Attachment D: Site assessment and charging options - supporting detail

This attachment provides the legal, operational and charging analysis that supports the summaries of Topics 1, 2 and 3 in the main report.

Topic 1 - Sites considered for trading activities – supporting detail

Site 1 – Corner Ballarat Street and Athol Street (paved road reserve) (see Figure 1)



Figure 1 - Site 1 shown in blue.

Transport assessment findings

1. The ViaStrada transport assessment of Site 1[1] found that the unweighted average of the individual transport criteria ratings are neutral towards trading activity occurring here. However, the assessment emphasises that the criteria are not equally significant. In particular, space/capacity and cumulative effects were both rated as largely negative and were identified as highly consequential and difficult to remedy. The following findings are noted:

    - Space / capacity criteria - the viable trading area is small, and should be limited to area 3 shown in Figure 2 below; pedestrian level of service is expected to decline; and the stairs and loose cobblestones present trip hazards. This makes access difficult for traders and customers, particularly people with visual or mobility impairments, because of trip hazards, poor visual contrast and the steep crossfall on the approach.

[1] See section 4 of the ViaStrada assessment (Attachment C of the main report)

There is little room for waiting or queuing; if queues started to build, stallholders might need to direct queues to prevent them blocking the walkway.

- The pedestrian capacity assessment found that conditions in the viable trading area would decline from level of service (LOS) D without trading to LOS E with trading.
- Cumulative effects criteria - existing space constraints and trip hazards may worsen during busy events and emergencies; access for traders and customers may be challenging; and additional foot traffic and stall activity may accelerate deterioration of the surface, increasing trip hazards.

2. From a transport perspective, the ViaStrada assessment identifies improvements to step visibility (i.e. tactile ground surface indicators) and the site surface (i.e. reducing path crossfall, surface defects >7 mm in height per the NZTA Pedestrian Network Guidance definition of a trip hazard) as necessary mitigations before the recommended controls are implemented. Subject to these improvements, the assessment recommends a series of controls to achieve safer operation if trading is provided for at the Site[2]. For example, these include limiting trading to the lower-level area and allowing a maximum of three stalls, based on each stall effectively requiring 5 metres of width to prevent pedestrian congestion.



Figure 2 - Site plan showing four areas: 1) the footpaths and bridges around the outside; 2) a raised area with bins, bike stands, and a lamp post; 3) a lowered area; 4) a raised area with bins and a lamp post (ViaStrada assessment)

[2] Section 4.3 of the ViaStrada assessment (Attachment C of the main report)

Interaction with QLDCs PDP[3]

3. Land use activities within a road are required to comply with Table 29.2 of Chapter 29 of the PDP. Rule 29.4.13 states that land use activities which are not listed in Table 29.2 require a discretionary activity land use consent. Commercial activities (i.e. trading) are not listed in Table 29.2 and would be subject to consideration under rule 29.4.13. This means that trading activities on the site could not be undertaken as of right (i.e. as a permitted activity).

4. For completeness, the Site is also located within a Historic Heritage Precinct, and heritage features are located on neighbouring sites. The immediate surrounding area is part of the Queenstown Town Centre Zone, with the exception of the adjoining Village Green reserve which is within the Civic Spaces Zone. Other PDP rules may apply depending on the nature and scale of any activity. Activities are required to comply with the PDP's 'district wide chapters' which apply despite the underlying zone. It is beyond the scope of this analysis to assess all potential rule breaches and their implications. Fees are payable to QLDC to process a resource consent should one be required[4].

Interaction with QLDC's road reserve management process

5. Because the Site is located within a road reserve, any activity involving the occupation of part of the Site would require Council approval, which may be provided through a licence to occupy road reserve. As owner and controller of the road, Council may grant licences permitting the temporary occupation of parts of the road. Council's authority to grant such licences arises from its common law rights as landowner. This ability is also recognised in ss.341 and 357 of the Local Government Act 1974 and supported by the general competence power in s.12 of the Local Government Act 2002. Any licence must not unreasonably interfere with the public's right to pass and repass over the road. Where granted, a licence may include conditions to manage the effects of the occupation and to maintain the continued safe and appropriate use of the road reserve.

6. Applicants are required to pay an application fee**Error! Bookmark not defined.** to recover the costs of receiving, assessing and processing an application for a licence to occupy road reserve.

Trees on/interacting with the site

7. Two large walnut trees are located at either end of the site. These trees are not indicated as being 'protected' under the PDP. QLDCs Arborist notes that the paved area around the trees means there is limited potential for soil compaction and that trading activities may occur under the tree canopies. However, it is advised that stallholders should not attach signage, lighting, or other equipment to trees, nor use trees for support of any kind. It was also advised that cooking facilities should not be located directly beneath the trees, to

[3] Note that this is a preliminary assessment of relevant aspects of the PDP. Overall compliance would need to be assessed on a case-by-case basis, having regard to the specific nature and scale of each proposed activity and any relevant district wide chapters of the PDP.

[4] https://www.qldc.govt.nz/media/32udca0a/qldc_resource-management-act-local-government-act-fees-and-charges_jul26.pdf

avoid potential adverse effects on both the trees and trading activities. It is noted that any potential contaminants for food related activities are assessed as part any approvals/permits required under the Food Act.

Site 2 – Corner Shotover Street and Stanley Street/SH6A (see Figure 3)



Figure 3 – Site 2 shown in blue.

Transport assessment findings

8. The ViaStrada transport assessment for Site 2[5] found that, while transport connectivity is positive, the other criteria are all neutral to negative and are not weighted equally. The calculated LOS was A both without and with trading, however, this result applies only to the Site area and does not account for capacity constraints on the surrounding footpaths. The following findings are noted:

    - Space/capacity criteria - the adjacent intersection has pedestrian capacity issues and frontage footpaths are narrow.

    - Loading/unloading criteria - traders would be required to pay for parking and there are no loading zones in the immediate area.

    - Cumulative effects - trading would add pedestrian activity to already constrained footpaths and crossings, while poor drainage, uneven ground and limited loading opportunities would create further access and safety challenges.

[5] See section 5 of the ViaStrada assessment (Attachment C of the main report)

9. From a transport perspective, the ViaStrada assessment identifies that improvements[6] to the site would be required before trading is provided for. These include levelling and surfacing part of the area to create a small plaza space and installing rubbish and recycling receptacles. It also notes that mitigations to improve the space/capacity and cumulative effects ratings would greatly improve the prospect of the Site for trading activities.

10. Subject to these improvements, the assessment recommends controls to support safer operation. Stalls would need to be set back sufficiently from the footpath to avoid obstructing pedestrians. The maximum number of stalls would be determined only after further assessment of the adjacent intersection's capacity to accommodate additional pedestrian traffic. Food and drink vendors should not be permitted unless waste receptacles are provided and either the additional weight of their stalls is assessed as unlikely to accelerate deterioration of the ground beyond acceptable levels, or suitable surfacing improvements are completed.

11. Because the site adjoins a state highway, NZTA has been consulted about the effects of additional foot traffic generated by stall trading and expressed concern about impacts on the operation of the Stanley Street/Shotover Street intersection. Further engagement with NZTA would be necessary to manage potential effects on the state highway should the site be made available for trading.

Interaction with QLDCs PDP**Error! Bookmark not defined.**

12. The Site is located within the Queenstown Town Centre Zone and Queenstown Town Centre Transition Subzone (Chapter 12) of the PDP. Commercial activities (i.e. trading) are generally anticipated within this Zone, and are identified as permitted in rule 12.4.1, subject to compliance with all other relevant standards in the Zone. The Queenstown Town Centre Transition overlay contains different standards primarily for built form, noise and licenced premises in recognition that this part of the zone adjoins residential areas at the periphery of the town centre.

13. Other provisions within the PDP's district-wide chapters may also apply depending on the nature and scale of the activity and any identified features relevant to the Site. It is beyond the scope of this analysis to undertake a comprehensive assessment of these provisions and their implications.

14. The PDP identifies a recreation reserve designation over this site (ref 561). However, the certificate of title does not record the land as being held as a reserve under the Reserves Act 1977. The PDP designation does not, of itself, establish the land's statutory status under the Reserves Act 1977. Furthermore, the Site is not zoned as one of those five zones and four sub-zones that Chapter 38 (Open Space and Recreation Zones) of the PDP specially developed to manage Council administered reserves. Nonetheless, on account of this designation, s.176(2) of the RMA would apply to any activity proposed on the Site[7].

[6] See Section 5.3 of the ViaStrada assessment (Attachment C of the main report)

[7] This would require prior written consent of the requiring authority (i.e. QLDC) to do anything in relation to the land that would prevent or hinder a public work or project or work to which the designation relates (i.e.

Trees on/interacting with the Site

15. The Site contains a number of mature trees. This includes a Golden Elm planted to commemorate the former school located adjacent to the Site. These trees are not indicated as being 'protected' under the PDP. QLDCs Arborist has raised concerns with increased foot traffic around the trees which is likely to lead to soil compaction, that can adversely affect root health and the tree's long-term growth and canopy development. Any damage to their root systems will result in long-term and irreversible impacts on their health, condition, and longevity. It was also noted the grassed surface of the site would be susceptible to significant wear from increased foot traffic, potentially requiring costly reinstatement works. Furthermore, it is noted that the trees at this Site are subject to a greater risk of branch failure in comparison to the other sites due to the number of trees present and their maturity.

16. To protect tree roots and minimise soil compaction, QLDCs Arborist recommends that trading activities would need to be located outside the dripline (generally the area below the tree canopy), which would significantly reduce the amount of usable space on the Site. Furthermore, while the risk is low, there remains a potential for branch failure, creating an additional risk consideration for activities beneath or adjacent to trees. A tree protection management plan would be required for this Site were it to be made available for trading.

Site 3 – Queenstown CBD lakefront (see Figure 4 below)



Figure 3 - Site 3 shown in blue, forming part of the area currently prohibited on the lakefront.

recreation reserve). The provisions of the PDP apply only to the extent that the land is used for a purpose other than the designated purpose.

Transport assessment findings

17. The ViaStrada transport assessment findings for Site 3[8] at Attachment C found that there were no negative ratings and some positive ones, but there are some issues during particular events and potentially during vessel embarkation and disembarkation times.

18. The LOS calculation indicates that pedestrian operating conditions would decline from LOS D without stall trading to LOS E with trading. The ViaStrada assessment outlines that LOS D is acceptable, although it represents the point at which pedestrian conditions become a concern. LOS E and F are not considered acceptable because they represent increasingly restricted and potentially unsafe pedestrian movements especially in an emergency. Despite this, ViaStrada notes that pedestrian bypass space exists, although, it would result in pedestrians needing to use the adjacent grassed area, potentially causing turf damage.

19. ViaStrada note that the LOS result does not preclude trading at Site 3. It is one aspect of the overall assessment for this site. However, it does reinforce the need to control stall locations, numbers and operating times to maintain a clear pedestrian route. To achieve safe operation for trading activities at Site 3, ViaStrada have recommended controls. These include locating traders so they back onto Lake Whakatipu with a 300 mm setback from the steps, limiting the number of traders to a maximum of 12 small stalls or six large stalls, allowing approximately 5 to 10 metres of space per stall, preventing trading during New Years Eve events and when the Queenstown Creative Market is operating. If Council is willing to accept a lower pedestrian LOS in this location, they may choose to provide for trading on the Site. In that case, controls are important to support the performance of the site in as safe and accessible a manner as possible (from a transportation perspective).

Interaction with QLDCs PDP**Error! Bookmark not defined.**

20. The Site is located within the Rural Zone (Chapter 21) of the PDP, and is also in the Queenstown Waterfront Subzone. The Subzone acts as an overlay to the underlying Zone, and provides for additional activities to occur. The Subzone provisions are set out in Chapter 12 (Queenstown Town Centre Zone). Rule 12.4.4 specifies that Commercial Activities (i.e. trading activities) within the Subzone require a controlled activity resource consent. Any other relevant aspects of the PDP would also apply including, as set out in the district wide chapters, depending on the nature and scale of proposed activities. It is beyond the scope of this analysis to undertake a comprehensive assessment of these provisions and their implications.

Trees on/interacting with the site

21. The site interacts with three mature trees. These trees are not indicated as being 'protected' under the PDP. QLDCs Arborist has not raised any concerns with regard to the use of the Site in relation to the surrounding trees and noted that the paved surface would avoid turf damage and soil compaction.

[8] See section 6 of the ViaStrada assessment (Attachment C of the main report)

22. Food operators would be required to do a risk assessment to ensure any food for sale is safe and suitable. The risk assessment would include a requirement to identify and manage any risks relating to the location (including in relation to trees above trading activities), that address the likes of dirt, dust, fumes and other contaminants.

Crown/QLDC lease over the land

23. The Site is contained within a larger parcel of land that technically forms part of Lake Whakatipu foreshore. However, this area has been considerably modified and developed such that it appears as a natural extension of the surrounding Queenstown town centre. This parcel extends around the wider Queenstown Bay area, is owned by the Crown and administered by LINZ. QLDC leases this land for the provision of a paved boardwalk, jetties and jetty extensions. The leased area is shown in Figure 5.



Figure 4 - Crown/QLDC leased land

24. The lease ensures that any member of the public has the right to enter onto the land on foot. In addition, the lease prevents QLDC from assigning, subletting, mortgaging, charging, or granting any security interest in the land without the prior written consent of the Crown. The lease provides that such consent will not be unreasonably withheld. Should Council wish to provide for trading on this Site, further work between QLDC and LINZ would be necessary to consider and reach agreement on amendments to the lease to give effect to the Council's preferred management approach.

25. For clarification, it is the intention that Site 3 be limited to the area contained within the LINZ leased area. It is noted that this is consistent with the area previously permitted for trading (currently prohibited) under the Bylaw.

Queenstown Creative Market

26. The Queenstown Creative Market undertakes trading activities on the adjoining QLDC recreation reserve land (see Figure 6) in the form of an organised community arts and crafts market. The sale of machine manufactured or imported goods, smoking, fires, barbeques or any other activity that constitutes a fire risk are specifically prohibited by the licence agreement.



Figure 5 - Queenstown Creative Market lease area

27. The licence sets out a range of conditions for use of the reserve, which includes the following operating restrictions:

    - Each Saturday from 9am to 4.30pm (November to April), and 9.30am to 3.30pm (May to October); and
    - Up to 9 extra Fridays from 9am to 4.30pm (November to April), and 9.30am to 3.30pm (May to October) if requested by the Licensee, and to be approved by the Licensor in its sole discretion annually.

28. The licence expires on 30 June 2030 with no further rights of renewal.

29. As noted above, it is intended that any area made available for trading on Site 3 is located on the QLDC/LINZ lease area such that it would not cross over with the area subject to the QLDC/Creative Market lease (i.e. the yellow area in Figure 6).

Detailed summary of Site 3

30. From a transport perspective, pedestrian operating conditions are expected to decline with trading activities present, resulting in more restricted movement, frequent adjustments and interruptions. Congestion risks would be greatest during events, vessel arrival and departure periods, and when tour groups gather nearby. Trading could also

obstruct emergency access and cause pedestrians to divert onto Earnslaw Park. As such, controls would be important. The transport assessment recommends that:

- stalls be positioned in a single line backing onto the lakefront steps,
- a 300 mm setback from the lakefront steps,
- trading be limited to a maximum of 12 small stalls or six large stalls,
- allowing each stall approximately 5–10 m of space either side
- trading should not occur during New Year's Eve celebrations or while the Queenstown Creative Market is operating, and
- operating hours may need to avoid peak vessel activity and Council maintenance periods.

31. Trading in this location would increase the commercial occupation of a prominent public space with highly valued views and amenity. Should Council determine that this site be made available for trading, staff are cognisant of the careful balance needed between enabling trading, retaining suitable levels of accessibility and amenity values. Indeed, these are key principles noted in Table 3 of the main report (Principles guiding the wider project). The recommended transport controls set out above, would limit the nature and scale of trading in this location such that amenity values would change from the status quo (i.e. the current prohibition). Additional controls may be necessary to retain Council's desired level of amenity on the site. For example, in relation to waste from traders and their customers, and limiting trading periods in a similar manner to that of the Queenstown Creative Market.

32. Furthermore, it is acknowledged that administrative complexity exists due to the overlapping regulatory environment and the need for QLDC to work with LINZ to amend or otherwise address the existing lease arrangements.

Topic 3 – Applying fees and charges – supporting detail

33. QLDC has not previously charged for its administrative and operational process activities associated with regulating pop-up stall trading under the Bylaw, nor for the occupation of public space by trading activities. Despite this, QLDC has charging regimes to recover costs associated with its administrative and operational activities for other similar statutory roles, such as for processing resource consents, dog registrations, approvals and audits for food related activities, and trade waste activities and inspections[9].

34. QLDCs Revenue and Financing Policy[10] must state QLDCs policies in respect of the funding of both operating expenses and capital expenditure, including through the use of fees and charges. The Policy provides predictability and clarity around who pays for what and why. The Policy states that '*generally, the Council will look to use fees and charges to recover the 'private benefit' costs of a particular activity if it is economically viable to do so'*. Furthermore, the Policy includes direction about the funding of 'community assets' under its 'economic development' category. These include leased assets and other activities that

[9] See QLDC User Fees and Charges - https://www.qldc.govt.nz/your-council/user-fees-and-charges
[10] https://www.qldc.govt.nz/media/slecwyc0/qldc_revenue-and-financing-policy_2024-2034-final.pdf

contribute to economic development. The Policy states that '*the Council is involved in these activities to provide the maximum possible return from the assets involved*' and that '*this activity almost exclusively provides private goods to clearly distinct groups of beneficiaries and will be funded by user charges with any surplus derived used to reduce general rate requirement*'. As such, it is considered that the Policy supports charging traders for any administrative functions associated with permissions, and for the commercial use of public land.

35. Since 2006, QLDC has charged licensed fixed-premises businesses, such as restaurants and cafés, that use public space (i.e. footpaths) for outdoor dining. This reflects that '*outdoor dining areas constitute a significant commercial benefit to the businesses who seek to operate them*'11. QLDCs Outdoor Dining on Public Space Policy 2024[11] establishes the process for assessing applications and managing the commercial use of public land. The Policy does not apply to trader activities which are not licensed fixed-premises businesses, but it does provide a useful comparison. The Policy requires the payment of annual rental/licence fees at market rate which can be reviewed annually. Fees are set by separate Council resolution. The Policy also provides for the payment of a bond to rectify cleaning problems and/or to reinstate the public space when the licence is terminated. Table 1 below provides an overview of the current outdoor dining rental values applicable for different parts of the Queenstown town centre. In addition to the commercial rental, QLDC also charges applicants a fee associated with administering outdoor dining areas and applications[12].

Table 1 - Current outdoor dining rental values	
Location	**Market Rental $/m² (set 2024[13])**
The Mall	$600
Lakefront Reserve / Marine Parade	$600
Beach & Rees Street	$550
Shotover & Lower Brecon Streets	$450
Camp Street & Cow Lane	$450
Remaining Queenstown Pavements	$250
Arrowtown – Buckingham Street	$250
Remaining Arrowtown Pavements	$175
Wānaka Lakefront	$225
Remaining Wānaka Pavements	$125
Glenorchy	$50

36. QLDCs Community Facility Funding Policy 2019[14] provides direction for user charges associated with leases and licences. The Policy supports the collection of fees and charges

[11] https://www.qldc.govt.nz/media/mfkajy53/outdoor-dining-policy-2024.pdf
[12] Set by Full Council resolution 2 May 2024
https://www.qldc.govt.nz/media/rs4ffgjm/2-outdoor-dining-fees-report-2024.pdf
[13] Set by Full Council resolution 2 May 2024 - The valuation assessment of outdoor dining areas is based on 30% of the indoor rental of adjoining properties
https://www.qldc.govt.nz/media/rs4ffgjm/2-outdoor-dining-fees-report-2024.pdf
[14] https://www.qldc.govt.nz/media/klapsyjt/community-facility-funding-policy.pdf

for the use of Council land, reserves and within community facilities, including when public facilities are used for private commercial gain. As with outdoor dining, this policy provides a useful comparison. It also identifies a base rental per annum of '7.5% of gross revenue or per head fee as appropriate to activity' for 'other licensed commercial uses (including private coaching when not under a Council approved agreement with a host lessee)'. This policy is under review as part of the 2027-37 Long Term Plan process.

Stakeholder feedback

37. During early engagement stakeholders provided feedback in relation to fees and charges for trading that takes place on public land. Both trader and business stakeholders generally supported charging for applications and/or the commercial use of public land, primarily because it was not considered equitable to have adjacent commercial premises paying commercial fees whilst stallholders were not charged. Suggested approaches included charges comparable to outdoor dining, per-square-metre fees, differentiated rates for premium locations and bonds to address potential damage. Traders also highlighted the need to accommodate seasonal or intermittent use and considered that fee revenue could support improved monitoring and enforcement.

Statutory framework for fees and charges

38. The Local Government Act 2002 (LGA) provides two primary mechanisms for local authorities to implement fees and charges. The appropriate charging mechanism depends on the purpose of the charge. The key distinction for the purpose of this analysis is that:

    - Under a licence management regime, QLDC could charge a market rate for the commercial use of public land. This charge could generate revenue for QLDC. The costs of processing/administering this licence could also be on charged. As discussed in the main report, a licence regime is not available without an amendment to the Bylaw, therefore charging a market rate is not an option at this time.

    - Under a bylaw management regime, QLDC could charge applicants reasonable costs in relation to any certificate, authority, approval, permit, consent or inspection. It could not charge a market rate for the commercial use of public land. An enabling Bylaw based process is not recommended by staff and it follows that a reasonable costs approach is not recommended. However, for completeness, cost recovery fee charging is discussed in more detail below.

Cost recovery fee charging

39. Sections 150(1)–(5) of the Local Government Act 2002 authorise a local authority to set fees or charges for issuing a '*certificate, authority, approval, permit or consent', or* carrying out an '*inspection'*, under an LGA bylaw or another enactment. Council must take care to ensure such fees 'bear a proper relationship to' and are representative of the 'reasonable costs' incurred for performing the function and meet statutory requirements, such as s.9 of the Regulatory Standards Act 2025. Such costs must be directly related to the function (as opposed to indirect costs such as rent, salaries etc.) and should not be used for cross-subsidising other functions (i.e. using revenue from one function to fund another).

40. Should Council seek to enable trading on any site(s) via the Bylaw, it could direct staff to develop a further detailed costing approach and follow the necessary procedural steps to implement this charge. Because developing fees for trading would delay the implementation of a near-term approach given the local government framework for fee setting, it is not recommended that this is pursued at this time.