This shall include removing the drop crossing and reinstating the kerb and channel.
- i) The submission of Completion Certificates from both the Contractor and Approved Engineer for all infrastructure engineering works completed in relation to or in association with this subdivision/development (for clarification this shall include all Roads, Water, Wastewater and Stormwater reticulation). The certificates shall be in the format of the QLDC's Land Development and Subdivision Code of Practice Schedule 1B and 1C Certificate
- j) The consent holder shall remedy any damage to all existing road surfaces and berms that result from work carried out for this consent.

Ongoing Conditions/Covenants

- 19. The following conditions of the consent shall be complied with in perpetuity and shall be registered on the Computer Freehold Register for Lot 1 DP 306661 and Lot 2 DP 27703 providing for the performance of the following condition on an ongoing basis:
 - a) A covenant shall be registered on the title advising that the easements created pursuant to Condition 18(e) above shall not be cancelled or varied without prior written approval from Council.

Accidental Discovery Protocol

- 20. If the consent holder:
 - a) discovers koiwi tangata (human skeletal remains), waahi taoka (resources of importance), waahi tapu (places or features of special significance) or other Maori artefact material, the consent holder shall without delay:
 - (i) notify Council, Tangata whenua and Heritage New Zealand Pouhere Taonga and in the case of skeletal remains, the New Zealand Police.

- (ii) stop work within the immediate vicinity of the discovery to allow a site inspection by the Heritage New Zealand Pouhere Taonga and the appropriate runanga and their advisors, who shall determine whether the discovery is likely to be extensive, if a thorough site investigation is required, and whether an Archaeological Authority is required.

Any koiwi tangata discovered shall be handled and removed by tribal elders responsible for the tikanga (custom) appropriate to its removal or preservation. Site work shall recommence following consultation with Council, the New Zealand Pouhere Taonga, Tangata whenua, and in the case of skeletal remains, the New Zealand Police, provided that any relevant statutory permissions have been obtained.

- b) discovers any feature or archaeological material that predates 1900, or heritage material, or disturbs a previously unidentified archaeological or heritage site, the consent holder shall without delay:
 - (i) stop work within the immediate vicinity of the discovery or disturbance and;
 - (ii) advise Council, the Heritage New Zealand Pouhere Taonga and in the case of Maori features or materials, the Tangata whenua and if required, shall make an application for an Archaeological Authority pursuant to the New Zealand Pouhere Taonga Act 2014 and;
 - (iii) arrange for a suitably qualified archaeologist to undertake a survey of the site.

Site work may only recommence following consultation with Council.

Surveyor's Certificate

- 21. In order to ensure that the proposed building is located exactly as proposed in the application and complies with the maximum height permitted by this resource consent, the consent holder shall employ an appropriately qualified surveyor at their expense who shall:
 - (a) Certify to Council in writing that the foundations have been set out in accordance with the approved consent in terms of levels and position; and
 - (b) Confirm to Council in writing upon completion of the building that it has been built in accordance with the approved plans and does not exceed the RL levels annotated on Drawing RC105 dated 1 February 2016.

Noise

- 22. The consent holder shall ensure that sound from all activities, other than construction activity, measured in accordance with NZS 6801:2008 and assessed in accordance with NZS 6802:2008 shall not exceed the following noise limits at any point within any other site:
 - (i) daytime (0800 to 2200 hrs) 60 dB LAeq(15 min)
 - (ii) night-time (2200 to 0800 hrs) 50 dB LAeq(15 min)
- 23. Prior to any commercial operations a report prepared by an acoustics specialist shall be submitted to the Council demonstrating that measured sound levels from all mechanical plant operating together at maximum duty comply with the night-time noise limit in Condition 24. If this limit is not met, adequate mitigation measures shall be put in place to ensure this limit is met and shall remain in place for the duration of the operation of the building.

24. All construction activity shall be conducted in accordance with the approved Construction Management Plan and comply with the noise limits in NZS 6803:1999. The Construction Management Plan shall be amended to address all matters set out in Annex E of NZS 6803:1999.

Loading bay

25. The consent holder shall ensure that delivery vehicles do not exceed the loading bay dimensions to avoid traffic manoeuvring issues on site.

Signage:

26. The maximum dimensions of the signs on the building shall not exceed those specified in the following table:

Building External Signage:

	Dimensions	Area
Sign 1	0.982 x 4.500m	4.419m ²
Sign 2	1.028 x 5.00m	5.140m ²
Sign 3	1.214 x 6.00m	7.284m ²
Sign 4	1.200 x 5.500m	6.600m ²
Sign 5	1.214 x 6.000m	7.284m ²
Total Area		30.727m ²

provided that the area of corporate blue cladding does not exceed the areas shown on the following Plans included within Condition 1:

- South Elevation' iFly Queenstown - Drawing No RC201 Rev 2
- West Elevation' iFly Queenstown - Drawing No RC202 Rev 2
- North Elevation' iFly Queenstown - Drawing No RC203 Rev 2
- East Elevation' iFly Queenstown - Drawing No RC204 Rev 2

Review

27. Within ten working days of each anniversary of the date of this decision the Council may, in accordance with Sections 128 and 129 of the Resource Management Act 1991, serve notice on the consent holder of its intention to review the conditions of this resource consent for any of the following purposes:
- (a) To deal with any adverse effects on the environment in respect to noise and amenity that may arise from the exercise of the consent which were not foreseen at the time the application was considered and which it is appropriate to deal with at a later stage.
 - (b) To deal with any adverse effects on the environment in respect to noise and amenity which may arise from the exercise of the consent and which could not be properly assessed at the time the application was considered.

- (c) To avoid, remedy and mitigate any adverse effects on the environment in respect to noise and amenity which may arise from the exercise of the consent and which have been caused by a change in circumstances or which may be more appropriately addressed as a result of a change in circumstances, such that the conditions of this resource consent are no longer appropriate in terms of the purpose of the Resource Management Act 1991.

Advice Note:

1. The consent holder is advised that any retaining walls, including stacked stone and gabion walls, proposed in this development which exceeds 1.5m in height or walls of any height bearing additional surcharge loads will require Building Consent, as they are not exempt under Schedule 1 of the Building Act 2004.
2. Prior to any works commencing on site, the consent holder is advised to prepare a photo survey of the immediate neighbouring buildings (subject to being permitted access to neighbouring properties for this purpose) so that the extent of damage, if any, due to excavation can be clearly and accurately determined.
3. Prior approval via a Connection to Council Services for a Temporary Water Take is required if Council's water supply is to be utilised for dust suppression during earthworks. This shall include the use of a backflow prevention device to prevent contamination of Council's potable water supply.
4. No further signs, such as window signs or sandwich boards, are permitted by this resource consent.