Queenstown Lakes District Council

Section 42A Reporting Planner's Response
To Hearing that commenced 24 July 2023

Statement dated: 27 July 2023

Plan Change 54 - Northlake

File Reference: Northlake PC54 S42A – response to hearing

1. RESPONSE TO HEARING - PLANNING

1.1. My name is Ian Colin Munro and I have the experience and qualifications set out in my s.42A report. I confirm that I continue to agree to comply with the Environment Court's Code of Conduct for Expert Witnesses and that I have done so in the preparation of this s.42A response statement.

1.2. I attended the full duration of the public hearing of PC54 and listened to the presentations as well as Commissioners' questions. I gave a high-level verbal summary of my response at the hearing.

1.3. I have read and considered the response statement of Mr. Mike Smith (transport) dated 26 July 2023 in the preparation of this response.

Infrastructure

1.4. Having considered the information provided at the hearing including NIL's witnesses and the response provided on behalf of the Council by Mr. Richard Powell, I have not changed my opinions or recommendations as set out in the s.42A report.

Stormwater

1.5. I confirm that in the ordinary run of things, I would likely have agreed with the approach put forward on behalf of NIL. It is the presence of erosion in an erosion-prone gully and issue of an Abatement Notice by the Otago Regional Council that led me to the view that 'something was not right' with the overall planning status quo within the stormwater catchment within which AAB6 is proposed. This in turn led me to prefer a more precautionary approach and the recommendations of Ms. Purton. During the hearing Ms. Purton produced an alternative Ch15 ODP subdivision assessment matter, derived in turn from Mr. Brown's (evidence) response to the s.42A report.

1.6. I agree with and have sympathy for Mr. Bretherton's concerns about the unintended consequence of my proposed Ch12 ODP rule potentially being a need for additional very detailed information at the outline development plan stage, where it would usually sit as a Ch15 ODP subdivision matter. For that reason I am comfortable with the method, irrespective of whether it as a rule or an assessment matter, sitting within Ch15 ODP.

1.7. Ms. Purton confirmed that the assessment matter would be acceptable although she preferred a rule. I agree with Ms. Purton but by the same token an assessment matter would more naturally fit into the existing flow and structure of Ch15 ODP, and on the basis of Ms. Purton's opinion that the assessment matter would ultimately be workable

as well as addressing the criticisms of the Ch12 / outline development plan placement raised by NIL, I am satisfied it would be the most appropriate overall solution.

1.8. Although agreement with NIL remains not fully reached, the disagreement has narrowed and can now be seen as two alternative Ch15 ODP assessment matters (the Brown option and the Purton option). I have also identified minor corrections to the Purton assessment matter and this is set out in **Appendix 5** (following the original s.42A numbering) to this response.

Landscape / visual

1.9. Based on the site visit I undertook prior to the hearing where I was able to generally ascertain the northernmost boundary of AAB6, the landform rising above it, and the base and top of the water reservoir; and the information provided at the hearing on behalf of NIL – particularly by Mr. Skelton, I have come to agree with the NIL approach for a height limit of 401.5 MASL within AAB6. I was particularly persuaded by the favourable comparison that NIL's witnesses described between AAB6 and the existing AAC1 on which, depending on how allotments (at a lower density than AAB6) were configured, a very similar presentation of built form and scale could have resulted. On that basis I consider any adverse effects of PC54 would be minimal if at all noticeable compared with what could be expected of the status quo. I have adopted NIL's rule wording and this is included in **Appendix 5**.

1.10. In respect of Ms. Mellsop's suggestion regarding additional landscape mitigation of the water reservoir, I note that in the time since my initial site visit in 2022 and the hearing, mitigation planting required by the reservoir resource consent has been provided. Although still establishing, in my opinion this is sufficient noting that the matter was the subject of its own consent and the only basis to revisit that as part of PC54 would be via a potential cumulative effect arising between it and additional intensity enabled by AAB6. On the basis of my conclusion above, I no longer consider any such potential cumulative effect to be likely.

1.11. On the basis of the above and in summary, I understand that there is now agreement between myself and NIL on the matter.

Transport

1.12. In summary, my position has not changed since that set out in my supplementary s.42A report (and its **Appendix 4**).

1.13. It appears that in relation to transportation all relevant submitters and experts accepted that there was a potential for future traffic from Sticky Forest activities to create adverse effects within the NSZ and that furthermore these should to be managed. Disagreement

has only extended to whether an RMA-based (district plan rule) method was more or less appropriate than non-RMA based methods (LGA / road controlling type methods).

1.14. Having considered the very thoughtful evidence and information provided on behalf of the submitters with an interest in Sticky Forest, I remain in substantial disagreement including in terms of the evidence of Mr. Penny and Ms. Ellis.

1.15. Listening to the concerns and fundamental 'guiding principles' (my term) that were explained by the Sticky Forest group, I was struck by just how much agreement and common ground there was between them and I. Our differences appear to be focused on the subtleties of how alternative methods may or may not work; and disagreements as to what levels of reliance can be placed on the parallel Environment Court process of addressing a PDP appeal on the zoning of Sticky Forest.

1.16. In my opinion "harvesting" in terms of the NES:PF does not extend to the transportation of the crop from the site of harvest or removal / gathering to another destination such as a mill / processing yard / export terminal. I see nothing in the proposed s.42A rules that would seek to go beyond what the NES:PF permits, and all of Stickly Forest subject to the NES:PF could be harvested noting that there are many potential ways that the crop could be then used or removed from the Site other than via the NSZ roads.

1.17. The remainder of my response to the information provided can be summarised as follows:

a. The context of PC54;

b. Precluding HPMVs;

c. Mr. Penny evidence;

d. Ms. Ellis evidence;

e. The principal reasons why a RMA rule is more appropriate than non-RMA (LGA or road controlling) methods; and

f. Final clarifications of recommended approach.

<u>Context of PC54</u>

1.18. I agree with the Sticky Forest interests that Sticky Forest presents a most unusual situation for the Panel and its consideration of PC54. However and with the greatest of respect to the Sticky Forest interests' team and particular empathy for Ms. Rouse and the other successors, I disagree that the wider issue of treaty land redress explained by

Ms. Stevens as being something approaching a "100-year problem" should be conflated with the separate issue of land access. That problem has arisen separately and only as a result of the way the Crown elected to subdivide the original plantation reserve area in the 1990s; subsequent actions by Ngai Tahu to develop land within the Kirimoko Block without providing such access; and also the Council's PC13 process for the wider Kirimoko Block that also could have, but did not, provide access. This succession of disappointing planning decisions also forms part of the context of how to approach what NIL has pragmatically (and in my opinion commendably) supported as part of its development within the NSZ. In 'doing the right thing' for Sticky Forest and the successors, I do not think it correct to expect NIL or the residents within its subdivision to wear unreasonable adverse effects arising from that.

1.19. In that respect the importance of providing access to Sticky Forest and the relevance of s.8 RMA as part of that should not veto or improperly outweigh the consideration of other valid resource management issues arising directly from the provision of access through Northlake given that Northlake was never planned for or envisaged to accommodate such a linkage and future traffic as PC54 now proposes to enable. I am particularly interested in the residents living within the NSZ along routes likely to be trafficked by future Sticky Forest traffic, and the environmental effects of that increased traffic on those persons.

1.20. NIL's Northlake development is the subject of a community-focused and design-quality led set of restrictive guidelines, covenants and controls, and purchasers have bought-into that with a greater-than-typical expectation of certainty and predictability as to what effects and developments they are likely to be exposed to. I disagree with the view expressed by Ms. Ellis and Mr. Penny suggesting that by living on a classified collector road, those residents might already have some reasonable expectation of future forestry or other traffic coming from beyond the existing and master-planned NSZ framework.

1.21. I agree with the Sticky Forest interests that the Panel should not seek to second-guess what may come from the PDP appeal process. That is one principal reason why I have proposed a catch-all traffic generation rule. I record however that as I see it, the Sticky Forest interests were fundamentally second-guessing not just the appeal but an eventual subdivision and development scenario (which would likely be several years after any PDP appeal decision) by focusing on a current preference for a maximum 150-allotment subdivision, assumed by those submitters and their experts to also only contain 1 dwelling per allotment (150 allotments).

1.22. It is permitted on any allotment for a residential dwelling and a residential flat to occur together. It is also possible by way of resource consent within the Lower Density Suburban Residential zone to seek integrated housing. I cannot agree, although I accept

at face value the sincerity of the current development vision for the land held by those submitters, that there is any certainty that no more than a maximum of 150 dwellings (and its traffic) could ever eventuate on Sticky Forest. In saying that, I do agree with Mr. Penny to the extent that the information provided is sufficient for me to set aside the higher-end estimates Mr. Smith calculated in his initial s.42A memo to me. Based on the information given as to future ONL boundaries within Sticky Forest, it is in fairness now difficult for me to see more than the order of 350-400 dwellings possibly eventuating within Sticky Forest in any scenario.

1.23. In any event, the traffic likely from even 150 dwellings is more than the potentially 75 dwellings-worth of capacity Mr. Smith identified in his original s.42A memo as possibly existing along Stonehenge Road, also noting that there remains potential for ongoing intensification and infill within the NSZ such as via residential flats on the Allenby Farm site in the meantime. Although Mr. Carr proposed a higher potential estimate, he was as I understand it speaking to theoretical capacity, not existing capacity within the existing geometry of kerb-lines and intersections, etc.

Precluding HPMVs

1.24. I continue to consider it is appropriate for rule 15.2.3.4(xx) to include an outright ban on HPMVs from the new Sticky Forest link. No expert fundamentally disagreed with Mr. Smith's appraisal of the potentially significant adverse effects these 'huge' (my colloquialism) trucks could have. Discussion at the hearing was limited to how such effects, at least within the road reserve, might be manageable. I remain persuaded by the reasoning given by Mr. Smith – whose direct experience in the temporary traffic and transportation management space was particularly compelling to me - and consider that this particular class of vehicle and obvious potential adverse effects should simply not be tolerated on the existing and plainly very residential-character NSZ road network and land use interfaces. This still leaves room for Heavy Commercial Vehicles to be used where appropriate for forestry or other uses (noting that this class still includes very large trucks up to 44 tonnes as set out by Mr. Smith).

Mr. Penny evidence

1.25. I have addressed the matter of the 150 maximum dwellings relied on by Mr. Penny already.

1.26. In my opinion Mr. Penny did not provide any meaningful attempt to quantify or assess likely forestry activities or traffic on the NSZ, and I do not agree that his conclusions are reliable. Simply stating that the forest is small compared to some other forests; that the carriageway width of Riverslea Road was comparable to some highways; that amenity effects would not be problematic (again, without any obvious attempt to identify, quantify

or assess such); and that residents will complain if the terms of any imposed traffic or transportation management plan requirements were not met, as Mr. Penny did, was in my opinion rather casual and overall inferior to the approach taken by Mr. Smith. After hearing Mr. Penny, my preference towards and confidence in Mr. Smith's conclusions and opinions has increased.

1.27. Mr. Penny focussed overly on road classification issues and geometric or physical works, either in relation to temporary / interim forestry traffic or permanent additional (residential) traffic loading and whether in his opinion they were spatially or technically workable. I do not disagree with him in general terms that non-RMA methods may be able to provide for at least some of these, including such matters as the Council potentially (and hypothetically) closing part of Lammermoor Street to traffic through a road closing process. Mr. Penny was however silent on the differences between non-RMA methods and the proposed resource consent method in terms of both the latter's ability to address potential effects before they occur (avoiding the issue of requiring residents to regulate traffic management plan compliance by way of complaints), and by way of direct cost-attribution and financial responsibility for Sticky Forest-related effects on to Sticky Forest owners or developers. These are among the key reasons, in my view, why the proposed resource consent rules are more appropriate than the non-RMA methods promoted at the hearing. I do not consider it would be appropriate for NIL or the Council to be expected to fund works required as a result of Sticky Forest's forestry activities or subsequent development.

Ms. Ellis evidence

1.28. Ms. Ellis expressed a number of criticisms of the s.42A recommendation. I propose to only address the key ones most relevant to the Panel's decision. But I agree with her that the proposed traffic trigger approach is atypical or unusual; this simply reflects the unusual context of PC54 and Sticky Forest that the rule is responding to.

1.29. I disagree that the proposed transport trigger, sitting within Ch12 ODP, would be confusing or difficult for an experienced planner to find or be aware of. First, the key parties were in the PC54 hearing and are hence already aware of the proposed rule. Secondly, it is in my opinion fairly conventional practice when undertaking a site assessment to consider a site and relevant planning provisions; then all direct neighbours for the same (which would identify the Ch12 ODP rule in question); often also certificates of title and listed instruments; then non-RMA Council documents such as design guidelines; then iwi management plans or similar; then regional plans and so on. In that context, where it is typical to consider multiple RMA and non-RMA documents, I just do not see the basis for her concern.

1.30. I do agree with Ms. Ellis to the extent that, depending on what might ultimately come out of PC54, other rules may have the effect of making my proposed rules redundant. In such a scenario, my rules would become unnecessary duplicates. However, based on Ms. Ellis' scenario, they would not require any additional or further assessment or technical work to be undertaken by a consent applicant; merely the identification of the Ch12 ODP rules in an AEE as additional matters for consent. I would imagine at worst this would be a minor administrative nuisance and would be interim noting that at some point it is likely the Council will 'fold in' the NSZ and Ch12 ODP to the PDP, and any issue of duplication could be removed at that time.

1.31. This does also relate to a comment made by Mr. Goldsmith, where he constructively floated the possibility of PC54 rules in Ch12 ODP that might have a sunset clause depending on the resolution of rules with equivalent effect in the Sticky Forest appeal. I have not been able to progress that matter further but for completeness, could only see such an approach working if there was a way of ensuring the 'replacement' rule or rules addressed the same things that my proposed rules would (i.e., not just the milestone of settlement of the Sticky Forest appeal *per se*).

Principal reasons to support s.42A RMA method

1.32. Based on all of the above, I confirm that I have considered and agree with the validity of non-RMA methods. But after considering these I remain of the opinion that they are inferior to the RMA-based rules I propose. My principal reasons are:

a. A resource consent can where appropriate be limited or fully notified, not only allowing affected persons to participate but be relied on in the making of a decision (this is in my opinion very different to an optional 'consultation' process that might occur as part of a non-RMA traffic management plan approach).

b. A resource consent allows a more proactive approach to the management of potential adverse effects contrasted with the often-reactive non-RMA approaches, and an ability to avoid adverse effects more readily.

c. A resource consent allows amenity values and effects beyond just the road reserve or on a road pavement to be considered, which non-RMA approaches do not (at the hearing I described to the Panel the example of a resident living along Riverslea Road being affected by a sustained forestry activity, potentially seeking an interim acoustic wall along the front of their site but within the road reserve noting that the various Northlake rules (12.34.4.1(vii)) and design requirements have sought to avoid those in the first instance within allotments); and

d. A resource consent allows a more direct and in my opinion reliable attribution of responsibilities and costs onto the party or parties proposing to create an adverse effect than non-RMA approaches do.

Final clarifications of proposed s.42A RMA method

1.33. Based on final questions put to me by the Panel, I confirm the following in relation to my recommendations and the alternatives proposed by Mr. Brown.

a. I disagree that Policy 3.7 identified by Mr. Brown is necessary, but by the same token I am not opposed to it and agree it does make for a more-obvious vertical linkage between the objective and method. I note that the NSZ also contains a rule to manage building height, but lacks a direct policy expressly 'setting up' a specific building height limit. This has not in my opinion hindered the efficient and effective operation of the zone provisions to date or the ability, through the PC54 hearing and associated evidence, to consider and discuss a height limit to apply in AAB6.

b. I generally agree with Mr. Brown as to the wording of rule 12.34.2.3(v) as he proposed to amend it other than in clause (b), where I consider it is necessary to retain reference to pedestrian and cycle traffic. These could be required to also be considered depending on proposed changes arising from vehicular traffic flow characteristics.

c. I disagree that the assessment matters Mr. Brown has identified at 12.34.5.2 are necessary, although in fairness much of their content was included in my original s.42A version of rule 12.34.2.3(v). My reasoning is that having had the opportunity to more fully consider the issues, and nothing was presented at the hearing to change my thinking on this, the restrictions proposed are sufficiently wide to fully provide for the matters Mr. Brown proposes and in addition any other relevant matter that might arise.

d. In terms of my proposed notification rule at 12.34.3, this caused some confusion at the hearing which I accept is a result of its wording. In its pre-existing state, the clause provided for the automatic non-notification of all restricted discretionary activities listed in Ch12 ODP except where an application for an outline development plan proposed a road connection to an adjoining land area, whereby affected parties could be limited notified. The intent of my intervention was to exempt the new traffic generation rule trigger at 12.34.2.3(v) (as it would be a restricted discretionary activity) from the general statement that all restricted discretionary activities be non notified. I did not mean to propose any change to the existing operation of the rule as it might relate to the provision of the Sticky

Forest road link enabled by PC54. It was my intent that applications for consent under the new 12.34.2.3(v) would be subject to the normal RMA notification tests, allowing the Council to limited notify or fully notify an application (depending on its characteristics and effects). I had in mind residents living along the roads that might be subjected to substantial forestry traffic or changes in the existing traffic volumes or road geometry. If the Panel identifies an alternative wording or clause that has the same effect, I would remain comfortable with that.

1.33 Overall and for the reasons set out above, in my supplementary s.42A and my original s.42A report, I recommend that PC54 be approved with modifications as set out in **Appendix 5** attached to this response statement. Those provisions are in my opinion the most appropriate having regard to the applicable matters set out in s.32AA and s.32 of the RMA.

Ian Munro

27 July 2023