

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

**CLOSING SUBMISSIONS for
NORTHLAKE INVESTMENTS LIMITED**

Dated: 4 August 2023

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Introduction

- 1 These Closing Submissions will not repeat anything not still potentially under debate or anything addressed in primary submissions which has not been challenged during the hearing. Most issues are largely resolved. I will briefly address those issues which are, or are potentially, still subject to debate.

Hearing comments by submitters

Ian Greaves for Kirimoko No. 3 Limited Partnership (KLP3)

- 2 While Ian Greaves is apparently a qualified planner, he gives evidence in his role as Project Manager for KLP3. He fairly noted that he was not giving evidence as an expert planner. As a consequence, no expert evidence has been provided by KLP3 in support of its submission to PC54. I note that that may give rise to a possibility of a trade competition issue (as between land developers). However given the lack of any expert evidence supporting the KLP3 submission, I take that point no further.

- 3 In his paragraph 2 Ian Greaves states:

"KLP3 is a Section 274 party on the Sticky Forest appeal and has lodged evidence accepting some rezoning of Sticky Forest ..."

- 4 It is difficult to reconcile that statement with the subsequent theme of Ian Greaves' evidence which concludes with the sentence "... *The best way to achieve this outcome is a Council led Plan Change that deals with all relevant matters across these areas in one package*". Those two propositions are inherently contradictory.
- 5 I submit that there has been no expert evidence presented to the Commission which supports the general theme of the KLP3 evidence which concludes as quoted above. No issue raised through the PC54 process has been identified which cannot be addressed and resolved through the PC54 process.

Bike Wanaka

- 6 Ewan Mackie gave evidence for Bike Wanaka Inc seeking the same outcome as KLP3, being the refusal of PC54 to enable a more wide ranging plan change to be initiated by Council. The same response is made as in relation to KLP3's submission.
- 7 In addition I note that Bike Wanaka's primary concern appears to be the potential loss of "*one of the most important community assets*" being the trail network within Sticky Forest enjoyed by Bike Wanaka's members. As that land is private land, with no right of public access, no such "*community asset*" actually exists. It is therefore not possible to advance a concern about the loss of such alleged community asset as a reason for declining PC54.

Council infrastructure – Richard Powell – Water supply

- 8 In his Memo dated 28 June 2023 (contained in Appendix 1 to the s42A Report) Richard Powell raised a generic concern about alleged constraints in the Council's North Wanaka water network. The relevant paragraph of that Memo includes the following statements:

"An already constrained water network within the North Wanaka area would be further impacted by intensifying demand through additional zoned land as proposed ... It would be imperative that as a condition of this zoning, Council would be able to increase supply from the lake to the new treatment plant to meet growing demands ..."

- 9 Those generic statements are not supported by any evidence. In particular:
- a. there is no technical evidence demonstrating any such supply constraint in the North Wanaka water network;
 - b. there is no technical evidence about the extent of additional demand that would result from confirmation of PC54 (other than as provided by the requestor NIL in detailed infrastructural evidence confirming that the approval of PC54 will not result in any adverse effects on the water network);

c. there is no evidence examining how the approval of a potential further 63 residential lots will adversely affect the North Wanaka water network or contribute to any alleged existing water supply constraint.

- 10 More importantly, Richard Powell did not respond in any way to paragraphs 8-28 of the evidence of Marc Bretherton for NIL which in general responded to Richard Powell's Memo and which in particular refers to the extensive dealings with Council resulting in the completed Development Agreement in relation to water supply. While Richard Powell did acknowledge that he was aware of the existence and contents of the Development Agreement, he made no attempt to examine or challenge any of Marc Bretherton's evidence.
- 11 No concern about this issue was raised in the s42A Report, and I submit that the Commission should likewise have no concern in relation to this issue.

**Section 42A Supplementary Statement dated 27 July 2023
(Supplementary Statement)**

- 12 I address the issues raised in the Supplementary Statement under the same headings in the same order.

Infrastructure

- 13 I have addressed this issue above.

Stormwater

- 14 NIL accepts Kate Purton's wording for the proposed amendment to 15.2.12.3 Assessment Matters and the reasoning in the Supplementary Statement which supports that wording. As that constitutes agreement between NIL and the Council on this issue, and as there is no other challenge to or evidence in relation to this issue, I will not further address Kate Purton's verbal comments in these Closing Submissions.

Landscape/visual

- 15 I record the following two relatively minor points in relation to the verbal comments made by Helen Mellsop during the hearing:

- a. She expressed a concern about views from the open space above the water tank looking down and southwards across the land subject to PC54. That open space is privately owned NIL land which is not accessible to the public. NIL has no concerns about those views.
- b. In the viewpoint referred to in a. above, Helen Mellsop referred to residential development being "... *some distance below* ..." under the existing zoning and being "... *now closer* ..." under the PC54 proposed zoning. However the northern end of the proposed PC54 AAB6 is actually coincident with the existing AAC1 (which is clear from the single plan of a possible indicative future subdivision which was handed up at the hearing but not given any exhibit number). Therefore that residential development is no closer to that viewpoint (if that viewpoint was a relevant consideration, which it is not).

- 16 Helen Mellsop referred to two additional viewpoints, but the Commission has not requested any further information in relation to those viewpoints so I will not address them further.
- 17 I submit that the conclusion reached by Ian Munro in his Supplementary Statement, which reflects NIL's position, is the appropriate conclusion in relation to this issue.

Transport

- 18 Following the hearing NIL has changed its position in relation to the Transport issue. NIL now supports the position detailed in the Supplementary Statement that PC54 should introduce District Plan provisions in the NSZ to manage potential traffic generated by activities within Sticky Forest, rather than rely on the non-RMA methods canvassed during the hearing. There are two reasons for that change in position.
- 19 The first reason is that NIL finds the evidence of Mike Smith to be persuasive in many respects and the rationale of Ian Munro in the Supplementary Statement to be equally persuasive. Mike Smith has identified some inadequacies in the non-RMA approach, and Ian Munro has presented some strong reasons for introducing an RMA regime in relation to this issue.

- 20 The second reason is more pragmatic. NIL has realised that it carries the burden of a five year maintenance period in respect of all roading within the NSZ constructed by NIL and vested in the Council as legal roads. Should logging activities within Sticky Forest commence within that five year period and generate truck movements traversing the NSZ, NIL would be liable for any damage resulting from those truck movements. On this issue Ian Munro's reference to the effect that the person who causes effects should pay the cost of those effects, and his reference to which regime better achieves allocative efficiency, are particularly on point.
- 21 Subject to one point, NIL has nothing further to add in relation to the wording of transport related provisions should they be included in the NSZ through PC54. That one exception relates to the proposed new Rule 15.2.3.4(xx) which I quote below, with tracked change highlighting an amendment proposed by NIL:
- "(xx) In the Northlake Special Zone, any subdivision of Activity Area B6 that does not establish legal vehicle and infrastructure servicing access ~~that includes a weight restriction so as to limit use by High Productivity Motor Vehicles (HPMV) (as defined in Land Transport Rule 41001/2016)~~ to Sticky Forest (Section 2 of 5 Block XIV Lower Wanaka Survey District)."*
- 22 NIL seeks deletion of the words crossed out in the Rule (xx) quoted above for the simple reason that it is unclear how that can be achieved. If NIL constructs a road which is then vested in Council as legal road, the land must be clear of any encumbrances before it can vest. I am unaware of any legal mechanism, such as a Consent Notice, which can impose such a restriction on a legal road which cannot be subject to a registered instrument. If one were to lodge an application for subdivision consent, I am unaware of what the applicant could propose to impose the requisite weight restriction in order to avoid non-complying activity status under Rule (xx).
- 23 I note that Mike Smith's Technical Response dated 26 July 2023, in Part 9 on page 6, second bullet point, contains the statement:
- *A weight class restriction is typically imposed through the Bylaw process, and may be subject to public consultation."*

- 24 The above quote reinforces my concern about the apparent lack of a legal method under the RMA to impose a weight restriction on a road.
- 25 I advance three possible options to address this issue (assuming that the words crossed out in Rule (xx) above are deleted):
- a. The Commission could rely upon the transport rule regime otherwise proposed by Ian Munro. As any residential, commercial or forestry traffic generated by any activity within Sticky Forest will be subject to resource consent approval under that rule regime, there is no reason for Rule (xx) to address the weight limit issue.
 - b. The Commission could include an additional specific non-complying activity rule applicable to HPMV generated by any residential, commercial or forestry activity within Sticky Forest. However that seems to be an unnecessary addition to the rule regime being proposed by Ian Munro.
 - c. The Commission could rely on the non-RMA control which Council has over the use of legal roads by vehicles. I addressed this point during the hearing. Assuming NIL proceeds with its Stage 18 to subdivide Activity Area B6, Council could require a row of poles to be installed across the end of that road where it meets the Sticky Forest boundary and not allow those poles to be removed until and unless Sticky Forest is rezoned, appropriate development consents are obtained, and appropriate management of traffic generated by Sticky Forest activities is put in place.

Conclusion

- 26 No evidence of any nature, expert or otherwise, has been presented which would justify refusal of the residential component of PC54.
- 27 No evidence has been presented which would justify refusal of the Sticky Forest access component of PC54.
- 28 Subject to the amendment to proposed Rule 15.2.3.4(xx) addressed above, NIL agrees with the summary and conclusions of the Supplementary Statement including all of the wording of the NSZ Part 12 and the Subdivision Part 15 provisions of the ODP as recorded in Appendix 5 to the Supplementary Statement.

29 The provisions referred to in the previous paragraph (including deletion of the weight limit aspect) is the most appropriate outcome of PC54, taking into account all relevant considerations.

Dated 4 August 2023



Warwick Goldsmith
Counsel for Northlake Investments Limited