

Supplementary Evidence

For Hearing commencing 8 August 2016

Report dated: 9 August 2016

Plan change 51 - Peninsula Bay North

Prepared by:

**Vicki Jones on behalf of the Queenstown Lakes District
Council**

1. INTRODUCTION

- 1.1. This supplementary evidence serves three purposes;
 - a. To respond to various points raised by the panel during the hearing
 - b. To respond to various points raised by legal submissions and other experts
 - c. To respond to the amended proposal, as outlined in Ms Semple's legal submissions.
- 1.2. I will also verbally highlight a number of minor corrections to my s 42A report.

2. RESPONSE TO POINTS RAISED BY THE PANEL

- 2.1. This section is structured into the following headings:
 - a. The reasoning behind the Open Space Zone (OSZ)
 - b. The ultra vires nature of the Outline Development Plan (ODP) provision and the implications of this.

The reasoning behind the OSZ

- 2.2. Page 15 of the decision on Variation 25, which is attached to Dr Read's supplementary evidence, states the following under the "consideration" heading:

"Variation 25 respects Environment Court decision C010/2005, and excludes all of that land identified by the Court as sensitive from the proposed Low Density Residential Zone. Instead, it rezones those more sensitive areas Open Space Zone, which provides far greater protection than Rural General Zoning.

Part 12.1 of the Section 32 report finds that retaining Rural General Zoning is not the most appropriate option".

- 2.3. That comment aligns with my recollection at the time which was that a) Rural General zoning did not necessarily prevent development and that such urban development was not suitable in this location. As I have mentioned elsewhere, while the option of vesting the OSZ was not precluded, the alternative of securing public access through easements over the land (presumably in gross) was, if anything, the favoured option at that time for cost saving reasons and in recognition that it was land that was not appropriate for built form and served a valuable public access function. There was certainly, from my recollection, an element of compensation being made in lieu of rezoning those parts of the Rural General zone that had the ability to absorb development as low density residential (LDR).
- 2.4. As recorded in the District Plan¹, the OSZ has a purpose of protecting landscape values, natural character and informal open space to be used for passive recreation

¹ Purpose 20.1.1 and Objectives 20.1.2

and objectives of protecting and maintaining natural ecological values and the open appearance, and enabling public use of the OSZ for passive or informal recreational activities.

- 2.5. I also note that the intention from a district-wide perspective was to utilise the OSZ in other parts of the District Plan in order to ensure a hard urban edge, public recreational use, and landscape protection without the threat of ad hoc lower density, clustered, or rural residential typologies encroaching into that land.

The ultra vires nature of the ODP provision

- 2.6. To assist the panel with understanding the ultra vires nature of the existing ODP rule in the District Plan, I can advise that the Environment Court's third interim decision C93/2014² in relation to plan change 19 to the Queenstown Lakes District Plan made a finding on this matter.
- 2.7. In summary, that decision found that the rule, which I recall as being very similar to that which applies to Peninsula Bay, was ultra vires because the activity status of consequent consents (e.g. landuse and subdivision) was then determined by whether it was consistent with an ODP which sat outside the District Plan. Since that time, to my knowledge no other plan change in this district has utilised or sought to carry over those provisions but, rather, have used alternative means to achieve similar discretion or control over the outcomes³. I have not had the opportunity during the course of the hearing to consider how the matter would be best dealt with in this instance.
- 2.8. In terms of whether it is necessary to retain the ODP rule in respect of this (sub) zone, I agree with Ms Taylor that there are complications (including scope issues) with simply removing it due to the fact the rule relates to the whole of Peninsula Bay and there is already an ODP consent involving this land. Presumably on the face of it there would be scope for you to specifically exclude the Peninsula Bay north (sub) zone from the rule.
- 2.9. In response to another query of the panel, I can also advise that, in my opinion, the following matters that are currently captured by the ODP stage but would not be captured by the proposed rules or Structure Plan if the ODP stage were removed are as follows:
- a. There would be limited ability to control landscaping within the road reserves within the Peninsula Bay North (Sub) Zone, although general matters of control

²² <http://www.qldc.govt.nz/planning/district-plan/district-plan-changes/plan-change-19-frankton-flats-b/>

³ For example: Plan Change 19 (Frankton Flats), Plan Change 44 (Hanley Downs) and Plan Change 45 (Northlake)

at the time of subdivision do provide for control over the provision for streetscape planting within the road and public spaces⁴.

- b. There would be no mechanism for ensuring the appropriate provision of and location of easements for public access purposes throughout the Open Space Zone, and their relationship to the Low Density Residential Zone, and no ability to refuse a consent application that failed to provide such easements or vesting.
- c. There would be no ability to re-check the visibility of dwellings from the lake at resource consent stage.
- d. There would be no requirement to provide a statement from the Wanaka Urban Design Panel evaluating the application or a record of the outcomes of a public open day.

2.10. In my opinion, in order to overcome the 'gaps' created by the removal of the ODP stage, should the panel wish to do so, point a) above could be added to the Structure Plan and a standard imposed requiring a landscape plan to be approved (as discussed further below); point b) could need to be added to the subdivision rules (vesting or easements); point c) is probably unnecessary if the panel are satisfied the visibility is appropriate; and point d), while potentially raising vires issues, could be added to the Structure Plan or a rule or matter of control in terms of subdivision in this area.

3. RESPONSE TO POINTS RAISED BY LEGAL SUBMISSIONS AND OTHER EXPERTS

3.1. This section covers the following matters:

- a. The growth in users of the reserve land
- b. The vesting of the land as reserve
- c. Whether the land is within the current and future Urban Growth Boundary (UGB)
- d. The resource consent process following the plan change and what discretion/control that provides.
- e. The adequacy of the provisions and reliance on the Structure Plan to achieve the desired outcomes.⁵

3.2. Ms Semple raises the concern that I state, at paragraph 10.9(c,) that the plan change will not provide adequate useable land to provide for the rapidly growing number of recreational users, citing that this is not substantiated by Ms Galavazi's report. To clarify, I rely on the statistics cited at my paragraphs 15.4 and 15.5 and am referring to the rapid growth in recreational users per se (as a function of the rapidly increasing tourist and resident population growth and the fact that cycling and walking amongst both types of users is becoming increasingly popular). So Ms Semple is correct that I have no evidence that use of this area is rapidly increasing but, rather, I draw the

⁴ 15.2.17.1 and Assessment Matters 15.2.17.4

⁵ Evidence of Louise Taylor, paragraph 5.17

conclusion that all public spaces (when it is vested or easements granted) will rapidly become increasingly well used over time in the Wanaka area.

- 3.3. While discussing comments made in relation to these paragraphs of the s 42A report, I also note for completeness that the economic benefits to Wanaka cited in paragraphs 15.4 and 15.6 derive from MBEI's monthly regional tourism estimates⁶⁶, which show the annual spend in the Wanaka area to be \$399,000,000.00 for the last 12 months. I also wish to record that I was very clear in my s 42A report about the difficulties around quantifying the benefits of the passive recreational industry to Wanaka but stand by my overarching conclusions. For the record, despite having an economics major from Massey University I confirm that I do not profess to be an expert in economics but consider it important to highlight the reasonably foreseeable recreational needs of current and future generations and the potential benefits thereof.
- 3.4. Ms Taylor⁷, along with other experts, states numerous times that the land is privately owned, that no public right of access exists over it, and that public access is provided at the liberty of the landowner. This is despite the fact that, as you are now well aware, there has been a condition⁸ of consent since RM060929 was issued in 2007, requiring that this be vested in the Council (and that such vesting may occur in stages). In Ms Taylor's paragraph 11.21, she contends that PBJV could simply keep the last few lots in the same ownership as the open space land, therefore retaining it in private ownership in perpetuity. Mr Botting makes a similar assertion in his evidence. I interpret what they are saying is that the title of lot (x) could simply never be obtained and therefore condition 11 would never need to be fulfilled. While that may be possible, you would need to obtain further advice as to whether that is the case, and particularly whether it is in accordance with the condition that "this vesting may occur progressively in stages that match the staging of the subdivision" (my emphasis added). Whether withholding the vesting (and not replacing it with easements) of such a large piece of land due to 1 or a few sections not having been titled seems inconsistent with the commensurate intention of the condition in my view.
- 3.5. I do agree that through a Variation to condition 11 of the ODP consent (RM060929) the applicant could apply to achieve this end result however, I note that pursuant to Objective 15.1.3.6 and the associated policies⁹, Objective 20.1.2¹⁰ and the associated

⁶⁶ <http://www.mbie.govt.nz/info-services/sectors-industries/tourism/tourism-research-data/monthly-regional-tourism-estimates>

⁷ Evidence of Ms Taylor, paragraphs 9.28, 11.21, 11.22, 11.30(b), 12.32(a),

⁸ Footnote 8, s 42A report

⁹ 15.1.3.6 - Objective 6 - To ensure effective public access is provided throughout the Peninsula Bay land.
Policies:

6.1 To ensure that before any subdivision or development occurs within the Peninsula Bay Low Density Residential Zone, a subdivision consent has been approved confirming easements for the purposes of public access through the Open Space Zone.

policies and implementation methods; and to Rule 7.5.3.3(iii)¹¹, that public easements are clearly anticipated; are a matter of discretion at the ODP stage; and would in my view be required to be provided throughout this part of the open space land as part of any variation to the existing condition. I note that the activity status of varying the ODP consent is discretionary (and a new ODP is restricted discretionary) and could therefore be declined.

- 3.6. Ms Taylor¹² and other experts state that the site is within both the current and future UGB. While it is correct that it is within the UGB shown in the Proposed District Plan, this document is irrelevant to these proceedings, there is no UGB in the operative District Plan, which is the relevant plan in this case, and while it is within that UGB shown in the Wanaka Structure Plan (2007) that is not a plan or strategy developed under another Act and therefore is irrelevant in the consideration of this plan change. I also make the point that there are other (less natural but extensive) open spaces within the UGB, as there should be in a well-planned urban area and as such, in my view, there should be no presumption that all land within the UGB is therefore necessarily to be developed for urban purposes.
- 3.7. With regard to the two step resource consent process that will follow the plan change, if approved, I am not as confident that Ms Taylor that it will necessarily ensure that all the effects are managed in the manner that is intended and anticipated in the Requestor's (collective) evidence. While I concur with much of Ms Taylor's assessment of how the Resource Consent process would progress¹³, I note that in relation to planting, a) at the

6.2 Within the Peninsula Bay site, to ensure that public access is established through the vesting of reserves and establishment of easements prior to any further subdivision.

6.3 To ensure that easements for the purposes of public access are of an appropriate size, location and length to provide a high quality recreation resource, with excellent linkages, and opportunities for different community groups. In addition to the above, refer: Open Space Zone Objective 2, Part 20.

¹⁰ 20.1.2 Objective 2: To enable public use of the Open Space Zone for passive or informal recreational activities.

Policies:

2.1 By ensuring public access is available to land within the zone.

...

Implementation Methods

(i) District Plan

(a) Rules

(ii) Other methods

(a) Public access easements

(b) Covenants

(c) Deeds of agreement

¹¹ iii Outline Development Master Plan – Peninsula Bay

Within the Low Density Residential Zone at Peninsula Bay, the Outline Development Plan of the Low Density Residential Zone and the adjacent open space zone lodged with the Council pursuant to Rule 7.5.5. 3(xiv), in respect of:...

(d) Pedestrian linkages through the subdivision, and their relationship to the adjacent Open Space Zone, the margin of Lake Wanaka and adjacent residential land;

(e) Location of easements for public access purposes throughout the Open Space Zone, and their relationship to the pedestrian linkages and roading access within the Low Density Residential Zone;

¹² Evidence of Ms Taylor, paragraph 12.43

¹³ Evidence of Ms Taylor, paragraph 13.1

ODP stage, the matters of discretion only relate to planting within road reserves and only to land within the LDR zone and therefore Rule 7.5.3.3(iii) does not enable the consideration of species composition; and b) at the subdivision stage, the Structure Plan provides a plant list but, in my view, neither the rule relating to that or the general controlled subdivision rule provide the ability to decline an inappropriate dominance of a certain species, or at the very least it would be costly and inefficient to attempt to do so. While I agree that the matter of plant spacings which was discussed as an example at the hearing is a matter of detail that can be left until Resource Consent stage but I consider that the matter of composition is fundamental to determining the appropriateness of the plan change from a landscape and ecological perspective.

- 3.8. In this respect I agree with Ms Taylor who, in questioning, suggested that a standard may be necessary to ensure a management plan and landscaping plan would need to be agreed with Council as part of any subdivision in order to overcome this issue and note that there is a precedent for this already in the District Plan in relation to the Ferry Hill Rural Residential Sub-Zone.
- 3.9. I also have some concerns that the Requestor's proposal (and its contention that the plan change is appropriate), relies solely on the rules in the subdivision section (in addition to the general ODP rule in section 7). I note that this is largely the result of having dispensed with the land covenant approach in favour of rules at the request of the Council and the Council's preference not to amend the LDR zone and I am sure there is no intention by the requestor to circumvent the rules in anyway. However, I am concerned that this may have the consequence of meaning that if the developer were to undertake landuse (i.e. constructing one or more dwellings) prior to subdivision then there would be no requirement to adhere to the Structure Plan or the detailed rules in the subdivision section until the time of subdivision if and when that occurred. While the rules proposed (i.e. 15.2.3.4(v) and 15.2.6.2(xi) certainly intend to capture development as well as subdivision, I suggest that the panel may wish to carefully consider whether this will operate as intended if they are of a mind to approve the plan change. For the record, I do not consider this to be a fanciful proposition in this district, noting that clustered dwellings on a single title used primarily for visitor accommodation purposes is often located in locations such as this.
- 3.10. With regard to the adequacy of the provisions, in addition to the above comments I stand by the need to amend them in the manner I have suggested in the version attached to my S 42A report, should the panel recommend that the plan change be approved. In respect of the provisions, I also note for completeness that both experts agree that prostrate blue grass and cushion pimelea should be included in the planting plan and, as such, these will need to be added to the Structure Plan should the plan change be adopted.

4. RESPONSE TO THE AMENDED PROPOSAL, AS OUTLINED IN MS SEMPLE'S LEGAL SUBMISSIONS

- 4.1. For the purpose of this section, rather than repeat the recent amendments to the proposal I adopt the summary of the changes proposed by the Requestor, as outlined in paragraph 12 of Ms Semple's opening legal submissions for the Requestor. The only exception to this is that I do not believe that the bluegrass and cushion pimelea have yet been added to the Structure Plan in the manner intended.
- 4.2. In considering the appropriateness of the amended proposal, I have carefully considered the Requestor's legal submissions, the written and verbal evidence provided on behalf of the Requestor, the submissions and evidence of the submitters, and the advice/ evidence of Council experts. In summary I am of the view that:
- a. Considering all of the costs and benefits of the effects of the amended proposal, it remains inappropriate. In saying this, I wish to highlight that it is the cumulative costs (when weighed against the benefits) on landscape and on amenity and on recreational amenity and on the ecology which have lead me to this conclusion. I have accepted the relatively minor and/ or short terms benefits of the proposal relating to efficient landuse, economic benefits, and employment but in the absence of any clearly demonstrated and significant net benefits in relation to recreation, ecology, and/ or the landscape, I cannot support it as being an effective and efficient proposition.
 - b. While certainly a significant improvement on the notified plan change, nothing in the amended proposal or in the evidence has convinced me that the plan change, as amended, would be the most appropriate way of achieving the objectives of the District Plan or Part 2 of the Act.
 - c. The proposed new Objective (15.1.3.22) has not been amended and therefore still does not include, as a priority, the protection of at least the 'at risk' native vegetation and does not recognise the natural character of the landscape (regardless of its classification). As such it remains inappropriate in my view. I also note that the objective only exists in the subdivision section of the District Plan and, as such, arguably cannot be considered when assessing an ODP application under Section 7 of the District Plan.
 - d. I remain of the view, having considered all three sets of landscape evidence and the questioning of the panel, that the ONL classification should include the whole subject site as preferred by Dr Read and Ms Stevens. I note that all experts, including Mr Espie, accept that the eastern half of the south facing part of the site is either ONL or at least "has character that is very similar to the ONL land"¹⁴ and on this basis, in my view, the land containing at least lots 13 - 26 should be

¹⁴ Peninsula Bay Landscape assessment September 2015, Paragraph 19

considered an ONL/ section 6 landscape. The decision as to the category of the remaining land appears less clear, and while I consider the lots to the west of Bull Ridge and south of the northern ridgeline (i.e. lots 1-3 and lots 7-11 or 12) may sit outside it, on balance rather than effectively cutting the north facing slopes of the ridgeline in half, I favour zoning all that area as ONL. That said, I concur with others that the matter of whether the land is or is not ONL is not determinative of whether it is appropriate for re-zoning as LDR. Rather, that classification simply helps to determine the extent to which the plan change relates to a matter of national importance, when considering it in terms of the purpose of the Act or whether the landscape matters in relation to part of the site are subject instead to section 7. I also note that the relevant objectives of the District Plan that need to be considered pursuant to S 32 of the Act are the same, regardless of the landscape classification.

- e. Together, the removal of Lots 5 and 6, the reduction in the size of Lots 20 to 24 and Lots 7 to 12 and in the size of the buildable area of Lot 21, the restriction on colours for some lots, the restriction on the height of exotic species on Lot 4 or Lots 20 to 26, the removal of the post and rail fencing, and the fact that the majority of the planting will now be on public land will reduce the overall adverse effect on landscape values. However, in my opinion, the overall costs in terms of landscape, in combination with others, continue to outweigh any benefits.
- f. I accept that the development of lots 1-3 and 7 - 11 would have the least effect of all the proposed lots (as it did with the notified proposal) in that it will have little if any effect on ecological and recreational values. However, after careful consideration I remain of the view that approving the rezoning of these lots would adversely affect visual amenity, the existing sense of place and character, and strong sense of containment, and result in a less legible urban boundary. I therefore conclude that the benefits of approving such a plan change would be outweighed by these adverse effects together with the inefficiencies intrinsic in creating a separate zone (or subzone) and a complex set of site specific rules for such a small area. In this sense it is similar to the 3 lot option I consider in appendix 3 of the s 42A report. I had not considered the views from the track along the eastern track previously but have now done so and concur with Ms Stevens that this is an important public view of the ridge and south facing slopes, which should be considered.
- g. The amendments made to the recreational amenities being offered are all positive but I remain of the view that these 'upgrades'/ additional tracks are not necessarily desired by the community at this point in time or at least not to the extent that they would offset the loss in open space zoning. In saying this, I note that it is my view that the Council can ensure public access is provided in

perpetuity either through vesting or easements (in gross most likely) as intended by the District Plan.

- h. I am satisfied on the evidence that protecting and enhancing the 'at risk' species within this threatened environment should be the focus of any (revegetation) plan for the area; that any revegetation in this environment will benefit from wilding conifer and rabbit control (with the possible exception of kanuka); and that the existing plant communities should be protected, enhanced and maintained by retaining the current zoning and improving custodial management. While I accept that the amended proposal will achieve more native diversity and a net increase in the area of native vegetation once established, I favour the conclusions of Ms Palmer that the extensive planting proposed is not necessary, will not result in improved ecological outcomes (as articulated by Ms Palmer and in objective 4.1.4(1) and that outcomes would be better served and more cost effectively achieved by protecting and enhancing what is already present on the site.