BEFORE THE HEARINGS PANEL
FOR THE QUEENSTOWN LAKES DISTRICT PLAN
PLAN CHANGE 53

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of Plan Change 53: Northlake

SUMMARY OF MATTERS RAISED AT THE HEARING ON 6 JUNE 2018

PLANNING: CRAIG BARR

8 June 2018

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1. INTRODUCTION

1.1 My name is Craig Alan Barr. I am employed by the Queenstown Lakes District Council (**QLDC**) as a Senior Planner. My experience and qualifications are set out in my S42A report dated 3 May 2018.

1.2 The Hearings Panel have requested that I provide written notes detailing the matters I discussed when I appeared at the hearing on 6 June 2018. I note that this brief is not an opportunity to provide a rebuttal to matters raised at the hearing, or an opportunity to present new evidence. While the Hearings Panel did not specify a page limit or word limit, I have endeavoured to keep the brief as short as practicable.

1.3 I raised the following matters and will address each in turn:

(a) Jurisdiction/scope to make changes;

(b) Policies 1.7 and 2.6;

(c) Recommended new Policies 2.6, 2.8, 2.9 and 2.10;

(d) New Objective 7 and policies; and

(e) Proposed District Plan Business Mixed Use Zone.

2. JURISDICTION/SCOPE TO MAKE CHANGES

2.1 I consider that my recommended amendments to the Northlake Special Zone (**NSZ**) provisions are within scope for the Hearings Panel to consider as valid changes for the following reasons:

(a) The scope for decisions ranges between what was notified and what was sought in submissions. In this instance there are submissions seeking rejection of the plan change. My recommended amendments address the concerns of the submitters to reduce the adverse effects of the Plan change, compared to what was notified.

(b) My recommended amendments are 'on' the relief sought in the submissions and the submitters reasons for seeking that PC 53 be rejected. These submissions are discussed in the body of my S42A report, and referenced in the recommended

revised NSZ provisions I provided to the Hearings Panel on 6 June 2018.

(c) My recommended amendments fit within a spectrum between the changes sought by Northlake Investments Ltd and those requested changes not occurring at all because of the various relief from submitters seeking the plan change be rejected.

(d) I do not consider any fairness issues arise because during the public notification process, and notification of submissions for further submissions, persons are put on notice that changes are requested to certain provisions and environmental outcomes of the land affected by the plan change. Through making a submission or further submission, any person (except where it relates to trade competition) is able to become involved in the process.

(e) In addition, my recommended modifications to the NSZ provisions will only affect land located within the area proposed to re-zoned Activity Area D1 (**AA-D1**)[1], owned by Northlake Investments Limited, and although changes to activities at a local commercial centre can have a range of effects on the wider area there are not any other landowners within the NSZ directly affected by the recommended amendments[2].

2.2 I have attached at **Appendix A**[3] the legal advice provided to the Hearings Panel presiding over submissions on Stage 1 of the Proposed District Plan 2015, which I mentioned, and was requested by the PC53 Hearings Panel to be provided. I note that the advice was provided by a third party legal firm and that the advice was accepted by the Hearings Panel[4].

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[1] With the exception of the requested amendment to Assessment Matter 12.34.5.xv because the assessment matter also applies to land wider than that identified in the plan change request.

[2] All other land currently being developed by parties other than NIL within AA D1 is for residential activity (ie. the residential units being constructed on land adjoining Outlet Road).

[3] Request for legal opinion regarding consequential amendments. Meredith Connell 9 August 2016.

[4] For context of the discussion refer to: Hearings of Submissions on Proposed District Plan. Report 5. Report and Recommendations of Independent Commissioners regarding Chapter 26 – Historic Heritage. [At 52-56] Available via clicking on this weblink.

2.3 The legal opinion provided to the PDP Hearings Panel cited the findings of the Environment Court[5] that there were three steps to be taken in asking whether a submission reasonably raises scope:

(a) *Does the submission clearly identify what issue is involved and some change sought in the proposed plan?*

(b) *Can the local authority rely on the submission as sufficiently informative for the local authority to summarise it accurately and fairly in a non-misleading way?*

(c) *Does the submission inform other persons what the submitter is seeking?*

2.4 For the reasons discussed above, I consider that the submissions I am relying on to recommend modifications to the NSZ provisions meets the tests set out in (a) to (c) in the preceding paragraph.

2.5 I also note respectfully that the Hearings Panel have the option of requesting a legal opinion on this matter of their own.

3. Policies 1.7 and 2.6

3.1 Retail and commercial activities must implement NSZ Policy 1.7 in order to achieve Objective 1. This policy has been described during the course of the Hearing as the enabling component of the policy framework. These activities must also implement Policy 2.6 to achieve Objective 2, which has been described as the limiting component of the policy framework. The relevant objectives are as follows:

Objective 1 – Residential Development

A range of medium to low density and larger lot residential development in close proximity to the wider Wanaka amenities

Objective 2 – Urban Design

Development demonstrates best practice in urban design and results in a range of high quality residential environments.

[5] Campbell v Christchurch City Council [2002] NZRMA 332 (EC)

3.2 I do not consider these objectives to be the most appropriate way to achieve the relevant higher order provisions and planning instruments[6] in the context of the changes sought by the requestor. Nor do I consider these policies to be the most appropriate way to provide guidance in a case where retail and commercial activities need to be limited to ensure that a future resource consent application to exceed the permitted standards does not undermine the viability of Wanaka Town Centre Zone or the Three Commercial Core Zone.

3.3 Policies 1.7 and 2.6, and Objectives 1 and 2 have been determined to be appropriate for the existing NSZ retail activity, which is limited to 1000m² gross floor area overall and 200m² for any single activity . However, I consider that a dedicated and more directive policy framework associated with managing commercial and retail activities is required to ensure that the requested additional 250m² retail activities, a single large format retail activity of 1250m² and additional commercial activity within the extended AA D1 would be appropriately managed, and if necessary be able to be constrained in a case where applications for resource consent are made for activities that exceed the retail or commercial gross floor area rules.

3.4 I also reiterated on 6 June 2018 my assessment that the NSZ is emerging as a commercial/retail node and drew comparisons to the PDP Local Shopping Centre Zone (Chapter 15). The policy framework of the Local Shopping Centre Zone and the NSZ are considered to be comparable in several respects as discussed in Issue 2 of my S42A report[7].

3.5 I also stated at the Hearing on 6 June 2018, that a deficiency in the NSZ provisions would arise if the request is accept as notified because the existing policies, should they be read and applied in the context of the changes sought by the requestor, would not sufficiently articulate what a 'small scale' retail activity would be and I do not agree with the requestor that both a 200m² retail activity and a 1250m² retail can be considered small scale in the context of Wanaka and the overall District

6 As set out in section 5 of my S42A report.

7 S42A at 9.20 – 9.50.

Plan framework[8]. As part of this comparison, I drew the Hearings Panel's attention to the Operative District Plan's definition of Large Format Retail for Three Parks, which is specified to be 400m², and to the rules limiting office activities to 200m² and retail activities to 300m²[9].

4. Recommended Policies 2.6, 2.8, 2.9 and 2.10

4.1 I stated at the Hearing on 6 June 201 that these recommended policies would provide flexibility, or 'breathing space' for the development of a single large format retail activity in the event that the urban design related criteria in the existing provisions cannot be achieved, in a situation where a designer identifies practical constraints generally associated with the building form for large format retail[10].

4.2 Relying on Ms Skidmore's advice, and approaching the matter from a planning perspective, I am concerned that in the event that a single large format retail activity of 1250m² is added to the rule framework, it would be difficult for the building associated with such an activity to accord with the assessment matters in section 12.34.5[11] of the NSZ. This could frustrate the processing and determination of a resource consent application for a supermarket up to 1250m².

4.3 If the Hearings Panel consider that this is in fact reasonably achievable through the existing assessment matters, I consider the recommended policies are not necessary, but note that any building up to 1250m² in area would be expected to accord with the assessment matters in order to obtain a resource consent.

5. New Objective 7 and Policies

5.1 For the reasons set out in section 2 of this brief, I consider there is scope to introduce a new objective and policies and that this is the

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8 Both Volumes A and B of the District Plan as explained in 5.24 of the S42A.

9 S42A at 9.26.

10 S42A at 10.23 to 10.39.

11 In particular Assessment Matter 12.34.5.2V(c) '*Whether the design, colour, and choice of building materials will contribute to a coherent theme for the street and neighbourhood, in general accordance with the architectural style shown in the following images…*

most appropriate way to manage the changes sought by the requestor relating to the extension of AA D1 by 4.2ha and the associated increase to retail and commercial activities. The recommended objective and policies are directive and in my view achieve the higher order objectives of the District Plan[12]. I also consider that these consequential amendments are necessary because of the changes sought by the requestor, and to address the concerns of submitters[13].

6. Proposed District Plan Business Mixed Use Zone.

6.1 I confirmed to the Hearings Panel on 6 June 2018 that the PDP Chapter 16 Business Mixed Use Zone (**BMUZ**) is in my opinion not specifically referenced in the PDP Strategic Directions. This Zone is not provided the same status as Wanaka Town Centre Zone or the Three Parks Commercial Core Zone, but nor is the BMUZ considered to be a 'threat' to the Wanaka town centre or Three Parks.

6.2 I stated at the Hearing that because of the history of the BMUZ in Wanaka, and because of the fragmented ownership pattern and relatively small property sizes in the BMUZ, the Zone is in my view 'self regulating' and is not considered likely to undermine the Wanaka Town Centre or Three Parks. I also stated that the zone had been recast through the PDP[14] to provide more opportunities for residential activity and mixed uses as part of the development of Three Parks[15].

Craig Barr
SENIOR PLANNER
8 June 2018

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12 S42A at 5.29 to 5.36 and 9.48.

13 As identified in the recommended revised NSZ provisions provided to the Hearings Panel on 6 June 2018.

14 Ie removal of the ODP Business Zone Rules that specify that retail activity less than 500m² is a non-complying activity, and retail activity greater than 500m² is a discretionary activity (ODP Rules 11.2.3.3.i and 11.2.3.4.i) ODP Chapter 11 Business and Industrial Areas Rules available via this weblink.

15 S42A at 9.24.

APPENDIX 1

Legal Opinion Regarding Consequential Amendments 9 August 2016

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of the Queenstown Lakes Proposed District Plan

REQUEST FOR LEGAL OPINION REGARDING CONSEQUENTIAL AMENDMENTS

1. Although this question has arisen in the Stream 3: Historic Heritage and Protected Trees Hearing Stream, it is an issue of concern PDP-wide.

2. The question we request a legal opinion on is:

> Where a submitter has sought amendments to the rules but not to the overlaying objectives and policies, is it within scope to amend the objectives and policies that the rule(s) are implementing to ensure that there remains a consistent series of implementation links from objectives to policies and policies to rules by classing such changes as consequential amendments?

3. We would appreciate an answer to this as soon as possible please.

For the Hearing Panel

Denis Nugent (Chair)

4 August 2016

Memorandum

To:	Queenstown Lakes District Council - Hearing Panel
From:	Meredith Connell
Date:	9 August 2016
Subject:	**Request for legal opinion regarding consequential amendments**

1 We refer to the Hearing Panel's request for legal advice of 4 August 2016 as to whether:

> Where a submitter has sought amendments to the rules but not to the overlaying objectives and policies, it is within scope to amend the objectives and policies that the rule(s) are implementing to ensure that there remains a consistent series of implementation links from objectives to policies and policies to rules by classing such changes as consequential amendments?

2 In our view, the Panel is not prevented from amending the overlaying objectives and policies where a submitter has only sought amendments to the relevant rule(s) as long as any such amendments do not go beyond what is fairly and reasonably raised in the submission.

3 The Courts have considered this matter in past cases where local authorities have proposed amendments in response to submissions, but which are not included in the specific relief sought. The Courts have taken a liberal approach to these situations, finding that a legalistic view whereby local authorities (the Panel in this case) can only accept or reject the specific relief sought in submissions is unrealistic.

4 This is on the basis that decision-makers generally need to reconcile multiple conflicting submissions and submissions are often prepared without professional assistance, so a submitter may not understand the planning framework and the requirement for implementation links from objectives to policies and policies to rules.

5 Accordingly, the Panel should ask itself whether any amendment it proposes, in order to ensure a consistent series of implementation links, goes beyond what is fairly and reasonably raised in the submission.

6 This will be a question of degree, to be judged by the terms of the proposed change (ie is it a significant change, perhaps to the structure of the Proposed Plan or in respect of a Plan-wide matter? Or is it simply a minor change?) and the content of the relevant submission. As an example, an amendment to a rule might be the specific relief sought, but the grounds for the submission might outline what the submission seeks to achieve, which the Panel could find to encompass a change to the relevant objectives and policies.

7 The Environment Court in *Campbell v Christchurch City Council* [2002] NZRMA 332 (EC) set out three useful steps in asking whether a submission reasonably raises any particular relief:[1]

(a) Does the submission clearly identify what issue is involved and some change sought in the proposed plan?

(b) Can the local authority rely on the submission as sufficiently informative for the local authority to summarise it accurately and fairly in a non-misleading way?

(c) Does the submission inform other persons what the submitter is seeking?

8 In applying this test and proposing "consequential" amendments, the Panel should also be careful to consider any proposed amendments to the overlaying objectives and policies in the context of the Proposed Plan more broadly. There may be consequences in terms of objective and policy direction that goes beyond what is fairly and reasonably raised in the relevant submission.

9 Some submissions will likely include "any other consequential changes" as relief sought. While the changes are, in effect, consequential amendments, it is open to the Panel to simply class the changes as within the scope of submissions (so long as the "fairly and reasonably" test is met).

1 *Campbell v Christchurch City Council* [2002] NZRMA 332 (EC). See also *Countdown Properties (Northlands) Limited v Dunedin City Council* [1994] NZRMA 145 (HC).