# BEFORE THE EXPERT CONSENTING PANEL

# CONCERNING THE NORTHBROOK WANAKA RETIREMENT VILLAGE

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| **IN THE MATTER** | of the COVID-19 Recovery (Fast-Track Consenting) Act 2020 (the **FTA**) and the deliberations and final decision of the Expert Consenting Panel appointed under Clauses 2, 3, and 4 of Schedule 5 of the FTA to consider the application for consents for the Northbrook Wanaka Retirement Village |
| **Expert Consenting Panel:** | Matthew Allan (Chair)<br>Hoani Langsbury (Member)<br>Ian Munro (Member) |
| **Comments received under Clause 17(4) of Schedule 6 to the Act:** | 23 June 2021 |
| **Details of any hearing if held under Clause 21 of Schedule 6 of the Act:** | No hearing was held (refer clause 20, Schedule 6 to the FTA) |
| **Date of Hearing if held:** | Nil |
| **Date of decision:** | 4 August 2021 |
| **Date of issue:** | 4 August 2021 |

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**RECORD OF DECISION OF THE EXPERT CONSENTING PANEL UNDER CLAUSE 37 OF SCHEDULE 6 TO THE FTA**

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## A. Executive Summary

[1] The Northbrook Wanaka Retirement Village (**Proposal**) is a referred project listed in Schedule 3 to the COVID-19 Recovery (Fast-track Consenting) Referred Projects Order 2020.

[2] The Panel grants the required resource consents for the Proposal, subject to the conditions set out in **Appendix 1**.

[3] The Panel's reasons for its decision can be found in each relevant section of this document.

[4] Pursuant to clause 37(7) of Schedule 6 to the COVID-19 Recovery (Fast-Track Consenting) Act 2020 (**FTA**), the date on which the resource consents granted in this decision lapse unless first given effect to is 2 years from the date of commencement of the resource consents as defined in clause 37(9) of that Schedule.

## B. Introduction and Procedure

***Introduction***

[5] Winton Property Limited (**Applicant**) seeks to construct and operate a 100-unit retirement village and associated facilities on land situated on the northern edge of the Northlake area of Wanaka, adjoining Outlet Road.

[6] The land in question is zoned Northlake Special Zone (**NSZ**) in the Queenstown Lakes Operative District Plan (**ODP**).

[7] Broadly, the Proposal involves two components: a subdivision and the development of a retirement village.

[8] The proposed subdivision would create two new lots, one of which (together with two other lots, Lots 6000 and 6001 LT 558541) will contain the proposed retirement village, plus a large balance lot. Specifically, the subdivision proposes the creation of the following lots:

(a) Lot 1 – 3.05ha (within Activity Area C2 of the Northlake Structure Plan) which will contain most of the proposed retirement village; and

(b) Lot 2000 – a large 60.71 ha balance lot (this appears to be misdescribed on page 5 of the Application as being 63.76 ha).

[9] The development of the proposed retirement village is focused on 3.81 ha of land adjoining Outlet Road, which the document entitled *Application for resource consent to establish a Retirement Village at Northlake, Wanaka* dated 12 March 2021 (**Application**) describes as being in two parts:

(a) the western part fronting and accessed from Outlet and Lindis

Roads; and

(b) the eastern part consisting of two blocks that front Outlet Road and Malvern Road and accessed from Malvern Road and Cairnmuir Street.

[10] The Application summarises the retirement village component of the Proposal as follows at pages 5 to 6:

(i) 100 residential units for independent living. The units are between 116.92m$^2$ and 135.78m$^2$, comprising 1, 2 or 3 bedrooms;
(ii) A Care pod building with 36 specialist care units and communal kitchen, dining and living areas, medical storage space and staff facilities;
(iii) A Main Entry building with offices, staff room, kitchen, and back of house facilities for administration purposes;
(iv) A Clubhouse and Amenity building for social and active recreation, including:
- a lounge bar and kitchen;
- a yoga room;
- a gym;
- a swimming pool and spa;
- reception area, toilets, plant room, kitchens, back-of-house;

(v) Landscaping and planting throughout the development;
(vi) Roading, footpaths and parking areas;
(vii) A pedestrian and cycle trail.

Consents Required

[11] Section 8.6.4 of the Application provides a summary of the resource consents required for the Proposal under the ODP, Proposed District Plan (**PDP**), and Otago Regional Plan: Water. A range of controlled, restricted discretionary, discretionary and non-complying consent 'triggers' are identified.

[12] In the Applicant's 1 July 2021 response to comments received from the Queenstown Lakes District Council (**QLDC**), the Applicant accepted that the proposed signage in the development also requires discretionary activity consent in terms of rule 18.2.5 of the ODP.

[13] The QLDC stated in its initial comments on the Proposal that the rules of the PDP (notably, in this instance, the transport rules) do not apply to the Northlake Special Zone. The Applicant accepted that position, as does the Panel.

[14] As a consequence of [12] and [13] above, the list of consents required at section 8.6.4 of the Application should be read subject to two amendments:

(a) The addition of a requirement for discretionary activity consent under rule 18.2.5 of the ODP; and

(b) The deletion of the PDP requirements of consent.

[15] The Panel notes in passing that it received further information from QLDC on 12 July 2021 and legal advice from Ian Gordon on 15 July 2021 confirming that strategic district-wide objectives and policies in Chapters 3 to 6 of the PDP do apply to the Proposal. The Panel has accepted this advice.

[16] The Otago Regional Council (**ORC**) identified three further potential consent requirements in its comments on the Proposal. Two related to stormwater and drilling and were raised in relation to provisions of the Otago Regional Plan: Water, while the third related to contaminated soil and arose in relation to the Otago Regional Plan: Waste. In its 1 July response to those comments, the Applicant briefly addressed each matter, concluding that no further consents were required in terms of the relevant matters. The Panel accepts the Applicant's explanations in relation to these matters.

[17] The Proposal requires resource consent overall as a non-complying activity, and therefore the 'gateway' test prescribed in section 104D of the RMA applies to the Proposal (see clause 32(1) of Schedule 6 to the FTA).

***Procedure***

Meetings / Site visit

[18] The Panel conducted a site visit on 11 June 2021.

[19] The Panel conducted Zoom meetings on:

(a) Friday 25 June 2021;

(b) Monday 5 July 2021;

(c) Wednesday 14 July 2021;

(d) Friday 16 July 2021;

(e) Friday 30 July 2021.

Invitations to comment

[20] The Panel invited comments on the Proposal from those parties listed in clauses 17(6) and (7) of Schedule 6 to the FTA on 1 June 2021. Comments were also invited from certain parties pursuant to clause 17(8) of Schedule 6 on the same date.[1] Comments were required by 23 June 2021.

[21] Comments were received from eleven parties as follows:

[1] Refer to Minute 1 dated 31 May 2021.

(a) **Rangi Theodore Bunker and Lorraine Rouse**. Mr Bunker and Ms Rouse were recently appointed as substitute appellants in an Environment Court appeal (ENC-2018-CHC-069) following the death of Michael Beresford who was the original appellant in those proceedings. The appeal is directed at whether the landlocked land in Wanaka known as 'Sticky Forest', which is set aside under the Ngāi Tahu Claims Settlement Act 1998, should be rezoned to enable residential development. The Order in Council in respect of the Proposal directed that Mr Beresford be invited to comment on the Proposal. Mr Beresford passed away in April 2021 and the Panel accordingly invited Mr Bunker and Ms Rouse to comment on the Proposal.

Mr Bunker's and Ms Rouse's comments focus on the condition proposed by the Applicant to address access to Sticky Forest, and propose an alternative easement-based approach to that condition. This matter is discussed in Part G below.

(b) **Fraser McDougall**, whose comments raise concerns about the density of the Proposal. We return to Mr McDougall's comments in this regard in Part F below.

(c) **Heritage New Zealand Pouhere Taonga** (**HNZPT**). HNZPT proposes a new accidental discovery protocol condition and related amendments to other conditions. The request for a new accidental discovery protocol condition is addressed in Parts D and E below.

(d) **Hon Andrew Little, Minister for Treaty of Waitangi Negotiations**. The Minister requests that the Panel consider favourably any condition proposed which would provide the greatest level of certainty for securing legal access to the Sticky Forest. Again, this matter is discussed at Part G below.

(e) **Hon Carmel Sepuloni, Minister for Arts, Culture and Heritage**. The Minister supports the intent of the Proposal and supports HNZPT's proposed new archaeological accidental discovery protocol condition and amendments to other conditions. Again, this matter is discussed in Parts D and E below.

(f) **Te Rūnanga o Ngāi Tahu**. Te Rūnanga o Ngāi Tahu encompasses five hapū, Kati Kurī, Ngāti Irakehu, Kati Huirapa, Ngāi Te Ruahikihiki, Ngāi Tūāhuriri and 18 Papatipu Rūnanga. The Rūnanga referred this Proposal to local Papatipu Rūnaka for comment through their environmental entities Te Ao Marama Inc and Aukaha. Te Rūnanga supports the conditions of consent previously proposed in a letter from Aukaha[2], which are reflected in the conditions in Appendix 1. In relation to a condition to secure access to Sticky Forest, Te Rūnanga supports an alternative easement-based approach to that proposed by the Applicant. This matter is discussed at Part G below.

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[2] Attachment W to the Application.

(g) **Hokonui Rūnanga**. The Hokonui Rūnanga supports the conditions put forward by the Applicant with the proviso that the Rūnanga are also consulted in relation to the Applicant's "proposed condition 3" (which is advice note 1 in Appendix 1). The Hokonui Rūnanga support consideration being given, as part of this consent process, to the most appropriate means for providing access to Sticky Forest. The Hokonui Rūnanga's comments on advice note 1 and the issue of access to Sticky Forest are discussed at Part G below.

(h) **Hon Kelvin Davis, Minister for Māori Crown Relations: Te Arawhiti**, who had no comment to make on the Proposal.

(i) **Te Arawhiti, the Office for Māori Crown Relations**. Te Arawhiti supports the alternative condition proposed by Mr Bunker and Ms Rouse for securing future access to Sticky Forest. Again, this matter is discussed in Part G below.

(j) **Otago Regional Council**. The ORC's comments traversed: general matters; possible additional consents required; consent conditions; and policy considerations. Aspects of the ORC's comments are addressed in this decision.

(k) **Queenstown Lakes District Council**. The QLDC's comments covered: critical matters for the Panel to consider (namely Sticky Forest access and height); consent conditions; the relevant rules in the ODP applying to the Proposal; the status of the PDP rules; character and amenity; signage, lighting and hours of operation; engineering; and ecology. Aspects of the QLDC's comments are addressed in this decision.

[22] In accordance with clause 18(5), copies of all comments received were sent to the Applicant for response.

[23] The Applicant provided its response to the comments received pursuant to clause 19 on 1 July 2021.

[24] The Panel records that it received very late comments from M Crennan and J Doody on 27 July 2021. Clause 18(6) of Schedule 6 provides that:

> The panel is not required to consider any comments received after the time specified in the invitation, but may do so, in its discretion, as long as the panel has not issued its decision.

[25] The comments from M Crennan and J Doody were received over a month late, and the Panel has decided not to consider them in these circumstances.

Further information

[26] The Panel, through the EPA, sent two requests to the Applicant for further information:

(a) The first request was sent on 17 June 2021. The Applicant responded to this request on 1 July 2021.

(b) The second request was sent on 5 July 2021. The Applicant responded to this request on 13 July 2021.

[27] The Panel, through the EPA, also requested further information from the QLDC on 6 July 2021. The Council responded to this request on 12 July 2021.

Further reports to the Panel

[28] At the Panel's request, the EPA engaged barrister Ian Gordon to provide legal advice on the following matters:

(a) Access to Sticky Forest;

(b) The Status of PDP provisions;

(c) The 'avoidance' policy contained in section 12.33 of the ODP.

[29] Mr Gordon provided advice on the above matters on 15 July 2021.

[30] The Panel expresses its gratitude to Mr Gordon for his assistance.

Hearing

[31] The Panel did not find it necessary to conduct a hearing.

Conditions

[32] At the Panel's request, the EPA engaged planning consultant Brian Putt to assist with the review and preparation of draft conditions. Again, the Panel is grateful to Mr Putt for his assistance with the draft conditions.

[33] In accordance with clause 36 of Schedule 6 to the FTA, the Panel sent a draft set of conditions to the following on 15 July 2021, inviting comments on the draft conditions:

(a) the Applicant; and

(b) every person or group that provided comments in response to an invitation given under clause 17(2).

[34] Minute 3 dated 15 July 2021, which accompanied the draft conditions, invited comments by 21 July 2021.

[35] On 16 July 2021, the Panel received a request from Te Arawhiti to extend this timeframe by an additional 5 working days to allow the Honourable Andrew Little, Minister for Treaty Negotiations, the opportunity to provide comment on the draft conditions.

[36] The Panel resolved to grant an extension to the time by which any comments on the draft conditions were to be received by the EPA (with a revised deadline of 28 July 2021). As a matter of fairness, the Panel applied the extension to all parties who had been invited to comment on the draft conditions.

[37] As a consequence of the above, the Panel decided to extend the timeframe for completing its decision by 5 working days pursuant to clause 37(3)(b)(i) of Schedule 6 to the FTA to 4 August 2021.

[38] Responses to the draft conditions were received from QLDC, HNZPT, ORC, Mr Bunker / Ms Rouse, the Minister for Treaty of Waitangi Negotiations, Te Arawhiti, Te Rūnanga o Ngāi Tahu and the Applicant. The comments on draft conditions are addressed further throughout this decision and in Part G.

## C. Legal Context

[39] The FTA makes provision for both listed projects and referred projects. As noted at [1] above, the Proposal is a referred project.

[40] The panel appointed to consider the comprehensive care retirement village at Kohimarama considered the legal framework for considering referred projects in some detail in section C of their decision dated 12 May 2021 (**Kohimarama Decision**). We respectfully adopt that analysis, but highlight relevant aspects of the framework below.

[41] Section 12(2) of the FTA provides, in the case of referred projects, that the process for obtaining a consent under Schedule 6 to the FTA applies in place of the process under the RMA.

[42] Clauses 31 and 32 of Schedule 6 set out the key requirements, when considering resource consent applications for referred projects.

[43] Subclauses (1) and (3) of clause 31 relevantly set out matters to which a Panel must have regard.

[44] Subclauses (1) and (2) are set out below:

> (1) When considering a consent application in relation to a referred project and any comments received in response to an invitation given under section 17(3), a panel must, subject to Part 2 of the Resource Management Act 1991 and the purpose of this Act, have regard to-
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> (a) any actual and potential effects on the environment ofallowing the activity; and
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> (b) any measure proposed or agreed to by the consent applicant to ensure positive effects on the environment to offset or compensate for any adverse effects that will or may result from allowing the activity; and
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> (c) any relevant provisions of any of the documents

> listed in clause 29(2); and
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> (d) any other matter the panel considers relevant and reasonably necessary to determine the consent application.
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> (2) In respect of the matters listed under subclause (1), a panel must apply section 6 of this Act (Treaty of Waitangi) instead ofsection 8 of the Resource Management Act 1991 (Treaty of Waitangi).

[45] As the Panel observed in the Kohimarama Decision[3], *"[c]lause 31(1) has significant similarities to s 104 RMA, but with the addition of scope to consider offset and compensation and that consideration is subject not just to Part 2 of the RMA but also, the purpose of this Act"*. In the case of Part 2 of the RMA, section 6 of the FTA must be applied rather than section 8 of the RMA. The dual statutory purposes are addressed further in Part I below.

[46] Clause 31(3) specifies a further mandatory matter to have regard to where an activity is in an area where a planning document prepared by a customary marine title group under section 85 of the Marine and Coastal Area (Takutai Moana) Act 2011 applies. This subclause does not apply to the Proposal.

[47] Subclauses 31(4) to (6) set out matters which the Panel may or must disregard.

[48] Subclause (4) provides:

> When forming an opinion for the purposes of subsection (1)(a), a panel may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect.

[49] The Panel records that it has not disregarded any adverse effects in terms of the above discretion.

[50] No issues arise for the Proposal in terms of the matters prescribed in subclauses (5) and (6).

[51] The Panel has carefully reviewed the 'other matters relevant to decisions' set out in subclauses (7) to (12) of clause 31. In terms of subclause (7), the Application describes the Proposal as a non-complying activity overall. The Panel agrees and has assessed it on that basis. The Panel is satisfied that no issues arise in terms of the matters in subclauses (8) to (12).

[52] Clause 32 prescribes 'further matters relevant to considering consent applications for referred projects'. Notably, for the purposes of this non-complying Application, both sections 104B and 104D of the RMA apply.

[53] Clause 35 provides that the Panel may grant a resource consent subject to the conditions it considers appropriate, and sections 108, 108A to 112,

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3 At [37].

and 220 of the RMA apply to any conditions imposed.

[54] An interesting feature of the legal framework applying to conditions identified by Mr Gordon in his legal advice to the Panel[4] is the absence of any reference to section 108AA of the RMA, which provides that a consent authority must not include a condition in a resource consent unless an applicant agrees to it, or it is "directly connected" to an adverse effect and / or an applicable district or regional rule, or a national environmental standard, or it relates to administrative matters that are essential for the efficient implementation of the consent. The Panel accepts Mr Gordon's advice that section 108AA does not apply under the FTA, and that the FTA provides a "wide discretion" to grant a resource consent subject to the conditions it considers appropriate.

[55] However, that discretion – while wide – must be exercised on a principled basis. The Panel accepts the submission by counsel for the Applicant, Warwick Goldsmith, that the *Newbury* tests remain relevant to conditions imposed under clause 35 of the FTA.[5] Equally, the Panel notes the following passage from the Supreme Court's decision in *Waitakere City Council v Estate Homes Limited*:[6]

> … We consider that the application of common law principles to New Zealand's statutory planning law does not require a greater connection between the proposed development and conditions of consent than that they are logically connected to the development. This limit on the scope of the broadly expressed discretion to impose conditions under s 108 is simply that the Council must ensure that conditions it imposes are not unrelated to the subdivision. They must not for example relate to external or ulterior concerns. The limit does not require that the condition be required for the purpose of the subdivision. Such a relationship of causal connection may, of course, be required by the statute conferring the power to impose conditions, but s 108(2) does not do so.

## D. Mana Whenua

[56] Te Rūnanga o Ngāi Tahu (**Te Rūnanga**) is the statutorily recognised representative tribal body of Ngāi Tahu whānui (as provided by section 15 of the Te Rūnanga o Ngāi Tahu Act 1996 (**TRONT Act**)) and was established as a body corporate on 24 April 1996 under section 6 of the TRONT Act.

[57] Te Rūnanga encompasses five hapū, Kati Kurī, Ngāti Irakehu, Kati Huirapa, Ngāi Te Ruahikihiki, Ngāi Tūāhuriri and 18 Papatipu Rūnanga, who uphold the mana whenua and mana moana of their rohe. Te Rūnanga is responsible for managing, advocating and protecting, the rights and interests inherent to Ngāi Tahu as mana whenua.

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4 Letter from Ian Gordon dated 15 July 2021, at [11].
5 Memorandum of Warwick Goldsmith dated 1 July 2021, at [65].
6 *Waitakere City Council v Estate Homes Limited* (2006) 13 ELRNZ 33, at [66].

[58] Papatipu Rūnanga who have shared interests across the Queenstown Lakes District are: Waihōpai Rūnanga; Te Rūnanga o Awarua; Te Rūnanga o Ōraka Aparima and Te Rūnanga o Hokonui (collectively referred to as Ngāi Tahu ki Murihiku) and Te Rūnaka o Ōtākou, Kati Huirapa ki Puketeraki Rūnaka and Moeraki Rūnaka (collectively referred to a Kāi Tahu ki Ōtākou) referred to as Ngā Rūnanga.

[59] The Application includes a letter from Aukaha providing preliminary comments on the Proposal from Ngā Rūnanga.[7]

[60] Ngā Rūnanga highlighted a concern regarding capacity of the existing wastewater treatment plant and infrastructure for Wānaka, which sits outside the scope of this Application.

[61] Ngā Rūnanga consider that a Cultural Impact Assessment for this Proposal was not required and that Rūnanga concerns will be mitigated by adhering to the requested conditions.

[62] The Ngai Tahu Claims Settlement Act 1988 includes Statutory Acknowledgments for the Clutha River/Mata-au and Lake Wānaka – this is a recognition by the Crown of Ngāi Tahu's cultural, spiritual, historical and traditional association with the water and land of the area.

[63] The Mata-au takes the name from a Ngāi Tahu whakapapa that traces the genealogy of water. On that basis, the Mata-au is seen as a descendant of the creation traditions. For Ngāi Tahu, traditions such as this represent the links between the cosmological world of the gods and present generations, these histories reinforce tribal identity and solidarity and continuity between generations and document the events which shaped the environment of Te Wai Pounamu and Ngāi Tahu as an iwi.

[64] Wānaka is one of the lakes referred to in the tradition of "Ngā Puna Wai Karikari o Rākaihautū" which tells how the principal lakes of Te Wai Pounamu were dug by the rangatira (chief) Rākaihautū. Rākaihautū was the captain of the canoe, Uruao, which brought the tribe, Waitaha, to New Zealand.

[65] Ngā Rūnanga specifically requested that the following should be adhered to:

(a) That the Heritage New Zealand Pouhere Taonga Archaeological Discovery Protocol should be adhered to.
(b) That suitable, locally sourced native plants are included in any landscape planting to compliment the surrounding environment.
(c) That Rūnanga are consulted via Aukaha around the use of Ngāi Tahu names within the subdivision.

[66] Section 8.7 of the Application provides the following discussion of the Ngāi Tahu Ki Murihiku Natural Resource and Environmental Iwi Management Plan 2008 (**IMP**):

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7 Attachment W to the Application.

> The Ngāi Tahu Ki Murihiku Natural Resource and Environmental Iwi Management Plan 2008 describes the values underpinning the relationship between Ngāi Tahu ki Murikihu and the natural environment, identifies the primary issues associated with natural resource and environmental management in the takiwā and articulates policies and management, wāhi tapu and wāhi taonga.
>
> The upper Queenstown and Wanaka catchments are addressed in Section 3.4 Takitimu me ona Uri of the Plan. The section focuses on tenure review, high country pastoral farming, energy generation and efficiency, mining and exploration, forestry, vegetation clearance and burning, access and tourism, plant pests, animal and bird pests, hazardous substances and new organisms, mahinga kai, general water policy, protecting sites of significance in high country and foothills area and rock art.

[67] As the ORC noted in its comments, the Application as lodged provided no assessment of the provisions of the IMP itself. Further assessment of the provisions of the IMP was accordingly requested by the Panel, and duly provided by the Applicant on 13 July 2021.

[68] That assessment identified only Policy 2 of Section 3.4.8 Access and Tourism as relevant to the Proposal:

> **Policy 2** – Development that includes building activity should consider specific landscape and geographical features and the significance of these to Ngāi Tahu Whānui. Activity whereby buildings will protrude above ridgelines or displace sites of cultural significance should be avoided.

[69] In relation to the above policy of the IMP, the Panel accepts the Applicant's statement at page 2 of its letter of 13 July 2021 that the proposed buildings *"do not protrude above ridgelines or displace sites of cultural significance"*, subject to noting that the wider landscape was used by mana whenua and for this reason it is possible that archaeological sites or taonga could be uncovered, as noted in the letter from Auhaka at Attachment W to the Application. For this reason, the Panel considers it is appropriate to impose an accidental discovery protocol condition (condition 8).

[70] We received a number of comments from parties invited to comment under clause 17 of Schedule 6. The Minster for Arts, Culture and Heritage recommended standard wording for the Accidental Discovery Protocol.

[71] HNZPT supported the participation of Aukaha and HNZPT in the preparation of the Accidental Discovery Protocol and that QLDC provides 20 working days to provide comment on the final Accidental Discovery Protocol. Consent conditions 7 and 8 in relation to the ADP were amended to reflect the comments received.

[72] We received a number of comments specific to the provision of access to Sticky Forest, from the Minister of Treaty of Waitangi Negotiations, the Office for Maori Crown Relations Te Arawhiti, Hokonui Rūnanga, Greenwood Roche on behalf of Mr Bunker and Ms Rouse, and QLDC.

Responses to these are dealt with in Part G below. Consent conditions 47 to 50 provide for a potential pathway for the issue of access to Sticky Forest to be resolved.

[73] As noted, the Minster for Māori Crown Relations had no comments to make.

## E. Evaluation of Effects

***Existing environment***

[74] The existing environment has been most graphically and succinctly described in the Architectural Design Statement (Version 2), prepared by Three Sixty Architecture.[8] In terms of the comments received, no disagreement with the Applicant's description of the Site and its environment was expressed.

[75] On the basis of the Panel's site visit, the Applicant's site and environment description material is adopted and referred to.

[76] By way of summary, the NSZ is located at the north-eastern corner of Wanaka generally between Aubrey Road and Outlet Road, and close to (but screened from) the Clutha River / Mata-au. It is in a state of development, with many streets, urban blocks, houses and other amenities completed and others under construction. Earthworks are also being undertaken across land that has yet to be developed.

[77] The Site that the Proposal would locate on is a slender strip of land running generally parallel to Outlet Road in the north of the NSZ. The land has been, and remains, subject to various earthworks that have been the subject of separate and previous resource consents. Although there are sloped areas as well as flat areas, the Site is effectively cleared and awaiting development. It lies within Activity Areas C2, D1 and E1 as set out within the NSZ's Structure Plan. Outlet Road runs at a similar level to the Site for most of its length, but at the northern end Outlet Road bends and drops notably on its path down to the Wanaka Campground and the Clutha River / Mata-au.

[78] Existing development south-east of the Site has established a ground level approximately 1m - 2m higher than Outlet Road, with a landscaped bund and post-and-rail fence forming an edge between the road and the gardens within allotments. Consented earthworks being undertaken on the Site at the time of the Panel's site visit were intended to continue this pattern, including that development on the Site would be up to 2m above Outlet Road and with the feature post-and-rail fence continued along the frontage.

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8 Attachment G to the Application.

[79] The Applicant sought to identify what built form outcomes could be reasonably expected of the applicable provisions in a non-fanciful and generally District Plan-compliant manner. This was depicted in the Landscape and Urban Design Report prepared by Patch Ltd, 5 March 2021.[9] In section 7 of that report it is identified that there is no permitted baseline as such.

[80] In Activity Area C2, 15 freehold residential lots could be reasonably anticipated (Figure 6 of the Patch report). This suggests a series of generally evenly spaced buildings could occur along Outlet Road.

[81] In Activity Area D1, 26 freehold lots could be reasonably anticipated (Figure 7 of the Patch report). Given the existing roads and block pattern here, this would effectively be a subdivision within an existing and formed block.

[82] Noting that there was no permitted baseline that applied, the Panel has accepted the Applicant's representations of what might be possible under the NSZ as a matter of context.

***Urban design and visual effects***

Potential effects

[83] Potential urban design and visual effects relate to the placement and visual impact of the proposed buildings; the site layout and relationship of buildings and open space; the quality and design of the buildings; and the "fit" of the development in the context of the Special Zone and Wanaka.

[84] The Application was supported by an assessment of Landscape and Urban Design effects by Patch Ltd, dated 5 March 2021. The AEE also included comments as to the Proposal's effects. The Applicant's case was that the Proposal would not be widely visible or obtrusive in its setting and would either not be visually problematic, or that potential effects would be mitigated such as by landscaping and tree-growth, so as to be "very low".

[85] In terms of urban design effects, Patch Ltd did not report any adverse qualities or effects likely, and concluded that the proposal would have only "positive urban design outcomes".

[86] Patch Ltd provided an assessment of landscape and visual effects on the environment, and considered an urban design assessment in terms of the ODP Chapter 12 design criteria. We have interpreted this as relating to both effects on the environment and against the relevant plan provisions.

[87] The AEE concluded that any urban design and visual effects would be no more than minor and not possess characteristics that would sit in tension with the outcomes sought by the District Plan.

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9 Attachment I to the Application.

Comments received

[88] The QLDC expressed concern with the scale and effects of the Proposal in terms of its overall density, height and location. This related closely to the QLDC's concerns about the compatibility of the Proposal with the planning framework, which is addressed separately. In the QLDC's opinion the Proposal would result in more than minor and unacceptable adverse effects.

[89] There was a disagreement between the QLDC and the Applicant as to the correct height of the buildings, depending on the definition of height. There was a discrepancy of 2m between the Applicant (approximately 11.5m) and the QLDC (approximately 13.5m), which we surmise to have resulted from whether or not the filling of the land above its existing level by approximately 2m should qualify as the baseline for measuring building height.

[90] We have considered this, including the definitions of "height" and "ground level" within the ODP.

Panel findings and conditions imposed

*Height and ground level*

[91] We were told on our site visit by the Applicant's representative, who guided us and explained where and how the Proposal would sit on the Site, that the existing ground level was to be filled by up to 2m from its original level. We have been given no evidence that the change in ground level will be as a result of an approved subdivision rather than a land use consent. The relevance of this is that it is only through a subdivision consent that the ground level to measure building height from can be changed in terms of the ODP definitions. In this respect we tend to prefer the QLDC's view that building height should be measured from the qualifying ground level, not the finished ground level that the building would then be constructed on and what has been shown on the Applicant's plans.

[92] But in any event, we find that this disagreement is not material to our decision and that whether or not the buildings have a maximum building height of approximately 11.5m or approximately 13.5m will not change the applicable resource consent activity status or the real world effects that visitors and users of the environment would experience. Specifically, were the building proposed to sit on an elevated 'mound' or podium of land close to its actual footprint and that was visually discernibly built up above the general surrounding ground level, then it would be clear to the naked eye that the total height proposed would be the building and the mound combined together. In this instance the earthworks proposed are more substantial across the Site, and will tie into the natural land form and slopes that sit both west and east of the Site. To the naked eye what is proposed will appear to be buildings up to approximately 11.5m above that. This is

the ‘real world’ context that we have assessed the Proposal’s adverse effects against.

[93] But for completeness and to avoid any doubt, we find that we would have reached the same conclusions on the Application irrespective of whether we numerically record the maximum height of the buildings as being up to approximately 11.5m, or up to approximately 13.5m.

*Three storey Care Pod building*

[94] In our draft conditions sent to the parties for comment, the Applicant identified a number of concerns with reducing the scale of the Care Pod building. In its feedback, the Applicant expressed concern about the direct effect of the removal of one floor on the economic viability of the retirement village, together with the indirect effect on the social contribution of the retirement village to the wider Wanaka community.

[95] The Panel has considered that feedback on this issue carefully. It found some of the Applicant’s statements to be conclusory in nature, such as the statement at paragraph 3 that it is “generally accepted that circa 50 beds is the minimum number needed to establish a cost neutral care bed facility within a retirement village”. No citation or evidence was provided in support of this statement.

[96] The Panel found aspects of the Applicant’s feedback to be inconsistent. For instance, while the Applicant states (as noted above) that circa 50 beds is the “minimum number” to establish a “cost neutral” facility, the Proposal involves 36 beds in any event.

[97] The Panel observes that the Applicant has not explained why the removal of a storey would reduce the number of beds from 36 to 22, when the very similar internal floor plans show 12 beds on each floor. While there may be a reasonable explanation for this, it was not presented to us.

[98] The Panel was also curious as to why the Applicant had configured its Proposal such that the largest-scale and highest-density aspect of the proposed retirement village, the Care Pod, was located in the furthest part of the Site and as far as would be possible from Activity Area D1, where at least higher-intensity and scaled buildings had been enabled based on a zone-wide spatial strategy that included comprehensive consideration of landscape, visual and urban design effects. The Applicant’s response to our draft conditions dated 28 July 2021 explained the rationale of the 3-storey Care Pod location. This included that (paragraph 5):

> The Applicant focused on finding a location already zoned for development where the effects of a retirement village on residents who had already purchased residential lots within Northlake would be minimised, with a particular focus on minimising the effects of a higher building likely to be required for a care bed facility. …

[99] We accept on its face the Applicant’s reasoning and rationale, but we have not found it persuasive as a means of justifying the configuration proposed.

Referring to a Memorandum from Warwick Goldsmith to the Panel, on behalf of the Applicant, dated 1 July 2021, he stated:

> As is the practice of many large-scale residential developers, NIL registers non-object covenants against titles which it sells in order to minimise opposition to changes in development intentions which occur as a result of circumstances not anticipated when development is originally approved. The circumstances of this proposed road is a classic example of one such eventuality which was not anticipated when NIL's existing residential consents were obtained. Those non-object covenants do not prevent the relevant consent authority from taking into account effects of proposed activities on existing residential neighbourhoods. However they do provide a mechanism to deal with unreasonable objections based upon NIMBY considerations which are not reasonably related to, or arise from, potential effects.

[100] We understand the situation to be that Activity Area D1 enables the tallest and most intensive buildings within the NSZ. Having reviewed the development control rules, we find that a building of the scale proposed for the Care Pod would not offend what a reasonable and reasonably-informed person might contemplate could eventuate within that Activity Area, including its retirement village purpose. Even if they did, as we understand it, the Applicant possesses non-object covenants on the affected land and could if necessary enforce these to accommodate any change to fit the Care Pod within, or substantially within, Activity Area D1.

[101] None of this is to suggest that the Applicant should have promoted a different Proposal than it did or that it would be appropriate for us to evaluate the Proposal against a hypothetical alternative retirement village, which we have not. It is relevant only to the extent that we have not been persuaded to accept that there is any material resource management constraint or limitation within Activity Area D1 that rendered it reasonably incapable of accommodating a retirement village facility of the general scale and intensity of the proposed Care Pod building. It follows that we do not accept as part of our evaluation that there is any unique need, benefit or justification for the location of the Care Pod building as it is proposed that might be regarded as a balancing factor in our decision making.

[102] The Panel accepts the Applicant's concerns with a draft condition we prepared requiring that the top storey of the Care Pod building be removed (dated 28 July 2021). We have read and considered these carefully. They do not sufficiently outweigh the concerns we have with the scale and location of the Care Pod building. Based on the above we find that if what is consentable on the location of the proposed Care Pod does not ultimately suit the Applicant's development requirements, it remains free to pursue a separate consent within its Activity D1 area. We can go no further than that.

[103] We find that the Care Pod would be one of the largest buildings within Wanaka, located in a position where it would strikingly stand out of place to all that viewed it, including members of the public within the private roads of the NSZ and residents within the NSZ with views of the Site. These

adverse effects would be substantially more than minor and would be unacceptable. They are not compatible with the lower-density, landscape-dominant amenity values that exist and are intended in this part of Wanaka and this part of the NSZ. We have not been persuaded by the assessment of urban design and landscape effects prepared on behalf of the Applicant in these respects, including because while specific assessment by Patch Ltd did account for its height, there was no mention of the building's overall scale and character, being plainly much larger than any likely dwelling would likely come close to, in the reasons given to support the building. We also find that the Patch Ltd assessment focused exclusively on views of the proposed building from outside the NSZ, which we see as insufficient given the existence of public-access roads and independently occupied buildings already in place. Our assessment has included, for example, effects on Wanaka residents travelling through the zone such as to use the proposed cycle / pedestrian link to the south of the Site.

[104] We find that a 3-storey building of the scale proposed would not maintain the amenity values of the location, or the built form amenity of both the NSZ and Wanaka as a whole. The legibility of each of these is intended to, and largely does, convey a clear focal point quality of density and scale around the identified central points, with development intensity and scale tapering away around these including, of note, the edge of the Clutha River / Mata-au.

[105] We acknowledge the Applicant's attempt to position the building where it would have minimal external views in the surrounding environment but we find this is not alone an acceptable or appropriate effects management strategy. The urban form amenity of Wanaka would be substantially degraded if developments, instead of clustering and achieving the benefits of compactness described within the District Plan, instead dispersed on the basis of minimum-visibility taking advantage of the scale of the landscape; that thinking in our opinion would create numerous significant adverse urban design outcomes for Wanaka and its residents' ability to provide for their social and economic wellbeing.

[106] Overall, we find that the proposed Care Pod is not acceptable. We considered whether or not this should lead to a refusal of consent, and we acknowledge that this was a finely balanced matter taking into account the scale and urban form effects of the remainder of the Proposal. However, in consideration of the full suite of statutory documents we are obliged to consider in our decision making, we have determined that if the Care Pod were reduced in height by one storey, its adverse effects would reduce to the limit of what we would deem "minor", and equally be acceptable albeit at our maximum tolerance of that.

[107] We have therefore imposed a condition requiring removal of the Care Pod's top storey. This is condition 1A in our decision.

*Balance of the Proposal*

[108] Other than the Care Pod, discussed above, we find that the Proposal will have urban design effects that would not be more than minor, and which would be acceptable. We accept the conclusions reached in the Patch Ltd urban design report and AEE in these respects. Particular points that we find lend support to the Proposal are:

(a) The rhythm and massing of buildings along Outlet Road, the most publicly-prominent part of the Proposal, will maintain the character that has already been established by development in the NSZ south-east of the Site, including in terms of the interface with Outlet Road itself (landscaping, vertical separation and fencing).

(b) The layout of the apartment buildings will not be significantly more adverse, than a line of large houses along Outlet Road as indicated within the Patch Ltd report could be reasonably anticipated following the Activity Area C2 Plan provisions (although it would be unlikely that they would have a relatively uniform design and scale as has been proposed).

(c) The visual quality and design of the buildings is context-appropriate, high-quality, and compatible with the forms, materials and colours that have already been established within the NSZ.

(d) The layout of the buildings on the Site will provide spaciousness and open space between the buildings and the quality of proposed landscape enhancement is in our judgement well-suited.

(e) The layout of buildings on the Site is also generally logical in terms of the Site's shape and dimensions.

[109] Overall and on the basis of the Care Pod being reduced to 2-storeys in height, we find that the Proposal will result in both positive and adverse urban design and visual effects. Adverse effects will overall be minor, but as commented above will be at the upper limit of that, and, on overall merit, acceptable.

***Landscape***

Potential effects

[110] The Application was supported by an assessment of Landscape and Urban Design effects by Patch Ltd, dated 5 March 2021. The AEE also included comments as to the Proposal's effects. The Applicant's case was that the Proposal would not be widely visible or obtrusive in its setting and would either not be visually problematic, or that potential effects would be mitigated such as by landscaping and tree-growth, so as to be "very low". The overall conclusion reached in terms of landscape character effects was that:[10]

> … The proposal will not increase any adverse effects on landscape character and will form part of the expected urban to natural transition

[10] Attachment I to the Application, paragraph 8.17.

between the Northlake neighbourhood and the adjacent Lake Wanaka and Clutha River ONL / ONF.

[111] The principal argument advanced by Patch Ltd, and agreed within the AEE, was that the Proposal was sufficiently far from, screened from, or otherwise consistent with, what could be seen from viewpoints around the Site and including Mt Iron, such that any adverse effects would be minimal.

Comments received

[112] None of the comments received included specific landscape assessment or evidence. The QLDC was opposed to the Proposal, but its objections did not in our view extend substantially to a broader landscape or landscape character effect.

Panel findings and conditions imposed

[113] We find that the Proposal will not be so visible in its wider environment that it would constitute a significant adverse landscape effect of any concern. We accept the conclusions of Patch Ltd in this regard.

[114] In reaching this conclusion we have paid particular attention to the proximity of the development to the Clutha River / Mata-au and ONL. We are satisfied that the Proposal would not have an adverse effect on either of those or their landscape qualities, on the basis of the reduction in height of the Care Pod building previously discussed.

[115] We have not imposed any additional landscape-related conditions of consent based on the Applicant's documentation and comments received (but have slightly amended condition 33 concerning landscaping, in response to feedback received from QLDC).

***Noise***

Potential effects

[116] The Application includes a letter from Marshall Day Acoustics (Attachment P to the Application) in relation to the noise associated with the proposed retirement village in comparison to the low and medium density residential activity anticipated by the zone (the **Marshall Day Report**).

[117] The Marshall Day Report states that noise generated by the proposed retirement village is likely to be less than the noise generated from low density residential activity, as a result of *"the general low number of residents who have or use motor vehicles, advanced age routine as well as generally slow and peaceful lifestyle"*.

[118] The Marshall Day Report concludes that *"the development of Areas C2 and D1 for use as a retirement village can comply with the Queenstown District Plan noise limits as is required for low and medium density residential activity"*, and that the *"retirement village activity can be*

*considered permitted with respect to noise"*.

[119] The Application states at page 51 that the Proposal *"will not result in adverse noise effects when compared to the noise that could be generated as of right by residential activity that is anticipated within the sites"*.

[120] The Application further states at page 52 that traffic generation from the site will be generally low (based on the characteristics of other retirement villages) and is not likely to be at peak hours due to residents not needing to travel for employment or education. The assessment in the AEE is that the traffic generated from the site is likely to have imperceptible noise effects on the basis that the traffic will be intermittent and spread through the day.

[121] The Application expresses the view that any potential adverse effects of noise on amenity values will be less than minor.

Comments received

[122] No comments directly raised concerns in relation to noise, although the QLDC's comments did raise the following in relation to hours of operation:

> Hours of operation have not been proposed for the retirement village activities such as the Care pod building, Main Entry building and Clubhouse and Amenity building and associated activities. Consideration should be given to any adverse effects of these activities outside what would be considered normal operating hours on any surrounding residential activities outside the retirement village.

Panel findings and conditions imposed

[123] The Panel generally accepts the Applicant's assessment in the Marshall Day Report, as supplemented by the discussion in the Application, and the conclusion that the Proposal's noise effects will be less than minor.

[124] While the evidence before the Panel does not necessarily expressly support Marshall Day's observation concerning "the general low number of residents who have or use motor vehicles" (each of the apartments has car parking provided within garages), the Panel accepts the proposition in the Application that a retirement village is not an inherently noisy activity, and Marshall Day's conclusion that the Proposal will comply with permitted activity standards in the district plan.

[125] The Panel does not consider it necessary to impose a condition relating to the hours of operation of communal facilities within the 'village hub' (a matter raised by QLDC). The Panel considers that compliance with the district plan's noise standards will suffice.

***Traffic***

Potential effects

[126] Section 12.1.5 of the Application addresses traffic effects by reference to the Transportation Assessment prepared by Carriageway Consulting

Limited (**CCL**) (Attachment L to the Application).

[127] The Application states that, in general, the traffic generation of a retirement village unit is much less than that of a standard residential unit, with travel taking place outside peak hours because retirement village residents have no need to travel for employment or education. Consequently, the Application states that expected traffic associated with the proposal will not give rise to any adverse effects relating to the capacity of the adjacent road network, particularly during peak hours.

[128] Some 'minor transport related non-compliances' are identified, which are assessed by CCL has giving rise to less than minor adverse effects.

[129] The Application states the construction phase of the Proposal will result in short term changes to the traffic patterns on the surrounding roading network due to construction and contractor vehicle movements to and from the site.

[130] Overall, the Proposal's adverse transportation-related effects are assessed as being less than minor.

Comments received

[131] No comments were received in relation to the Proposal's traffic effects (the Sticky Forest access issue raised by some commenters is addressed separately in Part G below).

Panel findings and conditions imposed

[132] The Panel accepts the Applicant's assessment that the transportation and traffic-related effects will be less than minor.

[133] The Application states at 12.1.5 in relation to conditions that:

> Mitigation will include the formation of a Construction Management and Traffic Management Plans to be prepared and complied with to avoid all potential adverse effects in relation to construction traffic. A condition of consent has been included requiring these plans to be submitted and approved by Council prior to construction works commencing on site.

[134] While a condition requiring a Traffic Management Plan (**TMP**) was proposed in the Applicant's set of conditions at Appendix U to the Application, a "Construction Management Plan" condition was not proposed *per se*. Rather an EMP condition was proposed.

[135] The Panel proposes an amendment to the EMP condition (condition 7) to require it to include a section on construction traffic management. In response to feedback on draft conditions received from QLDC, it has also imposed an amended form of TMP condition (see condition 15).

***Servicing effects***

Potential effects

[136] The Applicant has provided an Infrastructure Report by Paterson Pitts Group as Attachment M to the Application, which addresses the servicing of the Proposal in relation to water supply, wastewater disposal, stormwater management electricity and telecommunication networks.

[137] Section 12.1.6 of the Application states, in summary, that:

> … the proposal will be serviced by Council's existing reticulated water and wastewater networks. Stormwater will be managed and discharged within the existing Northlake Stormwater Management system; and electricity and telecommunication connections will be extended to adequately service the proposal.

And that:

> … the capacity of the existing and proposed three water infrastructure can adequately service the proposed retirement village. Stormwater can be appropriately captured and disposed of on site and there is capacity within the network utilities for the proposal. The method of servicing the proposal does not give rise to adverse effects that are more than minor.

Comments received

[138] Section 3.2 of the comments received from Te Rūnanga o Ngāi Tahu states that:

> … If during the consideration of the application any concerns relating to stormwater and/or wastewater do arise, Te Rūnanga wishes to highlight that any potential adverse effects from stormwater and wastewater may be felt within the Mata-au Clutha River and Lake Wānaka as potential end points for contamination pathways. …

Panel findings and conditions imposed

[139] Having considered the Application and Infrastructure Report, the Panel is satisfied that any potential effects under this heading are adequately mitigated and will be no more than minor. The Panel records, in relation to the comment by Te Rūnanga o Ngāi Tahu above, that no concerns arise relating to stormwater and/or wastewater.

***Contaminated Land***

Potential effects

[140] Section 12.1.7 of the Application notes that draft protocols for contaminated soil management are included within the draft EMP.

[141] Section 8.1 of the Application states that the Proposal involves 7,450m$^3$ of earthworks across 13,400m$^2$ and therefore requires consideration under the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health. The Application goes on

to state that:

> The site does not contain contaminated soil and has been zoned for residential activity. As discussed in the Preliminary Site Investigation and Detailed Site Investigation (Attachment V), the only hazardous substances associated with the previous pastoral farming use of Northlake are those that have been applied through application of fertilisers and pesticides. It is highly unlikely that this activity resulted in the accumulation of contaminants in soil that would exceed the NES soil contaminant standard.
>
> The proposal does not give rise to any potential risk to human health in relation to soil contamination.

Comments received

[142] The comments received from the ORC state:

> In the draft EMP the applicant has noted procedures in place if contaminated soil is identified. If contaminated soil is identified, resource consent would be required under rule 5.6.1 of the Regional Plan: Waste. …
>
> A site is classed as a contaminated site under the RPWaste if substance levels exceed relevant soil guidelines values and they are not naturally occurring. It is advised that resource consent is obtained on a precautionary basis if there is any suspicion that the site may be contaminated and if it is known that the site is contaminated, then consent must be required from ORC prior to any site disturbance.

[143] The Applicant's response to comments dated 1 July 2021 provides the following response to the comments from the ORC:

> The proposal will comply with Rule 5.6.1 as there is no known contaminated soils on the site. The site has been subject to bulk earthworks and no contaminated soil has been discovered.

Panel findings and conditions imposed

[144] The Panel is satisfied that no contaminated land issues arise, and that any potential adverse effects would be no more than minor in nature.

***Construction effects***

Potential effects

[145] A draft EMP has been provided as Attachment K to the Application. Section 12.1.7 of the Application states that following the preparation of detailed construction drawings, confirmed staging, the appointment of contractors, and prior to the commencement of works on-site, the draft EMP will be reviewed, updated and submitted to the Council for review and acceptance. The Application states that any adverse effects during construction will be mitigated through implementation of the EMP.

[146] Construction traffic effects are addressed above.

Comments received

[147] The ORC's comments note the absence of dedicated erosion and sediment and control documentation. ORC's comments state:

> … This is an issue as the soils in this area are glacial till, highly erodible and mobilise very easily during rainfall events. Given the proximity to the Clutha River/ Mata-au, good mitigation measures to control stormwater mobilising any sediment should be required. During summer dust may become an issue. The applicant may require water tankers or something similar to control dust from the site.

[148] The ORC proposes a set of conditions relating to erosion and sediment control.

[149] The Applicant's response to the ORC's comments on this matter are as follows:

> The application includes a draft Environmental Management Plan (Attachment K). Sediment and Erosion Control measured *[sic]* are discussed in Section 5 of the Environmental Management Plan. A detailed Erosion and Sediment Control Plan is to be prepared by the successful contractor at the time of detailed design along with the final Environmental Management Plan.
>
> It is proposed that the detailed Erosion and Sediment Control Plan will be consistent with the Erosion and Sediment Control Guidelines for Land Disturbing Activities in the Auckland Region 2016 along with the Queenstown Lakes District Council Guidelines for Environmental Management Plans.

[150] The Applicant considers the additional conditions of consent recommended by the ORC duplicate the draft EMP conditions proposed by the Applicant.

Panel findings and conditions imposed

[151] The Panel is satisfied that the proposed conditions of consent, including the proposed EMP condition (condition 7), are generally sufficient to ensure construction effects will be adequately mitigated.

[152] The Panel does however consider that condition 7 would benefit from some improvements. In particular, the Panel considers that the EMP should include specific sections on construction traffic management and the construction programme. The Panel also agrees with QLDC's suggested amendments to the EMP condition outlined in its letter dated 28 July 2021, and has imposed several additional / expanded environmental management conditions in response to QLDC's comments (see e.g. conditions 9 and 12 to 14). Conditions 7 and 13 have also been amended to require a copy of the EMP (and any amendments) and each monthly environmental report to be provided to the ORC for its information. Further, the Panel has amended condition 9 to include reference to GD2016/005 in

accordance with ORC's comments and the Applicant's response referred to at [147] to [149] above

[153] In relation to erosion and sediment control, the Panel considers that the conditions set out in Appendix 1 are appropriate.

***Archaeology***

Potential effects

[154] The Application does not provide any detailed discussion of potential archaeology effects, although the Application does record:

(a) Aukaha's preliminary advice that no specific cultural values have been identified within the location of the proposed development but have advised that the wider landscape was utilised by mana whenua and there is potential to uncover unrecorded archaeological sites/artefacts where earthworks are carried out; and

(b) The Applicant's acceptance of a condition, proposed by Aukaha, requiring compliance with the HNZPT's archaeological discovery protocol.

Comments received

[155] The HNZPT's comments note there are no historic heritage / archaeological sites scheduled in the Queenstown Lakes District Plan, nor entered on the New Zealand Heritage List within the area subject to the Application.

Panel findings and conditions imposed

[156] The Panel finds that any potential adverse archaeological effects will be less than minor, but considers that it is prudent to impose a condition (condition 8) requiring an accidental discovery protocol to be implemented in the event of any accidental archaeological discoveries that occur during construction works. Condition 8, and the advice note in condition 7, have been amended in accordance with comments received from Te Rūnanga o Ngāi Tahu on 28 July 2021. A new condition 43 has been added – also in response to comments from Te Rūnanga – to make it clear that condition 8 also applies to all works required by the conditions of the subdivision consent.

***Economic effects***

Potential effects

[157] The Application addresses economic effects at section 12.1.8, by reference to a report prepared by Urban Economics entitled *Evaluation of Market Potential for Proposed Retirement Village in Wanaka and its Environs* (Attachment Q), and a report prepared by Property Economics entitled *Economic Effects Assessment* (Attachment R).

[158] The report by Urban Economics provides an evaluation of the retirement village market in Wanaka, concluding that there are 213 existing retirement village units within Wanaka with a very low level of vacancy. As the Application notes, this tends to indicate there is a general shortage of retirement village units in the area. The Application also notes that the number of retiree households aged 70 years and older in Wanaka is forecast to increase by 67% by 2028.

[159] In relation to the *Economics Effects Assessment* by Property Economics, that report assesses the economic activity resulting from the proposed retirement village to identify 'high-level' economic costs and benefits and quantifies the economic impact of the proposal. The report states that, during the construction phase, the Proposal will create over 770 jobs during the peak construction year and will provide for ongoing operational local employment of 41 jobs per year. The proposed retirement village is expected to contribute $133m to business activity within the district over the first 5 years and an additional $9m in GDP and 145 jobs over a 15 year period at a regional level. At a national level the proposal provides for a further $148m in national GDP and 1210 jobs over the 15 year period. The AEE notes that:

> The proposal will create a significant number of construction jobs over the next five years. Given that the potential impacts of Covid-19 are likely to be most strongly felt during this period, the level of investment the proposal will provide for will create greater sustainability for the district's long term economic wellbeing and recovery.
>
> The proposal will contribute to an overall economic benefit within the district by creating additional employment, improved community investment, greater levels of option and amenity within the market and provides the district with the ability to attract an increasingly diverse demographic and ensuring economic activity.
>
> In summary, the proposal gives rise to positive economic effects.

Comments received

[160] No comments were received specifically addressing the Proposal's economic effects.

Panel findings and conditions imposed

[161] The Panel finds that the Proposal will have generally positive economic effects, as outlined above.

***Positive effects***

[162] The Proposal's positive effects are primarily assessed in the Application in the context of economic effects (see above).

[163] In short, the Application identifies positive effects through the increase in dwelling units for an increasing elderly population, and the creation of jobs during both the construction and operational phases.

[164] The Panel accepts that the Proposal will have a range of positive social

and economic effects, and will make a positive contribution to the district's economic wellbeing and recovery.

***Summary of effects***

[165] The Panel has assessed the effects of the Proposal as being no more than minor overall, provided that the height of the Care Pod building is reduced by one storey.

## F. Planning Instruments

[166] The Application and Appendix T provide analysis of relevant provisions contained in national, regional and district planning instruments.

**National Planning Instruments**

*National Environmental Standards*

[167] In relation to the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (**NES-Soil**), as noted above, section 8.1 of the Application records that the site does not contain contaminated soil and has been zoned for residential activity.

[168] The Panel accepts the assessment in the Application that it is highly unlikely that this activity resulted in the accumulation of contaminants in soil that would exceed the NES-Soil contaminant standard, and that the Proposal does not give rise to any potential risk to human health in relation to soil contamination.

[169] There are no other relevant NESs that require assessment.

*National Policy Statements*

[170] Section 8.3 of the Application notes the following matters in relation to the National Policy Statement for Urban Development 2020 (**NPS-UD**):

(a) That the QLDC is identified as a Tier 2 local authority in the NPS-UD, meaning all provisions except Policies 3 and 4 (which apply only to Tier 1 local authorities) apply.

(b) That the NPS-UD:

- requires planning decisions to contribute to well-functioning urban environments;
- directs Councils to set housing bottom lines within their plans;
- mandates rules relating to intensification in certain areas;
- requires removal of minimum carparking requirements from district plans; and
- requires Councils to be responsive to development unanticipated by planning documents where it would contribute

to desirable outcomes.

[171] The Application states that *"[w]hile the NPS-UD objectives and policies primarily set out the requirements for local authorities rather than developers, the proposal is generally consistent with its themes, as the proposal provides for residential development on a site zoned for residential activity within the Wanaka Urban Growth Boundary"*. The Application assesses the Proposal is being "consistent with the direction of the NPS-UD".

[172] Although the Application has not provided a detailed assessment of relevant provisions in the NPS-UD, the Panel has reviewed the relevant objectives and policies in the NPS-UD, namely those that refer to "planning decisions". In that regard, the Panel is aware of the Environment Court's findings in *Eden-Epsom Residential Protection Soc Inc v Auckland Council*, where the Court decided that there was no requirement to give effect to objectives and policies in the NPS-UD that do not require "planning decisions". [11] While that case related to different context (a private plan change), the ratio of the case would appear to be relevant to "planning decisions" involving resource consents also. The Panel accepts that the Proposal is generally consistent with the thrust of those provisions of the NPS-UD that are relevant to resource consent decision-making. [12]

[173] In its response to comments from the ORC, the Applicant briefly addresses the National Policy Statement for Freshwater Management as follows:

> The National Policy Statement for Freshwater Management (NPS-FM) provides direction on how to manage freshwater under the Resource Management Act 1991. The proposal is distant from and does not result in any effect on any water bodies (specifically the Clutha River and Lake Wanaka), therefore the proposal is consistent with the NPS-FM.

[174] The Panel accepts the Applicant's assessment in this regard.

**Regional Planning Instruments**

*Regional Policy Statements*

[175] Section 8.5 of the Application states:

> The Otago Regional Policy Statement 1998 (RPS98) version and the Partially Operative Otago Regional Policy Statement 2019 (PORPS19) are relevant to the proposal. …

[176] The Proposal is assessed in the Application as being generally consistent with both the Regional Policy Statement for Otago 1998 (**RPS98**) and the Partially Operative Otago Regional Policy Statement 2019 (**PORPS19**), *"in that it utilises the land resource for an activity that it has been zoned for, provides for the economic, social and cultural wellbeing of the Wanaka*

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11 *Eden-Epsom Residential Protection Soc Inc v Auckland Council* [2021] NZEnvC 082 at [30].

12 The Panel expressly records in terms of the *Eden-Epsom* case that its decision would not have changed, even if other NPS-UD objectives and policies had been applicable.

*community as it will support the region's economy by providing additional jobs, contributes to the supply of retirement village units and will result in a high amenity residential development"*.

[177] The Application states that an assessment of the relevant objectives and policies of the RPS98 and the PORPS19 is included in Attachment T.

[178] The Proposal is assessed in Attachment T as being consistent with the objectives and policies contained in Chapters 1, 2 and 4 of the PORPS19. The Panel accepts that assessment.

[179] Attachment T does not (despite the statement in the Application) provide an assessment of the RPS98, however nothing turns on this, as the Panel understands[13] the PORPS19 was declared partially operative on 15 March 2021, with the RPS98 being revoked on the same date.

[180] However, it came to the Panel's attention that the Otago Regional Council notified a new Proposed Otago Regional Policy Statement 2021 (**PORPS21**) on 26 June 2021.

[181] In view of the above developments, the Panel requested that the Applicant provide an updated assessment of the Proposal against relevant operative and proposed RPS objectives and policies.

[182] In response, the Applicant provided an assessment of the objectives and policies of the PORPS21 on 13 July 2021.

[183] The Panel has reviewed and generally accepts the Applicant's assessment of the Proposal as achieving relevant provisions in both the PORPS19 and PORPS21.

*Otago Regional Plan: Water*

[184] The Proposal is assessed in Attachment T as achieving relevant objectives and policies in the Otago Regional Plan: Water.

[185] The Panel notes that the ORC has not raised any concern with the Applicant's assessment in the section of its comments concerning "Policy considerations".

[186] Having reviewed the relevant objectives and policies, the Panel accepts the Applicant's assessment that the relevant objectives and policies of the Otago Regional Plan: Water will be achieved.

**District Plans**

[187] As noted, the Panel accepts the QLDC's comments that PDP district wide rules do not apply to the Proposal. The Panel also accepts QLDC's comments and Mr Gordon's advice as to the applicability of objectives and policies in PDP Chapters 3 to 6.

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13 Refer https://www.orc.govt.nz/plans-policies-reports/regional-plans-and-policies/otago-regional-policy-statements.

[188] The Panel has reviewed the assessment of relevant ODP rules / standards contained in section 8.6.1 of the Application, which it generally accepts and does not repeat.

[189] Similarly, subject to the important exceptions noted below, the Panel has reviewed, and generally accepts without repeating, the assessment of relevant PDP and ODP objectives and policies contained in Attachment T to the Application.

[190] While the Proposal is generally consistent with the objectives and policies of the ODP and PDP, the Proposal does not sit well with several key objective and policy provisions in section 12.33 of the ODP relating to the NSZ, which are discussed further below. The QLDC has also drawn attention to potential conflict with specific provisions in Chapter 4 of the ODP relating to urban and residential growth and Chapters 3 and 4 of the PDP relating to strategic direction and urban development. The provisions highlighted by the QLDC are also discussed briefly below.

[191] As a prelude to the discussion of those objectives and policies, the Panel is mindful of the High Court's statement in *McKenna v Hastings District Council* that things do not begin and end with effects.[14] The High Court confirmed that notwithstanding a finding that the adverse effects would be minor / not decisive, the Environment Court had been entitled to find that the proposal would be contrary to the policy intent of the plan, and take into account the precedent effect of granting consent, and concerns in relation to the integrity of the plan.

[192] Similarly, in *Stirling v Christchurch City Council*, the High Court confirmed that the Environment Court was entitled to decide that the absence of adverse effects is not determinative and that the enquiry should be made whether the proposal would achieve the objectives of the plan:[15]

> … It was for the Court to decide the weight that should be attached to the s 104(1) matters and the finding that the provisions of the Plan outweighed the absence of any adverse effects on the environment was clearly open to it….

[193] It is not unusual for a development proposal to find favour with some provisions of relevant planning instruments, but not with others. In those circumstances, the decision-maker is often required to consider the relative importance of the provisions, and decide what weight should be given to them.[16]

[194] The Supreme Court in *King Salmon* found that objectives and policies can be expressed in different ways, calling for a difference in how they are to be applied:[17]

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14 *McKenna v Hastings District Council* (2009) 15 ELRNZ 41 (HC) at [67] to [69].
15 *Stirling v Christchurch City Council* [2011] 16 ELRNZ 798 (HC) at [56].
16 Ibid, at [58].
17 *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited* [2014] NZSC 38 at [129].

> When dealing with a plan change application, the decision-maker must first identify those policies that are relevant, paying careful attention to the way in which they are expressed. Those expressed in more directive terms will carry greater weight than those expressed in less directive terms. Moreover, it may be that a policy is stated in such directive terms that the decisionmaker has no option but to implement it. So, "avoid" is a stronger direction than "take account of"…

[195] In this case, there is a directly relevant policy in section 12.33 of the ODP (Policy 1.7), which requires the "avoidance" of retirement villages outside Activity Area D1. In terms of that policy, as addressed further below, the Panel has found it helpful to consider the following further passages from *King Salmon*:

> [144] Third, it is suggested that this approach to policies 13(1)(a) and 15(a) will make their reach over-broad. The argument is that, because the word "effect" is widely defined in s 3 of the RMA and that definition carries over to the NZCPS, any activity which has an adverse effect, no matter how minor or transitory, will have to be avoided in an outstanding area falling within policies 13 or 15. This, it is said, would be unworkable. We do not accept this.
>
> [145] The definition of "effect" in s 3 is broad. It applies "unless the context otherwise requires". So the question becomes, what is meant by the words "avoid adverse effects" in policies 13(1)(a) and 15(a)? This must be assessed against the opening words of each policy. Taking policy 13 by way of example, its opening words are: "To preserve the natural character of the coastal environment and to protect it from inappropriate subdivision, use, and development". Policy 13(1)(a) ("avoid adverse effects of activities on natural character in areas of the coastal environment with outstanding natural character") relates back to the overall policy stated in the opening words. It is improbable that it would be necessary to prohibit an activity that has a minor or transitory adverse effect in order to preserve the natural character of the coastal environment, even where that natural character is outstanding. Moreover, some uses or developments may enhance the natural character of an area.

[196] As noted above, the QLDC assesses the Proposal as being "contrary to" a number ODP and PDP objectives and policies. In this context, and for the purposes of the section 104D assessment below, the Panel has interpreted "contrary to" as meaning opposed to in nature, different to, or repugnant to, the objectives and policies (and more than just non-complying).[18]

***Proposed District Plan***

QLDC assessment

[197] QLDC considers the Proposal is contrary to Objective 3.2.3.2 in Chapter 3 (Strategic Direction) of the PDP, which is:

> **Objective 3.2.3.2** – Built form integrates well with its surrounding

[18] *New Zealand Rail v Marlborough District Council* [1994] NZRMA 70 (HC) at 80.

urban environment.

[198] QLDC notes that the Proposal *"includes buildings of 13.5m in height and exceeds the density the Northlake Special Zone rules provide for"* and does not consider that *"it will integrate well with the surrounding urban environment given this scale and density proposed".*

[199] QLDC also considers the Proposal is contrary to Policy 4.2.2.3 in Chapter 4 (Urban Development) of the PDP:

> **Policy 4.2.2.3** - Enable an increased density of well-designed residential development in close proximity to town centres, public transport routes, community and education facilities, while ensuring development is consistent with any structure plan for the area and responds to the character of its site, the street, open space and surrounding area.

[200] Again, QLDC highlights the density proposed, which it says *"is not consistent with Structure Plan, which anticipates a lower density than is proposed"*. QLDC considers that *"the proposed retirement village would not adequately respond the character of the surrounding Activity Area and would therefore be contrary to this policy"*.

Applicant's assessment

[201] The Applicant differs in its assessment of Objective 3.2.3.2. It assesses the Proposal as achieving this objective, stating the *"retirement village and related activities are appropriately located with respect to the surrounding Northlake environment and will integrate well with activities in the NSZ"*.[19]

[202] In relation to Policy 4.2.2.3, the Applicant acknowledges that the Proposal is not consistent with the NSZ Structure Plan and therefore is not consistent with this aspect of the policy, but on the other side of the ledger highlights that: [20]

> … the development, through the design, responds positively to the character of the site, the street, open space and the surrounding area and overall would present a not dissimilar potential building bulk to that which is anticipated by the Structure Plan.

Panel's findings

[203] In terms of Objective 3.2.3.2, for reasons addressed in the section on visual and landscape effects above, the Panel finds that, subject to the removal of one storey from the Care Hub building the Proposal will respond acceptably to the site and surrounding area.

[204] The Panel agrees with QLDC that the proposed density does not comply with the Structure Plan, and the Panel finds that the Proposal is for that reason partly inconsistent with (but not 'contrary to') Policy 4.2.2.3. On the other hand, again subject to decreasing the height of the Care Hub

19 Attachment T to the Application, page 28.
20 Attachment T to the Application, page 32.

building, the Panel accepts that the Proposal will be similar to the potential building bulk anticipated by the Structure Plan. In terms of the consequences of this inconsistency for the Panel's consideration of the Proposal's overall merits, refer to the further discussion under the subheading *"Conclusion on PDP and ODP objectives / policies"* below.[21]

[205] The Panel finds that the Proposal is reasonably consistent with Objective 3.2.3.2, which elaborates on Objective 3.2.3: *"A quality built environment taking into account the character of individual communities"*. Subject to the redesign of the Care Pod building to remove one storey, the Panel considers that these objectives will be achieved.

***Chapter 4 of ODP***

QLDC assessment

[206] QLDC considers the Proposal is contrary to Objective 2 and Policies 2.1 and 2.3 of Chapter 4 of the ODP relating to urban growth:

> **Objective 2** - Urban growth which has regard for the built character and amenity values of the existing urban areas and enables people and communities to provide for their social, cultural and economic wellbeing.
> **Policy 2.1** - To ensure new growth and development in existing urban areas takes place in a manner, form and location which protects or enhances the built character and amenity of the existing residential areas and small townships.
> **Policy 2.3** - To protect the living environments of existing low-density residential areas by limiting higher density development opportunities within these areas.

[207] QLDC considers that the Proposal contrary to the above objective and policies as it:

> … will be constructed to a much greater scale and intensity when compared to the existing built character of the surrounding Northlake Special zone area which has the potential to adversely affect amenity values. Retirement villages are not provided for within Activity Area C2, and therefore the location of the development will not protect or enhance the built character and amenity of the existing residential area. The proposed built form will be a maximum of 13.5m in height, exceeding the height limit for the zone (8m in Activity Area C2 and 10m in Activity Area D1) and exceed the density requirements for Activity Areas C2 and D1. The proposal will not protect the existing low-density residential area given that the proposal will represent a higher density development than anticipated by the zone provisions.

[208] QLDC considers the Proposal is contrary to Policies 3.3 and 3.4 of Chapter 4 of the ODP relating to residential growth:

> **Policy 3.3** – To provide for high density residential development in

[21] As addressed in Part H below, the Panel is satisfied that, on the basis that adverse effects will be no more than minor, one of the limbs of the section 104D gateway test has been passed and that it is permitted to consider the Application's overall merits.

appropriate areas.
**Policy 3.4** – To provide for lower density residential development in appropriate areas and to ensure that controls generally maintain and enhance existing residential character in those areas.

[209] QLDC considers that the Proposal contrary to the above policies as it:

> … proposes high density residential development that exceeds the density provided for by the Northlake Structure Plan (in Activity Area C2 that provides for lower density residential development). It is considered that the proposal will not adequately maintain and enhance existing residential character in Activity Area C2. The Council considers the proposal contrary to the above policies.

Applicant's assessment

[210] The Applicant assesses the Proposal as achieving Objective 2 and Policies 2.1, 2.3, 3.3 and 3.4. The Applicant's assessment in Attachment T is reproduced below:[22]

> Objective 2
>
> The proposal has regard for and integrates with the existing built character and amenity values of Northlake. The development contributes to enabling the wider community to provide for the wellbeing of older residents. …
>
> Policy 2.1
>
> The proposal has been designed to complement the character and amenities of Northlake. The village hub buildings feature simple gable forms and are clad in natural and earth-toned materials which capture the commercial and residential vernacular developing at Northlake. …
>
> Policy 2.3
>
> Activity Area C2 is zoned for low density residential development. The higher density retirement village living proposed within this part of AAC2 is physically separated from the balance low-density residential areas by topography (in the case of the adjacent AAE1), roading, and Activity Area D1 in which higher density development is anticipated.
>
> Accordingly, although higher density development opportunities are limited in AAC2, the living environments in the existing low density areas of Northlake are protected from the higher density development proposed, and the policy is achieved.
>
> Policy 3.3
>
> The proposal provides for higher density residential development that exceeds the density provided for by the Northlake Structure Plan. However, it is appropriate given:

[22] Attachment T to the Application, pages 7-8.

> • although exceeding the density anticipated by the plan, the overall building footprint is less than that anticipated by the relevant permitted development standards;
> • the comprehensively designed built form, layout and proposed landscaping;
> • the proposed activity benefits from the high density type layout as it ensures that the retirement village is walkable for its residents and contains sufficient open space and communal areas.
> • It is appropriately located in relation to adjoining and nearby Activity Areas.
>
> Policy 3.4
>
> Activity Area C2 provides for lower density residential development. The subject site is in a part of this activity area that adjoins Activity Area D which anticipates a higher density of development (including retirement villages). This part of Activity Area C2 is otherwise generally separated from the other parts of Northlake, and the residential character of Northlake will continue to be maintained.
>
> To the extent that the policy is relevant, it is achieved by the proposal.

Panel's findings

[211] The Panel agrees with QLDC that there is some inconsistency with the provisions identified by the QLDC (e.g. Policy 2.3). Development at the density proposed is, as QLDC notes, not anticipated by the zone provisions.

[212] However, and for the reasons stated below, the Panel is satisfied on an overall merits assessment[23] that any tension is, by a very narrow margin, adequately resolved, and that, subject to the reduction in height of the Care Pod building, the built character and amenity of the NSZ will be adequately maintained. Again, refer to the further discussion under the subheading *"Conclusion on PDP and ODP objectives / policies"* below.

[213] The Panel also accepts that the Proposal engages with the social, cultural and economic wellbeing element of Objective 2, by providing for the wellbeing of older residents.

***Chapter 12 ODP – Northlake Special Zone***

QLDC assessment

[214] QLDC considers the Proposal is contrary to Objective 1 and Policies 1.5, 1.6, 1.7, and 2.2, 2.3, 2.5 and 2.6 of Chapter 12 of the ODP relating to the NSZ:

> **Objective 1** – Residential Development - A range of medium to low density and larger lot residential development in close proximity to the wider Wanaka amenities.

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23 Noting again the Panel's finding in Part H that on the basis that adverse effects will be no more than minor, one of the limbs of the section 104D gateway test has been passed, and the Panel is permitted to consider the Application's overall merits.

> **Policy 1.5** - To enable and encourage larger residential lot sizes within Activity Areas C1 – C3.
> **Policy 1.6** - To enable and encourage medium density residential activities within Activity Area D1.
> **Policy 1.7** - To provide for small scale neighbourhood retail activities including one small supermarket to serve the needs of the local community within Activity Area D1 and to avoid visitor accommodation, commercial, retail and community activities and retirement villages within Activity Areas other than within Activity Area D1.
> **Policy 2.2** - To require development to be consistent with the Northlake Structure Plan.
> **Policy 2.3** – To require the use of Outline Development Plans in resource consent applications for Activity Areas B1 to B5, C1 to C4 and D1 in order to:
> • implement the objectives and policies of the Zone and the relevant Activity Area and the Northlake Structure Plan;
> • determine the general location of anticipated future activities and built form within the Activity Area;
> • achieve any required density range within the relevant Activity Area;
> • achieve appropriate integration of anticipated future activities.
> **Policy 2.5** – To ensure that development recognises and relates to the wider Wanaka character and is a logical extension of the urban form of Wanaka.
> **Policy 2.6** - To enable visitor accommodation, commercial, community activities, retirement villages and limited small scale retail activities including one small supermarket within Activity Area D1 to service some daily needs of the local community, while maintaining compatibility with residential amenity and avoiding retail development of a scale that would undermine the Wanaka Town Centre and the commercial core of the Three Parks Special Zone.

[215] In relation to Objective 1, QLDC states that the Proposal:

> … exceeds the density the Northlake Special Zone rules provide for - Activity Area C2 anticipates 4.5 units per hectare +/- 15% (under Rule 12.34.4.2.iii) and Activity Area D1 anticipates 15 units per hectare (also under Rule 12.34.4.2.iii). The application proposes 37 units per ha in Activity Area C2 and 23.6 units per ha in Activity Area D1. This is considered to represent high density residential development rather than the medium to low density anticipated. …

[216] QLDC considers the development of multiple units within Activity Area C2 is contrary to Policy 1.5's intent for larger lot sizes. Similarly, the proposed density within Activity Area D1 is assessed by QLDC as higher than that provided for in the NSZ provisions, and therefore contrary to Policy 1.6.

[217] The Proposal is described as being contrary to Policy 1.7, which requires the avoidance of retirement villages within Activity Areas other than within Activity Area D1. QLDC note that the:

> … various Activity Areas were proposed and established through the original Plan Change for the Northlake Special zone and were specifically designed to have different purposes and densities of residential development, with Activity Area D1 also allowing for some small scale retail activities, visitor accommodation, commercial,

> community activities and retirement villages. The establishment of these types of activities outside Activity Area D1 (and within Activity Area C2) has the potential to adversely affect the character and amenity of the Activity Area and may compromise the overall integrity of the zone and how it relates to the surrounding environment.

[218] QLDC considers the Proposal is contrary to Policies 2.2 and 2.3, as it provides for a higher density of residential activity than is anticipated by the NSZ rules.

[219] The Proposal is considered by QLDC to be contrary to policy 2.5 as it includes buildings of 13.5m in height, is located within an Activity Area that seeks to avoid retirement villages (Activity Area C2), and is assessed as not recognising and relating to the "wider Wanaka character".

[220] Finally, in terms of Policy 2.6, QLDC states in relation to the part of the village in Activity Area D1 that, while provided for within that Activity Area, the height of buildings and density proposed mean that it will not maintain compatibility with residential amenity.

Applicant's assessment

[221] For its part, the Applicant acknowledges in its letter dated 1 July 2021 that the Proposal is contrary to:[24]

> … Policies 1.5 and 1.7 of the Northlake Special Zone (NSZ) in relation to larger residential lots sizes in Activity Area C1 – C3 (Policy 1.5) and the provision of a retirement village and associated activities within Activity Area C2 (Policy 1.7) (but is otherwise consistent with the policy to the extent that it provides for retirement village units within Activity Area D1). …

[222] In relation to Policy 1.5, the Applicant states in the same letter that "the land holding will still comprise a large lot of 3.05ha, although it will contain multiple units for the retirement village", while at paragraph 2e) of its response to QLDC's comments the Applicant draws attention to page 21 of the Landscape, Visual Effects and Urban Design Assessment, which states that the proposed building coverage of 27.34% is less than what is permitted for residential development in this area under Rule 12.34.4.2(iii) which provides for a building coverage maximum of 40% plus or minus 15%. The Applicant also notes the conclusion in the Landscape, Visual Effects and Urban Design Assessment that the Proposal presents little change beyond what is anticipated in the Zone.

[223] As to Policy 1.7, the Application provides the following discussion:[25]

> There is no other particular justification in the Zone provisions, or in the Zone purpose statement, as to why the Zone does not anticipate retirement villages – a predominantly residential activity – in the parts of the Zone that otherwise anticipate residential activities.

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24 In response to the Panel's first request for further information.

25 Attachment T to the Application, page 12.

> The key attribute of retirement villages is the greater density of residential living they provide. This density is necessary for the close co-location of the residents and proximity to communal facilities and amenities, including for residents' health and social wellbeing. In the case of this proposed retirement village, the location, design and its integration with the Zone and wider surrounds, are appropriate, notwithstanding that the policy discourages retirement villages in this part of the Zone.

[224] The Panel acknowledges the Applicant's further discussion of the background to Policy 1.7 in section 3 of the Applicant's 1 July 2021 letter, but records that it has not ultimately placed any weight on that commentary. Rather, it has interpreted the NSZ provisions as it finds them.

[225] The Applicant assesses the Proposal as achieving Objective 1 and, we infer, Policy 1.6. While exceedance of the densities required by the rules is acknowledged, the Applicant highlights in Attachment T that the density proposed (e.g. at 37 units per hectare in Activity Area C2) is consistent with a density generally regarded in New Zealand as "medium density".

[226] The Proposal is considered by the Applicant to be consistent with Policy 2.2 in the sense that, while it provides for a higher density of residential activity within Activity Area C2 than is otherwise anticipated by the rules, the development is nevertheless located within an area of the Structure Plan that anticipates residential development.

[227] Attachment T identifies no issue with Policy 2.3, and assesses the Proposal as achieving Policies 2.5 and 2.6, highlighting that the development has been designed in response to the local developing vernacular within Northlake and the surrounding Wanaka area, and to maintain the existing and development amenity of Northlake as discussed in the Landscape, Visual Effects & Urban Design and Assessment.

Panel's findings

[228] While we have referred primarily to QLDC's and the Applicant's assessments above, the Panel records that it has also considered the comments received from Mr McDougall, who observes that the density provided for in rule 12.34.4.2 of the ODP for the retirement village site is limited to 4.5 residential units per hectare. Mr McDougall states that this rule has given him confidence in the ODP's zoning policies, which should be upheld. He is happy for a well designed set of buildings, but not at the expense space.

[229] Consistent with the Supreme Court's comments in *King Salmon*, the Panel has paid careful attention to the precise words used in the various NSZ provisions. In particular, the Panel notes that several policies employ directive language (for instance the word "avoid" in Policy 1.7).

[230] The Panel finds that the Proposal is contrary to Policies 1.5 and 1.7, inconsistent with Policy 1.6 and arguably contrary to Objective 1.

[231] The Panel does not consider that a broader New Zealand approach to the

concept of medium density is an appropriate comparison in the context of the specific density provisions applying in the NSZ. Those provisions (see rule 12.34.4.2iii) reflect a particular understanding of what is meant by medium density, low density, and larger lot residential development. For instance, medium density residential activities are enabled within Activity Area D1 at a density of 15 units per hectare, which is substantially lower than the density now proposed.

[232] The Proposal is particularly problematic in terms of Policy 1.7, as the development clearly does not "avoid" retirement village development outside Activity Area D1.

[233] The Panel also finds that the Proposal is:

(a) Arguably contrary to Policy 2.2, which "requires" development to be consistent with the Structure Plan. While it is correct that the Structure Plan anticipates residential development on the land in question, that is at densities significantly lower than now proposed; and

(b) At least inconsistent with Policy 2.3, noting the underlying intent of that policy (e.g. to achieve any required density range within the relevant Activity Area).

[234] The Panel finds that the Proposal is generally consistent, however, with policies 2.5 and 2.6, for the reasons given by the Applicant.

[235] In summary, the Proposal does not find favour with an important group of objective and policy provisions applying to the NSZ. Achieving lower density of development at the northern edge of the NSZ (acknowledging the slightly higher density allowable in Activity Area D1) is a key policy theme. The Panel infers that the policy of 'avoiding' certain forms of development outside Activity Area D1 (not only retirement villages, but also visitor accommodation, commercial, retail and community activities) may be intended – at least in part – to avoid the sometimes larger and bulkier buildings associated with such activities.

***Conclusion on PDP and ODP objectives / policies***

[236] The question for the Panel, having assessed the Proposal as being at least inconsistent with, and in some cases contrary to, a key group of provisions, is whether this rules out the possibility of granting consent. Again, as addressed separately in Part H below, the Panel is satisfied that on the basis that adverse effects will be no more than minor, one of the limbs of the section 104D gateway test has been passed and that it is permitted to consider the Application's overall merits.

[237] From the Panel's perspective, this question of overall merit was extremely finely balanced. The Panel has decided, by the narrowest of margins, that the Proposal's inconsistency with / contrariness to the objectives and policies of the PDP and ODP (and the NSZ provisions in particular) do not demand the refusal of consent in the particular circumstances of this Application, broadly for the following reasons:

(a) Subject to the reduction of the height of the Care Pod building by one storey, the Panel assesses the Proposal's adverse effects as being no more than minor. Accordingly, having regard to [144] and [145] of *King Salmon* (quoted above), the Panel does not consider that the avoidance aspect of Policy 1.7 *requires* the refusal of consent;

(b) With the above change to the Care Hub building, the Panel finds that the Proposal will respond acceptably to the site and surrounding area, noting that the non-residential 'village hub' buildings will be set back from Outlet Road, and framed by existing and proposed indigenous vegetation;

(c) The Proposal will be similar to the potential building bulk anticipated by the Structure Plan, which provides for potentially large residential buildings within Activity Area C2 (albeit at a much lower density);

(d) The NSZ provisions and Structure Plan contemplate retirement village development in Activity Area D1; and

(e) While the NSZ provisions and Structure Plan do not contemplate retirement village development *per se* within Activity Area C2, residential development is contemplated within this Activity Area. Residential development is a central component of the activity "retirement village", as it is defined in the ODP:

> Means the development of residential units (either detached or attached) and associated facilities for the purpose of accommodating retired persons. This use includes as accessory to the principal use any services or amenities provided on the site such as shops, restaurants, medical facilities, swimming pools and recreational facilities and the like which are to be used exclusively by the retired persons using such accommodation.

## G. Conditions

[238] The Applicant provided a draft set of conditions with its Application at Appendix U.

[239] While these represented a useful starting point, with the assistance of Mr Putt, a number of gaps and areas for improvement were identified.

[240] As addressed earlier, a draft set of conditions was issued for comment on 15 July 2021 with an extended deadline of 28 July for comments.

[241] As noted, comments on the draft conditions were received from the following parties: QLDC, HNZPT, ORC, Mr Bunker / Ms Rouse, the Minister for Treaty of Waitangi Negotiations, Te Arawhiti, Te Rūnanga o Ngāi Tahu, and the Applicant.

[242] The Panel has made a number of further amendments to the conditions in response to the comments received. We do not propose to traverse the

detail of all changes, but note the following:

(a) The Panel has made some, but not all, of the changes requested by QLDC and ORC. The Panel records that it has not imposed an amalgamation condition as requested by QLDC (for reasons given by the Applicant), nor has it imposed conditions restricting the hours of irrigation or hours of operation of buildings within the village hub, as it does not consider these conditions have clearly been justified.

(b) The Panel has made the changes to conditions 7 and 8 requested in the table at section 1.1 of Te Rūnanga o Ngāi Tahu's response dated 28 July 2021. It has also imposed a new condition on the subdivision consent to address the matter raised in the final row the table (refer condition 43).

(c) The Panel has made amendments to condition 39(a) in response to comments received from the Applicant.

(d) While Hokonui Rūnanga did not provide feedback on the draft conditions, the Panel has amended advice note 1 in response to Hokonui Rūnanga's original comments (to specifically reference Hokonui Rūnanga).

[243] The Applicant opposed the possibility of a condition requiring the height of the Care Pod building to be reduced by one storey. As discussed above, the Panel has found such a condition to be necessary, and condition 1A imposes the relevant requirement.

***Sticky Forest***

[244] One aspect of the conditions attracted significant comment: access to Sticky Forest. This requires further comment.

[245] The Application records the following:

> 16.1 By letter dated 1 October 2020 (Minister's Letter) the Honourable David Parker, Minister for the Environment, advised the applicant Winton Property Limited (WPL) of his decision, under section 24(2) of the Act, to accept this application for referral. A copy of the Minister's Letter is at Attachment W.
>
> 16.2 The Minister's Letter included the following statement (Minister's Direction):
>
> > "I will also direct the expert consenting panel to consider whether this project is a legitimate opportunity to resolve access issues to landlocked Sticky Forest."

[246] While the Minister's letter, as quoted above, evinces an intention to direct the Panel to consider this matter, the Order in Council did not reflect this intention and no such direction was given to the Panel.

[247] The Panel records that, while no formal direction was given to it by the

Minister in relation to access issues for Sticky Forest, it has nonetheless considered the matter.

[248] The Applicant proposed a condition in Attachment U to the Application (condition 2) to address the issue of access to Sticky Forest, if approval to the Application is granted.

[249] Following review of comments on its initial proposed condition, the Applicant proposed an 'augmented' set of access conditions in its response of 1 July 2021. The augmented access conditions were discussed in some detail in a memorandum of 1 July 2021 from Warwick Goldsmith on behalf of the Applicant.

[250] The Applicant expressly volunteered the augmented access conditions to avoid any possible jurisdictional issue. The Panel records that, as the conditions have been offered on an *Augier* basis, it has not considered any jurisdictional issues with such conditions. The *Augier* principle derives from the decision by Sir Douglas Frank QC sitting as a Deputy Judge in the Queen's Bench Division in *Augier v Secretary of State for the Environment*.[26] That case is authority for the proposition that an applicant for resource consent who gives an undertaking to a planning authority which is relied upon in granting the consent is estopped from later asserting that there was no power to grant the consent subject to a condition based on the undertaking. The principle has been adopted and is regularly applied in New Zealand.[27]

[251] The Panel has, however, noted the Applicant's statement in relation to the volunteered conditions that:[28]

> … The conditions as volunteered extend to include any such drafting improvements provided they do not substantively alter the rights and obligations arising under the volunteered conditions, particularly in respect of subparagraph 2.c of the volunteered conditions.

[252] Other persons who provided comments on this aspect of the Proposal advocated for a different approach. In particular, Mr Bunker and Ms Rouse proposed an alternative condition based on an easement in gross in favour of the QLDC. The QLDC stated in its further information response of 12 July 2021 that it would accept such a condition, subject to a number of amendments, as outlined in its response.

[253] While the draft conditions issued by the Panel on 15 July 2021 included the augmented access conditions proposed by the Applicant (with some modifications), the accompanying Minute of the Panel made it clear that it had made no decision on whether (if it granted consent), it would impose a condition relating to access to Sticky Forest, or as to the form of any such condition. Having noted this, the Panel sought feedback both on the QLDC's form of amended easement condition wording, in addition to the

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26 (1978) 38 P & CR 219.

27 *Frasers Papamoa Ltd v Tauranga City Council*, CIV 2008-470-465, High Court, Allan J, 30 September 2009.

28 Memorandum from Warwick Goldsmith dated 1 July 2021, at [47].

Applicant's augmented access conditions.

[254] The Applicant's response to the draft conditions confirms that it supports its volunteered augmented access conditions, in preference to the QLDC's draft easement condition (but proposed an amendment in the event that the Panel decided to impose it).

[255] Mr Bunker and Ms Rouse, QLDC, Te Arawhiti, the Minister for Treaty of Waitangi Negotiations, and Te Rūnanga o Ngāi Tahu all reconfirm their support for the QLDC's draft easement condition. Te Arawhiti supported the easement condition being made "more flexible to provide for an alternative location within the project land...". QLDC and Te Arawhiti also propose possible amendments to the Applicant's augmented access conditions, should the Panel be minded to include those conditions (e.g. amendments so that the Access Deed is not conditional on any matter).

[256] The Panel has carefully considered the reasons for and against both:

(a) An easement-based condition, such as that proposed by Mr Bunker and Ms Rouse, and supported by QLDC and others; and

(b) The 'augmented' access conditions proposed by the Applicant.

[257] It has also considered the legal advice provided by Mr Gordon on the matter of access to Sticky Forest.

[258] Having done so, the Panel has a number of concerns with the reasonableness of imposing a condition on this Proposal requiring an easement in gross in favour of QLDC fixing a specific alignment for future access to Sticky Forest.

[259] While it is accepted that the legal 'threshold' for a valid condition may be slightly lower under the FTA than the RMA (as Mr Gordon has noted), the Panel doubts whether there is a sufficient logical link between the development proposed in the Application and the proposed easement for future access to Sticky Forest. As Mr Gordon has observed:[29]

> This retirement village proposal includes an application for subdivision, the purpose of which appears to enable the proposed village to have its own title. Apart from the balance lot sharing a common boundary with the Sticky Forest land, the only hint of cross boundary connectivity is an indicative pedestrian walkway/cycleway nib to provide a future connection. The proposal does not depend on amenity or recreation benefits of the Sticky Forest land and there is no call for a street network anywhere near the Sticky Forest land to be designed as part of the application.

[260] The Panel agrees with the above observations. The Proposal is, in reality, focused on the development of an area with no clear connection to future access for Sticky Forest.

[261] The Panel is also concerned as to the reasonableness of imposing the

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29 Letter from Ian Gordon to EPA dated 15 July 2021, at [22].

proposed easement condition, which would 'lock in' a particular future road alignment through part of the proposed balance lot, when the Applicant's future development plans for a sizeable portion of the proposed balance lot appear not to have crystalised. There is some force in Mr Goldsmith's submission that this *"effectively designs NIL's future development of that land, without any consultation with NIL"*.[30] Mr Goldsmith also advises that this *"aspect is of particular concern to WPL because NIL would certainly not put a road in this exact location"*.

[262] The Panel acknowledges the constructive approach taken by the Applicant and all those who have commented on this difficult issue. Having carefully considered the matter, the Panel considers that the Applicant's volunteered set of conditions (conditions 47 to 50 in Appendix 1) – while not providing final and immediate resolution of access – represents a satisfactory response to this issue, and provides a potential pathway for the issue to be resolved.

[263] As to the possible amendments to the Applicant's augmented access conditions proposed by QLDC and Te Arawhiti, the Panel has decided in its discretion not to make any further changes to the Applicant's offered conditions (e.g. to remove any conditions), noting the basis on which the Applicant has volunteered those conditions (refer [251] above).

[264] Finally, the Panel expressly records that the pursuit of a plan change to address access to Sticky Forest should not prevent other possibilities for achieving such access from being explored. For instance, the Panel would encourage QLDC (to the extent possible) to consider a roading connection to the Sticky Forest boundary as and when consent is sought for a street network on the Applicant's balance lot land.

## H. Section 104D

[265] As noted, the Proposal is a non-complying activity overall. The Application identifies five non-complying activity 'triggers' in the ODP as follows:[31]

- A non-complying activity consent pursuant to Rule 12.34.4.2(i) for activities not in accordance with the Structure Plan;
- A non-complying activity consent pursuant to Rule 12.34.4.2(x) for the removal of trees within Activity Area E1;
- A non-complying activity consent pursuant to Rule 12.34.2.5(viii) for buildings within Activity Area C2 and D1;
- A non-complying activity consent pursuant to Rule 12.34.2.5(ix) for a Retirement Village in Activity Area C2;
- A non-complying activity consent pursuant to Rule 12.34.4.2(iii) to breach the density of Activity Area C2; …

[266] Clause 32(1) of Schedule 6 to the FTA confirms that section 104D of the RMA applies to the Panel's consideration of a non-complying referred project. Accordingly, the Proposal must pass one of the 'gateway' tests prescribed in section 104D(1):

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30 Mr Goldsmith's Memorandum dated 1 July 2021, at [69]e.

31 Application, page 45.

> Despite any decision made for the purpose of notification in relation to adverse effects, a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either—
>
> (a) the adverse effects of the activity on the environment (other than any effect to which section 104(3)(a)(ii) applies) will be minor; or
>
> (b) the application is for an activity that will not be contrary to the objectives and policies of—
>
> (i) the relevant plan, if there is a plan but no proposed plan in respect of the activity; or
>
> (ii) the relevant proposed plan, if there is a proposed plan but no relevant plan in respect of the activity; or
>
> (iii) both the relevant plan and the relevant proposed plan, if there is both a plan and a proposed plan in respect of the activity.

[267] Once again, the word "contrary" for the purposes of section 104D(1)(b) means that it must be opposed to in nature, different to, or repugnant to.[32]

***Applicant's section 104D assessment***

[268] The Application, as lodged, did not include a section 104D assessment. The Panel accordingly requested that the Applicant provide an appropriate assessment in terms of the section 104D 'gateway' tests.

[269] In its 1 July 2021 further information response, the Applicant provided the following brief section 104 assessment:

> *Section 104D(1)(a) – Adverse effects on the environment will be minor*
>
> Section 104D(1)(a) of the Act requires that the Council is satisfied that the adverse effects of the activity on the environment will be minor. The effects of the proposal are assessed in Part 12 of the application document. As summarised in Part 12.1.9 of that document, the proposal does not give rise to adverse effects that are more than minor and therefore the test of s104D(1)(a) is satisfied.
>
> *Section 104D(1)(b) – Proposal will not be contrary to the objectives and policies of the District Plan*
>
> Section 104D(1)(a) *[sic]* of the Act requires that the Council is satisfied that the activity will not be contrary to the objectives and policies of the planning instruments. The relevant objectives and policies for the proposal are assessed in Attachment T of the application document. The proposal is not contrary to the relevant objectives and policies of the Operative District Plan (ODP) and the Proposed District Plan (PDP), with the exception of Policies 1.5 and 1.7 of the Northlake Special Zone (NSZ) in relation to larger residential lots sizes in Activity Area C1 – C3 (Policy 1.5) and the provision of a retirement village and associated activities within Activity Area C2 (Policy 1.7) (but is otherwise consistent with the policy to the extent that it provides for retirement village units within Activity Area D1). Policy 1.7 is

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32 *New Zealand Rail v Marlborough District Council* [1994] NZRMA 70 (HC) at 80.

> addressed further under Point 3 below. On Policy 1.5, the land holding will still comprise a large lot of 3.05ha, although it will contain multiple units for the retirement village.
>
> Overall, the proposal is, in the round, consistent with the objectives and policies of the Plans. Accordingly, the proposal passes both of the gateway tests in section 104D of the Act.

***Panel's consideration of section 104D***

[270] Beginning with the adverse effects limb of section 104D, as noted in Part E above, the Panel has reached the conclusion that, subject to reducing the height of the Care Pod building by one storey, the Proposal will have adverse effects on the environment that are no more than minor. Accordingly, the Panel is satisfied that the Proposal passes the first (adverse effects) limb of the gateway, and can accordingly proceed to be determined by the Panel.

[271] Turning briefly to the objectives and policies limb of section 104D, the Panel reiterates its finding at Part F above that the Proposal does not find favour with an important group of NSZ provisions and is contrary to Policies 1.5 and 1.7, and arguably contrary to Objective 1 and Policy 2.2. For its part, the Applicant concedes in the above assessment that the Proposal is contrary to policies 1.5 and 1.7 of the Northlake Special Zone (while noting partial consistency in relation to Activity Area D1). The Panel regards these provisions as important ones, which are directly relevant to the reasons for the Proposal's non-complying status. While academic in view of the Panel's finding on adverse effects immediately above, the Panel does wish to record its view that the Proposal would not have passed the objectives and policies limb of the gateway test.

## I. Statutory Purposes

[272] Clause 31(1) of Schedule 6 to the FTA provides (emphasis added):

> When considering a consent application in relation to a referred project and any comments received in response to an invitation given under section 17(3), a panel must, **subject to Part 2 of the Resource Management Act 1991 and the purpose of this Act**, have regard to—

[273] As noted above, clause 31(1) requires that any consideration must be subject to both Part 2 of the RMA and to the purpose of the FTA. There is no statement in the FTA that one purpose is to be given primacy or emphasis over the other. Accordingly, the plain meaning of the provision is that the purpose of each enactment must be applied equally when considering the Proposal.

[274] The Panel in the Kohimarama Decision accepted that it is a cornerstone of the FTA's dual purposes that, given the short duration of the FTA, the short-term economic benefits of a project should not result in bad long-term planning outcomes. We agree.

***Part 2 of RMA 1991***

[275] The Panel has reviewed the Applicant's assessment of Part 2 of the RMA at section 7.1 of the Application. It accepts that assessment, including the Applicant's view that the Proposal will promote the sustainable management of natural and physical resources.

***Purpose of Covid Fast Track Act***

[276] The Panel has also reviewed the Applicant's assessment of the purpose of the FTA at section 7.2 of the Application. It accepts that the Proposal will, to an extent, advance the purpose of the FTA by promoting employment to support New Zealand's recovery from the economic and social impacts of COVID-19 and supporting the certainty of ongoing investment across New Zealand, while continuing to promote the sustainable management of natural and physical resources.

## J. Final Decision

[277] The Panel has decided to grant resource consent for the Proposal subject to the conditions attached as Appendix 1.

[278] It expressly records that this decision was reached by a very narrow margin, having regard to the Proposal's inconsistency with / contrariness to several important objective and policy provisions.

[279] Finally, the Panel notes, in relation to clauses 38 and 45 of Schedule 6 to the FTA, that a person entitled to appeal is to file any appeal with the High Court no later than 15 working days after the date on which the person was notified of the decision of the Panel under clause 38(1).

Matthew Allan (Chair)

Hoani Langsbury (Member)

Ian Munro (Member)

## APPENDIX 1 – CONDITIONS

**LAND USE CONSENT CONDITIONS**

**The development has been granted consent subject to the following conditions which are to be met on an ongoing basis to the extent necessary to achieve the purpose of the conditions.**

***General Conditions***

1. That the development shall be undertaken/carried out in accordance with the following plans and documents:

**360 Architecture Plans**

- 'Outline Development Plan', dated 5/03/2021
- 'Masterplan Stages', RC.2.3, dated 12/11/2020
- 'Site Plans', RC.3.1, dated 12/11/2020
- 'Site Plan 01', RC.3.2, dated 12/11/2020
- 'Site Plan 02', RC.3.3, dated 12/11/2020
- 'Site Plan 03', RC.3.4, dated 12/11/2020
- 'Site Plan 04', RC.3.5, dated 12/11/2020
- 'Site Plan 05', RC.3.6, dated 12/11/2020
- 'Site Plan 06', RC.3.7, dated 12/11/2020
- 'Elevation Reference Plan & Care Pod Elevation', RC.5.1, dated 12/11/2020
- 'Road B Elevations', RC.5.2, dated 12/11/2020
- 'Road B Elevations', RC.5.3, dated 12/11/2020
- 'Front Elevations', RC.5.4, dated 12/11/2020
- 'Front Elevations', RC.5.5, dated 12/11/2020
- 'Outlet Road Elevations', RC.5.6, dated 12/11/2020
- 'Outlet Road Elevations', RC.5.7, dated 12/11/2020
- 'Elevations', RC.6.5, dated 12/11/2020
- 'Elevations', RC.6.6, dated 12/11/2020
- 'Main Building Elevations', RC.7.3, dated 12/11/2020
- 'Main Building Elevations', RC.7.4, dated 12/11/2020
- 'Clubhouse Elevations', RC.8.3, dated 12/11/2020
- 'Clubhouse Elevations', RC.8.4, dated 12/11/2020
- 'Type A Elevations', RC.9.3, dated 12/11/2020
- 'Type A1 Elevations', RC.9.7, dated 12/11/2020
- 'Type B Elevations', RC.9.10, dated 12/11/2020
- 'Type C Elevations', RC.9.14, dated 12/11/2020
- 'Type D Elevations', RC.9.19, dated 12/11/2020
- 'Type D1 Elevations', RC.9.22, dated 12/11/2020

**Patch Landscape Architecture Plans**

- Landscape Masterplan and all other plans and schedules contained within the 'Resource Consent Package', dated 5/03/2021

**Paterson Pitts Plans**

- 'Existing Contours as per RM190505 and RM200796, Sheet 101, Rev 4, dated 9/3/2021
- 'Proposed Contours', Sheet 102, Rev 4, dated 9/3/2021
- 'Cut-Fill Plan', Sheet 103, Rev 5, dated 9/3/2021
- 'Cross Sections 1', Sheet 104, Rev 2, dated 23/11/2020

- ‘Cross Sections 2’, Sheet 105, Rev 2, dated 23/11/2020

And all documents submitted in support of the application, and including the amendments required by the following conditions of consent.

1A. Prior to commencement of any works, a revised set of architectural drawings (elevations and plans) must be prepared showing the removal of one floor from the Care Pod building. The revised drawings must also show any other consequential changes to the building design and are to be submitted to the Queenstown Lakes District Council (**Council** or **QLDC**) for review and acceptance. In making any consequential changes, the overall building footprint, location and roof forms shall remain unchanged. The development shall be undertaken in accordance with the revised plans, as approved by the Council (rather than the drawings for the Care Pod building as originally lodged).

2. All engineering works shall be carried out in accordance with the QLDC’s policies and standards, being Council’s Land Development and Subdivision Code of Practice. The owner of the land being developed shall provide a letter to the Manager of Resource Management Engineering at Council advising who their representative is for the design and execution of the engineering works and construction works required in association with this development and shall confirm that these representatives will be responsible for all aspects of the works covered under Sections 1.7 and 1.8 of QLDC’s *Land Development and Subdivision Code of Practice*, in relation to this development.

3. The development shall be utilised as a Retirement Village. The contact details of the Retirement Village operator and any onsite manager for the Retirement Village shall be forwarded to the Council for the Council’s records. This information shall be kept current at all times.

4. Under clause 37 of Schedule 6 to the COVID-19 Recovery (Fast-track Consenting) Act 2020, and subject to condition 50, this consent lapses two years after the date of commencement of the consent unless:

    a. The consent is given effect to; or
    b. The Council extends the period after which the consent lapses.

5. The consent holder is liable for costs associated with the monitoring of this resource consent under section 35 of the Resource Management Act 1991.

***Staging***

6. The development may be staged as indicated on the Masterplan RC.2.3. To ensure compliance with this consent, the conditions shall be applied only to the extent that they are relevant to any particular stage.

***Environmental Management***

7. At least fifteen (15) working days prior to any works commencing on site the Consent Holder shall submit an Environmental Management Plan (**EMP**) to Council’s Monitoring and Enforcement Team for review and acceptance in writing by QLDC. This document must be prepared by a Suitably Qualified and Experienced Person (**SQEP**). The EMP shall be in accordance with the principles and requirements of the *Queenstown Lakes District Council’s Guidelines for Environmental Management Plan*s and specifically shall address the following environmental elements as specified in the guidelines:

    a) Administrative Requirements

        i. Weekly site inspections
        ii. Monthly environmental reporting

iii. Independent audit by Suitably Qualified and Experienced Person
iv. Notification and management of environmental incidents
v. Records and registers
vi. Environmental roles and responsibilities of personnel (including nomination of Principal Contractor)
vii. Site induction

b) Operational Requirements

i. Erosion and sedimentation (including Erosion and Sediment Control Plan)
ii. Water quality
iii. Dust
iv. Cultural heritage
v. Noise
vi. Vibration
vii. Contaminated sites
viii. Indigenous vegetation clearance
ix. Chemical and fuel management
x. Waste management

The matters referred to in b) (i) to (x) above shall be prepared by Suitably Qualified and Experienced Persons.

The EMP shall also include sections addressing:

i. The construction works programme; and

ii. Construction traffic management measures.

Any amendments to the approved EMP must be submitted to the Council's Monitoring and Enforcement Team for review and acceptance in writing.

A copy of the EMP (and any amendments) shall be provided to the Otago Regional Council for its information.

*(**Note:** Te Ao Marama Inc., Aukaha, and Heritage New Zealand Pouhere Taonga will be consulted on the cultural heritage aspects of the EMP, including the Accidental Discovery Protocol.)*

8. The Heritage New Zealand Pouhere Taonga Archaeological Discovery Protocol, or an accidental discovery protocol modified to reflect the specific project detail, shall be implemented in the event of any accidental archaeological discoveries that occur during construction works.

If the Heritage New Zealand Pouhere Taonga Archaeological Discovery Protocol is not implemented, then:

i. the Accidental Discovery Protocol shall be prepared in consultation with Aukaha, Te Ao Marama Inc., and HNZPT; and
ii. the Council shall ensure Aukaha, Te Ao Marama Inc., and HNZPT have a minimum of 20 working days to provide comment on the final Accidental Discovery Protocol.

9. Prior to ground-disturbing activities on the initial stage of works or any subsequent new stage of works, the Consent Holder shall engage a SQEP to prepare and submit an Erosion and Sediment Control Plan (**ESCP**) to Council's Monitoring and Enforcement Team for review and acceptance. The ESCP shall form part of the EMP and must be prepared in accordance with the requirements outlined on pages 13 – 18 of the *Queenstown Lakes District Council's Guidelines for Environmental Management Plans* and with the *Erosion and Sediment Control Guidelines for Land Disturbing Activities in the Auckland Region 2016* (Auckland Council Guideline Document GD2016/005).

These plans must be updated when:

a) The construction programme moves from one stage to another; or
b) Any significant changes have been made to the construction methodology since the original plan was accepted for that stage; or
c) There has been an Environmental Incident and investigations have found that the management measures are inadequate.

10. Prior to commencing ground-disturbing activities, the Consent Holder shall nominate an Environmental Representative for the works programme in accordance with the requirements of the *Queenstown Lakes District Council's Guidelines for Environmental Management Plans*.

11. Prior to commencing ground disturbing activities, the Consent Holder shall ensure that all staff (including all sub-contractors) involved in, or supervising, works onsite have attended an Environmental Site Induction, which includes familiarisation with the Accidental Discovery Protocol.

12. Prior to bulk earthworks operations (and vegetation clearance) for the initial stage or any subsequent new stage of works, the Consent Holder must install erosion and sediment controls in accordance with the ESCP as well as provide As-built documentation for these controls by Suitably Qualified and Experienced Person.

13. A SQEP shall monitor the site monthly to ensure that the site is complying with its EMP, identify any new environmental risks arising that could cause an environmental effect and suggest alternative solutions that will result in more effective and efficient management. This must include a specific audit by the SQEP of the effectiveness of the ESCP. The Consent Holder shall complete and submit exception reporting to QLDC in the form of a monthly environmental report. The monthly environmental report shall be submitted to QLDC's Regulatory Department within five (5) working days of the end of each month. A copy of each monthly environmental report shall also be provided to the Otago Regional Council for its information.

14. Any Discharge (refer definition in the *Queenstown Lakes District Council's Guidelines for Environmental Management Plans*) that leaves the site shall comply with the Water Quality Discharge Criteria outlined on page 19 of the Guidelines.

***Prior to works commencing***

15. The consent holder shall obtain and implement a Traffic Management Plan (**TMP**) approved by Council prior to undertaking any works within or adjacent to Council's road reserve that affects the normal operating conditions of the road reserve through disruption, inconvenience or delay. The TMP shall be prepared by a certified Temporary Traffic Management Planner (TTMP) as validated on their CoPTTM ID certification. All contractors obligated to implement temporary traffic management plans shall employ a qualified Site Traffic Management Supervisor (STMS) to manage the site in accordance with the requirements of the NZTA's "Traffic Control Devices Manual Part 8: Code of practice for temporary traffic management". The STMS shall implement the TMP. A copy of the approved TMP shall be submitted to the Manager of Resource Management Engineering at Council prior to works commencing.

16. Prior to commencing any work on the site, the consent holder shall install construction vehicle crossings to each site in the location of the vehicle crossings shown on the stamped as approved plans, which all construction traffic shall use to enter and exit the site. The minimum standard for this crossing shall be in accordance with '*A Guide to Earthworks in the Queenstown Lakes District*' brochure, prepared by the QLDC.

17. At least 7 days prior to commencing excavations, the consent holder shall provide the Manager of Resource Management Engineering at Council with the name of a suitably

qualified geoprofessional as defined in Section 1.7 of QLDC's *Land Development and Subdivision Code of Practice* who is familiar with the GeoSolve Limited report ('*Geotechnical Report for Resource Consent. Northbrook Village, Wānaka.' GeoSolve ref 200490, dated 12/03/2021)* and who shall supervise the earthworks procedure and retaining wall construction, in accordance with the report recommendations. Should the site conditions be found unsuitable for the proposed excavation/construction methods, then a suitably qualified and experienced engineer shall submit to the Manager of Resource Management Engineering at Council new designs/work methodologies for the works prior to further work being undertaken, except for any necessary works required to stabilise the site in the interim.

***To be monitored during construction***

18. All works shall be undertaken in accordance with the most current version of the EMP approved by Council. The EMP, including the Accidental Discovery Protocol, shall be kept and be available on site at all times during work under this consent.

19. The Consent Holder shall establish and implement a document version control method. Council shall at all times be provided with an electronic copy of the most current and complete version of the EMP.

20. The Consent Holder shall undertake and document weekly and Pre-/Post-Rain Event site inspections.

21. The Consent Holder shall:

    a) Report to the Council details of any Environmental Incident within 12 hours of becoming aware of the incident.
    b) Provide an Environmental Incident Report to the Council within 10 working days of the incident occurring.

22. Environmental Incident records are to be collated onsite and shall be made available to Council upon request.

23. The consent holder shall implement suitable measures to prevent deposition of any debris on surrounding roads by vehicles moving to and from the site and to clean the roads in the event that any site material is accidentally deposited on any public road.

24. No earthworks, temporary or permanent, are to breach the boundaries of the site, except for those earthworks required for the construction of the vehicle crossings, road upgrades and retaining walls along Outlet Road.

25. Hours of operation for construction, shall be:

    - Monday to Saturday (inclusive): 7:30am to 6.00pm.
    - Sundays and Public Holidays: No Activity.

26. On completion of earthworks within the building footprints and prior to the construction of the buildings, the consent holder shall ensure that either:
    a) Certification from a suitably qualified geo-professional experienced in soils investigations is provided to the Manager of Resource Management Engineering at Council, in accordance with NZS 4431:1989, for all areas of fill within the site on which buildings are to be founded (if any). Note this will require supervision of the fill compaction by a suitably qualified geo-professional; or

    b) The foundations of the residential unit shall be designed by a suitably qualified engineer taking into consideration any areas of uncertified fill on-site.

***To be completed when works finish and before occupation of the Retirement Village***

27. No permanent batter slope within the site shall be formed at a gradient that exceeds 1(V):2(H).

28. On completion of earthworks, the consent holder shall complete the following:

    a) All earthworked areas shall be top-soiled and revegetated or otherwise permanently stabilised.

    b) The consent holder shall remedy any damage to all existing public road surfaces, footpaths and berms that result from work carried out for this consent at its cost.

***Prior to occupation***

*Engineering*

29. Prior to the occupation of the Retirement Village, the consent holder shall complete the following:

    a) Provide records of the 'as-built' plans and information required to detail all engineering works completed.

    b) Provide records of the Completion Certificates from both the Contractor and Accepted Engineer for all infrastructure engineering works completed in relation to or in association with this development. The certificates shall be in the format of the *Queenstown Lakes District Council's Land Development and Subdivision Code of Practice* Schedule 1B and 1C Certificate.

    c) An Elster Helix 4000 or C4000 / 4200 (For 40mm to 200mm connections) or Sensus Meitwin; Meistream WP; water meter shall be installed on to the Acuflo manifold for the water connection to Lot 2000 DP 558541.

    d) Road naming shall be carried out, and signs installed, in accordance with Council's road naming policy and LINZ Guideline LINZG80700 ('Guidelines for addressing in retirement villages'). All signage shall be installed in accordance with Council's signage specifications and all necessary road markings completed on all public or private roads (if any), created by this subdivision.

*Lighting*

30. All fixed exterior lighting shall be directed downwards and away from adjacent roads and properties.

31. Exterior lighting shall utilise hoods, louvres, snoots or other similar attachments to direct light and minimise 'light spill', and shall be incandescent, halogen or other white light and not sodium vapour or other light.

32. Certification from a SQEP shall be provided to the Council prior to occupation to ensure that the intentions of **Conditions 30 and 31** are met.

*Landscaping*

33. The landscape management plan identified as Patch Landscape Architecture Masterplan listed in **Condition 1** shall be implemented and thereafter maintained with suitable, locally sourced native plants to complement the surrounding environment. If any plant or tree should die or become diseased it shall be replaced within the next available planting season.

*Cycle / pedestrian link*

34. The two metre wide cycle / pedestrian link to the south of the Retirement Village shown on the plan entitled *Circulation within Northlake* dated 3 March 2021 shall be constructed at an accessible gradient and available for public use prior to occupation.

*Air-conditioning plant and other on-roof equipment*

35. Any air-conditioning plant and other on-roof equipment shall be screened in a manner that ensures they are masked from view from the street or surrounding properties.

*Screening of service / storage areas*

36. All service or storage areas shall be screened from the street or surrounding properties.

*External building materials*

37. External building materials shall either:

    (i) be coated in colours which have a reflectance value of between 0 and 36%; or

    (ii) consist of unpainted wood (including sealed or stained wood), unpainted stone, unpainted concrete, or copper; except that:

    - architectural features, including doors and window frames, may be any colour; and

    - roof colours shall have a reflectance value of between 0 and 20% Any amendment to the specified colours and/or materials in the application shall be certified by the Council prior to use on the building.

**Advice Notes:**

1. *Rūnanga (including Hokonui Rūnanga) shall be consulted via Aukaha and Te Ao Marama Inc around the use of Ngāi Tahu names within the subdivision.*

2. *Under the Heritage New Zealand Pouhere Taonga Act 2014, the permission of the Heritage New Zealand Pouhere Taonga must be sought prior to the modification, damage or destruction of any archaeological site, whether the site is unrecorded or has been previously recorded. An archaeological site is described in the Act as a place associated with pre-1900 human activity, which may provide evidence relating to the history of New Zealand. These provisions apply regardless of whether a resource consent or building consent has been granted by Council. Should archaeological material be discovered during site works, any work affecting the material must cease and the Heritage New Zealand Pouhere Taonga regional archaeologist must be contacted (Regional Archaeologist Otago/Southland 03 470 2364).*

**SUBDIVISION CONSENT CONDITIONS**

38. That the subdivision must be undertaken/carried out in accordance with the plan prepared by Paterson Pitts Group:

    - Proposed Subdivision Scheme Plan Lots 1 and 2000 being Subdivision of Lot 2000 DP 558541, Sheet No. 100, Rev 4, dated 09/03/2021

***To be completed before Council approval of the Survey Plan***

39. Prior to the Council signing the Survey Plan pursuant to Section 223 of the Resource Management Act 1991, the consent holder shall complete the following:

a) All necessary easements, including any that arise from the corresponding land use consent, shall be shown in the Memorandum of Easements attached to the Survey Plan and shall be duly granted or reserved. This shall include any Easements in Gross as required by Council, on terms and conditions acceptable to Council, for infrastructure to vest. This shall also include a public right of way in gross in favour of the Council securing public pedestrian and cycling access to the cycle / pedestrian link to the south of the Retirement Village shown on the plan entitled *Circulation within Northlake* dated 3 March 2021.

***Engineering Conditions***

40. All engineering works, shall be carried out in accordance with the QLDC's Land Development and Subdivision Code of Practice.

***Prior to works commencing***

41. Prior to commencing works on the site, the consent holder shall obtain 'Engineering Review and Acceptance' from the Queenstown Lakes District Council for development works to be undertaken and information requirements specified below. The application shall include all development items listed below unless a 'partial' review approach has been approved in writing by the Manager of Resource Management Engineering at Council. The 'Engineering Review and Acceptance' application(s) shall be submitted to the Manager of Resource Management Engineering at Council for review, prior to acceptance being issued. At Council's discretion, specific designs may be subject to a Peer Review, organised by the Council at the applicant's cost. The 'Engineering Review and Acceptance' application(s) shall include copies of all specifications, calculations, design plans and Schedule 1A design certificates as is considered by Council to be both necessary and adequate, in accordance with **Condition 40**, to detail the following requirements:

a) The provision of a water supply to Lot 1 in terms of Council's standards and connection policy. This shall include a bulk flow meter which consists of an approved valve and valve box with backflow prevention and provision for water metering to be located at the road reserve boundary. The costs of the connections shall be borne by the consent holder.

b) The provision of a foul sewer connection from Lot 1 to Council's reticulated sewerage system in accordance with Council's standards and connection policy, which shall be able to drain the buildable area within the lot. The costs of the connections shall be borne by the consent holder.

c) The provision of a stormwater collection and disposal system which shall provide both primary and secondary protection for the development, in accordance with Council's standards and connection policy. This shall include:

(i) The provision of a soakage basin within Lot 66 DP 371470 adequate to dispose of the runoff from all impervious areas within the catchment area within the development which drains to the soakage basin during the critical 1% AEP storm event. The detailed design of the soakage basin shall be accompanied by the results of percolation testing undertaken by a suitably qualified person undertaken within the soakage area, adequate to determine the bulk soakage characteristics of the soakage basin area. The method for soakage testing is to be agreed with the Manager of Resource Management Engineering at Council prior to testing. A copy of the test results shall be provided along with the design of the soakage basin based on the percolation test results.

(ii) The provision of a connection from all areas not covered by **Condition 41(c)(i)** above to Outlet Road. This shall include details of all stormwater outlets, demonstrating that there will be no adverse effects due to erosion and/or

scour.

(iii) A reticulated primary system to collect and dispose of stormwater from all impervious areas within the development to the soakage basin and outlet approved under **Conditions 41(c)(i) and 41(c)(ii)** above. This shall include details of treatment solutions to avoid adverse water quality effects on receiving waters. As a minimum there shall be provision for the interception of settle-able solids, hydrocarbons and floatable debris from all proposed catchments. The reticulation shall be designed to provide gravity drainage only.

(iv) A secondary protection system consisting of secondary flow paths to the soakage basin and outlet approved under **Conditions 41(c)(i) and 41(c)(ii)** above to cater for the 1% AEP storm event and/or setting of appropriate building floor levels to ensure that there is no inundation of any buildings within the development, and no increase in run-off rates onto land beyond the site from the pre-development situation.

d) The provision of fire hydrants with adequate pressure and flow to service and maintain the subdivision with a Class FW2 fire risk in accordance with the NZ Fire Service Code of Practice for Firefighting Water Supplies 2008. Any lesser risk must be approved in writing by Fire & Emergency NZ, Queenstown Office. Evidence of adequate flow testing to hydrants shall be submitted to Council prior to subdivision completion.

e) The provision of road lighting in accordance with Council's road lighting policies and standards, including the Southern Light lighting strategy. Any road lighting installed on private roads/rights of way/access lots shall be privately maintained and all operating costs shall be the responsibility of the lots serviced by such access roads. Any lights installed on private roads/rights of way/access lots shall be isolated from the Council's lighting network circuits.

f) The provision of Design Certificates for all engineering works associated with this subdivision submitted by a suitably qualified design professional (for clarification this shall include all Roads, Water, Wastewater and Stormwater reticulation). The certificates shall be in the format of the QLDC's Land Development and Subdivision Code of Practice Schedule 1A Certificate.

***To be completed before issue of s224(c) certificate***

42. Prior to certification pursuant to section 224(c) of the Resource Management Act 1991, the consent holder shall complete the following:

a) The consent holder shall provide 'as-built' plans and information required to detail all engineering works completed.

b) The completion and implementation of all works detailed in **Conditions 40 and 41** above, except for the stormwater connection to the permanent detention system. Timing of the connection to the detention system shall be agreed with Council's Property & Infrastructure engineers.

c) Written confirmation shall be provided from the electricity network supplier responsible for the area, that provision of an underground electricity supply has been made available (minimum supply of single phase 15kVA capacity) to the net area of all lots created and that all the network supplier's requirements for making such means of supply available have been met.

d) Written confirmation shall be provided from the telecommunications network supplier responsible for the area, that provision of underground telephone services has been made available to the net area of all lots created and that all the network supplier's requirements for making such means of supply available have been met.

e) All earthworks and fill certification shall be carried out under the guidance of suitably qualified and experienced geotechnical professional as described in Queenstown Lakes District Council's Land Development and Subdivision Code of Practice.

f) The submission of Completion Certificates from the Contractor and the Engineer advised in **Condition 2** for all engineering works completed in relation to or in association with this subdivision. The certificates shall be in the format of a Producer Statement, or the Queenstown Lakes District Council's Land Development and Subdivision Code of Practice Schedule 1B and 1C Certificate.

g) All newly constructed foul sewer and stormwater mains shall be subject to a closed-circuit television (CCTV) inspection carried out in accordance with the New Zealand Pipe Inspection Manual.

h) All earth-worked areas shall be top-soiled and revegetated or otherwise permanently stabilised.

43. **Condition 8** shall apply to all works required by the conditions of this subdivision consent.

***Ongoing Conditions/Consent Notices***

44. The following conditions of the consent shall be complied with in perpetuity and shall be registered on the relevant Titles by way of Consent Notice pursuant to s.221 of the Act.

a) A consent notice condition pursuant to s.221 of the Resource Management Act 1991 shall be registered on the Records of Title for the relevant lots providing for the performance of any ongoing requirements for protection of secondary flow paths or minimum floor levels for buildings, where deemed necessary by Council to satisfy **Condition 41(c)(iv)** above. The final wording of the consent notice instrument shall be checked and approved by the Council's solicitors at the consent holder's expense prior to registration to ensure that all of the Council's interests and liabilities are adequately protected.

45. In the event that the Engineering Acceptance issued under **Condition 41** contains ongoing conditions or requirements associated with the installation, ownership, monitoring and/or maintenance of any infrastructure subject to Engineering Acceptance, then at Council's discretion, a consent notice (or other alternative legal instrument acceptable to Council) shall be registered on the relevant Records of Title detailing these requirements for the lot owner(s). The final form and wording of the document shall be checked and approved by Council's solicitors at the consent holder's expense prior to registration to ensure that all of the Council's interests and liabilities are adequately protected. The applicant shall liaise with the Subdivision Planner and/or Manager of Resource Management Engineering at Council in respect of the above. All costs, including costs that relate to the checking of the legal instrument by Council's solicitors and registration of the document, shall be borne by the applicant.

*[Note: This condition is intended to provide for the imposition of a legal instrument for the performance of any ongoing requirements associated with the ownership, monitoring and maintenance of any infrastructure within this development that have arisen through the detailed engineering design and acceptance process, to avoid the need for a consent variation pursuant to s.127 of the Resource Management Act].*

46. The land use consent shall only be given effect to in association with the subdivision consent.

**CONDITIONS VOLUNTEERED BY THE CONSENT HOLDER ON AN *AUGIER* BASIS (APPLICABLE TO ALL CONSENTS)**

47. These consents shall not be implemented by the consent holder until and unless:

    a. A request for a private plan change (**PPC Request**) is lodged with the Council in respect of the undeveloped land owned by Northlake Investments Limited located east of, and adjoining, the land referred to as 'Sticky Forest' legally described as Section 2 of 5 Block XIV Lower Wanaka Survey District; and

    b. The PPC Request includes provision for a legal route for road access (including a route for other infrastructure services) connecting Sticky Forest to roading and other infrastructure services already installed within the Northlake Special Zone (**Sticky Forest Access**) to enable the servicing of development enabled within Sticky Forest; and

    c. Accompanying the PPC Request is an executed deed to secure and implement the Sticky Forest Access (**Access Deed**).

48. The Access Deed shall:

    a. Be executed by the consent holder and/or any other owner of any part of the land across which the Sticky Forest Access will run (as grantor of the Sticky Forest Access);

    b. Provide for either or both of the Council and the Crown (in its capacity as the owner of Sticky Forest) to execute the Access Deed as a party which will benefit from the Access Deed;

    c. Ensure that no aspect, right or obligation arising under the Access Deed shall in any way hinder or inhibit the ability of the consent holder to develop the land subject to this consent in accordance with the Operative District Plan provisions applicable to that land as at the date of the Access Deed, except to the extent necessary to implement the Sticky Forest Access;

    d. Grant the following easements in favour of the Council (in gross) and/or the Crown (appurtenant to Sticky Forest):

        i. a right of way;

        ii. a right to convey water, electricity, gas and telecommunications; and

        iii. a right to drain water and sewage,

    in respect of the part of the land necessary to create the Sticky Forest Access, relying upon the rights and powers implied for those classes of easement as prescribed by the Land Transfer Regulations 2018 and Schedule 5 of the Property Law Act 2007 (Easements), and provide for those easements to be registered;

    e. Provide for the land required for Sticky Forest Access to be vested in the Council as legal road, at the Council's discretion;

    f. Not contain any positive obligation on the Council and/or the Crown or the consent holder to carry out any works to form any part of the road or other infrastructure enabled by the Sticky Forest Access, provided that the Council and/or the Crown and the consent holder shall be entitled to carry out any such works at their discretion;

g. Provide for the inclusion in those easements of any terms or conditions required by the Council and/or the Crown as grantee provided that such terms and conditions do not breach subclause c. above;

h. Include provision for the consent of any mortgagee, encumbrancee or other person having an interest in the land whose consent will be required to enable the implementation of the Access Deed;

i. Be executed by the persons or entities referred to the preceding subparagraph;

j. Be conditional only upon:

i. Sticky Forest being zoned to enable any form of development which requires the Sticky Forest Access to enable that development to be implemented;

ii. The Sticky Forest Access being approved through, and as a consequence of, the PPC Request.

49. These consents can only be implemented on or after the date the PPC Request and the Access Deed (executed as required under **Conditions 48(a) and 48(i)** above) are lodged with the Council.

50. These consents will lapse if the PPC Request and the Access Deed are not lodged with the Council within six months of the date of this consent.