

QUEENSTOWN LAKES DISTRICT COUNCIL

Hearing of Submissions on Stage 3 Proposed District Plan Provisions

Report and Recommendations of Independent Commissioners

Report 20.4: Chapter 19A

Three Parks and Related Variations to Chapters 9, 16, 25, 27 and 30

Commissioners

Trevor Robinson (Chair)

Sarah Dawson

Greg Hill

Calum Macleod

Ian Munro

Quentin Smith

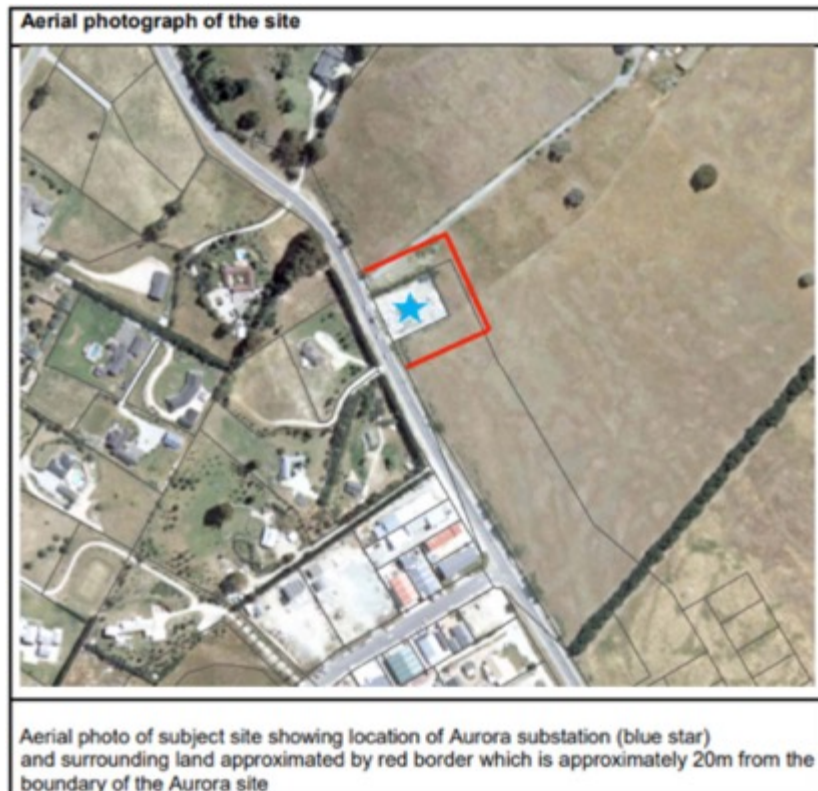
a height in relation control. Accordingly, as a consequential amendment, we also recommend the 18m height standard for telecommunication poles, with a height in relation to boundary control, in the TPBZ – noting that had the zoning changes not been recommended, the 18m height limit would have applied to the Three Parks Commercial Zone and the GISZ.

89. The height of poles in the BMUZ was not part of the Spark/Vodafone submission, and accordingly we have not recommended any change to pole heights in relation to that zone.
90. Overall, for the technical, landscape and planning reasons set out above, we agree that the permitted pole heights be 18m along with height in relation to boundary rule, is appropriate in both the Three Parks Commercial and Business zones.

4.2 Aurora Electrical Substation - BRA

91. Aurora sought a BRA around its Wānaka Substation north of the Sir Tim Wallis Drive intersection on Ballantyne Road. The legal position was set out by Mr Peirce, and Ms Dowd provided planning evidence. Both emphasised the importance of protecting the sub-station from reverse sensitivity effects from the surrounding LDRSZ.
92. Mr Peirce and Ms Dowd also discussed the relevant Strategic Objectives and Policies relating to the recognition, provisions for and protection of regionally significant infrastructure such as the Aurora network⁵³. We accept that the Aurora network is regionally significant.

93. We also accept that Strategic Policy 3.3.37 is directive that regionally significant infrastructure is to be protected by managing incompatible activities. The evidence of Ms Dowd was that buildings in proximity to the Wānaka Substation would be incompatible with its operation as they have the possibility to cause adverse health and safety and amenity effects. It was her view, which we accept, that to manage those effects effectively requires restricting buildings in the vicinity of the sub-station. Ms Dowd considered that the activities which could continue in the Building Restriction Area are car parks, greenways, walkways, and roads. Aurora also sought to be listed as an affected party in terms of the RMA's notification provisions should a building be proposed within the BRA.



94. The zoning we have recommended for the sub-station and the land adjoining and surrounding the sub-station is LDSRZ. This enables residential subdivision with a minimum lot size of 450m² with setback requirements of 2 metres for side boundaries for a residential dwelling and no

⁵³ Objective 3.2.1.9 and policies 3.3.36 and 37

setback requirements for accessory buildings. We accept this scale of development could create the reverse sensitivity and health, safety and amenity effects outlined in Aurora's legal submissions and planning evidence.

95. Mr Roberts addressed this matter in his section 42A report and in his reply evidence. In the section 42A report, he recommended rejecting the BRA. However, he was persuaded by Aurora's evidence to alter his view. In his rebuttal⁵⁴ and reply evidence⁵⁵ he recommending a 20 metre building setback for the Aurora Sub-station, to be achieved by applying a BRA along the substation boundaries. In his rebuttal evidence, he had also recommended a rule (as a consequential amendment to Chapter 7 – Lower Density Suburban Residential) that Aurora would be deemed to be an affected party in accordance with section 95A of the RMA if a building was proposed within the BRA.

96. In his legal submissions, Mr Peirce advised⁵⁶:

*Having considered Aurora's relief further and, further discussion with Aurora engineers, and to maintain consistency with the setback provisions in other zones such as the WBRAZ Ms Dowd considers that the building restriction area can be reduced to **10 metres** as shown in the plan attached to these submissions as Appendix 2. Notably, the building restriction area follows the existing right of way that is located on the property owned by Ballantyne Properties Limited. (emphasis added)*

97. We accept the 10 metre BRA as an appropriate mechanism to protect Aurora's substation, and have recommended this accordingly. However, we have limited this BRA to a five year time period from when the plan was notified. This is because we consider that extending the sub-station's designation⁵⁷ is likely to be a more appropriate mechanism to ensure the site's function and protection while addressing the concerns of the adjoining landowners. In this respect Mr Peirce addressed this in his legal submissions, – stating⁵⁸:

The section 42A Report Author questions where a more appropriate form of relief than what has been sought by Aurora would be, to extend the existing designation to cover the same area which has been sought as a non-building restriction. While that would be an equally effective means of protecting the Wanaka Substation it similarly goes no further than to achieve the same outcome to what has been sought through Aurora's submission. Furthermore, if Aurora were to seek a designation for the surrounding area then it is likely that the landowners would be seeking Aurora to purchase that same land and amalgamate it with its existing landholding. The reason for that is the designation becomes a blight on the land which, in Aurora's experience, landowners do not want. It would be a unique situation in the District for Aurora to extend its designation without owning the land that is subject to the designation

98. We agree with Mr Peirce that expanding the designation would equally be an effective means as the BRA in protecting the Wānaka Substation, and in doing so, it is possible that the

⁵⁴ Paragraphs 3.4 and 3.5 of Mr Roberts' Rebuttal Evidence

⁵⁵ Paragraphs 5.1 and 5.2 of Mr Roberts' Reply Evidence

⁵⁶ Paragraph 46 of the Legal Submissions

⁵⁷ Designation #337 - for electricity substation and ancillary purposes

⁵⁸ Paragraph 44 of the Legal Submissions

adjoining landowners will seek Aurora to purchase that same land and amalgamate it into the substation site. We think this is entirely reasonable, as the effect of the BRA is to externalise the cost of the sub-station's protection to the adjoining landowner; affecting or limiting how they may wish to use their land. The five year time frame for the BRA is, in our view, sufficient for Aurora, in conjunction with the adjoining landowner to discuss, and agree if possible, the appropriate mechanism to enable the sub-station to be able to function safely and efficiently; or failing agreement, to expand its existing designation.

99. Aurora also sought some additional provisions to protect the functioning of its network. These included:

- A matter of discretion relating to effects from buildings on electricity sub-transmission and distribution infrastructure;
- A requirement to give consideration to Aurora as an affected party when considering notification of applications, and
- An Advice Note on the need to comply with the New Zealand Electrical Code of Practice for Safe Distances;

100. We have addressed our findings on these matters in Report 20.3, but also record that Mr Roberts addressed these in his section 42A report in relation to Three Parks. He essentially agreed with the Aurora submission on these matters and provided the recommended additional provisions in his revised plan provisions attached to the section 42A report.

101. Aurora's submission sought a new standard be introduced in the LDSRZ that would enable applicants to request prior written consent from Aurora to allow a building to be constructed⁵⁹. Non-compliance with the standard, i.e. if Aurora's written approval was not obtained, would make the application non-complying. We discussed the legality of such a rule with Mr Peirce. He accepted there would be issues with it. We find this standard would be ultra vires as the consent status would be determined by a third party (ie Aurora). Unsurprisingly, we have not recommended this standard.

102. In terms of Aurora being an affected party for the purposes of notification, we sought clarification from Mr Roberts about the rule he recommended referring to the BRA. He set out in his reply evidence⁶⁰:

On reflection, the statement in the rule that Aurora shall be deemed to be an affected party is likely to be ultra vires as it directs notification on a specific person/entity rather than relying on the assessment under s95B and 95E. I therefore recommend removing this from the rule, and including an advice note that Aurora may be considered an affected party in respect of the rule.

103. We agree with Mr Roberts, and have accepted the advice note he recommended, which is the same as set out in the GISZ provisions.

4.3 Educational Facilities

104. The Ministry of Education (MoE) submission sought a more enabling regime for educational facilities within the TPCZ. Mr Frentz, MoE's planner presented evidence on this. Mr Frentz recommended a new policy as follows:

⁵⁹ Paragraph 67 of Ms Dowd's evidence-in-chief

⁶⁰ Paragraph 5.1 of Mr Roberts' reply evidence