

## **QUEENSTOWN LAKES DISTRICT COUNCIL**

**Recommendations following the hearing of submissions and further submissions on proposed Private Plan Change 54 – Northlake Special Zone**

**PURSUANT TO CLAUSE 10 OF SCHEDULE 1 OF THE RESOURCE MANAGEMENT ACT 1991, PRIVATE PLAN CHANGE 54 IS RECOMMENDED TO BE APPROVED WITH MODIFICATIONS**

**THE FULL RECOMMENDATION IS SET OUT BELOW**

<b>Private Plan Change:</b>	Plan Change 54 - Northlake
<b>Site address:</b>	Northlake Special Zone, Wānaka
<b>Requestor:</b>	Northlake Investments Limited
<b>Hearing Panel:</b>	Richard Blakey (Chair) Rachel Dimery
<b>Queenstown Lakes District Council</b>	Ian Munro, Planning Consultant Kate Purton, Civil Engineer Richard Powell, Development Engineer Helen Mellsop, Landscape Architect Mike Smith, Traffic Engineer
<b>Appearances:</b>	<p><u>For the Requestor:</u> Warwick Goldsmith, Legal Counsel Marc Bretherton, Corporate Stephen Skelton, Landscape Architect Alex Todd, Development Engineer Andrew Carr, Traffic Engineer Anthony Steel, Stormwater Engineer Jeffrey Brown, Planning</p> <p><u>For the Submitters:</u> Amy Hills, Legal Counsel Lorraine Rouse Monique King (Office for Maori Crown Relations – Te Arawhiti) Tanya Stevens – Te Rūnanga o Ngāi Tahu Ian Greaves – Kiromoki No.3 Limited Partnership Ewan Mackie – Bike Wānaka</p>
<b>PC54 notification date:</b>	27 October 2022
<b>Hearing commenced:</b>	24 July 2023
<b>Hearing adjourned:</b>	25 July 2023
<b>Commissioner’s site visit</b>	23 July 2023
<b>Hearing closed:</b>	9 August 2023

## RECOMMENDATIONS OF THE COMMISSIONERS

### Introduction

1. This recommendation is made on behalf of Queenstown Lakes District Council (**the Council**) by Independent Hearing Commissioners Richard Blakey (Chair) and Rachel Dimery, appointed and acting under delegated authority pursuant to s.34A of the Resource Management Act 1991 (**the RMA**).
2. The Commissioners have been given delegated authority by the Council to make a recommendation on Plan Change 54 (**PC54**) to the Operative Queenstown-Lakes District Plan (**ODP**) after considering all the submissions, the s.32 evaluation, the reports prepared by the officers for the hearing and evidence presented during and after the hearing of submissions.
3. PC54 is a private plan change that has been prepared following the standard RMA Schedule 1 process (that is, the plan change is not the result of an alternative, 'streamlined' or 'collaborative' process as enabled under the RMA).

### The Site and Existing Plan Provisions

4. The subject site has an area of 58.15ha, and forms part of an area known as Northlake which is itself part of an urban area where development has occurred largely according to the Northlake Structure Plan (**NSP**), which allows for urban development across much of the land within the Northlake Special Zone (**NSZ**), as a component of the ODP. The land to the west is zoned Rural and contains the land holding known as the Sticky Forest, which is currently clad in mature conifers.
5. As described in the Landscape Assessment Report (**LSA**) included in the notified plan change that accompanied the plan change request (by Patch Landscape Architecture, dated 22 January 2022), the NSZ comprises a number of Activity Areas as shown in the NSP. The area subject to this plan change (the site) is in the west, central part of the NSZ near the western boundary, where 'activity areas' AA E1, C1 and B2 intersect. Earthworks already undertaken in this area have created a modified terrace landform across these aforementioned activity areas. A large water tank has been constructed on the land to the immediate north of the zone area. This is fenced and surrounded by early-growth landscape planting.
6. The existing area of the NSP that is the subject of this plan change is comprised of the abovementioned activity areas for residential activity, with E1 (building restriction area) being prevalent, but incorporating pockets of C1 areas and B2 along the southern boundary (adjoining the land known as the Allenby Block to the south).

## Summary of Plan Change

7. The proposed plan change is described in detail in the application materials and the Council's s.42A hearing report prepared by Ian Munro (Consultant Planner to the Council) (**s.42A Report**). Mr Munro's report provides a useful overview of the purpose of the plan change and we have generally adopted his outline below.<sup>1</sup>

8. Northlake Investments Limited (**NIL**) has described its plan change request as to:

*... enable legal access and infrastructure corridor through the [NSZ] to Sticky Forest, west of and adjoining the NSZ, and to expand the area available for urban residential purposes in the western part of the NSZ.*

9. This was clarified slightly in the Council's Public Notice of PC54 (27 October 2022), as follows:

- *Amend the Structure Plan, policies and rules of the Northlake Special Zone (Section 12) to enable and provide for legal access (for transportation and infrastructure purposes) to the adjoining land to the west legally described as Section 2 of 5 BLK XIV Lower Wanaka SD and known as Sticky Forest;*
- *Amend the Structure Plan, policies and rules of the Northlake Special Zone to provide for a new residential Activity Area (B6) in the northwest part of the zone, with consequential amendments to the existing configuration of Activity Areas B2, C1 and E1; and*
- *A consequential amendment to the Subdivision and Development chapter (Section 15) in relation to the proposed legal access to Sticky Forest.*

10. Mr Munro's overview also advises:

*The specific changes NIL proposes to the ODP in Chapters 12 and 15 are set out by NIL Request for a Change to the [ODP], Document 2, Brown & Company Planning Group Ltd, 3 February [2022]. This is included in Volume 2 of the Hearings Agenda. Although the potential yield of this part of the [NSZ] would increase by up to approximately 63 dwellings (from approximately 64 to approximately 127), in the first instance at least a restricted discretionary activity land use consent would continue to be required for any residential activities (rule 12.34.2.3). In this respect PC54 does not create any relevant additional permitted activities over and above what might occur today.*

11. Mr Munro's s.42A Report also provides some background to the NSZ, including with respect to previous and concurrent plan changes and to Sticky Forest. He also described the reasons why PC54 has been requested, and that this has been primarily as a result of an *Augier* condition proffered as part of its NIL's 'fast track' consent application for the Northbrook

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<sup>1</sup> S.42A Report, at [4]

Retirement Village.<sup>2</sup> The inclusion of this condition was to address a long-standing issue whereby the Sticky Forest land has become land-locked, with no direct public road access connecting to its boundary which presents an obvious practical problem that exists to this day. The Panel is grateful to Mr Munro for the context provided by his summary of the history of this issue in his s.42A Report, and we were assisted by further detailed evidence in this regard by witnesses for Te Arawhiti and Te Rūnanga o Ngāi Tahu.

12. Condition 47 of the NIL fast-track consent sought to address the issue by requiring NIL, before it implements that consent, to lodge a plan change request to include:

*provision for a legal route for road access (including a route for other infrastructure services) connecting Sticky Forest to roading and other infrastructure services already installed in the [NSZ] (Sticky Forest Access) to enable the servicing of development enabled within Sticky Forest.*

13. Related to condition 47 was condition 48, which imposes a need for NIL to create an Access Deed so as to enable, amongst other things, suitable public access along any such route(s) to Sticky Forest as may arise.
14. We note that a concurrent process is underway with respect to the re-zoning of the Sticky Forest land, involving a change to the Council's Proposed District Plan (**PDP**) that is currently before the Environment Court. We were advised during the hearing that this matter is not scheduled to be heard until December 2023, but we were appraised of the potential provision for development of the land under the plan change, as referred to later in this decision.

## Relevant Statutory Provisions Considered

15. The RMA sets out an extensive set of requirements for the formulation of plans and changes to them. These requirements were set out in NIL's Plan Change Request (including an evaluation pursuant to s.32)<sup>3</sup> and in section 5 of the s.42A Report.
16. In particular, s.32(1)(a) requires an assessment of whether the objectives of a plan change are the most appropriate way to achieve the purpose of Part 2 of the RMA. Section 72 also states that the purpose of the preparation, implementation, and administration of district plans is to assist territorial authorities to carry out their functions in order to achieve the purpose of the RMA. In addition, s.74(1) provides that a territorial authority must prepare and change its district plan in accordance with the provisions of Part 2. While this is a private plan change, these provisions apply as it is the Council that is approving the private plan change, which will in turn change the ODP.
17. The Panel also notes that s.32 clarifies that analysis of efficiency and effectiveness of the plan change is to be at a level of detail that corresponds to the scale and significance of the

<sup>2</sup> Lodged with the Environmental Protection Authority and determined in accordance with the COVID-19 Recovery (Fast Track Consenting) Act 2020

<sup>3</sup> 'Evaluation under Section 32 of the [RMA]', prepared by Brown & Company Planning Group, 3 February 2022

environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposed re-zoning. Having considered the evidence and relevant background documents, we are satisfied that PC54 has been developed in accordance with the relevant statutory requirements.

18. Clause 10 of Schedule 1 requires that a decision on a plan change must include the reasons for accepting or rejecting submissions. The decision must also include a further evaluation of any proposed changes to the plan change arising from submissions; with that evaluation to be undertaken in accordance with s.32AA. This further evaluation must be undertaken at a level of detail that corresponds to the scale and significance of the changes. In this regard, Mr Munro stated:<sup>4</sup>

*In terms of S.32AA of the RMA, and to the extent that I have identified additional modifications to those proposed by NIL, I have undertaken a further evaluation based on the scale and extent of differences my modifications would make to the notified PC54. In my opinion the changes are not significant and do not require any further analysis than that set out previously in my detailed analysis and reasoning (and the supporting assessments I have referred to).*

19. The Panel accepts Mr Munro's evidence in this regard and notes that no party considered that further analysis under s.32AA in respect of the proposed changes was required.

## Structure and Approach

20. Clause 10 of Schedule 1 to the RMA sets out the requirements for decisions on a plan change, as follows:
- (1) *A local authority must give a decision on the provisions and matters raised in submissions, whether or not a hearing is held on the proposed policy statement or plan concerned.*
  - (2) *The decision—*
    - (a) *must include the reasons for accepting or rejecting the submissions and, for that purpose, may address the submissions by grouping them according to—*
      - (i) *the provisions of the proposed statement or plan to which they relate; or*
      - (ii) *the matters to which they relate; and*
    - (ab) *must include a further evaluation of the proposed policy statement or plan undertaken in accordance with section 32AA; and*
    - (b) *may include—*

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<sup>4</sup> S.42A Report, at [14.3]

- (i) *matters relating to any consequential alterations necessary to the proposed statement or plan arising from the submissions; and*
  - (ii) *any other matter relevant to the proposed statement or plan arising from the submissions.*
- (3) *To avoid doubt, the local authority is not required to give a decision that addresses each submission individually.*
  - (4) *The local authority must—*
    - (aaa) *have particular regard to the further evaluation undertaken in accordance with sub-clause (2)(ab) when making its decision; and*
    - (a) *give its decision no later than 2 years after notifying the proposed policy statement or plan under clause 5; and*
    - (b) *publicly notify the decision within the same time.*
  - (5) *On and from the date the decision is publicly notified, the proposed policy statement or plan is amended in accordance with the decision.*
21. We have sought to minimise the repetition of material where possible, while still conveying the key issues and reasons for our recommendations. Where possible we have referred the reader to the s.42A Report and/or witness responses and the Requestor's reply rather than duplicate the material in our recommendations. Where our reasons for accepting, accepting in part or rejecting a submission depart from those in the relevant s.42A Report or replies, we have set out our reasons in our recommendations.
22. Where we have accepted or rejected a submission, then the corresponding further submission is accepted or rejected in accordance with our recommendation on the primary submission.

## **Summary of the Recommendations**

23. The Panel accepts that PC54 delivers a better outcome for the NSZ than the presently operative version of that zone. In particular, it will enable legal and infrastructure access through the NSZ to Sticky Forest to the west, and to expand the area available for urban residential purposes in the western part of the NSZ. The modifications to PC54 that have been proposed through the hearing and as attached to this recommendation will enable both of these key outcomes to be achieved in a manner that addresses potential adverse effects related to stormwater, landscape character, visual amenity and transportation. With reference to the potential transportation effects, we have found that the non-RMA mechanisms available to the Council, including its powers as a road controlling authority, are the most appropriate way to manage the potential effects that could arise from logging traffic due to any future harvesting of trees within Sticky Forest.
24. We broadly accept the PC54 provisions in Appendix 5 to the s.42A Report, which are referred to in Requestor's Reply dated 4 August 2023. Specifically, we accept the amendments to provide for legal access to the adjoining land and for a new residential Activity Area (B6). We

do not accept the modifications to the rule 12.34.2.3.v and we accept in part the modifications rule 15.2.3.4(xx). Our recommended modifications are identified in our report under the section entitled '*Findings on the Principal Issues in Contention*'.

25. We recommend to the Council that PC54 be approved subject to modifications with the submissions and further submissions accepted or rejected (as summarised at Attachment 1) to the extent that the provisions at Attachment 2 are either retained or amended.
26. We set out our reasons below.

## **Notification, submissions and affected party approvals**

27. The plan change was publicly notified on 27 October 2022, and attracted 31 submissions.
28. The Council notified a summary of submissions on 9 February 2023, and four further submissions were received.
29. As noted in the s.42A Report, Submission 21, from WFH Properties Ltd, attracted further submissions in opposition from Ironwood Trust (sub #32), NIL (sub #34), and The Peak View Ridge Lot Owners (sub #35). However, on 17 May 2023, WFH Properties Ltd withdrew its submission and we therefore have no further regard to it, or the further submissions made in respect of it.
30. We record that no other preliminary or procedural matters arose in the course of the hearing.

## **Summary of the evidence heard**

### **Introduction**

31. Mr Munro's s.42A Report was based on the plan change as notified and addressed the relevant statutory requirements, the relevant environmental effects and the issues raised by submissions. Mr Munro provided the following comments in expressing his overall support for the plan change:<sup>5</sup>

*I am particularly supportive of PC54 on the basis of s.8 (Part 2) of the RMA and the ability of PC54 to enable Sticky Forest road access, which I see as a necessary and valid resource management goal to support an ongoing Crown process of Treaty settlement and redress. It is a practical and timely outcome to support Sticky Forest's future owners, albeit one that presents uncertainties and likely future limitations based on the constraints presented by the NSZ road network. In terms of NIL's interests, I am satisfied that the provision of additional dwellings will not give rise to concerning or inappropriate environmental effects, and to my thinking will provide NIL a means of recouping something of the costs it will have incurred seeking to help support the Crown and future owners of Sticky Forest obtain access to that land (and possibly in constructing the future road link). In that respect, approving PC54 will also contribute to the wellbeing of NIL and*

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<sup>5</sup> S.42A Report, at [14.2]



*I am on that basis supportive of the proposal to provide for a road access and adjacent housing development together.*

32. Accordingly, and noting what he termed “*the fairly modest overall scale of PC54*”, it was Mr Munro’s overall recommendation that the plan change could be approved, subject to certain recommended amendments as set out in Appendix 3 to his report.
33. The assessment and conclusions reached in the s.42A Report were informed by the following specialist assessments:
- (a) Helen Mellsop is a landscape architect and provided a peer review of the LSA and commented on the landscape-related matters raised by submitters and further submitters. Ms Mellsop’s assessment dated 16 May 2023 concluded inter alia that:

*The proposal would reduce the open character, legibility and naturalness of the landscape, and the recreational value of the open spaces within Northlake. However the adverse landscape effects would be low-moderate, and not significant, in extent. Cumulative adverse effects on landscape character and values could be mitigated by removal of the C1 Activity Area east of the plan change area and by retention of a building restriction area on steeper slopes in the south-western corner of the site.*

Ms Mellsop also suggested that further landscaping around the water tank to the north of the site may be necessary given the increased residential audience associated with the expansion of AA-B6.

- (b) Mike Smith is a transport engineer at Stantec and provided a peer review of the plan change in terms of potential transport effects. His Technical Review dated 9 June 2023 addressed a number of aspects related to the transport network, existing and proposed, including with respect to the effects associated with possible heavy vehicle movements associated with any logging activities undertaken in Sticky Forest. On this issue he considered that:

*...modifications would be required to ensure that provision of the traffic from the PC 54 area only was permitted, and that where any connection from Sticky Forest would trigger the need for a specific transport assessment to assess effects, impacts, and remedial provisions that would need to be undertaken on the existing NSZ road network to cater for the Sticky Forest traffic generation.*

Further modifications to the plan change were also recommended by Mr Smith in respect of controls relating to such vehicle movements, including weight restrictions.

- (c) Kate Purton is a civil engineer at Beca Limited and provided a peer review of the potential stormwater runoff effects arising from the plan change. Her review letter dated 9 June 2023 noted existing erosion issues in the downstream environment and recommended

modifications to PC54 to incorporate a new rule as part of the NSP (at the outline development plan stage) as follows:

- a. *To mitigate downstream flood risk, peak flow attenuation to limit post-development peak flow to 80% of pre-development peak flow for the 2-year, 5-year, 10-year, 20-year and 100-year events.*
  - b. *To mitigate downstream erosion:*
    - a. *Retention or volume reduction of at least 5 mm runoff depth in any storm, plus*
    - b. *Extended detention storage draining down over 24 hours, for the difference between the pre- and post-development runoff volumes from the 95th percentile 24-hour rainfall event minus the 5 mm retention.*
- (d) Richard Powell is a civil engineer at the Council and provided a peer review of infrastructure-related effects associated with the plan change (confined to wastewater and water supply and confirmed his support for Ms Purton's recommendations with respect to stormwater). Mr Powell's memorandum advised that there are no particular constraints with respect to wastewater but that there are some issues with providing additional water supply. He concluded in this regard as follows:

*Based on the information provided as part of the plan change application I accept that the level of the 'high level' reservoir is such that fire fighting pressures can be achieved for the proposed plan change area.*

*I also accept the information provided where the 'high level' reservoir is able to provide residential pressures to part of the subject area however for the parts that are not able to be serviced with adequate residential pressures we would require the 'high level' reservoir to be raised to enable it to provide adequate pressures or a secondary higher reservoir will need to be included to supply the upper areas.*

*I accept the above to be a feasible solution with the details to be worked through at the time of detailed design.*

34. The evidence presented by the Applicant at the hearing responded to the issues and concerns identified in the s.42A Report<sup>6</sup> and associated specialist reports and the submissions made on the plan change.

### **Evidence for the Applicant**

#### **Legal submissions**

35. Prior to the hearing, the Applicant pre-circulated the statements of evidence of its witnesses. This was accompanied by a 'Memorandum to the Commission' prepared by the Requestor's counsel, Warwick Goldsmith. This memorandum helpfully provided an early description of the

<sup>6</sup> Including the Supplementary report provided by Mr Munro on 21 July 2023 (prior to the hearing)

Requestor's approach to the various legal issues posed by the plan change and the Council's s.42A assessments. It noted that, "[t]o the extent that the s42A Report is in accordance with, and supportive of, the Request, the Requestor will adopt the s42A Report as evidence in support of PC54 being approved".<sup>7</sup>

36. The Memorandum described the matters that would be traversed by the Requestor's witnesses in respect of the changes to PC54 recommended in the s.42A Report, where "*NIL agrees with some of the Changes, disagrees with some (for drafting and/or substantive reasons) and proposes further Changes where NIL disagrees*".<sup>8</sup> It went on to identify the legal matters that would be addressed by NIL's planning witness, Jeffrey Brown, and noted that early identification of these issues were likely to assist Mr Munro to consider them prior to the hearing, and similarly for the Crown (Te Arawhiti) in terms of traffic generated by activities within Sticky Forest.
37. Mr Goldsmith provided his legal submissions at the commencement of the hearing and following the Applicant's consideration of the expert evidence provided by submitters, which we summarise later. While noting the Applicant's general acceptance and agreement with the conclusions and recommendations of the s.42A report, he drew attention to some matters and proposed provisions which were not agreed with. Mr Goldsmith also noted matters raised within the evidence for submitters and the submissions themselves that were not supported. Overall, it was his conclusion that:<sup>9</sup>

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

38. However, as part of his opening address, Mr Goldsmith noted that there were in fact three further primary issues before the Panel, being access from Sticky Forest more generally, as well as an issue in respect of stormwater management, and the visibility of houses in the upper part of the AAB6 area.
39. Mr Goldsmith then introduced his witnesses and we outline their evidence below.

#### Marc Bretherton - Corporate

40. Marc Bretherton is the Wānaka General Manager for Winton Land Limited, the parent company of NIL. Mr Bretherton's evidence addressed the issues of water supply and stormwater management within Catchment A at Northlake. In respect of the former he responded to the

<sup>7</sup> NIL Memorandum, 6 July 2023, at [5]

<sup>8</sup> Ibid, at [8]

<sup>9</sup> NIL Part 2 Legal Submissions, at [50]

review by Mr Powell which he considered did not provide detail in respect of “*the extensive water network recently constructed and commissioned by NIL at Northlake*”<sup>10</sup> which is designed to service the PC54 area. He noted that this network, including the responsibilities of NIL and the Council in respect of it, was recorded in a Development Agreement dated 15 March 2023. He described the works undertaken on the basis of that agreement, and noted in his conclusion that:<sup>11</sup>

*NIL simply does not agree with large parts of Mr Powell’s evidence which is out of date or just plain incorrect. Mr Powell’s evidence does not reflect the QLDC’s position as evidenced by the Development Agreement between the parties.*

41. Mr Bretherton also, in response to Ms Purton’s evidence, commented on the stormwater infrastructure servicing the Northlake area, which he notes has been designed, approved, constructed and vested with the Council since 2016. He described the more onerous process that NIL has gone through in terms of the stormwater modelling required for the Engineering Plan Approval (**EPA**) process for Stage 16 and associated issues identified by the Council in respect of stormwater flows from Catchment A. Mr Bretherton was concerned at the additional work in this regard that was required at the outline development plan stage and was at odds with the purpose of that process. He stated in conclusion:<sup>12</sup>

*I can see no reason why that work cannot be carried out at [EPA] stage, as was the case with the lengthy and detailed process required to achieve Stage 16 engineering approval. The proposed stormwater rule would result in significant cost being incurred much earlier in the subdivision process without any justification in terms of management of stormwater.*

42. In response to questions Mr Bretherton noted that there has only been one occasion where changes at subdivision or EPA stage have been required relative to an outline development plan approval to address stormwater-related constraints (at Stage 10).

Alexander Todd – Civil Engineering

43. Alexander Todd is a civil engineer who provided evidence on water supply and wastewater infrastructure on behalf of NIL. He noted his agreement with the evidence of Mr Bretherton in respect of these matters, and advised that, since preparing his original report in respect of infrastructure:<sup>13</sup>

*We have since received a wastewater modelling report from Hydraulic Analysis Limited (via QLDC). This report supports the conclusions stated in the infrastructure report and in itself concludes there is sufficient capacity within the existing infrastructure to*

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<sup>10</sup> Bretherton, at [8]

<sup>11</sup> Ibid, at [28]

<sup>12</sup> Ibid, at [44]

<sup>13</sup> Todd, at [18]

*accommodate the additional residential lots being requested. A copy of this report is attached.*

44. Mr Todd responded to Mr Powell's recommendations in terms of water supply that the Council "would require *the 'high level' reservoir to be raised to enable it to provide adequate pressures or a secondary higher reservoir will need to be included to supply the upper areas*". Mr Todd noted that the current reservoir location was carefully chosen and that the suggestion that it could simply be raised "*suggests a lack of understanding of what would be involved and, more importantly, other options to deal with the situation*".<sup>14</sup>
45. With respect to the Hydraulic Analysis report, and references to the wastewater network needing to rely on buffering of wet-weather capacity through reliance on storage within the network, Mr Todd advised that it is always assumed that stormwater will infiltrate such a network, but that flows don't enter the system at the same time. He therefore remained confident that the wastewater network provided sufficient capacity for the additional residential area proposed.

Anthony Steel – Stormwater Engineer

46. Anthony Steel is a civil engineer who provided evidence on stormwater-related matters for NIL, and in particular in response to the review by Ms Purton and the recommendations set out therein. He considered that the matters set out in Ms Purton's recommendations were based on supposition in respect of reference to unreferenced guidelines. He considered that clause 4.2.7 of the Council's Land and Subdivision Code of Practice (**CoP**) would adequately address requirements to minimise adverse peak flood impacts of downstream infrastructure.
47. Mr Steel's evidence stated in summary that:

25 *I believe the responses provided above, including the detailed modelling and existing COP requirements, sufficiently demonstrate that the additional requirements outlined in paragraph #39 of the Memorandum provided by Beca are not required for Plan Change 54 as there is no detailed rationale behind the proposed additional provisions and that detailed stormwater modelling may determine something otherwise in order to meet the District Plan requirements.*

26 *As stated in paragraph #17 of the Memorandum, detailed stormwater analysis, flood and erosion risks to downstream infrastructure assessments and design decisions will be made at the resource/subdivision consent and/or engineering approval stages.*

27 *The work required to determine stormwater design decisions is extensive, detailed and expensive. That work is normally carried out when subdivision consent has been obtained and engineering approval is required. I see no reason for that work*

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<sup>14</sup> Todd, at [22]

*to have to be carried out at an earlier stage in the land subdivision and development process.*

48. Mr Steel noted in response to questions that modelling at the correct time (i.e., at subdivision or EPA stage) will provide the most accurate response to managing stormwater flows and any resultant change to potential erosion effects.

Stephen Skelton – Landscape Architecture

49. Stephen Skelton is a landscape architect and provided evidence on landscape-related matters for NIL, and in response to the issues noted in Ms Mellsop’s peer review. While noting a small difference in their respective conclusions as to the extent of landscape character effects, his evidence focussed on potential visual effects associated with future development within the proposed B6 Activity Area (AAB6).
50. The issue in this regard was the extent to which such development may be visible from westerly vantage points, particularly the Millennium Track and the Wānaka - Mt Aspiring Road. Following consideration of Ms Mellsop’s comments in this regard, Mr Skelton outlined the additional work undertaken to determine the potential for future buildings to extend above the Sticky Forest ridge from these vantage points. Following this modelling exercise (using ArcGIS Pro software to prepare a ‘Zone of Theoretical Visibility’ and resulting in an ‘Above Ground Level’ model), he advised that *“built development in the northeastern corner of the proposed AAB6 may be visible if development were to be above a set height”*.<sup>15</sup>
51. Based on that further analysis, Mr Skelton recommended inclusion of a rule requiring that *“no part of any building shall exceed a height of 5.5m above a ground level of 396masl”*,<sup>16</sup> which would ensure that buildings would not be visible from the vantage points identified in the map attached to his evidence as Attachment A.
52. Mr Skelton also noted Ms Mellsop’s recommendation that some additional planting could occur near the water tanks to the north of the proposed AAB6 area. However, he stated in this regard that while this would enhance amenity and natural character values, *“I do not consider it necessary to avoid or mitigate any adverse effects of the proposal on the nearby ONL”*.<sup>17</sup>
53. During the hearing the levels of the nearby water tank and Sticky Forest ridge were confirmed, with the base level of the tank being at 402masl, and thus higher than the 401.5masl recommended as the maximum height for any new buildings. The Sticky Forest ridge was noted to be 410masl. In terms of undertaking further view analysis, Mr Skelton advised that accurate site levels for sites further north around Lake Wānaka were not publicly available which would make further modelling more difficult, but in any event considered that the proposed restriction would ensure any adverse effects would be low.

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<sup>15</sup> Skelton, at [18]

<sup>16</sup> Ibid, at [21]

<sup>17</sup> Ibid, at [23]

Andrew Carr – Transport Engineer

54. Andrew Carr is a transport engineer and provided evidence on transport-related matters on behalf of NIL. His evidence outlined his initial assessment of the transportation effects of the development facilitated by the plan change request and the relevant parts of the s.42A transport assessment by Mr Smith. With respect to the former, he noted his previous conclusion that PC54 could be supported from a transportation perspective and had not changed his view in this regard. He was therefore in general agreement with the review by Mr Smith that the roading network is able to accommodate the increase in traffic volumes arising from PC54.
55. Mr Carr considered, however, that the mitigation recommended by Mr Smith in terms of heavy vehicle movements within Northlake can be addressed through other existing mechanisms, including the Code of Practice for Temporary Traffic Management (**TTMP**), and s.353 of the Local Government Act 1974. He noted that any TTMP requires approval by the Council, and so even the use of the roads within Northlake for standard-size trucks could not occur without a process being followed and Council approval being given.<sup>18</sup>
56. With regard to the more restricted carriageway and road reserve widths of Lammermoor Drive, Mr Carr noted that the Council can specify the roads to be used in respect of heavy traffic, and for general traffic additional road calming devices can be installed. In terms of the consultative aspects available in the development of management methods for heavy traffic, Mr Carr advised that the relevant legislation does not mandate such consultation (e.g., with adjacent residents), but does not preclude it either.

Jeffrey Brown - Planner

57. Jeffrey Brown is a planning consultant and provided evidence in respect of planning matters for NIL. Mr Brown had assisted NIL with the preparation of the plan change request, including co-authoring the plan change request, the s.32 evaluation, the assessment of effects and the proposed amended provisions. He confirmed his agreement with the plan change documentation and Mr Munro's s.42A Report analysis and conclusions, except for the matters addressed in his evidence.
58. Those matters were addressed in turn and relate to particular amendments to the plan change provisions which we address later in the decision, to the extent that they remained in contention by the close of the hearing. By way of summary, Mr Brown considered that some of the additional provisions recommended by Mr Munro, in response to the Council expert peer reviews, "*are either not necessary or should be modified in the manner and for the reasons expressed above*".<sup>19</sup> Subject to those modifications, it was Mr Brown's view that:<sup>20</sup>

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<sup>18</sup> Carr, at [38]

<sup>19</sup> Brown, at [3.1]

<sup>20</sup> Ibid, at [3.2]

*the changes proposed in PC54 are efficient and effective in achieving the objectives of PC54, taking into account the environmental, social and economic costs (including transaction costs) and benefits of the changes. There is no environmental risk of acting (by adopting the provisions) but not acting (by not adopting the provisions, in whichever form they take) would not fulfil the objectives of PC54.*

59. Overall, Mr Brown considered that:<sup>21</sup>

*The objectives of the proposal – to provide formal access to and infrastructure corridor for Sticky Forest and to expand the area available for urban residential use in the northwestern part of the NSZ – are necessary and are the most appropriate way to achieve the purpose of the Act, taking into account the existing higher order provisions of the ODP and the relevant provisions of the regional and national planning instruments. I consider that the provisions are the most appropriate way to achieve the NIL objectives, taking into account the submissions, expert reports and evidence.*

60. In his presentation to the Panel, Mr Brown emphasised the more indicative nature of the outline development plan process compared to the subsequent subdivision and EPA approval process. However, he acknowledged that the non-RMA methods to address the effects of heavy vehicle movements do not address amenity effects, which is a RMA issue, and so was supportive of a clear rule that addressed both aspects, through an addition and changes to the requirements at 15.2.3.4(xx), as agreed by Mr Carr. Mr Brown also spoke to other wording changes which we address later in this decision and confirmed his agreement with Mr Munro in terms of the acceptability of post-notification changes under s.32AA.

### **Submitters**

#### **Ian Greaves – Kirimoko No.3 Limited Partnership**

61. Ian Greaves presented a statement of evidence in his role as a planning and land development advisor to Kirimoko No.3 Limited Partnership (**KLP3**) which own land that borders Sticky Forest and the Northlake Special Zone. Mr Greaves noted that KLP3 is a s.274 party to the Sticky Forest appeal, where the extent of the proposed rezoning remains a live issue between the parties and noting that KLP3 is not supportive of any vehicle access from Sticky Forest or Northlake that enters the Kirimoko area. His evidence was that PC54 should not be considered in isolation of the development proposed in Sticky Forest and the wider integration matters between Northlake, Sticky Forest and Kirimoko, and that “[t]he best way to achieve this outcome is a Council lead Plan Change that delas with all relevant matters across these areas as one package”.<sup>22</sup>

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<sup>21</sup> Ibid, at [3.3]

<sup>22</sup> Greaves, at [7]



Legal submissions (Te Arawhiti)

62. Legal submissions on behalf of Te Arawhiti were provided by Amy Hill (Counsel for Office for Māori-Crown Relations – Te Arawhiti). Ms Hill’s pre-circulated submissions emphasised the importance of the provision of legal road and infrastructure access to the Sticky Forest land and in this respect sought that PC54 be accepted, and specifically in respect of amendments to Policy 3.1 and proposed new Rule 15.2.3.4(xx) as set out in Mr Brown’s evidence. Conversely, Ms Hill advised that Te Arawhiti seeks that the traffic provisions recommended in the s.42A report, and as amended by NIL, are declined.

Monique King – Senior Advisor (Te Arawhiti)

63. Monique King provided evidence in her role as a Senior Advisor with Te Arawhiti, and described the Crown’s interest in PC54, its obligations and the current status of the Sticky Forest land, the Ngāi Tahu Deed and the process required to effect transfer of the Sticky Forest land, as well as the importance of providing legal access to the land through PC54. She also described current and future uses of the Sticky Forest land.
64. Ms King noted that the future zoning of the land is currently before the Environment Court and that the parameters of any future residential development on the Sticky Forest land are now known, with the appellants seeking new provisions that would enable subdivision of approximately 150 residential lots (in a mix of lot sizes), with no development within the identified Outstanding Natural Landscape (**ONL**) (which affects approximately 50% of the land). She therefore disagreed with statements in the s.42A reports that the potential extent of development within the land was not known.<sup>23</sup>
65. Ms King also commented on the issue of potential traffic effects from logging in and from Sticky Forest and referred to the evidence of Tony Penny and to Katrina Ellis in terms of proposed new rules on this matter. She noted that Te Arawhiti has been exploring the potential for access routes, other than through Northlake, that are appropriate for logging traffic. She emphasised, however, that:<sup>24</sup>

*part of Sticky Forest is proposed to be developed for residential use. What development the parties seek, or would accept, by way of rezoning is before the Environment Court. It is my understanding that appropriate controls to address logging will be dealt with in that context.*

Katrina Ellis – Planning (Te Arawhiti)

66. Katrina Ellis provided planning evidence on behalf of Te Arawhiti. This described her support for the proposed road link to Sticky Forest, responded to submissions on the use of this land, and commented on NIL’s updated provisions and the additional transport rules proposed in the s.42A report.

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<sup>23</sup> King, at [45]

<sup>24</sup> Ibid, at [49]

67. Ms Ellis noted that the provision of road access to Sticky Forest would “*better promote sustainable management than not doing so*”,<sup>25</sup> and “*would be consistent with the policy direction in ss 6(e) and 8 of the RMA including requiring that the principles of Te Tiriti o Waitangi be taken into account*”.<sup>26</sup> She noted her agreement with the changes to Rule 15.2.3.4(xx) proposed by NIL and the consequential change to Policy 3.1. However, she did not support the new transport rules proposed in the s.42A report, noting the limited number of lots for Sticky Forest sought within the present Environment Court proceedings, and that the rule would be unduly restrictive and broad in its application. As was also noted by Mr Brown, Ms Ellis did not consider it logical for activities within Sticky Forest to be subject to rules applying to a different zone, or a different version of the district plan.<sup>27</sup>
68. Ms Ellis also observed that there was no rationale in the s.42A report as to “*why there is a proposed exclusion for proposed rule 12.34.2.3(v) from the non-notification rule 12.34.3(i)*”.<sup>28</sup> She considered that if this rule were to be included, she would not support its exclusion from rule 12.34.3(i), given that the matters to be considered would need to be addressed by traffic experts, rather than the public at large. She also queried the robustness of the s.32 analysis used to inform the proposed rules relating to heavy vehicles, noting also that “*removing trees from Sticky Forest is key to enabling this redress land to be utilised by the intended owners*”.<sup>29</sup>

#### Lorraine Rouse

69. Lorraine Rouse presented evidence on behalf of herself and Theo Bunker and advised that she is one of 50 people to whom the Crown committed land in the 1800s to land at ‘The Neck’, between Lakes Hāwea and Wānaka, but which has not yet been transferred. She is involved as an appellant in respect of the current appeal before the Environment Court relating to the Sticky Forest land, that seeks rezoning of approximately 17.6ha of that land to enable the development of approximately 150 houses. Ms Rouse noted that the provision of access to Sticky Forest through PC54 will provide some resolution for the grievances that she and other descendants have inherited in respect of the land. She did not, however, support the new rules proposed within the s.42A Report. Ms Rouse also confirmed that she and Mr Bunker support references to Sticky Forest being amending to Hāwea/Wānaka – Sticky Forest.

#### Tony Penny – Transport Engineering (Theo Bunker and Lorraine Rouse)

70. Tony Penny provided transport engineering evidence on behalf of Theo Bunker and Lorraine Rouse. He drew attention to the current Environment Court proceedings noted by Ms King, and that the potential maximum outcome that may arise from that process is 150 lots,<sup>30</sup> and

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<sup>25</sup> Ellis, at [14]

<sup>26</sup> Ibid, at [15]

<sup>27</sup> Ellis, at [32]

<sup>28</sup> Ibid, at [35]

<sup>29</sup> Ibid, at [41]

<sup>30</sup> Ibid, by reference to an ‘Indicative Layout Plan’ at Figure 1

that these would be able to be “*efficiently and safely accommodated solely by the access easement proposed by PC54, and by other roads within the NSZ and beyond*”.<sup>31</sup>

71. Mr Penny also commented on the rules proposed by Mr Smith in terms of logging trucks that may use the NSZ. However, as with Mr Carr, he considered that “*any trucks related to logging could not use these roads without a more detailed assessment associated with the preparation of a Temporary Traffic Management Plan*” and that “*the road controlling authority (QLDC) are able to control the effect of logging trucks on the road network*”.<sup>32</sup> In addition, he considered that the potential logging traffic associated with Sticky Forest could safely and efficiently use the single access route, with an appropriate TTMP.
72. On that basis Mr Penny concluded that there is no need for rules controlling such traffic within the PC54 provisions.

Tanya Stevens – Planning (Te Rūnanga o Ngāi Tahu)

73. Tanya Stevens provided planning evidence on behalf of Te Rūnanga o Ngāi Tahu (**Te Rūnanga**). Her evidence described the historical context and genesis of the Hāwea/Wānaka South Island Landless Natives block, and therefore the importance of access to that block provided for by PC54, and why that access has been provided for, along with the relevant statutory context and specific Te Rūnanga submission points made on PC54.
74. Ms Steven’s conclusion was that PC54 provides an opportunity for access to be provided to the Hāwea/Wānaka block, in a manner that is consistent with ss.6(e), 7(a) and 8 of the RMA, and is a positive step toward completing redress owed to the successors of that block. Her conclusions in this regard were, however, subject to the inclusion of an amendment to Objective 3 (Connectivity), Policy 3.1 and Rule 15.2.3.4(xx). We refer to those changes later in this decision.
75. Ms Steven also recommended that the Sticky Forest block is referred to as ‘*Hāwea/Wānaka – Sticky Forest*’ in PC54 to acknowledge both the origin of the block and the colloquial reference, and noted the support for this by Ms Rouse and Theo Bunker.<sup>33</sup>

Ewan Mackie – Bike Wānaka

76. Ewan Mackie spoke to the submission by Bike Wānaka, which he noted was an organisation with approximately 1,000 members. He advised that Bike Wānaka fully support the objectives to provide recompense and redress to the owners of Sticky Forest, but like Mr Greaves for KLP3, was concerned at what he considered was a piecemeal approach to land in this area, where a more integrated outcome would provide a better outcome for all parties. He was also concerned that PC54 was leading to more residential development in the area and an associated loss of open space with little in the way of formal public access.

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<sup>31</sup> Penny, at [3.4]

<sup>32</sup> Ibid, at [3.6]

<sup>33</sup> Stevens, at [97]

## **Council response**

### Procedural note

77. We heard responses from the Council officers and specialist advisers in two stages. Because submitters were to be heard on the second day, and had not raised infrastructure or stormwater issues, we heard from the Council's experts on these topics at the end of the first day. In terms of stormwater, this then overlapped with the second day, and we then heard from the Council's traffic and planning witnesses in the usual manner following the submitter presentations.

### Katherine Purton – Stormwater Engineer

78. As noted previously, Ms Purton had prepared a memorandum that recommended the inclusion of new stormwater-related rules to address existing erosion effects occurring within the catchment. In this respect she considered that reliance on the Council's CoP would not be sufficient and referred to other standards applicable in the Flat Bush area in Auckland as a relevant example of requiring stormwater flows to be limited to 80% of pre-development flows. Following questions related to the comparative efficacy of a method or rule at outline development plan stage, we asked Ms Purton to consider Mr Brown's recommended provisions, being an assessment matter at the subdivision stage (via Chapter 15).
79. Ms Purton provided possible wording in respect of this at the commencement of the hearing on the second day. While noting it was not her preferred option, she advised that it was an approach that she "*could live with*".

### Richard Powell – Infrastructure Engineer

80. As also referred to previously, Mr Powell's memorandum had advised that there were no particular constraints with respect to wastewater but noted some issues with providing additional water supply. He explained that this was not related to reservoirs but to servicing of the wider network and the need for new easements to the water source (lake), as the existing easements were not wide enough for a second pipe network. This appeared to be an issue related to the Development Agreements referred to by Mr Bretherton, and we return to this matter later in the decision.

### Helen Mellsop – Landscape Architect

81. As previously noted, Ms Mellsop had noted two particular issues, regarding the height of buildings towards the upper part of the AAB6 area, and landscaping of the upper water tank. In terms of the latter, she explained that the issue was more about views from above the water tank downwards towards the AAB6 area but acknowledged that the tank is outside the PC54 area so any changes in this regard would be likely to be out of scope.
82. She noted her general support for the ZTB analysis and the viewpoints adopted by Mr Skelton for his assessment, but noted that the Sticky Forest ridge has a dip in the middle (at 396masl) and so considered that additional viewpoints, at the top of Ruby Island and the intersection of

the Millenium Track and Lake Road link track would be beneficial to confirm whether any visual effects of a moderate nature would arise from these locations (as a result of potential removal of existing forest within Sticky Forest). While she noted that information on levels from these locations would not be as accurate as those used in the ZTB analysis, they would be within 1m and this would not make a significant difference.

Mike Smith – Transportation Engineer

83. As previously outlined, Mr Smith had recommended the inclusion of rules to address transport impacts from Sticky Forest, and in particular in respect of any traffic associated with logging activities. He prepared a memorandum in response to the evidence which addressed the following matters:

- An outline of credentials with respect to Temporary Traffic Management (**TTM**);
- A statement on matters relating to the PC54 development proposal;
- An outline of large vehicle definition and implications for tools for controls;
- Tools available under TTM;
- Impacts of cumulative effect of traffic generation;
- Localised calming treatments (in respect of Lammermoor Street);
- Road Pavement and impacts of HCV use (regarding logging);
- Traffic / Transportation Management Plans; and
- Use of vehicle mass restrictions.

84. We will refer to particular aspects arising from Mr Smith’s memorandum later in this decision, but note here his concluding comment that:<sup>34</sup>

*...in response to the submitters that sought reliance on LGA or Road Controlling Authority-type methods instead of the District Plan rule proposed in the s.42A report, I feel that the proposed rules as set out in the s.42A supplementary report of Ian Munro are the most appropriate and that a resource consent can manage the technical engineering / pavement-type aspects, amenity aspects, notification to adjacent residents (where appropriate), and cost-allocation / responsibility-allocation for any interim or permanent road changes, repairs and reinstatements, or other works required.*

Ian Munro - Planner

85. Mr Munro also prepared a detailed memorandum in response to the evidence heard which advised of his recommendations with respect to the matters that appeared to remain in contention. He also attached a revised version of the NSZ provisions, noting that in his opinion, these provisions are “*the most appropriate having regard to the applicable matters set out in*

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<sup>34</sup> Smith memorandum 26 July 2023, at [10]

s.32AA and s.32 of the RMA”.<sup>35</sup> We will refer to Mr Munro’s recommendations with respect to the relevant matters of contention later in this decision.

### **Requestor’s right of reply**

86. In NIL’s Reply, Mr Goldsmith advised that no evidence had been presented which justify refusal of either the residential component of PC54 or the Sticky Forest access component of PC54. He advised that NIL accepted the Ms Purton’s proposed amendment to the 15.2.12.3 Assessment Matters relating to stormwater but had changed its position in relation to the transport provisions. In this regard, Mr Goldsmith outlined that NIL now preferred the approach proposed by Mr Munro to manage potential traffic generated by activities within Sticky Forest, as it preferred a regime managed through the RMA and was concerned that logging activities may result in damage to roads within NSZ that NIL could be liable for (depending on timing). There was one remaining area of disagreement, in that NIL sought amendments to rule 15.2.3.4(xx) to delete the additional wording relating to a weight restriction. We will address this later in the decision.
87. Having considered the matters raised in the officer responses and the reply provided on behalf of NIL, the Panel determined on 9 August 2023 that the hearing was able to be closed.

## **Findings on the principal issues in contention**

### **Introduction**

88. A range of matters were traversed in the request for the plan change, submissions, the s.42A Report and supporting material, and during the hearing. The following section addresses the Panel’s overall findings on PC54, having heard and considered all of the material and evidence before us. In this regard, we acknowledge the submission point made by Mr Goldsmith in his reply that no evidence has been presented which would justify refusal of either the residential component or the Sticky Forest access component of PC54.<sup>36</sup>
89. After an analysis of the plan change request and supporting evidence, a full review of the s.42A Report, consideration of the submission and our site visit, we have determined that principal issues in contention are as follows:
- Effects of water supply infrastructure;
  - Adequacy of stormwater provisions;
  - Landscape and visual effects;
  - The appropriate method to address transport effects;

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<sup>35</sup> Munro memorandum, 27 July 2023, at [1.33]

<sup>36</sup> Closing submissions for Northlake Investments Limited at [26] – [27]

- Amendments to Objective 3;
  - The name of Sticky Forest to be used in the NSZ; and
  - Integration of provisions relating to adjacent land blocks.
90. The reply addressed these issues, and with one exception relating to proposed rule 15.2.3.4(xx), agreed with the amendments to provisions as set out in Appendix 5 to the s.42A Reporting Planner's Response. This represented a change in position by NIL in relation to the transport effects and we discuss this later in our decision.
91. By way of overview, we record our acceptance of the evidence for both NIL and the Council that PC54 represents an appropriate change for the NSZ. Overall, we accept Mr Munro's recommendation that PC54 should be adopted, and that the plan change and associated change in the zoning of the land will:
- assist the Council in achieving the purpose of the RMA;
  - give effect to the NPS-UD;
  - be consistent with the regional policy statements (Operative 2019 and Proposed 2021); and
  - be consistent with s.8 of Part 2 of the RMA.
92. Our main findings on the principal issues in contention, and the reasons for our findings are set out below.

#### **Effects of water supply infrastructure**

93. As previously noted, Mr Powell had advised that water supply restrictions within the north Wānaka area would be further impacted by intensifying demand through the zoning of additional residential land. He considered that:

*The applicant should provide, on terms acceptable to Council, easements for at least two options for an easement to be exercised over the optioned alignments including neighbour land, either Sticky Forrest or the land owned by Alex Fraser Urquhart and Dunmore Trustees Ltd.*

94. This was opposed in the evidence of Mr Bretherton, who considered that Mr Powell had not taken account of the water network that has been constructed and commissioned in Northlake, and which reflected a Development Agreement between NIL and the Council. Mr Bretherton advised that in respect of water supply, the maximum developer capacity provided for in the Development Agreement includes the PC54 lots and those already zoned in the NSZ.<sup>37</sup>
95. Mr Munro's s.42A Report had responded to the recommendations of Mr Powell in his s.42A Report and advised that he did not consider that such easements could be conditioned or

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<sup>37</sup> Bretherton, at [18]

required at the time of a plan change, and the appropriate time would be at resource consent stage. He stated:<sup>38</sup>

*In this instance there are already wide-ranging restrictions of discretion available to the Council relating to the sufficiency of infrastructure (12.34.2.3(i)(f) is very open-ended, and is supported by assessment matter 12.34.5.2iii(e)(i)). In my opinion the outcomes identified by Mr. Powell could be the subject of valid consent conditions as required – or failing that, consents could be refused. To the extent that the Council’s current [CoP] might be satisfied by an outcome less than Mr. Powell considers might be required, the ch.12 ODP matters identified above do not directly reference, and are not in my opinion limited to, that [CoP] in any event.*

96. Mr Munro therefore agreed with NIL’s position in this regard and advised in his response memorandum that he had not changed his recommendations on this point.
97. Mr Goldsmith, in his closing submissions, noted that no technical evidence had been presented to demonstrate any water supply constraints in North Wānaka generally, or as a result of the confirmation of PC54.
98. The Panel agrees with Mr Munro’s assessment on this matter. We are considering a request for a plan change and as such, cannot require easements over NIL and other parties’ land for water supply purposes. We are satisfied the subdivision provisions are sufficient to enable consideration of the adequacy of water supply and any easements that may be required. We further note that we agree with Mr Munro’s advice to us at the hearing, that should additional land be required to enable water supply infrastructure, this would need to be addressed by the Council through using its powers either under the Local Government Act 2002 (**LGA**) or by giving notice of a requirement for a designation. Accordingly, we have determined that no further modifications to PC54 in this regard are required.

#### **Adequacy of stormwater provisions**

99. As previously summarised, the memorandum by Ms Purton had highlighted existing erosion issues from the local stormwater network and recommended modifications to PC54 to incorporate a new rule as part of the NSP (to be applied at the outline development plan stage). This approach was supported by Mr Munro in his s.42A Report and he adopted Ms Purton’s proposed rule, to be included as part of the restricted discretionary activity rules at 12.34.2.3.
100. This was opposed by NIL, and in particular through the evidence of Mr Bretherton as set out earlier. Mr Brown had also addressed this matter in detail, highlighting that the required engineering design to address stormwater effects would be carried out at the subdivision or EPA stage, rather than at the time of an outline development plan. Mr Brown considered that the additions proposed by Ms Purton and Mr Munro should instead be set out in an assessment matter located within the subdivision chapter (Chapter 15), noting that “*the controlled activity status, matters of control and assessment matters in Chapter 15 provide an adequate*

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<sup>38</sup> S.42A Report, at [11.23]



consenting regime for stormwater management for [AAB6]'.<sup>39</sup> He proposed a revised assessment matter to be included in Chapter 15 as follows:

*In addition to the above, within the Northlake Special Zone:*

(xvi) *The adequacy of proposed methods to achieve compliance with the Council's Code of Practice in respect of post-development stormwater discharge being no greater than pre-development stormwater discharge, taking into account:*

1. *Pre-development peak flows for the 2-year, 5-year, 10-year, 20-year and 100-year events;*
2. *The cumulative effect of increased volumes and resulting increased coincidence of peak flows and consequential effects on the storage capacity of downstream stormwater retention devices and systems.*

101. As previously discussed, Ms Purton agreed to consider what further changes to a Chapter 15 assessment regime may be necessary to address her concerns. Ms Purton's amended version (as amended slightly in Mr Munro's updated provisions attached to his response memorandum) is as follows:

*In addition to the above, within Activity Area B6 of the Northlake Special Zone:*

(xvi) *The adequacy of proposed stormwater management methods to mitigate the downstream effects of the development, taking into account:*

(a) *Downstream flood risk*

*EITHER*

- i. *Attenuation of post-development peak flows back to pre-development peak flows for the 2-year, 5-year, 10-year, 20-year and 100-year events:*
  - *at the point of discharge from the development area; and*
  - *at any point in the downstream system, to the point of discharge to the stream*

*OR*

- ii. *Attenuation of post-development peak flows back to 80% pre-development peak flows for the 2-year, 5-year, 10-year, 20-year and 100-year events, at the point of discharge from the development area.*

(b) *Downstream erosion*

*Mitigation of the effects of increased frequency of runoff and increased volume in small storm events, using an industry accepted method for mitigation of potential erosion effects, such as that set out in Auckland Council's GD01 section B1.7 or equivalent.*<sup>40</sup>

<sup>39</sup> Brown, at [2.12]

<sup>40</sup> Being a reference to the Auckland Unitary Plan rules for 'Stormwater Management Area Control: Flow 1 and 2' areas, and includes reference to chapters E8, E9 and E10.

102. Mr Munro's response memorandum noted his acceptance of Mr Bretherton's concerns about the level of information that would be required at the outline development plan stage, where it would usually sit at as a Chapter 15 subdivision matter. Mr Munro, and indeed the Panel, acknowledged Ms Purton's obvious preference for the retention of a Chapter 12 rule, but we note her acceptance that the assessment matter would be workable. Mr Goldsmith's reply also confirmed that NIL accepts Ms Purton's amendments to the Assessment Matters at 15.2.12.3.
103. Therefore, and in accepting NIL's criticism of the Chapter 12/outline development plan issue, we find that the inclusion of the amended assessment matter within Chapter 15 is the most appropriate approach to provide for the design of future stormwater infrastructure within the NSZ.

### **Landscape and visual effects**

104. Some submissions<sup>41</sup> raised concerns about the loss of Activity Area E1, which was described as open space, reserve land or a no build area; and the visibility of houses in Activity Area B6.
105. We had the benefit of evidence from two landscape architects, Ms Mellsop and Mr Skelton, on which to consider these matters. Ms Mellsop and Mr Skelton both acknowledged that the loss of open character would reduce landscape values, but not to a significant extent. Ms Mellsop assessed the extent of adverse landscape effects to be low-moderate, whereas Mr Skelton assessed it to be low. As summarised earlier, the issue relating to landscape and visual effects relates to the need or otherwise for additional analysis from two additional viewpoints as recommended by Ms Mellsop. We understand Ms Mellsop's concern to arise from the lower height of a ridge within Sticky Forest, which could potentially give rise to some visibility of future dwellings in the upper part of the AAB6 area, notwithstanding the height limitation of 401.5masl proffered by NIL through the evidence of Mr Skelton.
106. Having viewed the site, including from an area within and around the water reservoir and the existing AAC1 area to the east, we did not have the impression that the additional viewpoints recommended by Ms Mellsop would be exposed to a measurably different outcome than those modelled by Mr Skelton. We therefore adopt Mr Munro's assessment in this regard where he states:<sup>42</sup>

*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...*

<sup>41</sup> Submissions 3, 6, 7, 8, 9, 10, 12, 13, 18 19, 23, 29 and 30

<sup>42</sup> Munro, Response Memorandum at [1.9]

107. Mr Munro advised in his s.42A Response that he adopted the wording of rule 12.34.4.2(iv) as proposed by NIL. Following the hearing, we sought clarification<sup>43</sup> whether standard 12.34.4.2(iv)(b) applied to Activity Area A6. Mr Brown responded on 8 August 2023 to propose an amendment to this standard to include a height limit of 401.5m above sea level, to avoid the possibility that buildings on sloping sites could rely on a potentially higher height limit. This being the case, we are satisfied that any adverse landscape or visual effects associated with the plan change will be low-moderate at most, and the visibility to the west of future dwellings in the upper part of AAB6 will be minimal, or indiscernible.

### **The appropriate method to address transport effects**

#### **Introduction**

108. The road link to Sticky Forest was supported by some submitters<sup>44</sup> as it would establish legal access to the landlocked block of land. Other submissions<sup>45</sup> opposed the road link to Sticky Forest due to reasons including concerns about increased traffic through NSZ (both from logging trucks and future residential development within Sticky Forest); concerns that it may enable a future link into the Kirimoko Blocks; loss of land used for recreational biking within Sticky Forest; use of Activity Area E1 for roads and housing and the likelihood the road would enable the future redevelopment of Sticky Forest.
109. We have previously outlined the purpose and origins of PC54 and the fact that PC54 has arisen primarily as an outcome of a proffered condition (and undertaking) associated with a separate resource consent application. We heard several statements of evidence on behalf of Te Arawhiti and Te Rūnanga as to the way in which this would address the currently land-locked nature of Sticky Forest. Ms Stevens, for example, stated that:<sup>46</sup>

*... the provision of access to the Hāwea/Wānaka block through private Plan Change 54 is of vital importance. The land vested to successors needs to be meaningful – in that the potential of the land can be unlocked as and how the successors determine is appropriate.*

110. We note that it was generally agreed between the witnesses for NIL, Te Rūnanga, Te Arawhiti and the Council that enabling access is appropriate and would give effect to s.8 of the RMA. As noted by Mr Munro<sup>47</sup> (and endorsed by Mr Brown<sup>48</sup>):

*I am particularly supportive of PC54 on the basis of s.8 (Part 2) of the RMA and the ability of PC54 to enable Sticky Forest road access, which I see as a necessary and valid resource management goal to support an ongoing Crown process of Treaty settlement and redress.*

<sup>43</sup> Minute 4 dated 7 August 2023

<sup>44</sup> Submissions 15, 20 and 22

<sup>45</sup> Submissions 1, 3, 4, 6, 7, 8, 9, 12, 16, 17, 23, 24, 26, 27 and 28

<sup>46</sup> Stevens, at [22]

<sup>47</sup> s.42A Report, at [14.2]

<sup>48</sup> Brown, at [3.3]

111. The question for this Panel was then how to address the potential effects that such access would have on land within the NSZ. As noted in Mr Munro's response memorandum,<sup>49</sup> the disagreement between the relevant submitters and experts was limited to whether an RMA-based (district plan rule) method was more or less appropriate than non-RMA based methods (i.e., LGA / road controlling authority type methods).
112. The plan change as notified included a non-complying activity rule in the Subdivision Chapter to require the road link to Sticky Forest to be established at the time of subdivision of Activity Area B6 (rule 15.2.3.4(xx)). This rule was refined further through the hearing process, with Mr Brown, Ms Ellis and Ms Stevens agreeing the rule should read as follows:
- (xx) In the Northlake Special Zone, any subdivision of Activity Area B6 that does not establish legal vehicle and infrastructure servicing access to Sticky Forest (Section 2 of 5 Block XIV Lower Wanaka Survey District).*
113. Mr Munro disagreed. He considered that High Productivity Motor Vehicles (**HPMV**s) should be precluded from using the new Sticky Forest link and that the rule should read as follows.<sup>50</sup>
- (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).*
114. In his closing submissions, Mr Goldsmith advised that NIL sought the deletion of the words relating to the weight restriction which are intended to restrict the use of roads by HPMVs. He advised that there is no legal mechanism available that would allow legal road to vest in the Council with a weight restriction, as land must be free of any encumbrances before it can vest.<sup>51</sup> This in turn would result in all subdivision in Activity Area B6 being classed as a non-complying activity. We agree and note that s.238 of the RMA states that land shown as road is to vest free from all interests in land. We therefore find the amendments proposed by Mr Munro to not be a practicable option. We will return to the issue of HPMVs later in our recommendation.
115. Three issues were traversed in the evidence and at the hearing in relation to transport effects:
- (a) Traffic from additional residential development within Activity Area B6;
  - (b) Traffic from the future rezoning of Sticky Forest; and
  - (c) Logging traffic generated by harvesting within Sticky Forest.
116. Our findings on these issues are discussed below.
- Traffic from additional residential development within Activity Area B6**
117. Mr Carr and Mr Smith agreed that existing NSZ road network is able to accommodate the additional traffic that would be generated by the residential development enabled by PC54.

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<sup>49</sup> Munro Response Memorandum, at [1.13]

<sup>50</sup> Section 42A Response, Appendix 5

<sup>51</sup> Goldsmith, Closing Submissions at [22]

However, Mr Smith identified some specific measures that may be required, including the closure of Lammermoor Street to through traffic, traffic calming, and no-stopping lines to control kerbside parking.

118. It was Mr Carr's opinion that if such measures were required, they were capable of being accommodated within the existing road reserve. However he had not at this point formed a view on the appropriateness of specific measures. This was due to his view that it is more appropriate to consider traffic calming or other measures at the time of subdivision, engineering approval or as part of the Council's management of the roading network.
119. We agree with Mr Carr and find that no additional provisions are required to address this matter, as it is capable of being addressed at the subdivision stage.

### **Traffic from the future rezoning of Sticky Forest**

120. Mr Goldsmith addressed the extent to which our determination of PC54 can or should address traffic generated by activities carried out within Sticky Forest. He submitted that the future rezoning of Sticky Forest was not a relevant consideration to whether or not PC54 is approved, but we were not precluded from making changes to the ODP provisions that address issues which may arise in the future.<sup>52</sup>
121. There was a degree of conjecture between the evidence of Mr Carr and Mr Smith as to the potential number of lots that could be realised within Sticky Forest, and thus a wide degree of scope as to what traffic volumes and associated effects could arise within the Northlake roading network. This was addressed in large part in the evidence of Mr Penny, who identified a potential for 150 lots within Sticky Forest based on the extent of the two residential zones sought within the plan change for that land, and an associated indicative subdivision layout.<sup>53</sup> We were advised that other parties sought a lesser area of residential zoning, and so we understood that the zones depicted in his evidence (Figure 1) represented the most that could be achieved through the plan change.
122. With reference to the evidence that he has prepared for the Environment Court hearing on that matter, Mr Penny advised that:<sup>54</sup>

*...with traffic generated by the proposed residential rezoning of part of the Sticky Forest land using this single access, that traffic would not adversely affect the efficiency or safety of the road network associated with Northlake. This conclusion reflects the limited volume of residential traffic that would be generated by Sticky Forest ...*

123. While Mr Carr and Mr Smith were in agreement that the Northlake road network has capacity for the additional traffic generated by the increase in residential lots within AAB6, they differed as to the extent of surplus capacity that would exist in terms of development Sticky Forest. Mr Carr considered that up to 325 residences could be developed whereas Mr Smith considered

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<sup>52</sup> Goldsmith, Part 1 Legal Submissions at [12]

<sup>53</sup> Penny, at [5.3]

<sup>54</sup> Penny, at [5.5]

that only 75 residences would be appropriate. The potential number indicated by Mr Penny thus falls somewhere between these two scenarios.

124. We observe that if the land is rezoned for residential development it will, as Ms Ellis identified,<sup>55</sup> be subject to restricted discretionary rule 29.4.11. This rule applies where more than 50 residential units are proposed or there is a change of use that results in more than 400 additional vehicle trips per day, or 50 additional trips during the commuter peak hour. The matters of discretion require consideration of the effects on the transport network in relation to a broad range of matters including integration with the existing transport network and any recommendations from an Integrated Transport Assessment.
125. Whether or not the Sticky Forest rezoning appeal will be successful is an unknown. Having carefully considered this matter, we find that there is simply no clear basis for us to rely on to predict the future level of development within Sticky Forest. Any traffic effects that may result development that may be enabled in the future is the purview of the Environment Court in its consideration of the appeal and the appropriateness of rezoning the land for urban development.

#### **Logging traffic generated by harvesting within Sticky Forest**

126. The potential for logging traffic generated by harvesting within Sticky Forest to use the road network within the NSZ was a key issue. As we have noted earlier, this matter was not addressed in the plan change as notified.
127. Mr Goldsmith addressed the matter in his legal submissions and during the hearing. Mr Goldsmith submitted that there was nothing in s.32 that would prevent the Panel from considering non-RMA options to address the issue. At the hearing, he highlighted that in reality, there may only be a 12-month period within which harvesting activities may take place within Sticky Forest as a permitted activity. As was identified by Ms Hill in her submissions, the Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017 (**NES-PF**) would not apply to any land zoned for urban purposes, and as such, would not apply if the Sticky Forest rezoning appeal is successful.<sup>56</sup> She also identified that harvesting on land within the ONL is classified as a non-complying activity.<sup>57</sup>
128. We agree that if the rezoning appeal is successful, the harvesting of logs in Sticky Forest would require resource consent due to the land being zoned urban (in part). The balance of the land not subject to the appeal is an ONL and resource consent would be required to harvest logs within the land subject to those ONL provisions. In either case, the transportation of logs through the NSZ and beyond is a matter that would fall to be considered under any such resource consent application. Accordingly, we are satisfied that logging traffic generated by harvesting can be addressed at that time and that the inclusion of a rule in the NSZ is not necessary.

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<sup>55</sup> Ellis, at [28]

<sup>56</sup> Ms Hill legal submissions at [28.12.2]

<sup>57</sup> Ibid at [28.12.1]

129. We turn now to consider the possibility that the Rural Zone is retained on the Sticky Forest land either due to the appeal not being successful, or that logging may occur during the intervening period and prior to determination of the appeal, which Mr Goldsmith submitted may only be 12 months away.
130. Two approaches were put forward in the evidence and evolved during the hearing to address the issue which were essentially the relative advantages or disadvantages between RMA methods or non-RMA methods.
131. Mr Munro in his s.42A Report considered that a rule was necessary to manage this effect, based on the technical memorandum of Mr Smith which had outlined his significant concerns with enabling such traffic within the Northlake roading network. Mr Munro stated the underlying purpose for a rules-based approach to this issue as follows.<sup>58</sup>

*Having considered the objectives and policies of Chapters 12 and 15 of the ODP, and in particular my reflection on the safe, high amenity living environments anticipated by the Plan in the context of what are for the most part well-established residential streets and intersections, I share the submitter's, NIL's and Mr. Smith's concerns. In my opinion what could be a significant forestry activity to clear Sticky Forest (both in terms of scale and duration) could result in significant adverse safety, amenity, and road asset-damage effects.*

132. The proposed rule proposed by Mr Munro and Mr Smith addressed all forms of traffic movements from Sticky Forest and we address the specific effect of heavy vehicles later in this discussion. For now, however, we set out the proposed restricted discretionary rule 12.34.2.3.v as set out in Mr Munro's s.42A Report:

**v. *traffic generated by land use activities within Sticky Forest (Section 2 of 5 Block XIV Lower Wanaka Survey District) seeking to access and use roads within the Northlake Special Zone.***

*The exercise of Council's discretion shall be limited to:*

- (a) *Total traffic volumes and means to safely accommodate that.*
- (b) *Provision of road or network upgrades to accommodate increased vehicular, cycle and pedestrian traffic.*
- (c) *Streetscape amenity and the amenity of residential allotments adjoining a road or roads proposed to accommodate an increase in traffic volumes.*
- (d) *In the case of forestry and/or construction-related traffic:*
  - 1. *The limitation or avoidance of frequent or high-volumes of High Productivity Motor Vehicles (HPMV) (as defined in Land Transport Rule 41001/2016), and/or Heavy Commercial Vehicles (HCV);*
  - 2. *The suitability of any Construction Traffic Management Plan or Forestry*

<sup>58</sup> S.42A Report, at [10.49]

Traffic Management Plan, and any associated measures or temporary works proposed; and

3. The imposition of weight restrictions on roads.

133. This rule was subject to further iterations with Mr Munro's pre-hearing supplementary s.42A Report adopting some but not all recommendations of Mr Brown, and a further version being included in Mr Munro's Response Memorandum as follows:

v. Any [motorised] vehicular traffic generated by residential, commercial or forestry activities within Sticky Forest (Section 2 of 5 Block XIV Lower Wanaka Survey District) seeking to access and use roads within the Northlake Special Zone.

The exercise of Council's discretion shall be limited to:

(a) Total traffic volumes and means to safely manage that.

(b) Provision of road or network upgrades to manage increased vehicular, and any other cycle and pedestrian traffic.

(c) Streetscape amenity and the amenity of residential allotments adjoining a road or roads proposed to accommodate an increase in traffic volumes.

134. In addition, Mr Munro recommended an amendment to NIL's proposed non-complying activity trigger at 15.2.3.4(xx) of the ODP, as well as the existing restriction of discretion at 12.34.2.3(i)(b), in order to "ensure that the Sticky Forest road-link will include a proposed weight restriction, and that the Council will possess a suitable restriction of discretion to consider and determine that at the time of resource consent".<sup>59</sup>

135. We have already discussed Mr Munro's recommended amendments to rule 15.2.3.4(xx) and find that these amendments are not appropriate, as legal road is required to vest free of any interests in land and there is no mechanism that would enable the road to vest with a weight restriction.

136. Ms Ellis considered that the proposed plan provisions were not appropriate as they would be more stringent than the NES-PF.<sup>60</sup> Mr Munro disagreed and, in his opinion, the NES-PF does not apply to the transportation of logs following harvesting.<sup>61</sup> For the reasons set out earlier, we were not persuaded that the NES-PF applies to the transportation of logs following harvesting and find that we must therefore consider the potential effects of logging traffic using the road network within NSZ.

137. We therefore turn to consider whether rule 12.34.2.3.v is the most appropriate way to achieve the objectives. The zone objectives relevant to transport are as follows:

<sup>59</sup> Ibid, at [10.50]

<sup>60</sup> Ms Ellis, evidence in chief at [38]

<sup>61</sup> Mr Munro, Section 42A Reporting Planner's Response, dated 27 July 2023 at [1.16]



### **Objective 3 – Connectivity**

*Development that is well-connected internally and to networks outside the zone.*

### **Objective 6 – Infrastructure**

*Provision of servicing infrastructure to cater for demands of development within the zone in an environmentally sustainable manner and to enhance wider utility network systems where appropriate.*

138. We will return to Objective 3 later in our recommendations but suffice to say the objectives seek to achieve connectivity within the NSZ itself, as well as to the wider road network.
139. Mr Munro stated in his supplementary s.42A Report that the proposed method “*is purposefully limited to seeking to manage the traffic resulting from activities on Sticky Forest where that traffic seeks to use the NSZ; it does not seek to manage activities on Sticky Forest itself*”.<sup>62</sup> In acknowledging the ‘unusual’ nature of the provision, and the criticism of the same raised by Ms Ellis,<sup>63</sup> he noted that this “*simply reflects the unusual context of PC54 and Sticky Forest that the rule is responding to*”.<sup>64</sup>
140. Ms Ellis’ evidence further highlighted what she viewed as the problematic nature of district plan and zone provisions relating to an area of land residing in a separate district plan/zone, and that “*it is not logical to expect plan users to look in the [NSZ] or any other chapter of the [ODP] to check if an activity will be compliant when the Sticky Forest land will, in due course, be subject to rules of the [PDP]*”.<sup>65</sup>
141. We found the distinction between managing activities in Sticky Forest and managing the traffic from activities occurring in Sticky Forest to be somewhat artificial. In short, one cannot undertake residential, commercial or forestry activities without generating motorised vehicular traffic. Mr Goldsmith submitted that such a rule was *intra vires*, but that it was not good planning practice for a rule in one zone controlling traffic originating from another zone. Mr Brown also characterised this as unusual and not best practice but considered it to be a drafting issue only. In contrast, Ms Ellis did not agree that it was a coherent outcome to have rules in one zone controlling activities in another zone, and moreover, for these rules to sit within a chapter of the ODP. Ms Ellis observed that following resolution of the appeal on the zoning of Sticky Forest, the land would be subject to the PDP.
142. We agree with Ms Ellis that if one is considering the applicable planning rules, one would not expect the rules to be in a chapter for a different zone. We have considered Section 2 of the ODP, which provides a general guide for plan users. This section directs plan users to identify the zone and states that each zone has its own rules. It then directs plan users to check the District-wide rules and the appendices for designation, protected features and areas of significant natural conservation value. We do not consider it efficient or effective for rules restricting vehicle movements originating from another zone to be included in the NSZ

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<sup>62</sup> S42A Supplementary, at [[1.12]

<sup>63</sup> Ellis, at [32]

<sup>64</sup> Response Memorandum, at [1.28]

<sup>65</sup> Ellis, at [32]

provisions. However, we were not presented with any other options for provisions that may address the effects of logging traffic.

143. The transport experts agreed that forestry logging trucks could range in size from smaller Heavy Commercial Vehicles (**HCVs**) through to large HPMVs. Mr Smith advised that HCVs range from anywhere between 3.5 to 44 tonnes and HPMVs are those vehicles over 44 tonnes. The land transport rules require that HPMVs are unable to operate on public roads without a permit, which may be refused. In comparison HCVs may operate on any public road, with the only restriction being the requirement to obtain a TTMP where such movements are outside the normal operating conditions of a road.
144. We are satisfied that the land transport rules governing the use of HPMVs is the most appropriate method to address the potential effects associated with these types of vehicles. We agree with Mr Carr that a resource consent process is inefficient as it would duplicate the permit process. While the permit process does not consider amenity, it does consider safety and we find that given the opinion of Mr Smith regarding the unsuitability of the NSZ roads for HPMVs, together with his considerable experience as a Temporary Traffic Management trainer and auditor,<sup>66</sup> that it would be highly unlikely for any such permit to be approved, however we cannot be certain of this.
145. It was common ground that the use of HCVs would require a TTMP (as noted above). We acknowledge Mr Smith's expertise and experience in TTMPs and associated tools and accept his evidence that these tools would be insufficient to address the potential effects on the pavement life, as well as amenity effects. We accept Mr Smith's opinion that the TTMP process alone would not be adequate in respect of these matters.
146. Importantly however, the other non-RMA mechanism that is available is the use of a bylaw. This was raised at the hearing by Ms Ellis, who noted that the Council has a particular bylaw, the Traffic and Parking Bylaw 2018 (**Traffic Bylaw**), that may be used to restrict trafficking of roads by HCVs and HPMVs. Mr Smith's response memorandum confirmed that vehicle mass restrictions may be imposed through the Traffic Bylaw process and that public consultation would be required.
147. We have subsequently reviewed the Traffic Bylaw and note clause 8.1 as follows:

*The Council may by resolution prohibit or restrict the use of a road as unsuitable for any specified class of traffic or any specified class of vehicle due to its size or manner of operation or the nature of the goods carried.*

148. A further non-RMA method was traversed at the hearing by Mr Goldsmith, which he returned to in his closing submissions, which related to the Council's powers over road formation and the use of public roads. Mr Goldsmith submitted that it was possible that the western end of the road link to Sticky Forest may be vested in the Council without being formed and that the Council could require a row of poles to be installed at the end of the road where it adjoins the boundary of Sticky Forest.<sup>67</sup> As Mr Goldsmith described at the hearing, this road stub is not

<sup>66</sup> Smith, Hearing Reply, at p.1

<sup>67</sup> Goldsmith, Closing Submissions, at [25.c]

required for the development of Activity Area B6, and once vested as legal road, the public would have a right of access. However, the Council controls the formation of legal roads and no party may form the road without permission of the Council under the LGA. We find that this proposition has considerable merit in determining an acceptable way to provide legal access to Sticky Forest, while providing the means to ensure the control of that access through the appropriate mechanisms.

149. In summary, we are satisfied that the non-RMA options are the most appropriate way to achieve the aforementioned PDP objectives. The Council's powers as road controlling authority provide it with the ability to control the classes of vehicle that use the roads generally, and are the most effective method to control the potential impacts of logging traffic entering the NSZ road network in particular.
150. As a result, we have concluded that it is not necessary to include the motor vehicle traffic matters proposed in NIL's reply at 12.34.2.3(v), 12.34.5.2(xvi) and 15.2.3.5(xix). As a result, the addition to the non-notification clause at 12.34.3(i) within the s.42A Report (i.e., to exclude applications made in respect of 12.34.2.3(v)), becomes redundant and so has also been deleted.

### **Amendments to Objective 3**

151. There was an associated issue as to whether the provision of a link to Sticky Forest should also require a corresponding amendment to Objective 3. The submission by Te Rūnanga sought the following change:

*Development that is well-connected internally and to networks outside the zone including provision for access to [Sticky Forest].*

152. Ms Stevens' evidence in this regard was that:

*The amendment sought to Objective 3 has not been agreed to by the Applicant nor has the section 42A report recommended its inclusion. I consider that the amendment sought by Te Rūnanga does not go beyond what is anticipated by the objective, but provides additional clarity to the objective.*

153. Mr Munro observed during the hearing that the objective is appropriately cast in broad terms to signal the emphasis on the provision of good connections both internally and beyond the zone, such that particular connections, including to Sticky Forest, are then identified through the subsequent policies. We agree, and do not consider that there is a need to further highlight this specific connection within the context of the NSZ provisions generally.

### **The name of Sticky Forest to be used in the NSZ**

154. As noted above, the submission by Te Rūnanga and evidence of Ms Steven also recommended that the Sticky Forest block is referred to as '*Hāwea/Wānaka – Sticky Forest*' in PC54 to acknowledge both the origin of the block and the colloquial reference. Te Arawhiti made a neutral further submission on this point, noting that the future owners of the land may seek a different name for the land, however the evidence of Ms King advised that "*Te Arawhiti*

*supports the insertion of Hāwea-Wānaka before Sticky Forest if that is [Te Rūnanga's] wish as we understand it is".*<sup>68</sup>

155. Mr Munro had noted in his s.42A Report that he was neutral on this point, and reiterated that position in his verbal response at the hearing because of the potential that a different name for the land may arise in due course, in particular because “*there is a PDP appeal process ongoing currently that relates to Sticky Forest and it may be that a formal naming preference is determined through that process*”.<sup>69</sup>
156. The Panel notes that there is no resource management impediment to accepting this submission, we have resolved to do so because, as noted by Ms Stevens, this reference “*better reflects the genesis of the block rather than simply the colloquial term used*”.<sup>70</sup>

### **Integration of provisions relating to adjacent land blocks**

157. The evidence of Mr Greaves (KLP3) and Mr Mackie (Bike Wānaka) both raised concerns in terms of PC54 as to what they considered was a lack of integration with the planning of adjacent blocks, and in particular between Northlake, Sticky Forest and Kirimoko. We consider that the issues raised in this evidence were appropriately addressed in Mr Munro’s s.42A Report that responded to their original submissions. We therefore adopt Mr Munro’s reasoning as to why PC54 should not be rejected on these grounds, but with particular reference to the following three factors:<sup>71</sup>
- There is no public plan change alternative that can be referred to or compelled.
  - Most of the Kirimoko and NSZ areas have been developed, and the opportunity for the planning of these areas as one (with Sticky Forest) “*has long-since passed*”.
  - Sticky Forest is subject to its own PDP appeal, while the NSZ is operative. Accordingly, “*there is a risk that the opportunity presented by PC54 to provide at least one means of access to Sticky Forest... could be foreclosed or at least significantly degraded*”.
158. Accordingly, we do not consider that the evidence of Messrs Greaves and Mackie provides any reasonable basis to reject PC54.
159. In this regard, we note a further integration matter arising from the Northlake Structure Plan map incorporated into the s.42A Report, which identifies an “*additional Required Road Links*” (s.42A recommendation)”. The basis for this amendment was set out in summary form by Mr Munro in his s.42A Report as follows:<sup>72</sup>

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<sup>68</sup> King, at [50]

<sup>69</sup> S.42A Report, at [12.22]

<sup>70</sup> Stevens, Evidence Summary, at p.2

<sup>71</sup> S.42A Report, at [12.3]

<sup>72</sup> S.42A Report, at [10.39]

*b. The western-most new required road shown on NIL's Structure Plan connecting to the Allenby Farm land should be extended southwards to approximately 30m from the NSZ's southern boundary. This has been directly marked up on the Structure Plan in Appendix 3. The Panel could also additionally extend the other required roads shown on the WFH Properties Ltd land (Allenby Farm) so as to connect them all together, although this is not formally recommended.*

160. Mr Munro's reasoning was that this would preserve the potential for a north-south linkage to Aubrey Road (to the south of the NSZ boundary) should the Sticky Forest owners and other stakeholders be able to secure this through a separate process.<sup>73</sup> We agree that providing the additional required road link running north-south to connect with NIL's proposed westernmost required road is the most appropriate way to achieve the objectives of the NSZ and in particular, objective 3.
161. The plan prepared by the Council to show this change has been produced using GIS and is included in the provisions at Attachment 2.

## Recommendations on Submissions

162. It is also necessary for us to set out our decisions with respect to the submissions received on the plan change. In terms of the particular topics raised in submissions (but were not the subject of evidence at the hearing), we adopt the assessment provided by Mr Munro in his s.42A report and addendum. In general terms, we have determined that the plan change should be approved, with modifications, so those submissions that opposed the plan changes are recommended to be rejected.
163. We have set out our decision on the submissions, and the relief sought in those submissions, at **Attachment 1** and these are based our findings set out above in respect of those matters addressed at the hearing, and our overall decision to approve the plan change. For the purposes of our Attachment 1, and in accordance with cl.10(2) of the RMA, we have grouped the submissions together under the headings that were used in the s.42A Report for consistency (and in the same order).
164. We also highlight in this regard that further submissions can only support or oppose an initial submission. We have not listed the further submissions, but our recommendations in respect of them necessarily reflects our findings on the primary submissions. For example, if a further submission supported a submission(s) that opposes the plan change and we have recommended that the initial submission(s) be rejected, then it follows that the further submission is also rejected.

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<sup>73</sup> Ibid, at [10.35]

## Findings with respect to Part 2

165. In terms of s.5 of the RMA, it is the Panel's finding that the provisions of PC54 are consistent with, and are the most appropriate way, to achieve the purpose of the RMA. In particular, PC54 will enable the efficient development of the site for residential activities while also protecting certain existing ecological and hydrological values as well as avoiding, remedying, or mitigating any adverse effects on the environment.
166. For all of the reasons set out in this decision, we are also satisfied the matters set out in ss.6 and 7 of the RMA have been addressed. PC54 and its provisions, as amended, have recognised and provided for, have had particular regard to and taken into account those relevant ss.6 and 7 matters.
167. Section 8 outcomes are also a particular focus for the plan change, and in this regard we agree with the s.42A Report assessment as to the way in which PC54 will deliver those outcomes. We agree that, although we have recommended that access to Sticky Forest should be subject to a different regulatory regime than sought by the Sticky Forest submitters, the plan change will support an ongoing process of Treaty settlement and redress. We conclude that the recommended provisions will address at the appropriate time the uncertainties and likely future limitations presented by the existing and future NSZ road network, and the effects on that network, while still providing for the objectives of the descendants of the Sticky Forest land to be realised.
168. Having considered all the evidence and relevant background documents, we are satisfied, overall, that PC54 has been developed in accordance with the relevant statutory and policy matters with regard to ss.32 and 32AA and Part 2 of the RMA. The plan change will clearly assist the Council in its effective administration of the District Plan.
169. Accordingly we find that, overall, the proposed plan change promotes the sustainable management of natural and physical resources in accordance with the purpose and principles of the RMA.

## Recommendation

170. In accordance with our delegation under s.34A of the Resource Management Act 1991, the Hearing Panel recommends that Proposed Plan Change 54 to the Operative Queenstown Lakes District Plan be **approved**, generally on the basis of the Plan Change as provided with the Applicant's reply, subject to those amendments that we have described in this decision.
171. In addition to the reasons set out above, the overall reasons for the recommendation are that Plan Change 54:
- (a) accords with and will assist the Council in carrying out its statutory functions and achieve the purpose of the RMA;

- (b) accords with Part 2 of the RMA especially in terms of s.8 of the RMA and enabling the future owners of Sticky Forest to provide for their social, economic and cultural well-being by way of enabling road access to a currently land-locked site;
- (c) gives effect to the partially operative Otago Regional Policy Statement 2019, and otherwise be in keeping with the proposed Otago Regional Policy Statement 2021;
- (d) gives effect to the National Policy Statement on Urban Development 2020 and the National Policy Statement on Freshwater Management 2020;
- (e) includes rules sufficient to manage the environmental effects of development that could foreseeably result from PC54, including in particular the avoidance, remediation or mitigation of adverse effects and the avoidance of any fundamentally unacceptable adverse effects;
- (f) includes objectives that are the most appropriate way to achieve the purpose of the RMA; and
- (g) includes policies and methods that are the most appropriate way to achieve the objectives, including after having had regard to their efficiency and effectiveness, and taking into account both the benefits and costs of those proposed policies and methods; and the risk of acting or not acting in the case of uncertainties that exist in relation to the future use and potential traffic generation that may result within the NSZ from Sticky Forest.

R Blakey and R Dimery

Independent Hearings Commissioners

13 October 2023

**Attachment 1** – Recommendations on Submissions

**Attachment 2** - Northlake Special Zone – PC54 Recommended Version (including Chapter 15 modifications)