

BEFORE THE QUEENSTOWN LAKES DISTRICT COUNCIL

IN THE MATTER OF

the Resource Management Act 1991

AND

IN THE MATTER OF

Plan Change 54 – Request for a
Private Plan Change to the
Queenstown Lakes District Council
Operative District Plan by Northlake
Investments Limited

MEMORANDUM TO THE COMMISSION

RE: EVIDENCE

PART 1 LEGAL SUBMISSIONS

Dated: 6 July 2023

Counsel:

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To: The Commission

- 1 I act for the Requestor Northlake Investments Limited (**NIL**) in respect of the request (**Request**) for private plan change 54 (**PC54**) to the Queenstown Lakes District Council Operative District Plan (**ODP**). This Memorandum accompanies evidence being lodged on behalf of NIL, in accordance with the directed evidence lodgement timetable, and addresses certain legal issues which I consider are better raised at this point, rather than waiting until the legal submissions lodgement date of 19 July 2023, for the reasons detailed below.

Evidence

- 2 My general practice is to minimise unnecessary repetition, in evidence prepared for presentation at the hearing, of information that is fully and adequately detailed in the Request and/or the Section 42A Report prepared for the hearing. That approach is based on the understanding that the Agenda documents will all be pre-read in order to minimise the required hearing time.
- 3 To that end witnesses for NIL have been instructed to adopt, as their evidence for the hearing:
 - a. the relevant reports and assessments prepared and lodged as part of the Request;
 - b. the relevant parts of the s42A Report dated 18 May 2023 (**s42A Report**) which accord with the Request and/or are not under any challenge,in each case subject to any clarification, amendment or addition arising as a consequence of matters raised in submissions lodged to the Request (and related evidence) or in the s42A Report.
- 4 The s42A Report, prepared to inform the Commission for the forthcoming hearing, is almost completely supportive of approval of PC54 as notified, subject to specific additional amendments being made to the provisions of the Northlake Special Zone (**NSZ**) and related provisions of the ODP.

- 5 To the extent that the s42A Report is in accordance with, and supportive of, the Request, the Requestor will adopt the s42A Report as evidence in support of PC54 being approved. No further evidence will be presented at the hearing in relation to issues which are not under debate as between the Requestor and the recommendations of the s42A Report (other than formal confirmation, as evidence, of expert reports lodged as part of the Request).
- 6 The following Briefs of Evidence are lodged with this Memorandum:

	Name	Firm or company	Area of expertise/ subject of evidence
1.	Marc Bretherton	Northlake Investments Limited	Corporate
2.	Alex Todd	Paterson Pitts Group	Civil Engineering (excluding stormwater)
3.	Anthony Steel	Fluent Solutions Limited	Stormwater
4.	Andy Carr	Carriageway Consulting	Transport
5.	Stephen Skelton	Patch Limited	Landscape and Visual Amenity
6.	Jeffrey Brown	Brown & Company Limited	Planning

Legal issues

- 7 The balance of this Memorandum should be treated as Part 1 Legal Submissions for the forthcoming hearing, being lodged now for the reasons detailed below. This will be confirmed upon lodgement of Part 2 legal submissions for the Requestor on 19 July 2023.
- 8 The s42A Report recommends certain amendments or additions to relevant provisions of the ODP (**Changes**). NIL agrees with some of the Changes, disagrees with some (for drafting and/or substantive reasons) and proposes further Changes where NIL disagrees.
- 9 The Changes raise a number of interrelated legal and planning considerations. The reasons for addressing the relevant legal issues now are:
- a. Jeff Brown's planning evidence required some legal guidance, which Jeff Brown relies upon. It therefore seems logical to address those legal issues now, so that the relevant legal considerations

can be considered along with Jeff Brown's planning evidence, rather than having the planning evidence precede the legal advice.

- b. This course of action will allow more time for the author of the s42A Report Ian Munro (who I assume will attend the hearing) and the Commission to give consideration to Jeff Brown's planning evidence with the benefit of the legal advice which has informed that planning evidence.
- c. I anticipate that the Crown (Te Arawhiti) will have a particular interest in Changes related to traffic generated by activities within Sticky Forest. It may assist the Crown to have the benefit of NIL's legal submissions on that issue prior to the Crown preparing legal submissions (rather than all legal submissions being exchanged on the same day).

10 Attachment B to Jeff Brown's planning evidence contains a full copy of ODP Part 12 plus relevant parts of ODP Part 15, marked up and highlighted as follows:

- a. coloured yellow –Changes as notified;
- b. coloured green – Changes recommended in the s42A Report;
- c. coloured turquoise - further Changes now proposed by NIL.

11 The following submissions address the further Changes coloured turquoise.

Transportation

12 In respect of the extent to which the determination of PC54 can or should address traffic generated by activities being carried out within the adjoining Sticky Forest, I submit that the correct legal position is as follows:

- a. The basis for consideration of this issue must be the existing Rural zoning of Sticky Forest. The prospect of future hypothetical rezoning, particularly future possible residential zoning, within Sticky Forest cannot be a consideration relevant to whether or not PC54 is approved. Any 'downstream' traffic effects arising from the rezoning of Sticky Forest would be a consequence of that

rezoning and should be addressed through the relevant rezoning process.

- b. a. above does not preclude Changes which are not relevant to whether or not PC54 should be approved or the basis upon which PC54 should be approved, but which anticipate issues which may arise in the future and which can be addressed now without influencing whether or not PC54 should be approved.
 - c. Sticky Forest contains an existing forest (which is understood to have originally been planted for commercial purposes). The harvesting of that forest is a permitted activity under the National Environmental Standard for Plantation Forestry, subject to compliance with a number of regulations¹. Sticky Forest is currently 'landlocked' in terms of vehicle access which would be required to enable harvesting of that forest. PC54 provides for a roading link in order to remedy that current 'landlocked' status. Approval of that roading link may enable harvesting of that forest. Therefore the potential impacts of logging traffic generated by logging within Sticky Forest, and traversing the NSZ roading network, would be consequential upon the approval of PC54 and is a relevant consideration.
- 13 These submissions now address the Changes proposed in the s42A Report to address transportation issues, upon the legal basis set out in the previous paragraph. This is a somewhat complex exercise which is informed by the following factors:
- a. While NIL is neutral on the issue of traffic generated by potential future rezoning of Sticky Forest, it has no difficulty with Changes that might address that issue without adversely affecting approval of PC54.
 - b. The current nature and dimensions of roading infrastructure within the NSZ may place limitations on the ability of logging traffic to traverse the NSZ, regardless of whether or not any additional ODP provisions are inserted to address that issue.

¹ RFI Response June 2022 – Brown & Company letter dated 1 June 2022.

- c. If any changes or upgrades of roading infrastructure within the NSZ would be necessary to accommodate logging traffic generated by activities within Sticky Forest, the consequential costs should be borne by the Sticky Forest landowner carrying out the harvesting, not by NIL.
- d. It is by no means certain that future logging traffic generated by harvesting within Sticky Forest would use the NSZ roading network. Potential alternative roading connections to Sticky Forest were explored in the RFI response dated June 2022². In particular there are three options at the northern end of Sticky Forest which appear to be less adversely affected by topographical considerations. It is possible that the Crown and the Council might work together to resolve legal access issues in order to enable one of those potential roading connections to facilitate harvesting within Sticky Forest.

High Productivity Motor Vehicles (HPMV) – Rule 12.34.2.3.i(b)

- 14 The s42A Report recommends the amendment of existing Rule 12.34.2.3.i(b) by including the following additional (underlined) wording (**HPMV Rule**):

"(b) Roading pattern and vehicle access arrangements, including integration with existing development and, in the case of Activity Area B6, weight restrictions applying to High Productivity Motor Vehicles (HPMV) (as defined in Land Transport Rule 41001/2016) at the connection to Sticky Forest."

- 15 Assuming the HPMV Rule is able to be implemented (which is not obvious) the HPMV Rule is a concern to NIL for some of the reasons detailed in paragraph 13 above. The HPMV Rule potentially imposes an obligation (and related costs) on NIL to address the effects of traffic not generated within the NSZ and to address effects which may never arise. NIL proposes the deletion of the HPMV Rule for those reasons plus the reasons detailed below.

² RFI Response June 2022, Brown & Company letter dated 1 June 2022.

- 16 The first question about the HPMV Rule is whether an RMA response to this issue is necessary and/or appropriate. The concerns expressed in the Stantec Transportation Technical Review by Mike Smith (**Smith Review**) about logging traffic traversing the NSZ appear to relate to adverse effects on safety and/or infrastructure. The following statements can be found on page 17 of the Smith Review:

"Considering the movement of logs from the Sticky Forest area, through the NSZ road network, has identified a significant number of extremely adverse effects that would be felt by both the residents, and the contractor road formation.

In this regard, it is my opinion that the existing road network is insufficient for large logging trucks, with a significant unsafe impact on vulnerable users, and a high potential for damage to road infrastructure that could not have been reasonably anticipated by the Northlake Development, from an as then unknown Sticky Forest development.

Any associated large scale works that would utilise the existing road network would have a very strong reliance on Temporary Traffic Management. Considering the scale and nature of the potential logging operations from the Sticky Forest area, I am of the opinion that even with this measure, it would have significant negative effect on the safety of the residential area access, and vulnerable users.

...

This measure [recommended provisions] is considered to minimise the detrimental effect of large heavy vehicle movement on the road network, or present a road safety risk to residents, especially children/pedestrian/cyclists etc."

- 17 The recommended rule references Land Transport Rule 41001/2016 (**LTR**). Clauses 5.1(1), 5.2(1) and 5.2(4) of the LTR read:

"5.1 Motor vehicle requires permit to exceed mass limits

5.1(1) A motor vehicle must not exceed the mass limits in section 4 unless it is operating under a permit in one of the following categories:

- (a) overweight vehicle transporting indivisible loads:*
- (b) high-productivity motor vehicles:*
- (c) specialist vehicles carrying indivisible loads.*

....

5.2(1) A road controlling authority must, before issuing a permit under this section, consider –

- (a) the safety of the vehicle; and*
- (b) the safety of road users; and*
- (c) the durability of roads and bridges on which the vehicle may operate.*

...

5.2(4) A permit issued under this section may specify additional conditions under which the vehicle may be operated that the road controlling authority considers necessary to ensure the safety of road users, the protection of infrastructure, or to provide for compliance with the permit (including tracking systems that allow the vehicle to be checked for route and mass limit compliance)."

- 18 It therefore appears that the LTR provides Council with more than adequate control over the potential adverse effects of HPMV traversing the NSZ. Such traffic must have a permit. A permit can be granted or refused, or granted with conditions, to address safety and effects on roading infrastructure. That must raise a question about whether it is necessary to address this issue in PC54.

- 19 I acknowledge that Ian Munro addresses potential non-RMA methods in paragraph 10.24 of the s42A Report. The concluding sentence of that paragraph reads:

"... But this Panel is empowered only in terms of the RMA and is not able to commit or compel the Council in non-RMA terms, nor can it soundly assume or rely on such hypothetical actions achieving satisfactory or affordable resource management solutions."

- 20 I query whether that statement correctly reflects the extent of the Commission's ability to take into account such potential alternative non-RMA solutions to an issue. There is the Section 32(1)(b) requirement to consider options which is not expressed as excluding non-RMA options. I note the relatively common occurrence of planning proposals relying on or anticipating changes in speed limits on roads, when such speed limits cannot be imposed under the RMA and reliance must be placed on complementary actions by the local authority.
- 21 I submit that the availability to the Council of an alternative non-RMA method of addressing HPMV is a relevant consideration.
- 22 The second question to be asked about the HPMV Rule is whether it is possible to impose a weight restriction (on a road vested in Council) under the RMA, noting again the availability of a non-RMA method³. That could raise a question with the Council as to whether HPMV should be controlled under the RMA or through the LTR or other legislation referred to by Andy Carr⁴.
- 23 The submissions above relating to the HPMV Rule are subject to one overriding consideration. If the proposed new Rule 12.34.2.3.v is retained (refer submissions below), and subject to that rule being redrafted as suggested below, that rule will address all of the concerns raised above in relation to the HPMV Rule. Accordingly the HPMV Rule can be deleted and reliance can be placed upon proposed new Rule 12.34.2.3.v.

Rule 12.34.2.3.v

³ Refer evidence of Andy Carr at paragraphs 34-38.

⁴ Ibid.

- 24 The s42A Report recommended the inclusion of a new restricted discretionary activity Rule 12.34.2.3.v (**RDA Rule**) which would be triggered by any traffic generated by any land use activities within Sticky Forest and which imposes controls on such traffic traversing the NSZ. To the extent that the RDA Rule is recommended to address potential traffic consequences of a future rezoning of Sticky Forest, NIL is neutral on the inclusion of that rule. To the extent that the RDA Rule addresses logging traffic generated by forest harvesting within Sticky Forest, and subject to my submissions above about the need for an RMA method to address this issue, NIL supports that new rule, subject to possible amendment for the reasons detailed below.
- 25 From NIL's perspective, the RDA Rule has the following advantages:
- a. It addresses the effects caused by potential future logging trucks traversing the NSZ, being effects which might arise prior to any rezoning of Sticky Forest.
 - b. It addresses the potential future effects of rezoning of Sticky Forest which, while not relevant to the approval of PC54, can appropriately be addressed without affecting the approval of PC54.
 - c. It does not impose any obligations on any landowner prior to the commencement of an activity which would generate traffic through the NSZ and trigger implementation of the rule.
 - d. Any costs consequential upon the rule being triggered will be borne by the landowner carrying out the activity which triggers the rule.
 - e. It does not impose any obligations on any landowner if an alternative roading link to Sticky Forest for forest harvesting purposes is secured and used.
- 26 For the assistance of the Commission generally, and with particular consideration to logging traffic, I submit that the drafting of the RDA Rule could be improved. I comment:
- a. As currently worded, the rule would catch a single car driven by a representative of the landowner visiting Sticky Forest. The rule could be perhaps limited to residential, commercial and forestry land use activities.

- b. In subclauses (a) and (b) the word "*accommodate*" might limit those assessment matters to accommodating whatever traffic volumes are proposed. That might not allow restrictions. That word could perhaps be amended to "*manage*".
- c. Subclause (d)(i) is limited to "... *frequent or high volumes* ..." of HPMV. That would not encompass other possible outcomes such as limiting HPMV to certain hours of the day which could be relevant for child safety reasons. Perhaps the words "... *frequent or high volumes* ..." should be deleted from this rule and effectively replaced by an appropriately worded assessment matter (refer following point).
- d. Rule 15.34.5.2 Assessment Matters contains a suite of reasonably detailed assessment matters in respect of each restricted discretionary activity specified in Rule 12.34.2.3. If the proposed RDA Rule is to be inserted, there could or should be an equivalent provision inserted in Rule 12.34.5.2 which provides a greater degree and detail of guidance (such as in relation to the previous point).
- e. Subclause (d)(ii) would perhaps be better located in the Assessment Matter provision suggested above.
- f. The previous point also applies to paragraph (d)(iii) – subject to the question raised above earlier whether a weight restriction can be imposed on a road under the RMA.
- g. To the extent that the RDA Rule applies to HPMV, I refer to my submissions above concerning the LTR. In order for this RMA rule to apply to HPMV, the relevant vehicle operator must first have applied for and obtained the relevant permit (potentially subject to conditions) to enable the relevant HPMV to use the relevant affected roads within the NSZ. That being the case, there should perhaps be an additional assessment matter allowing the consent authority to take into account any restrictions or conditions already imposed on that HPMV under the LTR.

27 Jeff Brown has been requested to consider the drafting of the RDA Rule, taking into account the above comments, and anything else

which he considers appropriate as a planner. His evidence includes the amended RDA Rule as recommended by him.

Southwest extension of Required Road Links

- 28 This issue is addressed in paragraphs 10.33-10.39 and 12.5-12.9 of the s42A Report. I assume the reference in paragraph 12.5 to "... a *collector-road connection in the south-eastern part of the NSZ to Aubury Road ...*" should refer to the south-western part of the NSZ.
- 29 NIL is neutral in relation to this proposed Required Road Link extension.

Stormwater

- 30 The s42A Report recommends the amendment of existing Rule 12.34.2.3.i(g) by including the following additional (underlined) wording (**Stormwater Rule**):

"(g) Proposed methods of low impact stormwater disposal including in the case of Activity Area B6 methods for:

- 1. Limiting post-development peak flow to 80% of pre-development peak flow for the 2-year, 5-year, 10-year, 20-year and 100-year events, and*
- 2. Retention or volume reduction of at least 5mm runoff depth in any storm, and*
- 3. Extended detention storage draining down over 24 hours, for the difference between the pre- and post-development runoff volumes from the 95th percentile 24-hour rainfall event minus the 5mm retention identified in (2) above."*

- 31 NIL's position in response to the Stormwater Rule is as follows:
- a. The Stormwater Rule is not necessary because the Council already has sufficient powers and discretion under the QLDC Land Development and Subdivision Code of Practice (**CoP**) to achieve the outcomes intended by the Stormwater Rule if the restrictions detailed in the Stormwater Rule are necessary.

- b. It opposes the “80% of pre-development peak flow” criterium (instead of the standard 100% referenced in the CoP) on the basis that the additional restriction has not been justified.
- c. It has no difficulty with the rest of subclause 1 (relating to catering for the different interval storm events).
- d. It opposes subclauses 2 and 3 on the basis that those restrictions have not been justified.
- e. If any additional stormwater restrictions are to be applied, it is not appropriate that the specific intended outcomes be assessed and determined at Outline Development Plan stage under Rule 12.34.2.3.i, because of the extent of analysis required. Any such restrictions should be addressed at subdivision consent and/or engineering approval stage, as is normally the case when addressing District Plan stormwater management requirements.

32 The reasons for NIL’s concerns about the Stormwater Rule, as detailed below, are as follows:

- a. NIL fully accepts that stormwater must be appropriately managed and that such appropriate management results in costs being borne by developers;
- b. each of the restrictions detailed in the Stormwater Rule will require provision of additional stormwater detention which involves additional construction complexity and cost and also potentially reduces development yield (if additional stormwater retention requirements result in loss of residential lots);
- c. those restrictions and resulting cost consequences should be based upon analysis of the specific circumstances applicable to the relevant development and should not be imposed by way of a blanket approach which has not been justified.

33 The stormwater evidence of Anthony Steelfor NIL is relatively limited because he generally agrees with the technical content of the Beca evidence dated 9 June 2023 prepared by Kate Purton. NIL does not dispute Kate Purton’s evidence at a technical level. What NIL does dispute is the manner in which the recommended additional restrictions have been derived.

34 I first note a very important point which is not clear in the wording of the Stormwater Rule. This issue involves two separate factors, being flood risk and erosion. The Stormwater Rule is based upon Kate Purton's recommendations in paragraph 39 of her evidence which reads:

"I therefore recommend that the proposed PC54 provisions are modified to include the following requirements:

a. To mitigate downstream flood risk, peak flow attenuation to limit post-development peak flow to 80% of pre-development peak flow for the 2-year, 5-year, 10-year, 20-year and 100-year events.

b. To mitigate downstream erosion:

a. Retention or volume reduction of at least 5mm runoff depth in any storm, plus

b. Extended detention storage draining down over 24 hours, for the difference between the pre- and post-development runoff volumes from the 95th percentile 24-hour rainfall event minus the 5mm retention."

35 It is clear from paragraph 39 quoted above that the different parts of the Stormwater Rule address those two different factors. Subclause 1 addresses flood risk, and subclauses 2 and 3 address erosion risk. It is important that this distinction be kept in mind.

36 This distinction has not been kept in mind in the s42A Report. Stormwater is dealt with in paragraphs 11.1-11.14 on pages 53-56 of the s42A Report. Consideration of those paragraphs leads to a conclusion that the justification for the Stormwater Rule is based upon the erosion factor. There is no consideration of the flood risk factor intended to be addressed under subclause 1 of the Stormwater Rule. In the submissions below I address those two factors separately.

Current stormwater regime is adequate

- 37 However before addressing those two factors I submit that there is a valid question about whether any additional stormwater provisions relating to AAB6 are necessary at all.
- 38 Under the provisions of the NSZ, the future management of stormwater in relation to development of AAB6 is a controlled subdivision activity under Rule 15.2.12.1 of the ODP. The exercise of that controlled subdivision activity discretion is then guided by the assessment matters detailed in Rule 15.2.12.3. Reference to Rule 15.2.12.3 will show a detailed series of assessment matters, some of which only apply to specific special zones.
- 39 In her paragraph 35 Kate Purton references and quotes relevant assessment matters under Rule 15.2.12.3. However she does not reference and quote the important introduction to Rule 15.2.12.3, which is quoted below, together with the three most applicable assessment matters:

"In considering whether or not to grant consent or impose conditions in respect of stormwater disposal, the Council shall have regard to but not be limited by [underlining added] the following:

"(i) The adequacy of the proposed means of collecting and disposing of stormwater from the roof of all existing or potential buildings and hard surfacing, in terms of the avoidance or mitigation of adverse effects on the site, other properties in the vicinity, or the receiving environment, whether land or water;"

....

"(iii) Any adverse effects of the proposed subdivision on drainage on, or from, adjoining properties and mitigation measures proposed to control any adverse effects;"

"(iv) The provisions of the Council's Code of Practice in respect to the construction and installation of the stormwater disposal system;"

40 Kate Purton's concerns in relation to this issue are recorded in paragraph 17 of her evidence which reads:

"17. Future resource consents would be required to enable the road and the residential development in the north-western edge the Northlake Special Zone. The proposed infrastructure, including stormwater management, would be addressed as part of these resource consents. This relies on the PC54 changes to the ODP plan provisions, the existing plan provisions in the ODP, and the requirements of the QLDC Land Development and Subdivision Code of Practice (CoP) being able to address all stormwater-related issues."

41 Kate Purton then appears to say that stormwater design requirements are specified in the CoP, and that the CoP is inadequate because it fails to address certain factors. This is evident from paragraph 37 of her evidence which reads:

"37. The CoP sets out the required design approach for stormwater systems. While the CoP requirements are explicit regarding the primary and secondary system design standards (5% AEP and 1% AEP respectively), the requirements are not explicit for stormwater management to mitigate downstream flood risk including the cumulative effects of multiple developments and detention ponds or downstream erosion."

42 However the fact that the CoP may not specify explicit design requirements to address certain stormwater factors does not mean that the Council cannot require those factors to be addressed. The Council has a very wide discretion under the Stormwater Rule 15.2.12.3 quoted above which specifically says that the Council "... shall have regard to but not be limited by ..." and refers to "The adequacy of the proposed methods of collecting and disposing of stormwater ... in terms of the avoidance or mitigation of adverse effects on ... the receiving environment, whether land or water".

43 I also note Clause 4.2.7 of the CoP⁵ which reads:

"Downstream impacts could include (but are not limited to) changes in flow peaks and patterns, flood water levels, contamination levels and erosion or silting effects, and effects on the existing stormwater system. Where such impacts are more than minor, mitigation measures such as peak flow attenuation, velocity control, and treatment devices will be required."

44 It is particularly important to note that the CoP is not the determining document. It is one of ten separate considerations which Council must have regard to under Rule 15.2.12.3 (plus any additional considerations the Council may decide to have regard to).

45 I submit that all of the concerns raised in Kate Purton's evidence can be addressed by requirements (including stormwater detention requirements) imposed under the current Council stormwater management regime.

Flood risk

46 Subclause 1 of the Stormwater Rule, as recommended by Kate Purton in her paragraph 39, addresses flood risk. The rationale for that recommendation can be found in paragraphs 20 and 28 of Kate Purton's evidence which read:

"20. Where there are multiple individual developments (or stages of development) in a catchment with detention basins providing peak flow attenuation, the cumulative effect of increased volumes and resulting increased coincidence of peak flows can result in higher than pre-development peak flows downstream. Achieving no net increase in peak flow downstream of all development requires that individual developments (or stages of development) be attenuated to a lower peak than pre-development (some guidelines recommend targeting 80% of pre-development peaks)."

⁵ Refer Request documentation – Infrastructure Report by Paterson Pitts Group – Appendix B containing the Fluent Solutions Stormwater Management Concept – Page 21.

"28. *The proposed stormwater system would not address the increase in peak flow discharged in events smaller than the 10-year event. This means that it may increase the risk of downstream flooding in events smaller than the 10-year event (e.g. the 2-year and 5-year event). It would also not address the potential cumulative effects downstream from several detention ponds in multiple developments or stages of development.*"

- 47 The final sentence quoted above does not reflect the extent of discretion available to the Council when addressing stormwater issues under Rule 15.2.12.3. Nor does it reflect Council's current practice (at least as far as NIL's Northlake development is concerned). Marc Bretherton's evidence addresses the extent of analysis which NIL has had to provide in order to obtain engineering approval for Stage 16⁶. The Council is already imposing requirements above and beyond those specified in the CoP, and NIL is complying with those requirements.
- 48 As stated above, and as specifically recorded in Marc Bretherton's evidence concerning Stage 16⁷, NIL has no difficulty with addressing the recommended range of storm interval events, nor does it have any difficulty with addressing the cumulative impact of different stages of development, all in relation to achieving the CoP 100% requirement. NIL's concern is that the amended 80% requirement is not based on any analysis or justification. The 20% change appears to be a figure which is just pulled out of thin air and which is not in any way related to the effects of generation of stormwater from AAB6 in this particular catchment.
- 49 NIL acknowledges that the detailed stormwater modelling, which is normally carried out at subdivision consent or engineering approval stage, might lead to a conclusion that some additional stormwater retention is required in order to meet the 100% criterium. NIL has no difficulty with that. However that modelled additional stormwater detention requirement might be 2%, or 5%, or 10%, or 20%. There is no justification for the blanket 20% criterium.

⁶ Marc Bretherton's evidence dated 6 July 2023, at paragraphs 34-44.

⁷ Ibid.

Erosion

50 Subclauses 2 and 3 of the Stormwater Rule, as recommended by Kate Purton in her paragraph 39, relate to erosion risk. The rationale for this recommendation is set out in paragraphs 14, 21, 29 and 38 of Kate Purton's evidence which read:

"14. I am aware of the erosion issues in the Rockabilly Gully downstream of the discharges from the existing Northlake and Hikuwai developments, and that Otago Regional Council (ORC) has issued QLDC with an abatement notice in respect of this issue. I have walked the gully from the outlets to the Clutha River. I am also providing advice to QLDC with regard to the possible causes of this erosion issue."

"21. Peak flow attenuation does not mitigate the increase in frequency of runoff or the increase in volume, both of which can contribute to increases in downstream erosion. This also needs to be addressed."

"29. The proposed stormwater management system would not address the increase in runoff frequency or increase in runoff volume from development in the PC54 area. This means that it would not mitigate the risk of downstream erosion caused by development in the PC54 area."

"38. There is already significant erosion downstream following development in the catchment. It is therefore important that this is not exacerbated by the effects of further development not being appropriately mitigated."

51 With reference to that evidence, paragraph 11.8 of the s42A Report reads:

"11.8 I am aware that the Otago Regional Council has issued an abatement notice to the Queenstown Lakes District Council in relation to unauthorised storm water discharges into Hikuwai Reserve and Clutha River/Mata-Aū, referenced EN.RMA.21.0081 and dated 1 October 2021. Ms Purton has also identified that she has personally visited and inspected sites where erosion is occurring."

- 52 The first question which springs to mind is why, if the existing erosion situation is caused by unauthorised discharges, and an Abatement Notice has been issued (presumably requiring steps to be taken to remedy the situation) almost two years ago, this is an issue for PC54. If the existing situation is appropriately remedied, in order to properly accommodate existing stormwater discharges, the development of AAB6 may not cause or contribute to any erosion consequence.
- 53 Quite separately from the previous point, the difficulty here is again the lack of analysis to justify the proposed restrictions. In particular I note:
- a. Kate Purton appears to be fully informed about the existing erosion situation, which must have been happening for some years if the Abatement Notice was issued in October 2021. However her evidence contains no detail about how or why that erosion situation has arisen.
 - b. There is no assessment of the extent to which stormwater discharge from AAB6 might contribute to the existing erosion situation and no explanation of how subclauses 2 and 3 of the Stormwater Rule will avoid or mitigate any contribution to the existing erosion situation.
 - c. AAB6 contains 11ha which is about 5% of the total area of this stormwater catchment which contains approximately 214ha⁸. Presumably AAB6 will therefore receive, and discharge (and in fact is already receiving and discharging), approximately 5% of the total stormwater discharge which has existing or potential erosion risk consequences. Kate Purton's evidence does not analyse how much of that 5% of total stormwater discharge will be reduced as a consequence of the imposition of subclauses 2 and 3 of the Stormwater Rule, and what the potential consequence of that reduction would be in relation to the existing or future erosion situation.
- 54 The above criticism of Kate Purton's evidence may be considered not to be fair because the requisite modelling information is not available and it is not her responsibility to carry out that modelling. However

⁸ Ibid at paragraphs 31-32.

that is entirely the point. That modelling is carried out at subdivision consent or engineering approval stage. The Council has wide powers to impose stormwater detention restrictions to address potential adverse effects on the receiving environment. Additional stormwater detention requirements to avoid or mitigate adverse effects on the wider environment should be determined and imposed through that process, and not through a blanket approach in the ODP provisions which lack any analytical basis or justification.

Not an Outline Development Plan issue

55 NIL maintains its opposition to the Stormwater Rule for the reasons detailed above. However if the Commission determines that additional ODP provision relating to stormwater is appropriate, NIL's second major concern is the timing of the requirement to carry out the modelling to determine or confirm stormwater detention/retention requirements.

56 This issue is recognised in the s42A Report, at paragraph 4.10 on page 10, where Ian Munro addresses in a generic manner the NSZ Outline Development Plan process, noting that a number of Councils have adopted a similar process in the past. The second sentence of paragraph 4.10 states:

"... Its [ODP] intent was to facilitate spatial integration across larger sites and/or multiple landholdings by filling in the detail between a very high-level structure plan and a very site-specific subdivision consent ..."

57 Under the NSZ ODP process there are three approval stages, each of which generally requires a different level of detail, as described in Marc Bretherton's evidence⁹.

58 The detailed modelling and analysis required to establish full compliance with stormwater management requirements involves a huge amount of work at considerable cost¹⁰. That should not be imposed at the Outline Development Plan stage because there is no need for it to be carried out at that stage. There is no justification for development of AAB6 to have to go through a process different from

⁹ Evidence of Marc Bretherton dated 6 July 2023, at paragraph 43.

¹⁰ Ibid, at paragraphs 41-43.

that applicable to anywhere else within the NSZ (and, in fact, anywhere else in the District).

Amended stormwater provision

- 59 I submit that there is no need or justification for any additional provision for management or stormwater in the ODP, for the reasons detailed above. However NIL would have no difficulty with the inclusion of a provision which applies additional guidance to the Council in undertaking the requisite CoP assessment and approval. That guidance could address considerations which are already within the ambit of the Council's discretion but which are not explicitly referenced in the CoP. I submit that the appropriate place for that guidance is in Rule 15.2.12.3 which sets out assessment matters for the stormwater component of resource consents, including assessment matters specific to certain special zones.
- 60 Jeff Brown has been requested to consider this issue and draft an amendment to Rule 15.2.14.2 which he considers appropriate as a planner. His evidence includes the amended rule as recommended by him.
- 61 I do not think there is any jurisdictional hurdle to that additional provision being applicable to the entire NSZ because it does not impose any requirement additional to the Council's current discretion in relation to stormwater management.

Dated 6 July 2023



Warwick Goldsmith
Counsel for Northlake Investments Limited