



DECISION OF QUEENSTOWN LAKES DISTRICT COUNCIL

RESOURCE MANAGEMENT ACT 1991

Applicant:	REAL JOURNEYS LIMITED
RM Reference:	RM130404
Location:	Park Street, Queenstown; “The Narrows” on Lake Wakatipu; and Kelvin Peninsula
Proposal:	To construct and use foreshore and lakebed structures and to undertake a commercial activity on the surface of Lake Wakatipu.
Type of Consent:	Land Use
Legal Description:	On and adjacent to Section 1 SO 410336 held in Computer Freehold Register 463142 (Park Street); the surface and bed of Lake Wakatipu; and Legal Road (at Kelvin Peninsula).
Valuation Number:	2910441500
Zoning:	Rural General
Activity Status:	Non-Complying
Notification:	24 July 2013
Commissioners:	W D Whitney & D Clarke
Date of Decision:	12 November 2013
Decision:	Consent is refused

A. INTRODUCTION

A.1 Background

1. Real Journeys Limited has applied to the Queenstown Lakes District Council for a commercial activity on the surface of a waterbody; and for foreshore and lakebed structures. The applicant proposes to establish a ferry service across The Narrows on Lake Wakatipu to primarily serve walkers and cyclists using the Wakatipu Trails network.
2. Following an initial trial period (discussed further below) a ferry terminal is to be established at Park Street, Queenstown on and adjacent to an Esplanade Reserve described as Section 1 SO 410336 that is held in Computer Freehold Register Identifier 463142 in the Otago Land Registration District. The Park Street terminal is located to the east of the rocky point promontory at Park Street and is located generally opposite Jubilee Park and land designated D36 for “Sewage Pump Station” purposes. Land to the north of Park Street and east of Suburb Street is located in the Low Density Residential Zone in the Operative Queenstown Lakes District Plan (Operative District Plan/District Plan) that became fully operative on 10 December 2009.
3. Following the trial period a ferry terminal is also proposed on Kelvin Peninsula on the southern side of The Narrows. The Kelvin Peninsula terminal is on and adjacent to designated legal road reserve, being unformed legal road, adjacent to land designated D183 for “Recreation Reserve (Yacht Club)” purposes in the Operative District Plan. This land is leased to the Wakatipu Yacht Club for a term of 30 years commencing on 1 October 2010 (ie. until 1 October 2040).
4. That portion of Park Street to the east of the intersection with Suburb Street and Veint Crescent is a long cul-de-sac that connects to the Frankton Track (being part of the Queenstown Trail) at the cul-de-sac head. A footpath exists on the southern (lake) side of Park Street which is devoid of jetties or other structures on the foreshore between the boat sheds in the vicinity of the Queenstown Gardens, and the cul-de-sac head.
5. The terminal site at Kelvin Peninsula is located immediately to the east of a small sandy spit and is located on a beach generally to the west of an existing jetty, being one of two jetties operated by the Wakatipu Yacht Club. The landward

portion of the jetty structure will encroach onto the unformed legal road within a stand of existing established Douglas Fir trees.

A.2 The Proposal

Ferries

6. Initially a trial ferry is to be utilised to assist the applicant in determining the commercial viability of a ferry service. The trial ferry will load and unload directly onto the foreshore at either end of the trip.
7. The trial ferry is likely to be smaller than the permanent ferry (discussed below) and the applicant anticipates that the trial ferry could be in operation for a period of up to two years albeit that this period has been described as being a “guesstimate”. The trial ferry is to be powered by a 50 horse power outboard motor.
8. The permanent ferry is to have a catamaran configuration for stability and is to be 10.5 metres in length and 4.2 metres in breadth. The permanent ferry will be constructed of aluminium alloy and the superstructure will be open on the sides to improve visibility and reduce windage. The permanent ferry, described by the applicant at the hearing as the “Bumble Bee” ferry, features yellow and dark grey (or black) striped paintwork to enhance safety.
9. The permanent ferry is to be propelled by two azimuthing thrusters, one in the aft section of each hull. The thrusters are electric motors each with their own independent bank of batteries installed below deck in the hulls. The batteries will be charged by an induction system at the Park Street terminal, automatically connecting once the vessel is berthed.
10. The permanent ferry will carry up to 30 passengers, up to 15 cyclists with bikes, or a combination of both. The interior will be arranged with cycle stands on both sides and with handrails for the standing passengers. There will be sufficient room in the central corridor for wheelchairs. Prams and golf trundlers can also be carried.

11. The ferry is to operate across 320 metres of water at The Narrows, being the shortest distance between both sides of the lake. The duration of the ferry crossing is estimated to be less than 5 minutes.
12. At the hearing the applicant suggested that a reasonable limitation on operating hours for the ferries could be:
- 1 September to 30 April – daily, 0600 hrs (6:00am) to 2400 hrs (midnight)
 - 1 May to 31 August – daily, 0600 hrs (6:00am) to 2200 hrs (10:00pm).
13. At the conclusion of the hearing Mr Goldsmith for the applicant submitted that the hours could be further restricted by the Commission; and noted the potential for changing the hours in future via an application to change the relevant condition. Alternatively Mr Goldsmith informed us that the hours of operation could be subject to a review condition.
14. Subsequent to the hearing the applicant formally advised in a Memorandum from Mr Goldsmith dated 4 November 2013 that the application was further amended to limit the hours of operation to 6:00am – 8:00pm, throughout the year.

Park Street Terminal

15. To facilitate operation of the trial ferry steps are proposed to the west of the future jetty [as shown on Mr Baxter's Attachment A] to provide access to the foreshore for the trial ferry. These steps will also provide public access down to the beach.
16. The permanent ferry terminal at Park Street has several components as follows:
- A short path and access ramp that ties into the existing Park Street footpath.
 - A flat deck area, approximately 8 x 4.5 metres upon which a shelter structure 2 metres wide, 5 metres long and 2.4 metres in height is to be located. Such shelter structure is to be open to the east and north.
 - A timber jetty structure 10.7 metres in length and 1.5 metres wide which is supported by piles and which has a wooden handrail structure above it.
 - A 10 metre long and 1.5 metres wide steel gangway with timber deck and non-slip finish that is anchored to the jetty and to a floating pontoon.
 - A floating pontoon approximately 7.2 metres in depth that is orientated parallel to the shoreline. The floating pontoon is anchored by two steel pylons that

extend to a height of 314.5 metres, being 3.85 metres above normal high water level of 310.65 metres.

- A floating breakwater structure (floating wave attenuator) that has scaled dimensions of approximately 20 x 4 metres (80m²) and which projects approximately 12 metres beyond the outer edge of the floating pontoon. The breakwater can be concrete, steel or composite (fibre reinforced plastic/polyethylene) and will sit approximately 400mm above the waterline. The floating breakwater will be anchored to the lakebed with concrete block anchors and Seaflex units will maintain tension on the mooring lines.
- The permanent ferry will be moored at the Park Street terminal floating pontoon when not in use.

17. The components of the Park Street terminal (including the jetty, pontoon and breakwater structure) will project approximately 47 metres from the Park Street footpath into The Narrows.

Kelvin Peninsula Terminal

18. The Kelvin Peninsula terminal has similar components to the Park Street terminal. The Kelvin Peninsula terminal consists of:

- A concrete slab and gravel area that ties into the existing ground level and walking track at the Kelvin Peninsula end.
- A shelter structure consistent with the Park Street terminal structure, with protection to the north and east sides.
- A 10.9 metre long, 1.5 metre wide jetty mounted on piles with timber hand railing above.
- A 10 metre long by 1.5 metre wide steel gangway with timber deck and non-slip finish that is anchored to the jetty at one end and to a floating pontoon at the other.
- A floating pontoon that is orientated perpendicular to the shoreline and which is anchored by steel pilings to a height of 314.5 metres.

19. No breakwater structure is required with respect to the Kelvin Peninsula terminal. The components of the Kelvin Peninsula terminal (including the jetty and pontoon) will project approximately 33 metres from the edge of the slab on the landward side to the outer edge of the pontoon on the surface of the lake.

20. Lighting is proposed at both the Park Street terminal and the Kelvin Peninsula terminal. Such lighting can be placed at a low height. Low density directional yellow LED navigational lights will be mounted into the floating pontoon to facilitate manoeuvring of the ferry. Safety lighting may also be required on the breakwater depending on the requirements of the Harbourmaster.
21. Metal components of the Park Street terminal and the Kelvin Heights terminal can be finished in a dark brown or dark grey colour; and the breakwater can also be finished in a dark grey colour to mitigate visual effects.
22. In the application documentation, in documents circulated by the applicant subsequent to the lodging of submissions and at the hearing the applicant volunteered a range of conditions to mitigate effects. These include the following (or to like effect):
- (i) Dark brown or dark grey colours for components of the structures.
 - (ii) Operation of a single ferry.
 - (iii) A restriction on hours of operation (further altered subsequent to the hearing see paragraph 14 above).
 - (iv) Relocation of the Park Street jetty approximately 21.5 metres to the east from the position originally proposed.
 - (v) Relocation of the shelter structure at the landward end of the Park Street jetty.
 - (vi) Use of a larger floating breakwater rather than wave break piles (as originally proposed).
 - (vii) Relocation of the Kelvin Peninsula jetty approximately 6 metres to the west of the position originally proposed.
 - (viii) Lower height lighting on the jetties to be operated by infrared sensor.
 - (ix) Provision of berthing bollards on the outer sides of the floating pontoons to facilitate public use.
 - (x) Provision of ladder facilities on both floating pontoons for the use of swimmers.
 - (xi) The addition of steps from the Park Street footpath down to the beach for use in conjunction with the trial ferry.
 - (xii) Deletion of any lockable gate from the jetty structures.
 - (xiii) Provision of a carpark and associated access at Kelvin Peninsula to the south of the existing Wakatipu Yacht Club carpark and boat storage area.

- (xiv) A review condition with respect to carparking.
- (xv) Measures to discourage use of the Wakatipu Yacht Club carpark at Kelvin Peninsula by ferry users (but not by utilising a gate).
- (xvi) Noise to be subject to a review condition.
- (xvii) Neighbours to be advised when construction noise anticipated.
- (xviii) Preparation of a safety plan with respect to ferry operations.
- (xix) Provision of lighting to facilitate pedestrian access to the ferry terminal at Kelvin Peninsula, if required.
- (xx) Limits on the extent of signage (one sign 600mm x 100mm proposed at each ferry terminal).
- (xxi) Noise to comply with relevant District Plan rules.
- (xxii) No amplified commentary permitted.
- (xxiii) A yellow flashing light could be displayed on the ferry, if required.

23. The Commission confirms that it has assessed the proposal on the basis of the application as lodged; the further information provided on behalf of the applicant prior to the hearing, including emails and other correspondence and enclosures from Anderson Lloyd Lawyers dated 11 July 2013, 12 September 2013, 17 September 2013 and 30 September 2013; the contents of Mr Goldsmith's Memorandum dated 4 November 2013 and attachment thereto; and the conditions offered by the applicant at and subsequent to the hearing.

A.3 Zoning

District Plan

24. The Esplanade Reserve at Park Street is zoned Rural General as it comprises stopped road that is zoned Rural General in accordance with Clause A.1(iii) on page A1-17 of the Operative District Plan. The surface, foreshore and lakebed of Lake Wakatipu is zoned Rural General consistent with the Legend to the District Planning Maps; and the unformed legal road at Kelvin Peninsula is deemed to be designated, but is unzoned.

25. Rule 5.3.3.3iv(b) provides for commercial boating activities as a unrestricted discretionary activity. The operation of a ferry across The Narrows is such a commercial boating activity.

26. Rule 5.3.3.4i(c) confirms that commercial activities ancillary to and located on the same site as recreational activities are a non-complying activity.
27. Rule 5.3.3.3iv(a) provides for any structure or mooring which passes across or through the surface of any lake and river or is attached to the bank of any lake and river, except in those locations where such structures or moorings are shown on the District Plan maps as being non-complying as a unrestricted discretionary activity. In this instance Map 35 of the Operative District Plan applies the following notation adjacent to Park Street:
- “All structures and moorings non-complying, except for jetties”.*
28. The Park Street jetty is therefore a unrestricted discretionary activity in terms of Rule 5.3.3.3iv(a).
29. Rule 5.3.3.4ii(b) confirms that structures or moorings passing across or through the surface of any lake or river or attached to the bank of any lake or river in those locations on the District Plan Maps where such structures or moorings are shown as being non-complying, is a non-complying activity. The floating breakwater structure at the Park Street terminal is therefore a non-complying activity.
30. The Kelvin Peninsula terminal is also a non-complying activity pursuant to Rule 5.3.3.4ii(b) as Map 37 confirms that the lake surface and margins at Kelvin Peninsula are subject to the following notation:
- “All structures and moorings non-complying, except for boat launching ramps and jetty at existing Yacht Club site”.*
31. Zone Standard 5.3.5.2ii requires a setback from road boundaries for buildings of 20 metres. A breach of Zone Standard 5.3.5.2ii is a non-complying activity in terms of Rule 5.3.3.4vi.
32. Zone Standard 5.3.5.2iv(b) stipulates that no commercial motorised craft shall operate on Lake Wakatipu within Frankton Arm outside the hours of 0800 to 2000. A breach of Zone Standard 5.3.5.2iv(b) is a non-complying activity pursuant to Rule 5.3.3.4vi.

33. The Commission has considered the proposal as an application for land use consent to a non-complying activity in terms of the Operative District Plan.

Regional Plan : Water

34. On 23 March 1994 the Otago Regional Council and the Queenstown Lakes District Council entered into a deed whereby the Otago Regional Council transferred to the Queenstown Lakes District Council its functions, powers and duties for determining applications for land use consent, consent for which is required to be obtained pursuant to section 13(1)(a) of the Resource Management Act 1991 (the Act).

35. Section 13(1)(a) of the Act directs that no person may, in relation to the bed of any lake or river, use, erect, reconstruct, place, alter, extend, remove, or demolish any structure or part of any structure in, on, under, or over the bed unless expressly allowed by a “.... rule in a regional plan ... or a resource consent.”

36. The Regional Plan : Water for Otago became operative on 1 January 2004. Rule 13.2.2.1 confirms that the erection of the jetty and floating breakwater at the Park Street terminal and of the jetty at the Kelvin Peninsula terminal is a restricted discretionary activity in terms of that rule.

37. Rule 13.5.3.1 of the Regional Plan : Water confirms that the alteration of the bed of any lake or river (except as provided for by Rules 13.5.1.1 to 13.5.2.1 of the Regional Plan : Water) is a discretionary activity. It is unclear whether the current proposal will meet the requirements of Rule 13.5.1.1. Accordingly an unrestricted discretionary activity consent (Rule 13.5.2.1 being not applicable) is required to alter the bed of the lake pursuant to Rule 13.5.3.1.

38. The Commission has therefore considered the proposal as an application for land use consent to a discretionary activity in terms of the Regional Plan : Water.

A.4 Submissions

39. The application was publicly notified on 24 July 2013 and 104 submissions were received by the closing date of 21 August 2013. Eight submissions were received between one and seven working days subsequent to the closing date for

submissions. Having taken into account the matters listed in section 37A(1) of the Act the Commission hereby grants an extension to the time period for the lodging of submissions by J Bitcheno, R Bitcheno, N Hirst, B McKay, A & S Januszkiewicz, A & J Stephens, W Stevens and M Farry.

40. The Commission has given consideration to the contents of all submissions lodged in response to the application.

A.5 Reports and Hearing

41. The Commission has had the benefit of a planning report dated 14 October 2013 from Ms Hanna Afifi a Senior Planner with the Queenstown Lakes District Council; a Landscape Assessment dated 25 September 2013 from Ms Helen Mellsop Landscape Architect with the Queenstown Lakes District Council; an Engineering Report dated 19 September 2013 prepared by Mr Steve Hewland the Principal Resource Management Engineer with the Queenstown Lakes District Council; an Environmental Health report dated 23 September 2013 prepared by Ms Zoe Hammett the Senior Environmental Health Officer with the Queenstown Lakes District Council; a Safety Report prepared by Mr Marty Black the Harbourmaster for the Queenstown Lakes District Council; and written comments dated 20 August 2013 and 12 September 2013 from Mr Paul Wilson, the Acting Manager Parks and Operations with the Queenstown Lakes District Council.

42. At the hearing which took place over three days on 23-25 October 2013 inclusive we were assisted by Ms Afifi, Ms Mellsop, Mr Hewland, Ms Hammett and Mr Black albeit that Mr Black was present on the morning of 23 October 2013 only. Ms Louise Ryan, Committee Secretary with the Queenstown Lakes District Council, provided administrative support at the hearing on 23 October 2013 and 24 October 2013; and Ms Rachel Beer, Planning Support Co-ordinator with the Queenstown Lakes District Council, provided administrative support at the hearing on 25 October 2013.

43. Prior to the hearing we had the opportunity to consider the application and supporting material including the further information filed by the applicant, together with all of the submissions lodged in response to the application. In the company of Ms Afifi we made a site inspection on the afternoon of Tuesday 22

October 2013. This site inspection including visits to the site of the Park Street terminal and the Kelvin Peninsula terminal; and the Commission records that the level of Lake Wakatipu at that time was the Normal High Water Level of 310.65 metres. During the course of the hearing the Commission accepted the applicant's invitation to return to the site of the Park Street terminal to observe the applicant's staff using a rowing boat and pole to demonstrate the location of the westernmost steel pylon pontoon anchor; and the end of the breakwater.

44. At the hearing the applicant was represented by Mr Warwick Goldsmith, counsel, of Anderson Lloyd Lawyers. Mr Goldsmith presented legal submissions and called evidence from Mr Maurice Davis a marine engineer and naval architect of Emtech Limited; Mr Jonathan Clow, Marine Manager of Real Journeys Limited; Mr Tony McQuilkin the Commercial Director of Real Journeys Limited; Mr Paddy Baxter landscape architect and director of Baxter Design Group Limited; Mr Drew Bryant of Real Journeys Limited (who had prepared photomontages); and Mr Jeffrey Brown resource management planning consultant and director of Brown & Company Planning Group Limited.

45. Twenty submitters appeared or were represented at the hearing. Submitters who appeared or who were represented included Sir Eion Edgar; Gillian Mcleod represented by Sir Eion Edgar; Philip & Mrs Jocelyn Sanford represented by Mr Philip Sanford; Philip & Kerrie Schmidt represented by Jocelyn Sanford; Rob Greig & Roz Greig represented by Mr Rob Greig; Sir John & Patricia Lady Davies represented by Mr Graeme Todd of GTodd Law (counsel) with Sir John Davies; Ashley & Helen Cooper and Rhys & Amanda Richards, Steven & Lisa White, Anthony Morris and Alice Hampson represented by Mr Graeme Todd; Wakatipu Yacht Club represented by Mr D Stringer and Mr N McDonald; the ER & CA Henshaw Family Trust represented by Ms Amanda Dewar of Lane Neave (counsel), Mr Ernest Henshaw and Mr John Edmonds resource management consultant and director of John Edmonds & Associates Limited; Mr Wayne Shaw; DJ & EJ Cassells represented by Mr Jay Cassells; Mr Wayne Perkins; Mr Phillip Hensman; the Hollyer Family represented by Mr Matt Hollyer; the Queenstown Trails Trust represented by Mr Carey Vivian; Mr Bryan Collie; Ms Rosemary Crick; Mr Murray Black; and Mr Roger Tompkins.

46. The officers reports were taken as read and Mr Black was invited to comment following the presentation of Mr Davis's and Mr Clow's evidence; and Ms Hammett, Mr Hewland, Ms Mellsop and Ms Afifi were invited to comment following the presentation of all the evidence and submissions. Following Mr Goldsmith's reply the hearing was adjourned.

A.6 Principal Issues in Contention

47. The principal issues in contention before us are the adverse effects on the environment associated with the proposed land use activity. The Commission acknowledges that such effects must be balanced against the positive effects of providing a ferry service at The Narrows.

B. EFFECTS ON ENVIRONMENT

B.1 Permitted Baseline

48. Ms Afifi informed us that earthworks restricted to a volume of up to 300m³ within any 12 month period, a volume of 20m³ within 7 metres of a waterbody and which do not breach Site Standard 5.3.5.1viii; and a land based fence slightly less than 2 metres high are permitted activities in the Rural General Zone. Any structure which passes across the surface of any lake or river, or is attached to the bank of any lake or river, requires resource consent.

49. There are no permitted commercial boating activities within the Rural General Zone. Non-commercial boating activities are a permitted activity provided that they comply with Zone Standards 5.3.5.2iv(a) and 5.3.5.2v (that relate to noise). Non-commercial recreational activities and commercial land based recreational activities of no more than 5 people per group are also permitted activities in the Rural General Zone.

50. There are no lawfully established activities that are particularly relevant to this application nor are there any relevant unimplemented resource consents that are applicable to this proposal.

51. The Commission acknowledges that section 104(2) of the Act states that the consent authority may disregard an adverse effect of an activity on the environment if the plan permits an activity with that effect.

B.2 Affected Persons Approvals

52. No affected persons approvals have been provided with the application.

B.3 Assessment Matters

53. The District Plan contains assessment matters in Part 5 and Part 14 that are relevant to the proposal.

54. Section 104(1)(a) of the Act confirms that when considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to any actual and potential effects on the environment of allowing the activity.

55. Clause 5.4.2 of the District Plan confirms that in considering whether or not to grant consent or to impose conditions assessment matters contained in Clause 5.4.2 are to be addressed in addition to considering any other relevant matters.

56. Clause 5.4.2.1 advises that there are three steps in applying the assessment criteria. These include Step 1 – Analysis of the Site and Surrounding Landscape, Step 2 – Determination of Landscape Category and Step 3 – Application of the Assessment Matters.

57. The Environment Court in decision C180/99 indicatively categorised landscapes. That decision found that Lake Wakatipu is part of an Outstanding Natural Landscape. Ms Mellsop informed us that west of the Frankton Arm the lake is considered to relate to the terrestrial landscape of the wider district as opposed to the landscape of the Wakatipu Basin, and is therefore classified as an Outstanding Natural Landscape (District Wide) (ONL(DW)). Mr Baxter agreed with this categorisation.

58. The Commission has assessed the proposal in terms of the assessment matters that apply specifically to the ONL(DW) along with the other relevant assessment matters stated in the District Plan. The relevant assessment matters stated in Part 5 were listed in Section 9.2.2 of Ms Afifi's report. Ms Afifi chose not to reproduce each of the relevant assessment matters in her report, but instead gave consideration to them during her consideration of the actual and potential

effects on the environment of the proposal. The Commission considers it appropriate to adopt a similar approach to Ms Afifi and confirms that the Commission's assessment of the actual and potential effects on the environment of the proposed activity has been guided by all relevant assessment matters as stated in the District Plan.

59. The Commission now assesses the actual and potential effects on the environment of the proposal utilising the headings contained in Ms Afifi's section 42A report.

B.4 Effects on Lake Processes and Nature Conservation Values

60. The proposal will create effects such as disturbance of the lakebed due to the establishment of localised piles and concrete anchors. Sediment and aquatic biota disturbance can be minimised given the relatively small extent of the lakebed that will be disturbed by the two steel pilings that the floating pontoon is anchored to; the timber piles that support the jetties; and the breakwater anchors.

61. The Commission's conclusion is that any effects on lake processes and nature conservation values associated with disturbance of the lakebed will be no greater than minor. The Commission acknowledges that a positive effect associated with the proposal is the applicant's intention to establish various native species in the vicinity of the Park Street terminal as shown on Mr Baxter's Attachment A.

62. The ferries are proposed to operate at a speed of 5 knots. At such a speed any adverse effect due to erosion from the wake of the ferry is likely to be minimal. While no evidence was presented with respect to the effects on nature conservation values associated with the use of the trial ferry; the Commission does not anticipate that any such effects are likely to be greater than minor albeit that practical difficulties may arise in the operation of the trial ferry when the lake level is high (when no beach is available) and when the lake level is low (when the rocky lakebed is exposed).

B.5 Visual and Landscape Effects

63. It is appropriate to address the effects of the Park Street terminal and the Kelvin Peninsula terminal separately in this context.

Park Street Terminal

64. From distant viewpoints including from Kelvin Peninsula and the foreshore of the Queenstown Gardens, from both ends of Park Street adjacent to the lake and from the Frankton Track the Park Street terminal will not be visually prominent and will not have significant adverse effects on the natural character of the view or the visual coherence of the landscape.
65. From Park Street west of the rocky point, from the rocky point, from the Park Street footpath in the vicinity of the terminal (including to the east) parts of the terminal will be visible. The Commission notes in particular that the large steel piles which the floating pontoon is anchored to and which may project approximately 4.5 metres above water level will be visible from a distance along Park Street; and that the breakwater structure will also be visible on the lake surface.
66. The Park Street terminal will be visible from Park Street, from Jubilee Park, from nearby residences including those that overlook the terminal site (particularly when deciduous trees are not in leaf) from the Esplanade Reserve and from the foreshore and surface of Lake Wakatipu. It is important to note that Park Street, the Esplanade Reserve and the foreshore in this locality is visited by users of the Frankton Track (which Mr McQuilkin advised is estimated to be used by approximately 250,000 persons per year albeit that the veracity of this figure was challenged by several submitters), by residents and by visitors engaged in sightseeing, photography, fishing, swimming, kayaking, boating and picnicking at the lakeshore; and by wedding parties who have their photographs taken against the magnificent views that are available from the Park Street Esplanade Reserve across the lake.
67. Park Street is popular for passive recreation including viewing the scenery from the park bench at the rocky point, from elsewhere along the lakeshore and from parked vehicles. The locality is valued as it provides the opportunity for such passive recreation in close proximity to the bustling Queenstown CBD yet is so tranquil.
68. The Park Street terminal will be clearly visible to all of the above persons who are in the immediate vicinity of the terminal. As noted above the Park Street terminal

features a series of components that will project approximately 47 metres into The Narrows from the footpath at Park Street. The Commission finds that the Park Street terminal will have significant adverse visual and landscape effects on the scenic and amenity values that are found in this locality; and that the adverse effects on the natural character of the landscape will not be adequately avoided, remedied or mitigated by the proposal.

69. No jetties currently exist adjacent to Park Street to the east of the boatsheds (near the Queenstown Gardens). In essence the Park Street terminal is proposed on a portion of the foreshore that is readily accessible to the public and which is devoid of jetty structures at present. The Commission also notes that, as a matter of engineering necessity, a combination of structures is proposed at the Park Street terminal which exceed the size of most other wharf/jetty structures at Lake Wakatipu in the Queenstown area except for those found in Queenstown Bay or at the Frankton Marina.

Kelvin Peninsula Terminal

70. The Kelvin Peninsula terminal is to be located to the west of the westernmost existing Wakatipu Yacht Club jetty. From the Queenstown Gardens, Park Street, the Frankton Track and State highway 6A (Frankton Road) the Kelvin Peninsula terminal will be seen in views that include existing jetties and the *Earnslaw* Slipway. The Commission is satisfied that any visual and landscape effects of the Kelvin Peninsula terminal structure, as seen from a distance, will be no greater than minor.

71. The Kelvin Peninsula terminal will be visible from the walking track at Kelvin Peninsula, from the beach where the terminal is to be located and from the adjacent Wakatipu Yacht Club jetty. From these vantage points the floating pontoon and particularly the anchor pilings will have adverse visual effects that will be greater than minor. From further afield on Kelvin Peninsula the Kelvin Peninsula terminal will be screened by existing trees.

72. The Commission has concluded that the Kelvin Peninsula terminal will have effects that may be greater than minor when viewed from the immediate vicinity of the structure; but that any visual and landscape effects of the structure from further afield will be no greater than minor.

The Ferry

73. The permanent ferry will travel between the floating pontoons and will be moored when not in use at the Park Street terminal. When crossing The Narrows the trial ferry and the permanent ferry will be visible from Park Street and from residential properties above, from the Wakatipu Yacht Club lease area, from sections of State highway 6A (Frankton Road) and from other vantage points.

74. The ferry is to be finished in yellow and dark grey (or black) colours for safety reasons. The Commission acknowledges that brightly coloured boats (particularly jet boats and water taxis) travel through The Narrows and that the ferry will not be a visually unexpected or inappropriate feature in the landscape when in motion. The moored permanent ferry at the Park Street terminal will exacerbate the visual and landscape effects associated with that terminal.

Lighting

75. Lighting will be required at the Park Street terminal and at the Kelvin Peninsula terminal. The effects of any such lighting will be mitigated by the use of low level lighting and sensor activation. The Commission considers that lighting would also be required to assist pedestrians accessing the Kelvin Peninsula terminal from the proposed carpark and/or utilising the footpath from Kelvin Heights. Such lighting, when sensor activated, would create an adverse effect as Kelvin Peninsula is in darkness at night albeit that Mr Baxter advised that such lighting could be directed away from facing the north and north-west. The Commission considers that any such adverse effect would be limited given the hours of operation now proposed being to 8:00pm, year round.

Photomontages

76. Mr Baxter's Attachments D and F included photomontage images prepared by Mr Bryant. These images were criticised by several submitters and by Mr Todd in his submissions presented at the hearing. The Commission agrees with Ms Mellsop that the photomontages do not show the whole of the Park Street terminal components in one panorama. In these circumstances the Commission has placed little weight on the photomontage images that have been supplied, and has used them for general guidance purposes only.

B.6 Residential Character and Amenity

77. The residential area to the north of Park Street and east of Suburb Street is in the Low Density Residential Zone. Residential land generally to the west of Suburb Street and north of Park Street is in the High Density Residential Zone.

78. Amenity values are defined in section 2 of the Act as follows:

*“**Amenity values** means those natural or physical qualities and characteristics of an area that contribute to people’s appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes.”*

79. The residents of Park Street enjoy the amenity values associated with the close proximity of their properties to the margins of Lake Wakatipu. These amenities are also enjoyed by the residents of nearby streets, including residents of Veint Crescent and The Terrace, some of whom enjoy direct access to the margins of the lake through Jubilee Park.

80. The Commission is satisfied that the residents of Park Street and environs enjoy the passive and active recreational opportunities that are afforded by the close proximity of the foreshore at Park Street. This foreshore is also used by many others during the day. At night this is a particularly quiet area due to the absence of through traffic on Park Street east of Suburb Street and Veint Crescent.

81. The Commission finds that this residential area of Queenstown is unique given its close proximity to the lake and the absence of water based or other commercial development. The Commission considers that the residential area at Park Street, particularly to the east of the Suburb Street and Veint Crescent intersection, has a unique character and special amenity values that are enjoyed by not just the immediate residents but by many other Wakatipu residents and visitors alike.

82. The operation of the Park Street terminal will introduce a significant commercial activity into the Park Street residential area. The terminal will act as a permanent focal point for commercial activity in this otherwise tranquil environment. While the ferry service is primarily oriented to walkers and bikers using the Queenstown Trails network; the ferry is also likely to be used by residents of Kelvin Heights for commuting during the day and evening; by golfers wishing to access the Kelvin

Heights Golf Course from Queenstown; and by others who wish to visit Kelvin Heights, including those involved in activities at the Wakatipu Yacht Club. The Commission notes that Kelvin Heights commuters are likely to include workers, school children, shoppers and those who wish to participate in dining and entertainment in the Queenstown CBD.

83. During the daytime, activity at the Park Street terminal will detract from the amenities enjoyed by those who reside in the Park Street residential area east of the Suburb Street/Veint Crescent intersection. The Commission notes in this context the potential for those waiting for the ferry, including cyclists, to gather on the footpath and carriageway of Park Street and at Jubilee Park while awaiting ferry transport.

84. Early in the evening the peace and tranquillity enjoyed by Park Street residents is likely to be affected by pedestrians returning to the ferry terminal from restaurants and entertainment venues in the Queenstown CBD; by taxis and other motor vehicles dropping people off at the ferry terminal (particularly in inclement weather); and by those who gather at the ferry terminal when awaiting ferry transport.

85. The Commission agrees with Ms Hammett and Ms Afifi that noise associated with people waiting for and using the ferry service could have a considerable impact on residential amenity in this locality. The Commission does not consider that Jubilee Park provides an effective “buffer” to protect residents from such noise and notes in this context Ms Hammett’s advice that noise travels upwards, being towards the residences above Jubilee Park.

86. The Emtech report attached to Mr Goldsmith’s Memorandum dated 4 November 2013 confirms the applicant’s earlier advice that the motors of the trial and permanent ferries will comply with the relevant noise rules; and that noise from flexing of the component structures to the ferry terminals will be avoided. The Commission’s conclusion is that noise from the ferry motor and from the terminal structures will not have a significant effect on residential amenity values.

87. The Commission acknowledges that Park Street, the Esplanade Reserve and Jubilee Park are public places where vehicular and pedestrian traffic and public

activity can be expected. Notwithstanding this, the Commission considers that the establishment of a commercial activity being the Park Street terminal will have a significant adverse effect on the amenity values enjoyed by the residents of Park Street and environs and by those who visit this locality to enjoy the peace and tranquillity that this unique and special area offers in such close proximity to the Queenstown CBD.

88. As noted above, the hours of operation were reduced to 6:00am – 8:00pm year round subsequent to the hearing as confirmed in Mr Goldsmith’s Memorandum dated 4 November 2013. The Commission confirms that it has had regard to these reduced hours when reaching its conclusions as presented above. The Commission notes in this context that the Park Street terminal will have an adverse effect on residential amenity values during daylight hours; as well as during the early evening.

89. In summary the Commission finds that the proposal will have a significant adverse effect on residential amenity values, particularly those enjoyed by persons who reside in the Low Density Residential Zone north of Park Street.

B.7 Effects on Lake Users

90. Effects on lake users can be distinguished between the Park Street terminal and the Kelvin Peninsula terminal. The Commission also notes that issues have been raised with respect to navigation in The Narrows and this aspect is addressed further below under the heading of “Water Safety and Navigation”.

Park Street Terminal

91. The lake foreshore at Park Street is used for various activities such as fishing, boating, kayaking, picnicking and swimming; as well as by those engaged in sightseeing and photography, including the taking of wedding photographs. As noted above these recreational opportunities are afforded to both nearby residents; other Wakatipu residents; and to visitors.

92. The Commission considers that the Park Street terminal which includes a series of structures, including the breakwater, that will extend approximately 47 metres from the Park Street footpath into the lake will have an adverse effect that is

greater than minor on lake users in the immediate vicinity of the Park Street terminal, including those who use the Esplanade Reserve and foreshore at and immediately to the east of the rocky point; and those use the lake surface, including those in small boats and kayaks (including those fishing from kayaks) who will have to manoeuvre around the Park Street jetty and breakwater.

93. Mr Baxter noted that positive benefits would result as members of the public would be able to walk out onto the lake on the jetty structure; and as members of the public could also use the steps to access the beach. The Commission considers that such positive effects on lake users at Park Street will be outweighed by the adverse effects discussed above.

Kelvin Peninsula Terminal

94. The Kelvin Peninsula terminal is to be located on a beach situated between the sandy spit and an existing jetty, being the westernmost jetty operated by the Wakatipu Yacht Club.
95. Mr McDonald and Mr Stringer provided considerable information with respect to the activities of the Wakatipu Yacht Club that established at its present site in 1982/83. The Commission notes in particular that the foreshore area which includes the beach to the west of the Wakatipu Yacht Club jetty provides the only flat and sheltered area suitable to rig small Optimist class yachts. Mr McDonald informed us that launching and beaching from this location is particularly well suited, as the water is deep enough that centre boards can remain down until sailors are close to the beach, where the boats can be easily retrieved.
96. The beach is a focus for the undertaking of 'Learn to Sail' programmes that are primarily aimed at school children in the 8-14 year age group. The beach is also used by Yachting New Zealand in delivering the 'Have A Go' programme that introduces school children from the Wakatipu and beyond to the sport of yachting. Mr Stringer informed us that the 'Learn to Sail' programme averages 20-25 students per season; and that the 'Have A Go' programme averages 40-50 participants per session. Mr Stringer was of the opinion that the proposed jetty will severely compromise these activities.

97. Mr McDonald also provided a plan (his Attachment B) that provided an overview of the berthing arrangement for yachts on the western side of the existing jetty. Mr McDonald informed us that the distance between the sandy spit to the existing jetty is considered to be the minimum required to successfully manoeuvre into the jetty for members who regularly launch larger yachts ranging up to 8.5 metres in length. Mr McDonald's Attachment B demonstrated that the location of the Kelvin Peninsula terminal would be a severe impediment to craft manoeuvring; and he informed us that the terminal would render the western side of the existing jetty inaccessible to at least 50 known users.
98. The written submission by the Kelvin Peninsula Community Association expressed concern that the location proposed for the Kelvin Peninsula terminal would impact on a very popular recreational beach. Mr Hollyer advised us, based on his personal observations, that the beach is very popular with swimmers as well as kayakers, fishers, paddle boarders and recreational boaters, predominantly during the summer months. We also heard from Mr Shaw that the beach is also used for family groups having barbeques and swimming, the shallow water near the sandy spit being particularly suitable for youngsters.
99. The Kelvin Peninsula terminal will result in the existing beach being bisected by the jetty and ramp structures; with the floating pontoon occupying the surface of the lake off the beach. The Commission considers that the Kelvin Peninsula terminal will have a significant adverse effect on recreational users of the lake and its margins at the beach. The Commission is also satisfied that the Kelvin Peninsula terminal and associated ferry movements will have an adverse effect on a range of sailing activities, as described by Messrs McDonald and Stringer.
100. The Commission acknowledges Ms Afifi's comment that while yachting activity may occur on only a limited number of days per annum; that the Kelvin Peninsula terminal and associated ferry operations would be present for 100% of the time that yachting (or other recreational activity) would occur in this locality.

B.8 Infrastructure – Traffic and Parking

101. Traffic and parking effects also vary between the Park Street terminal and the Kelvin Peninsula terminal.

Park Street Terminal

102. The Park Street carriageway east of the Suburb Street/Veint Crescent intersection is approximately 450 metres in length, terminating at a cul-de-sac head at the entrance to the Frankton Track. The sealed carriageway varies in width between approximately 6-7 metres, with a pinch point 5.8 metres wide at the sides of the Jubilee Park carpark. This carriageway width dictates that where kerbside parking occurs the road can accommodate a single lane only for traffic.
103. The cul-de-sac head has a diameter of approximately 14 metres. While a car can turn at this cul-de-sac head with some care; this is unlikely to be the case for vans towing trailers that are frequently associated with cycle tour operators.
104. Parking bays have been installed at Park Street to the west of Suburb Street. No such parking bays have been provided at Park Street to the east of the Suburb Street/Veint Crescent intersection.
105. The Park Street terminal will attract additional traffic into the Park Street cul-de-sac. Such traffic includes motor vehicles (including taxis) picking up or dropping off passengers at the ferry terminal. Traffic will also be associated with the operation of the Park Street terminal including Real Journey staff who are involved with the operation and management of the ferry service as well as servicing vehicles. Traffic associated with the Park Street terminal can be expected during the day and early in the evening, particularly when those who have visited restaurants and entertainment venues in the Queenstown CBD are dropped off at the ferry terminal prior to 8:00pm.
106. The ferry service is primarily oriented to the needs of users of the Queenstown Trails network, including the Frankton Track. While a passenger shelter and platform is provided adjacent to the footpath on Park Street, it is possible that groups waiting to utilise the ferry, including cyclists, may obstruct the footpath and carriageway on Park Street. The Commission was informed that cyclists using the Frankton Track who travel on Park Street ride on both the road carriageway and on the existing footpath that is located on the south side of Park Street. The effect of the proposal will be to significantly increase traffic movements on the cul-de-sac portion of Park Street and the potential exists for congestion to occur, particularly when parking occurs at the kerbside; and Mr

Hewland informed us that any widening of this portion of Park Street would be difficult to undertake. The Commission also notes that a blind corner is present on the Park Street cul-de-sac at about the rocky point, such corner being located in close proximity to the location of the Park Street terminal.

107. The applicant has provided an assessment of the existing on-street parking supply at Park Street that has been prepared by Traffic Design Group Limited; such assessment being dated 12 September 2013. Traffic Design Group Limited have noted that given the narrow width of the eastern section of Park Street (east of Suburb Street) the assessment of available kerbside parking is based only on the length of the southern kerb line. The traffic engineers have noted that the significant number of vehicle crossings on the north side of the road means that it is more practicable to assess the parking capacity of the southern side only. Traffic Design Group Limited has advised that there is sufficient space for a maximum of approximately 85 vehicles to be parked at the kerb side on the lakeside of Park Street east of Suburb Street, including the 90 degree parks in the Jubilee Park carpark. For completeness it is noted that Traffic Design Group Limited has also advised that some 71 vehicles can be parked at the kerb side on Park Street (on both sides of the road) between Queenstown Gardens and Suburb Street.

108. Mr McQuilkin provided us with the results of a parking survey that the applicant conducted at Park Street on 2-15 September 2013. That survey showed an average of about seven cars parked in Park Street at any one time and a maximum of 17. The Commission has placed little weight on these survey results given that the period surveyed is a quiet time of the year. The Commission also notes the observations by local residents relating to busier periods; including Mr Collie's observations that during the Christmas period 30-50 cars are parked at Park Street which becomes "quite jammed" as a consequence.

109. The Park Street terminal will result in additional parking demand. Such parking will be utilised by those who use the Park Street ferry terminal at the commencement or conclusion of cycle rides or walks around the Frankton Arm, the Frankton Peninsula or when utilising the trail to Jacks Point. Parking will also be required for those waiting to collect cyclists or walkers, those who may wish to park in Park Street while visiting the Kelvin Heights Golf Course or the Wakatipu

Yacht Club and the applicant's employees operating or managing the ferry service. Such parking demand will be in addition to existing parking demand generated by Park Street residents and their visitors and by those utilising the Park Street foreshore and Jubilee Park for active and passive recreational purposes.

110. The Commission's conclusion is that the effects of traffic and parking associated with the operation of the Park Street terminal will be greater than minor.

Kelvin Peninsula Terminal

111. The Kelvin Peninsula terminal is to be located to the east of the sandy spit at the northern edge of the Kelvin Peninsula. Access to the Kelvin Peninsula terminal is to be achieved via the existing track network that exists at Kelvin Peninsula. In his report dated 19 September 2013 Mr Hewland identified various options for the establishment of a carpark at Kelvin Peninsula for the use of commuters that utilise the ferry service. His option labelled B is located generally to the south of the existing Wakatipu Yacht Club boat storage area and carpark in an existing stand of Douglas Fir trees. A memorandum attached to correspondence dated 30 September 2013 from Anderson Lloyd Lawyers confirms that the applicant agrees to establish a public carpark in the area identified as B; and Mr Goldsmith confirmed at the hearing that such carpark would accommodate a minimum of 20 parked cars and that the applicant would also construct the physical access to the carpark and any associated lighting that may be required.

112. Access to the carpark is to be achieved utilising the existing entry point from the Kelvin Height Golf Course Road carriageway, at the point where a turnoff exists to the Wakatipu Yacht Club boat storage area. Area B is located to the south of the area leased by the Wakatipu Yacht Club and is part of the land designated D182 for "Kelvin Peninsula Recreation Reserve" purposes on Map 37 of the Operative District Plan.

113. The Commission acknowledges that the provision of parking within the designated reserve would be subject to the approval of the Queenstown Lakes District Council as administering authority for the Kelvin Peninsula Recreation Reserve. A comment dated 12 September 2013 from Mr Paul Wilson, the Acting Manager Parks & Operations for the Queenstown Lakes District Council,

confirmed that the Council would be willing to work with the applicant to accommodate parking if necessary, either within the Recreation Reserve or on Road Reserve on or in the vicinity of the Kelvin Peninsula Recreation Reserve.

114. The Commission considers that a dedicated parking area would be necessary on Kelvin Peninsula given that commuter traffic originating from Kelvin Heights is likely to make use of the ferry service. It appears that the potential exists to provide carparking at Kelvin Peninsula subject to any necessary approvals under the Reserves Act 1977. The Commission acknowledges that additional vehicular and pedestrian traffic will result in the vicinity of the Wakatipu Yacht Club complex as a consequence of making such provision for parking; and as a result of commuters (and others) utilising the ferry service from Kelvin Heights.

115. The potential exists for the nominated parking area at area B to be screened by existing vegetation; albeit that lighting effects will be associated with the provision of lighting for personal security at the carpark and on the tracks that lead to the Kelvin Peninsula terminal in an area that is otherwise in darkness at night. The Commission has concluded that traffic and parking effects at Kelvin Peninsula will be no greater than minor.

B.9 Effects on Takata Whenua

116. Ms Afifi advised us that the site is of special significance to takata whenua as acknowledged in the Ngai Tahu Claims Settlement Act 1998. Takata whenua were served with notice of the application and no submissions were received from these parties.

117. The Commission is satisfied that any effects on takata whenua could be mitigated by applying an accidental discovery protocol and by the imposition of conditions with respect to any ecological and environmental effects of the proposed activity on lake processes and nature conservation values. The Commission is satisfied that the proposal will not result in any adverse effects on takata whenua that are more than minor.

B.10 Water Safety & Navigation

118. The Commission acknowledges in this context that safety is a paramount consideration. The applicant proposes to cross The Narrows utilising the most

direct route being approximately 320 metres from the Park Street terminal to the Kelvin Peninsula terminal. The ferry will travel at a speed of 5 knots. The crossing is estimated to take about 3.8 minutes; with the journey taking less than 5 minutes in total.

119. The Narrows of Lake Wakatipu is the only access into the main body of the lake from Frankton Arm for all vessels; and as a consequence there is a High Speed Access Lane in place to allow powered craft to travel in excess of a speed of 5 knots. Mr Black, the Harbourmaster, informed us that the High Speed Access Lane is 50 metres from the south shore (of Kelvin Peninsula) and is marked by three yellow buoys. Mr Black informed us that the northern boundary is not marked; but the Commission understands that this is around 150 metres north of the southern boundary. The High Speed Access Lane is designated in the Queenstown Lakes District Navigation Safety Bylaw 2009 (the Bylaw).

120. The Commission has been provided with legal advice from the Council's solicitors MacTodd dated 9 September 2013 which expresses the opinion that the proposed ferry route will comply with the Bylaw.

121. The proposal will result in a ferry crossing the High Speed Access Lane at right angles. Mr Black advised us that the ferry will be required to give way to all boat traffic that is using the High Speed Access Lane in the correct manner. Mr Black suggested a change in location of the jetties so that the ferry would enter the High Speed Access Lane on more of an angle which would mean that the ferry would generally be travelling in the same direction as other boat traffic for at least part of the short voyage across The Narrows.

122. At the hearing Mr Clow advised that international rules encourage movement at right angles to traffic flow as far as possible. Mr Clow observed that this improves the ability to see other vessels whereas such vessels can be difficult to see at an oblique angle.

123. Mr Clow acknowledged that the ferry will have to give way to traffic using the High Speed Access Lane; and that in the event that a risk of collision did exist, the Maritime Rules : Collision Prevention apply, requiring power-driven vessels to avoid risk of collision. Mr Clow concluded that the operation of the ferry service

across The Narrows does not pose a serious risk to any other water user, either in a safety or activity sense.

124. The Harbourmaster suggested that the applicant develop a Safety Plan for crossing the High Speed Access Lane; that the use of a flashing light be investigated especially for night operations; and that the applicant liaise with the Wakatipu Yacht Club to avoid any conflict. Mr Goldsmith accepted that a yellow flashing light on the ferry could be required as a condition of consent. Mr Black also noted that both ferries will be required to have proper navigational lights and be painted bright yellow and dark grey [black] to provide additional safety.
125. Mr Clow noted the potential for VHF radio to utilise all stations calls as the ferry departs from the terminals. The Commission has reservations that while such an arrangement would work for commercial vessels it would provide little assistance in the context of private vessels which are likely to be common in The Narrows during the busy summer holiday season. The Commission also notes the potential for conflict when the yacht club fleet is in The Narrows on regatta days as observed by several submitters.
126. Several submitters referred to the rough conditions that can be experienced in The Narrows due to the exposure to the prevailing westerly and south-westerly winds. Mr Henshaw also considered that it would be extremely difficult to manoeuvre the ferry in beam “sea” conditions. The Commission anticipates that conditions on the ferry may become uncomfortable during rough conditions as all passengers are required to stand.
127. Notwithstanding the above the Commission considers, subject to adherence to the relevant Maritime Rules that are explicitly aimed at the preservation of safety, that any adverse effects in terms of water safety and navigation are able to be avoided and will be no greater than minor. These conclusions relate specifically to the crossing of The Narrows by the trial ferry and the permanent ferry. Effects on other lake users are addressed above under the heading of “Effects on Lake Users”.

B.11 Earthworks & Hazards

128. Earthworks are proposed to construct the Park Street terminal where it meets the footpath given the difference in level between the footpath level at Park Street and the foreshore area. The volume of such earthworks is not significant and conditions of consent could be imposed, should consent be granted, to ensure adequate site management of earthworks to avoid potential effects relating to dust nuisance, unnecessary sediment runoff into the lake and land stability. The Commission is satisfied that any potential adverse effects with respect to such earthworks would be no more than minor.

129. Earthworks would be associated with the establishment of the carpark at Kelvin Peninsula being option B as identified by Mr Hewland. Mr McDonald opined that such earthworks may require resource consent. Mr Goldsmith, in his reply, observed that such earthworks may not require resource consent on the basis that the carpark is to be constructed in accordance with designation D182 that applies to the Kelvin Peninsula Recreation Reserve. In the absence of detailed information with respect to the extent and nature of any such earthworks (and acknowledging that any such parking area would require approval by the administering authority under the Reserves Act 1977), the Commission is not able to determine whether the adverse effects of such earthworks are likely to be more or less than minor at Kelvin Peninsula.

B.12 Cumulative Effects

130. Cumulative effects vary between the Park Street terminal and the Kelvin Peninsula terminal.

Park Street Terminal

131. The operation of the Park Street terminal will have cumulative effects in terms of traffic and parking demand. The Park Street terminal will attract additional traffic and will create an additional demand for parking at Park Street in addition to the traffic and parking demand that is associated with existing activities, including residential activity and the range of recreational activities that occur at Park Street.

Kelvin Peninsula Terminal

132. From a distance the Kelvin Peninsula terminal will be viewed at Kelvin Peninsula in the context of other structures including the Wakatipu Yacht Club jetties and the *Earnslaw* Slipway. The Commission has noted Ms Mellsop's conclusion that, considering the receiving landscape is a whole, the proposal could be absorbed without significantly exacerbating the adverse effects of existing development on natural character and landscape values at Kelvin Peninsula.
133. Adverse cumulative effects are likely to arise in the context of water based activity at the Kelvin Peninsula terminal. As noted above the small beach between the westernmost Wakatipu Yacht Club existing jetty and the sandy spit is used for various yachting activities and the beach is popular for other recreational purposes. The establishment of the Kelvin Peninsula terminal and associated ferry movements will have an adverse cumulative effect in this locality. Such adverse cumulative effects have the potential to be greater than minor.

B.13 Positive Effects

134. Mr McQuilkin informed us that the ferry service is primarily targeted at users of the Queenstown Trails network. The ferry service would provide a link from Park Street in Queenstown to the Kelvin Peninsula. This ferry service would enhance the experience of those using the Queenstown Trails network by providing the ability to travel in a loop around Frankton Arm without backtracking. The ferry service would also open up trails around the Kelvin Peninsula and the trail to Jacks Point to those from Queenstown who have limited time available to participate in cycling and walking. A water based mode of transport will add to the experience of those using the Queenstown Trails network; and in a general sense enhancement of access to the trails network encourages and facilitates healthy lifestyles.
135. The ferry service will also provide an alternate transport route for commuters between Queenstown and the Kelvin Heights residential area. Substantial land is zoned for future residential subdivision and development at Kelvin Heights as evidenced by the zoning depicted on Map 37 and on other planning maps that form part of the Operative District Plan. The ferry service has the potential to provide existing and future residents of Kelvin Heights with an alternative form of

transport to employment, education, shopping and entertainment venues in Queenstown. The ferry service will also provide an alternate means of achieving access to the Kelvin Heights Golf Club and to the Wakatipu Yacht Club for Queenstown residents.

136. The Commission acknowledges that the use of the ferry service for commuting could have the benefit of reducing the number of vehicles travelling to and from Queenstown from Kelvin Heights, reducing use of the Kawarau Falls Bridge and State highways 6 and 6A (Frankton Road). No evidence was presented to the Commission to quantify this reduction in traffic or to model the effects of the proposal on the transport network.

137. The Commission also acknowledges that the applicant is a proven tourism operator that currently operates more than 36 vessels under safe ship management and carries in excess of 500,000 passengers per annum. The applicant has the expertise to successfully operate the ferry service for the benefit of all users.

138. The Commission is satisfied that significant positive effects would be associated with the proposal. An on-demand ferry service is proposed which would be beneficial to trail users (some of whom could make a spur of the moment decision to use the ferry), commuters and others who wish to utilise a ferry service to cross The Narrows on Lake Wakatipu. The Commission acknowledges in this context that many of the opposing submitters expressed support for a ferry service, but opposed the placement of the terminals in the locations proposed.

B.14 Summary : Effects

139. The Commission finds that the proposed activity will have adverse and positive actual and potential effects on the environment. Adverse effects that are associated with the Park Street terminal and/or the Kelvin Peninsula terminal (as discussed above) include visual and landscape effects, effects on residential character and amenity values, effects on lake users, effects in terms of traffic and parking (at the Park Street terminal) and adverse cumulative effects. The Commission also acknowledges that significant positive effects would be associated with the provision of the ferry service. The Commission's overall

conclusion is that the adverse effects associated with the proposed activity are greater than minor and will outweigh the positive effects.

C. THE QLDC DISTRICT PLAN : OBJECTIVES & POLICIES

140. Parts 4, 5, 7 and 14 of the Operative District Plan contain objectives and policies for the whole district, for rural areas, for residential areas and for transport, respectively. The objectives and policies from Parts 4, 5, 7 and 14 have been presented in Ms Afifi's report and have been referred to in the evidence presented to us by Messrs Brown and Edmonds. To a large extent the objectives and policies relate to matters discussed in our assessment of the effects of the activity. It is neither desirable or necessary, therefore, to undertake a line by line analysis of every objective and policy as this would involve a significant amount of repetition without materially advancing our analysis of this application.

C.1 Part 4

141. Objective 4.1.4 and associated policies are as follows

"Objective 1 – Nature Conservation Values

The protection and enhancement of indigenous ecosystem functioning and sufficient viable habitats to maintain the communities and the diversity of indigenous flora and fauna within the District.

Improved opportunity for linkages between the habitat communities.

The preservation of the remaining natural character of the District's lakes, rivers, wetlands and their margins.

The protection of outstanding natural features and natural landscapes.

The management of the land resources of the District in such a way as to maintain and, where possible, enhance the quality and quantity of water in the lakes, rivers and wetlands.

The protection of the habitat of trout and salmon.

Policies:

...

- 1.7 To avoid any adverse effects of activities on the natural character of the District's environment and on indigenous ecosystems; by ensuring that opportunities are taken to promote the protection of indigenous ecosystems, including at the time of resource consents.

- ...
- 1.13 *To maintain or enhance the natural character and nature conservation values of the beds and margins of the lakes, rivers and wetlands.*
- ...
- 1.16 *To encourage and promote the regeneration and reinstatement of indigenous ecosystems on the margins of lakes, rivers and wetlands.*
- ...”

142. The construction of the Park Street terminal and the Kelvin Peninsula terminal is inconsistent with the objective of preserving the remaining character of the district’s lakes and their margins; and with the objective of protecting outstanding natural landscapes (discussed further below).

143. The Commission acknowledges that some native planting is proposed within the Esplanade Reserve at the site of the Park Street terminal and in this sense the proposal is not contrary to Policy 1.7 and Policy 1.16.

144. Objective 4.2.5 relates to landscape and visual amenity. Objective 4.2.5 is:

***“Objective:
Subdivision, use and development being undertaken in the District in a manner which avoids, remedies or mitigates adverse effects on landscape and visual amenity values.”***

145. Objective 4.2.5 is supported by a number of policies. Policies of relevance include Policy 1 Future Development which relates to the effects of development; Policy 2 that relates to Outstanding Natural Landscapes (District Wide/Greater Wakatipu); Policy 8 that relates to Avoiding Cumulative Degradation; Policy 9 that relates to Structures; Policy 12 that relates to Transport Infrastructure; and Policy 17 that relates to Land Use.

146. Policy 1 – Future Development – is to avoid, remedy or mitigate the effects of development and/or subdivision in those areas of the District where the landscape and visual amenity values are vulnerable to degradation; to encourage development and/or subdivision to occur in areas of the District that have a greater potential to absorb change without detracting from landscape and visual amenity values; and to ensure that subdivision and/or development harmonises with local topography and ecological systems and other nature conservation values as far as possible.

147. The Commission is not satisfied that this policy is met in this instance. The Commission considers that the foreshore in the vicinity of the Park Street terminal has landscape and visual amenity values that are vulnerable to degradation. This portion of the foreshore is devoid of jetties or other built development and is a peaceful and tranquil location that is readily accessible and where residents and visitors can view the outstanding natural landscape of Lake Wakatipu and the surrounding mountains. The Commission does not consider that the proposal is consistent with encouraging development to occur in areas of the district that have a greater potential to absorb change without detracting from landscape and amenity values.

148. Policy 2 – Outstanding Natural Landscapes (District Wide/Greater Wakatipu) states as follows:

“2. Outstanding Natural Landscapes (District-Wide/Greater Wakatipu)

- (a) To maintain the openness of those outstanding natural landscapes and features which have an open character at present.*
- (b) To avoid subdivision and development in those parts of the outstanding natural landscapes with little or no capacity to absorb change.*
- (c) To allow limited subdivision and development in those areas with higher potential to absorb change.*
- (d) To recognise and provide for the importance of protecting the naturalness and enhancing amenity values of views from public roads.”*

149. The Commission does not consider that the proposal is consistent with maintaining the openness of the outstanding natural landscape of Lake Wakatipu that has an open character at present; avoiding development in those parts of the outstanding natural landscape with little or no capacity to absorb change; and recognising and providing for the importance of protecting the naturalness and enhancing amenity values of views from public roads. The Park Street terminal in particular will have a significant adverse effect on the amenity values of views enjoyed from Park Street, including from kerbside parking areas and the footpath which is located on the south side of the road, adjacent to the Esplanade Reserve and foreshore of Lake Wakatipu.

150. In terms of Policy 8 – Avoiding Cumulative Degradation the Commission considers that the benefits of building the Kelvin Peninsula terminal will be outweighed by the adverse effect on landscape values; and that the proposal is not consistent with encouraging comprehensive and sympathetic development given the adverse cumulative effects discussed above.

151. Policy 9 – Structures – refers specifically to preserving the visual coherence of outstanding natural landscapes and visual amenity landscapes by locating structures such that they are in harmony with the landscape and designed appropriately to blend into the landscape within which they are proposed. The policy also encourages colours of buildings and structures to complement the dominant colours in the landscape and promotes the use of local, natural materials and construction in the context of the ONL(DW) – Policy 9(a). The Commission acknowledges in this instance that the structures proposed are dictated by engineering imperatives; particularly the floating breakwater structure at the Park Street terminal. The structures will extend 47 metres from the footpath at Park Street; and will bisect the beach at Kelvin Peninsula. The Commission finds that the proposal is not consistent with preserving the visual coherence of the outstanding natural landscape in this instance notwithstanding that dark colours are to be incorporated into the structures in an effort to mitigate visual effects and that signage is to be limited.

152. Policy 12 – Transport Infrastructure – refers to preserving the open nature of the rural landscape by, amongst other matters, encouraging shoreline structures, such as jetties, to be located only where they are visually contained by the topography, eg. coves or bays. The Park Street terminal and the Kelvin Peninsula terminal have not been chosen primarily to achieve visual containment. The locations have been chosen to achieve the shortest route across The Narrows to maximise the frequency of service. While the Park Street terminal is located generally to the east of the rocky point and the Kelvin Peninsula terminal is located generally to the east of the sandy spit, neither location can be described as being visually contained by the topography and neither is in a cove or a bay. The Commission considers the proposal to be contrary to that part of Policy 12 that is specific to shoreline structures.

153. Policy 17 – Land Use – encourages land use in a manner which minimises adverse effects on the open character and visual coherence of the landscape. The Commission finds that the proposal is contrary to this policy.

154. The Commission considers that the objectives and policies stated in 4.3.4 that relate to Takata Whenua are of no particular relevance in this instance.

155. Clause 4.4.3 contains objectives and policies relating to open space and recreation. Objective 4.4.3.2 and its associated policies state as follows:

“Objective 2 – Environmental Effects

Recreational activities and facilities undertaken in a way which avoids, remedies or mitigates significant adverse effects on the environment or on the recreation opportunities available within the District.

Policies:

- 2.1 To avoid, remedy or mitigate the adverse effects of commercial recreational activities on the natural character, peace and tranquillity of the District.*
- 2.2 To ensure the scale and location of buildings, noise and lighting associated with recreational activities are consistent with the level of amenity anticipated in the surrounding environment.*
- 2.3 To ensure the adverse effects of the development of buildings and other structures, earthworks and plantings in areas of open space or recreation on the District’s outstanding natural features and landscapes or significant natural conservation values are avoided, remedied or mitigated.*
- 2.4 To avoid, remedy or mitigate any adverse effects commercial recreation may have on the range of recreational activities available in the District and the quality of the experience of people partaking of these opportunities.*
- 2.5 To ensure the development and use of open space and recreational facilities does not detract from a safe and efficient system for the movement of people and goods or the amenity of adjoining roads.*
- 2.6 To maintain and enhance open space and recreational areas so as to avoid, remedy or mitigate any adverse effects on the visual amenity of the surrounding environment, including its natural, scenic and heritage values.*

...”

156. The Commission notes in the context of this objective and policies that the proposal is primarily directed to serving walkers and cyclists using the

Queenstown Trails network. However the proposal will not serve to avoid, remedy or mitigate significant adverse effects on the natural character and peace and tranquillity enjoyed by current users of the recreational amenities available in the vicinity of the Park Street terminal and in the vicinity of the Kelvin Peninsula terminal. The Commission considers that the proposed activity is contrary to Objective 2 and to its associated policies as presented above.

157. Objective 4.4.3.3 and its associated policies state as follows:

“Objective 3 – Effective Use

Effective use and functioning of open space and recreational areas in meeting the needs of the District’s residents and visitors.

Policies:

3.1 *To recognise and avoid, remedy or mitigate conflicts between different types of recreational activities, whilst at the same time encouraging multiple use of public open space and recreational area wherever possible and practicable.*

...

3.3 *To encourage and support increased use of private open space and recreational facilities in order to help meet the recreational needs of the District’s residents and visitors, subject to meeting policies relating to the environmental effects of recreational activities and facilities.”*

158. Again while acknowledging the benefits that the ferry service will have for Queenstown Trail network users in particular; the proposal will not serve to avoid, remedy or mitigate conflicts between different types of recreational activities in the vicinity of the Park Street terminal and at the Kelvin Heights terminal. The Commission therefore finds that the proposal will be contrary to Objective 4.4.3.3 and its associated policies as presented above.

159. Objective 4.4.3.4 and its associated policies relate to esplanades. These state as follows:

“Objective 4 – Esplanade Access

A level of public access to and along the District’s rivers, lakes and wetlands, adequate to provide for the current and foreseeable recreational and leisure needs of residents and visitors in the District.

Policies:

...

4.5 *To have regard to any adverse effects along the margins of the District’s lakes, rivers and wetlands when considering resource consents.*

...”

160. In this instance an Esplanade Reserve has been created between Park Street and the lake margin. The Park Street terminal will have adverse effects on those using the Esplanade Reserve at Park Street. The Kelvin Heights terminal will also have adverse effects on those using the beach between the sandy spit and the westernmost Wakatipu Yacht Club jetty. The effect of Objective 4 and its associated Policy 4.5 is to direct attention to these adverse effects.

161. Objectives and policies relating to the Surface of Lakes and Rivers include Objective 4.6.3 and its associated policies that state as follows:

“Objectives

Recreational activities undertaken in a manner which avoids, remedies or mitigates, their potential adverse effects on:

- ***natural conservation values and wildlife habitats,***
- ***other recreational values,***
- ***public health and safety,***
- ***takata whenua values, and***
- ***general amenity values.***

Policies:

1. *to identify the different types of lakes and rivers in the District and the different recreational experiences offered by these lakes and rivers, in terms of:*
 - (a) *outstanding natural characteristics, wild and scenic beauty, aesthetic coherence, biological diversity, ecosystem form, function and integrity, sense of isolation and recreational amenity;*
 - (b) *multiple use and proximity to population centres.*
2. *To enable people to have access to a wide range of recreation experiences on the lakes and rivers, based on the identified characteristics and environmental limits of the various parts of each lake and river.*
3. *On each land and river, to provide for the range of recreational experiences and activities which are most suited to and benefit from the particular natural characteristics.*
4. *To avoid or mitigate the adverse effects of frequent, large-scale or intrusive activities such as those with high levels of noise, vibration, speed and wash.*
5. *To avoid the adverse effects of motorised craft in areas of high passive recreational use, significant nature conservation values and wildlife habitat.*

6. *To ensure that any controls that are imposed on recreational activities through the District Plan are certain, understandable and enforceable, given the transient nature of many of the people undertaking activities on the District's lakes and rivers and the brief, peak period of private recreational activity.*
7. *To avoid and protect the environment from the adverse noise effects of motorised watercraft.*
- ...
12. *To avoid adverse effects on the public availability and enjoyment of the margins of the lakes and rivers.*
13. *To ensure that the location, design and use of structures and facilities which pass across or through the surface of any lake and river or are attached to the bank of any lake and river, are such that any adverse effects on visual qualities, safety and conflicts with recreational and other activities on the lakes and rivers are avoided or mitigated.*
- ...
17. *To ensure that the number of commercial boating operators and/or boats on waterbodies does not exceed levels where the safety of passengers cannot be assured."*

162. In this instance the proposed activity will not avoid, remedy or mitigate adverse effects on other recreational values and the general amenity values that are enjoyed in the vicinity of the Park Street terminal and the Kelvin Heights terminal. The Commission considers that Policies 12 and 13 are of particular relevance in the context of the current proposal and finds that the presence and operation of the Park Street terminal and the Kelvin Peninsula terminal will have adverse effects on the public availability and enjoyment of these parts of the margins of Lake Wakatipu. The proposal is contrary to Objective 4.6.3 and its associated policies.

163. The Commission is satisfied that other objectives and policies stated in Part 4 are of no particular relevance to the current proposal.

C.2 Part 5

164. Part 5 of the District Plan contains objectives and policies that specifically relate to Rural Areas. Objective 1 and its associated policies seek to allow the establishment of a range of activities that are managed in such a way as to protect the character and landscape values of the rural area:

“Objective 1 – Character and Landscape Value

To protect the character and landscape value of the rural area by promoting sustainable management of natural and physical resources and the control of adverse effects caused through inappropriate activities.

Policies:

1.1 *Consider fully the district wide landscape objectives and policies when considering subdivision, use and development in the Rural General Zone.*

...

1.6 *Avoid, remedy or mitigate adverse effects of development on the landscape values of the District.*

1.7 *Preserve the visual coherence of the landscape by ensuring all structures are to be located in areas with the potential to absorb change.*

...”

165. In terms of Policy 1.1 the district wide landscape objectives and policies have been considered fully above. The Commission considers that the proposal is contrary to Objective 1 and to Policies 1.6 and 1.7 as the proposal will not serve to avoid, remedy or mitigate adverse effects of development on the landscape values of the District; and will not serve to preserve the visual coherence of the landscape by ensuring that all structures are located in areas with the potential to absorb change. The Commission again notes in this context the scale of the Park Street terminal, the components of which extend for some 47 metres into Lake Wakatipu; and to the location of the Kelvin Peninsula terminal that bisects the beach.

166. The Commission also notes that Objective 3 and its associated policies seek to avoid, remedy or mitigate adverse effects of development and activity on rural amenity. In this instance the proposed activity will have adverse effects on amenity values that are experienced within and adjacent to the Rural General Zone in the vicinity of the Park Street terminal and the Kelvin Peninsula terminal. These adverse effects are not sufficiently avoided, remedied or mitigated to comply with Objective 3 and its associated policies.

C.3 Part 7

167. Part 7 contains objectives and policies that relate to Residential Areas. As previously noted land to the north of Park Street and east of Suburb Street is in

the Low Density Residential Zone; and land to the west of Suburb Street that extends to the Queenstown Gardens is in the High Density Residential Zone. The Commission is satisfied that the objectives and policies in Part 7 are relevant to the current proposal given the close proximity of the proposed activity to the residential area that exists at Park Street.

168. Objective 3 and its associated policies relate to residential amenity. These provisions state as follows:

“Objective 3 – Residential Amenity.

Pleasant living environments within which adverse effects are minimised while still providing the opportunity for community needs.

Policies:

...

3.4 *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.*

3.5 *To ensure hours of operation of non-residential activity do not compromise residential amenity values, social well being, residential cohesion and privacy.*

...

3.8 *To ensure noise emissions associated with non-residential activities are within limits adequate to maintain amenity values.*

3.9 *To encourage on-site parking in association with development and to allow shared off-site parking in close proximity to development in residential areas to ensure the amenity of neighbours and the functioning of streets is maintained.*

...”

169. The Commission considers that the proposed Park Street terminal will not minimise adverse effects on the pleasant living environment found in the residential area at Park Street. Having regard to the reasons discussed above, the Commission has found that the proposed activity will have a significant adverse effect on residential amenity values; and that adverse effects will be greater than minor in terms of traffic and parking at Park Street. The Commission’s conclusion is that the proposal is contrary to Objective 3 and the associated policies presented above.

170. Objective 4 and its associated policies relate to Non-Residential Activities. These provisions state as follows:

“Objective 4 – Non-Residential Activities

Non-Residential Activities which meet community needs and do not undermine residential amenity located within residential areas.

Policies:

4.1 *To enable non-residential activities in residential areas, subject to compatibility with residential amenity.*

...”

171. The objective and associated policies support non-residential activities that do not undermine, and which are compatible with, residential amenity. The Commission has previously found that the proposal will have a significant adverse effect on residential amenity at Park Street and environs and accordingly the proposal is contrary to Objective 4 and the associated Policy 4.1.

C.4 Part 14

172. Part 14 contains objectives and policies that relate to transport. The objectives and policies stated in 14.1.3 that are of relevance are presented below:

“Objective 1 – Efficiency

Efficient use of the District’s existing and future transportation resource and of fossil fuel usage associated with transportation.

Policies:

...”

1.8 *To consider options for encouraging and developing greater use of public transportation facilities and in particular to continue to investigate the options for alternative transport means.*

1.9 *To require off-road parking and loading for most activities to limit congestion and loss of safety and efficiency of adjacent roads and to promote the maintenance and efficiency of those roads.”*

173. The proposal is consistent with Objective 1 and Policy 1.8. The Commission notes in this context that the permanent ferry is to be powered by electricity and that the ferry represents an alternative form of public transport. No off-road parking is proposed at the Park Street terminal and the proposal is therefore contrary to Policy 1.9.

“Objective 2 – Safety and Accessibility

Maintenance and improvement of access, ease and safety of pedestrian and vehicle movement throughout the District.

Policies:

...

2.2 *To ensure the intensity and nature of activities along particular roads is compatible with road capacity and function, to ensure both vehicle and pedestrian safety.*

2.3 *To ensure access and movement throughout the District, and more particularly the urban areas, for people with disabilities is not unreasonably restricted.*

2.4 *To encourage the development of pedestrian and cycle accessways, within the main townships.*

...”

174. The proposal is consistent with Objective 2 as it improves access for pedestrians and cyclists across The Narrows. The Commission has reservations with respect to the compatibility of the Park Street terminal with the capacity and function of Park Street in terms of Policy 2.2. In terms of Policy 2.3 the Commission acknowledges that the ferry will accommodate wheelchairs; and the provision of a link across The Narrows is consistent with encouraging pedestrian and cycle access in terms of Policy 2.4.

“Objective 3 – Environmental Effects of Transportation

Minimal adverse effects on the surrounding environment as a result of road construction and road traffic.

Policies:

3.1 *To protect the amenities of specified areas, particularly residential and pedestrian orientated town centres from the adverse effects of transportation activities.*

3.2 *To discourage traffic in areas where it would have adverse environmental effects.*

3.3 *To support the development of pedestrian and similar links within and between settlements and the surrounding rural areas, in order to improve the amenity of the settlements and their rural environs.*

...”

175. The Commission considers that the proposal is contrary to Objective 3 and the associated Policies 3.1 and 3.2. The Commission notes that the Park Street terminal will have an adverse effect on residential amenities and will have adverse effects in terms of traffic movements and congestion at Park Street. The proposal is consistent with Policy 3.3 as a pedestrian link will be provided across The Narrows.

“Objective 5 – Parking and Loading – General

Sufficient accessible parking and loading facilities to cater for the anticipated demands of activities while controlling adverse effects.

Policies:

...

5.2 *To ensure business uses have provision for suitable areas for loading vehicles on-site.*

5.3 *To ensure car parking is available, convenient and accessible to users including people with disabilities.*

...”

176. The proposal is contrary to Objective 5 and Policy 5.2 and 5.3. The Commission is not satisfied that adequate provision has been made for parking in association with the Park Street terminal albeit that some parking is available in Park Street. It is anticipated that passengers waiting to embark are likely to gather on the footpath and carriageway at Park Street and at Jubilee Park, as it is unlikely to be practicable for all passengers, including cyclists, to wait on the terminal structures.

“Objective 6 – Pedestrian and Cycle Transport

Recognise, encourage and provide for the safe movement of cyclists and pedestrians in a pleasant environment within the District.

Policies

6.1 *To develop and support the development of pedestrian and cycling links in both urban and rural areas.*

...”

177. The proposal is entirely consistent with Objective 6 and Policy 6.1. In essence the proposal provides a link between the Queenstown Trails network on either side of The Narrows.

“Objective 7 – Public and Visitor Transport

Recognition of public transport needs of people and provision for meeting those needs.

Policies:

7.1 *To plan and encourage an efficient pattern of public transport.*

7.2 *To investigate opportunities for public transport as an alternative to, or in association with, changes or extensions to the major road network.*

...

7.4 *To support the development and operation of various types of tourist transport.*

7.5 To liaise with the Otago Regional Council and public transport operators to ensure the public transport needs of the District are met.”

178. In a general sense the proposal is consistent with Objective 7 and its associated policies. The Commission has reservations with respect to the efficiency of the ferry service as a means for transporting commuters between Kelvin Heights and the Queenstown CBD. This reservation is based on the substantial distance that exists between the existing and future residential areas at Kelvin Heights and the Kelvin Heights terminal; and the substantial distance that exists between the Park Street terminal and the Queenstown CBD. A more efficient ferry service for commuters would incorporate terminals that are located in close proximity to the residential area to be served at one end and to the ultimate destination of the commuter, at the other.

C.5 Summary : District Plan Objectives and Policies

179. Following the above analysis, the Commission finds that the proposal is contrary to many of the objectives and policies stated in Part 4, Part 5 and Part 7 that are relevant to the application; and that the proposal is consistent with many of the generic objectives and policies that support the development of transport as stated in Part 14. Overall the Commission has concluded that the proposal is contrary to the objectives and policies of the Operative District Plan.

D. SECTION 104D

180. Section 104D(1) of the Act confirms that 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 ... 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, ...”*

181. In this instance the Commission has found that the adverse effects of the activity on the environment will be greater than minor; and that the activity will be contrary to the objectives and policies of the Operative District Plan. The Commission therefore finds that the proposal fails to pass through either gateway

specified in section 104D(1) of the Act; and the Commission cannot therefore give consideration to granting resource consent in this instance.

182. Notwithstanding the failure of the proposal to pass through either gateway specified in section 104D(1) of the Act; the Commission has, for completeness, given consideration to the proposal in the context of other matters specified in section 104(1) below.

E. NATIONAL POLICY STATEMENT

183. The National Policy Statement for Freshwater Management 2011 (NPS) took effect on 1 July 2011. The National Policy Statement contains objectives and policies relating to freshwater management. These provisions are relevant only in the general sense to the proposal; and the proposal is not contrary to the NPS.

F. REGIONAL POLICY STATEMENT

184. The Regional Policy Statement for Otago (RPS) became operative on 1 October 1998. Relevant objectives and policies are contained in Chapters 5, 6 and 9 of the RPS. Ms Afifi provided us with a useful summary of the relevant objectives and policies that seek:

- (i) The sustainable management of Otago's resources including built environment and infrastructure;
- (ii) The protection of Otago's Outstanding Natural Landscapes from inappropriate development;
- (iii) The protection of Maori cultural values;
- (iv) The maintenance or enhancement of the ecological, amenity and cultural values of water;
- (v) The sustainable management of Otago's transport network;
- (vi) To avoid, remedy or mitigate the effects of built environment on natural and physical resources, and the maintenance or enhancement of amenity values of people and communities.

185. The Commission finds that the proposal is consistent with the sustainable management of Otago's transport network; but is not consistent with protecting

Otago's outstanding natural landscapes from inappropriate development; or avoiding, remedying or mitigating the effects of built development on natural and physical resources, and maintaining and enhancing the amenity values of people and communities. Overall the Commission considers that the proposal is not consistent with the relevant provisions of the RPS.

G. REGIONAL PLAN : WATER

186. The Regional Plan : Water (RPW) contains in Chapter 5 objectives and policies relating to the natural and human use values of lakes and rivers. Objective 5.3.1 states as follows:

“5.3.1 To maintain or enhance the natural and human use values, identified in Schedules 1A, 1B and 1C, that are supported by Otago’s lakes and rivers.”

187. The outstanding values associated with Lake Wakatipu as presented at Schedule 1A are:

- “(a) as a fishery;*
- (b) for its scenic characteristics;*
- (c) for scientific value, in particular water clarity, and bryophyte community;*
- (d) for recreational purposes, in particular boating;*
- ...”*

188. Other objectives of relevance presented in Chapter 5 of the RPW include:

“5.3.3 To protect the natural character of Otago’s lakes and rivers and their margins from inappropriate subdivision, use or development.”

“5.3.4 To maintain or enhance the amenity values associated with Otago’s lakes and rivers and their margins.”

“5.3.5 To maintain or enhance public access to and along the margins of Otago’s lakes and rivers.”

“5.3.6 To provide for the sustainable use and development of Otago’s water bodies, and the beds and margins of Otago’s lakes and rivers.”

189. Chapter 5 of the RPW also contains policies that are relevant to the current proposal. These include:

“5.4.1 To identify the following natural and human use values supported by Otago’s lakes and rivers, as expressed in Schedule 1:

- (a) *Outstanding natural features and landscapes;*
- (b) *Areas with a high degree of naturalness;*
- ...

“5.4.2 In the management of any activity involving surface water, groundwater or the bed or margin of any lake or river, to give priority to avoiding, in preference to remedying or mitigating:

- (1) *Adverse effects on:*
 - (a) *Natural values identified in Schedule 1A;*
 - ...
 - (e) *The natural character of any lake or river, or its margins;*
 - (f) *Amenity values supported by any water body; and*
- ...

“5.4.3 In the management of any activity involving surface water, groundwater or the bed or margin of any lake or river, to give priority to avoiding adverse effects on:

- (a) *Existing lawful uses; and*
- ...
- of lakes and rivers and their margins.”*

“5.4.9 To have particular regard to the following qualities or characteristics of lakes and rivers, and their margins, when considering adverse effects on amenity values:

- (a) *Aesthetic values associated with the lake or river; and*
- (b) *Recreational opportunities provided by the lake or river, or its margins.”*

190. Having regard to the effects of the proposed activity as discussed in Part B of this decision, the Commission finds that the proposal is contrary to the relevant objectives and policies of the RPW as presented above.

191. The RPW in Chapter 8 also contains specific objectives and policies relating to the beds and margins of lakes and rivers. These are in addition to the provisions contained in Chapter 5 of the RPW. The relevant objectives and policies presented in Chapter 8 of the RPW are reproduced in Ms Afifi’s report to us. These objectives and policies relate to the effects of structures in, on, under or over the bed of any lake or at the margin of any lake. The Commission

is satisfied that the proposal is not contrary to the specific objectives and policies presented in Chapter 8 of the RPW that relate to the direct physical effects of the proposed structures on the lake itself.

H. OTHER MATTERS

192. Section 104(1)(c) requires the consent authority to have regard to any other matter the consent authority considers relevant and reasonably necessary to determine the application.

H.1 Precedent

193. A number of the submissions raised the potential issue of precedent, particularly in respect to the establishment of other commercial activities within the residential area at Park Street. Submitters referred to the potential for other commercial activities to establish in the immediate vicinity of the Park Street terminal.
194. The Commission does not consider that a precedent would be set in this sense if consent were to be granted to the proposal. Any such additional commercial activity would be required to obtain resource consent, and any such application must be considered on its merits. The Commission does not consider that the existence of the Park Street terminal, in itself, would justify the location of other commercial activities in this vicinity.
195. If consent were granted to the current proposal the consented baseline would be set for ferry services to be based at the Park Street terminal. The Commission has noted Mr Edmond's observation that successful tourism activities tend to grow over time. It is possible that over time a more substantial ferry and associated terminal facilities may be required on the basis that a larger vessel is justified by the demand for the service, or out of necessity given the potential need for more robust infrastructure to cope with lake conditions that can be challenging at times.
196. The Commission also notes that the presence of the ferry terminal at Park Street is likely to create the need for additional infrastructure such as provision for cycle parking (as suggested by Mr Hewland); or for toilet facilities (as suggested by Mr Sanford and other submitters).

197. The Commission considers that consent to the current proposal would establish a consented baseline and a precedent for the future development and expansion of the Park Street terminal into the future. Such activity would exacerbate the adverse effects associated with the Park Street terminal as discussed in Part B of this decision.

H.2 Other Relevant Documents

198. Ms Afifi's report referred to various "non-statutory" documents, being documents that have not been prepared under the Resource Management Act 1991. We briefly comment on these below.

QLDC Jetties and Moorings Policy 2007

199. This Policy applies to the foreshore from the northern part of the Queenstown Gardens Recreation Reserve in Queenstown Bay to the south-western extent of the Kelvin Heights Golf Course on the Kelvin Peninsula, and includes the Frankton Arm of Lake Wakatipu. The Policy seeks to protect the natural character and amenity of the Frankton Arm and environs (being the foreshore subject to the Policy) while facilitating access to and use of the lake by the community.
200. The Commission notes that the proposal conflicts with the Policy in several respects. The Policy requires that jetties must not create adverse effects on foreshore character and amenity; must be constructed and situated in natural bays not headlands; must be wooden structures; must be bare or stained, not painted; and must be rectangular and be no more than 20 metres in length.
201. The proposal is consistent with other aspects of the Policy including that jetties must be available for the use of the general public; must be able to be used for dropping off and picking up passengers; and the Policy states that jetties or pickup/drop off points for public transport purposes are desirable at the area of the Kelvin Heights Golf Course and Park Street, amongst other areas. The Commission notes in the context of this statement that that part of Park Street in the vicinity of the rocky point can be readily distinguished from the western portion of Park Street adjacent to the lake, where existing boatsheds and an existing jetty are located.

Sunshine Bay, Queenstown Bay, Frankton, Kelvin Heights Foreshore Management Plan 1991

202. This Foreshore Management Plan has been prepared under the Reserves Act 1991 albeit that the Foreshore Management Plan relates to both reserves and to land that is not subject to that legislation.

203. General policies stated in the Foreshore Management Plan include the following:

Policy G19: that all major wharves associated with commercial use or development be located either within the Queenstown Bay area between Marine Enterprises wharf and the Town Pier or at the Frankton Marina site.

Policy G20: that light weight timber jetty structures be permitted in the areas as indicated on Plans 4.1 and 4.2 and that Council liaise with the Lakes District Waterways Authority to establish guidelines in the design and appearance of these jetties. Jetties to be available for public access.

204. At the hearing there was some discussion with respect to the terminology used in the policies being “wharves” and “jetty structures”. These terms appear to be interchangeable and Policy G19 requires that major jetty structures associated with commercial use or development be located at the nominated locations; whereas light weight timber jetty structures are permitted elsewhere. The Commission notes that Plan 4.2 indicates that additional jetties may be established subject to Lake District Waterways Authority approval and design guideline standards at Park Street, whereas no additional foreshore structures are to be permitted at Kelvin Peninsula. The Commission also notes that “light weight timber jetty structures” are to be permitted at Park Street in terms of Policy G20 rather than major jetty structures for commercial use.

205. The Foreshore Management Plan also contains specific policies that relate to the Frankton Arm North Foreshore and to the Kelvin Peninsula. Policy S47 is specific to the Frankton Arm North Foreshore (including Park Street) and states as follows:

Policy S47: that commercial activities shall be restricted to the picking up and setting down of passengers and shall include commuter passengers and construction of any necessary wharf.

206. Policy S47 appears to be in conflict with Policies G19 and G20. The Commission notes that the policies can be reconciled on the basis that Policy S47 provides for the picking up and setting down of passengers only, and not for the operation of a ferry terminal at Park Street with the ferry permanently based there, as proposed in the current application.

207. Policy S89 relates to the Kelvin Peninsula. This states as follows:

Policy S89: that no foreshore structures or jetties be permitted on this reserve foreshore apart from the existing yacht club jetty.

208. The establishment of the Kelvin Peninsula terminal is clearly contrary to Policy S89. The Commission's conclusion is that the establishment of the Park Street terminal and the Kelvin Peninsula terminal, as proposed, is contrary to the policies stated in the Foreshore Management Plan.

Wakatipu Transportation Strategy 2007

209. The Wakatipu Transportation Strategy is a joint initiative by the Otago Regional Council, the Queenstown Lakes District Council and the New Zealand Transport Agency. The Strategy focuses on the development of alternatives to the car, so that locals and visitors have real choices and options on the way they can get around the District. The Strategy also states that strong potential exists for private enterprise to bring forward elements of this Strategy; and makes specific reference to bus and ferry services. Figure 5 as contained in the Strategy was reproduced in Ms Afifi's report and shows a Ferry Service (including Park and Ride), operating along a route from Queenstown Bay to the Bay View Reserve at Kelvin Heights.

210. The Commission concludes that while the proposal is consistent with generic support for ferry services expressed in the Strategy; the proposal is inconsistent with the specific route for a ferry service between Queenstown and Kelvin Heights, as identified on Figure 5 in the Strategy document.

Wakatipu Trails Strategy 2004

211. The Wakatipu Trails Strategy has been prepared to guide development of an integrated network of walking and cycling trails and cycleways in the Wakatipu Basin. The Strategy's vision is to create a world class trail and cycle network. The proposal is primarily aimed at providing a ferry service for cyclists and

walkers using the Queenstown Trails network and is therefore consistent with developing an integrated network of walking and cycling trails albeit that no specific mention is made in the Strategy to the provision of a ferry service across The Narrows.

212. The Commission acknowledges in this context that the Queenstown Trails Trust has submitted in support of the application along with many other submitters who support the ferry service as a link in the Queenstown Trails walking and cycling network.

H.3 Alternatives

213. The applicant emphasised to us at the hearing that the ferry service route between the Park Street terminal and the Kelvin Peninsula terminal is the shortest route across The Narrows which enables the most frequent service; and the applicant considers this critical to the economic viability of the project. It was emphasised to the Commission that the application as presented must be considered and consented, or not, on this basis.
214. During the course of the hearing alternatives were referred to. On the Queenstown side of The Narrows alternatives included a terminal at about the location of the existing jetty to the west of Park Street adjacent to the Queenstown Gardens, being Jetty 77 which was used by the former *Meteor* hydrofoil. Another alternative location nominated was at the existing wharf complexes found in Queenstown Bay.
215. Alternatives nominated on the southern side of The Narrows included the golf course jetty (also known as the Ngai Tahu or Water Taxi jetty); a potential jetty site in the vicinity of the *Earnslaw* Slipway; at Kelvin Grove; or at the Bay View Reserve which is located more centrally within the Kelvin Heights residential area.
216. The Commission received submissions from the applicant dismissing these alternatives but there was no detailed technical evidence with respect to the practicability of utilising these alternatives. The Commission's conclusion, however, is that some of the alternatives are worthy of further consideration as they appear to provide the opportunity for a ferry service to be established in a

manner that would avoid the adverse effects associated with the Park Street terminal and the Kelvin Peninsula terminal, as discussed in Part B of this decision; and would provide ferry terminals in closer proximity to the Queenstown CBD and to the existing and future residential areas at Kelvin Heights.

217. The Commission acknowledges that a disadvantage of these alternatives is that they involve a longer crossing (in terms of distance and time) than the proposal. The Commission notes however that a faster vessel would reduce the time required to achieve a crossing between the alternative terminal sites that have been nominated.
218. The Commission considers, given the adverse effects associated with the Park Street terminal and the Kelvin Peninsula terminal as proposed and given the likelihood that ferry services into the future will operate from the consented locations, that it is vitally important that the ferry terminals should be located where adverse effects on the environment are best avoided, remedied or mitigated. The Commission is not satisfied that the Park Street terminal and the Kelvin Peninsula terminal satisfy this requirement.

I. PART 2 OF THE ACT

219. Part 2 of the Act contains sections 5 to 8. We refer to them in reverse order.
220. Section 8 requires us, in exercising our functions on this application, to take into account the principles of the Treaty of Waitangi. No specific issues were raised with us in reports or evidence in relation to section 8.
221. Section 7 directs that in achieving the purpose of the Act we are to have particular regard to certain matters which include, of particular relevance here, the efficient use and development of natural and physical resources; the maintenance and enhancement of amenity values; and the maintenance and enhancement of the quality of the environment. Other matters of potential relevance include the intrinsic values of ecosystems and the protection of the habitat of trout and salmon. The Commission is satisfied, having regard to the matters addressed in this decision that the proposal is not consistent with the matters of particular relevance stated in section 7 of the Act.

222. Section 6 sets out a number of matters which are declared to be of national importance and directs us to recognise and provide for them. The following matters of national importance are relevant in this instance:

(a) *The preservation of the natural character of ... lakes ... and their margins, and the protection of them from inappropriate subdivision, use, and development:*

(b) *The protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:*

...

(d) *The maintenance and enhancement of public access to and along ... lakes,*

223. Having regard to the adverse effects associated with the Park Street terminal and the Kelvin Peninsula terminal, as discussed in Part B of this decision, the Commission concludes that the proposed activity is contrary to section 6(a) and (b) as it will not serve to preserve the natural character of Lake Wakatipu and its margins, or serve to protect this outstanding natural landscape, from inappropriate use and development. While the ferry service will enhance public access in the sense of providing a link in the Queenstown Trails network across The Narrows, it will not serve to maintain and enhance public access to and along the lakeshore in the immediate vicinity of the Park Street terminal and in the vicinity of the Kelvin Peninsula terminal. The Commission's conclusion is that the proposal will therefore also be contrary to section 6(d).

224. Section 5 sets out the purpose of the Act – to promote the sustainable management of natural and physical resources. Taking into account the definition of sustainable management contained in section 5(2), the Commission has reached the view that the application before us will not achieve the purpose of the Act.

225. Sustainable management means managing the use, development and protection of natural and physical resources within certain parameters. While physical resources will be used in such a way that the social and economic wellbeing of the applicant is provided for, the potential of natural and physical resources will not be sustained to meet the reasonably foreseeable needs of future generations

who value the special amenity afforded by the tranquil lakeshore environment found in the vicinity of the Park Street terminal and who also value the amenity provided by the beach at Kelvin Peninsula. The Commission has determined that the adverse effects of the activity in this instance are not satisfactorily avoided, remedied or mitigated.

J. OUTCOME

226. The Commission has determined that the proposal fails to pass through either gateway specified in section 104D(1) of the Act; and the Commission cannot therefore grant consent to the application. If either gateway test had been passed the Commission would have discretion to grant consent having regard to the matters specified in section 104(1) of the Act.

227. Section 104(1) directs that when considering an application for resource consent and any submission received in response to it, we must, subject to Part 2, have regard to the actual and potential effects on the environment of allowing the activity together with the relevant provisions of the Operative District Plan. In the course of considering this application and the submissions and in reaching the conclusions expressed in this decision the Commission has followed this process. In the event that either gateway specified in section 104D(1) of the Act had been passed the Commission would have had discretion under section 104B to grant or refuse consent. The Commission confirms that in such circumstances, and following consideration of the matters listed in section 104(1), the Commission would have exercised its discretion to refuse consent in this instance.

228. Land use consent is hereby refused to RM130404.

This decision on RM130404 is dated 12 November 2013.



W D Whitney
COMMISSIONER
For the Commission being W D Whitney and D Clarke