

**QUEENSTOWN LAKES DISTRICT  
COUNCIL**

**Recommendations following the hearing of submissions and  
further submissions on proposed Private Plan Change 51 –  
Peninsula Bay North**

**PURSUANT TO CLAUSE 10 OF SCHEDULE 1 OF THE RESOURCE MANAGEMENT  
ACT 1991, PRIVATE PLAN CHANGE 51 IS RECOMMENDED TO BE DECLINED**

**THE FULL RECOMMENDATION IS SET OUT BELOW**

<b>Hearing Panel:</b>	The plan change request, submissions and further submissions were heard by Hearings Commissioners consisting of:
	David Mead (Chairperson)
	Andrew Henderson
	Mel Gazzard

<b>Queenstown Lakes District Council:</b>	Vicki Jones (Reporting planner)
	Dr Marion Read (Landscape)
	Dawn Palmer (Ecology)
	Jeannie Galavazi (Parks and reserves)
	Julia Chalmers (Administrator)

<b>Appearances:</b>	
<b>Applicant / Requestor:</b>	Lauren Semple (Counsel)
	Paul Croft (Managing Director, Infinity Investments Limited)
	Mike Botting (Surveyor)
	Ben Espie (Landscape architect)
	Gary Bramley (Ecology)
	Robert Greenway (Recreation)
	Louise Taylor (Planner)
	<b>Submitters:</b>
Doug Hamilton	
Jaime Greenway, Bike Wanaka	
Julian Haworth, Upper Clutha Environmental Society (Inc)	
Evan Altey, Central Otago Lakes Branch Royal Forest & Bird Protection Society (Inc)	
Elizabeth Steven (Landscape)	
Dr Ella Lawton, Aspiring Tracks Network	

<b>PP51 Notification Date:</b>	9 December 2015
<b>Hearing:</b>	8 to 10 August 2016
<b>Hearing Closed:</b>	14 September 2016

## RECOMMENDATIONS OF THE COMMISSIONERS

### INTRODUCTION

1. Under section 34A of the Resource Management Act 1991 (RMA) Queenstown Lakes District Council has appointed David Mead (Chair), Andrew Henderson and Mel Gazzard as the hearings commissioner panel to hear and make a recommendation on Peninsula Bay Joint Venture's proposed Private Plan Change 51 (PPC 51) to the Operative Queenstown Lakes District Plan.
2. A hearing was held at the Lake Wanaka Centre on 8 to 10 August 2016. The hearing was then adjourned for the purpose of receiving further information from the Requestor, with the hearing closed on 14 September 2016.

### SUMMARY OF DECISION / RECOMMENDATION

3. After hearing from the Requestor (Peninsula Bay Joint Venture), Council and submitters, the Commissioners have determined as follows:

Private Plan Change 51 to the Queenstown Lakes District Plan is recommended to be **declined**, with the submissions and further submissions accepted or rejected in whole or in part as indicated in Appendix 2.

4. We set out our reasons below.

### BACKGROUND

5. PPC 51 seeks to rezone an area of land at the northern end of Peninsula Bay from Open Space zone to Low Density Residential (LDR) zone. As originally notified the rezoning involved 6.11 hectares of land and would enable the development of 26 residential lots. This was subsequently modified at the hearing by the Requestor such that 4.37 hectares would be rezoned, with 24 residential lots being proposed within the smaller area. Closing submissions further modified the proposal, with 21 lots on 3.5 hectares of re-zoned land now proposed.
6. The land subject to the plan change request is the southern face of a low rounded ridge that runs roughly east-west, parallel and to the north of Infinity Drive. The area is immediately adjacent to the northern extent of the Peninsula Bay residential area. It is described in the plan change request as having a relatively high degree of naturalness through its glacially rounded landform and widespread remnant kanuka<sup>1</sup>. The western part of the plan change area has been extensively earth worked. The refinement presented through closing generally results in a single row of additional houses immediately adjoining the existing largely developed LDR zoned land.
7. We were told that part of the plan change area is within an identified Outstanding Natural Landscape (ONL), and there was a difference in opinion between the expert landscape evidence as to where this line should sit.
8. The area of land in question is owned by the Requestor and is part of a larger block of land zoned Open Space. This land borders a Department of Conservation reserve that

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<sup>1</sup> Para 33, Landscape and Visual Effects Assessment Report, Vivan and Espie, 22 September 2015.

follows the shore of Lake Wanaka. The land has a number of informal walking and biking trails running through it, and offers extensive views to the north, east and west. While zoned Open Space, the land is not vested in the Council.

9. The existing Open Space zoning of the land was confirmed through Variation 25. That variation identified a range of open space areas in the Peninsula Bay North area as part of the structure plan for the urbanisation of the area. Resource consent conditions require the identified open space land to be vested as the Peninsula Bay residential area is subdivided, with the relevant consent condition allowing for the open spaces to be vested in stages<sup>2</sup>. The Requestor has a small balance area remaining (Stage 6c) and once those lots are subdivided, then the intention was for the remaining Open Space zoned land to be vested. However, as pointed out by the Requestor, it is not certain that the land in question will be vested. Infinity Investments may not proceed with the final stages of the residential subdivision, in which case the land subject to PPC 51 would remain in private ownership, but subject to an Open Space zoning<sup>3</sup>.
10. The plan change proposes a suite of area-specific objectives, policies and controls that would apply to the residential lots to be created, as well as the remaining open space land. The controls include identified building platforms, limited building heights, site landscaping requirements and controls on reflectivity of buildings. The plan change would also require the Requestor to commit to re-vegetation of some of the lots to be created, as well as part of the remaining open space land. A new walking track would be built, the existing mountain bike track upgraded, and a toilet and car park provided. A financial contribution would also apply to the future lots, requiring a contribution towards track building within the Wanaka area. A structure plan is proposed to be inserted into the Queenstown Lakes District Plan. This plan would show building platforms, access ways, areas of re-vegetation and enhancement and new tracks and trails.
11. The plan change request was notified on 9 December 2015
12. 205 submissions and two further submissions were received. These are detailed in the section 42A report prepared for Council by Ms Vicki Jones (consultant planner) and were included as an attachment to that report. 115 of the submissions were pro forma. No late submissions were received.
13. The submissions in opposition raised a range of issues relating to landscape, ecological and recreational issues. Numerous submissions also questioned the implications for the integrity of the district plan should the rezoning of open space land occur. These issues are all further identified in the section 42A report.

## STATUTORY FRAMEWORK

14. The relevant statutory tests when assessing the merits of the provisions of a plan change are derived from sections 31, 32, 72, 74, 75 and 76 of the RMA. These tests have been summarised by the Environment Court in decisions such as *Long Bay-Okura Great Park Society Incorporated v North Shore City Council*, and more recently in *Appealing Wanaka Incorporated v QLDC*.
15. In summary form the tests are:

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<sup>2</sup> As set out in footnote 8 to para 8.1, QLDC Peninsula Bay North plan change, S42A report.

<sup>3</sup> Para 50, Peninsula Bay Joint Venture Closing Submissions

- a) The change should accord with the Council's functions under section 31 of the RMA, to manage the effects of development; use and protection of natural and physical resources in an integrated way;
  - b) give proper consideration to Part 2 of the RMA and the list of statutory documents in section 74 and section 75; and
  - c) to evaluate the proposed plan change under section 32 of the RMA.
16. There was no debate between the parties as to whether other tests should apply, and so we base our decision on the above matters.
  17. As originally notified PPC 51 did not propose any new objective. It did propose new policies and methods. Subsequently, the Requestor proposed a new objective. As such, as required by Section 32 of the RMA, we must consider whether the objective is the most appropriate means of achieving the purpose of the RMA, and then whether the policies and methods are the more appropriate means of implementing the objective.
  18. As is the case with many resource management issues, we are required to consider future conditions, both in terms of what may transpire under the current operative zoning, as well as in terms of the proposed zoning. To make predictions as to future conditions we must understand current conditions and the factors and variables that may lead to different outcomes in the future. There are no certainties and inevitably the analysis of what may happen strays into non-RMA matters. For example, would the Council commit to the enhancement of the open space zoned land and undertake a re-vegetation and enhancement programme?
  19. In undertaking this task, we were presented with a considerable volume of evidence by the Requestor and the Council and we appreciate the effort that went into this evidence and analysis provided. We were also assisted by the comments and points made by the submitters.
  20. We note that although the Proposed Queenstown Lakes District Plan was notified for public submission on 26 August 2015, it is only the provisions of the Operative District Plan that must be had regard to under section 74(2)(a)(i) of the RMA when assessing PPC 51. A number of submitters referred to the proposed plan, while Dr Read spent some time discussing how the proposed district plan classified the landscape of the land affected by the plan change. In this decision, we have not dwelled on the proposed plan. As its contents are not settled it is not a matter that we need to refer to.

## **EVIDENCE HEARD**

### **For the Requestor**

21. Ms Semple outlined the (amended) plan change request. In her view the plan change would result in a win: win for Wanaka. More housing would be able to be built, helping to meet people's needs, while the remaining open space zoned area would be upgraded through managed re-vegetation and improved walking and cycling tracks. In considering the merits of the proposal, the future of the open space area without the plan change needed to be assessed. It was likely that ecological and recreational values would decline due to lack of maintenance and investment. In contrast, the plan change offered certainty over enhancement of ecological and recreational values that off-set the reduced land area. The rezoning would not create any form of precedent.

22. Mr Paul Croft is the Managing Director of Infinity Investment Group Holdings Limited. He outlined Infinity Investments' development of the Peninsula Bay area and how demand for sections has been strong. He described the steps taken by Infinity to look at how the subject land might be developed, the consultation undertaken and the commitment to enhancement of the remaining open space area. In his view, the plan change would lead to an improvement of the remaining open space area. He noted that the intention to reconsider the zoning of the land had been signalled to lot owners as they purchased in the area, and so the zone change would not be a shock to them.
23. Mike Botting is a registered surveyor. He set out how the proposed lots would be provided with the necessary infrastructure. Earthwork profiles are proposed in the structure plan to help ensure that building platforms and road extensions minimised the amount of landform modification. He presented figures on the amount of land identified as open space in the Peninsula Bay area in comparison to the number of dwellings enabled by Variation 25. The rate of open space provision is considerably in excess of Council's standards.
24. Dr Gary Bramley addressed ecological issues. He stated that the plan change area contains areas of kanuka shrubland and depleted tussock grassland that meet some of the criteria for significance in the Operative District Plan. He is concerned that left unmanaged, these species are at risk due to their small size, isolation, the presence of exotic plant species, the presence of exotic animal species, and regular disturbance.
25. The plan change requires removal of vegetation, improvements to existing vegetation and new vegetation to be planted. He presented figures for the amount of kanuka and tussock vegetation to be removed; retained and enhanced as well as new planting. These figures were revised through the closing statement by which stage the following figures apply:
  - In terms of kanuka 5,440m<sup>2</sup> will be removed, and 10,995m<sup>2</sup> of new planting proposed, leading to a net gain of 5,555m<sup>2</sup>. In addition 2,045m<sup>2</sup> will be enhanced.
  - For tussock, there is a net gain of 3,345m<sup>2</sup>. Of the total existing area of tussock in the plan change area of 2,470m<sup>2</sup>, 1,650m<sup>2</sup> will be removed, 820m<sup>2</sup> retained and enhanced and 4,995m<sup>2</sup> of new planting will be established.
26. The majority of the new planting will be in the open space zoned area that will remain, adjacent to the proposed new housing.
27. In his opinion the new planting and an associated maintenance regime will result in a significantly increased area of indigenous vegetation and improved ecological integrity, diversity, function and connection between patches of habitat, compared to the current environment. Species of conservation significance identified by submitters, such as cushion pimelea (*Pimelea sericeovillosa* subsp. *pulvinaris*), prostrate bluegrass (*Connorochloa tenuis*) and Beauverd's scabweed (*Raoulia beauverdii*) and the possibly present *Coprosma brunnea* could be included in the replanting proposal.
28. Rob Greenway is a recreational specialist. He noted that the rezoning would not remove any existing tracks and trails, while the improvements proposed to tracks and facilities would result in enhancement of the recreational values of the (reduced) open space area. He considered that the land to be rezoned would be unlikely to be used for trails. To off-set any lost opportunity, he proposed that the plan change include a requirement for a financial contribution from the new lots to be paid to the Council. This contribution would be tagged to new and upgraded trails in the Wanaka area.

29. Mr Ben Espie addressed landscape issues. He is a landscape architect and has extensive involvement in the previous assessments and zoning decisions affecting the land. He stated that most of the land subject to the rezoning (as finally proposed through closing) was not within an ONL. In his opinion, the ONL classification should be along the top of the east-west ridgeline, to the north of most of the proposed lots, consistent with the findings of the Environment Court's decision on Variation 15. Only one lot is proposed in the ONL, and a building on that lot would not be inappropriate. The south facing slopes subject to the plan change were more akin to a Visual Amenity Landscape.
30. He agreed that the land to be rezoned had a role to play in providing a visual buffer to the urban development to the south. The plan change would see this buffer role maintained, albeit in a narrower form. While there would be an adverse effect on the visual amenity enjoyed by residents directly to the south, this effect was confined to a relatively small number of people. The proposed conditions relating to re-vegetation, building heights, building platforms and reflectivity would all combine to ensure that the visual effects of houses on the slope would be substantially mitigated.

### **From Submitters**

31. Mr Doug Hamilton is a local resident. He is a keen mountain biker. He stressed that the land in question had a wide range of recreational and amenity values associated with it and that the land was not just used by mountain bikers. People walked and jogged across the land, took dogs for walks and children could play amongst the vegetation. The recreational and amenity values of the land would steadily grow over time.
32. Mr Jamie Greenway represented Bike Wanaka. He agreed with the points made by Mr Hamilton. The land had important amenity and recreational values that could not be replaced. He felt that the maintenance issues were over stated and there was considerable potential for community groups and interest groups to help build tracks and trails and undertake restoration works. This opportunity would be reduced if the land was rezoned.
33. Mr Julian Haworth is a member of the Upper Clutha Environmental Society (Inc). Mr Haworth read from a written submission. He noted the involvement of the Society in Variation 25 and their agreement to the open space zoning determined through that process. He was very concerned that the plan change, if successful, would undermine the previous decisions made about the balance between open space and development in the northern part of Peninsula Bay. The plan change proposed an irreversible change, in that once rezoned for low density residential development, the open space zone would be lost. He did not consider that the rezoning would lead to an overall net gain.
34. The Central Otago-Lakes Branch of Royal Forest and Bird Protection Society was represented by the Branch Chairperson, Mr Evan Alty. Mr Alty read a statement. The Society are concerned that the rezoning would overturn a decision reached in the mid 2000s as to the value of the land in question and that those values were best managed by way of an open space zone (that is, the position reached through Variation 25).
35. The Society's concerns cover landscape and ecological issues. In terms of ecological issues, the Society's view is that the plan change will see the loss of short tussock grassland. This is a significant negative aspect of the plan change. They challenge the Requestor's contention that the existing fescue tussock grassland will disappear without proper management. They also doubt the proposed viability and value of the re planting proposed.

36. In terms of landscape issues, the Society raised two issues - the location of ONL and the effect of the plan change on the overall landscape. The ONL issues were specifically addressed by Ms Stevens (addressed below). In terms of overall landscape effects, they submitted that the proposed development would breach the strong containment by natural landscapes, of the residential area that now exists.
37. Ms Stevens presented expert evidence on landscape issues. She is a landscape architect and has worked on defining an ONL line incorporated into the Proposed District Plan. She concurred with Dr Read's assessment that the ONL encompasses most of the land subject to the rezoning. Part of the western end of the south facing slope may fall outside the ONL, due to the extent of landform modification in this area. Her assessment of the ONL boundary is on the basis that the south facing slopes of the land currently zoned open space have very similar characteristics to the north facing land. She noted that just because the south facing slopes were not part of the "lake landscape", this did not mean they could not have ONL qualities.
38. Dr Ella Laughton represented the Aspiring Tracks Network (ATN). ATN was neutral on the acceptance of the plan change, preferring track users to submit as individuals. However, Dr Lawton put forward a list of ten requests for improvements to the track network in the plan change area that ATN would like to be undertaken should the plan change be approved.

#### **For Council**

39. Ms Vicki Jones, planning consultant, had prepared the Council's section 42A report. That report recommended that the panel recommend declining the plan change request. Attached to the Hearing Agenda with Ms Jones' s42A Report were the following technical expert reviews:
  - (i) Dr Marion Read, Landscape;
  - (ii) Dawn Palmer, ecologist; and
  - (iii) Ms Jennifer Galavazi, Council recreation planner.
40. After hearing from the Requestor and the submitters, the Council witnesses circulated and spoke to supplementary statements.
41. Dr Read's pre-circulated evidence set out her approach to landscape classification of the area. In her opinion, the ONL should run along the open space zone boundary, at the southern foot of the rounded ridgeline. After hearing from the Requestor, she remained of the opinion that the ONL should be located to the south of the ridgeline; and that the development proposed was not appropriate within the ONL. She stated that even if the ONL remained along the east-west ridgeline as proposed by Mr Espie, the land to the south still had landscape values.
42. Dawn Palmer noted that in ecological terms, development of lots 13 to 26 at the eastern end would have much more of an impact than lots 1 to 11. In her opinion the native vegetation present towards the eastern end was of significance due to its 'at risk' rating and it was more appropriate to retain and enhance what exists, rather than seek to replace the vegetation. She particularly questioned the proposed Beech trees as replacements for the kanuka. She raised concerns over the sustainability of the re-vegetation.



43. Ms Galavazi stressed that while the land in question may not appear to have high recreational values, over time as the population of the wider area increases, then its value will grow. Once the land is vested, then Council could commence plans to upgrade and enhance the recreational and ecological values of the area. This would require funding.
44. Ms Jones addressed the various statutory tests that need to be applied to the plan change. Her opinion was that the plan change would not assist with the sustainable management of the land and the wider area. There were few benefits from the rezoning and these were easily outweighed by the costs in terms of landscape effects, risks associated with the re-vegetation and lost recreational opportunities.

#### **Requestor's right of reply**

45. Additional evidence was received from Mr Espie and Mr Bramley. Further refinements to the structure plan were set out in the closing submissions. The number of lots was reduced to 21 with three lots removed from the north-eastern end of the proposed development.
46. The amount of vegetation to be removed is reduced, while the area of re-vegetation remains as per the proposal presented at the hearing. 7,090m<sup>2</sup> of tussock and kanuka is to be removed, and 15,990m<sup>2</sup> will be re-vegetated in tussock and kanuka. As a result the net increase in vegetation cover is 8,900m<sup>2</sup>, as opposed to 5,680m<sup>2</sup> as presented at the hearing.
47. In his additional evidence, Mr Espie further outlined his assessment that the ONL should be placed on the ridgeline. To the south, he reiterated that the housing development would mean:
- The rounded ridgeline that currently forms the foreground to the Peninsula Bay development will become partially obscured by buildings whether PPC 51 proceeds or not; and
  - The additional buildings that will be enabled by PPC 51 will not entirely obscure the rounded ridgeline. It will continue to read as a foreground ridge to the Peninsula Bay area, albeit that it will be more modified.
48. Dr Bramley clarified that the proposed kanuka planting is intended to create a shrubland dominated by kanuka, but with more diversity than occurs currently. He was not proposing a Beech tree forest. He stressed that the costs to Council (and hence the community) of carrying out management of the existing open space area to enhance and extend the vegetation present would be significant. While the re-vegetation proposed by the plan change may be challenging, the risks were able to be managed and overall, a better ecological outcome would arise.

#### **PRINCIPAL MATTERS RAISED**

49. Having heard the evidence, in our opinion, the principal matters raised in the plan change request, submissions and/or by Council review came down to three themes:
- (i) The values of the land to be rezoned;

- (ii) The effects (positive and negative) of the earthworks, roads, housing, re-vegetation and enhancement and track upgrades proposed by the plan change; and
- (iii) Whether the rezoning would result in 'better' (or improved) management of the northern Peninsula Bay area in terms of Part 2 of the RMA.

## Values

- 50. There was agreement amongst the experts that there were three main values provided by the land to be re-zoned, being recreation, landscape and ecological values.
- 51. We note that these values accord with the purpose of the Open Space zone as stated in section 20 of the QLDC plan:

*The purpose of the Open Space Zone is to protect landscape values, natural character and informal open space of the area. It is intended to keep such areas in a natural state and free of buildings and structures. Such areas may however, be utilised for types of passive recreation that do not require intrusive buildings or structures, such as walking, running and biking.*

- 52. The listed permitted and controlled activities reinforce the purpose of the zone. Permitted activities cover:
  - i Passive or informal recreation (e.g. walking, running, biking, picnics);
  - ii Maintenance activities associated with permitted activities, or those activities that have a resource consent;
  - iii Removal/control of weeds and wilding trees;
  - iv Fencing of ecologically valued areas; and
  - v Fencing on the boundary of the Zone where it bounds privately owned land.
- 53. Light stock grazing is a controlled activity. The matters of control relate to the location of grazing areas, the type of stock to be grazed, and the intensity and duration of grazing activity.

## Recreation values

- 54. Starting with recreational values, the main area in contention related to the future recreational attributes of the land to be rezoned. Mr Greenway for the Requestor was of the opinion that the open space values of the land to be rezoned were confined to passive recreational activities, with tracks and trails a possible activity. Any lost opportunity in terms of tracks or trails could be addressed by way of upgrades to the tracks in the balance of the open space land and a financial contribution towards upgrades elsewhere. There was also an offer of an additional car park and toilets in the amendment received from the submitter on 8 July 2016.
- 55. In contrast, Ms Galavazi and submitters pointed to the long term recreational potential of the land. This potential is currently not well articulated in any plan or strategy, a point made by the Requestor. However in the Council's defence the land is not yet vested in

the Council and so there is little impetus for the Council to develop a meaningful picture of the future development of the land. Ms Galavazi's opinion was that the character of the land offered informal recreational opportunities that are not available elsewhere in such close proximity to Wanaka urban area.

56. The land in question is zoned as Open Space and was identified as such through a previous planning exercise. We can see no matters that suggest that the decisions made then as to recreational needs of the wider area are any different today, or indeed that the land identified as Open Space zone is no longer required for that purpose. In fact if anything, we consider that the urban development that was planned to occur under Variation 25 has occurred as anticipated, and as such, recreation demands will also have increased in tandem with that growth.
57. Our finding on this point is that the subject land's recreational values are not significant, but equally they are not absent. Informal tracks and trails are apparent and indicate that the area is used by walkers and bikers and no doubt the area is used by local children for informal play and adventure.
58. We also find that under the 'status quo' option, there is a reasonable expectation that the open space zoned land will be vested in the Council, at some point as a recreation reserve. We are not persuaded by arguments presented by the Requestor that it will hold onto the land and the land will not be made available for public use.
59. On this point, the Bike Wanaka submission referred us to the following passage of the Council decision on the Peninsula Bay Plan Change (Variation 25)<sup>4</sup>:

*Mr Thorn suggests that the Open Space Zone could be changed through the private plan change process in the future. It is recognised that zoning provides less guarantee than vesting as reserve. However, given the strong provisions of Part 4 of the Plan relating to ONL, and the objectives and policies of the Open Space Zone a successful plan change to enable development is considered highly unlikely. It is anticipated that once the Open Space Zoning has been confirmed and subdivision consents lodged, the vesting of the land as reserve will be addressed by the Council.*

60. The above passage and a plain reading of the relevant consent condition pertaining to the vesting of the open space land indicates to us that we must have some confidence that the open space land was always intended to be, and will be, vested.

### **Landscape Values**

61. A focus of debate amongst the relevant experts during the hearing was the location of the ONL, with Mr Espie maintaining that the ONL ran along the ridgeline, with Dr Read and Ms Stevens maintaining it ran along the edge of the current open space zone (that is, to the south of the ridgeline).
62. Changes made by the Requestor, post hearing, remove all of the more elevated lots that would be close to, or north of, the crest of the rounded ridgeline, except for Lot 4 at the western end.
63. We are not required by the District Plan to determine where an ONL shall lie as part of this plan change proposal. However we accept that consideration of whether all the subject land would meet the criteria for being within an ONL does have bearing on the determination of effects. If the whole of the land is within an ONL, then the adverse

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<sup>4</sup> Bike Wanaka Submission, 51/205, page 3.

effects of the proposed housing on the landscape have to be given due weight under Section 6 of the RMA. Equally though, if part of the site is not within the ONL, this does not mean that landscape effects from housing on this portion of the land are not at issue. There are still amenity issues to consider.

64. Having said that, the focus of the ONL debate appears to us to overstate the importance of the ONL classification to the determination of whether the plan change will lead to a better outcome than the present zoning. Our impression is that apart from the lots near the ridgeline (an issue now confined to Lot 4, after the removal of Lots 20, 21 and 22); the landscape impacts of the proposed zoning are confined to the Peninsula Bay North area. In other words, ONL or not, the impacts of development relate to the interface of the landscape with the urban development. As such we do not see the need to make a determination on the location of the ONL.
65. Mr Espie acknowledged that the land in question had a role as a 'book end' to the Peninsula Bay North residential area. It also provides a buffer or transition area to the lakeside environment on the north side of the ridge. We agree with these roles being important, a view confirmed to us when we observed the Peninsula Bay residential area from the track leading up to the Sticky Forest. We are of the opinion that the Open Space zone usefully frames the Peninsula Bay urban area, and to enable further development into this area will have adverse effects on the amenity of the area and on the ability of landscape itself to act as a transition area to the lakeside environment.
66. The need for, and benefits of, the open space ring around the Peninsula Bay residential area identified in Variation 25 remains unchanged in our opinion. Having viewed the PPC 51 area and other open space areas in the vicinity, we consider that the Open Space zone that surrounds the now largely established Peninsula Bay residential area does not 'over provide' for open space, in landscape terms.
67. We accept that landscape values differ between the western and eastern ends of the southern slope. The western end of the slope is devoid of vegetation and appears to have been earth worked. The eastern end has a more natural form and contains vegetation that in our view adds significantly to the visual amenity values of the area. To the west, the currently more barren slopes could re-vegetate either naturally or as part of a specific programme.

### **Ecological Values**

68. By the end of the Hearing it was apparent to us that the debate over ecological values was more related to the long term health of the species present under the status quo option and the risks of the replanting strategy proposed by the Requestor, rather than a debate as to existing value of the vegetation present. Generally the vegetation present is seen to have value.
69. The changes made post Hearing by the Requestor to the proposed development pattern further reduce the extent of differences over the effects of vegetation to be removed and replanted. The changes retain some of the best quality tussock grassland present on the site and the cushion pimelea which is located in proposed Lot 20.
70. In both the future without the plan change and the future with the plan change, we have to make predictions as to future conditions in respect of ecological conditions. This is not an easy task, as both scenarios involve actions of others. Dr Bramley's opinion was that the risks to the current health of the tussock grasslands were significant, while the risks during replanting were manageable. Council's expert was of the reverse opinion.

71. With regard to the future without the project we have to assume that the Council will take reasonable steps to manage the ecological values present, once the land is vested and therefore the differences between the future with and without the plan change are not as stark as they are made out to be. Equally, we have to assume that if required by conditions of the structure plan, that the Requestor will undertake the necessary re-vegetation programme to a high standard. While not directly broached during the Hearing, concerns over the Requestor 'going out of business' once the plan change is in place (and therefore not fulfilling their on-going duties) could be addressed by a bond or similar.

### **Anticipated Effects**

72. A range of evidence on the environmental effects of PPC 51 was presented to us at the hearing, and the matter was addressed appropriately in the various s32 reports presented. We have discussed the values above. In this section we make findings as to the likely effects of the plan change on those values, both negative and positive.
73. As discussed above, in our opinion, the main landscape effect relates to the impact on what may termed the local landscape of the Peninsula Bay area. Mr Espie acknowledged the impacts on this landscape, but does not see these effects as being large or significant. In our view, the landscape effects will be more prominent than he has stated. We are satisfied that the rationale adopted in Variation 25 as to the point at which the urban development should stop at the northern end of Peninsula Bay still holds today. We do not agree that extending residential development as sought in PPC 51 into either the eastern or western sections of the southern slope is appropriate. Houses in the vegetated eastern area would significantly detract from the landscape values it offers, while to the west, houses would preclude a much more natural break to the urban development being formed by the change in landform in this area.
74. In terms of effects on recreational values, there is a negative effect through a lost opportunity for informal play and use of the land for what may be called 'rambling'. We accept that this effect is not a large scale effect, but it is nevertheless a consequence. We understand the intent of the proposal to 'off-set' this effect through a financial contribution for the development of tracks and trails elsewhere. However we cannot have any certainty that such an off-set is reasonable or indeed considered useful by Peninsula Bay residents. Apart from the suggestions from the Aspiring Tracks Network there is no specific project that the Requestor or the Council could point to as being the off-set, and such we cannot be sure that a like-for-like exchange will occur. We do not accept that market pressure for additional land in Peninsula Bay is sufficient justification to erode the open space that was created to support the wider residential development.
75. Turning to ecological effects, here our findings are less clear cut due to the uncertainties present over the future, with and without the project. Generally we accept the point made by Ms Palmer that as a starting point, it is better to manage and enhance what currently exists, rather than try to recreate those values through re-vegetation. This starting point should not preclude the option of re-vegetation to off-set the removal of vegetation, but any decision to re-create should be based on some wider benefit from enabling development in the areas to be cleared.
76. In summary we see some benefits from the proposed re-vegetation and management proposed by the Requestor, flowing from the certainty that the plan change presents. However, those benefits seem marginal over the 'without project' future. The amended proposal as submitted at the close of the hearing would result in a larger amount of

replanting compared to the area to be cleared, than as first proposed. It would normally be expected that the area of re-vegetation is to exceed the area to be removed. This is to cover the costs of removing the intrinsic values of established vegetation, the time taken for new vegetation to get to a height and coverage that matches what is being removed, and to cover the risks involved in replanting. In our view, there is little net gain from the re-vegetation proposed. What is being removed is being off-set, so the end result is a neutral outcome at best, in our opinion.

77. What is an 'absolute' loss is the potential to re-vegetate in whole or in part the 3.5 hectares of land to rezoned to LDR. That is, under the status quo option, the existing vegetation can be retained, and new plantings established in the area to be rezoned, as well as elsewhere. This potential to re-vegetate the land to be re-zoned is largely lost through the plan change.
78. Finally, the other effect of the plan change is to enable more housing. This has social and economic benefits. However this effect does not appear to be a large or strong benefit of the plan change. We were not presented with any evidence that Wanaka faces a shortage of land for housing and that as a result there were strong reasons to support a rezoning. The Requestor said that demand for housing in the Peninsula Bay had been constant, and we accept that it is a desirable residential area. However the benefit of providing space for 20 more houses seems very small in the total context of the area.

### Statutory Assessment

79. In sections 13 to 15 above we outlined the tests that must apply to our consideration of a plan change request. In this section we address each test in turn.
80. But before doing so, we briefly address the issue of plan integrity. Some submitters raised the concern that an undesirable precedent would be set if the plan change was approved. That is, a previous planning decision that had broad agreement would be over turned. Here, we agree with the advice of the section 42A report that precedent and integrity issues are not ones that are identified in the RMA as matters to be addressed in the consideration of any plan change. We also agree with the Requestor that Variation 25 is not 'set in stone'; that is, it is not determinative as to this plan change request. Planning is a dynamic process and planning frameworks should adjust as circumstances change. Having said that, changes to planning frameworks need to be based on sound reasons. Integrity issues arise from poor decisions, not changes to plans, per se.

**Does PPC 51 accord with the Council's functions under section 31 to manage the effects of development, use and protection of natural and physical resources in an integrated way?**

81. PPC 51 proposes a new objective, as follows:

***New Objective 22 Peninsula Bay North Low Density Residential Zone***

*Low density residential development at Peninsula Bay North:*

- a) enhances and where appropriate, protects areas of significant indigenous biodiversity;*
- b) protects the visual amenity values associated with the Outstanding Natural Landscape.*
- c) enables people to access land for passive and active recreation.*

82. The Requestors' (amended) section 32 report states that the new objective seeks to balance the provision for residential development with the enhancement and, where

appropriate, protection of indigenous biodiversity and landscape values of the land<sup>5</sup>. Retaining the existing zoning at this site is seen to be a lost opportunity for the community to provide for their social and economic wellbeing.

83. The Requestor's section 32 assessment further states that the existing Open Space zone is inefficient in achieving the objectives of the existing District Plan as it largely prevents development and use of the Open Space zone, and thus any corresponding conservation gains that may result<sup>6</sup>.
84. Council's assessment was that the objective would not assist in managing resources of the land in question, in part due to the classification of the land as an outstanding natural landscape and a conclusion that the removal and re-vegetation proposed would result in a net ecological loss.
85. As discussed above in terms of values and effects, we have not made a finding as to whether the land in question is within an ONL, while our findings on the ecological issues are that there is not net gain or loss. Nevertheless, these findings do not mean that the objective will assist the Council.
86. In our view, the objective proposed in PPC 51 does not accord with all of Council's functions under the RMA. It places too much emphasis on enabling well-being through more housing and insufficient attention to the maintenance and enhancement of amenity values. We are also of the view that there is no need to 'balance' the provision of residential development with enhancement in the case of the subject land. The current open space zone is the outcome of a larger, more widespread 'balancing' exercise. It protects the existing values of the land and retains opportunities for enhancement in the future. That is its primary role and a role that is still relevant today.
87. Turning to the policies as proposed, they clearly help the Council to fulfil its duties under the RMA, should the land be rezoned. During the course of the hearing a number of matters of detail as to the methods proposed were identified, and in closing the Requestor proposed amendments. These amendments appear helpful. However there remains the fundamental issue as to the appropriateness or not of the proposed rezoning of the land.

**Does PPC 51 give proper consideration to Part 2 of the RMA and the list of statutory documents in section 74 and section 75?**

88. PPC 51 must "give effect to" any National Policy Statements and the Otago Regional Policy Statement (ORPS).
89. After the close of the Hearing and during the course of our deliberations, a National Policy Statement on Urban Development Capacity (NPS UDC) was issued by the Minister of the Environment. The NPS-UDC will come into effect on 1 December 2016. We do not see any conflict with this NPS. Development capacity issues were not the driver of the plan change, although some extra housing capacity is a (small) benefit of the plan change.
90. The relevant provisions of the ORPS were reviewed in both the plan change request documents, evidence and the s42A report. Council's evidence was that the plan change will not give effect to the RPS, as required by section 75 of the RMA. This was in relation to the land being within an ONL. Given our reluctance to enter into a landscape

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<sup>5</sup> Page 5, Amendments to Plan Change 51 and Associated Section 32AA Evaluation, Mitchell partnerships, 7 July 2016.

<sup>6</sup> Page 7, Ibid

classification process we do not make a finding that the plan change does not give effect to the ORPS.

91. We note that a number of the ORPS policies refer to maintenance of amenity values<sup>7</sup> (which are variously described to include open spaces, recreational resources, greenbelts and landscapes) as an issue. This concern does not rely on whether or not an area is considered to be an ONL.
92. We are required to have regard to the proposed regional policy statement, the relevant provisions of which were also discussed in the application documents, evidence and s42A report. A decisions version was released on 1 October 2016. Having reviewed the notified and decisions version provisions, we find no inconsistency with respect to PPC 51.
93. More importantly, is PPC 51 in accordance with the provisions of Part 2 of the RMA? Here we take the broad judgement approach to Part 2 of the RMA, given that higher order documents like the operative Regional Policy Statement are not directive in their provisions as to appropriate outcomes for the northern Peninsula Bay area, while no national policy statements are relevant.
94. In our opinion, PPC 51 will not lead to a better outcome than the current zoning, in terms of sustainable management. If anything, the plan change will result in poorer outcomes. The reasons for this finding are based on our overall evaluation of the plan change request. The broad judgement required by Section 5 of the RMA requires us to weigh up the benefits to people and the environment from developing and using resources while considering the nature and extent of impacts on the environment. Section 6 and 7 provide guidance on the importance of various environmental factors, including amenity and the quality of the environment. We must also take into account the foreseeable needs of future generations.
95. In short, we do not see the benefits of the plan change (more housing, proposed re-vegetation, contribution towards recreational facilities) as being of sufficient value to outweigh the costs in terms of landscape and amenity, and lost ecology and recreational opportunities. In our view, existing and future generations will derive more benefits from access to the amenity and landscape values of the open space land identified by Variation 25, than if the plan change proceeds. No evidence suggests that those values have been lessened or replaced by other open space area since Variation 25. With the plan change in place, the longer term ecological and recreational opportunities of the land will be reduced, even taking into account the certainty of the re-vegetation proposed, due to the reduction in area.

### **Evaluation under Sec 32**

96. We were presented with substantive assessments by the Requestor and Council's reporting officer.
97. The Requestor provided an assessment with the plan change request. That assessment was updated on 7 July 2016.
98. These assessments assessed the proposed rezoning under sections 32(1)(b)(ii) and (2)(a). The new provisions were assessed in terms of their appropriateness in achieving the objective of the proposal and against the existing relevant District Plan objectives (sections 32(3)). A comparative assessment of costs and benefits was

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<sup>7</sup> Such as Policy 9.5.4 and 9.5.5.



provided that compared modifying the zoning to enable (controlled) residential development plus re-vegetation, with the status quo.


99. In short, the Requestor's assessment was that while changes to the landscape were seen as a cost (in terms of impacts on the landscape character of the local Peninsula Bay area), these costs are to be outweighed by the housing enabled and the re-vegetation proposed. Recreational benefits are anticipated, but no recreational costs are identified.
100. Council's section 42A report provided an assessment of three options. These were the status quo, the plan change option and the option of a scaled back plan change. This assessment placed more weight on the lost recreational opportunities, the effects on ONL landscape values and potential ecological losses.
101. The evaluations provided to us have identified relevant positive and negative effects.
102. The amended proposal submitted by the Requestor at the end of the hearing reduced some of the 'costs' of the proposal. Three house lots were removed, lessening some landscape effects and reducing the amount of vegetation to be removed. The area of open space land to be rezoned was also reduced. While beneficial, we do not consider that these changes tip the balance in favour of the plan change.
103. We also considered an option whereby only the western lots were rezoned (Lots 1 to 11). These lots did not have any existing ecological values, while recreational attributes were also limited. We did not pursue this option. The Requestor had not sought such an option, while there will still be amenity and landscape effects, as well as lost opportunities for enhancement.

## **RECOMMENDATION**

104. Pursuant to our delegation under s34A of the Resource Management Act 1991, we recommend that Private Plan Change 51 to the Queenstown Lakes District Plan is declined, with the submissions and further submissions accepted or rejected in whole or in part as indicated in Appendix 2.
105. The reasons for our recommendation (in summary only as the decision records our detailed reasons) are:
  - a) The plan change will have a negative impact on recreational values through the loss of open space zoned land. While the active recreational values that will be forgone by the plan change are not large, passive recreational opportunities will be lost. These effects are not off-set by the proposed financial contribution. We can have no certainty that the money collected will be spent in a manner that will compensate for the lost opportunity.
  - b) The land to be rezoned has landscape value in its relationship with the northern extent of the Peninsula Bay residential area. The southern slopes of the land help to contain and define the urban area, imparting a strong sense of the urban development being settled into the landscape. That landscape value will be weakened, to the detriment of the wider area.
  - c) The claimed ecological benefits of the plan change are marginal at best, while the ability to re-vegetate a larger area will be lost.

106. Overall, we do not consider that the plan change will enable the Council to better manage the resources present, compared to the status quo. There are no advantages in terms of part 2 of the RMA and the sustainable management of natural and physical resources present, compared to the current zoning, and in our view, there are a number of disadvantages, as outlined above.
107. Our recommendations on submissions are included as Appendix 2. We adopt and confirm the reasons for those recommendations as stated in the s42A report.

David Mead  
Chairperson



Date:

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22 November 2016

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