

## SUBMISSION ON PUBLICLY NOTIFIED PROPOSAL FOR A PLAN CHANGE

**TO: Queenstown Lakes District Council**

- 1      Name of Submitters:    Ian Percy and Fiona Aitken  
  
   Ian Percy and Fiona Aitken Family Trust  
  
   Aitken's Folly Vineyard Limited  
  
   **(the Submitters)**
- 2      This is a submission on proposed Private Plan Change 46 (PC46), publicly notified on 19 March 2015.
- 3      The Submitters can not gain an advantage in trade competition through this submission.
- 4      The specific provisions of PC46 that the submission relates to are:  
         The entire Plan Change.
- 5      Our submission is:
  - a      Ian Percy and Fiona Aitken Family Trust owns a property at 246 Riverbank Road, Wanaka **(the Property)**:
    - i      The Property is situated directly to the south of the land that is the subject of PC46 and has a common (north/south) boundary with much of the PC46 land;
    - ii     The Submitters' north/north easterly aspect looks directly at the land that is subject to PC46;
    - iii    The PC46 land is located on the top of a ridgeline at the northern end of the Submitters' property;
    - iv     There is a 4 metre rise in elevation from the Submitters' Property to the PC46 land;
    - v      The Submitters' property is zoned Rural General;
    - vi     Ian Percy and Fiona Aitken reside on the property and operate a vineyard on the Property through Aitken's Folly Vineyard Limited.

District Plan review

- b It is inappropriate for the Council to be considering PC46 (a private plan change) when it is close to notifying its proposed District Plan review. PC46 in its present form has the potential to create an island of Low Density Residential land sitting within an area of Rural, Industrial and large lot urban zones. This is not sustainable management, or a logical zoning approach to this land or the development of this part of Wanaka.
- c The effects of any rezoning of this land must be considered in the wider district plan review, which will consider all development for Wanaka in the whole, including the location of the Wanaka urban boundary, all zoning, whether residential, industrial or otherwise, infrastructure and roading.

Wanaka Structure Plan

- d PC46 places excessive weight upon the Wanaka Structure Plan (WSP). The WSP is a non-RMA document that has been prepared without the rigour of a s32 analysis. It is an expression of Council's strategic intent for Wanaka's growth, now 8 years old. It has not been fully incorporated into the Operative District Plan, nor has the urban growth boundary (inner and outer) identified through the WSP process been incorporated into the Operative District Plan.
- e It is unsound resource management practice to base a plan change upon the "need" for the District Plan to reflect a non-RMA document.
- f The WSP does not consider the characteristics of specific sites within the strategic growth boundaries for Wanaka. Therefore a s32 analysis is necessary to determine the appropriateness of (in this case) a method; i.e. zoning.

Demand for Industrial and Residential Land

- g Section 5 of the Act requires Council to manage the use, development and protection of natural resources "in a way and at a rate" that allows people to provide for their social, economic and cultural wellbeing.
- h The first obligation of any plan change is that it achieves the integrated management of the effects of the use, development, or protection of land and physical resources of the district (sections 74(1)(a) and 31(1)(a) of the Act).

- i In order to perform its functions under s31 in a way that achieves the purpose of the Act, Council must consider whether there is a present need to apply a particular method (in this case a new special zone) to land.
- j The s32 report lodged with PC46 seeks to justify the plan change on the basis of the need to meet the demands of industrial activities and residential activities. There is no demonstrated demand for industrially zoned land or residentially zoned land identified in the s32 report, either now or in the foreseeable future. The lack of need for such land was also noted by senior Council officers reporting to the Council's Strategy Committee in August 2013 on the merits of the acceptance of the private plan change (**copy attached**).
- k The s32 analysis fails to identify and assess whether the content of the plan change is the most appropriate way of achieving the settled objectives and policies of the Operative District Plan and, in turn, the purpose of the Act. This analysis must be undertaken with particular reference to relevant sections of the Operative District Plan – for example, in the case of urban growth, PC46 must establish:
  - i An urban growth boundary, then
  - ii Demonstrate how much new urban land was sufficient (but no more than sufficient) to meet the identified needs.

PC46 fails to establish either of these points.

- l Rezoning land when there is unutilised or under-utilised land already zoned for the same purpose, leads to the inefficient provision of infrastructure and fails to provide for orderly and sustainable growth.
- m The nearby industrially zoned land on Ballantyne Road provides for around 40 years of demand at current rates.<sup>1</sup> This land includes around 5 hectares owned by the Requestor, rezoned as Industrial B by Plan Change 36 following a submission lodged by the Requestor through the PC36 process. The Submitters note that the acceptance of the Requestor's PC36 submission inappropriately and unlawfully extended the scope of PC36, the Council failing to consult with or notify neighbours of the increased scope of the plan change in that instance. The Submitters were significantly prejudiced by that PC36 process and outcome. The Requestor now seeks to advance its land interests, initially secured through the unlawful PC36 process just referred to, again to the prejudice of the Submitters.

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<sup>1</sup> Planner's report for Plan Change 36 dated 11 February 2011 page 25

Effects Upon the Submitters

- n The Plan Change fails to consider and manage the interface, relationship and transition from the proposed PC46 land to the Submitters' Property.
- o Given the topography of the land subject to PC46, the amenity of the Submitters' Property and the adjacent Rural Zone generally will be adversely affected in a way not anticipated by the relevant objectives and policies of the Operative District Plan. Those adverse effects include (without limitation):
  - i glare from vehicle lights;
  - ii noise;
  - iii street lighting;
  - iv loss of rural amenity due to roading and adjacent and relatively dense built form;
  - v loss of privacy;
  - vi loss of rural outlook;
  - vii reverse sensitivity.
- p The use of a Low Density Residential Zone directly adjacent to the proposed Industrial Zone fails to manage the transition from the urban fringe of Wanaka to the Submitters' Property, which is in the Rural Zone.
- q The plan change acknowledges reverse sensitivity issues by the provision of the open space area between the proposed Industrial and Low Density Residential Zones. However, there are also reverse sensitivity effects on any nearby residential neighbours from rural activities, for example frost fans and helicopters. The proposed open-space area terminates prematurely and fails to provide any set back between the Rural and Low-Density Residential Zones to help manage reverse sensitivity issues.

Landscape

- r The land subject to PC46 is a Visual Amenity Landscape.
- s The Plan Change fails to have particular regard to the amenity values associated with the landscape.

- t The PC46 land is located at the top of a ridgeline making the land easily visible from the surrounding Rural General and Rural Lifestyle Zones, along with Riverbank Road. The change in elevation notably increases the prominence of built form on the skyline in this environment and exacerbates adverse effects on the Submitters.
- u Some of the top edge of the terrace is currently screened by a plantation of trees located on the northern boundary of the Submitters' property. Those trees will be harvested in due course thus exposing more of the southern boundary of PC46. The Requestor cannot rely on those trees as providing any form of mitigation. The trees are not under the Requestor's control.

### Proposed Road 3

- v Proposed Road 3 is unnecessary. There are existing access points via Frederick Street, Road 1 (shown on the PC46 Concept Structure Plan) and Gordon Rd that provide safe access to Ballantyne Rd. These existing roads could be used to access any new industrial or residential area.
- w The existing roads available to the Requestor include Enterprise Drive, a new and wide road achieved as a result of the Council's unlawful incorporation of the Requestor's additional land into PC36 without notification to affected parties (see point above). There is no sound resource management reason for the Requestor to now add another road to this environment that causes adverse traffic effects in the Ballantyne Rd environment and adverse amenity effects on the Submitters.
- x The construction of Road 3 and would lead to a significant loss of rural amenity in the Rural General Zone and on the Submitters' property due to (among other things) noise and street lighting. Street lighting is particularly significant because of light-spill due to the PC46 land's elevation.
- y Road 3 raises significant road safety issues, which have not been addressed in PC46 and the further information presented. The Requestor's intention to resolve the final access arrangement for Road 3 through a side agreement with Council is inappropriate. Those traffic effects must be considered through the plan change process so that all parties can consider the environmental effects raised and how those effects will be avoided, remedied or mitigated.

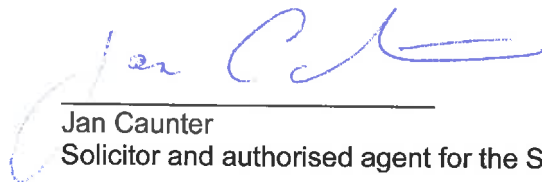
General

- z PC46 is inconsistent with the objectives and policies of the Operative District Plan.
- aa PC46 does not achieve the purpose of the Act.

**Relief**

- 6 The Submitters seek the following decision from the local authority;
  - a That Plan Change 46 be rejected in its entirety; or
  - b Should some or all of the Plan Change be approved, the Submitters seek the following particular outcomes and otherwise reserve their position:
    - i Road 3 be deleted from the plan change and an alternative access point confirmed that is much further away from the Submitters' property, to the northwest, closer to the existing industrial area. This access point could use existing roading (Road 1 - Enterprise Drive, Frederick St, Gordon Rd).
    - ii Appropriate earthworks, mounding and planting be provided to adequately screen the Submitters' property from any new activity, whether it be industrial or residential, approved through PC46;
    - iii The open space area be extended along the southern boundary of PC46 to provide a transition from the proposed Low Density Residential zone to the Rural General zone. This extended open space area should be a minimum of 50 metres in width, measured from the southern boundary of the PC46 land in a north-westerly direction;
    - iv The open space land remain free of all buildings and vehicle access.
    - v Any residential area comprise large lot residential rather than low density residential, with a prohibition on further subdivision and a maximum height on residential buildings of 6 metres. This large lot residential outcome is at least more consistent with the Council's current position on the rezoning of land under the proposed district plan review, notified to the public for consultation in early 2015.

- vi All buildings within the Industrial B area be limited to a maximum height of 6 metres.
  - vii Appropriate controls and methods be included within the Plan Change to address reverse sensitivity issues.
  - viii The rezoning of the land through PC46, in whatever form, be deferred until existing industrial and low-density residential land is utilised for its zoned or other use. Performance standards to assess the uptake of that land ought to be incorporated into the Plan. Until those performance standards are met, the current rural zoning should be retained and applications for resource consent assessed against the same as if the land were not subject to the deferred zoning.
- 7 The Submitters wish to be heard in support of their submission.
- 8 If others make a similar submission, the Submitters will consider presenting a joint case with them at a hearing.



Jan Caunter  
Solicitor and authorised agent for the Submitters

17/4/15  
Date:

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**STRATEGY COMMITTEE  
27 AUGUST 2013****REF: STR130801****Item: 1 - Proposed Plan Change 46 - Ballantyne Road Industrial and Residential Extension****Purpose – Decision Making**

- 1 To recommend that the Strategy Committee accept for processing Private Plan Change Request 46 (PC46) to re-zone an area of land off Ballantyne Road, Wanaka from Rural General to Low Density Residential and Industrial B.

**Executive Summary**

- 2 A private plan change request has been received from Orchard Road Holdings Limited to re-zone approximately 19.3ha of land in Wanaka from Rural General to Low Density Residential and Industrial B. Of this, 13.4ha is to be rezoned Low Density Residential, and 5.9ha is to be rezoned Industrial B. A structure plan specifies areas of open space of 3.3ha within the new Industrial B zoning.
- 3 The land subject to the request is relatively flat and is currently used for pastoral grazing. The proposed Low Density Residential re-zoning is estimated by the developer to enable approximately 96 dwellings. The proposed Industrial B rezoning will allow further industrial development adjoining the operative Industrial B zoning (created through Plan Change 36 on 14 March 2013).
- 4 There are no grounds for rejecting the request or stating that it should be progressed as a resource consent. While generally consistent with Council's strategic documents, there are no strong reasons for adopting it as a Council led plan change. There is a large amount of undeveloped Industrial B and Low Density Residential zoned land already available in Wanaka,
- 5 It is recommended that the Council accept the request for processing, and that the notification process commence once further transport information is provided.

**Recommendation**

1. ***That private plan change request 46 (Ballantyne Road Industrial and Residential Extension) is accepted for processing by the Council and proceed to notification, on the condition that further information in relation to traffic impacts is provided to the Council's satisfaction.***

Prepared by:

Blair Devlin  
Senior Planner (Policy)

Reviewed and Authorised by:

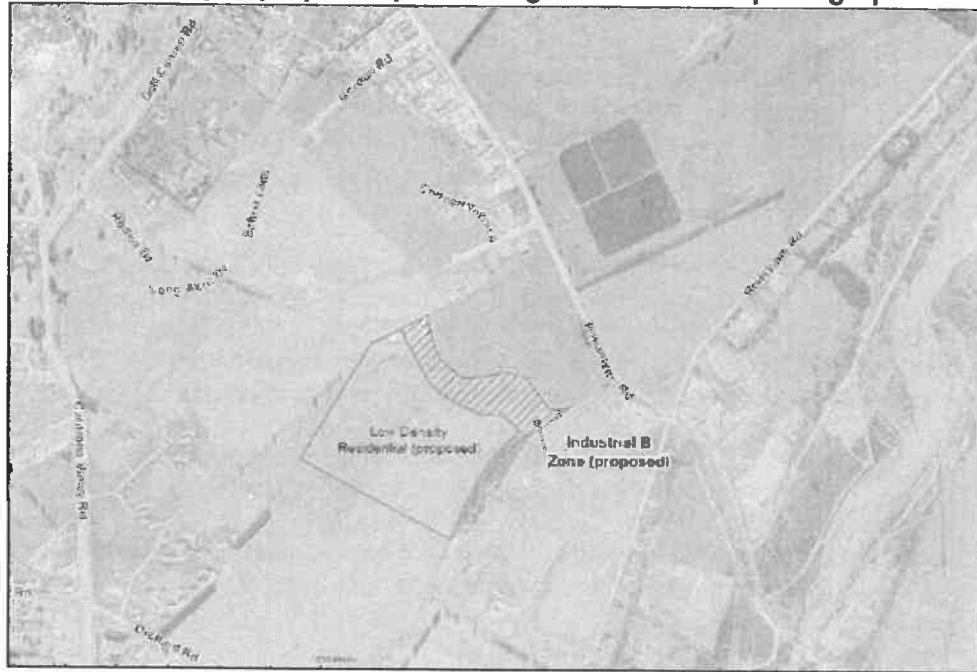
Marc Bretherton  
General Manager Planning &  
Development



## Issue

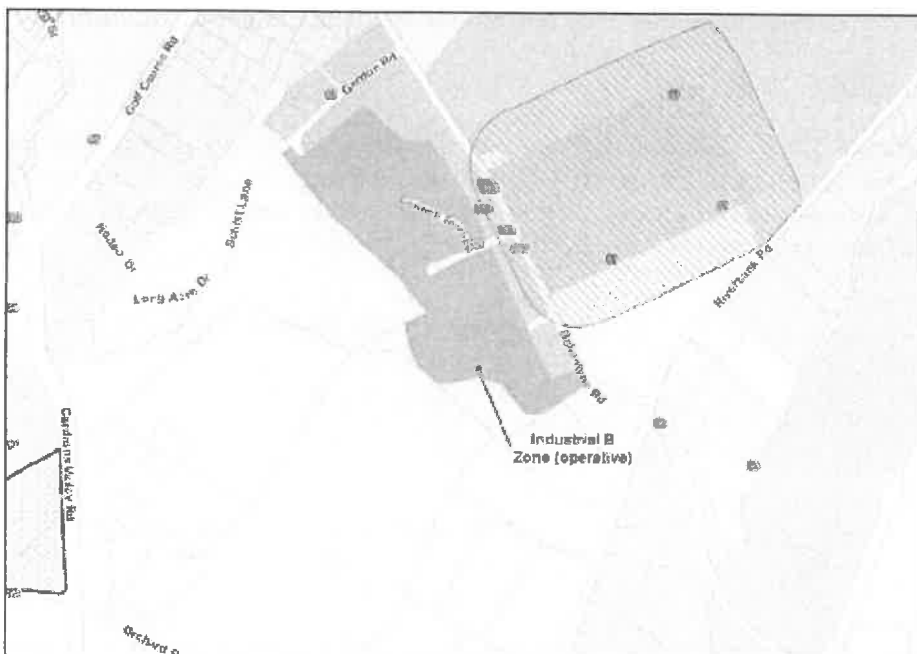
- 6 Private Plan Change 46 has been received from Orchard Road Holdings Ltd to re-zone approximately 19.3 hectares of land off Ballantyne Road, Wanaka, from Rural General to Low Density Residential and Industrial B.

**Figure 1 - Boundary of proposed plan change area on aerial photograph**

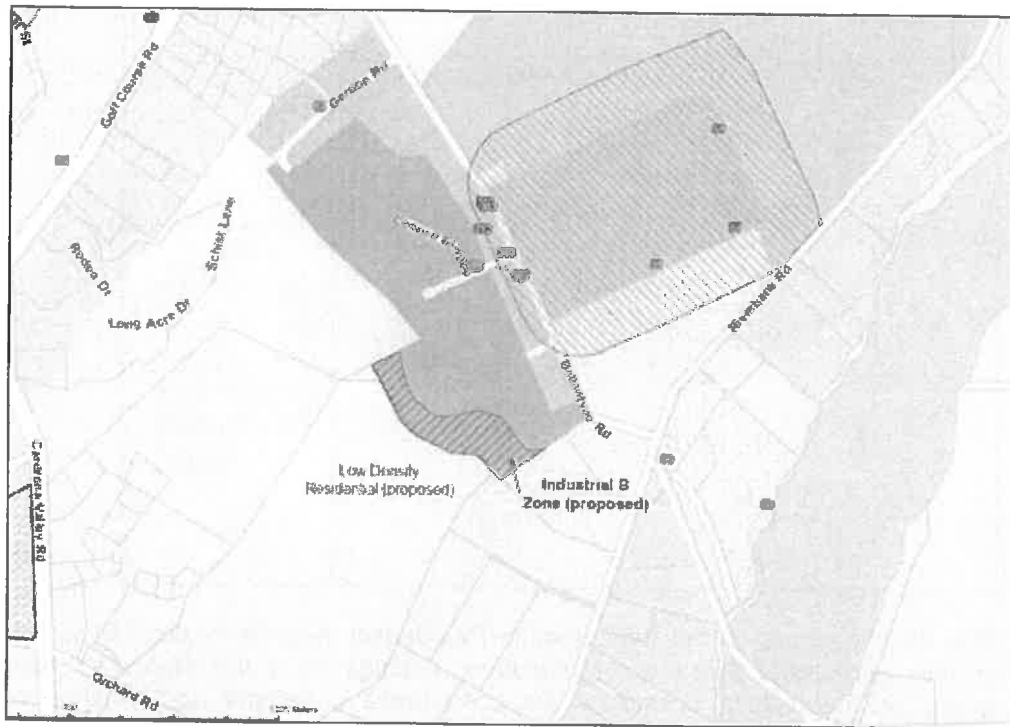


- 7 The land is currently zoned Rural General as shown in the operative planning map below. Figure 3 then shows the proposed planning map.

**Figure 2 - The operative planning map for the PC46 land**

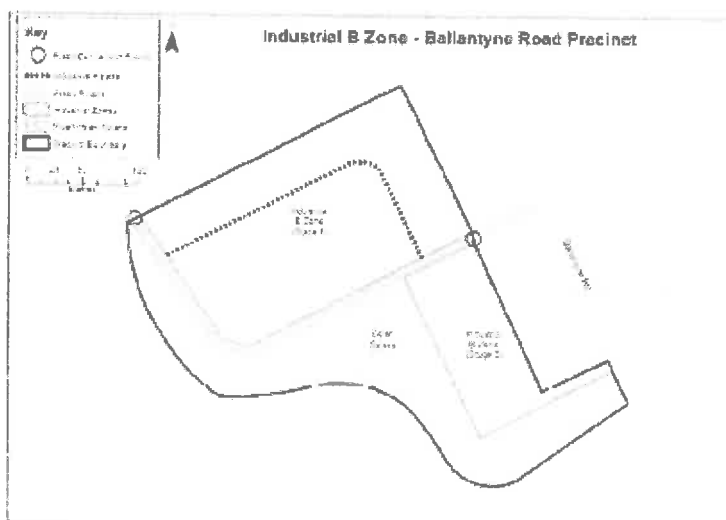


**Figure 3 - Proposed Planning map for the PC46 land**

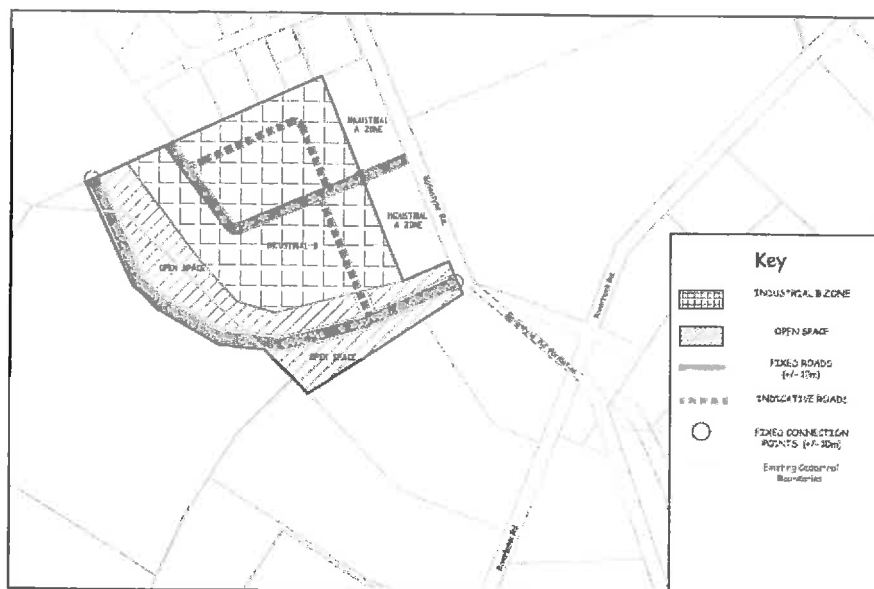


- 8 The purpose of the Industrial B zone is to *provide for industrial and service activities. Conversely, offices, residential and almost all retail uses are avoided in the zone in order to ensure that it does not become a mixed use zone where reverse sensitivity issues and land values make industrial and some business uses unviable within the zone.*
- 9 The proposed Industrial B rezoning is approximately 5.9 hectares immediately adjacent to the operative Industrial B zoning created through Plan Change 36 (a Council-led plan change). The operative 'Ballantyne Road Precinct Structure Plan' is also proposed to be altered. The operative and proposed Structure Plans for the Ballantyne Road Precinct are shown below.

**Figure 4 - Operative Industrial B Structure Plan - Ballantyne Rd Precinct**

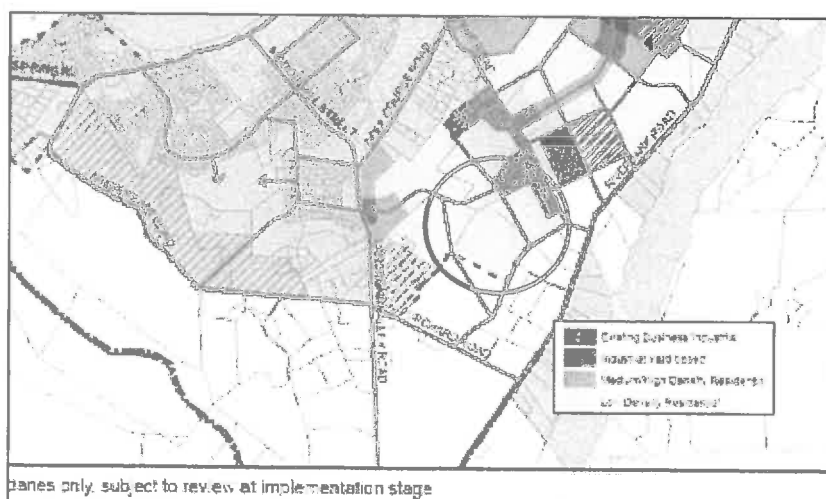


**Figure 5 - Proposed PC46 Industrial B Structure Plan - Ballantyne Rd Precinct**



- 11 The main purpose of the Low Density Residential zone is to provide for low density permanent living accommodation, maintaining a dominance of open space and low building coverage. The zone seeks to maintain and enhance the low density residential areas with ample open space, low rise development and minimal adverse effects experienced by residents. ....Other activities are permitted in the zone provided they meet environmental standards which keep the activities compatible with residential activity and amenity....
- 12 The proposed Low Density Residential rezoning is approximately 13.4 hectares. An open space area on the structure plan separates the two areas.
- 13 The future of the land subject to PC46 was considered as part of the Wanaka Structure Plan process, which concluded that the site sits within the Inner Growth Boundary (red hatched line below). The Wanaka Structure Plan 2007 also identifies the land subject to PC46 as future 'low density residential' land (shown as light yellow).

**Figure 6 - Wanaka Structure Plan 2007**



- 14 The plan change seeks to rezone land Industrial B where the Wanaka Structure Plan anticipates residential activity. The applicant has stated that they consider the land would be more appropriately zoned industrial given the demand for and suitability of the land for industrial activity; the ability to create a comprehensive industrial area with discrete road access and connectivity, and the ability to manage the transition between residential and industrial land.
- 15 In summary, the proposed plan change:
- Utilises the operative Low Density Residential and Industrial B zones.
  - Proposes a new structure plan for the 'Ballantyne Road Precinct' area.
  - Would enable approximately 96 dwellings in the area to be zoned Low Density Residential according to the applicant. It is noted that the Low Density Residential Zone allows subdivision down to 450m<sup>2</sup> so potentially more sites could be created.
  - Would enable additional industrial development adjoining the operative Industrial B zone.
  - Includes a concept plan and structure plan that shows provision of a potential east-west link road between Ballantyne Road and Cardrona Valley Road.
  - The operative rules of the Industrial B zone require that an Outline Development Plan be approved prior to any development or subdivision.

## Options

- 16 Under Clause 25 of the First Schedule, the Council has four options:
- a Reject the Plan Change
  - b Process the Plan Change request as a resource consent
  - c Adopt the Plan Change
  - d Accept the Plan Change (for processing).

## Assessment

### Reject the Plan Change

- 17 A plan change request *may* be rejected on certain grounds, as specified in Clause 23(6) and Clause 25 of the First Schedule:
- a This request is not considered to be frivolous or vexatious. It does not lack seriousness or set out to annoy others.
  - b The 'substance' of the request has not been dealt with by the Council or the Environment Court in the last two years. This area of land was not considered as part of Plan Change 36 - Industrial B zone.
  - c The change is not contrary to sound resource management practice. The Courts have not defined 'sound resource management practice' but confirm that it needs to be tied to the Act's purpose and principles and should be limited to only a coarse scale merits assessment.

- d The change would not make the District Plan inconsistent with Part 5 of the Act (relating to National Environmental Standards and other policies and plans).
- e The District Plan has been fully operative since 2007. The Industrial B zone has only been operative since March 2013. As this is an extension of the Industrial B zoning, with only minor changes to the actual provisions, this is not a suitable ground upon which the Council *may* reject the plan change.
- f Clause 23(6) clarifies that if the requestor declines to provide information sought by the Council, the plan change request can be rejected. The requestor has provided the further information sought to date.

18 It is therefore considered *inappropriate* to reject the plan change request.

#### **Process the plan change request as a resource consent**

- 19 Under this scenario the plan change request is converted to a resource consent application and is processed by the Council as such. This would mean:
- The requestor bears all the costs associated with a resource consent.
  - The Council has no influence over what is publicly notified.
  - The resource consent does not have effect until it is beyond challenge.
- 20 Having assessed the costs and benefits of this option, it is considered *inappropriate* for the following reasons:
- The size of the plan change request and the extent of deviation from the operative zoning would affect the integrity of the Rural General Zone.
  - The decision would be unlikely to provide the degree of flexibility required. For example, the Rural General zone requires building platforms and large setbacks from boundaries.
  - A resource consent must be given effect to within 5 years (unless an extension is provided) which could be unrealistic.
  - Under the resource consent process, an assessment of the options for the land is not required, as is the case under Section 32 of the Act.

#### **Adopt the Plan Change**

- 21 Under this scenario the plan change becomes a Council plan change and is processed as such. This would mean the Council has full control over the content and extent of the plan change, and bears the costs of managing and processing the plan change. The plan change would also have some 'weight' from the time it is notified (and this 'weight' tends to increase as the process progresses).
- 22 The Strategy Committee passed a resolution on 19 March 2013 stating:

*That pending an assessment of the implications for the District Plan Review created by the proposed changes to the Resource Management Act announced by Government, no further Council-initiated changes to the District Plan are notified".*

- 23 At this time, only a discussion document on proposed changes to the RMA has been released. Until the proposed changes to the RMA reach the stage of a Bill before Parliament, it is not possible to fully assess the implications for the District Plan Review.
- 24 The Council's current Long Term Plan (June 2012), and to a degree the Annual Plan (2013-2014), anticipate private plan changes, but do not anticipate doing any Council-led plan changes as a comprehensive review is required.
- 25 There is already a large supply of land zoned for industrial and residential activity in Wanaka.
- 26 It is therefore considered *inappropriate* to adopt and process the plan change request as a Council Plan Change.

### **Accept the Plan Change for processing**

- 27 Under this scenario the private plan change is publicly notified in the form prepared by the requestor. The Council processes the plan change request in accordance with the First Schedule subject to minor modifications. This means:
- The requestor determines the nature of the plan change that is notified, but it can be modified prior to notification with the consent of the requestor. The Plan Change has been modified/ improved in various ways since lodgement.
  - The Council takes a neutral position on the proposal at the time of notification; neither supporting nor opposing the proposal. The Council can however lodge a submission that will be considered by commissioners.
  - The plan change does not have any effect until the decision is operative.
  - The requestor bears the cost of the plan change process (except for costs incurred by the Council in relation to any Environment Court proceedings).
- 28 It is *appropriate* to accept the plan change request for the following reasons:
- Re-zoning this land is generally consistent with Council strategies but is not a priority given the large supply of industrial and residential land already available in Wanaka.
  - The Council will have the opportunity to obtain further advice and information through the submission process and the planners report.
  - The Council is able to make a submission on the merits of the plan change, if this is considered necessary.
  - The Council does not bear the costs of processing the plan change, until appeals are received, if any.
  - The plan change would have no weight until operative, reducing the risk of resource consent decisions pre-empting the outcome.
  - There is sufficient information to notify the plan change.

### **Discussion**

- 29 The most appropriate option is to accept the plan change for processing.

### **Local Government Act 2002 Purpose**

- 30 This Item relates to a process that is clearly outlined within the Resource Management Act. The acceptance for processing of this request for a private plan change accords with Section 10 of the Local Government Act 2002, in that it fulfils the need for good-quality performance of regulatory functions.

### **Significance of Decision**

- 31 The decision being recommended to the Strategy Committee is not considered significant under the Council's Policy of Significance:
- it will not incur more than \$2 million of budgeted or \$200,000 of unbudgeted expenditure;
  - it will not involve any transfer of ownership or control, or the construction, replacement or abandonment, of a strategic asset as defined by the Act or listed in this policy;
  - it will not involve the sale of the Council's shareholding in any council controlled trading organisation, or council controlled organisation; and
  - it will not, directly or indirectly, significantly affect the capacity of the Council to carry out, or the cost to the Council in carrying out, in relation to any activity identified in the Long-Term Council Community Plan.

### **Consultation - Interested or Affected Persons**

- 32 The requestor of a private plan change is responsible for undertaking consultation prior to lodging the request with the Council. Should the recommendation be agreed, the formal consultation provisions of the Resource Management Act will ensure all persons have the opportunity to comment on the application, and speak to their submission at a public hearing.

### **Relevant Council Policies and Plans**

- 33 The following Council policy documents are relevant to this Item:
- Queenstown Lakes District Plan
  - Queenstown and Wanaka Growth Options Study (2004)
  - Wanaka Structure Plan (2007)
  - Wanaka Land Demands (2007)
  - Dwelling Capacity Model (2013)
  - Wanaka Transportation and Parking Strategy (2008)
  - Growth Management Strategy (2007)
  - Annual Plan and Long Term Council Community Plan (2012-2022)

### **Delegations**

- 34 The Strategy Committee has the delegation to accept a private plan change.

### **Risk Management**

- 35 Assuming the Strategy Committee adopts the recommendation to *accept* the plan change request for processing, the Council incurs no costs until appeals are received, if any.

### **Attachments**

- A Proposed Plan Change 46 - Ballantyne Road Industrial and Residential Extension - available on the Council's website:  
[http://www.qldc.govt.nz/plan\\_change\\_46\\_ballantyne\\_road](http://www.qldc.govt.nz/plan_change_46_ballantyne_road)



