**BEFORE THE ENVIRONMENT COURT**

Decision No. [2015] NZEnvC139

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| **IN THE MATTER** | of the Resource Management Act 1991 |
| **AND** | of an appeal pursuant to Clause 14 of the First Schedule of the Act |
| **BETWEEN** | APPEALING WANAKA INCORPORATED<br>(ENV-2014-CHC-46)<br>Appellant |
| **AND** | QUEENSTOWN LAKES DISTRICT COUNCIL<br>Respondent |
| **AND** | NORTHLAKE INVESTMENTS LIMITED<br>Applicant |

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| Court: | Environment Judge J R Jackson<br>Environment Commissioner J R Mills<br>Environment Commissioner A C E Leijnen |
| Hearing: | In Wanaka on 2, 3, 4 and 5 March 2015<br>Site inspection 30 April 2015<br>(Final submissions received 4 May 2015) |
| Appearances: | Mr P Page and Ms J Caunter for Appealing Wanaka Incorporated<br>Ms J Macdonald for Queenstown Lakes District Council<br>Mr W Goldsmith and Ms M Baker-Galloway for Northlake Investments Limited |
| Date of Decision: | 21 August 2015 |
| Date of Issue: | 21 August 2015 |

THE SEAL OF THE ENVIRONMENT COURT OF NEW ZEALAND

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**INTERIM DECISION**

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A: Under clause 15 of the First Schedule to the Resource Management Act 1991, the Environment Court:

(1) subject to (2) and Orders [B] and [C] approves Plan Change 45; and

(2) directs the Queenstown Lakes District Council to amend the "Amended Structure Plan" which is part of PC45 as indicated in the attached 'Reasons' unless any party indicates by 30 September 2015 that they wish to call evidence on the issue;

B: We reserve leave for:

(1) Appealing Wanaka Incorporated:

(a) to advise the court and other parties whether it wishes to continue with any of its *ultra vires* allegations (other than those about Chapter 4.9 of the Queenstown Lakes District Plan which have been adjudicated on); and

(b) if so, to lodge a memorandum of counsel setting the issue(s) and arguments out in detail;

— by 4 September 2015;

(2) the other parties to respond by 18 September 2015; and

(3) any reply from Appealing Wanaka Incorporated to be lodged and served by 2 October 2015.

C: We direct that the parties confer on:

(1) our powers to amend PC45 (see the last paragraph of the Reasons); and

(2) on the matters of detail raised in part 10 of the Reasons attached; and

— in the absence of agreement lodge affidavits (if necessary) and submissions on the issues under the following timetable:

- 30 September — submissions by Northlake
- 14 October — submissions by Queenstown Lakes District Council
- 21 October — submissions by Appealing Wanaka Incorporated

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- 4 November — replies by Queenstown Lakes District Council and Northlake Investments Incorporated

D: Leave is reserved for any party to apply for further or other directions in case we have overlooked any matter or if they have major difficulties with the timetables.

E: Costs are reserved.

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## REASONS

### 1. Introduction

1.1 Plan Change 45

[1] The issue in this proceeding is whether or not to confirm Plan Change 45 ("PC45") to the Queenstown Lakes District Plan. That is a private plan change which proposes the residential development of a large area between the town of Wanaka and the Clutha River. The land in question is approximately 219.26 hectares ("the site") and is held in four separate ownerships as shown on the ownership plan annexed to this decision as "A".

[2] The question for us to decide is whether to confirm PC45 and rezone the site for both residential development and protection of special areas of landscape and ecological value or to cancel the decision of the Council. The principal difficulty in this case is that the objectives and policies about residential development in the district plan of the Queenstown Lakes District Council are so many, various and complex that the witnesses for the parties have not been able to agree which are the most relevant and/or whether they head in the same general directions. Those problems are compounded by the fact that all people concerned with resource management are still working through the

ramifications of the Supreme Court's decision in *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd*[1] *("EDS v NZ King Salmon").*

1.2 The history of Plan Change 45, the appeal and the parties

[3] A request to amend the Queenstown Lakes District Plan ("the QLDP") under clause 21 of the First Schedule to the Resource Management Act 1991 ("the RMA" or "the Act") was made by a Ms Lucy Meehan in July 2013. That request was accepted[2] and then notified by the Queenstown Lakes District Council on 1 August 2013. A summary of the decisions requested in submissions was publicly notified on 25 September 2013 and the period for further submissions closed on 9 October 2013.

[4] 124 primary submissions were lodged on PC45. The plan change went to a hearing by Council-appointed Commissioners Messrs D Whitney and L Cocks. They released their report and recommendations on 17 June 2014. After the Council accepted those recommendations — to approve PC45 as amended by the Commissioners — a notice of appeal by an unincorporated body of submitters was lodged with the Registrar of the Environment Court on 5 September 2014.

[5] Both the original requestor and the appellants have been succeeded by others. First, the original applicant, Ms Meehan, has been succeeded by Northlake Investments Limited ("Northlake"), a company in which she retains an interest. Second, on 24 February 2015 the court issued a (further) procedural decision[3] confirming that Appealing Wanaka Incorporated ("AWI") is the successor appellant to one of the earlier groups of submitters.

[6] PC45 is opposed by AWI on a number of grounds. First it says that the existing supply of land zoned for residential purposes in Wanaka is more than sufficient to meet the community's needs[4]; second it says that the lack of an identified urban growth boundary means that the court only has part of the picture[5]; third the plan change is premature because an upcoming review of the district plan will determine the

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1 *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd* [2014] NZSC 38; [2014] 1 NZLR 593; [2014] NZRMA 195; (2014) 17 ELRNZ 442.
2 Under clause 25(2)(b) of Schedule 1 to the RMA.
3 *Appealing Wanaka and Others v Queenstown Lakes District Council* [2015] NZEnvC 23.
4 Submissions by the appellant dated 24 April 2015 para 17.3.
5 Submissions by the appellant dated 24 April 2015 para 17.4.

appropriate solution for urban growth; fourth PC45 does not achieve the objectives and policies of the operative district plan, nor is it the better option under section 32 RMA. Some *vires* issues are also raised. AWI only called two — albeit very experienced — witnesses: an urban designer Mr I C Munro and the planner Mr D F Serjeant. Mr Munro had previously prepared for the Council an urban design report[6] on PC45 which was presented at the Commissioners' Hearing. He was later engaged to support AWI in this proceeding, where he maintains the advice he gave in his earlier report to the Council.

[7] The Council played no active part at the hearing — it called no witnesses — but supports the plan change. However, an independent planner Ms V S Jones, who had been contracted by the Council to report on the plan change, was called by AWI under a witness summons. Ms Jones produced her section 42A report and some supporting documents to the Court. She also took the trouble — for which the court is grateful — to read the evidence lodged with the Registrar and then to lodge and serve a brief statement of evidence updating her expert opinions.

[8] It is common ground that the version of the RMA that must be applied is that in force between 1 October 2011 and 3 December 2013, that is before the Resource Management Amendment Act 2013 came into force[7].

## 1.3 The environment

*The existing rural area*

[9] The site is to the north and east of the residential areas of Wanaka town. Aubrey Road runs along the southern boundary of the site, and Peak View Road runs to its western boundary (but terminates short of the high point). Beyond that terminus a pine plantation known as "Sticky Forest" — a popular mountain bike recreational area[8] — covers the hill separating the site from Lake Wanaka. Outlet Road, the road to where the Clutha River begins, runs through the site. Adjacent to the site's eastern boundary is the Hikuwai Conservation Area, a kanuka shrubland managed by the Department of Conservation. This area contains a significant representative[9] sample of the Upper

6 I C Munro evidence-in-chief Appendix 2: 2013 Report [Environment Court document 17].

7 This is because the closing date for submissions was (as recorded above) 9 October 2013, and therefore, under clause 2 of Schedule 12 to the RMA the form of section 32 in existence between 1 October 2011 and 3 December 2013 applies.

8 J B Edmonds evidence-in-chief para 3.2.4 [Environment Court document 14].

9 J B Edmonds evidence-in-chief para 3.14 [Environment Court document 14].

Clutha kanuka shrubland and cushionfield: a modified but apparently relatively uncommon vegetation type.

[10] To the southwest a residential area known as the Kirimoko Block borders the site. It contains a plantation of conifers and a (largely undeveloped) low density residential zoning. Immediately north of the Kirimoko Block a Council water reservoir[10] is situated. A right of way provides vehicle access to the reservoir across part of the site connecting to Peak View Road (currently a private access road).

[11] The topography of the site is quite complex in that it is a mix of old moraine hummocks and riverine terraces incised by smaller (and formed later) water courses. The high point in the northwest is 410 metres above sea level ("masl") and the lowest point, 330 masl, is at the south-eastern end adjoining Aubrey Road. The vegetation of the site is largely introduced pasture, but there are areas of kanuka and smaller ones of matagouri and native tussocks. There are shelterbelts of mature pines, and some plantations of conifers as well as some wildings.

[12] The site borders an outstanding natural landscape which includes Lake Wanaka, although the lake cannot be seen from the site because its high point is at its western end. The site is immediately to the south of the Clutha River (itself an outstanding natural feature) which commences about one kilometre to the northwest where the water flows out of Lake Wanaka. Part of that landscape is the Council-owned Clutha River Reserve[11] to the north of the site. The reserve extends from Beacon Point/Outlet Road to Albert Town and contains a walking and cycling trail along the river edge.

*The adjacent urban environment*

[13] There is an enclave of "Rural-residential" land between part of the site and Aubrey Road as a result of an earlier subdivision by one of the site's landowners. That area is interesting because it reveals what Northlake claims is a likely outcome for the site if PC45 does not proceed. Across Aubrey Road, to the south of the site, is more


10 Located on Lot 13 DP 300734 and listed in the District Plan as Designation 314 Local Purpose (Water Reservoir).

11 Listed in the District Plan as Designation 116, 'Clutha Outlet Recreation Reserve'.

partly developed Rural Residential zoned land that extends up the lower slopes of Mount Iron, an Outstanding Natural Feature.

[14] In 2013 there were 6,471 people normally resident in Wanaka (that is 23% of the District's population). The housing statistics[12] are:

- there were 2,781 occupied dwellings and 1,752 unoccupied dwellings — total 4,533 dwellings (about 40% of houses are likely to be second or holiday homes)[13];
- the average household size was 2.4 persons, and 20% of Wanaka's households were single person households;
- in the year to December 2013 the Council issued 159 building consents for residential dwellings.

[15] The Council's 2013 estimates[14] were that zoned capacity for 5,686 dwellings exist in Wanaka and that the number of houses likely to be built in the next 20 years (from 2013) is 2,300. The evidence in respect of the site is that if PC45 proceeds then it is likely[15] that up to 600 of the houses at Northlake will be used for holiday homes, with the remainder (a little less than 900 at maximum build out) being lived in permanently.

[16] The median house price[16] in the Queenstown-Lakes district at January 2014 was $532,500; and the median income in January 2015 was about $74,970. Wanaka is affluent by New Zealand standards with slightly higher incomes than the New Zealand average[17]. Even so, the median multiple of income to house price as at that date was 7.10.

[17] There is one other aspect of the land market (for sections of residential zoned land) in the Wanaka basin which we should record. It is dominated by one family. The

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12 Statistics New Zealand quoted in the evidence of I C Munro evidence-in-chief para 5.13 [Environment Court document 17].
13 J A Long evidence-in-chief para 2.3 [Environment Court document 12].
14 Evidence of I C Munro para 5.15 [Environment Court document 17].
15 J A Long evidence-in-chief para 2.3 [Environment Court document 12].
16 Source: www.interest.co.nz/property/house-price-income-multiples (Accessed 12/13/15 1350).
17 J A Long evidence-in-chief para 2.7 [Environment Court document 12].

attached map[18] marked "B" shows some interests of the Dippie family — being Messrs A and E Dippie and various companies[19] apparently owned or controlled by them and their families — in Wanaka. Counsel for AWI tried to undermine this point by identifying other land — at Lake Hawea — which was zoned for residential development. That point failed when it emerged[20] a day or so later that Dippie family interests own much of that land also. Having recorded that situation we must also say that we received insufficient evidence to rely on[21] of any manipulation of the quality, timing or pricing of sections placed on the market by the interests of the Dippie family. We simply note at this point that the potential for monopolistic behaviour exists.

*The value of the site as rural land*

[18] After the hearing the Court asked for and received evidence of the value of the entire (original) 245 hectares covered by PC45 in its original version. In his affidavit for Northlake, dated 10 April 2015, Mr S G N Rutland of Auckland, Registered Valuer, deposed that the estimated gross market value of the use *Option 1 (Rural General Option Value)* for the land, assuming (counterfactually) that the land is undeveloped farm land in the Rural General Zone in the vicinity of Wanaka and is not currently subject to a plan change to rezone, is $30,000 per hectare (excluding GST)[22].

1.4 The purpose and detail of PC45

[19] The site is proposed to be managed under a new "Section 12.X" of the district plan as the "Northlake Zone". The new zone includes objectives, policies and a Structure Plan intended to guide future development under a staging process, with each stage guided by an "Outline Development Plan" and associated rules. Each Outline Development Plan will require details such as the indicative subdivision design, roading pattern, location of pedestrian and cycling connections, and location of "open space"[23] and recreational amenity spaces.

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18 Ex 14.1.

19 These were identified by Mr Edmonds as Orchard Road Holdings Limited, Willowridge Developments Limited and Beech Cottage Trustees Limited — transcript p 95.

20 Transcript p 96.

21 Quite apart from any natural justice issues: none of these landowners were parties or witnesses.

22 S G N Rutland affidavit dated 10 April 2015 para 9 [Environment Court document 34].

23 This has its own meaning and own chapter (20) in the QLDP.

[20] Rather confusingly, PC45 states its own purpose[24], even though there is no requirement for that under the RMA[25]. This is stated to be:

> ... to provide for a predominantly residential mixed use neighbourhood. The area will offer a range of housing choices and lot sizes ranging from predominantly low to medium density sections, with larger residential sections on the southern and northern edges. The zone enables development of the land resource in a manner that reflects the zone's landscape and amenity values.

It also contains express objectives which are[26] to provide a residential development with "a range of medium to low density and larger lots"[27] in close proximity to the wider Wanaka amenities; to attain best practice in urban design[28] and to achieve "high quality residential environments", which are well-connected[29] internally and to infrastructure networks outside the zone; to develop "tak[ing] into account"[30] the landscape, visual amenity, and conservation values of the zone; and to establish[31] areas for passive and active recreation.

[21] There are to be internal roads connecting to Aubrey Road, Outlet Road and Peak View Road. While Peak View Road was apparently always intended as an important walking and cycling route, the adjacent landowner Allenby Farms Limited (here represented by Northlake) has acquired an additional strip of land adjoining that access strip, so that the access strip available for future access use is now a minimum 20m wide along its full length, and wider in places. That width is adequate to accommodate vehicular access and would improve connectivity between PC45 and Wanaka generally[32]. All other infrastructure can connect to existing infrastructure[33], with upgrades to be provided at Northlake's expense where required.

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24 Para 12.X Northlake Special Zone [PC45 p 12X-1].
25 See section 75 for the compulsory and optional contents of a district plan.
26 Proposed Objectives (12.X.2) 1 to 6 [PC45 p 12.X-1 to -4].
27 Proposed Objective (12.X.2) 1 [PC45 p 12.X-1].
28 Proposed Objective (12.X.2) 2 [PC45 p 12.X-2].
29 Proposed Objectives (12.X.2) 3 and 6 [PC45 pp 12.X-3 and 12.X-4].
30 Proposed Objective (12.X.2) 4 [PC45 p 12.X-3].
31 Proposed Objective (12.X.2) 5 [PC45 p 12.X-3 and 12.X-4].
32 A A Metherell rebuttal evidence para 1.11 [Environment Court document 10].
33 J McCartney evidence-in-chief paras 10 and 11 [Environment Court document 13].

[22] Although the Northlake land is currently held in separate holdings by different owners, PC45 attempts to provide for integrated management of the whole site and adjacent land. It attempts this at three levels. First, it proposes a Structure Plan for the site (a copy dated 1 May 2015 is attached as "C"[34]). Second, it divides the Northlake land into different Activity Areas (each called an "AA" as shown on the Structure Plan), each with different management aims and methods. Third, it proposes a detailed level of design for all development in respect of small areas as they are developed: Outline Development Plans would address detailed design.

[23] The Activity Areas are[35]:

- Activity Area A, which contains the currently zoned Rural Residential part of the site. This part of the site[36] has a current "live" subdivision consent[37] for 64 lots, each over 4000m$^2$ in size and houses are currently being built on it.

- Activity Areas B1 to B5 which provide for housing of a similar nature to existing Wanaka with low density residential areas containing an average of 10 dwellings per hectare (average lot size of 700-800m$^2$).

- Activity Area D1, which enables more compact low density residential activities that would comprise around 15 dwellings per ha, or an average lot size of 450-500m$^2$. The planner for Northlake and "architect" of PC45, Mr J B Edmonds, wrote[38]:

> ... small houses, possibly including some attached housing (townhouses or terrace houses), and possibly two storey construction, would be expected to achieve this type of density. Private amenity may be lower than in the other activity area; however, this is compensated for by other benefits associated with the close proximity to community parks and facilities. Certain non-residential activities

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34 It should be noted that we have drawn a short orange line on this plan which is explained in Part 10 of this decision.

35 J B Edmonds evidence-in-chief para 2.3.1 [Environment Court document 14].

36 Lot 69 DP 371470.

37 Queenstown Lakes District Council reference RM051067.

38 J B Edmonds evidence-in-chief para 2.3.1 (3rd bullet) [Environment Court document 14].

(such as small scale retail) are enabled within this activity area, subject to compatibility with residential amenities.

- Activity Areas C1 to C5 which would enable larger residential lots that would result in around 4.5 dwellings per ha, with an average lot size of 1,500m$^2$. There are "Building Restriction Areas" within Activity Areas C1, C2 and C3 to reflect the higher landscape qualities of prominent hilltops, ridges and gullies in these parts of the site. Northlake proposes through rules relating to development (Activity status and linked development standards) to conserve the regenerating clusters of kanuka[39] and matagouri.

- Activity Area E is the land protected from development either because it abuts the Clutha River outstanding natural feature or because it encompasses areas of high natural value and/or is visually sensitive — for example the high points on the land, or land adjacent to Sticky Forest. This land is to be retained in a pastoral state.

[24] Other features of the proposed PC45 zone put forward by Northlake are that 20 sections are to be offered in the first development phase, at a cost of no more than $160,000 each, to the Queenstown Community Trust as "affordable housing". The applicant also proposes to provide a community indoor swimming pool, gymnasium, children's play area and tennis court, recreational areas, and pedestrian and cycleway trails. However, there does not appear to be any obligation that these are actually developed, even though space is provided for them. Rather there is a trigger point — a certain number of lots have to be sold before the owners feel obliged to supply these facilities.

1.5 The likely effects of PC45

[25] Many of the positive effects of PC45 have been identified in the description of PC45 above. We will discuss them in more detail later in respect of the objectives and policies of the QLDP about providing for the needs of the Wanaka community, but essentially there was very little challenge to the positive benefits asserted by Northlake.



39 P de Lange *A Revision of the New Zealand Kunzea* Phytokeys 40:1-185 (25 August 2014): At least some of the kanuka in the Wanaka area may be a separate species.

*Effects on the supply of zoned land and/or sections*

[26] Mr Munro, the urban designer for AWI, gave evidence of the effects of PC45. In his opinion PC45 would increase the zoned supply of land — using sections (allotments) as units — by 28% to (5,686 + 1,600 =) 7,286 sections. The Council's current (2013) predictions are that there may be a 20 year demand for 2,302 households in Wanaka. According to Mr Munro PC45 would result in a "surplus" zoned capacity of (7,286 – 2,302 =) 4,984 households over a relatively long 20 year planning period. In cross-examination Mr Munro said there were five times more sections than Wanaka would need in the near future, and development under PC45 would increase that to six times.

[27] Mr Munro was of the opinion[40] that such an "oversupply" of sections might cause wastelands in approved subdivisions both in Northlake and elsewhere in Wanaka: "... substantial gaps [between houses], sporadic stop start developments ..."[41] and "... an overall failure to establish anywhere ... a coherent sense of community or character as the district plan invariably describes as desirable in its residential zones"[42]. He also considered that would lead to sprawl[43].

*Effects on other residents of Wanaka*

[28] Mr Serjeant was more concerned with the amenity effects for neighbours of the site and remoter residents of Wanaka. He wrote[44]:

> For persons living on the current urban edge there is an expectation that the Northlake land would remain rural for at least the next 10-15 years. This expectation is supported by the District Plan policies that envisage a compact town and the avoidance of sprawl, and the recognition of ample infill and greenfields capacity closer to town. While specific views are not necessarily protected, I consider that the premature loss of the overall rural ambience is an adverse effect on these people.
>
> Urban amenity is provided as much by journeys through an urban area as by where we live. This is particularly the case in Wanaka which is placed within a much wider outstanding landscape. The town is developing a network of walking and cycling trails with on and off-road sections,

40 Transcript p 168.
41 Transcript p 168 lines 5-6.
42 Transcript p 168 lines 23-24.
43 Transcript p 168 line 28.
44 D F Serjeant evidence-in-chief para 51 [Environment Court document 18].

> complementing the private vehicle journey option. In my view, irrespective of the travel mode chosen, a higher quality journey is provided through a well-developed urban fabric than through a discontinuous series of suburban and rural neighbourhoods.

The first paragraph raises the probability of the direct effects on the amenities of near neighbours of the site on the south side of Aubrey Road. We consider that there are some real (if relatively minor) concerns which could be mitigated by some re-design of the Activity Areas. We consider the second paragraph is being precious: any such effects will be very minor, fleeting, and their number will dwindle over time.

*Monetary costs*

[29] A class of adverse effects of PC45 identified by Mr Serjeant were not physical effects on people or the environment, but extra costs[45] imposed on other people. We will consider these in our section 32 evaluation.

*Effects of the "commercial area"*

[30] If the sections on the site sell and are built on, then Mr J A Long, the retail consultant called for Northlake, considered that any of a café/restaurant, a convenience store, takeaway food outlets and a hairdresser/beautician might establish in Activity Area D[46]. Almost all residences would be within 900 metres[47] of any such retail outlets, making them within walking distance for most residents.

[31] Rentals[48] for the shops would be low, and so returns would be challenging for the developer or landlord. In Mr Long's opinion the businesses could be successful at a small scale (and we discuss the urban design consequences later)[49]. We accept Mr Long's evidence that any retail at Northlake will have "... no discernible impact on Albert Town or Three Parks"[50].

[32] Mr Serjeant alleged[51] there would be adverse effects in relation to:

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45 D F Serjeant evidence-in-chief paras 35-36 [Environment Court document 18].
46 J A Long evidence-in-chief para 2.10 [Environment Court document 12].
47 J A Long evidence-in-chief para 2.13 [Environment Court document 12].
48 J A Long evidence-in-chief para 2.19 [Environment Court document 12].
49 J A Long evidence-in-chief para 2.20 [Environment Court document 12].
50 J A Long evidence-in-chief para 9.7 [Environment Court document 12].
51 D F Serjeant evidence-in-chief para 41 [Environment Court document 18].

> … the overall convenience of access to the wide range of goods and services provided in existing centres and potentially in the proposed Northlake centre. This effect is not about trade competition, but the achievement and maintenance of the highest level of urban amenity that can derive from these centres.

[33] Later he added that[52]:

> Although the effect may not be significant, it has a high probability and it undermines the policy framework, which has an aspirational approach of creating positive effects, as opposed to the bottom-line assessment of avoiding adverse effects that Mr Long has undertaken.

We find that evidence rather disingenuous. If, as he appears to be suggesting, Mr Serjeant wishes to protect the shops in both Wanaka's "main street" near the waterfront of Lake Wanaka and in the proposed Northlake centre, he is clearly attempting to stop any trade competition from operators on the Northlake land. We would need considerably more evidence of adverse effects — as against the beneficial effects of (trade) competition[53] — before we could put something solid into the scales against PC45. In any event the adverse effects do not meet the threshold which takes them out of the trade competition category (as we discuss in Part 2).

## 2. Plan change considerations after *EDS v NZ King Salmon*

### 2.1 Identifying the matters to be considered

[34] The RMA provides a number of matters which a territorial authority must consider. The principal matters to be considered when preparing a plan or plan change are set out in sections 74 and 75 of the RMA. These state (relevantly):

> **74 Matters to be considered by territorial authority**
>
> (1) A territorial authority must prepare and change its district plan in accordance with—
>
> (a) its functions under section 31; and
>
> (b) the provisions of Part 2; and
>
> (c) a direction given under section 25A(2); and
>
> (d) its obligation (if any) to prepare an evaluation report in accordance with section 32; and
>
> (e) its obligation to have particular regard to an evaluation report prepared in accordance with section 32; and

52 D F Serjeant evidence-in-chief para 48 [Environment Court document 18].

53 To the extent we might be allowed to consider these: see section 104(3)(a) RMA.

(f) any regulations.

(2) In addition to the requirements of section 75(3) and (4), when preparing or changing a district plan, a territorial authority shall have regard to—

(a) any—

(i) proposed regional policy statement; or

(ii) proposed regional plan of its region in regard to any matter of regional significance or for which the regional council has primary responsibility under Part 4; and

(b) any—

(i) management plans and strategies prepared under other Acts; and

(ii) *[Repealed]*

(iia) relevant entry on the New Zealand Heritage List/Rārangi Kōrero required by the Heritage New Zealand Pouhere Taonga Act 2014; and

(iii) regulations relating to ensuring sustainability, or the conservation, management, or sustainability of fisheries resources (including regulations or bylaws relating to taiapure, mahinga mataitai, or other non-commercial Maori customary fishing),—

to the extent that their content has a bearing on resource management issues of the district; and

(c) the extent to which the district plan needs to be consistent with the plans or proposed plans of adjacent territorial authorities.

(2A) A territorial authority, when preparing or changing a district plan, must take into account any relevant planning document recognised by an iwi authority and lodged with the territorial authority, to the extent that its content has a bearing on the resource management issues of the district.

(3) In preparing or changing any district plan, a territorial authority must not have regard to trade competition or the effects of trade competition.

**75 Contents of district plans**

(1) A district plan must state—

(a) the objectives for the district; and

(b) the policies to implement the objectives; and

(c) the rules (if any) to implement the policies.

(2) A district plan may state—

(a) the significant resource management issues for the district; and

(b) the methods, other than rules, for implementing the policies for the district; and

(c) the principal reasons for adopting the policies and methods; and

...

(3) A district plan must give effect to—

(a) any national policy statement; and

(b) any New Zealand coastal policy statement; and

(c) any regional policy statement.

(4) A district plan must not be inconsistent with—

(a) a water conservation order; or

(b) a regional plan for any matter specified in section 30(1).

(5) ...

[35] Apart from their formal requirements[54] as to what a district plan must (and may) contain, those sections impose three sets of positive substantive obligations on a territorial authority when preparing or changing a plan. These are first to ensure the district plan or change accords with the authority's functions under section 31, including management of the effects of development, use and protection of natural and physical resources in an integrated way; second to give the proper consideration[55] to Part 2 of the RMA and the list of statutory documents in section 74 and section 75; and third to evaluate the proposed plan or change under section 32 of the RMA.

[36] On an appeal to this court we must also have regard to the local authority's decision[56].

[37] Of course where the subject of consideration is a plan change rather than a proposed new plan, that list of considerations also needs to consider the provisions of the plan being changed, that is the operative district plan. In fact, assessing how a plan change fits into an operative district plan may not be straight forward. Broadly, plan changes fall on a line between two extremes. At one end a plan change may be totally subservient to the objectives, policies and even rules of the operative district plan it proposes to amend, in which case the question of whether the plan change integrates the management of adverse effects is unlikely to arise. At the other end, rather than to fit within the district plan (other than in the necessary geographical sense that it must be within the district's boundaries) a plan change may be designed to be added to the operative plan. In the latter case, the first set of considerations under section 74(1)(a) RMA — integrated management — may be very important, as may Part 2 and the

54 Section 75(1) and (2) RMA.

55 This ranges from "according" with Part 2, through "giving effect to" or making provisions "not inconsistent with", to "having (particular) regard to".

56 Section 290A RMA.

statutory documents. It is therefore important to work out at the start where and how the plan change is proposed to fit into the operative district plan.

[38] Further complications arise where, as here, a proposed plan change contains its own objectives (including its "purpose"). At first sight section 74 and section 32 require each new objective to be tested against the principles of the Act but not against the other objectives and policies of the operative district plan. However, at least in cases where a plan change is designed to fit within an operative district plan, we consider the proper approach is to view the plan change (proposed purpose, subordinate objectives and all) as a policy change to implement the higher order objectives and policies in the operative district plan. A rezoning of land is a policy issue in the sense that, if confirmed by this court, the Council will be adopting "a course of action" designed to implement higher level objectives and policies: *Auckland Regional Council v North Shore City Council*[57].

[39] Before we turn to the positive obligations we should also refer to the one set of negative obligations — not to have regard to "trade competition or the effects of trade competition" — since the effects of PC45 on potential trade competitors was raised by the evidence. That provision is in section 74(3) and is oddly comprehensive. The mischief at which subsection (3) is directed would appear to be "the effects of trade competition on the profits of trade competitors, their lessors and (possibly) creditors". Instead subsection (3) appears to state that territorial authorities must not have regard even to the beneficial effects of trade competition, for example lower prices for consumers. Despite that the Supreme Court has confirmed that consequential economic and social effects are not the effects of trade competition — *Westfield (NZ) Ltd v North Shore City Council*[58]. We find this whole area of the law about the RMA very confusing: perhaps there is a distinction between the effects of competition (good) and those of trade competition (bad)?

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57 *Auckland Regional Council v North Shore City Council* [1995] 3 NZLR 18 (CA) at 23; [1995] NZRMA 424 at 430; (1995) 1B ELRNZ 426 at 433.

58 *Westfield (NZ) Ltd v North Shore City Council* [2005] NZSC 17; [2005] 2NZLR 597 [2005] NZRMA 337 (SC) at [119] and [120]. The phrase "... and the effects of trade competition" was not in section 74(3) when *Westfield (NZ) Ltd v North Shore City Council* was decided, but we doubt if that would make any difference to the Supreme Court's approach.

2.2 According with the council's functions

[40] The first set of positive obligations — and counsel for AWI reminded us that this is the purpose[59] of a plan (or plan change) — is to ensure that the district plan or change accords with the council's functions under section 31. That is usually a relatively simple factual matter: if the plan proposes to manage the effects of the use, development or subdivision (or protection) of the land, then it accords with the council's functions. Any complications normally arise in respect of the council's first and most general function in section 31. That is:

> (a) the establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district:

The notion of integrated management is very complex when faced with all the uncertainties of the future.

[41] In this case AWI argues that PC45 does not achieve integrated management of the effects of the development and use of the land and resources of the Wanaka area at all. Rather, it contends, the plan change is "entirely inward focused in terms of its design and analysis"[60]. This is of course a matter of fact, prediction, opinion, and degree on the evidence and will be considered in due course.

2.3 Implementing Part 2 and the list of statutory documents

[42] The second set of obligations in (and the major parts of) sections 74 and 75 appears to direct that, even on a minor plan change, the territorial authority has the onerous and wide-ranging task of traversing all the higher order objectives and policies in the hierarchy of superior documents that sits above the district plan, including the principles in Part 2 of the Act. That is the way sections 74 and 75 have been applied in a string of cases deriving from *Eldamos Investments Ltd v Gisborne District Council*[61],



59 Section 72 RMA.
60 Submissions of counsel for AWI dated 24 April 2015 at para 10.
61 *Eldamos Investments Ltd v Gisborne District Council* W 047/2005.

and more comprehensively since *Long Bay-Great Park Society Incorporated v North Shore City Council*[62].

[43] The recent decision of the Supreme Court in *EDS v NZ King Salmon*[63] sets out an amended — and simpler — approach to assessing plan changes under the second set of obligations in sections 74 and 75. The principle in *EDS v NZ King Salmon* is that if higher order documents in the statutory hierarchy existed when the plan was prepared then each of those statutory documents is particularised in the lower document. It appears that there is, in effect, a rebuttable presumption that each higher document has been given effect to or had regard to (or whatever the relevant requirement is). Thus there is no necessity to refer back to any higher document when determining a plan change provided that the plan is sufficiently certain, and neither incomplete nor invalid. This seems to have been accepted by the High Court in a recent decision — *Thumb Point Station Ltd v Auckland City Council*[64]. There Andrews J very succinctly put the approach as being that:

> In most cases, the Environment Court is entitled to rely on a settled plan as giving effect to the purposes and principles of the Act. There is an exception, however, where there is a deficiency in the plan[65]. In that event, the Environment Court must have regard to the purposes and principles of the Act and may only give effect to the plan to the degree that it is consistent with the Act.

We respectfully agree provided that the reference to giving effect to the "purposes and principles" [66] of the Act includes giving effect to the higher order statutory instruments, and indeed to the consideration of the other statutory documents referred to in sections 74 and 75 of the RMA.

[44] The reference to any "deficiency" in *Thumb Point* was a summary of *EDS v NZ King Salmon*. The latter case was concerned with the relationship between a plan change and a higher order statutory instrument that post-dated and therefore was not given

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62 *Long Bay-Great Park Society Incorporated v North Shore City Council* A 078/08 at [34].

63 *EDS v NZ King Salmon* (supra footnote 1) (SC).

64 *Thumb Point Station Ltd v Auckland City Council* [2015] NZHC 1035 (HC) at [31].

65 Citing *Eldamos Investments Ltd v Gisborne District Council,* W047/2005;*Environmental Defence Society Inc v The New Zealand King Salmon Company Ltd,* above footnote 1.

66 Strictly, there is only one purpose (not more as Andrews J's plural "purposes" might suggest): section 5 RMA.

effect to in the operative district plan. The national policy statement in question was the New Zealand Coastal Policy Statement 2010 ("the NZCPS"). Arnold J stated[67]:

> ... the NZCPS gives substance to pt 2's provisions in relation to the coastal environment. In principle, by giving effect to the NZCPS, a regional council is necessarily acting "in accordance with" pt 2 and there is no need to refer back to the part when determining a plan change. There are several caveats to this, however, which we will mention shortly. ...

[45] The "caveats" were identified in a later passage where Arnold J stated[68]:

> ... it is difficult to see that resort to pt 2 is either necessary or helpful in order to interpret the policies, or the NZCPS more generally, absent any allegation of invalidity, incomplete coverage or uncertainty of meaning. The notion that decision-makers are entitled to decline to implement aspects of the NZCPS if they consider that appropriate in the circumstances does not fit readily into the hierarchical scheme of the RMA.

The Supreme Court makes it clear that, absent invalidity, incomplete coverage or uncertainty of meaning in the intervening statutory documents, there is usually no need to look at Part 2 of the RMA, at least on a plan change.

[46] Mr Goldsmith submitted for Northlake that "[a] district plan is not as pure an expression of the purpose of the Act for the district as the NZCPS is for the coastal marine area ... And a plan change is not strictly bound to 'give effect to' wider relevant plan provisions, compared to the strong directions in say the NZCPS". We hold that misses an important aspect of *EDS v NZ King Salmon*. That is, whatever the obligation in section 74 or section 75 is in respect of the relevant existing statutory document, that obligation has been given effect[69] or had regard[70] to, or been kept consistent with as the case may be, in the operative district plan (absent uncertainty of meaning, incompleteness or invalidity) if it has been carried out by or "particularised" in an objective or policy. It would be illogical if a higher order instrument which had to be given effect to does not need to be looked at (e.g. the NZCPS as in *EDS v NZ King Salmon*) but a lower order document which only needed to be had regard to in the

67 *EDS v NZ King Salmon* (supra footnote 1) (SC) at [85].
68 *EDS v NZ King Salmon* (supra footnote 1) (SC) at [90].
69 Section 75(3) RMA.
70 Much of section 74(2) and (2A).

preparation of the district plan must still be looked at (absent a deficiency in the plan). For example, a strategy prepared under the LGA 2002 might have been had regard to[71] and then particularised in a district plan in a very directive policy. That could then have a nearly determinative effect on the outcome of an application for a resource consent or plan change. Indeed that is, if we understand counsels' arguments correctly, part of the submissions for AWI.

[47] We conclude that, since *EDS v NZ King Salmon,* the method of applying the list of documents referred to in sections 75 and 76 of the RMA is this: first, if there are **1, 2, 3 ... n** documents in the hierarchy of statutory documents[72] — with **1** being Part 2 of the RMA and **n** being the operative district plan which is proposed to be changed — then the effect of *EDS v NZ King Salmon* is that the only principles, objectives and policies which normally (subject to the second and third points) have to be considered on a plan change are the relevant higher order objectives and policies in document **n**[73] (in this case the QLDP itself). Second, only if there is some uncertainty, incompleteness or illegality in the objectives and policies of the applicable document does the next higher relevant document[74] have to be considered (and so on up the chain if necessary). Third, if, since a district plan became operative, a new statutory document in any of the lists identified in section 74(2) and (2A) and section 75(3) and (4) has come into force, that must also be considered under the applicable test[75]. While the simplicity of that process may sometimes be more theoretical than real, since in practice plans may be uncertain, incomplete or even partly invalid, it is easier than the exhaustive and repetitive process followed before the Supreme Court decided *EDS v NZ King Salmon.*

*Are there any later statutory documents to be considered in this proceeding?*

[48] In this case two documents were suggested as being documents of the classes identified in section 74 (2)(b) RMA:

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71 Under section 74 (2)(b)(i).

72 Including National policy statements, operative and proposed regional policy statements and plans, and any direction from the Ministry for the Environment (under section 25A(2)): section 74(1) and (2) and 75(3) RMA.

73 Or, if there are none, those in document **n-1** (usually a regional plan or regional policy statement).

74 Or, where relevant, a section 74(2)(b) document. While strictly such documents are not part of the hierarchy, they still need to be had regard to; similarly an iwi document identified in section 74(2A) RMA has to be taken into account.

75 'Given effect to', 'not inconsistent with', 'had regard to' etc.

- the Queenstown Lakes District Growth Management Strategy dated April 2007 ("the GMS")[76]; and
- the Wanaka Structure Plan 2007 ("the WSP") — a strategy prepared under the LGA 2002.

As Mr Goldsmith pointed out to us, the GMS expressly records[77] that it is "... an expression of the legislative intent of the Council and the Council's intention is to translate the actions identified in the strategy into appropriate statutory documents". So it is not[78] a statutory document and we have no further regard to it. Other documents prepared for the Council were also referred to in evidence, but none of these qualifies as a document we must have regard to under the RMA, and in any event they culminate in the WSP.

[49] So the only document we must have regard to under section 74(2) RMA is the WSP. The WSP[79] includes provisional placement of some "urban growth boundaries" and a map of "Zoning Proposed", a copy of which is annexed marked "D". It will be noted that approximately one third of the site is white (to the east of the "Plantation/Sticky Forest") and the remaining two thirds is shaded in blue and white diagonal stripes, denoting a proposed "Urban/Landscape Protection" Zone.

[50] There is a legal issue about the WSP we can deal with briefly here. Counsel for AWI pointed out that the WSP stated (in its final words[80]) "This means the Council will undertake Plan Changes", whereas of course PC45 was requested by Northlake. That is at best a legal quibble and no weight should be given to it. As it happens, the relevant policies[81] in the district plan — introduced by the subsequent PC30 — are simply "To enable the use of Urban Growth Boundaries to establish distinct and defendable urban edges ..." and to "... defin[e] an UGB through a plan change [after taking certain listed

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76 Exhibit 14.3 produced by J B Edmonds.

77 GMS p 2 (Exhibit 14.3).

78 In *Monk v Queenstown Lakes District Council* [2013] NZEnvC 12 at [34] the court accepted the GMS as a statutory document under section 74(2)(b) RMA "... in the absence of argument".

79 The only document produced to us was called "The Wanaka Structure Plan Review" but we were told that the QLDC adopted it in December 2007.

80 Wanaka Structure Plan 2007 p 14.

81 Policy (4.9.3) 7.3 and 7.6 [Queenstown Lakes District Council Plan p 4-57].

matters into account]". The policies do not say that the plan change must be introduced by the Council.

[51] We were advised that an earlier plan change ("PC20") was proposed by the Council to establish an UGB for Wanaka but did not proceed beyond initial consultation, apparently due to budgeting constraints. The WSP was presumably taken into account when PC30 was prepared[82]. However, since the WSP goes into much more detail than PC30 (which prescribes how to locate UGBs in general rather than giving specific directions for any particular location) we will have regard to the WSP's key recommendations in part 7 of this decision.

2.4 Evaluation of a plan change under section 32

[52] The third set of obligations on a territorial authority when preparing a plan (change) is the section 32 evaluation. Section 32(3) of the RMA in its relevant form requires us to examine[83]:

> (a) the extent to which each objective is the most appropriate way to achieve the purpose of this Act; and
>
> (b) whether, having regard to their efficiency and effectiveness, the policies, rules, or other methods are the most appropriate way for achieving the objectives.
>
> ...

The section 32 assessment for policies and methods, including rules, requires examination of whether policies implement the objectives, and the rules (if any) implement the policies[84]. Each proposed policy or method (including each rule) is to be examined, having regard to its efficiency and effectiveness, as to whether it is the most appropriate method for achieving the objectives[85] of the district plan (or of the plan change if that introduces any), taking into account[86] (relevantly):

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82 PC30 became operative on 5 June 2012.

83 Section 32(3) (emphasis added), as it was until 2 December 2013. Section 32 as quoted was replaced with a new section by section 70 of the Resource Management Act Amendment Act 2013.

84 Section 75(1)(b) and (c) of the Act (also section 76(1)).

85 Section 32(3)(b) of the Act.

86 Section 32(4) of the RMA.

(a) the benefits and costs of the proposed policies rules or other methods; and

(b) the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods; …

On an appeal[87] about a plan change, the Environment Court has the same duty[88] that the territorial authority has to evaluate the plan change under section 32.

[53] In *EDS v NZ King Salmon*[89] the only statement by the Supreme Court about section 32 of the RMA is rather gnomic. Arnold J simply quoted part of section 32(3) and then turned to the NZCPS (2010) stating[90]:

> Given the central role played by the NZCPS in the statutory framework, and because no party has challenged it, we will proceed on the basis that the NZCPS conforms with the RMA's requirements, and with pt 2 in particular. Consistently with s 32(3), we will treat its objectives as being the most appropriate way to achieve the purpose of the RMA and its policies as the most appropriate way to achieve its objectives.

[54] In this case we are not concerned with the application of a higher order instrument but with testing PC45's lower order objectives and policies for their efficiency and effectiveness at implementing the district-wide objectives and policies of the district plan. Of more assistance on our role under section 32 is the decision of the High Court in *Rational Transport Soc Inc v New Zealand Transport Agency*[91]. The High Court stated[92]:

> Section 32 requires a value judgment as to what on balance, is the most appropriate, when measured against the relevant objectives. "Appropriate" means suitable, and there is no need to place any gloss upon that word by incorporating that it be superior. Further, the Freshwater Plan does not only have stream protection as a sole object; …
>
> As to Mr Bennion's argument that s 32(3)(b) mandated that "each objective" had to be the "most appropriate way" to achieve the Act's purpose; i.e. it was an error to look at the combined

87 Under clause 14 of the First Schedule to the RMA.
88 Section 290(1) RMA.
89 *EDS v NZ King Salmon* (supra footnote 1) (SC).
90 *EDS v NZ King Salmon* (supra footnote 1) (SC) at [33].
91 *Rational Transport Soc Inc v New Zealand Transport Agency* [2012] NZRMA 298.
92 *Rational Transport Soc Inc v New Zealand Transport Agency* [2012] NZRMA 298 (HC) at paras 45 and 46.

> objectives; I do not agree that the Board is to be constrained in that way. It is required to *examine* each, and every, objective in its process of evaluation - that may, depending on the circumstances result in more than one objective having different, and overlapping, ways of achieving sustainable management of natural and physical resources (the purpose of the Act). But objectives cannot be looked at in isolation, because "the extent" of each may depend upon inter relationships …

[55] On that basis the evaluation under section 32(3) and (4) will be of the change as a whole, even if — as PC45 does — the plan change contains its own proposed "purpose" and, especially, objectives. Those must initially be taken as subordinate "policies" unless it is quite clear that either the operative district plan does not contemplate any plan changes and/or the plan change shows that it is designed to add to the operative district plan. The complications just identified in the previous sentence do not arise strongly in these proceedings because, as we shall see, the operative district plan contemplates residential rezonings, and PC45 is designed to fit within the QLDP notwithstanding that it purports to introduce new objectives. We should examine PC45 as if it is a policy change to the operative district plan.

## 3. What are the relevant objectives and policies to be considered?

### 3.1 The scheme of the plan

[56] The scheme of the QLDP is complex, especially on the subject of urban growth. Oversimplifying slightly, the plan has two broad tiers of objectives and policies — district-wide, and specific to subjects or areas. Those objectives and their policies and rules are contained in Volume 1A[93]. The 20 Chapters, with those most relevant to this proceeding in bold, are:

1. **Introduction**
2. Information …
3. **Sustainable Management**
4. **District Wide Issues**
5. Rural Areas
6. Queenstown Airport Mixed-Use Zone
7. **Residential Areas**

[93] Volume 1B contains the planning maps.

8. Rural Living Areas
9. Townships
10. Town Centres
11. Business and Industrial Areas
12. **Special Zones**
13. Heritage
14. Transport
15. **Subdivision Development ...**
16. Hazardous Substances
17. Utilities
18. Signs
19. Relocated Buildings ... and Temporary Activities
20. Open Space Zone-Landscape Protection.

We note that the different parts of the plan are called "sections" in the QLDP but to avoid confusion with parts and sections in the RMA we will call them "Chapters".

*Sustainable management*

[57] Chapter 3 contemplates[94] an enabling approach to development[95] and contains four basic aspirations of which two are anthropocentric and therefore particularly relevant here: enabling people's social, economic and health concerns to be met and allowing individuals and communities to provide for their well being[96].

*District wide issues*

[58] The principal, but not the only, higher order district-wide objectives and policies in the district plan are in Chapter 4. Chapter 4.2 of the district plan contains district-wide objectives and policies about the landscapes and visual amenities of the district. Objective (4.2.5) 1 seeks that subdivision, use and development in the district is undertaken in a manner which avoids, remedies or mitigates adverse effects on landscape and visual amenity values[97]. These include policies to discourage urban development in the outstanding natural landscapes and visual amenity landscapes of the

94 Chapters 1 and 2 are introductory.
95 Para 3.4 [Queenstown Lakes District Council Plan p 3-2].
96 Para 3.6 [Queenstown Lakes District Council Plan p 3-4].
97 Objective (4.2.5) 1 [Queenstown Lakes District Council Plan p 4-9].

district[98], and to avoid sprawling development and subdivision along roads[99]. There is a related policy[100] which seeks clear identification of extensions to urban areas by "design solutions to avoid sprawling development along the roads of the district". The open space and recreation policies require provision of open space and recreation reserves[101].

[59] The energy efficiency objective[102] in Chapter 4.5 has policies promoting "compact urban forms which reduce the length of and need for vehicle trips"[103] and the "compact location" of community, commercial, service and industrial activities, reduction of "the length of and need for vehicle trips"[104], and encouraging sufficiently large residential sites to enable solar energy to be generated for heating[105]. Other relevant objectives and policies relate to natural hazards[106].

[60] Chapter 4.9 on urban growth was the subject of a good deal of evidence and lengthy submissions so we outline its provisions and the arguments raised, in the next subpart of this decision.

[61] More recently the Council has identified a need for "affordable housing" and introduced a plan change ("PC24") to assist in its provision. The definition of that term is not provided, but from the context it appears to refer to relatively inexpensive housing for "low and moderate income households". Chapter 4.10 of the district plan — Affordable and Community Housing[107] — provides this objective[108]:

> Objective 1 Access to Community Housing or the provision of a range of Residential Activity that contributes to housing affordability in the District.

[62] The implementing policies are[109]:

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98 Policy (4.2.5) 6(a) [Queenstown Lakes District Council Plan p 4-11].
99 Policy (4.2.5) 6(c) [Queenstown Lakes District Council Plan p 4-11].
100 Policy (4.2.5) 7 [Queenstown Lakes District Council Plan p 4-11].
101 Objective (4.4) 1.1 [Queenstown Lakes District Council Plan p 4-24].
102 Objective (4.5.3) 1 [Queenstown Lakes District Council Plan p 4-29].
103 Policy (4.5.3) 1.2 [Queenstown Lakes District Council Plan p 4-29].
104 Policy (4.5.3) 1.3 [Queenstown Lakes District Council Plan p 4-29].
105 Policy (4.5.3) 1.3 [Queenstown Lakes District Council Plan p 4-29].
106 Objective (4.8.3) 1 [Queenstown Lakes District Council Plan p 4-49].
107 Added by Environment Court consent order dated 17 July 2013 in *Infinity Investment GH Ltd v Queenstown Lakes District Council* (ENV-2009-CHC-46).
108 Objective (4.10.1) 1 [Queenstown Lakes District Council Plan p 4-59].
109 Policies (4.10.1) 1.1 to 1.3 [Queenstown Lakes District Council Plan p 4-59].

1.1 To provide opportunities for low and moderate income Households to live in the District in a range of accommodation appropriate for their needs.

1.2 To have regard to the extent to which density, height, or building coverage contributes to Residential Activity affordability.

1.3 To enable the delivery of Community Housing through voluntary Retention Mechanisms.

*Residential areas (Chapter 7)*

[63] Chapter 7 is concerned with residential and proposed residential areas (not merely zones) and so, if applicable – and AWI belatedly challenged this in its closing submissions – it is relevant. We outline its relevant provisions in part 3.3 below.

*Special zones (Chapter 12)*

[64] The final particularly relevant chapter is Chapter 12 of the QLDP, since that is the proposed home for the Northlake Zone's provisions. Chapter 12 — Special Zones — is introduced with the statement that[110]: "There are areas within the district, which require Special Zones." Residential zones are expressly included. PC45 is designed to be such a special "residential" zone in Chapter 12. It proposes its own suite of objectives, policies and rules.

[65] PC45 also suggests some consequential changes to rules in Chapters 14 (Transport) and 15 (Subdivision) of the operative district plan.

3.2 Subchapter 4.9: urban growth

[66] Subchapter 4.9 manages urban growth within the district. Of the eight urban growth objectives in Chapter 4.9, five are relevant (another relates to visitor accommodation[111] and the remaining two are site specific[112]). It is useful to see the relevant objectives together. They are:

> Objective 1 - Natural Environment and Landscape Values
>
> Growth and development consistent with the maintenance of the quality of the natural environment and landscape values.

110 Para 12 Introduction [Queenstown Lakes District Council Plan p 12-1].

111 Objective (7.9.3) 5 [Queenstown Lakes District Council Plan p 4-56].

112 Relating to Frankton Flats [Objective (4.9.3) 6] and the Wanaka Airport [Objective (4.9.3) 8] respectively.

Objective 2 - Existing Urban Areas and Communities

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.

Objective 3 - Residential Growth

Provision for residential growth sufficient to meet the District's needs.

Objective 4 - Business Activity and Growth

A pattern of land use which promotes a close relationship and good access between living, working and leisure environments.

Objective 7 - Sustainable Management of Development

The scale and distribution of urban development is effectively managed.

[67] Two of the objectives — 3 and 7 — on urban growth in Chapter 4.9.3 are formulaic: they give decision makers directions about which dimensions of growth should be managed but not how. Objective 3 is to provide for "residential growth sufficient to meet the District's needs" and Objective 7 is to manage effectively the "scale and distribution" of that growth. (We agree with Mr Goldsmith and Mr Serjeant[113] that "scale" seems to refer to the volume of growth and "distribution" to its location). The words "sufficient" and "needs" in Objective 3 are not so straightforward.

*Objective 3 Residential Growth*

[68] There was considerable uncertainty at the hearing and submissions afterwards as to the meaning of "sufficient". Mr Goldsmith submitted for Northlake that it is a minimum. "Sufficient" is defined in The Shorter Oxford English Dictionary[114] as meaning "of a quantity, extent or scope adequate to a certain purpose or object". We consider that when "sufficient" is used without "necessary" — as in "necessary and sufficient" — then it is close to but something less than a maximum. Counsel for AWI submitted that the goal is to accommodate urban growth through "policies of consolidation"[115]. We pause to note that consolidation in the QLDP is directed at the

113 Transcript p 278-279.

114 The Shorter Oxford English Dictionary (Third Edition, 1985 OUP) page 2180.

115 AWI's closing submissions para 64 [Environment Court document 35].

distinction between urban and rural growth, and is rather different from the related concept of compactness (which is also important under the plan especially under the Energy objective discussed above). Counsel continued that "the use of the word sufficient" anticipated control over the scale and timing of urban growth. We accept that loose control is anticipated — but not more than that because of the enabling aspirations in the plan (Chapter 3) and in the implementing policies. So we accept the submission of counsel for AWI that the objective requires provision "for adequate residential growth".

[69] As for the "needs" referred to in Objective (4.9.3) 3, AWI took, with respect, a rather reductive position arguing in effect that the relevant needs are for zoned housing sections. For Northlake, Mr Goldsmith submitted that the needs are identified at length in other district-wide objectives. We consider that neither is fully correct, although Mr Goldsmith is closer: the needs are identified in objectives but also in policies and explanations. We will collate and summarise these later since the question of the community's "needs" arises repeatedly.

*Objective 7 Sustainable Management of Development*

[70] Objective (4.9.3) 7 and its policies were amended[116] by plan change 30, which became operative on 13 June 2012[117]. Because this objective and its policies were central to the appellant's case, we set them out in full[118]:

> Objective 7 Sustainable Management of Development
>
> The scale and distribution of urban development is effectively managed
>
> Policies:
>
> 7.1 To enable urban development to be maintained in a way and at a rate that meets the identified needs of the community at the same time as maintaining the life supporting capacity of air, water, soil and ecosystems and avoiding, remedying or mitigating any adverse effects on the environment.
>
> 7.2 To provide for the majority of urban development to be concentrated at the two urban centres of Queenstown and Wanaka.

116 Objectives (4.9.3) 5 and 6, respectively relating to Visitor Accommodation and the Frankton Flats (in the Wakatipu Basin), are irrelevant to this proceeding.

117 We note that PC29 supplied further policies to Objective (4.9.3) 7 which became operative on 21 May 2015. However, they are irrelevant because they relate to Arrowtown.

118 Objective (4.9.3) 7 [Queenstown Lakes District Council Plan p 4-57].

7.3 To enable the use of Urban Growth Boundaries to establish distinct and defendable urban edges in order to maintain a long term distinct division between urban and rural areas.

7.4 To include land within an Urban Growth Boundary where appropriate to provide for and contain existing and future urban development, recognising that an Urban Growth Boundary has a different function from a zone boundary.

7.5 To avoid sporadic and/or ad hoc urban development in the rural area generally. To strongly discourage urban extensions in the rural areas beyond the Urban Growth Boundaries.

7.6 To take account of the following matters when defining an Urban Growth Boundary through a plan change:

7.6.1 Part 4 district-wide objectives and policies

7.6.2 The avoidance or mitigation where appropriate of any natural hazard, contaminated land or the disruption of existing infrastructure.

7.6.3 The avoidance of significant adverse effects on the landscape, the lakes and the rivers of the district.

7.6.4 The efficient use of infrastructure, including transport infrastructure, and its capacity to accommodate growth.

7.6.5 Any potential reverse sensitivity issues, particularly those relating to established activities in the rural area.

7.7 To ensure that any rural land within an urban growth boundary is used efficiently and that any interim, partial or piecemeal development of that land does not compromise its eventual integration into that settlement.

7.8 To recognise existing land use patterns, natural features, the landscape and heritage values of the District and the receiving environment to inform the location of Urban Growth Boundaries.

[71] The Implementation Methods are[119]:

Objective 7 and associated policies will be implemented through a number of methods:

i District Plan Methods

Through plan changes that identify Urban Growth Boundaries within which effective urban design is encouraged.


119 Queenstown Lakes District Council Plan p 4-57.

ii Other Methods Outside the District Plan

(a) Confining the provision of new public urban infrastructural services exclusively to urban areas.

(b) Monitoring of land availability, development trends and projecting future growth needs.

(c) The use of Structure Plans to implement or stage development growth areas.

(d) Community Plans to identify local characteristics and aspirations.

(e) Studies and management strategies.

[72] AWI put a great deal of weight on Objective (4.9.3) 7 and its implementing policies. Its case included two legal arguments which we should consider here. The first was a jurisdictional argument that in the absence of an UGB the court could not even consider PC45; the second was an argument that PC30 imposed a gate which proposed PC45 could not pass: unless there is evidence identifying needs for sections or zoned land in Wanaka, PC45 cannot pass "Go". Mr D F Sergeant accepted[120] that was his position when cross-examined by Mr Goldsmith.

[73] There were two main threads to the jurisdictional argument raised by counsel for AWI. First they referred to the direction of Policy (4.9.3) 7.5 which "strongly discourages" urban growth in the absence of or outside an UGB. Counsel for AWI submitted this raised a jurisdictional bar: because there is no UGB for Wanaka PC45 could not succeed. We hold that is incorrect, since it effectively reads the relevant part of Policy 7.5 as "To avoid (or prohibit) urban extension in the rural areas …". A policy 'to strongly discourage' is close to but is not a directory policy as was the 'avoidance' policy in the NZCPS — the subject of the Supreme Court's decision in *EDS v NZ King Salmon*[121]. A discouragement policy — even when a strong one — still permits an applicant to request a plan change. While it is unfortunate that Northlake did not put forward a proposed UGB as part of PC45, the absence of an UGB is not fatal. The district plan expressly recognises that an UGB has "… a different function from a zone boundary"[122].



120 Transcript p 237 line 14.

121 *EDS v NZ King Salmon* (supra footnote 1) (SC).

122 Policy (4.9.3) 7.4 [Queenstown Lakes District Council Plan p 4-57].

[74] Second, counsel submitted that "absent … an [UGB], … provision for new urban zoned land within Wanaka does not find support in Part 4.9 of the Plan"[123]. They asked "how the court could know which policies apply until it knows where the UGB is"? Counsel compared this case with *Monk v Queenstown Lakes District Council Ltd*[124] ("*Monk*") where the court would not resolve a rezoning until it established where the UGB should be for Arrowtown. We find that there are quite large differences between this case and the Arrowtown situation before the court in *Monk*. Here PC45 is designed to fit within the district plan as part of Chapter 12. In the Arrowtown situation there were two plan changes before the court:

- PC29 which (rather confusingly) was a Council change adding some further (Arrowtown specific) policies to Objective (4.9.3) 7 as already amended by PC30; and
- PC39 which was a private plan change in respect of rural land immediately south of Arrowtown.

[75] In the Arrowtown situation the court decided that PC29 should be resolved first and did so — see *Monk v Queenstown Lakes District Council*[125] — and only then resolved the appeals on PC39 in *Cook Adams Trustees Ltd v Queenstown Lakes District Council*[126]. Among other important distinguishing factors between the Arrowtown and Northlake situations, is that PC30 sought to introduce both specific "district-wide" policies to implement Objective (4.9.3) 7 in relation to Arrowtown and an UGB for Arrowtown. Clearly, the wording of the policies had to be resolved and the UGB established before any rezoning under the later PC39 could be decided upon.

[76] If the Council had notified its PC20 (proposing an UGB for Wanaka) then the situation might have been different. However it did not. Nor is it correct that we cannot know what policies apply to PC45: very few substantive policies in the district plan (none in Chapter 7 and few in Chapter 4) contain references to urban growth boundaries, so there is a plethora of guidance in the District Plan. Further, as we shall see, there is

123 AWI's submissions dated 24 April 2015 para 6 [Environment Court document 35].
124 *Monk v Queenstown Lakes District Council Ltd* [2013] NZEnvC 12.
125 *Monk v Queenstown Lakes District Council* [2013] NZRMA 12.
126 *Cook Adams Trustees Ltd v Queenstown Lakes District Council* [2014] NZRMA 117.

some guidance about a proposed UGB in the vicinity of the site in the Wanaka Structure Plan.

[77] Turning to the application of Objective (4.9.3) 7, it is, as we have already observed, substantively empty. It is a formula requiring "effective" management of the scale and location of urban development, but what is to be achieved by that is left open by the objective itself. We hold that this objective is mechanistic — it is aimed at managing the scale and location of development so as to achieve the other district-wide objectives for urban growth in Chapter 4.9. Its implementing policies should be read in that light. Policy (4.9.3) 7.1 largely repeats earlier objectives[127]. Policies (4.9.3) 7.3[128] and 7.4 together with 7.6 and 7.8 provide a mini-scheme for the identification of Urban Growth Boundaries (now a defined term in the QLDP). Lastly, Policy (4.9.3) 7.7 is a transitional provision which we will refer to later when assessing the risks of the options open to us.

*What housing related needs are identified in Chapter 4?*

[78] The three relevant substantive objectives in Chapter 4.9 identify some of the needs to be satisfied:

(1) the first need identified in Chapter 4.9 of the district plan is to enable people and communities to provide for their social, cultural and economic wellbeing (Objective (4.9.3) 2). That is obviously a primary set of needs because it reflects section 5(2) of the RMA. We note too that the objective suggests any management of that need is obliged to be relatively light-handed and flexible because the district plan is not "... to provide for people's wellbeing" but to enable people and communities to provide for their own.

(2) the second need is [Objective (4.9.3) 1] to provide for urban growth and development consistent with the quality of the natural environment and landscape values. New Zealand citizens generally, and Queenstown Lakes residents in particular, are fortunate that their basic needs are (with a few

127 Specifically Objective (4.9.3) 3 (residential growth sufficient to meet the District's needs) and Objective (4.2.1) (adverse effects on landscape and visual amenity values).

128 This policy is not easy to understand: it has an enabling aspect (*Monk* [2013] NZEnvC 12 at [90]) and a restrictive component (*Monk* at [26]).

exceptions) well provided for and they have the fortunate need to protect their landscape values.

(3) the third need in Chapter 4.9 is to promote (again a non-prescriptive word) a close relationship and good access between living, working and recreation.

(4) we also note that other needs are set out in the objectives in Chapter 4.1 to 4.8 and 4.10 of the district plan and we summarised those very briefly earlier.

[79] The introduction to the "Issues" for urban growth states that "it is not possible to be precise about the level of growth to be planned for"[129] and then the statements of issues, policies and explanations elaborates on these needs:

- to have "the lifestyle preferences of the District's present and future population"[130] provided for;
- to manage the identity, cohesion and wellbeing of existing communities[131];
- "... enabl[ing] people and communities to provide for their .... wellbeing"[132] including "... commonality of aspirations, outlook, purpose and interests"[133].

Mr Goldsmith cross-examined Mr Sergeant at some length on these and other provisions in the district plan relating to needs, obtaining a concession in respect of each "need" and the provision relating to it that there was "no sense of limitation[134]" in any of them.

[80] We conclude that Chapter 4 and in particular subchapter 4.9 in the district plan are not strongly "interventionist"[135] about urban extensions or, at least, not as strongly as AWI suggests they are. That is because:

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129 4.9.2 Issues [Queenstown Lakes District Council Plan p 4-52].
130 Issue 4.9.2 (b) [Queenstown Lakes District Council Plan p 4-52].
131 Issue 4.9.2 (c) [Queenstown Lakes District Council Plan p 4-52].
132 Objective (4.9.3) 2 [Queenstown Lakes District Council Plan p 4-53].
133 Explanation to Objective (4.9.3) 2 [Queenstown Lakes District Council Plan p 4-54].
134 Specifically at Transcript p 268 lines 25 to 28 but more generally pp 264 to 273.
135 Submissions for AWI dated 24 April 2015 para 56 [Environment Court document 35].

(1) the objectives in Chapter 4 and their implementing policies have consistent themes of enabling opportunities for a complete range of urban and residential needs and aspirations;

(2) the quantity (scale) of urban development to be enabled (not "set") can only be quantified in very loose terms and in areas rather than in notional allotments, at least when considering a plan change;

(3) in essence the point of Policy (4.9.3) 7.1 is to enable urban development by using one of the implementation methods appropriately — either as residential or as special zones — so that landowners and developers are able to subdivide and develop their land at rates and in locations which meet the multifarious needs of the community (while meeting the bottom lines).

[81] We see only a general requirement for a requestor for a plan change to demonstrate that there is a shortfall in the current rate and quantity supplied of these needs precisely because of their broad and varied nature. In any event the question whether Policy (4.9.3) 7.1 is implemented is a matter of facts, predictions and opinion in specific contexts not simply a question of law. So in relation to the second legal argument[136] raised for AWI about Objective (4.9.3) 1, we hold that it is incorrect that the policy imposes with any precision a threshold as to the rate or scale of development which must be passed by a plan change.

3.3 The objectives and policies for residential areas (Chapter 7 of the district plan)

*District-wide provisions*

[82] Chapter 7 (Residential areas) of the district plan expressly includes further "district-wide" residential objectives and policies[137]. The first three of the four district-wide residential objectives — relating to availability of land, residential form and residential amenity respectively — are relevant. The first (Chapter 7) objective[138] — availability of land — is to provide sufficient i.e. adequate land to provide a diverse range of residential opportunities. It is important to understand what the plan requires a

136 See para [72] above.

137 Heading 7.1.2: District Wide Residential Objectives and Policies [Queenstown Lakes District Council Plan p 7-3].

138 Objective (7.1.2) 1 [Queenstown Lakes District Council Plan p 7 -3].

sufficiency of. In this more detailed objective it is an adequate supply of land to provide for a diverse range of residential opportunities.

[83] The first implementing policy is[139] "to zone sufficient land to satisfy demand for anticipated residential (and visitor) accommodation". The district plan appears to be intending to use the language of economics here. It does not do so very clearly. The only straightforward meaning to be taken from the policy in its context is that the Council seeks to zone sufficient land to satisfy the quantities of different types of sections/houses demanded by the various submarkets in housing. Most sections or houses are not ready substitute goods for others — that is why specific performance is a remedy for breach of contract in relation to land. So to satisfy demand requires identification of the demand relationships (curves) between the quantity demanded and the price per section for the residential allotment market of the District as a whole and for submarkets within and around Wanaka in particular. That would involve consideration of the type, characteristics and quantity of allotments demanded and of the factors that cause shifts in demand (and in supply). To zone an adequate (or sufficient) area of land requires far more than summation of the number of potential allotments.

[84] New residential areas are to be enabled[140] but in areas which "... have primary regard to the protection and enhancement of the landscape amenity"[141] and to assist that, a distinction is to be maintained between urban and rural areas.

[85] Compact growth is to be "promoted"[142], which leads to the second (Chapter 7) district-wide residential objective[143] (residential form). That focuses on compact "residential form" as distinguished from the rural environment. "Compact" here is a relative term: it is used to distinguish the consolidated urban environments from rural areas. Its first two policies are complementary. Policy (7.1.2) 2.1 seeks to limit peripheral, residential expansion[144]. Policy (7.1.2) 2.2 is to limit the spread of rural living and township areas, and to manage that expansion having regard to "the important district-wide objectives" (presumably those in Chapter 4). A further policy requires

139 Policy (7.1.2) 1.1 [Queenstown Lakes District Council Plan p 7-3].
140 Policy (7.1.2) 1.2 [Queenstown Lakes District Council Plan p 7-3].
141 Policy (7.1.2) 1.2 [Queenstown Lakes District Council p 7-3].
142 Policy (7.1.2) 1.3 [Queenstown Lakes District Council Plan p 7-3].
143 Objective (7.1.2) 2 [Queenstown Lakes District Council Plan p 7-4].
144 Policy (7.1.2) 2.1 [Queenstown Lakes District Council Plan p 7-4].

development forms to provide for increased residential density[145], at least in new residential areas, and "careful use of topography"[146]. We consider that the relevant policies for this proceeding are Policies (7.1.2) 2.1 and 2.4 since this proceeding is about the outward spread of existing residential areas, rather than about townships or rural living areas.

[86] The third objective — residential amenity — is to provide "pleasant living environments within which adverse effects are minimised while still providing the opportunity for community needs [to be satisfied]"[147]. Again the implementing policies appear to be relevant, so we will discuss them later.

*Residential objectives and policies for Wanaka*

[87] Moving down a tier in the internal hierarchy of objectives and policies, Chapter 7.3 of the district plan recognises the town of Wanaka as the second largest residential area in the district[148]. There is one relevant specific objective for Wanaka[149]:

> 1. Residential and visitor accommodation development of a scale, density and character within sub zones that are separately identifiable by such characteristics as location, topology, geology, access, sunlight or views.

In that objective, the phrase "... scale, density and character" is left hanging. In our view it generally refers back to the first three district-wide objectives in Chapter 7 which, it will be recalled, relate to availability of land, residential form and residential amenity respectively.

[88] The most relevant implementing policies are to provide[150] for some peripheral expansion of existing residential areas in Wanaka (and Albert Town), while retaining their consolidated form, and to organise[151] residential development around

145 Policy (7.1.2) 2.4 [Queenstown Lakes District Council Plan p 7-4].
146 Policy (7.1.2) 2.4 [Queenstown Lakes District Council Plan p 7-4].
147 Objective (7.1.2) 3 [Queenstown Lakes District Council Plan p 7-4 and 7-5]. The words in square brackets must be implied.
148 Para 7.3.1 [Queenstown Lakes District Council Plan p 7-13].
149 Objective (7.3.3) 1 - 4 [Queenstown Lakes District Council Plan p 7-13].
150 Policy (7.3.3) 1 [Queenstown Lakes District Council Plan p 7-14].
151 Policy (7.3.3) 4 [Queenstown Lakes District Council Plan p 7-14].

neighbourhoods separate from areas of predominantly visitor accommodation development.

3.4 Summary

*What are the most relevant objectives and policies for PC45?*

[89] The urban growth objectives of the district plan are, as observed by Mr Serjeant, rather confusingly found in several places within the district plan. We hold that there are three levels of substantive policy about such development. From the general to the specific they are:

1. district-wide objectives and policies in Parts 4.2, 4.4, 4.5 and 4.9 of the district plan;
2. the "district-wide" residential areas objectives and policies in Chapter 7.1;
3. the Wanaka provisions in Part 7.3.

In resolving which are the most relevant policies we must approach the operative district plan as a coherent whole: *J Rattray and Sons Ltd v Christchurch City Council*[152] per Woodhouse J. We must also avoid the trap of "... conclud[ing] too readily that there is a conflict between particular policies and prefer one over another, rather than making a thorough ... attempt to find a way to reconcile them" as Arnold J stated in *EDS v NZ King Salmon*[153]. On the other hand, later more specific objectives and policies should be applied rather than earlier more general ones (that is the "particularisation" approach working within a district plan) if that is what the scheme of the plan suggests.

[90] We hold that the most particular and therefore the most relevant objectives and policies and therefore those under which PC45 must be considered are:

(1) the Wanaka provisions in Chapter 7.3 and (to the extent they are limited or uncertain);
(2) the district wide objectives and policies in Chapter 7.1.



152 *J Rattray and Sons Ltd v Christchurch City Council* (1984) 10 NZTPA 59 (CA) at 61.
153 *EDS v NZ King Salmon* (supra footnote 1) (SC) at [131].

[91] In the situation before us it is arguable that the QLDP does not require us to look at any of the more general district wide objectives and policies in Chapter 4 generally (except where Chapter 7 contains a direction to go to Chapter 4 or is deficient). However, we should recognise that in fact many of the relevant (amended) provisions in Chapter 4.9 came into force over 10 years later than Chapter 7, so there is some uncertainty over whether Chapter 7 truly carries out the intentions of Chapter 4.9. Further, Chapter 4.10 certainly post-dates Chapter 7. We will therefore consider Chapter 4.9 and 4.10 as part of our analysis. In effect that brings in much of the relevant parts of Chapter 4.

[92] We discuss the extent to which PC45 is effective in implementing the objectives and policies of the QLDP from the bottom up i.e. under Chapter 7 first (part 4 of this decision) and then under Chapter 4 QLDP (part 6 of this decision). In between we consider the urban design evidence (in part 5) separately because much of the urban design evidence lacked grounding references to the district plan.

## 4. How effective is PC45 in implementing Chapter 7 of the QLDP?

### 4.1 Where should urban development occur at Wanaka (and on the site)?

[93] The most specific relevant provisions in the QLDP are in Chapter 7 and they expressly encourage[154] some peripheral urban growth at Wanaka (town). The district-wide policies in Chapter 7 also look at where urban development should be in two ways, first by considering the potential adverse effects of urban development on landscape and rural values; and second by examining potential adverse effects of sprawl on urban amenities. The first looks out into the superb country sides of the district, the second back into nearby residential development.

[94] As to the first, residential growth is to be enabled in areas which have "primary regard to the protection and enhancement of the landscape amenity"[155] and is to maintain a distinction between urban areas and rural areas to assist protection of the quality of the surrounding environment[156]. There was little suggestion in AWI's

154 Policy (7.3.1) 1 [Queenstown Lakes District Council Plan p 7-14].
155 Policy (7.1.2) 1.4 [Queenstown Lakes District Council Plan p 7-3].
156 Policy (7.1.2) 1.5 [Queenstown Lakes District Council Plan p 7-3].

evidence that these policies would not be implemented, and we are satisfied by Northlake's that they would be.

[95] As to the second — the effect of urban development — there is a range of implementing policies as to where development should occur. They are:

- to promote compact residential development[157];
- to contain the outward spread of residential areas and to limit peripheral expansion[158];
- to provide for increased residential density and "careful use of the topography"[159].

In Mr Edmond's opinion[160], Northlake's zone maintains the compact form of Wanaka. At first sight that is plausible. The outward spread of residential areas is clearly limited by (ultimately) the Clutha River and, to the south of that, the ONL line agreed by the landscape experts. For AWI Mr Munro gave a detailed analysis of why, in his opinion, PC45 does not achieve compact development. We examine that evidence under *Urban design* below because he tends to use "compactness" in a more general way than the district plan often does. We record that otherwise there was little or no specific criticism by the witnesses of Northlake's use of the topography of the site when setting out the Activity Areas.

4.2 How much development (if any) on the Northlake land?

[96] The relevant specific Wanaka objective[161] is poorly worded, and leaves open the "scale" of residential development, so that the district-wide objectives in Chapter 7 need to be referred to. The relevant district-wide objective[162] is to provide "sufficient land … for a diverse range of residential opportunities for the District's present and future urban populations"; and the implementing policy is "to zone sufficient land to satisfy … anticipated residential demand"[163].

157 Policy (7.1.2) 1.3 [Queenstown Lakes District Council Plan p 7-3].
158 Policy (7.1.2) 2.1 [Queenstown Lakes District Council Plan p 7-4].
159 Policy (7.1.2) 2.4 [Queenstown Lakes District Council Plan p 7-4].
160 J B Edmonds evidence-in-chief para 6.8.16 [Environment Court document 14].
161 Objective (7.3.3) 1 [Queenstown Lakes District Council Plan p 7-13].
162 Objective (7.1.2) 1 [Queenstown Lakes District Council Plan p 7-3].
163 Policy (7.1.2) 1.1 [Queenstown Lakes District Council Plan p 7-3].

[97] The direct evidence-in-chief for Northlake on this was very brief and not very helpful. Mr Edmonds wrote[164]:

> I note that both the objective and Policy 2.1 use the term 'sufficient land', which I interpret to mean that the Council should always maintain an over-supply of appropriately zoned land. This objective looks at providing for both current as well as future generations, consistent with Section 5. I do not consider that there is a good resource management reason to limit or stage the supply of residential zoned land in this particular case.

That may be, as we shall see, nearly correct — except we would not use the term "over-supply"[165] — but in view of the Council's section 42A report (produced by Ms Jones) and Mr Munro's 2013 report Mr Edmonds should have expanded on his reasons for this.

[98] Much of AWI's evidence is relevant to the question of whether PC45 implements what we hold to be the applicable policies in Chapter 7.1. First Mr Munro gave evidence that there is already sufficient land zoned residential to satisfy future demand. Second, in his opinion, if more houses are needed, there are better areas around Wanaka to zone for them. On the first point Mr Munro wrote[166]:

> If PC45 proceeded and accommodated 1,520 units ... over the next 20 years this may lead to remaining zoned areas in Wanaka achieving as little as 14% uptake in that period. That is not effective or efficient for those zoned areas, and would not achieve what I could describe as a "compact" outcome for Wanaka. I could not support it in urban design terms.

*Identifying the demand for sections (of different types)*

[99] One difficulty with Policy (7.1.2) 1.1 is that it tends to suggest that there is a single residential demand for "accommodation". Mr Meehan gave evidence of demand for different housing types in both the Wakatipu Basin and in the Northlake area[167]. In the absence of evidence to the contrary, we accept that evidence. There may very likely be demands for different quantities of apartments, small households, holiday homes, houses for low income households, middle income households, and wealthy households

164 J B Edmonds evidence-in-chief para 6.8.15 [Environment Court document 14].
165 An "over-supply" simply tends to cause prices to drop (causing a movement in the quantity demanded) which most consumers in NZ would think is desirable.
166 I C Munro evidence-in-chief para 2.5 [Environment Court document 17].
167 C S Meehan evidence-in-chief and rebuttal [Environment Court documents 7 and 7A].

etc. Further, each of the markets for those different (and other) types of households may be segmented further depending on the desires of the aspiring owners in relation to location, views, topography and other factors. The list of "needs" we have identified in the QLDP shows that it is alive to these complexities.

[100] Despite the criticism of Mr Meehan's subjectivity we find his evidence, read with that of Northlake's other witnesses, shows that Northlake would supply a range of different section types and houses which are not currently (on the evidence before us) for sale in any quantity at Wanaka. The areas in Meadowstone Drive and West Meadows Drive in the south-west of Wanaka may provide similar sections but we had no evidence as to the specific quantities actually on the market.

[101] In contrast we have doubts about the Council's 2013 model relied on by AWI's witnesses. That starts by purporting to "... identify a 2011-2031 twenty year demand for houses and holiday homes of 2,302"[168]. Then in his 2013 report Mr Munro stated[169]:

> The Council's model identifies that there is current capacity for 5,686 units in the Wanaka CAU, more than sufficient to meet this .... demand.

We note that, unlike the QLDP, the 2013 model is using economic language loosely. It uses "demand" when the context shows it is attempting to predict the quantity of (general, undifferentiated) units demanded.

[102] Mr Munro showed that he was aware of the submarket's identification problem — not treating all allotments (ice creams)[170] as if they are the same (vanilla), when there are in his view at least two different section types (vanilla and chocolate) — when he continued[171]:

> Even if a reduced supply of land for units broadly "comparable" to those proposed in PC45 of 50% total capacity is used (2,843 units), there is still sufficient capacity to fully accommodate predicted growth without the need for any up zoning of the PC45 land at all.

168 I C Munro evidence-in-chief Appendix 2 para 4.30 [Environment Court document 17].
169 I C Munro evidence-in-chief Appendix 2 para 4.31 [Environment Court document 17].
170 The reason for the metaphor will become apparent shortly.
171 I C Munro evidence-in-chief Appendix 2 para 4.31 [Environment Court document 17].

However, no basis was given by Mr Munro for his proposition that 50% of the available zoned "units" are similar to those in PC45. Indeed even within the PC45 site, not all areas are proposed to have the same housing typology — to the contrary, as we described in part 1 of this decision.

[103] Ms Jones referred to the Council's Special Housing Accord (October 2014), which states that[172]:

> In this Accord, the targets are focuses on the Wakatipu Basin, given its strong projected population and employment growth over the life of the Accord, together with the fact that land supply constraints are significantly greater than in the Upper Clutha.

She relied on that as supporting her opinion that there is "no hard evidence presented that … Wanaka is suffering from a constrained residential land supply …"[173]. With respect to Ms Jones, the Council's document does imply that there are land constraints in the Upper Clutha. Its point is only that those constraints are "significantly" lesser around Wanaka than they are in the Wakatipu Basin.

[104] Further, there is an air of unreality about AWI's evidence. Almost[174] all zones which restrict housing cause constraints in the quantity supplied — usually for a good resource management reason. In this district it is to protect outstanding natural landscapes and features and visual amenities. Elsewhere and more controversially they are used as de facto congestion controls since local authorities do not have the powers to impose congestion charges. Planners and urban designers are generally incorrect to suggest there is no evidence of constraints when zoning structures tend automatically to impose constraints on the quantity of houses that can be supplied (and that of course affects prices and hence affordability). However, we put no weight on the matters raised in this paragraph because they were not put to the witnesses.

[105] There is also evidence — discussed shortly — from several witnesses (Mr Edmonds, Mr Meehan and Mr Barratt-Boyes) for Northlake as to the ways in which the


172 http://www.qldc.govt.nz/assets/Uploads/Council-Documents/Strategies-and-Publications/Queenstown-Lakes-District-Housing-Accord.PDF
173 V S Jones statement-of-evidence para 4.20 [Environment Court document 16].
174 We are being cautious: in fact we can think of no exceptions.

site will provide "products" (sections) which are different from elsewhere in Wanaka. That suggests there is further segmentation into submarkets than Mr Munro allowed for. Having asserted the Northlake sections are different, we hold that Northlake did not have to prove more unless AWI produced evidence to the contrary. An assertion of broadly 'comparable' units is insufficient.

*The planning horizon*

[106] Time (and timing) is an important element in the assessment of the adequacy of the quantity of sections supplied to the market. Mr Serjeant wrote that "the longest time period for which the[e] supply must be adequate is 10 years"[175], referring to the RMA's requirement[176] that district plans are to be reviewed every 10 years. In fact, as we have recorded, Mr Munro considered that there is enough zoned land to supply new household demand for 20 years.

[107] In reply Mr Edmonds considered it was appropriate to plan for a longer period for several reasons of which we consider two are relevant: first, because Wanaka is growing "exceptionally fast"[177] (28.3% between 2001 and 2013), and second, because elsewhere in the district the Council has adopted long planning horizons. Mr Edmonds cited Alpha Ridge at Wanaka, and Kelvin Heights, Jacks Point, Frankton and "areas of 'commonage' land around the edge of Queenstown's CBD"[178]. He did not identify any adverse effects or blight associated with those areas and he was not cross-examined on that.

*Differentiating points and submarkets*

[108] A further (minor) aspect of Mr Munro's analyses which concerned us was his reference to[179]:

> The general premise that land supply is one factor that influences the cost (distinct from price) of housing, and that to ensure the lowest possible costs it is desirable to have a surplus of developable land available controlled by commercial competitors motivated to release product in

175 D F Serjeant evidence-in-chief para 31 [Environment Court document 18].
176 Section 79 RMA.
177 J B Edmonds rebuttal evidence-in-chief para 4.4(a) [Environment Court document 14A].
178 J B Edmonds rebuttal evidence-in-chief para 4.4(c) [Environment Court document 14A].
179 I C Munro evidence-in-chief p 28 [Environment Court document 17].

> the short term and inclined to lower prices against each other as the primary means of product differentiation.

[109] Our concern was substantiated by the urban designer for Northlake, Mr G N Barratt-Boyes, in his rebuttal evidence when he wrote[180]:

> ... there are a myriad of factors that make any new residential area more desirable than others. Often the proximity to schools, shops, amenity, open space, cultural and civic amenities, community facilities and character of the neighbourhood itself have a direct bearing on this decision. Affordability is also a key driver.

In the last sentence he agrees with Mr Munro, but unlike Mr Munro he has identified some of the other relevant factors that go into buyers' choices. We add that there was an exchange between the court and a second planner called by Northlake, Mr J A Brown, where he confirmed[181] that normal quantity supplied and price relationships apply in the markets for sections. He too quite properly tried to quantify his answer by saying[182] that differences in location and attributes also affect the relationship.

[110] In Mr Barratt-Boyes opinion[183]:

> PC45 provides choice, affordability and diversity as a new neighbourhood within the wider Wanaka area. It also offers a lifestyle choice and point of difference to other potential residential areas, proposed or existing.

We accept that evidence because it addresses the issue of the needs of people and community as identified in the district plan. Our difficulty with Mr Munro's position is again the air of unreality: he seems to have given little thought to the implications of *location, location, location*[184]. Location is a primary differentiator of one section from another.

[111] We also consider Mr Munro is wrong on a matter of terminology: a product differentiator means that there are two non-substitute products and they may have two

180 G N Barratt-Boyes rebuttal evidence para 6.3 [Environment Court document 9A].
181 Transcript p 18 line 4.
182 Transcript p 18 lines 6 and 7.
183 G N Barratt-Boyes rebuttal evidence para 6.4 [Environment Court document 9A].
184 Apparently first used by a Chicago realtor in 1926.

quantity demanded versus price relationships (curves). In contrast a change in price will simply move the quantity of similar sections (products) sold by whoever has sections on the market. Indeed Mr Munro seemed to acknowledge this. In an answer to a question from the court[185] as to whether:

> … at least in the short-term, just supplying more lots so that you're adding to the quantity of lots supplied does, other things being equal (and they may not be), tend to drive the price down doesn't it?

— Mr Munro answered (eventually)[186]:

> What would really make a difference is the nature of the product being offered and so for instance if Northlake lots with their nice north facing slope with water views were compared with Three Parks lots which are a bit more working-class, flatter, more enclosed in, less of that amenity.

*Conclusions*

[112] We find (without difficulty) that market differentiators for land include — in addition to location — topography, size, views, aspect and vegetation (all complicated by time). Demand and supply relationships (curves) to price are for a notionally identical[187] good (in this case, sections) and simply show the theoretical relationship between the quantity demanded (or supplied and the price). Sections which differ will usually have different demand/supply relationships. For example, markets in top end sections (with outstanding views, lake frontage and sunny locations) will usually have inelastic demand relationships (the quantity demanded is relatively insensitive to price increases), whereas middle and lower income housing sections tend to be more elastic (so a small decrease in price may cause a significant increase in the quantity demanded and vice versa). In the light of those complexities as illustrated in the evidence of Northlake's witnesses, Mr Munro's analysis seems very simplistic. It is easy to envisage that the Three Parks and Orchard Road areas where he considered development is preferable might be supplying completely different products from Northlake. Indeed, that was the evidence for Northlake.



185 Transcript p 176 lines 1-4.
186 Transcript p 176 lines 19-23.
187 Or at least are for readily substitutable goods.

[113] There is also a wider resource management issue here which is that it is important not to confuse zoning with the quantity of sections actually supplied. Land may be zoned residential but that does not mean it is actually assisting to meet the quantity of sections demanded. Only sections for sale can do that. There is no direct relationship between the number of sections theoretically able to be cut out of land zoned residential and the number of sections actually on the market at any one time especially when — as in Wanaka — there are very few landowners with land zoned for residential activities.

[114] The policy about satisfying "residential demand"[188] is relevant and that must be read in the context of the objective it implements. That refers to supply of adequate land to provide for "a diverse range of residential opportunities". As all the witnesses appeared to agree, sections of different qualities are likely to be priced differently, which suggests any assessment of demand has to be assessed continuously. Since the factors that go into assessing quality are multifarious, any evidence of demand should at least assess the quantity demanded at different prices. Thus the objective means that residential demand must be assessed as the sum of the demands for a diverse range of section types. In order to supply the quantity of residential sections demanded at any given price, the quantity of zoned land might have to be very large in proportion to the quantities demanded and in a variety of different locations. We think that is probably what Mr Edmonds meant by an "oversupply". We note that Ms Jones seemed to agree with Mr Edmonds[189].

[115] We find that an excessive quantity of sections or houses is not being supplied to the market. The site, while not necessary to meet strict numerical growth predictions when price and all the other factors are disregarded (which in practice they never are), offers points of difference to other available or potentially available land. We conclude that Mr Munro considerably oversimplified the situation when he wrote[190]:

> I cannot imagine how in light of such a magnitude of supply over demand there is any foreseeable scenario where an "undersupply" of zoned residential land could eventuate in

188 Policy (7.1.2) 1.1 [Queenstown Lakes District Plan p 7-3].
189 V S Jones statement-of-evidence para 4.13 [Environment Court document 16].
190 Evidence of I C Munro para 5.16 and 2.17.

> Wanaka. Without PC45 or any other private plan change request that scenario would require approximately 5,500 households to locate in Wanaka within the next District Plan review period of approximately 10 years (when further land could be released as necessary). This would amount to over four times the growth rate currently predicted and is in my view fanciful.

[116] We prefer the evidence of Northlake's witnesses. We hold that PC45 effectively achieves the relevant objectives and policies of Chapter 7 of the district plan in respect to the provision of sufficient land for a diverse range of residential opportunities.

## 5. Does PC45 implement the urban design objectives and policies in the district plan?

5.1 Urban design in the district plan

[117] The QLDP contains the following relevant provisions expressly relating to urban design[191]:

(Chapter 4)

- "to identify clearly the edges of … extensions to [existing urban areas] by design solutions …"[192]

- …

  3.2 To encourage new urban development, particularly residential and commercial development, in a form, character and scale which provides for higher density living environments and is imaginative in terms of urban design and provides for an integration of different activities, e.g. residential, schools, shopping[193].

  (and the explanation in the district plan is that a sustainable pattern of urban design ".... achieves cohesive urban areas through urban design that provides for efficient and effective network connectivity and coordination with existing systems …"[194]).

(Chapter 7)

- "to provide for and encourage new and imaginative residential development forms within the major new residential areas"[195].

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191 Several witnesses referred to the QLDC's *Urban Design Strategy* from 2009. However, that is not a document to which we must have regard so we have not considered it.

192 Policy (4.2.5) 7 [Queenstown Lakes District Council Plan p 4-11].

193 Policies (4.9.3) 3.1 to 3.4 [Queenstown Lakes District Council Plan p 4-54].

194 Explanation etc to Objective (4.9.3) 3 [Queenstown Lakes District Council Plan p 4-58].

195 Policy (7.1.2) 3.10 [Queenstown Lakes District Council Plan p 7-5].

- "to require an urban design review to ensure the new developments satisfy the principles of good design"[196].

  (the explanation[197] states:

  > Within the major new areas of residential zoning the Council strongly encourages a more imaginative approach to subdivision and development. The Council believes the quality of the District's residential environments would be significantly enhanced by design solutions that moved away from traditional subdivision solutions. In this respect the Council will be looking to encourage a range of residential densities, variations in roading patterns, imaginative use of reserves, open space and pedestrian and roading linkages, attention to visual outlook and solar aspect, and extensive use of planting).

We note that urban design as contemplated by the QLDP is largely internal to areas being developed. The outward looking factors are confined to design of edges of new urban areas, and to connectivity to and coordination with existing systems. However, for AWI's urban design witness Mr Munro, the subject seems to cover anything in the RMA that pertains to urban environments, and more.

5.2 Mr Munro's principles of urban design

[118] For AWI, Mr Munro referred to the NZ Urban Design Protocol 2005[198] as the basis for his work. He then described[199] how he has developed a standard urban design framework derived from a number of domestic and international authorities recognised as promoting best practice but varied to account for local circumstances. In summary, the key urban design principles relevant to PC45 in his opinion are as follows (we have footnoted what we consider are the principal relevant objectives and policies in the QLDP as we go through the list)[200]:

(a) to minimise resource, energy[201] and "environmental service inputs"[202] needed to enable wellbeing (this includes promoting public health);

(b) to be based on the most compact[203], mixed pattern of uses and networks possible;

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196 Policy (7.1.2) 3.13 [Queenstown Lakes District Council Plan p 7-5].
197 Explanation [Queenstown Lakes District Council Plan p 7-6 and 7-7].
198 A non-statutory document prepared by the Ministry for the Environment.
199 I C Munro evidence-in-chief para 4.1 [Environment Court document 17].
200 I C Munro evidence-in-chief para 4.2 [Environment Court document 17].
201 See Objective (4.5.3) 1 Efficiency [Queenstown Lakes District Plan p 4-29].
202 See Objective (4.9.3) 1 [Queenstown Lakes District Plan p 4-52].
203 See Policies (4.5.3) 1.2 [Queenstown Lakes District Plan p 4-29], Implementation method (4.9.3) 3(i)(a) [Queenstown Lakes District Plan p 4-54] and (Residential district-wide) Objective (7.1.2) 2 [Queenstown Lakes District Plan p 7-4].

(c) to minimise[204] the need for transport (by any mode) between activities;

(d) to maximise accessibility, diversity, and choice[205] for individuals and communities;

(e) to promote resilient, adaptable and long-term outcomes[206];

(f) to enhance local identity and character[207]; and

(g) to configure community investments to maximise "use" returns relative to capital and maintenance costs.

[119] We have several observations about Mr Munro's principles. The first is that they, like many collections of "principles" about urban design, contain pairs of principles that are at least in tension and may be in conflict in particular situations e.g. (b) and (d), (b) and (f), (c) and (g). Second and importantly, most of the principles are already largely contained in the district plan (as our footnotes show) but not under the heading "urban design" — see part 5.1 above. The exception is principle (g), for which we can find no Chapter 4 policy support.

[120] More generally, a difficulty with producing further "urban design" lists is that it is easy to substitute them for the matters with which we must be concerned — the relevant objectives and policies of the QLDP. We think that Mr Munro's list has caused him to skew the emphases in the plan. For example the only reference in his principles to ecosystems and the natural world which defines the edges of, urban places (this is important in the Queenstown Lakes District and in Wanaka in particular) is in the phrase "environmental service inputs". Another example is Mr Munro's "principle" that development "is to be based on the most compact, mixed pattern of uses and networks possible". That is incorrect. Compact growth is certainly promoted[208], but urban development is not based on the most compact pattern possible without regard to other considerations.

[121] Mr Munro's principles either omit or fail to emphasize a number of policies in the QLDP which are clearly relevant. Examples are:

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204 See Policy (4.5.3) 1.1 and 1.2 [Queenstown Lakes District Plan p 4-29].

205 See Objective (4.9.3) 1 [Queenstown Lakes District Plan p 4-53]; and Objective (7.1.2) 1 [Queenstown Lakes District Plan p 7-3].

206 See Policy (4.9.3) 3.2 [Queenstown Lakes District Plan p 4-54].

207 See Objective (7.3.3) 1 [Queenstown Lakes District Plan p 7-13].

208 "Promote compact urban towns" is the wording in Energy Policy (4.5.3) 1.1 [Queenstown Lakes District Plan p 4-29].

- the residential growth policy[209] to provide for lower density residential development in "appropriate areas";
- the policy to promote " a network of compact commercial centres which are easily accessible to, and meet the regular needs of residents of the surrounding residential environments"[210];
- the policy[211] "distinguish[ing] areas with … low density character from … [those] … located close to urban centres or transport routes where high density development should be encouraged"; and
- the subzone policy[212] specifically for Wanaka.

5.3 Urban design considerations for the site of PC45

[122] Returning to the express urban design considerations in the QLDP, the first related to establishing the boundaries of the site. Particularising the district-wide policy requiring identification of the urban edge of (in this case) Wanaka by a design solution[213], the relevant Wanaka objective provides that residential development[214] should be "… of a scale, density and character within [a] subzone … that [is] separately identifiable by such characteristics as location, topology, geology, access, sunlight, or views". The short answer to that complex prescription is that the Northlake site is so identifiable and has been carefully designed with respect to these matters.

[123] As for the (internal) implementing policies, the most specific seeks residential development organised around a separate neighbourhood[215] which is what PC45 proposes. The appellant barely disputed that the topography of the site provides a variety of landform suitable for a range of housing densities; that surrounding landforms afford a considerable degree of shelter from prevailing winds, the site's recreational attributes will be excellent[216], with the adjoining Lake Wanaka and Clutha River recreational corridor, extensive proposed walkway/cycleway linkages, and proposed internal

209 Policy (4.9.3) 3.4 [Queenstown Lakes District Plan p 4-54].
210 Policy (4.9.3) 4.2 [Queenstown Lakes District Plan p 4-55].
211 Policy (7.1.2) 3.14 [Queenstown Lakes District Plan p 7-5].
212 Policy (7.3.3) 1 [Queenstown Lakes District Plan p 7-13].
213 Policy (4.2.5) 7 [Queenstown Lakes District Plan p 4-11].
214 Objective (7.3.3)1 [Queenstown Lakes District Plan p 7-13].
215 Policy (7.3.1) 4 [Queenstown Lakes District Plan p 7-14].
216 C S Meehan evidence-in-chief para 12 [Environment Court document 7].

community facilities. Importantly the site is close to local schools[217], and is well located in relation to future potential public transport services. The Wanaka CBD and proposed Three Parks retail centre are only a little further away — although too far in the opinion of Messrs Munro and Serjeant. In any event the neighbourhood 'corner dairy' type development proposed would minimise travel requirements for day to day retail needs.

[124] Connected and compact development is an urban design imperative to ensure efficient use of infrastructure such as roading and services as well as community facilities such as schools, employment and commercial centres. The subject land is connected to Wanaka CBD by an identified future bus route and according to Mr Munro, is within a walking distance — of 800m at the Peak View Ridge access and of approximately 1600m at the midpoint of the land — to local primary and secondary schools. It would not be necessary for pedestrians or cyclists to cross an arterial road[218].

[125] Mr A A Metherell, a traffic expert called by Northlake, provided the court with analysis[219] of the existing roading network capacity and the integration of the PC45 development with that. The plan change provides for intersection upgrades. Traffic impacts were not challenged on the basis of provision made in the plan change for the necessary improvements.

[126] Servicing for water, sewerage, stormwater etc has been described to us as a cost the developer will bear. Although that was a matter under debate at the Council hearing it was not pursued with any vigour[220] at the hearing before us. Mr J McCartney, an experienced civil engineer called for Northlake, described the potential for the proponents to combine with the Council to provide an additional water supply that would benefit both this development and the wider community of Wanaka, where the current water supply has limitations. We were advised that Northlake could provide its own independent water supply and would not be reliant on any form of community infrastructure upgrade. Wastewater and stormwater drainage are also "enabled by the

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217 G N Barratt-Boyes evidence-in-chief para 5 (p 11) [Environment Court document 9].
218 G N Barratt-Boyes rebuttal evidence para 7.3 [Environment Court document 9A].
219 A A Metherell rebuttal evidence [Environment Court document 10].
220 There was some comment in the evidence-in-chief of several AWI witnesses but their criticisms were abandoned when cross-examined.

plan change"[221]. There was no suggestion that the management of the services could not be undertaken in a sustainable manner. We predict that servicing is not likely to be a significant cost or constraint to the community of Wanaka if this development proceeded.

*The shops*

[127] In Mr Munro's view a commercial node is "not supportable in urban design terms" if a maximum yield of 705 units over 20 years was imposed (as he suggested). He added[222]:

> Even if 1,600 units were to proceed in the zone and no additional connectivity was required I would still not be comfortable with a commercial node as it would either be inferior in urban design placement terms, or undermine other nodes if placed more desirably.

That overlooks Policy (4.9.3) 4.3 which promotes and seeks to enhance a "network of compact commercial centres … easily accessible to and meet[s] the regular needs of the surrounding residential environment …"[223].

[128] In Mr Long's opinion[224]:

> … a small, accessible on-foot, cluster of shops, pitched at independent retailers with a mix that supports each other, that doesn't compete with the large centres, is very desirable for a small residential community. It will help create a sense of place and be a focus for community identity. It could also help cut down on some trips, but my view is that planned regular/normal shopping trips will occur anyway.
>
> In summary, it will deliver positive outcomes from an urban design perspective, while not competing with the main centres. It will also help economic activity and employment, by creating accessible retail/commercial space for start-up and subsistence retailers and the like.

We prefer that evidence as showing PC45 implements the QLDP.



221 J McCartney evidence-in-chief para 5 [Environment Court document 13].
222 I C Munro evidence-in-chief para 6.15(b) [Environment Court document 17].
223 Policy (4.9.3) 4.2 [Queenstown Lakes District Plan p 4-55].
224 J A Long evidence-in-chief pras 6.10 and 6.11 [Environment Court document 12].

5.4 External urban design issues

[129] Mr Munro considered that, if more urban land was necessary (and he also considered it was not — a crucial point we will return to in part 6 of this decision), then there were other areas on which development would be preferable to the site. He showed these on a plan[225] which was the subject of some discussion by the witnesses and in cross-examination. In his opinion there were at least two, realistically developable, areas which should be preferred to the Northlake site. In preferring those he appeared heavily influenced by the fact that they are closer to the lakefront centre of Wanaka (although further from the Wanaka primary school).

[130] Northlake's urban designer Mr Barratt-Boyes first observed of Mr Munro's alternative areas that[226]:

> All the precincts generally gravitate outwards to the outer urban limit, with the existing town centre approximately in the middle. They all differ in character and offer varying forms of amenity and lifestyle choices.

While critical[227] of the accuracy of Mr Munro's isochrones, he pointed out that in relation to schools they "... place ... PC45 in a positive, unique location, relative to a significant proportion of other Wanaka residential areas to the south and east of the town centre"[228]. More broadly, and we consider with justification, he[229]:

> ... question[ed] the significant weight placed by Mr Munro on the ... walking distance isochrones without reference to other urban design considerations. Walking distance is a relevant factor, but in my opinion it is not the only relevant factor when asserting urban design outcomes.

We accept that evidence because, as we have held, the QLDP makes choice, opportunities and amenities important factors for us to consider.


225 I C Munro evidence-in-chief Figure 7 [Environment Court document 17].
226 N Barratt-Boyes rebuttal evidence-in-chief para 6.2 [Environment Court document 9A].
227 N Barratt-Boyes rebuttal evidence-in-chief para 7.2 [Environment Court document 9A].
228 N Barratt-Boyes rebuttal evidence-in-chief para 7.2 [Environment Court document 9A].
229 N Barratt-Boyes rebuttal evidence-in-chief para 7.4 [Environment Court document 9A].

[131] We referred to Mr Munro's oral evidence that the Northlake proposal PC45 would lead residential development to the edge of the urban boundary, leaving a "hole" in the town form when outlining the effects of PC45 in the first part of this decision. Mr Munro suggested[230] that development of the land in PC45 would lead to the remaining zonings in Wanaka being 85% empty and that would be "sprawl" with pockets of "stop/start" development.

[132] Mr Barratt-Boyes agreed that, from a strategic urban design perspective, sprawl is an important issue[231]:

> Urban sprawl is typically defined as the unplanned, uncontrolled spreading of urban development into areas adjoining the edge of a city or neighbouring regions. In my opinion PC45 is not urban sprawl. For that to be the case it would need to be uncontrolled and unplanned which it is not.
>
> The urban boundaries that limit future growth for Wanaka [indicated in the Wanaka Structure Plan] are clearly defined by geographical constraints e.g. the Cardrona River, Lake Wanaka, the Clutha River and the Crown Range. I believe these are very logical and legible physical boundaries within which Wanaka and its future urban form should sit.

The difference is that Mr Barratt-Boyes is talking about the sort of sprawl — housing randomly spread across the countryside or along rural roads — with which the QLDP is principally concerned (under the important Part 4.2 of the QLDP).

[133] Mr Munro compared PC45 with Jacks Point on the shores of Lake Wakatipu as an example of an undesirable stand-alone development. The short answer is that Jacks Point is provided for in the district plan. In any event, Northlake says PC45 is different. Mr Barratt-Boyes' response was that[232]:

> Jacks Point is divorced from both the Queenstown CBD and from Frankton. It is a standalone 'lifestyle' residential community conceived as a destination, set alongside and around a golf course, and with provision for two commercial villages.


230 Transcript p 168.
231 G N Barratt-Boyes rebuttal evidence para 4.2 [[Environment Court document 9A and 4.3].
232 G N Barratt-Boyes rebuttal evidence paras 5.3 and 5.4 [Environment Court document 9A].

> On the other hand, PC45 is close to schools and open space, connected to walking and cycling trails, and is stitched into its adjacent and neighbouring residential areas. The small local hub … creates a neighbourhood amenity… but not a new urban centre.

We prefer the evidence of Mr Barratt-Boyes and conclude that PC45 is not urban sprawl. Its development would implement the Chapter 7 objectives and policies.

[134] Finally, taking a view of the overall urban design merits of the proposal we note that Mr Munro largely agreed with the merits of PC45 in his 2013 report[233]:

> There is a fair case that the requestor's land will, in part, offer urban zoned land that is at least as meritorious as areas of land that have been zoned already, and in the case of land within a 2km isochrone of the schools, Wanaka centre or Three Parks; or within 400m of Aubrey Road, PC45 could offer superior urban design benefits to some of that zoned land. I support the enablement of land in PC45 that, while not necessary to meet Wanaka's growth needs, is superior to alternatives. This will promote competition in the land market as well as helping best serve the "compact" approach sought in Wanaka. If a competitive product can be released to market and it proves preferred by purchasers, this could lead to an improvement of urban form outcomes for Wanaka.

In fairness we should record that even in 2013 he was concerned about the rate of development. We consider this issue shortly (in 6.3 below).

## 6. Does PC45 effectively implement Chapter 4 of the QLDP?

### 6.1 Objectives (4.9.3) 1 and 4

[135] Objective (4.9.3) 1[234] is to have growth and development consistent with the maintenance of the quality of the natural environment and landscape values. This is a core linking objective in the district which relies on those values for much of its commerce and to maintain the qualities which residents come there for. We are satisfied that PC45 avoids[235] urbanisation of the outstanding natural landscape of the Clutha River Valley and protects[236] the visual amenity of the site and surrounding area. Objective (4.9.3) 4 then seeks a "pattern of land use which promotes a close relationship

233 I C Munro evidence-in-chief Appendix 2: Page 20 (2013 Report) [Environment Court document 17].
234 Objective (4.9.3) 1 [Queenstown Lakes District Plan p 4-52].
235 Policy (4.9.3) 1.1 [Queenstown Lakes District Plan p 4-52].
236 One small rearrangement of Activity Area E might be required as we discuss later.

and access between living, working and leisure environments[237]. PC45 is notable for its links between the living and leisure environments because of its proximity to the Clutha River and Sticky Forest and for the provision of walking and cycling tracks.

6.2 Objective (4.9.3): Sustainable management of development

*Residential growth sufficient to meet the District's needs*

[136] We have described how Objective [4.9.3] 3 is to provide[238] for residential growth "... sufficient to meet the District's needs" and how that needs to be read with Policy (4.9.3) 7.1. That policy, on which AWI's witnesses relied heavily, seeks to implement Objective (4.9.3) 7 (of effectively managing the extent and location of urban development) by "... enabl[ing] urban development to be maintained in a way and at a rate that meets the identified needs of the community ..."[239] (underlining added to demonstrate AWI's emphases). Much of the evidence discussed already in relation to Chapter 7 is relevant here, as is the list of needs identified earlier.

[137] Counsel for AWI submitted[240] that Objective (4.9.3) 7 and its implementing policies "... requires the integration of a range of issues and choices that are not addressed in the evidence". To illustrate the submission they suggested the policies raised the following questions:

(a) What is the identified need (in a residential capacity sense) of the Wanaka community in relation to urban growth?
(b) Where is that need best accommodated to avoid, remedy, or mitigate adverse effects on the environment?
(c) Where is the long term distinct division between rural and urban to be located?
(d) What land within the UGB should be rezoned for residential use now, and what should be preserved for "future urban development"?

Then they submitted that "none of those questions can sensibly be answered before the UGB has been set, and [PC45] is not the vehicle to set it".

237 Objective (4.9.3) 4 [Queenstown Lakes District Council Plan p 4-55].
238 Objective (4.9.3) 3 [Queenstown Lakes District Council Plan p 4-54].
239 Policy (4.9.3) 7.1 [Queenstown Lakes District Council Plan p 4-57].
240 Closing submissions for AWI (para 82) [Environment Court document 35].

[138] We have considered the evidence on these questions generally and in the earlier parts of this decision at length. Our specific consideration is set out below:

- Question (a) is not the correct question to derive from Policy (4.9.3) 7.1, since it both omits any reference of the introductory phrase 'To enable urban development to be maintained' and narrowly circumscribes the "identified needs" of the community in respect of urban development to a small artificial set of "residential capacity". The singular "need" rather than "needs" in counsels' question shows that AWI is being focused far too tightly to cover the extensive list of needs identified in part 3 of this decision. Further, the question put by counsel implicitly suggests tight control of "residential capacity", rather than management, which enables urban development by owners and developers to continue ("be maintained") in an improved (guided by other policies in Chapter 4) way and at a rate that provides the extensive list of opportunities and other needs identified in the QLDP;
- Question (b): for the reasons discussed in part 3 we consider that these policies do not require the local authority to second guess the market. The policies do not require a search for the "best" method of accommodating that "need" (which again should be "needs"). Rather they require an examination first of the enabling exercise under Policies (4.9.3) 7.1 and 7.3 (since an UGB is not being established in PC45) and second, measuring against the degree of achievement of all the other more specific policies in Chapter 4 of the QLDP, few if any of which require any sort of comparison to find the 'best' solution;
- Question (c) is, on the undisputed evidence, quite straight forward to answer. The division between rural and urban areas should probably in the long term be located either on the northern PC45 boundary, being the line drawn by the landscape architects described earlier or inside Activity Area E; and
- A variant of Question (d) — without the reference to an UGB — is considered in some detail below. We have already stated our conclusions on the legal issues raised by the lack of an UGB over the site.

*Sustainable management of development*

[139] Turning to the evidence on Objective (4.9.3) 7 and its policies, counsel for AWI submitted first that Northlake[241]:

> ... did not call any credible evidence that there is an insufficient supply of land in Wanaka such that the identified needs of the community cannot be met. It did not present any economic analysis of the prices available in Wanaka now at various levels of the property market.

The first sentence shows the deformation of Policy (4.9.3) 7.1 which we identified above. The words of the policy which require urban development (not land) to be maintained in a way and at a rate that meets "the identified needs of the community" — for much more than merely land — have been oversimplified with the effect that complexities of the policy are misrepresented. In fact AWI's question would have been more suitable as a test of whether PC45 achieves Chapter 7's objectives and policies, and we have considered similar issues raised by the evidence there.

[140] While we think counsel for AWI went too far when they described Mr Edmonds' one paragraph[242] about part 4.9 of the QLDP as extraordinary, it certainly was rather brief. Further, they referred[243] to Mr Page's cross-examination of Mr Edmonds[244] about the rate referred to in Policy (4.9.3) 7.1. We find the questions (and therefore the answers) unhelpful because they are predicated on a restricted interpretation of the policy which is, as we have already held, incorrect. Counsel suggested Mr Edmonds' answer to a point about the absence of an UGB was enlightening[245]. What we find enlightening in this otherwise rather unhelpful passage was Mr Edmonds' reference[246] to Mr Meehan's evidence. He described Mr Meehan as having "... identified — and [PC45] provides for — a range of other needs that are not currently being met by the District Plan in Wanaka. In particular areas such as Activity Area D, D1 so I believe that [PC] 45 does meet the identified needs of the community ...". That answer correctly

241 AWI closing submissions para 109(b) [Environment Court document 35].
242 J B Edmonds evidence-in-chief para 6.8.10 [Environment Court document 14].
243 AWI's closing submissions para 84 [Environment Court document 35].
244 Transcript p 107-108.
245 AWI's closing submissions footnote 38 [Environment Court document 35].
246 Transcript p 107 line 25 et ff.

applies Policy (4.9.3) 7.1. Counsel criticised[247] the reliance on Mr Meehan's evidence on the grounds he was not an expert, and had an interest in the outcome of the case. But the important points are that Mr Edmonds, who is an expert, accepted the evidence of Mr Meehan who gave evidence of facts as well as opinions. We give some weight to Mr Edmonds' expert opinion on this issue.

[141] In contrast was Mr Serjeant's evidence for AWI. Mr Serjeant did not strictly consider the policy. Instead he phrased his own question[248] — "Whether Wanaka needs additional land rezoned for residential development at the present time?"He described this as the "real" issue in the case[249]: and his answer was "no" relying on Mr Munro's evidence that Wanaka is likely only to have 2,302 new houses built in the 20 years from 2011 to 2031 and there is zoned provision for five times that many sections. Consequently in his opinion there is no need for any more.

[142] An aspect of Policy (4.9.3) 7.1 ignored by Mr Serjeant in his framing of the question is that it is an "enabling" policy, consistent with the enabling theme of the district plan as a whole. It is to enable urban development to be maintained not "to manage" it. Cross-examined on this Mr Serjeant said[250] " ... because there is no demand [for sections] the plan change should be refused". That is an empty and confusing[251] assertion. One can only make such a statement at a price or in a price range. There would likely be a higher quantity of sections demanded in Wanaka if they were only $50,000 each.

[143] Mr Serjeant was cross-examined extensively[252] by Mr Goldsmith on the application of the Objective (4.9.3) 7 and its policy 7.1. In an exchange between the court and Mr Serjeant he confirmed that[253] he agrees that sections are sold at different prices because they offer different qualities to buyers. Yet there was a revealing passage in cross-examination which shows that he retains a fundamental rationing approach to

247 AWI's closing submissions para 85 [Environment Court document 35].
248 D F Serjeant evidence-in-chief para 14 [Environment Court document 18].
249 D F Serjeant evidence-in-chief para 14 [Environment Court document 18].
250 Transcript pp 237-8.
251 As so often happens when witnesses use this language, it is unclear whether Mr Serjeant is talking about demand or the quantity demanded?
252 Transcript pp 261-267.
253 Transcript pp 231-232.

housing supply in the district. Mr Goldsmith was examining[254] about Objective (4.9.3) 3. After making it clear he was speaking hypothetically the exchange went:

> Q. … If you provide more than is sufficient without creating adverse effects in your view is the objective met?
>
> A. (Mr Sergeant) It's just so hypothetical I can't imagine that. I mean you could put any proposition hypothetical like that and I could potentially agree with it but I don't because it doesn't meet the district needs and one ice cream's enough for a child. There might be two and then three and four and five and they're going to get sick aren't they?

That suggests that Mr Sergeant thinks the plan is ultimately about rationing the supply of zoned land (ice creams) to what it considers is acceptable. There is an uncomfortable paternalism about this. In any event, we hold that rationing is not what the objectives and policies, read as a whole, aim for at all. The issue under the plan is not how many ice creams or sections are good for people but increasing the opportunities by increasing the quantity and range of products supplied and thus potentially reducing the price of some.

[144] Mr Serjeant was also concerned that Northlake and its advisors were "… interpreting the objective so that it's limitless"[255]. We agree there is sometimes a suggestion of that, but at other places Mr Edmonds (and Mr Brown) properly applied the relevant objectives and policies. Further, some of the policies are very open-ended so there is room for considerable disagreement over when an activity might reasonably be said to come within them — especially since the policies pull in different directions. On balance, we prefer the evidence of Mr Edmonds and Mr Brown.

6.3 <u>When should any urban development occur?</u>

[145] Counsel for AWI submitted that PC45 does not implement the direction in Policy (4.9.3) 7.1 that the <u>rate</u> of development is managed. We have already given our reasons for holding that the rate of development is to be enabled not managed but we briefly consider the evidence that the Council should manage staging of development of the site (although it apparently does not want to).


254 Transcript p 266.
255 Transcript p 266 line 28.

[146] Mr Munro put forward an alternative to PC45 which involved a staged release of the land. He considered his "demand" figures under a number of "lenses" e.g.: accessibility (walkable isochrones[256]), "pure land merit", and proportioning development pro-rata yield across Wanaka, and derived his opinion of an acceptable development yield for PC45 land of up to 512 dwellings over the next 20 years. He then considered whether development of the PC45 land was strategically appropriate in the contribution it would make to the objectives for Wanaka as a whole. He again referred us to his earlier report[257] where he came to the opinion that in order for the PC45 development to successfully integrate with Wanaka as part of a coherent and well-planned expansion, it should be contained in terms of yield to 442 dwelling units until at least 2025. In addition, the permitted development should be subject to a location constraint to along the southern edge of the PC45 land running along Aubrey Road and the rear of existing rural residential development fronting that road. He recommended that the highest possible densities be employed, subject to landscape constraints, to consume as little land as possible so as to avoid a large scale and relatively isolated stand alone node that would undermine the vision for Wanaka as a compact, well connected settlement.[258]

[147] In his rebuttal evidence Mr Edmonds described[259] how the rules of PC45 ensure that the initial stages of development "... will be focused within the Activity Area D1". In his opinion other staging requirements would not be necessary. We accept that evidence and consequently we accept Mr Goldsmith's submission that delaying the release of PC45 land would contribute little to sustainable management because:

- much of the land in question has been signalled for development for some time in the WSP (as we shall see in the next part of this decision);
- there is general agreement over the design and components of the development proposed;

256 An isochrone connects the points at which persons leaving for an identified destination would normally take the same time (making certain assumptions) to reach it.

257 I C Munro evidence-in-chief Appendix 2 [Environment Court document 17].

258 I C Munro evidence-in-chief Appendix 2: Paras [5.2-5.5] Page 20 (2013 Report) [Environment Court document 17].

259 J B Edmonds rebuttal evidence paras 13.1 to 13.7 [Environment Court document 14].

- the proposal will not place a strain on existing infrastructure and is in a planned location in terms of connectedness with Wanaka as a whole as it will continue to develop;
- while the release of the site to development over the next year or so may affect the release of other residential land into the market, it is unlikely to provide any undermining of the objectives and policies for Wanaka in the QLDP.

6.4 Compact development

[148] On the compactness or consolidation themes in the QLDP, Mr Serjeant referred to the policy[260] on providing for high density residential development in residential areas and continued[261]:

> Density is a relative term and in the Wanaka context higher densities are really only medium to high density with lot sizes down to 300m$^2$ per dwelling unit. In paragraphs 6.8.11 and 6.8.12 Mr Edmonds refers to the PC45 response to the affordable housing objective. While I recognise the importance of affordable housing to the district, the provision of up to 250 dwelling units, including affordable housing units, within Activity Area D1 is in direct conflict with Policy 3.2 and 3.3 above which directs the provision of high(er) density housing in appropriate areas and the combination of residential and commercial development so as to achieve the integration of different activities. It is clear to me that the provisions intend higher density development to locate around existing centres. The urban structure of Wanaka is relatively simple (ie not multi-nodal) and the expectation is that density will concentrically reduce rather than have suburban 'islands' of increased density, with consequent demand for competing open space and other community services in those locations.

We have several concerns with that. First, Mr Serjeant places too much weight on Policy (4.9.3) 3.3. As we have said, that is only a formula. He could just as easily (and equally wrongly) have justified PC45 under the following Policy (4.9.3) 3.4 which provides for low density residential development in "appropriate areas" also. In fact Policies (4.9.3) 3.3 and 3.4 require reference to other policies to determine what is appropriate. Cross-examined on that he conceded[262] that policy 3.3 needs to be applied in the light of the district's needs objectives (and of course they seek other targets than simply

260 Policy (4.9.3) 3.3 [Queenstown Lakes District Council Plan p 4-54].
261 D F Serjeant evidence-in-chief para 78 [Environment Court document 18].
262 Transcript p 268 line 7 et ff.

compactness). Second, reading the district plan as a whole, these policies need to be read with the specific Wanaka policy[263] of organising residential development around neighbourhoods. We predict that PC45 is likely to achieve that because it is designed to do so. Third, we have already pointed out that the district plan tends to use 'consolidation' for what Mr Serjeant (and Mr Munro) call compactness.

[149] In fact Mr Serjeant's point would have been better made in respect of the more specific Chapter 7 policy[264] which is "To provide limited opportunity for higher density residential development close to the Wanaka town centre". We have given that careful thought because at first sight PC45's Activity Area D1 goes against this policy. However, this policy needs to be read in the light of both the 'higher density close to transport routes' and to the affordable housing policies and we consider they justify the slightly contentious Activity Area D1 in combination with the Wanaka neighbourhood policy just referred to and other wider integration policies in Chapter 4.9. We find that PC45 will contribute to a relatively compact Wanaka. While it is not as compact as Mr Serjeant, Mr Munro and Ms Jones would like it to be, we hold that their conception is not necessarily what the district plan contemplates as most appropriate.

6.5 Affordable and Community Housing (Chapter 4.10)

[150] An "advice note" says[265] that the objectives and policies[266] of Chapter 4.10 of the district plan — Affordable and Community Housing[267] — are to be applied in the assessment of plan changes. Despite that, it was not well or thoroughly considered by the experts. Mr Edmonds, the planner for Northlake, quoted[268] the notified version of Chapter 4.10 which is not the operative provision. He described[269] how within PC45's Activity Area D1 the density range of up to 15 dwellings per hectare would result in smaller lots which would tend to be more affordable[270]. He also referred[271] to the provision of the 20 expressly "affordable lots" at a maximum price of $160,000. Mr

263 Policy (7.3.3) 4 [Queenstown Lakes District Plan p 7-14].
264 Policy (7.3.3) 3 [Queenstown Lakes District Plan p 7-14].
265 Queenstown Lakes District Plan p 4-59.
266 Quoted above in part 3.1 of this decision.
267 Added by Environment Court consent order dated 17 July 2013 in *Infinity Investment GH Ltd v Queenstown Lakes District Council* (ENV-2009-CHC-46).
268 J B Edmonds evidence-in-chief para 6.8.10 [Environment Court document 14].
269 J B Edmonds evidence-in-chief para 6.8.12 [Environment Court document 14].
270 J B Edmonds evidence-in-chief para 6.8.12 [Environment Court document 14].
271 J B Edmonds evidence-in-chief para 6.8.12 [Environment Court document 14].

Barratt-Boyes only referred to it indirectly when he talked about the types of housing likely to be built under PC45 — stand alone houses with clusters of "zero-lot" or terrace houses. Ms Jones referred to the evidence of Mr Barratt-Boyes and Mr Meehan and concluded that there will not be a "significant" amount of "true medium to high density" housing at Northlake. In our view almost any amount of such housing would be a success given what appears to be the strong desire of purchasers in this district for space around them. That is consistent with Mr Munro's position: he seemed to consider PC45's proposal did not meet his concept of affordable housing but approved this aspect of the plan change anyway. Finally Mr Serjeant, who had obviously relied on Mr Edmond's wrong quotation in preparation of his evidence, deleted his comments on the issue[272].

## 7. Having regard to the Wanaka Structure Plan

[151] As stated earlier, we must have regard to the WSP. Published in 2007, the WSP's purpose is "... to provide a tool for the Council to manage growth in Wanaka over the next 20 years"[273]. Each of the parties placed considerable weight on (different) aspects of the WSP.

[152] The first 13 recommendations are general. The remaining come under headings as follows[274] (relevantly)[275]:

- *Retaining Wanaka's Landscape Character*
- *Retaining the character of the settlement*
- *Protecting and enhancing entrances to the town*
- *Movement Networks*
- *Providing for High Quality Green (open space) and Blue (urban) Networks*
- *Providing for a vital town centre*
- *Promoting sustainability initiatives*

272 See J B Serjeant evidence-in-chief para 78 [Environment Court document 18].
273 Wanaka Structure Plan 2007 p 1.
274 Wanaka Structure Plan 2007 p 11 et ff.
275 Wanaka Structure Plan 2007. Key Recommendations 57 and 58 on visitor accommodation are omitted.

We will discuss these largely in order, clustering a few related key recommendations where appropriate. We also add some further subheadings (in brackets) within the 'General' recommendations.

*General recommendations*

[153] The first Key Recommendation ("KR") is not really a recommendation at all, but simply states that the growth figures had been updated to reflect the most recent studies (as at 2007). The growth boundaries in the "Zonings Proposed" Map — annexure "D" — reflect these figures which are, of course, out of date. Further they suffer from the same sort of problems we have identified in the 2013 predictions as to "capacity".

[154] The next KR is that [276]:

> 2. The Structure Plan will not incorporate a detailed 'staging plan', but will consider preferred staging principles when the structure plan is implemented into the District Plan. Initial investigations indicate that urban development is preferred south of the existing golf course (bound by SH84 and Ballantyne Rd), while development in the proposed Urban Landscape Protection Zone north of Aubrey Road is preferred over other land contained in this zone in the structure plan area.

It is not immediately clear what are the "staging principles" referred to in KR 2. The witnesses for AWI assumed they contemplated staging within an area to be rezoned. However, for several reasons we consider that is wrong. First the WSP applies to an area greater than the existing urban area of Wanaka, second, two areas are identified — one south of the golf course and one being part of the site (within the proposed Urban Landscape Protection Zone) — as preferred. We consider the more likely intention of this recommendation is that the staging is as between residential zones (in a general sense) as shown on attachment "D" to this decision. We hold that KR 2 does not promote detailed within-zone staging. The result is that at least part of the site — the area within the Urban Landscape Protection Zone — is favoured for development earlier rather than later.

[155] That is reinforced by KR 11 which states:


[276] Wanaka Structure Plan 2007 p 11.

> 11. The revised Structure Plan identifies a proposed 'Urban/Landscape Protection' area in the north east of the proposed structure plan area. The 2004 Structure Plan identified this area as an open space. This area is considered suitable for development due to its proximity to community and education facilities and to future public transportation linkages. It also reflects the fact that this area is already zoned for rural residential purposes, which is not considered to be an efficient use of the land (and also precludes its use for recreation/open space). The Urban/Landscape Protection area has been shown immediately fronting Aubrey Road, however the exact location of future development should be determined further during the Plan Change process. The outer growth boundary adjacent to the Clutha River has been amended (located further south to the 2004 structure plan) in recognition of the need to protect this land from inappropriate development.

This is a crucial recommendation for the site because the WSP expressly recognises at least a large part of the site is suitable for residential development.

*(Open space)*[277]

[156] KR 3 deals with open space issues. The WSP leaves the specific area and location of open spaces to be resolved at the plan change and/or resource consent stage. PC45 contains some proposals in respect of these matters, with a particular concentration on connectivity (see KR 14) across different ownerships within the site and across boundaries to existing roads and tracks (for pedestrians and cyclists).

[157] We note that KR 10 adds:

> 10. The Structure Plan identifies 'Plantation Forest' (i.e. "Sticky Forest") as a potential landscape protection area. This highlights the landscape sensitivity of this area as well as its potential to contribute to open space and recreation networks. …

Mr Edmonds pointed out that future trail connections are planned between the site and Sticky Forest[278].

*(Neighbourhood centres)*

[158] KR 4 also identifies locations for potential "neighbourhood centres" as "commercial/retail" on the map. It adds[279]:

277 We use brackets around subheadings where we supply them: they are not used by the WSP itself.
278 J B Edmonds evidence-in-chief Attachment 3 p 119 [Environment Court document 14].
279 Key Recommendation 4 [Wanaka Structure Plan 2007 p 11].

> 4. An appropriate location for a further neighbourhood centre … in the vicinity of Plantation Road/Aubrey Road will be considered prior to implementing the structure plan into the District Plan.

PC45 proposes a neighbourhood centre on the site to the north of Aubrey Road (a little more than one kilometre from Plantation Road). Given the explanation for the choice of location in the evidence of Mr Long[280], we consider that is appropriate. The evidence of Mr Serjeant and Mr Munro was not convincing on this issue (see Part 1.5). Mr Long gave evidence[281] of what he said was a successful small operation — the Grazë café at "Lake Hayes"[282] — and suggested the same could occur on the site. The success of a shop like this will depend on how well it is set up and marketed. We have already discussed the desirability of a small neighbourhood commercial centre from an urban design perspective, and we consider that PC45's proposal is consistent with this recommendation.

*(Growth boundaries)*

[159] Growth boundaries in the area are described by KR 5 in this way[283]:

> 5. The land that is located outside the inner (20 year) growth boundary but within the outer growth boundary will be identified as remaining Rural General as it is currently not needed to meet the 20 year growth needs. This aims to clearly signal to the community and landowners that this land is not considered suitable for additional development within the short to medium term future. Future guidance on the appropriate use of this land will be considered at the implementation stage.

[160] In the vicinity of the site, the WSP proposed both an "Inner Growth Boundary" ("pIGB") and an "Outer Growth Boundary" ("pOGB"). The location of both on the site is shown on annexed plan "D". The WSP clearly envisages part of the site — that within the pIGB — being urbanised, but subject to the constraints of the topography in this area as indicated by the WSP's proposed "Urban/Landscape Protection" zoning for the southern two-thirds of the site, as shown on annexure "D". That suggests that PC45 is at least heading in the right direction to achieve the WSP.

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280 J A Long rebuttal evidence para 7.2 [Environment Court document 12A].

281 J A Long evidence-in-chief Exhibit 12.1 [Environment Court document 12].

282 The inverted commas are because the "Lake Hayes Estate" is not at Lake Hayes but south of the State Highway on a terrace above the Kawarau River.

283 Key Recommendation 5 [Wanaka Structure Plan 2007 p 5].

[161] KR 5 is that the land between the pIGB and the pOGB will be identified as remaining Rural General because it was (at 2007)[284] "... currently not needed to meet the 20 year growth needs". Since that recommendation expressly signalled to the land owners that the northern one third of the site was not considered suitable for urban development in the medium term future, it is obviously against development of that part of the site as Mr Edmonds quite properly acknowledged in his evidence-in-chief[285].

[162] Against that we were advised that[286] the landscape experts for Northlake and the Council agreed before the hearing that there is "no landscape logic" to the pOGB as drawn across the site. Further, Mr Goldsmith pointed out that 83% of Northlake's proposed development would occur inside the pIGB. The 250 residential lots outside the pIGB but inside the pOGB represent only one or two years supply of allotments.

[163] No other reason for supporting the pIGB as a limit on development of the site was put forward. We accept that the concept of an outer growth boundary running along the edge of the higher landform points overlooking Lake Wanaka and the Clutha River, and intended to constrain urban growth within a clearly delineated UGB, is valid in an RMA context and achieved the important district-wide policies in part 4.2 of the QLDP. We agree with Mr Goldsmith[287] that: "The detail of this part of the pOGB in the WSP was not properly analysed and is not valid". We also accept that a boundary in the location agreed between Mr Baxter and Dr Read may well be an appropriate UGB. While we have no jurisdiction to incorporate a UGB into the district plan through PC45, we accept that the outer boundary of Activity Area E might be a valid and enforceable boundary. Preferable might be a line on the inside of Activity Area E (or at least E2).

*Retaining Wanaka's Landscape Character*

[164] The KRs on landscape include[288]:

> 14. A high amenity network of open space and recreation spaces should be provided to ensure that the settlement retains a strong connection to the adjacent landscape.

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284 KR 5 [WSP p 10].
285 J B Edmonds evidence-in-chief Attachment 3 p 117 [Environment Court document 14].
286 W J Goldsmith opening submissions para 15.10 [Environment Court document 4].
287 W J Goldsmith opening submissions para 15.9 [Environment Court document 4].
288 Key Recommendations 14 et ff [Wanaka Structure Plan 2007 p 11-12].

15. Maintain existing view corridors that offer high amenity landscape interpretation opportunities.
16. Limit development in areas identified as having landscape sensitivity and encourage development in the most logical, convenient and less sensitive areas of the town.

[165] KR 16 makes two points[289] — development in areas of landscape sensitivity should be limited, and development should be encouraged in "... the most logical, convenient and less sensitive areas of town". We have already recorded that Mr Munro put forward his own extensive analysis[290] of what in his view were more logical and convenient areas to develop. However, this KR must of course be considered in the context of the others, including those which expressly recognise the site as suitable for development. KR 16 cannot be used to subvert the more specific recommendations.

[166] The ONL boundary has been identified and drawn to exclude the slopes falling to the Clutha River. The Activity Area A and the Building Restriction Areas also limit development to protect other areas of landscape sensitivity.

[167] We find that PC45 achieves these recommendations in (nearly) exemplary fashion.

*Retaining the Character of the Settlement*

[168] The "character" recommendations are:

18. Provide for street layouts that are legible and interconnected.
19. Ensure that the layout of new development areas responds to the site context, site characteristics, setting, landmarks and views.
20. Ensure that the layout of new development areas creates a strong sense of place that reflects the character of the existing settlement. In particular local streets should reflect a sense of 'informality' with a less regimented arrangement of planting, a lack of kerbing and channelling and casually connecting pedestrian ways where practicable. The use of drainage swales should also be considered where possible. Design covenants could be used in new subdivisions to assist in achieving a specific character.



289 KR 16 [WSP p 11].
290 I C Munro evidence-in-chief 2013 Report [Environment Court document 17].

[169] KR 19 and KR 20 were agreed to be relevant. They relate to internal urban design factors, and on those issues we prefer the evidence of Mr Barratt-Boyes for Northlake (discussed in part 5 of this decision).

*(Density of development)*

[170] KR 23 is to:

> 23. Ensure that any higher density development is appropriately designed and located to enable for diversity of housing choice while retaining the overall low density character and feel of the settlement.

We consider the Northlake Structure Plan — annexure "C" — shows that will be achieved for the reasons given by Mr Barratt-Boyes in his evidence.

## 8. Evaluating PC45 under section 32 RMA

### 8.1 Introduction

[171] We have considered how effectively PC45 implements the relevant objectives and policies of the district plan in parts 4 to 6 of this decision. Because the relevant objectives and policies are, with one exception, not strongly directory and aim to enable a variety of outcomes, we hold that considerations of the efficient use of the land and other resources of the Wanaka area arise. We now examine the (limited) evidence on benefits and costs and the risks of acting or not acting. Those are both factors which help answer the question whether PC45 is more efficient than the status quo and other options put forward in the evidence in achieving the objectives and policies of the district plan.

### 8.2 The benefits and costs

*What costs?*

[172] We received little quantified evidence of the benefits and costs of the proposal. In relation to infrastructure, we had the uncontested evidence[291] of Mr J McCartney, a civil engineer for Northlake, that there would be no external costs imposed on the district in respect of any such alleged, but unidentified, costs.



[291] J McCartney evidence-in-chief Attachment 4 [Environment Court document 13].

[173] Mr Serjeant wrote that a result of PC45 being implemented would be that some "... additional costs ... will arise if already serviced land [of other developers] remains undeveloped"[292]. He explained by pointing out[293] that development contributions are usually taken by the Council at the time of issuing the section 224(c) RMA certificate to a subdivider which allows titles for new allotments to issue. That cost[294] is not recouped by the subdivider until the land is sold. Mr Serjeant then said that the risk of delays in offsite developers being repaid "... should not be increased through an oversupply of land created by Council zoning supply"[295]. While we do not accept there is likely to be an "oversupply" that is harmful to the public interest, we do accept that developers' holding costs may increase. It appears to us that these are costs imposed on trade competitors which they must accept (as would Northlake's developers) as a cost of trading and which we should not take into account: section 74(4) RMA. Since we did not hear argument about this we have regard to these costs but regard them as minor for the reasons we now give.

[174] First, any "oversupply" (of goods which do not spoil) from the point of view of developers is an opportunity or benefit for purchasers. As a general rule an increase in supply of sections in a market will lead to a lower price and movement in the quantity demanded, so that a greater quantity of sections is sold. That assumes of course that there are enough sellers in the relevant market to provide a competitive supply curve and we have considerable doubts that is so given the restricted ownership of residentially zoned land in the Upper Clutha Basin. The risks this creates we discuss (briefly) in part 8.3 of this decision. The net effect is that the extra holding costs caused to competitors by developers of the PC45 land are very likely to be outweighed by the benefits to purchasers because they will pay lower prices, as Mr Serjeant agreed[296] in an exchange with the court.

[175] In any event developers can, and routinely do, keep an eye on the market and develop their subdivisions in stages[297]. A result is that they only pay financial contributions for allotments they are seeking a section 224 certificate for. In other words

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292 D F Serjeant evidence-in-chief para 35 [Environment Court document 18].
293 D F Serjeant evidence-in-chief para 36 [Environment Court document 18].
294 Initially a private cost, but ultimately a social cost too.
295 D F Serjeant evidence-in-chief para 36 [Environment Court document 18].
296 Transcript p 231 lines 10 to 32 and p 232 lines 19 to 28.
297 Transcript p 254 line 26 et ff.

any trade competitor of Northlake can manage the costs of its financial contribution to a considerable extent.

[176] Of more relevance as offsite social costs are other potential effects identified by Mr Serjeant. He referred to the potential problems of earlybirds (our word) buying sections in the Three Parks subdivision and then living in an unattractive environment because other people who might have moved there have brought elsewhere, so the Three Parks subdivision languishes. However, he accepted[298] in cross-examination that it would only apply to people in a relatively small area (one stage of a subdivision). While we accept that there is a cost — and we accept Ms Jones' evidence[299] of the benefits of a 'built-out' neighbourhood — we consider that is a minor and temporary cost.

[177] Secondly he referred to delays in introducing public transport to Wanaka as a result of relatively more far-flung PC45 development. But he accepted[300] that this is a complex exercise in which PC45 has countervailing advantages in proximity to schools[301].

*The net social benefit*

[178] Ultimately of course it is desirable to know the net social benefit of any new proposal such as PC45 and compare it with the net social benefit of the status quo (or any other realistic potential use of the resources put forward in the evidence). The proposal with the greater[302] net social benefit is the most efficient use of the resources.

[179] The best way of quantifying and comparing the social benefit of different options for the management of a resource is to compare the relative net benefits of each, calculated in dollars per unit of resource per year if that is possible. Often it is not. In particular the quantification becomes difficult when:

298 Transcript p 257 lines 16 and 17.
299 V S Jones statement para 4.18 [Environment Court document 16].
300 Transcript p 261 lines 1 to 7.
301 Transcript p 260 lines 25 to 29.
302 Or "greatest" benefit if there are more than two choices before the local authority.

(a) there are large uncosted externalities (e.g. pollution, traffic congestion[303] or effects on significant ecosystems[304], outstanding natural landscapes or amenity values); and

(b) there are competing uses of land in one of which (residential use) much of the value may not be easily monetarised in cash flow terms (obviously it is much easier to capitalise as a purchase price).

Perhaps for one of those reasons we were not given any evidence going towards a cost benefit analysis. However, we asked for and were given valuations by a registered valuer called by Northlake.

[180] Land values provide good empirical evidence of the highest and best use as assessed by markets, provided of course there are only minor uncosted and relevant externalities to take into account. In situations involving land resources where lifestyle considerations mean that non-monetary benefits contribute greatly to the value of the land, valuations may be a good proxy because they more accurately reflect the "highest and best use" of the land in the eyes of consumers.

[181] Comparing the predicted approximate value of the land for three types of use shows:

*Option 1 — (Rural General Option Value)* $30,000 per hectare[305].

*Option 2 — Rural Residential Option Value*
Valued on the basis the land has been subdivided to a rural residential density as in Activity Area A, namely lot sizes of minimum 4,000$^{m2}$ ready to sell: the gross market value is $530,000 (excluding GST)[306] per hectare.

303 Loosening urban boundaries (in areas much larger than Wanaka) while not dealing with the costs of traffic congestion may be futile.
304 For example, under section 7(c) RMA.
305 See para [12] S G N Rutland affidavit dated 10 April 2015 [Environment Court document 34].
306 S G N Rutland affidavit dated 10 April 2015 para 13 [Environment Court document 34].

*Option 3 — PC45 Option Value*

Valued on the basis that the land has been subdivided in accordance with PC45; the estimated gross market value is $1,220,000 (excluding GST)[307] per hectare.

[182] Options 2 and 3 are predictions rather than opinions about the current state of affairs, but the evidence was asked for and given as an approximation so that the court could identify the relative value of the Northlake land for the three possible uses discussed. On that basis AWI did not seek to challenge it (although it was given the opportunity to do so). What the valuation evidence reveals is that the market values of residential land at Wanaka are over 40 times Rural General land values. Even allowing for a large margin of error, and for the complete lack of quantification of all costs (the development costs and financial contributions are likely to be formidable for option 3), that is an extraordinary difference and suggests that PC45 is the most efficient outcome. That is consistent with the evidence of Ms Jones who considered efficiency issues briefly. She described the Rural Residential zoning (which includes the site) that surrounds urban Wanaka as "inherently inefficient"[308] and piecemeal subdivision of that land as inefficient also[309].

[183] We conclude that rezoning the site as a type of residential zone is more likely than not to give considerably more benefits to society than retaining it as Rural General and more net benefit than rezoning it for rural-residential uses because it is difficult to conceive of the costs of the remote and apparently minor adverse effects identified by AWI as outweighing even the net benefits of the PC45 development compared with those other options. This conclusion is speculative so we will give it little weight in our overall evaluation, but it is worth recording because the net benefits and costs appear to be on the PC45 side of the ledger.



307 S G N Rutland affidavit dated 10 April 2015 para 15 [Environment Court document 34].
308 V S Jones statement of evidence para 3.1(d) [Environment Court document 16].
309 V S Jones statement of evidence para 3.1(e) [Environment Court document 16].

8.3 The risk of acting or not acting

[184] Another matter we must take into account is the risk of approving[310] PC45 or of refusing it ("not acting").

[185] We identified above three options that were put forward for the site. We discuss the risks of options 1 and 3 below, together with variants on option 2. In the wording of section 32(4), options 1 and 3 are:

> *Option 1: the risk of not acting (i.e. refusing PC45 so that the site remains Rural General).*
>
> *Option 2A: low density residential as recommended by Mr Munro.*
>
> *Option 3: the risk of acting (i.e. approving PC45).*

We have called the middle option 2A because it is different from option 2 assessed by the valuer[311]. It is assessed because it was Mr Munro's preferred option if the site is not to remain Rural General.

*Option 1 — Retention of Rural General zoning and rejection of PC45*

[186] Rejection of PC45, as recommended by Mr Serjeant, obviously means the zoning of the majority of the PC45 land would remain Rural General. The obvious risk is that part or all of the site would be subject to an application for a discretionary subdivision at some time in the near future. Indeed that has occurred already in this area — Activity Area A[312] adjacent to Aubrey Road has already been subdivided in that way with, in our view, inferior results in terms of the objectives and policies of the QLDP. An application for resource consent to develop a significant part of the site in that way was withdrawn at the Council's request in favour of a holistic approach by way of PC45, which addresses all the land.



310 "Acting" in terms of section 32(A) RMA.
311 That is the presiding Judge's fault: he worded the question to counsel incorrectly.
312 No longer part of the site.

[187] Mr Meehan, on behalf of himself and Allenby Farms Limited, stated that, if PC45 is cancelled and the existing Rural General zone is retained, the community can expect the landowners to pursue other development options. Those would probably involve either discretionary subdivision and land use application or a plan change seeking some form of low density "rural living"[313] development. These would forgo most of the corresponding PC45 benefits and efficiencies in achieving the objectives and policies of the QLDP. That potential outcome must be carefully considered.

[188] Mr Brown expanded on this in his evidence called in rebuttal. He wrote[314]:

> ... [of] the risk that land is suitable for residential growth could be fragmented prior to the opportunity for a comprehensive, integrated planning outcome. The more that land is fragmented the more difficult it is to develop comprehensively and efficiently, and this is a significant risk.

He preferred a comprehensive approach now to "any sort of holding pattern"[315]. That is reinforced by the evidence[316] of Mr Barratt-Boyes that another considerable advantage of PC45 is that it is very likely to avoid the risk of sporadic subdivision of the site which may not give effect to the desirable urban design goals.

[189] Mr Serjeant refused to answer questions about those issues because he regarded discretionary development as speculative. Given the extensive history of precisely such development to the south of the site that seemed slightly evasive. We accept that it would be difficult for the Council to resist ad hoc development enabled by way of discretionary activity resource consent under the Rural General Zones provisions.

[190] Finally we consider the risks of refusing PC45 on the supply of sections to the housing market(s) in the Upper Clutha. This is where the restricted ownership of residentially zoned land becomes relevant. We say immediately that we accept the submission of counsel for AWI that there is insufficient evidence of collusion to find that the housing market(s) is (are) suffering from deliberate monopolistic behaviour. However, that was not why the evidence of Mr Meehan and others covered the restricted

313 See Chapter 8 of the Queenstown Lakes District Council Plan.
314 J A Brown rebuttal evidence para 4.9 [Environment Court document 6].
315 J A Brown rebuttal evidence para 4.9 [Environment Court document 6].
316 G N Barratt-Boyes evidence-in-chief 9 [Environment Court document 9A].

ownership of land in the area. As counsel for Northlake submitted, that ownership creates a risk of suppressing the quantity of sections supplied and we should take that into account. This is a factor that favours PC45.

*Option 2A — The low density residential outcome (recommended by Mr Munro)*

[191] A second possible outcome appears a standard, suburban, low density residential zoning for an area inside the WSP pIGB. That would develop part of the site for about 700 houses (instead of about 1,500 houses). It would, in Mr Goldsmith's words, give "a much more limited range of residential product" and there would not be any community facilities, nor neighbourhood retail provision nor any affordable houses. The sections that would result would provide a desirable place to live for a reduced number of people (those who can afford property at the higher end of the already expensive Wanaka price range).

[192] A further creative slant on a similar theme was a staged approach suggested by Ms Jones whereby a larger lot (low density) subdivision would be undertaken and then at a point in the future these lots would be able to be further developed on an infill basis[317]. Mr Goldsmith examined the practicality of this suggestion with Ms Jones[318]. We are satisfied that this approach would not lead to best planning practice as integrated planning of such features as access, services and dwellings would not be optimised and could lead to unnecessary cost. In our experience large lot lifestyle or small-holding subdivision and subsequent re-subdivision rarely results in good urban form. We regard Ms Jones' idea as an off-the-cuff response in cross examination, which on reflection has few merits. Her other option in her statement of evidence — some development now in exchange for deferred zoning of the remainder — has more merit but is still likely to be less efficient than PC45.

*Option 3 — the risks of approving PC45*

[193] Counsel for AWI submitted[319] that there were four risks of approving PC45. None of them are risks in the proper sense of being the product of a probability of an


317 Transcript p 133 [4/3/15 1211].
318 Transcript p 136 [4/315 1211].
319 AWI's closing submissions para 128 [Environment Court document 35].

adverse effect and the cost of its consequences. However, in deference to counsel we will consider them briefly:

- If "sufficient" means any amount more than is necessary, then the more land developed the better. All land (not just the PC45 land) within the Wanaka Structure Plan 2007 UGB could therefore be developed without control.

This is a non-sequitur and we consider it no further. We have discussed the application of "sufficient" in its context earlier.

[194] Next:

- The UGB process to be determined by the district plan review is undermined because part of it will have been set absent of any comparative analysis of absorbing the "identified need" for urban growth elsewhere. This is not what integrated management means.

We have already observed that the UGB process is not compulsory, nor is development in the absence of an UGB prohibited. We consider integrated management in part 9.

[195] Next counsel submitted:

- The "staging plan" referred to in the [WSP] and inferred from Part 4.9 of the Plan will have already been set. For the next twenty years, Northlake will be "the stage". Again, this outcome would be absent of any comparative analysis of achieving the goal of compact urban form.

We have held this is a mistaken understanding of the WSP and what it means by "staging". We consider lack of compact form next.

[196] Finally:

- The Rural Residential Zone on Aubrey Rd will have no continuing function or integrity against a goal of "compact urban form". The effect of up-zoning the Rural Residential zone has not been considered. The UGB, the PC45 site and the Aubrey Rd Rural Residential zone all have to be managed in an integrated way. That has not been attempted, or even considered, by the Requestor.

The main policies[320] on this issue "promote" compactness. We have already found that PC45 is likely to do this to a satisfactory extent.

[197] Turning to risks properly so-called: the risks of approving PC45 are on-site and off-site. The on-site risks are relatively minor and would be largely borne by the developers and/or subsequent purchasers of lots, for example, there is a possibility that insufficient houses will be built to trigger construction of the communal facilities (swimming pool etc). There is also a risk that shops in the neighbourhood centre in Activity Area D will not be able to trade successfully. However, as Mr Barratt-Boyes observed that is largely a risk for the developer or at least the owner of the building as to the level at which they pitch rents. We have accepted Mr Long's unchallenged evidence[321] that a small commercial node will not affect other existing (or possible future) retail centres in Wanaka.

[198] Off-site there is a probability that subdivisions in the Three Parks area may be slower to sell (if they are even put on the market). The "tumbleweed" scenario identified in *Westfield Ltd v Upper Hutt City Council*[322] may be literal in the case of some of this land. However, we consider the social costs of slower sales would be relatively low, especially if the landowners at the time lower their prices as a response to new market conditions (a shift in supply) and/or an increase in the number of sections on the market (a supply movement). That would enable the Three Parks area to become an area for aspirational owners — people who wish to work in the area but cannot otherwise afford to live there.

[199] And of course PC45 is likely to reduce the risk of anti-consumer behaviour from current owners of undeveloped but zoned residential land by introducing more competition into the section/housing market(s) in Wanaka.



320 Policies (4.5.3) 1.1 and 1.2 [Queenstown Lakes District Council Plan p 4-29].
321 J A Long evidence-in-chief parts 7 and 8 [Environment Court document 12].
322 *Westfield Ltd v Upper Hutt City Council* W44/2001.

## 9. Assessing the most appropriate objectives and policies

9.1 The matters to be weighed and the Council's decision

[200] The final part of our decision on a plan change is to weigh up the four[323] relevant sets of considerations:

(1) whether the plan change is more effective than the status quo in achieving the relevant objectives and policies in the operative district plan and in other — usually higher, but here a lower (the WSP) — later statutory instruments not directly particularised in the district plan;

(2) the section 32 evaluation of the plan change against the relevant alternatives;

(3) whether the plan change accords with the local authority's functions, particularly — in the case of a territorial authority — managing the integrated effects of the use, development and protection of land and the other resources of the district; and

(4) having regard to the decision of the Council.

[201] As to (4), we respectfully agree with the outcome of the Commissioners' Hearing and most of the reasons they gave, and give the decision considerable weight. We consider the Council decision no further, but summarise our consideration of the first three matters in the following paragraphs after dealing with one other legal argument raised for AWI.

[202] Counsel for AWI submitted that no consideration had been given to alternative (off-site) areas for the residential development proposed by PC45 for the site. The Supreme Court decision in *EDS v NZ King Salmon* [324] establishes that there is no obligation to look at alternative sites. That is "... permissible, but not mandatory"[325]. In this case there are no matters of national importance (under section 7 RMA) raised to make that desirable; nor is there any proposal in PC45 which involves exclusive use of a

323 The three sets of territorial authority's obligations identified in para [41] above plus our obligation under section 290A RMA.

324 *EDS v NZ King Salmon* (supra footnote 1) (SC).

325 *EDS v NZ King Salmon* (supra footnote 1) (SC) at [166].

public resource to make consideration of alternatives "unavoidable"[326]. Further, "Of the six areas identified by Mr Munro (additional to Northlake), four are essentially undevelopable; which leaves only the Orchard Road block and Three Parks"[327]. We have found those are not likely to supply (many) comparable sections. Even Mr Munro conceded in his 2013 Report that PC45 was likely to provide superior allotments, so in our discretion we consider it is not necessary to look at alternative sites for urban development.

9.2 Does PC45 effectively implement the QLDP?

[203] Evaluated in terms of its effectiveness in achieving the relevant objectives and policies of the district plan, in parts 4 to 6 of this decision we predicted that PC45 is likely to[328]:

(1) encourage new urban development[329] which is imaginative in terms of urban design (the affordable housing outlined by Mr Meehan) and which integrates different activities:
   — the network of roads and tracks linking residences and providing for recreational biking and walking;
   — the small commercial centre[330]; and
   — the nearby schools.

(2) assist (potentially) in the definition[331] of an UGB on the site;

(3) provide sufficient land for 1,500 (approximately) residential units and a diverse range of residential opportunities[332];

(4) enable new residential accommodation[333] on the site including a number of residential allotments at the more affordable[334] end of the price range (in Activity Area D1) for middle or lower income households ;

(5) observe the constraints[335] imposed by the natural and physical environment;

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326 *EDS v NZ King Salmon* (supra footnote 1)(SC) at [168] and [170]-[173].
327 J D Edmonds rebuttal evidence para 12.11 [Environment Court document 14A].
328 This list generally follows the sequential order of objectives and policies in the district plan.
329 Policy (4.9.3) 3.2 [Queenstown Lakes District Council Plan p 4-54].
330 Policy (4.9.3) 4.2 [Queenstown Lakes District Council Plan p 4-55].
331 Policy (4.9.3) 7 [Queenstown Lakes District Council Plan p 4-57].
332 Objective (7.1.2) 1 [Queenstown Lakes District Council Plan p 7-3].
333 Policy (7.1.2) 1.2 and 1.4 [Queenstown Lakes District Council Plan p 7-3].
334 Policy (4.10.1) 1.1 [ Queenstown Lakes District Council Plan p 4-59].
335 Policy (7.1.2) 1.1 [Queenstown Lakes District Council Plan p 7-3].

(6) maintain a distinction between urban and rural areas[336] through the use of Activity Areas, conservation and design controls in the proposed rules;

(7) contain the outward spread[337] of Wanaka by detaining development areas which do not spread along, but away from, Aubrey Road, by restricting access arrangements;

(8) provide for development which carefully uses the topography[338] as shown on the attached "Structure Plan" marked "C";

(9) create a sense of neighbourhood[339] community and wellbeing by providing for centrally placed community facilities[340] (a neighbourhood centre and a swimming pool);

(10) by developing adjacent to Aubrey Road to provide for peripheral expansion[341] of Wanaka; and

[204] In addition PC45 generally carries out the Key Recommendations of the WSP.

[205] Against these positive aspects, Mr Munro summarised his principal concerns with PC45[342]:

> I disagree that sustainable management will be promoted by providing residential land in Wanaka when there is already a surplus, and where the new zoned land is inferior in urban design terms than existing zoned land. This is likely to lead to more dispersal, lower take up rates of existing zoned areas, less connected neighbourhoods, and overall a watering down of the "compactness" consistently seen by the community as essential to Wanaka's character and wider sense of identity. This amounts to urban design inefficiencies and ineffectiveness in terms of the operative zones and the overall outcome for Wanaka that PC45 would enable.

We have found that Mr Munro is likely to be incorrect in his conclusions that there is a surplus of residential land in Wanaka and is wrong that the site is inferior in urban design terms as contemplated by the QLDP.

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336 Policy (7.1.2) 1.5 [Queenstown Lakes District Council Plan p 7-3].
337 Policy (4.9.3) 3.2 [Queenstown Lakes District Council Plan p 4-54].
338 Policy (4.9.3) 4.2 [Queenstown Lakes District Council Plan p 4-55].
339 Policy (7.3.3) 2 [Queenstown Lakes District Council Plan p 7-14].
340 Policy (7.1.2) 3.1 [Queenstown Lakes District Council Plan p 7-5].
341 Policy (7.3.3) 1 [Queenstown Lakes District Council Plan p 7-14].
342 I C Munro evidence-in-chief para 31 [Environment Court document 17].

[206] As for the assertion that the community sees compactness as essential, we consider that the correct position is that the QLDP perceives consolidation/compactness as important and not spreading into the landscapes of the District as very important. PC45 implements both sets of policies especially the latter. We find that the main defects of PC45 from an effectiveness perspective are that it enables extensions of urban Wanaka which are not as compact/consolidated as might be achieved, and second that it is development outside an UGB which is to be "strongly discourage[d]".

[207] Giving due weight to those negatives, we conclude that overall PC45 is, in all the circumstances outlined, more appropriate than the status quo or the options put forward by Mr Munro and Ms Jones.

9.3 Section 32 evaluation: efficiency

[208] The sketch of benefits and costs suggests that the net social benefit of PC45 is more likely than not to be positive compared with the status quo or Mr Munro's staging. Similarly, the risk analysis favours PC45 over the alternatives. Having regard to efficiency of PC45 in achieving the relevant objectives and policies of the district plan, we consider PC45 is the most appropriate way of achieving those objectives.

9.4 Integrated management of the effects of use, development and protection

[209] We have considered the integrated management of the scale of effects of PC45 carefully. We appreciate that the addition of (potentially) 1,600 housing units increases the housing stock by approximately 35% (say, one-third). Counsel for AWI suggest that PC45 would introduce "a level of development never previously seen in Wanaka"[343]. That is not correct: it introduces the potential for such development under a carefully planned template — the Northlake site will only be developed as and when the developers consider all the relevant factors that suggest (to them) another stage should proceed. Counsel for the appellant submitted in closing[344] that "It is not the role of the District Council, or this Court, to pick winners in the market or to tackle growth capacity in the district". Counsel for Northlake agree but then submit that the appellant's approach "... being one of complete Council control over release of land through a ... staging process, could not result in any outcome other than the Council ... picking

343 AWI closing submissions para [101] [Environment Court document 35].
344 AWI closing submissions para 15(b) [Environment Court document 35].

winners through the District Plan". We agree with that submission and consider that AWI misconceives the QLDP: the district plan does not deliberately pick winners — it enables, encourages, and in certain cases strongly discourages, certain behaviour but that is as powerful as its intervention in the market place for land goes (recognising that rezonings may well amount to picking winners indirectly).

[210] We accept that it is theoretically open for the positive relevant considerations to be outweighed by other factors such as the policy discouraging urban extensions in the rural areas beyond urban growth boundaries, considerations of compactness and, overarching, by the exercise of the function to integrate the effects of use and development of land. For example, counsel for AWI submitted that PC45 would pre-empt both the plan review and the setting of an UGB, relying on the evidence of Mr Munro. Mr Goldsmith's reply[345] was that only the Council knows the reasons the Council put PC20 (which proposed an UGB for Wanaka) on hold, and the implications and consequences of the Council putting PC20 on hold (such as the potentiality or likelihood of an intiative such as PC45). The Council processed the Three Parks PC16[346] and the North Three Parks PC4[347] without a UGB in place; the Council must know whether or not, and if so when, it intends notifying a Wanaka-wide UGB; and further the Council must have its own view of whether or not the approval of PC45 would undermine the District Plan review in general or any proposed Wanaka-wide UGB in particular. Further, the Council accepted the Commissioners' PC45 recommendation and supports the PC45 decision in these proceedings, despite the District Plan review supposedly being notified later this year. We accept that is a fair statement of the position. In the circumstances we do not accept that the review is being subverted.

[211] The evidence of Mr Munro and Ms Jones seems influenced by their opinions about the past development of Wanaka. Ms Jones wrote with commendable directness[348]:


345 W Goldsmith submissions for Northlake in reply para 4.3 [Environment Court document 38].
346 Notified April 2009, made operative January 2011.
347 Notified March 2012, made operative July 2013.
348 V S Jones statement of evidence para 4.3 [Environment Court document 16].

> I agree with Mr Munro that the development of the northern peninsula is unfortunate and has resulted in areas of new development that are dependent on the private vehicle travel in the same way that Northlake will be at least for the next 20 years, if it is approved. In this respect, I think the phrase 'two wrongs don't make a right' is apt. I also agree that the historic Rural Residential areas that surround the Wanaka town are not desirable and, in a perfect world, would be intensified over time[349].

That sums up many of their concerns. However while those concerns may be justified by (some) urban design principles, they are not justified by reference to the operative district plan. Recurring themes in the district plan are enjoyment and maintenance of amenities and the landscape, enabling people to provide for their needs and lifestyle preferences. We doubt that many of the people who live on the Peninsula west and southwest of the site consider that their neighbourhood(s) are "unfortunate".

[212] We hold that it is fundamentally incorrect to see PC45 as a second wrong which compounds alleged earlier errors by the Council.

[213] While we appreciate that PC45 will make Wanaka less compact than AWI's witnesses and Ms Jones would like, we consider it does have some energy-saving advantages (in addition to the costs of extra travel to the lakefront or to a supermarket) in its proximity to Wanaka's schools and to recreational facilities. It also contains a proposal for small-scale shops to create its own neighbourhood. We consider that the argument PC45 will not manage the adverse effects of development in an integrated way is significantly overstated. Much will depend on the internal staging adopted by the developers and indeed on market conditions at the time of sale. Even if those go badly we consider the effects will be relatively temporary. In the longer term Wanaka will fill out to within a respectful distance of its natural topographical boundary (the Clutha River), in a completely appropriate and well integrated way. We conclude that the integrated management of effects favours PC45 over the options.



349 Section 42A report, Section 6.

## 10. Result

10.1 Conclusions

[214] Weighing all the matters outlined above, we conclude that PC45 is (provided some minor changes are made as raised in the next section) the most appropriate method of achieving the relevant objectives and policies of the district plan and that it will achieve integrated management of the resources of Wanaka. We are encouraged in these conclusions by the Hearing Commissioners' decision which was to the same effect. We will make (conditional) orders confirming that judgment.

10.2 Amendments to plans

[215] Since the following matters were not put to the parties or their relevant witnesses, they are provisional. Any party may apply to call evidence in respect of any of them.

[216] There is a low ridge in the centre of the site at the eastern end of (we think) the Allenby Farms Ltd property. There are patches of kanuka and native shrubs (and exotic weeds) on both the sunny northern side of this ridge and, more densely, on the southern side. While the flat ridge top is suitable for residential development, the kanuka and native shrubs should be protected. Any roading should go to the south of them. The Structure Plan will need to be re-drawn to show another tree protection area and relocation of the (notional) road.

[217] In the Stokes/Gilbertson block, at the eastern end of the site, two changes seem to be desirable to protect amenities:

(a) the whole of the gully should be a building restriction area (there is an anomalous residential C4 area at the northern end at present which should be cut off at the orange line drawn by us on plan "C");

(b) the land to the east of the gully in B5 should have minimum zoning size lots of 4,000m$^2$ (being a minimum Rural Residential scale) to protect the visual amenities of the elevated houses to the south of Aubrey Road.

[218] Third, there should be a walking track from the north-western high point on the site which overlooks the public reserve and camping area at the start of the Clutha River and down the ridge parallel to the Clutha River, to connect the two walking/cycling links shown on the Structure Plan. Because of potential erosion problems this may not be suitable for mountain bikes.

10.3 The objectives, policies and rules of PC45

*The objectives and policies*

[219] We hold that the rather anodyne objectives and policies of PC45 appropriately implement the particular objectives and policies of Chapter 7, and the more general policies in Chapter 4 of the district plan.

*The rules*

[220] In *Suburban Estates Ltd v Christchurch City Council*[350], a case about a new district plan for Christchurch City, the Environment Court wrote:

> [40] We conclude that when considering methods of implementation (including rules) the purpose of the Act as defined in section 5 is not the starting point at all; it is the finishing point, to be considered in the overall exercise of the territorial authority's judgement under Part II of the Act[351]. We hold that the overarching purpose of the Act — that is sustainable management, and the elements of Part II — are largely presumed to be met by, and subsumed in, the objectives, policies and methods contained in the revised methods of the City Plan. If that is not the case then there is an element of re-inventing the wheel if all the matters to be considered (to use a neutral term) under sections 5 to 8 of the Act have to be separately applied to the zoning.

With the exception of the first sentence, which is more applicable to a new (proposed) plan than a plan change, that passage largely fits with *EDS v NZ King Salmon.* Thus the objectives and policies to be implemented are primarily those in PC45 itself, now that we have confirmed those. Only where they are incomplete or uncertain do we need to refer to Chapters 7 or 4 of the district plan. Subject to some minor points raised below,

350 *Canterbury Regional Council (Suburban Estates Ltd) v Christchurch City Council* C 217/2001 at p 23.

351 As required by section 74(1) RMA.).

we consider the proposed rules effectively and efficiently implement the policies in PC45.

[221] In relation to the proposed rules in PC45 we note that when making a rule the territorial authority must also have regard to the actual or potential effect of activities on the environment[352]. In addition, there are several other considerations about rules (which have the force of regulations[353]) in section 76 of the RMA. Of these one is potentially relevant. Section 76(4B) states that there must be no blanket rules about felling of trees[354] in any urban environment[355]. Do the areas and rules for tree protection comply with section 76 (4B) RMA? We require an agreed position and/or submissions on this issue.

[222] We also have questions about the practicalities of other rules which should be considered to ensure the objectives and policies of the Plan and Plan Change are appropriately implemented:

(a) it appears there is an arrangement in the activity list where buildings are disjointed from the activities which might occupy them. This means that some categories of buildings appear permitted or controlled activities but the actual *residential* activity which will occupy them requires restricted discretionary consent. Thus the criteria which would be invoked to assess a residential activity will not necessarily be applied at development of the building stage. This could for instance allow remnant stands of native planting to be removed as only the Tree Protection Area and Area E are protected. This outcome might not implement Objectives 4 and Policy 4.2 of PC45;

(b) the requirement for no more than one residential unit on a site seems to be counterproductive in terms of efficient site planning, where contiguous areas of open space and shared features could be employed to achieve a

352 Section 76(3) RMA.

353 Section 76(2) RMA.

354 Section 76(4A) RMA as added by the Resource Management (Simplifying and Streamlining) Amendment Act 2009.

355 Section 76(4B) RMA — this rule was added by the Resource Management (Simplifying and Streamlining) Amendment Act 2009.

better urban design solution (consistent with PC45 Objective 2 and Policy 2.4);

(c) the rule permitting an underground structure to be excluded from maximum building coverage may reduce planting opportunity and perhaps these structures should be considered in a different way?

(d) there does not seem to be a rule addressing the external edge of the zone to the east where planting could assist the definition of this urban edge to be consistent with the Objectives and Policies introduced to the Plan through PC30. We note rules for planted edges facing Aubrey Road and Outlet Road might provide a model for addressing this issue;

(e) Activity Area E1 and Activity Area E4 seem to require the maintenance of a *pastoral state*. This directive will not protect trees or encourage additional enhancement planting. We request this wording be adjusted to address this concern which we consider does not accord with the Objectives of the Plan Change (e.g. PC45 Objective 4 and Policy 4.2, Objective 2 and Policy 2.1);

(f) is Activity C appropriately nominated given its natural attributes including proximity and buffer role to the ONL and the predominance of existing vegetation? We suggest this area should be nominated as a further Activity Area E (say E3). This would accord with Objective 4 and Policy 4.2 of the Plan Change.

10.4 Interim Decision

[223] Our decision will be interim for four reasons:

(1) the Amended Structure Plan will need to be redrawn;

(2) the objectives, policies and rules may need to be amended in respect of the matters raised in part 10.3;

(3) we are unsure of our powers to make the changes suggested in (1) and (2) — under the First Schedule or under section 293 RMA? — and will seek submissions on that; and

(4) we are unclear whether AWI wished to pursue its 'vires' arguments and in respect of what, so we will reserve leave for it to lodge more detailed

submissions on those (other than on Objective (4.9.3) 7 which we have resolved).

For the court:


**J R Jackson**
**Environment Judge**

Attachments

A: Ownership and site plan (Attachment "D" in Mr Goldsmith's opening bundle).

B: Map of Dippie Family interests (Ex 14.1).

C: Northlake's Amended Structure Plan dated 1 May 2015.

D: "Zoning Proposed" map from the Wanaka Structure Plan 2007.

ENVIRONMENT COURT OF NEW ZEALAND
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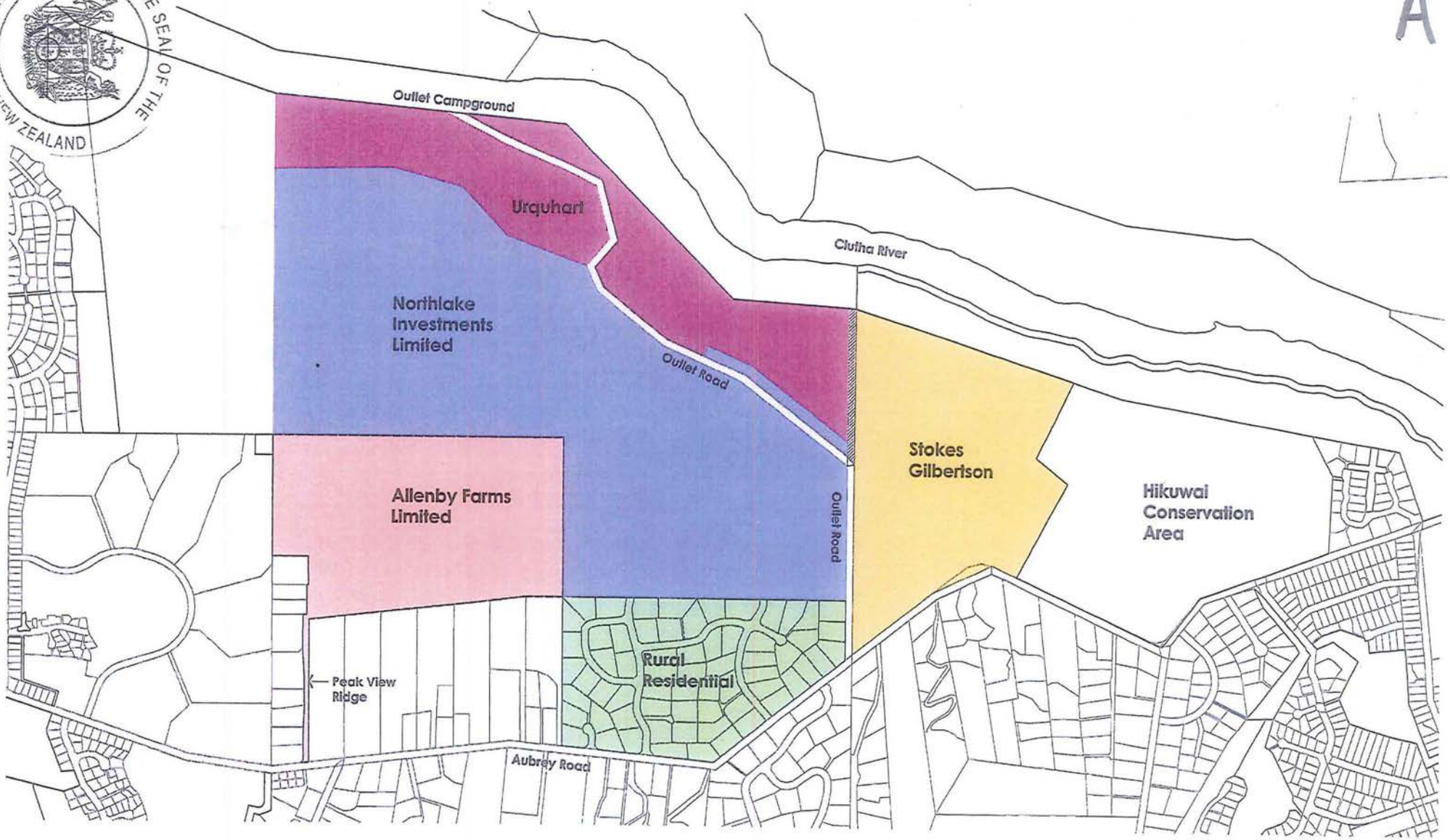
A



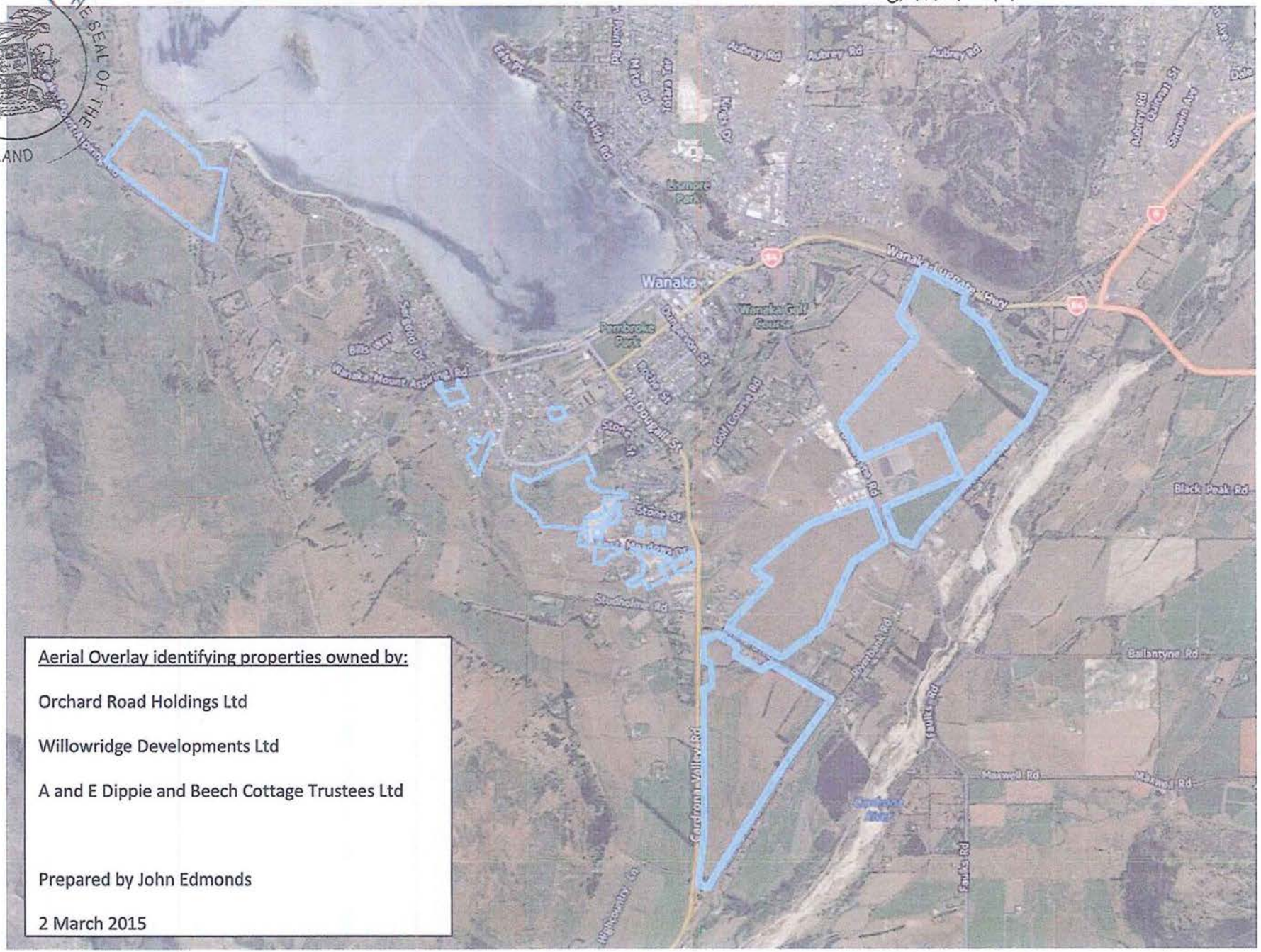

NORTHLAKE WANAKA - LAND OWNERSHIP PLAN (Note: Some coloured land is outside the PC45 Zone)

REFERENCE 1949-SK32 SCALE = 1:5000 AT A3 20 Feb 2015

baxter design group

Exhibit 14.1

B




Aerial Overlay identifying properties owned by:

Orchard Road Holdings Ltd

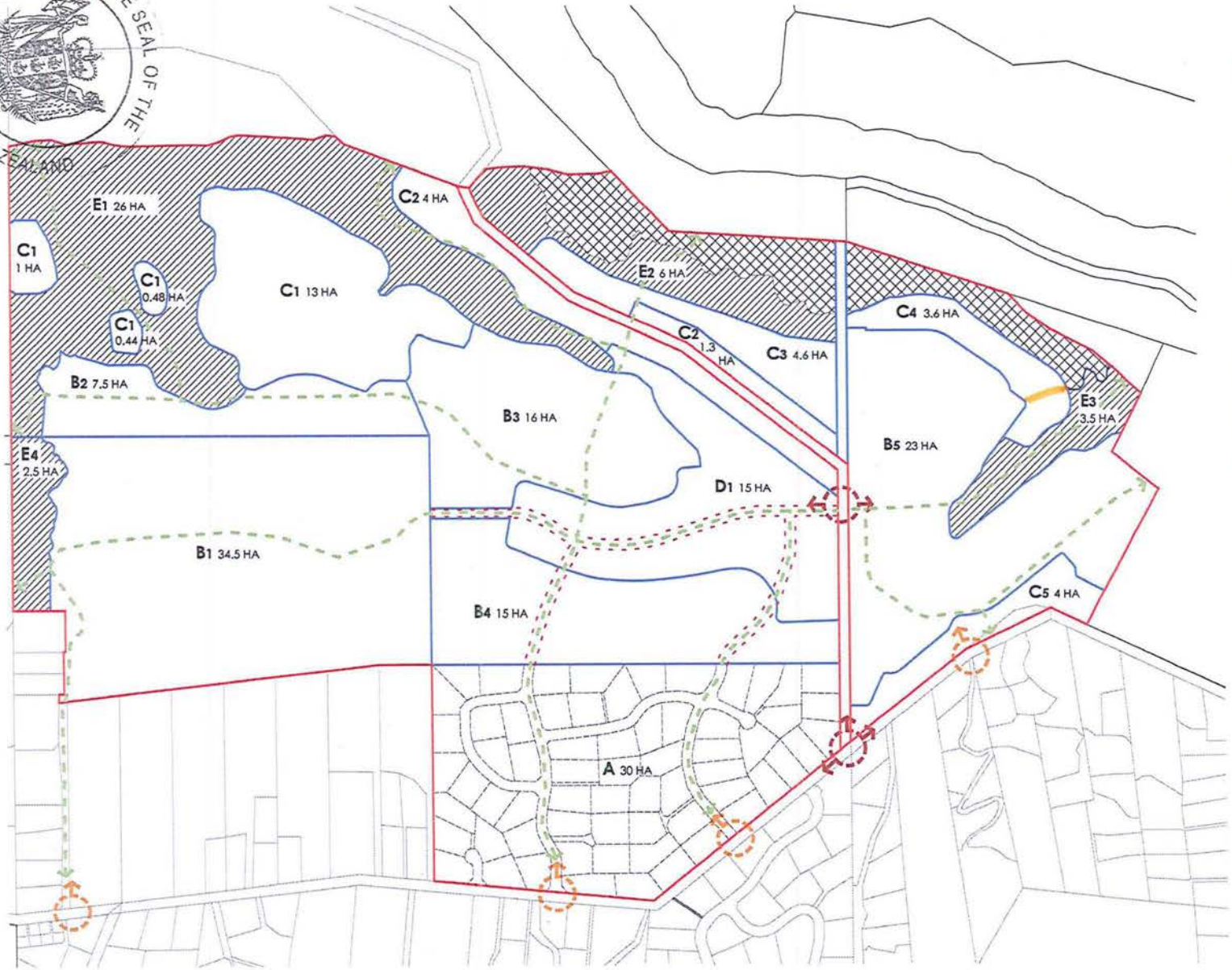
Willowridge Developments Ltd

A and E Dippie and Beech Cottage Trustees Ltd

Prepared by John Edmonds

2 March 2015

C




**KEY**

- Zone Area = 219.26ha (excludes legal roads)
- A - E Activity Areas
- Activity Area boundary
- Required walkway / cycle links
- Primary entries
- Secondary entries (indicative)
- Building Restriction Area
- Tree Protection Area and Building Restriction Area
- Required road links

North

# NORTHLAKE STRUCTURE PLAN

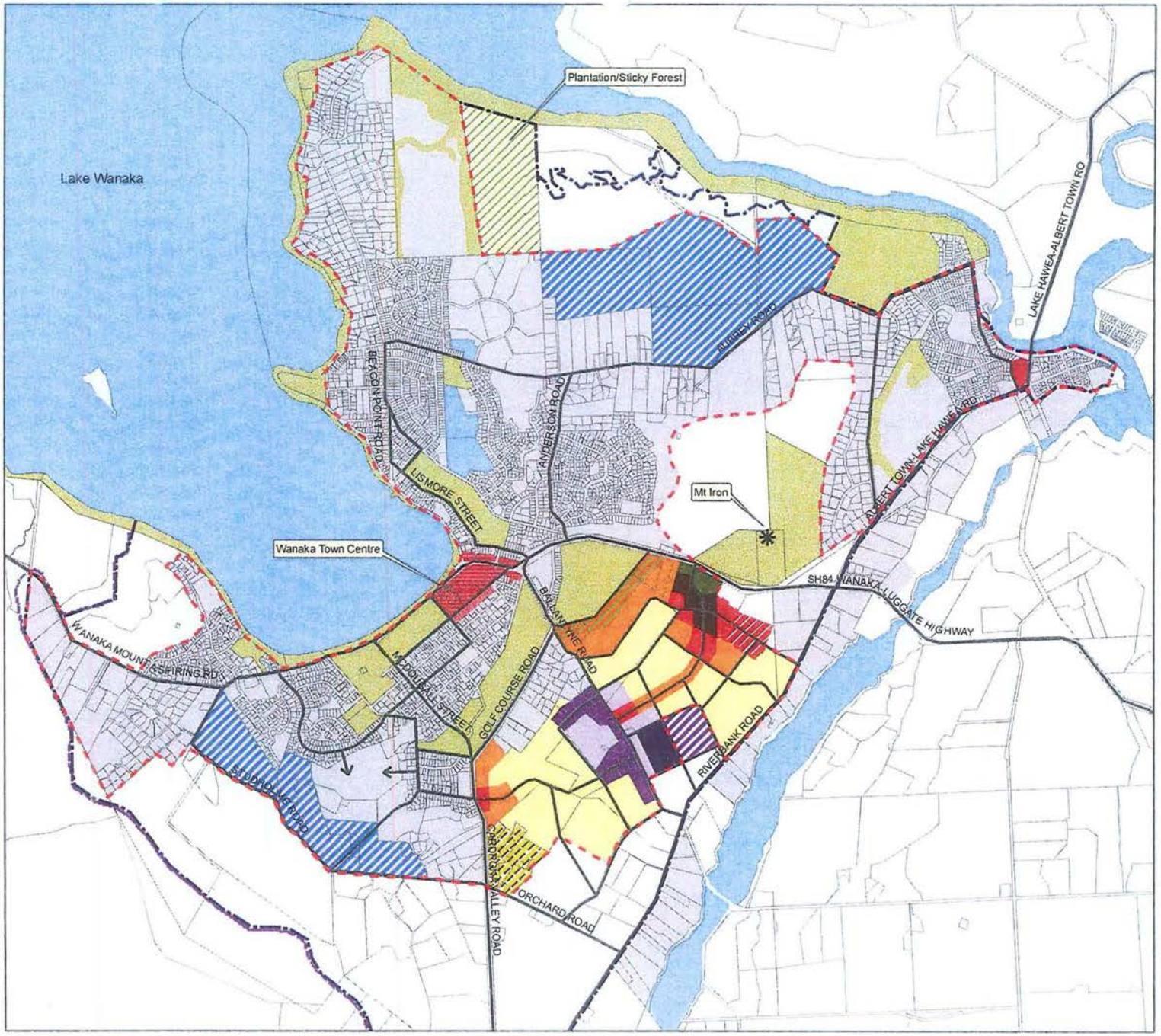
REFERENCE: 1949-SK58 Scale = 1:8000 @A3 - 01 May 2015

baxter design group

D

# Zoning Proposed

- Structure Plan Inner Growth Boundary
- Structure Plan Outer Growth Boundary
- Outstanding Natural Landscape (ONL) Line
- ONL Line Not Confirmed
- Road Network (Indicative)
- Retail Core
- New Open Spaces/Reserves
- Wanaka Town Centre
- Education
- Area Subject to Further Study
- Visitor Accommodation Overlay
- Urban/Landscape Protection
- Existing Open Spaces/Reserves/Golf Club
- Deferred Mixed Business/Office/Technology
- Deferred Future Commercial/Retail
- Commercial/Retail
- Mixed Business
- Existing Business/Industrial
- Industrial Yard based
- Medium/High Density Residential
- Low Density Residential
- Landscape Protection Area
- Mixed Use Zone
- Existing Zoned/Developed Areas
- Water




Indicative zone boundaries only, subject to review at implementation stage