

BEFORE THE QUEENSTOWN LAKES DISTRICT COUNCIL

IN THE MATTER OF

the Resource Management Act 1991

AND

IN THE MATTER OF

of proposed Private Plan Change 51
to the Queenstown Lakes District
Plan

**OUTLINE OF OPENING LEGAL SUBMISSIONS FOR
PENINSULA BAY JOINT VENTURE LIMITED**

Dated 8 August 2016

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MAY IT PLEASE THE COMMISSIONERS:

Introduction

- 1 Plan Change 51 ("PC51") simply seeks to move the existing Open Space zone boundary at Peninsula Bay 150 metres to the north. This will result in the rezoning of 4.37 ha of land to Low Density Residential ("LDR"), enabling 24 new residential dwellings to be built while still preserving the ecological and recreational functioning of the remaining Open Space zone. In my submission, it is an outcome that appropriately meets the purpose of the Resource Management Act ("the Act") and could be colloquially termed as a "win : win" for Wanaka.
- 2 The rezoning will enable the creation of 24 residential lots on land which immediately adjoins a large area of existing LDR zoned land, most of which is already undergoing residential development. Aerial photos of the existing status of urban development in the area can be seen in the photos contained in Mr Croft's evidence¹. The adjacent Peninsula Bay development is a 342 lot subdivision and all but 5 lots have been sold. The Penrith Park land² to the north west of the plan change site has been subdivided into 113 sections, consistent with its consents³. As can be seen, the area is on its way to becoming heavily urbanised. Indeed, in his evidence, Mr Espie describes the area as suburban⁴.
- 3 Consistent with that, the site lies within the Wanaka Structure Plan Inner Growth Boundary in the Queenstown Lakes District Growth Management Strategy, and development of the site for residential purposes would be consistent with that strategy.
- 4 Moreover, the evidence on behalf of the requestor is that this site is readily able to absorb development of the nature and scope envisaged by the LDR zone provided certain safeguards are put in place. The requestor has accepted the recommendations of its experts and these matters now form part of the proposal as outlined in the evidence of Ms Taylor.

¹ Evidence of Paul Croft, Appendix B

² Penrith Park Special Zone

³ QLDC Monitoring Report for the Penrith Park Special Zone 2011, page 5

⁴ Evidence of Ben Espie at paragraphs 14, 15, 16, 22

- 5 As you know, there is no presumption as to the appropriate zoning of a site when considering a plan change. The existing Open Space zoning has no inherent priority over the alternatives. Rather decision-makers must start with a "clean sheet of paper"⁵, considering and ultimately determining the most appropriate zoning to achieve the purpose of the Act. In my submission the weight of evidence firmly favours the LDR zoning.
- 6 The evidence confirms that the LDR zoning sought results in a more efficient use of the land and the existing infrastructure, while appropriately managing effects. It confirms that the important landscape values of the site will be protected, there will be positive ecological effects and recreational opportunities will be increased.
- 7 At the same time, the additional 24 residential lots will provide an important contribution to the availability and diversity of accommodation options within the Wanaka area. This land is under the control of a very experienced developer. As Mr Croft describes in his evidence⁶, demand for sections in Wanaka is still exceeding supply and as an addition to an existing residential area, these sections could be readily made available in a short period of time should the plan change request be granted.
- 8 Overall, the purpose of the Act will be better achieved by the rezoning of this land to LDR. This is confirmed in the s32 and s32AA evaluations undertaken by Ms Taylor which conclude that the proposed zoning is appropriate and will enable the sustainable development of the site.

Amendments to the Plan Change

- 9 As noted above, additional recommendations have been made in the evidence produced by the requestor and these matters have now been included within the terms of the proposal.
- 10 As notified, the various development controls included in the plan change request were proposed to be secured through the use of land covenants. As sought by the Council in its submission, these controls are now proposed to be secured through rules which require

⁵ *Coatesville Countryside Residence Living Group v Rodney District Council* A077/09 at [9]; *National Investment Trust v Christchurch City Council* C041/05 at [14]

⁶ Evidence of Paul Croft at paragraph 61

compliance with a Structure Plan⁷. This method (use of rules with most of the detail shown in the Structure Plan) is a standard mechanism for controlling the development of land, and is preferred by the Council. The requestor accepts that.

11 A comprehensive suite of other amendments have also been made to the plan change following notification (within the scope of the plan change) in order to address issues raised in submissions and the Council's review. Those amendments are described in the evidence for the requestor⁸, and are reflected in the rules and the Structure Plan. The Concept Scheme Plan and the Landscape Concept Plan have also been updated to reflect these amendments.

12 By way of summary:

- (a) Lots 5 and 6 (which were located within the Outstanding Natural Landscape ("ONL")) have been deleted and will now remain Open Space zone. New tussock grassland planting is proposed on those former lots⁹;
- (b) The Lot 21 building platform has been relocated to fall outside the ONL¹⁰. As a result, only one building platform (Lot 4) now remains within the ONL;
- (c) The boundaries of Lots 4, 7 to 12 (inclusive) and 20 to 22 (inclusive) have all been amended and those lots reduced in size. The planting that was proposed to be undertaken within those lots will now be undertaken within land which will remain Open Space zone in order to address Council's concerns about the maintenance and longevity of the planting proposed¹¹;
- (d) The extent of grassland planting proposed on Lots 20 and 21 has been increased¹²;
- (e) Short tussock outside of the building platforms will no longer be able to be removed¹³;

⁷ As sought in the Council's submission. See evidence of Louise Taylor at paragraphs 5.12 to 5.16.

⁸ Evidence of Louise Taylor at paragraphs 5.4 to 6.2

⁹ Amended Landscape Concept Plan

¹⁰ The location and extent of the ONL was defined by the Environment Court in *Infinity Group and Thorn v QLDC* C010/2005 at [139]. Mr Espie's assessment is consistent with that decision.

¹¹ Evidence of Vicki Jones at paragraph 12.2(g)

¹² Amended Landscape Concept Plan

- (f) A 4.5m wide kanuka planting area is proposed along the north eastern edges of Lots 23 and 24¹⁴;
- (g) Planting of exotic vegetation species on Lot 4 and Lots 20 - 26 that reach a mature height of more than 2m is prohibited¹⁵;
- (h) The Landscape Concept Plan now requires transplant and seed collection for prostrate bluegrass and cushion pimelea;
- (i) The planting proposed both within the lots and within the Open Space zone will be undertaken by the developer prior to issue of s224c certificate. The developer will be required to maintain the planting within the Open Space zone for 5 years¹⁶;
- (j) Landowners will be required to maintain the planting within their lots in perpetuity¹⁷;
- (k) The development standards have been amended to more specifically control exterior cladding and finish¹⁸;
- (l) The width of the gravel walking paths has been increased to 1.5m wide¹⁹;
- (m) A new rule is proposed requiring a financial contribution of \$5000 per consented lot for the purpose of developing or maintaining tracks and trails in the Wanaka area to address any loss of future potential recreation opportunity²⁰;
- (n) Some parts of the existing mountain bike track shown on the Landscape Concept Scheme Plan will be the subject of minor upgrades as described by Mr Botting²¹;
- (o) The location of the proposed Bob Robertson memorial has been moved to near Lot 4 as sought by Council²².

¹³ Development Standard 15.2.6.3(xi)(a)(v)

¹⁴ Amended Landscape Concept Plan

¹⁵ Development Standard 15.2.6.3(xi)(a)(iv)(d)

¹⁶ Development Standard 15.2.6.3(xi)(iv)(a) – (c)

¹⁷ Development Standard 15.2.6.3(xi)(a)(v)

¹⁸ Development Standard 15.2.6.3(xi)(a)(iii)

¹⁹ Development Standard 15.2.6.3(xi)(a)(viii)

²⁰ Proposed new rule 15.2.5.2(iii)

²¹ Evidence of Michael Botting at paragraph 44

²² Ms Jones confirms at paragraph 10.4(l) of her evidence that location of the memorial in the vicinity of Lot 4 would address those issues.

- 13 Overall, as a result:
- (a) The size of the area of land to be rezoned is reduced from 6.11 ha to 4.37 ha. The land which remains Open Space zone and to be vested in Council is a significant 8.4 ha;
 - (b) The 24 lots proposed will range in size from 600² to 1100m²;
 - (c) The area of kanuka will increase by 5680m² and the quality of the planting will be enhanced;
 - (d) The total area of tussock will stay the same (at 7580m²) but the quality will be enhanced.
- 14 Together these amendments result in:
- (a) A reduction in visual, landscape and natural character effects;
 - (b) Reduced recreational effects; and
 - (c) Increased ecological gains.
- 15 In my submission these amendments are important. Not only do they respond appropriately and sensitively to matters raised by the Council and submitters during the process, but when viewed within the totality of the proposal they represent a significant environmental gain overall.
- 16 This proposal will better achieve the purpose of the Act than the status quo, particularly when one considers carefully what that status quo actually means. Zoning as Open Space does not necessarily in and of itself result in good ecological or recreational outcomes.
- 17 As you will have read in the evidence of Dr Bramley, he has very significant reservations about the sustainability of the existing tussock grassland at the site without substantial and ongoing attention to weed and pest control and the management of recreational users. All of that comes at a cost and will likely require significant future restrictions on how the site is used.
- 18 Mr Greenaway (Recreation and Tourism Planner) considers there is little likelihood that the existing informal cycle tracks will be upgraded, and doubts whether there will be much in the way of new

or additional recreation tracks in the absence of the plan change, regardless of the rate of growth in participation in cycling or walking. As Mr Croft notes in his evidence, the Open Space zoned land which the requestor has already vested has not been developed in this way.

- 19 Conversely, acceptance of PC51 would result in improvements in the existing tracks, resolution of walker and cycling conflict, financial contributions to the wider track network, protection of important ecological values and additional housing. The outcomes are certain, sustainable and secure.
- 20 Moreover, this hearing relates simply to the appropriate zoning of the land. As Ms Taylor notes in her evidence, the plan change is just the first step in the approval process for establishing dwellings and infrastructure on this site.
- 21 The District Plan rules set up a comprehensive two-step consenting processes which will ensure that all necessary detail is dealt with at the appropriate time. The first step is a resource consent for an outline development plan which will need to be prepared for Peninsula Bay North and will be based on the Structure Plan. This will be a discretionary activity allowing a full evaluation of effects. The second step relates to the subdivision resource consent for the lots themselves. A controlled activity (assuming all relevant standards are met), this consent will ensure that matters such as long term commitments are given effect to via consent notices on the subsequent titles. These resource consents will ensure that detail around planting and track construction (for example) will be carefully managed by the Council and will give effect to the relevant objectives and policies of the District Plan²³.

Background to Plan Change 51 – Variations 15 and 25

- 22 It is useful but not determinative to understand the history of the plan change site²⁴, particularly as it is referred to by some submitters. Both Mr Espie's evidence and the Officer's Report provide this detail.
- 23 It is important, however, to be clear that Council's decisions on Variations 15 and 25 do not bind you. This is a de novo hearing.

²³ Evidence of Louise Taylor at paragraph 13.1

²⁴ Described in paragraph 7 of Mr Espie's evidence

Further, and significantly, both the environment against which the most appropriate zoning for the site is to be considered, and the proposal in front of you, have changed significantly since previous variations. As Mr Espie describes in his evidence, the configuration of this proposal is very different from those considered in the previous variations and includes rigorous site specific development controls (as I have described). It is only as a result of these changes that Mr Espie is in a position to support the proposal. Your decision must be made with regard to the totality of the evidence in front of you today.

- 24 That said, the Council's decision to approve Variation 15 was appealed to the Environment Court. The Court granted that appeal partly due to the visual effects of the development proposed at that time. As part of its decision on that matter, the Court made a finding as to the location of the ONL. Dr Read would have you revisit and amend that finding in the context of this hearing. To do so, you would have to determine that the Court's decision at that time was incorrect. In my submission there is no evidence here to support such a finding.

Statutory Considerations

- 25 The matters to be considered in relation to plan changes are well settled²⁵. In the *Colonial Vineyard* decision, the Court set out all of the requirements and emphasised the different legal standards to be applied. Those relevant to consideration of the plan change before you are:

General requirements (Sections 74 and 75)

- (a) A district plan change should be designed to **accord with**²⁶— and assist the territorial authority to **carry out** — its functions²⁷ so as to achieve the purpose of the Act;
- (b) The territorial authority shall **have regard to** any proposed regional policy statement²⁸ and **give effect to** any operative regional policy statement²⁹;

²⁵ *Colonial Vineyard v Marlborough District Council* [2014] NZEnvC 55 at [17]

²⁶ Section 74(1) of the Act

²⁷ As described in s31 of the Act

²⁸ Section 74(2)(a)(i) of the Act

²⁹ Section 75(3)(c) of the Act

- (c) The territorial authority must **have regard to** any relevant management plans and strategies under other Acts³⁰.

Objectives (Section 32 test)

- (d) Each proposed objective in a district plan change **is to be evaluated** by the extent to which it is the most appropriate way to achieve the purpose of the Act³¹.

Policies and methods (including rules) (Section 32 test)

- (e) The policies are to **implement** the objectives, and the rules (if any) are to **implement** the policies³²;
- (f) Each proposed policy or method (including each rule) is to be examined, having **regard to its efficiency and effectiveness**, as to whether it is the most appropriate method for achieving the objectives³³ of the (operative) district plan **taking into account**:
- (i) the benefits and costs of the proposed policies and methods (including rules); and
 - (ii) the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods³⁴.

Rules

- (g) In making a rule, the territorial authority must **have regard to** the actual or potential effect of activities on the environment³⁵.

Section 75

26 In terms of the requirements of s75, Ms Taylor's assessment is that the plan change:

- (a) Accords with s74(1) and will assist QLDDC to carry out its functions (s31) so as to achieve the purpose of the Act (s72);

³⁰ Section 74(2)(b) of the Act

³¹ Section 74(1) and s32(3)(a) of the Act

³² Section 75(1)(b) and (c) of the Act

³³ Section 32(3)(b) of the Act

³⁴ Section 32(2)(c) of the Act

³⁵ Section 76(3) of the Act

- (b) Gives effect to the Otago Regional Policy Statement (s75(3)(c));
- (c) Has had regard to the Proposed Otago Regional Statement (s74(2)(a)(i)); and
- (d) Has had regard to relevant management plans and strategies under other Acts (s74(2)(b)).

27 Ms Jones disagrees with that finding on the basis that she does not consider the plan change would maintain and enhance the ecological and recreational amenity values of the site³⁶. In my submission that conclusion is not supported by the evidence.

Section 32

28 Ms Taylor has assessed the proposed new objective, policy and rule in terms of s32. She has correctly undertaken her assessment without any particular presumption as to the appropriate zone, rule, policy or objective but rather has assessed the optimum planning solution within the scope of the plan change, based on an evaluation of the totality of the evidence³⁷. In my submission, her assessment can be safely relied upon.

29 Section 32(3) does not necessitate an assessment against the policies of the operative District Plan, nor does it require an assessment of the proposal against the objectives or policies of the Proposed District Plan³⁸.

Effects

30 Ultimately, your determination as to whether this plan change is the most appropriate means of achieving the purpose of the Act must be determined by considering the potential effects of the subsequent development enabled by this rezoning (recognising of course that the acceptance of a Structure Plan to enable development is itself a fully discretionary activity). Such effects are then to be evaluated through an analysis of the benefits, costs and risks as required by s32. This requires consideration of the settled objectives in the District Plan.

³⁶ Paragraph 5.3 – 5.4 Section 42A Hearing Report

³⁷ Consistent with *Briggs v Christchurch City Council* EnvC C045/08 at [26]

³⁸ Stage 1 of the Proposed Plan review was notified in August 2015. The Open Space zone is not subject to Stage 1. There is no statutory requirement to evaluate PC51 against the provisions of the Proposed Plan in terms of s32.

- 31 When considering effects, very little to no weight should be given to the Proposed Plan given decisions on the proposed plan provisions are yet to be made.
- 32 The potential effects of the development that would be enabled by the rezoning are addressed below.

Landscape and Visual Amenity

- 33 Mr Espie's assessment is that a small part of the development will occur within the ONL. He considers that in terms of s6(b), the plan change will not diminish the ONL or a reasonable person's perception of it. He also notes, importantly, that the District Plan provisions do not seek to entirely exclude development within an ONL. In his expert opinion, the landscape character of the site itself would be substantially changed but that change would be confined in area and the visual effects would be minimal except for observers on the north side of Infinity Drive. The owners of that land were made aware of the potential rezoning before they purchased and none have made submissions. Mr Espie, an experienced and long standing local expert, confirms that effects on both landscape character and visual amenity have been well mitigated and he supports the plan change from a landscape perspective.
- 34 In Dr Read's view, the whole site is ONL. This is contrary to the decision of the Environment Court in C010/2005 which was made at a time when the whole area was zoned Rural. Mr Espie considers that Dr Read's appraisal is unduly negative and lacking balance. In my submission the considered evidence of Mr Espie is to be preferred.

Ecology

- 35 Dr Bramley's evidence is that overall, the proposed plan change will result in an increased area of indigenous vegetation and will have a positive effect on the terrestrial ecology of the site. The large area of new and enhanced planting proposed will reflect the pre-human vegetation of the site, as well as the natural successional outcome which he expects will occur there. The ecological functioning, diversity and resilience of the site will be improved, as will the local connection between patches of shrubland habitat. This is consistent with the District Plan which encourages the incorporation of existing

significant vegetation into developments, enhancement of native vegetation and increased connectivity and ecological linkages.

- 36 Ms Palmer's view is that the status quo (but with the qualifier of improved custodial stewardship) protects the ecological values and is a better way to achieve Part 2 of the Act. In Dr Bramley's opinion, the degree of improved custodial management required would come at significant cost, and may also restrict the future recreational use of the site. It may also, of course, simply never happen.

Recreation

- 37 As described in the evidence of Mr Croft and Mr Greenaway, the Open Space zoned land adjoining the plan change site is currently used for informal biking and walking. Tracks have been formed through the area on an ad-hoc basis by the gradual removal of vegetation, repeated use of the then-cleared space, and progressive widening over time³⁹. At present, those tracks are on private land and cannot be said to have been "constructed" in any sense of the word, let alone to any particular standard. Mr Botting indicates in his evidence his discomfort with the safety of some parts of those tracks⁴⁰. Dr Bramley also notes the ecological damage that has occurred as a result of the approach taken by recreational users⁴¹.
- 38 It is very important to be clear that, other than undertaking some upgrades of the bike track shown on the Landscape Concept Plan (for safety purposes), the existing informal biking and walking tracks are not affected by the plan change. This has been the subject of much misinformation in the community and it is important to the requestor that the correct position is made plain in the course of this hearing.
- 39 Moreover, while the plan change site itself is currently used for general wandering by walkers (which would be affected) it is important to note that this current informal use occurs on private property with no right of access at the present time. Should the plan change be refused, the plan change site may vest in Council if certain conditions are met. There can, however, be no certainty that those conditions will be met. As such the existing environment (for the

³⁹ Evidence of Michael Botting at paragraph 46

⁴⁰ Evidence of Michael Botting at paragraphs 43, 44, 46

⁴¹ Evidence of Dr Gary Bramley paragraph 46

purposes of an effects assessment) is an area of privately owned Open Space land that is informally and unlawfully used by walkers from time to time. The future environment provides for new walking tracks that avoid conflict with cyclists and maintain a high value experience.

- 40 Mr Greenaway confirms that there will be no change to the existing scale of tracks, and that screen planting will mitigate views of new residences from the existing and proposed tracks, such that the amenity experience of future users of the Open Space zone will be a high value one.
- 41 It is acknowledged that there will be a 4.37 ha reduction in the extent of the Open Space zone as a result of the plan change. This will reduce the scale of open space potentially available for recreation and as raised by Ms Galavazi, may affect the potential for future trail development options. However in Mr Greenaway's view, it is unlikely that this land (whether or not it is rezoned) will ever be the subject of any significant trail development in the future. The financial contribution rule proposed addresses any residual effect in terms of the loss of potential future development opportunity and enables trail development in appropriate alternate locations.
- 42 In Ms Galavazi's view, the plan change should be put on hold until the Parks Strategy is adopted in late 2016. We have not been able to locate a copy of the draft Parks Strategy but note that this land, while currently zoned Open Space, is neither controlled nor owned by the Council and as such could not be considered a critical part of the future Parks Strategy. The structure of the plan change is such, however, that future funds paid by the developer in accordance with the financial contribution rule may be of benefit to implementation of the Parks Strategy in future.
- 43 Ms Galavazi is also concerned that if Sticky Forest is rezoned and developed in future, the plan change land would see more use. There is no evidence before you as to the potential for future rezoning and development of the Sticky Forest land, and Sticky Forest is not relevant to your assessment of this proposal.

Planning

- 44 Ms Taylor has undertaken a very thorough and balanced assessment of the proposal, as required by s32, and concludes that the rezoning will achieve the purpose of the Act.
- 45 It is acknowledged that Ms Jones's evidence was prepared before the majority of the amendments now proposed were made. However, in preparing her evidence, Ms Jones has placed considerable, and in my submission, inappropriate focus and reliance on the content of submissions. Moreover, the summary drawn from some of the submissions⁴², and distilled from some of the Council report writers⁴³, appears to be overstated.
- 46 Ms Jones attempts to quantify the value of the biking and walking industry to Wanaka's economy and the extent to which this site could contribute to that value over time. She does this in order to support her view that it would be "short-sighted to reduce this area of open space zoned land and that doing so would not assist in providing for long term economic benefits to the community". In her opinion, "there are considerable economic benefits to be gained by continually expanding a diverse range of walking and biking opportunities in the Wanaka area". While this may be true, there is no expert economic evidence before you which would quantify these assertions. Moreover and importantly, there is also no certainty that the land will be vested unless certain conditions are met, or that the land will be used in a certain way if it were to be vested.
- 47 Ms Jones also refers to the expectation of some submitters that the land will be vested. Whether or not the plan change land is required to ultimately be vested as reserve is not before you. Your task is simply to determine the most appropriate zoning.

⁴² For example Ms Jones states at paragraph 14.1 of her evidence that "a large number of submitters raise this issue (inconsistency with Part 2 of the Act and the District Plan objectives and policies) as one reason for requesting that the plan change be rejected". However very few of the submissions in fact refer to this.

⁴³ For example Ms Jones states (at paragraph 10.9(c) of her evidence) that she is of the opinion that the plan change will not provide adequate useable land to provide for the 'rapidly growing' number of recreational users. However Ms Galavazi does not refer to the use of the land as rapidly growing. She states that (on page 2 of her report) that she anticipates that the reserve (if vested) will become 'increasingly popular'.

Consistency with Part 2 of the Act

- 48 You must also assess the plan change under Part 2 of the Act.
- 49 The purpose of the Act is to promote the sustainable management of natural and physical resources. This is the over-arching purpose that guides authorities exercising functions under the Act. In achieving this purpose, such authorities:
- (a) Must 'recognise and provide for' various matters of national importance which, relevantly, include the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development (s6(b)) and the 'protection of areas of significant indigenous vegetation' (s6(c)); and
 - (b) Shall have particular regard to 'other matters' which, relevantly, include the efficient use and development of natural and physical resources (s7(b)); the maintenance and enhancement of amenity values (s7(c)); the intrinsic values of ecosystems (s7(d)); and the maintenance and enhancement of the quality of the environment (s7(f)).

Section 6

- 50 Section 6(b) has been properly recognised and provided for in the PC51 provisions. Your assessment in respect of s6(b) must be reached in terms of the overall criteria of s5 which does not mean that in every case, whatever the level of modification, the remaining level of natural character must be maintained⁴⁴. Development becomes inappropriate when it diminishes in any significant way the ONL or a reasonable person's perception of it⁴⁵. Mr Espie's evidence is that the ONL, and the reasonable person's perception of it, will not be diminished in that way⁴⁶.
- 51 In terms of s6(c), Dr Bramley considers that the areas of indigenous vegetation on the site are small and degraded and can only be considered significant at the local or district scale. Dr Bramley's evidence is that outcome for this vegetation is better if the plan change is approved.

⁴⁴ *Doves Bay Society Incorporated v Northland Regional Council* Env C C126/02 at [51]

⁴⁵ *Richard Henry Estate Limited v Southland District Council* Env C C022/03 at [60]

⁴⁶ Evidence of Ben Espie at paragraph 85

Section 7

52 The evidence on behalf of the requestor is clear that:

- (a) This proposal is an efficient use and development of natural and physical resources (s7(b));
- (b) Amenity values will be maintained and enhanced (s7(c)); and
- (c) Particular regard has been had to the intrinsic values of ecosystems when formulating the proposal (s7(d));
- (d) The quality of the environment will be maintained and enhanced (s7(f)).

Submissions

53 As noted in Mr Espie's evidence, many of the submissions on the proposal are identical and as such the issues can be clearly identified. They relate mainly to effects on recreation and visual amenity effects. Only two of the submissions (Council and Forest and Bird) raise ecological effects in any detail.

54 Many of the submissions which seek that the plan change be declined are concerned about a loss of existing biking or walking tracks and effects on existing general recreational use of the land. The evidence for the requestor makes it clear that the existing tracks will not be affected. New walking tracks will be created to enable separation of cyclists and walkers, and a new section of mountain bike track will also be created as agreed with ATN, Bike Wanaka and Council.

55 The impacts of the rezoning on views from the trails have been addressed. Screen planting will mitigate views of new residences from the existing and proposed tracks, such that the amenity experience of future users of the Open Space zone will be a high value one⁴⁷.

56 Some of the submitters question why the zoning of the land can be revisited at all. The Resource Management Act provides for this, as well as a fully public process for the determination of plan changes. There is nothing untoward in the lodging of this plan change. The

⁴⁷ Evidence of Rob Greenaway at paragraph 15(j)

environment is not static and nor is our planning framework. The current planning framework is being revisited now as part of the plan review. This is to be expected.

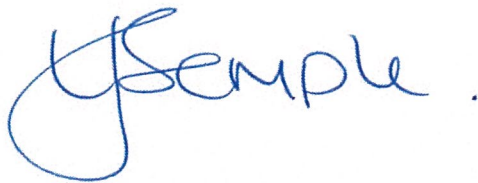
- 57 Some of the submissions claim that there is insufficient demand for additional residential land to be rezoned, and therefore the plan change should be declined. Mr Croft's evidence is that there is demand for this land. However it is not a requirement of the Act to demonstrate "need" or "demand". The Act is enabling, and requires adverse effects to be appropriately avoided, remedied or mitigated. It does not (yet) require a matching of demand with provision of zoning.
- 58 Some of the submissions also query whether the rezoning of this land may create some sort of precedent. The Council's submission also raises this issue⁴⁸. As noted in Ms Jones' report, the approval of a plan change does not create a precedent. Each case must be determined on its merits.
- 59 Council's submission seeks that the plan change be rejected unless the panel is assured of certain matters, including ensuring that:
- (a) The remaining Open Space zoned land is commensurate with the scale and intensity of the Peninsula Bay subdivision and the needs of the community;
 - (b) The LDR zoning is appropriate given the landscape sensitivity and proposed methods to manage development;
 - (c) The proposed planting will provide benefits that address the loss of existing vegetation and that this planting is viable;
 - (d) The earthworks required are acceptable in terms of effects on the ONL.
- 60 All of these matters have now been comprehensively addressed.

⁴⁸ QLDC Submission, 1(a)

Conclusion

- 61 The purpose of the Act is better achieved if this land is rezoned as sought. The proposed LDR zoning represents a logical and efficient extension of the existing LDR zone. It is consistent with Council strategies of urban consolidation and accommodating urban growth by the development of compact urban forms centred on existing settlements. The Structure Plan mechanism and the proposed rule framework will ensure that the site is developed in a way that maintains and enhances amenity values and the quality of the environment.
- 62 In my submission, PC51 can, and should, be granted.
- 63 The requestor's evidence has been pre-circulated and its witnesses are available to answer the Commissioners' questions in the following order:
- (a) Mr Paul Croft, managing director, Infinity Investments Limited;
 - (b) Mr Mike Botting, surveyor;
 - (c) Mr Ben Espie, landscape expert;
 - (d) Dr Gary Bramley, ecologist;
 - (e) Mr Rob Greenaway, recreational planner; and
 - (f) Ms Louise Taylor, planner.

DATED this 8th day of August 2016

A handwritten signature in blue ink, appearing to read 'L J Semple', is written above a horizontal line.

L J Semple / M A Thomas

Counsel for Peninsula Bay Joint Venture Limited