

29 May 2014

Queenstown Lakes District Council
Private Bag 50072
QUEENSTOWN 9348

Attention: Ruth Joiner

Dear Ruth

NORTHLAKE SPECIAL ZONE - ODP PROVISIONS (Our Ref: 382654-332)

1. You have asked us to consider the provisions for Plan Change 45 (Northlake Special Zone) following their revision by Counsel for Northlake (Mr Goldsmith) in light of Judge Borthwick's recent decision on Plan Change 19. In that decision Judge Borthwick ruled that the provisions in Plan Change 19 relating to Outline Development Plans ("ODP") were ultra vires.
2. It is clear that the ODP provisions originally included in Plan Change 45 suffered from the same basic problem as those included in Plan Change 19, principally that a stand-alone ODP consent cannot be applied for as an activity per se, and compliance or otherwise with an ODP resource consent cannot be used to trigger a different land use status for a subsequent activity.
3. We have considered the changes to Plan Change 45 proposed by Mr Goldsmith and we consider that they are necessary and do address the "vires" issue. This review also considers and comments on the issues raised by Ms Jones in her review of those provisions¹.
4. In light of the matters raised by Ms Jones, and following further discussion with Mr Goldsmith, a number of changes are suggested to Mr Goldsmith's provisions². These are set out in the document attached to this advice³ and are also provided electronically for ease of future use.

Rule 12.x.4.3 (i)

5. There is an inconsistency in the defined terms "residential activity" and "residential unit". While possibly not intended, by definition, residential units are residential activities.
6. As we understand it, the purpose of Rules 12.x.4.3 (i) and (ii) is to consent the *activities* rather than the buildings that house them⁴. The rules have therefore been amended to exclude buildings. It then follows that for AAB1-B5 and D1, residential buildings are permitted activities⁵, in

¹ Ms Jones' memorandum to you dated 19 May 2014.

² We note or completeness, that the changes are agreed by the requestor as both appropriate and necessary to address the matters raised by Ms Jones.

³ Labelled Proposed Northlake Special Zone – Final Version with ODP Amendments 15/05/14 – Further amendments 27/05/14

⁴ See for example controlled activity rule 12.x.4.2.ii relating to buildings in Activity Areas C1 – C5.

⁵ Subject to compliance with relevant standards

AAC1-C5 buildings are controlled and in AAD1 non-residential buildings are restricted discretionary activities⁶.

7. Ms Jones mentions in her review the possibility of future applications being made for non-residential activities in AA's B and C, and how these might be assessed given there is no requirement for an application for non-residential activities – such as visitor accommodation to be accompanied by an ODP.
8. Any such non-residential activities in AA's B and C will be caught by site standard 12.x.6.1.i (Nature and Scale of Non-Residential Activities).
9. There are two options to address the lack of any requirement for an ODP for such activities. The first is that the site standard be moved to a zone standard, such that a breach of the standard renders the activity non-complying. We understand across the breadth of submissions made to the provisions of the plan change that there would be scope for this change.
10. The other option, if the standard is to remain as a 'site standard', is to add under the assessment matter for nature and scale of activities⁷ a further assessment matter requiring consideration of consistency with an ODP approved under Rules 12.x.4.3.i. or ii.

Rule 12.x.4.3 (v)

11. Upon reviewing this provision, we queried the scope for more than one residential unit on a site to move from a zone standard (breach of which requires a non-complying activity consent⁸) to a restricted discretionary activity. Mr Goldsmith agrees there is a scope issue here, and as such the standard has been reinstated as a zone standard.
12. As there is now no reference in the zone standard to residential units that were shown on an ODP (because of the vires issue), the rule now includes specific reference, as an exception, for retirement villages that might be consented in AA-D1 (retirement villages would otherwise be non-complying in AA-D1, because they constitute more than one residential unit on a site).

Rule 12.x.4.4 (i)

13. With respect an application providing for an ODP over all of the activity area, we note that this is a requirement of Rule 12.x.4.3.i and ii. The rule requires:

"Any application for consent under this rule shall include application for approval of an Outline Development Plan in respect of all of Activity Area....."

14. At present there is however no default provision – i.e. what happens if the consent application is not accompanied by an ODP for the entire activity area? To address this matter, the Discretionary Activity rule⁹ has been reinstated such that any application made for consent that does not include an ODP for the entire activity area is to be assessed as a discretionary activity.

⁶ Rule 12.x.4.3.iv

⁷ 12.x.7.2vii(n) – page 12.x-22

⁸ 12.x.6.2.xii

⁹ 12.x.4.4.ii

15. We have also suggested an amendment to Rule 12.x.4.5.viii (Non Complying Activities) so it is clear that the use of land in an activity area in the absence of a consent granted under Rule 12.x.4.3.i or ii in respect of all of the activity area is non-complying. The rule as amended reads:

viii *The use or development of land...in the absence of a consent granted under Rule.....in respect of all of that Activity Area.*

Rule 15.2.3.3 (ix)

16. We agree with Ms Jones, that the Rule might be better worded along the lines of

"..... – any subdivision of an Activity Area into more than one lot....."

Rule 15.2.3.3 (x)

17. As we understand this Rule (which is to be deleted as a result of the vires issue), the intention was that any subdivision that was inconsistent with an approved ODP would be discretionary. It seems that the amendments to Rule 15.2.3.3 (ix) maintains that position in relation to subdivisions applied for prior to an approval being obtained under Rules 12.x.4.3 (i) or 12.x.4.3 (ii).
18. The issue Ms Jones refers to (paragraph 15) arises after the ODP approval and the subdivision plan submitted is inconsistent with that ODP approval. In order to address this matter, it is proposed, as a consequential amendment that all subdivision be a Restricted Discretionary Activity, reserving to the Council the ability to decline an application for subdivision that is inconsistent with or undermines the integrity of an ODP approved under Rules 12.x.4.3 (i) or (ii).

Other amendments

19. Other amendments to assessment matters have been proposed in order to ensure that land use activities are appropriately assessed against any prior approved ODP¹⁰.
20. We are happy to discuss as required.

Yours faithfully

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¹⁰ Rules 12.x.7.2(ii)(d), (iv)(n), (v)(n),