



12 July 2021

Environmental Protection Agency

Attention: Sandra Balcombe, Manager Land and Oceans Applications

Via email: northbrookwanakafasttrack@epa.govt.nz + alexander.erceg@epa.govt.nz

Re: Request for information from Queenstown Lakes District Council in relation to Northbrook Wanaka Retirement Village under COVID-19 Recovery (Fast-track Consenting) Act 2020

Dear Sandra,

Thank you for your letter dated 6 July 2021 requesting on behalf of The Northbrook Wanaka Retirement Village Expert Consenting Panel (the Panel) further information relating to the project. This letter is in response to that letter (requests in blue and responses below).

- 1. QLDC's comments express a preference for an easement to address access to Sticky Forest. Please comment specifically on the easement condition wording proposed by Mr Bunker and Ms Rouse, which is based on an easement in gross in favour of the QLDC. Does the QLDC accept this approach and proposed condition?*

The proposed wording by Mr Bunker and Ms Rouse can be found in their comments on the application here: https://www.epa.govt.nz/assets/Uploads/Documents/Fast-track-consenting/NorthbrookWanaka/Commentsreceived/23Jun21_Theo_Bunker_and_Lorraine_Rous

Council's position in relation to the proposed easement solution

As noted in its initial comments dated 23 June 2021, Council considers that securing legal access via an easement is preferable to a private plan change solution, as has been proposed by the applicant. If the Panel were to recommend the inclusion of a condition that requires registration of such an easement, Council would accept that approach. Council notes, however, that the need for access to Sticky Forest will depend on the outcome of the rezoning appeal lodged under Schedule 1, and that access is one of several substantive issues that will need to be resolved.

The wording of any easement condition

Council sets out below several amendments to the wording proposed by Bunker and Rouse. These amendments are proposed on the following basis:

- Council requires an ability to review and approve the terms of any easement before it is registered. While Bunker and Rouse have prepared a draft easement, Council will need to ensure that it can review the terms of that easement so that it satisfactorily captures which party is responsible for the construction of any new access, and ongoing maintenance, until such time as it may vest as road in Council. This has been captured in the proposed amendment below to clause (a).
- The wording of clause (a) anticipates that the easement terms will be those set out in the Land Transport Regulations 2018 and Schedule 5 of the Property Law Act 2007. These instruments

incorporate standard terms for simple easements, but Council would not recommend them for use in unusual situations such as this where there is a third party that will shoulder the primary responsibility for construction and maintenance, until such time as the access will vest in Council. In addition, there may need to be provisions to address the potential surrender of the easement, and vesting of land in the Council as road in the future.

- As the alignment and width of the easement may need alteration prior to registration, a proposed amendment to clause (b) has been suggested which specifies that Council's approval process will consider these matters.

Proposed amendments to easement condition

Council's revised wording for the condition is as follows (amendments shown in strike-through and underline):

Prior to the exercise of this consent, the consent holder shall:

(a) *grant the following easements in gross in favour of QLDC, on terms acceptable to, and approved by, QLDC:*

- 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 owned by Winton Property Limited (WPL) shown marked "A" on the attached Memorandum of Easements (Affected Area), ~~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).~~

(b) *survey the Affected Area, provide that survey to QLDC for its approval (acting reasonably, and with a view to ensuring that the right of way easement will be aligned and of sufficient width to allow the creation of access that will comply with Councils Land Development and Subdivision Code of Practice for the development potential of the land that will be served by the access) and, once approved by QLDC, lodge the survey for approval by Land Information New Zealand (LINZ); and*

(c) *do all such as may be necessary to register the Easements at LINZ, including, as applicable, obtaining the consent of any mortgagee, encumbrancee or other person having an interest in the Affected Area, and obtaining all necessary regulatory consents and approvals, provided always that the WPL shall pending registration be bound by the Easements as if they had been registered at LINZ.*

2. *Advise what, if any, opportunities exist for providing future road access to the Sticky Forest site over QLDC reserve land to the west of Sticky Forest. If there are particular constraints to providing access over Council reserve to the west, explain what these are.*

The land in question is Recreation Reserve land, and for this reason has not been previously considered for access purposes given the protections afforded to such land under the Reserves Act 1977. In addition, the topography is steep and challenging to provide access through. If there was any suggestion for a Legal Road to bisect the areas of Recreation Reserve, this would involve a process under the Reserves Act 1977 to revoke the reserve status, so that an area of legal road might otherwise be considered. This process would require public consultation, and decision making is delegated to the Minister of Conservation. A public process would also likely attract a significant number of submissions given the high profile of the reserve land and its current recreational uses. Given this requirement, there would be corresponding timeframes and potential delays associated with this approach, and no certainty on the outcome.

3. *QLDC's comments on the Applicant's proposed plan change condition state: Because the Council is currently undertaking a staged District Plan review, the Resource Management Act 1991 essentially requires Council to adopt any Private Plan Change as a Council Plan Change in order for it to progress – there is a risk that the Council does not adopt it.*

Counsel for the applicant, Warwick Goldsmith, disagrees with this assessment and states: QLDC provides no statutory authority for this statement. The statement is legally incorrect. The Northlake Special Zone is part of the Operative District Plan which has been operative for longer than two years. The current District Plan Review does not include the Northlake Special Zone. Part 2 Schedule 1 RMA applies. QLDC can accept a PPC Request (and in this case would have no valid statutory reason for refusing it). There is no legal obligation on QLDC to adopt the proposed PPC Request.

Confirm whether Mr Goldsmith's analysis on this point is accepted.

Council accepts Mr Goldsmith's analysis.

The Northlake Special Zone is comprised in Volume B of the District Plan (discussed further below), and has been operative for longer than two years.

Any request for a private plan change relative to the Northlake Special Zone will be subject to the provisions of Part 2 of Schedule 1 to the RMA, with Council required to make a decision under clause 25, but not obliged to adopt the request as a Council initiated plan change under clause 25(2)(a).

Despite this, Council remains of the view that the condition proposed by the applicant provides no legal certainty that access to Sticky Forest will be resolved.

Requesting a private plan change (that "includes provision for legal road access"), which is then the subject of a clause 25 decision by Council and, if accepted for processing, notification and a merits assessment and decision-making process, is inherently uncertain as to outcome. As there is the potential that the request could be rejected at the clause 25 stage, or significantly modified or refused through the Schedule 1 process, there can be no certainty that access will be resolved at all.

4. *QLDC's comments do not address the status / applicability of district-wide objectives and policies (as opposed to rules) to the proposal. Please provide comment on this.*

Structure of the District Plan

As noted in its initial comments, Council is currently undertaking a staged District Plan review.

The outcome of this staged review will be a District Plan that is made up of two volumes (A and B), which apply to distinct spatial areas, and strategic directions chapters that apply district wide (ie. Chapters 3, 4, 5 and 6).

Volume A will apply to all land that has been reviewed (ie. through the Schedule 1 process), with Volume B applying to land that has not yet been reviewed. After any Volume B land has been reviewed (and rezoned to a Volume A zone), it will then form part of Volume A of the District Plan.

Through the Topic 1 appeals on the Strategic Directions chapters of the Proposed District Plan, the Environment Court has considered these structural matters and determined that Chapter 1 of the Proposed Queenstown Lakes District Plan include the following explanatory text that describes the structure outlined above:

The Council has undertaken the review of the 2007 District Plan by way of a series of plan changes (referred to as a Proposed District Plan), notified in a series of stages from August 2015.

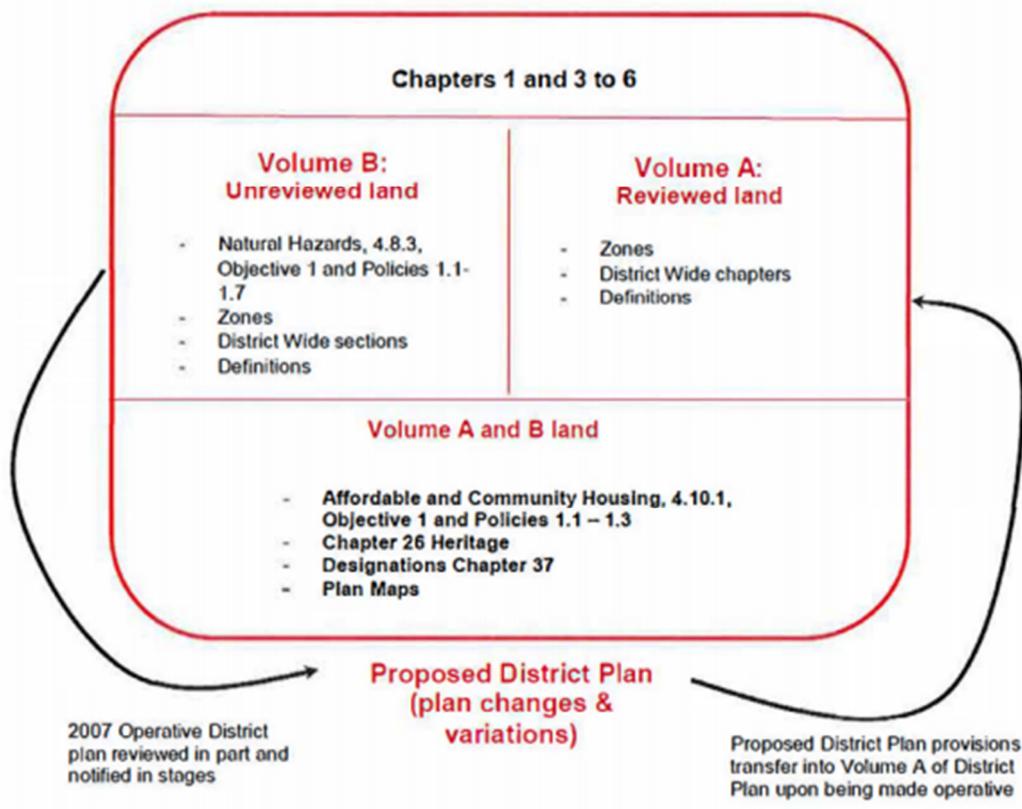
The District Plan consists of two volumes, separated by geographic area, and these areas are categorised by way of separate zones that fall into one of Volume A or Volume B. Volume A is the land that has been reviewed (for convenience referred to as the proposed district plan, until such time it is made operative), while Volume B contains land that to date has not been reviewed.

The relationship between the two volumes is as follows:

- a. Chapter 3 provides overarching strategic direction for the Queenstown Lakes District. The Chapter 3 strategic objectives and policies are further elaborated on in Chapters 4 and 5 that provide more detailed objectives and policies for urban development and tangata whenua. Chapter 6 provides more detailed policies for landscapes and rural character. Chapters 3, 4, 5 and 6 apply district wide over Volume A and Volume B land except to the extent that either Chapter 3 or Chapter 6 specifies exclusions or qualifications to that application. The principal role of Chapters 3 - 6 collectively is to provide direction for the more detailed provisions related to zones and specific topics contained elsewhere in the District Plan.
- b. Volume A consists of the zone and district wide chapters notified as plan changes (referred to as the proposed district plan), that have worked their way through the RMA Schedule 1 process and been made operative pursuant to Clause 17 of Schedule 1 of the RMA.
- c. Volume B of the District Plan consists of the zone chapters, or specific areas not yet reviewed or notified as the Proposed District Plan, and all relevant parts of the 2007 District Plan district wide chapters that need to remain to regulate district wide issues as they relate specifically to those Volume B provisions.
- d. Chapters 3, 4, 5 and 6 have encompassed the 2007 District Plan Section 4 (District Wide Issues) with the exception of the following two objectives:
 - Natural Hazards Objective 4.8.3(1) and Policies 1.1 to 1.7 (Section 4.8), which still applies as a relevant district wide objective to Volume B zones.
 - Affordable and Community Housing Objective 1 and Policies 1.1 - 1.3 (Section 4.10), which still applies to both Volume A and B zones.
- e. There is one designations chapter in the District Plan.
- f. The Volume A Heritage Chapter 26 includes listed heritage items. Some of these are located over Volume B land, and therefore Volume A District Wide Chapter 26 applies over Volume B land.
- g. The plan maps show both Volume A and Volume B land.

The following diagram shows the Queenstown Lakes District Plan and the relationship between Volume A and Volume B.

District Plan



A copy of Chapter 1 of the PDP, updated to include the above description of the structure of the District Plan, is **attached**.

Status / applicability of district-wide objectives and policies

Further to the above description of the structure of the District Plan, because the Northlake Special Zone remains in Volume B, all of the objectives and policies within the District Wide sections of Volume B will apply to the application.

Council's initial comments sought to clarify that the Chapter 29 – Transport provisions (comprised in Volume A) do not apply to the application

5. *If possible, please provide a copy of the legal advice referred to in this part of your comments.*

Advice addressing the above structure was provided to the Environment Court through legal submissions and memoranda. The Court has now considered all relevant advice and determined that the above text should be included in the new Chapter 1 of the PDP.

As the Court has determined the relevant text, Council does not consider there to be benefit in providing the EPA with copies of the submissions or memoranda provided to the Court at this stage.

6. *Confirm the citation for the Environment Court decision referred to. Is it Darby Planning Ltd Partnership v QLDC [2019] NZEnvC 133?*

The decision that confirmed the above explanatory text was: *Darby Planning Ltd Partnership v Queenstown Lakes District Council* [2020] NZEnvC 156, see Appendix 1.

7. *QLDC's comments state:*

Policy 1.3 seeks to maintain residential lots sizes within AA-C2 that are consistent with larger lot residential. This application to develop a retirement village primarily within AA-C2 is therefore contrary to these policies and would result in higher density development in an area anticipated to have low density.

The Panel would be assisted by expanded comments from QLDC as to the policies (and any objectives) in the Northlake Special Zone which council considers to the proposal to be "contrary to".

The Council considers to the proposal to be contrary to the following objectives and policies:

Operative District Plan

Chapter 4 – District Wide

4.9 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 well being.

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.

Comment: The Council considers the proposal contrary to the above objective and policies given that the proposal 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.

Objective 3 – Residential Growth

Policy 3.3 – To provide for high density residential development in 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.

Comment: The application 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.

Chapter 12 – Northlake Special zone

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

Comment: 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. The Council considers the proposal contrary to this objective.

Policy 1.5 - To enable and encourage larger residential lot sizes within Activity Areas C1 – C3.

Comment: As outlined by the applicant in Appendix T, the development is for multiple units (72) within Activity Area C2, which is contrary to the policy's intent for larger lot sizes.

Policy 1.6 - To enable and encourage medium density residential activities within Activity Area D1.

Comment: The proposal exceeds the density the Northlake Special Zone rules provide for - Activity Area D1 anticipates 15 units per hectare (also under Rule 12.34.4.2.iii). The application proposes 23.6 units per hectare within Activity Area D1, which is considered to represent higher density development than the medium density provided for by the Northlake Special zone provisions. The Council considers the proposal contrary to this policy.

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.

Comment: The policy seeks to avoid retirement villages within Activity Areas other than within Activity Area D1. The proposal is contrary to this policy given that the application proposes a retirement village and associated activities within Activity Area C2. 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.

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.*

Comment: The proposal provides for a higher density of residential activity than is anticipated by the rules for the activity areas and that is not consistent with the Northlake Structure Plan. The proposal is contrary to these policies.

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.

Comment: The proposal is considered contrary to this policy as it includes buildings of 13.5m in height and is located within an Activity Area that seeks to avoid retirement villages (Activity Area C2). It is considered the proposal does not recognise and relate to the wider Wanaka character and is not a logical extension to the urban form given the scale, nature and location of the proposal.

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.

Comment: Part of the retirement village is proposed within Activity Area D1, and whilst it is provided for within this Activity Area, it is considered that it will not maintain compatibility with residential amenity given the scale and nature of the proposal (height of the proposed buildings and the density which will exceed that anticipated for the area). The Council considers the proposal contrary to this policy.

Proposed District Plan
Chapter 3 – Strategic Direction

Objective 3.2.3.2 – Built form integrates well with its surrounding urban environment.

Comment: The proposal is considered contrary to this objective given that it includes buildings of 13.5m in height and exceeds the density the Northlake Special Zone rules provide for. It is not considered that it will integrate well with the surrounding urban environment given this scale and density proposed.

Chapter 4 – Urban Development

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.

Comment: The density proposed is not consistent with Structure Plan, which anticipates a lower density than is proposed. It is considered the proposed retirement village would not adequately respond the character of the surrounding Activity Area and would therefore be contrary to this policy

8. *QLDC's comments do not explicitly address Policy 1.7 which refers to inter alia the avoidance of retirement villages in Activity Area D1. Provide comment on how the proposal sits with this policy from QLDC's perspective.*

As outlined above, the policy seeks to avoid retirement villages within Activity Areas other than within Activity Area D1. The proposal is contrary to this policy given that the application proposes a retirement village and associated activities within Activity Area C2. 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.

9. *Does QLDC see an effects under-pinning for the relevant objectives and policies and, if so, please explain.*

Yes – as outlined above in the discussion about the objectives and policies, it is considered that there is potential for adverse effects on residential amenity and the character of the Activity Areas (particularly Activity Area C2) and the wider Northlake Special zone given that the scale, nature and location of the proposed retirement village is not anticipated by the zone provisions. The height of the proposed buildings are not in keeping with the surrounding Northlake and Hikuwai developments and is considered inappropriate given the location on the northern edge of the Northlake development and close to the Clutha River and its associated recreational amenities. As mentioned above, the proposal exceeds the maximum 8m permitted height for the Zone by 5.5m. As a result, adverse effects on the neighbouring residents surrounding the site may be greater than that reasonably anticipated from a development within the zone. Building bulk, visual dominance, and shading effects are considered to be the key adverse effects from the development in this location. This includes whether the proposed height generates any character or visual amenity adverse effects on the adjacent Clutha River and its margins

10. *Is the reference to "Policy 1.3" above intended to be a reference to Policy 1.5?*

Yes, the correct reference should be to Policy 1.5.

Yours sincerely

A handwritten signature in grey ink, appearing to read 'Richard Champion', with a stylized, cursive script.

Richard Champion

Resource Consents Team Leader (Wanaka)

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