BEFORE THE QUEENSTOWN LAKES DISTRICT COUNCIL

IN THE MATTER OF	the Resource Management Act 1991
AND	
IN THE MATTER OF	Plan Change 54 – Request for a Private Plan Change to the Queenstown Lakes District Council Operative District Plan by Northlake Investments Limited

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PART 2 LEGAL SUBMISSIONS for NORTHLAKE INVESTMENTS LIMITED

Dated: 19 July 2023

Counsel:
Warwick Goldsmith, Barrister
20 Cheltenham Road, Devonport, Auckland 0624
m + 64 021 220 8824
warwickgoldsmith@gmail.com

Introduction

1 These Part 2 Legal Submissions are lodged on behalf of the Requestor Northlake Investments Limited (**NIL**) in respect of the request (**Request**) for private plan change 54 (**PC54**) to the Queenstown Lakes District Council Operative District Plan (**ODP**). These Part 2 Legal Submissions should be read in conjunction with the Part 1 Legal Submissions for the Requestor lodged with the Memorandum to the Commission dated 6 July 2023.

2 PC54 seeks to achieve two objectives:

a. To enable road access and an infrastructure servicing corridor (**Access**) to that land adjoining and to the west of the Northlake Special Zone (**NSZ**), legally described as Section 2 of 5 Block XIV Lower Wanaka Survey District (**Sticky Forest**), to 'unlock' the potential of that (currently landlocked) land for future development;

b. To expand the area available for urban residential development in the northwest part of the NSZ, in the vicinity of the proposed Access.

3 PC54 raises a number of issues requiring consideration. 32 submissions were lodged (one having since been withdrawn) of which nine generally support the approval of PC54 and 22 oppose approval for a range of reasons. However all of the expert evidence lodged for this hearing, including the Section 42A Report dated 29 June 2023 (**s42A Report**), supports the approval of both PC54 objectives. Given that extent of supporting expert evidence, which must at least guide the determination of the PC54 outcome, I submit there is no basis upon which either objective could reasonably be declined, and the extent of issues subject to debate in this hearing is relatively limited.

Statutory framework

4 The statutory tests to be applied when considering the most appropriate provisions for the District Plan, arising from consideration of the options raised in any plan change, will be well known to the Commission. The required approach was well summarised by the

Environment Court in the QLDC Proposed District Plan (**PDP**) Topic 30 Decision[1] as follows:

> *"[16] We adopt our analyses of the RMA framework plan appeals decision and our previous decisions in the Plan review. As those decisions discuss:*
>
> *(a) our evaluation of the differing planning outcomes sought in the appeals is for what are the most appropriate provisions for achieving the related Plan objectives. That encompasses consideration of the importance of maintaining the overall integrity and coherence of the Plan;*
>
> *(b) we must abide relevant RMA directions, including that District Plans must give effect to higher order instruments, notably including the partially-operative Otago Regional Policy Statement 2019 ('PORPS19')."*

5 I submit the extract from the above which is directly relevant to this hearing is the statement "*… what are the most appropriate provisions for achieving the related Plan objectives …*".

6 Given the limited extent of issues under debate, I submit there is no need to address the relevant statutory framework in any more detail.

Evidence

7 The following Briefs of Evidence have been lodged on behalf of the Requestor:

	Name	**Firm or company**	**Area of expertise/ subject of evidence**
1.	Marc Bretherton	Northlake Investments Limited	Corporate
2.	Alex Todd	Paterson Pitts Group	Civil Engineering (excluding stormwater)
3.	Anthony Steel	Fluent Solutions Limited	Stormwater
4.	Andy Carr	Carriageway Consulting	Transport

[1] *Barnhill Corporate Trustee Limited & Ors v Queenstown Lakes District Council* [2022] NZEnvC 58 at paragraph [16] on page 8.

5.	Stephen Skelton	Patch Limited	Landscape and Visual Amenity
6.	Jeffrey Brown	Brown & Company Limited	Planning

8 Transportation and stormwater issues were addressed in detail in my Part 1 Legal Submissions and the accompanying evidence of Andy Carr and Anthony Steel. Those submissions will not be repeated.

Section 42A Report

9 The s42A Report is almost completely supportive of approval of PC54 as notified, subject to specific additional amendments being made to the provisions of the NSZ and related provisions of the ODP. To the extent that the s42A Report is in accordance with, and supportive of, the Request, the Requestor adopts the s42A Report as evidence in support of PC54 being approved. No further evidence will be presented in relation to issues which are not under debate as between the Requestor and the recommendations of the s42A Report.

10 This section of these submissions provides a range of comments on aspects of the s42A Report, mostly relatively minor and some merely correcting certain statements to ensure that the factual record is accurate. Comments are made in the order the relevant matters are raised in the s42A Report.

11 In paragraph 4.16, line 6, there is a reference to "*… the private road Peak View Ridge …*". Paragraph 10.15.a includes a similar reference in line 5. I assume these are references to the thin strip of land owned by WFH Properties Limited (formerly part of the Allenby Farms property) which runs from the southwest corner of the NSZ southwards and down to Aubury Road. Despite its appearance, that is not actually a "*road*" as defined because there is no public right of access over that strip of land. It is privately owned land subject to private right-of-way easements in favour of the private properties on its western side.

12 Paragraph 4.17 refers to restrictive covenants imposed by NIL preventing residential flats. That reference is correct and can be confirmed by Mark Bretherton if necessary, if relevant to this hearing. NIL does impose private covenants preventing the building of a

separate residential flat (in addition to the primary residential unit) on a residential lot.

13 The s42A Report contains the following references to public use of Sticky Forest:

a. In paragraph 4.24:

> "*… the Wānaka community has retained what I would characterise as a strong association with the land as a 'public' resource …*".

b. Paragraph 8.3:

> *"Many submitters have requested that road access to Sticky Forest be withheld, specifically so as to help retain it as recreational/natural land"*.

c. In paragraph 8.8:

> "*… Even if the land were to remain as a forested publicly-accessible recreation area …"*.

d. Paragraph 12.3.d:

> *"… even if the land were to remain rural zoned and some form of public recreational use retained …*".

14 The extracts quoted above, and in particular the references to "*… retain …"* and "… *remain …*", could be taken as endorsing similar statements in a number of submissions lodged to PC54 (which I return to later). There is currently no right of public use of Sticky Forest or any expectation of such public use (as is confirmed in the evidence of Monique Ahi King for Te Arawhiti[2]).

15 At paragraphs 4.29-4.32 the s42A Report addresses Conditions 47 and 48 of the Fast-Track resource consent (obtained by NIL for a retirement village within the NSZ) which resulted in the Sticky Forest Access Deed dated 3 February 2022 (**Access Deed**), a copy of which has been lodged as part of the Request. Paragraph 4.29 contains the statement: "*… NIL volunteered an <u>Augier</u> condition of consent …"*.

[2] Evidence of Monique Ahi King dated 13 July 2023, at paragraph 41.

That statement is correct. The relevant conditions of consent were volunteered by NIL. They could not have been imposed as they did not relate to an environmental effect arising from the retirement village proposal.

16 The entire Access Deed concept, which led to this objective of PC54, was an innovative process devised by NIL to address the long running issue of the landlocked status of Sticky Forest. It involved a considerable amount of work, resulting eventually in the Access Deed being executed by the Crown, the QLDC and NIL. There is no other proposal currently on the horizon to secure Access to Sticky Forest.

17 At paragraph 4.30 the s42A Report states:

> *"… The Access Deed is a separate and private instrument related to the 'nuts and bolts' of any future Sticky Forest access, and is not a matter that the PC54 Panel needs (or has powers) to further consider …"*.

18 I challenge that statement. A significant amount of work and effort has resulted in the Access Deed (executed by the Crown, QLDC and NIL) leading to this aspect of PC54. This is a very significant issue to the Māori interests represented by Te Arawhiti, Te Rūnanga and Bunker & Rouse, as is detailed in the evidence presented for those parties. Confirmation of this aspect of PC54 is one of the two conditions required to be complied with in order for the Access Deed to take legal effect. To that extent I submit that the Access Deed is a matter to which the Commission can accord considerable weight.

19 In paragraphs 5.7-5.12 the s42A Report addresses possible alternative Access routes which could unlock Sticky Forest, and arrives at the following conclusion in paragraph 5.10:

> *"I have come to the opinion that NIL's consideration of 'off-NSZ' alternatives was not necessary …"*.

20 As recorded in that evaluation of alternatives[3], there are other possibilities for Access but they all face challenges. NIL's solution to this issue is on the table for approval. Given the significance of this issue to Māori, as described above, I submit that the analysis of

[3] RFI Response dated June 2022 - letter from Brown & Company dated 1 June 2022.

alternatives was appropriately requested by Council and that the outcome of that analysis supports approval of PC54 because of the extent to which it resolves an important issue and because of the challenges facing other potential Access solutions.

21 These submissions do not further address the provision of Access to Sticky Forest. NIL seeks to enable that Access. The importance of that Access is addressed by other parties who have lodged evidence.

22 At paragraph 5.18 the s42A Report addresses the NPS-HPL. I agree with the reasoning in that paragraph. Although probably not necessary, I add the fact that the PC54 site is not Highly Productive Land because it is not currently classed as LUC1, 2 or 3 land (it is LUC4)[4].

23 At paragraphs 9.6-9.10 the s42A Report addresses the landscape related recommendations of Ms Mellsop, resulting in the recommended inclusion of the following additional matter of discretion:

> *"In the case of Activity Area B6:*
>
> *1. methods including building height and/or the location of allotment boundaries or building platforms to ensure no part of any building breaches the ridgeline as used from land and waters west of the zone; …"*

24 NIL has the following issues with that recommended matter of discretion:

a. It includes views from Sticky Forest, immediately to the west of the NSZ (although, to be fair, that was not what Ms Mellsop recommended and probably not what was intended).

b. It would impose an onerous consent requirement. There is a ridge within Sticky Forest west of the NSZ, and the ridge is covered by a forest. There are numerous viewpoints to the west down in the valley below and further away. Undertaking the calculations necessary to address that matter of discretion would be a complex exercise for each relevant landowner wishing to build a house.

[4] Sourced from on-line LUC mapping carried out by Manaaki Whenua Landcare Research.

25 Stephen Skelton for the Requestor was instructed to carry out the necessary calculations and to determine a *masl* level (for a maximum building height) which would achieve the desired outcome without requiring every consent applicant to go through the same process. That has resulted in the recommended amendment to the maximum height Rule 12.34.4.2.iv(a) now proposed by NIL.

26 In the same paragraph the s42A Report recommends one further matter of discretion:

> *"In the case of Activity Area B6:*
>
> *1. …*
>
> *2. provision of landscaping, including on land within Activity Area E1 adjacent to the water reservoir, to mitigate the visual impact of development within Activity Area B6, including that part closest to the ONL boundary."*

27 It is unclear what that matter of discretion is intended to address. The approved reservoir already has required screening vegetation[5]. The closest ONL boundary does not include any public viewpoint. If there was such a viewpoint, the reservoir itself would provide screening. NIL simply does not understand what is intended to be achieved.

Submissions

28 The submissions lodged to PC54 raise a number of issues, all of which have been fully and appropriately addressed in the s42A Report. As stated above, NIL adopts the s42A Report as evidence in support of approval of PC54. Three issues warrant some brief additional comment.

29 A number of submissions express concern about the potential loss of the 'Sticky Forest recreational asset' or words to that effect. As previously pointed out, there is currently no right of public use of Sticky Forest, so those expressed concerns have no legal foundation. Ironically the only method by which the public could gain access to Sticky Forest for recreational purposes, and which is currently potentially 'on the horizon', is the combination of the public road

[5] Refer Landscape Evidence of Ms Mellsop dated 16 May 2023, Figure 1 on page 4.

Access now proposed through PC54 together with the imminent rezoning of Sticky Forest (which could create public use rights).

30 Similar concerns are expressed in some submissions[6] about the potential loss of open space within the proposed AAB6, again apparently on the understanding that Activity Area E1 is public open space. That is not the case. Activity Area E1 is private open space owned by NIL. There is no District Plan mechanism for that land to become public open space (noting that NIL is currently in credit insofar as land for reserve development contributions is concerned[7]).

31 Two submissions[8] suggest that PC54 should be declined on the basis that there should be a larger plan change initiative by Council to deal with both PC54 and the rezoning of Sticky Forest. However neither submission identifies any concerns which cannot be dealt with through the current PC54 and PDP Sticky Forest appeal proceedings, nor do they identify any issue which would require a broader plan change to be addressed. This suggestion would be particularly onerous to the Sticky Forest interests who are awaiting the final determination (in early 2024) of a submission originally lodged to the PDP in October 2015, almost eight years ago.

Evidence for Te Arawhiti

32 NIL and Te Arawhiti have reached agreement on the amended wording of Policy 3.1 and Rule 15.2.3.4(xx), being the amended wording recorded in the planning evidence of Jeffrey Brown for NIL. That amended wording is slightly different from the wording proposed in the s42A Report but achieves the same intended outcomes. That agreed amended wording addresses all concerns raised in the submission by Te Arawhiti.

33 I note in passing that Katrina Ellis, in her paragraphs 38 and 45, comments on the National Environmental Standard for Plantation Forestry (**NES-PF**) to the effect that proposed provisions which would essentially impose controls on traffic generated by harvesting

[6] Submission 8 by Oliver Young, Submission 23 by Stephen Dennis, Submission 30 by John Wellington.

[7] Refer PC54 Assessment of Effects on the Environment, Part 5 on page 4.

[8] Submission 24 by Bike Wanaka Inc and Submission 28 by Kirimoko No. 3 Limited Partnership.

plantation forest may not be valid on the basis that the controls imposed would be more stringent than required under the NES-PF. While not of particular concern to NIL, I query whether that submission is valid.

34 The NES-PF governs the harvesting of plantation forestry. The term 'harvesting' is defined as:

> *"(a) means felling trees, extracting trees, thinning tree stems and extraction for sale or use (production thinning), processing trees into logs, or loading logs onto trucks for delivery to processing plants …"*

35 The definition quoted above does not extend to transportation of the logs after they have been loaded on to the logging trucks. Under the defined term, the harvesting is complete once the logs are loaded onto trucks for delivery. It therefore appears to me that the NES-PF would not prevent RMA controls on transportation of logs, if those controls are considered appropriate (either through PC54 or through the PDP Sticky Forest rezoning appeal).

Evidence for Te Rūnanga

36 With the exception of one issue, NIL has also reached agreement with Te Rūnanga on the wording of amendments to the relevant ODP provisions which would address the concerns expressed in the submission by Te Rūnanga.

37 The one exception is the amendment to Objective 3 – Connectivity requested by Te Rūnanga. That amendment reads (additional wording underlined):

> *"Development that is well-connected internally and to networks outside the zone <u>including provision for access to Hāwea/Wānaka – Sticky Forest.</u>"*

38 I submit that the amendment detailed above is both inappropriate and unnecessary. Objective 3.1 is worded generally with the apparent intention that it applies broadly to different aspects of connectivity. It is not appropriate to specify one specific aspect of connectivity in the objective. If that were the appropriate approach, then there are a

number of other aspects of connectivity which could and should be included in Objective 3.

39 Objective 3 is implemented by Policies 3.1-3.6. Those policies contain the detail of outcomes anticipated by the District Plan to achieve Objective 3. That includes the amended Policy 3.1 which has been agreed with Te Arawhiti and Te Rūnanga.

40 NIL stands by its position that the amendment to Objective 3 proposed by Te Rūnanga is neither appropriate nor necessary.

Evidence for Bunker & Rouse

41 The evidence of Tony Penny for Bunker & Rouse addresses detailed traffic considerations which are appropriately addressed by the relevant transportation experts and considered by the Commission on the basis of the transportation evidence. Except for one point I see no need to address that evidence any further.

42 The one point is the statement in Tony Penny's paragraph 6.1(c) which reads:

> *"(c) accompanying the plan change request is an executed deed to secure and implement that access. The primary mechanism through which that access is to be secured is through granting of an easement in gross in favour of the Council and/or the Crown."*

43 That statement is followed by a number of references in the evidence to an 'access easement'. The statement quoted above is not correct. The primary mechanism to achieve Access is the intended vesting of a 20m width strip of land in Council as road. That outcome is intended to be achieved by amendment of the NSZ Structure Plan as proposed in PC54 followed by the first subdivision consent applied for in respect of Activity Area B6 which will provide for the vesting of that required road.

44 The Access Deed does include provision for easements in favour of the Crown and/or the Council which would legally achieve the same outcome (other than vesting). However that provision is a fallback and temporary provision which might come into operation if there were

a delay in delivery of the vested road. The primary mechanism remains a vested road.

Queenstown Lakes District Council

45 The submission lodged by Council seeks the addition of a non-complying activity rule relating to the provision of infrastructure. NIL lodged a Further Submission opposing this request. The s42A Report agrees with NIL's position for the reasons detailed in paragraph 11.29. NIL strongly supports that reasoning and that recommendation.

46 Without traversing this issue in detail, the ODP contains detailed provisions to ensure that urban development of the nature anticipated by PC54 cannot take place unless all infrastructure requirements are adequately and appropriately addressed. That is the purpose of the resource consent process followed by the Engineering Approval process. Urban development cannot take place without those consents and approvals, and those consents and approvals cannot be obtained unless infrastructure is adequately dealt with.

47 I also note that no evidence has been presented which would raise any infrastructure concern of such significance as to even start to justify a rule of this nature.

48 There is also the issue about how one would draft such a rule to provide the certainty required for a non-complying activity rule.

49 I am unaware of any other zone in the ODP (or the PDP) which contains a rule of the nature proposed in the Council's submission. I submit that it is neither necessary nor appropriate to impose this rule which would only apply to Activity Area B6 in the NSZ (and would not apply to development of other land within the NSZ).

Conclusion

50 I submit that the only significant outstanding issue which will need to be debated and determined at the hearing is whether or not there should be additional provisions governing transportation effects inserted into the NSZ and, if yes, what the wording of those provisions should be. Once that matter of detail has been resolved, I submit that there is no impediment to the approval of PC54 in full and that such

approval is the most appropriate method of achieving the relevant objectives and policies of the relevant planning instruments.

Dated 19 July 2023

Warwick Goldsmith
Counsel for Northlake Investments Limited