

BEFORE THE QUEENSTOWN LAKES DISTRICT COUNCIL

IN THE MATTER

**of the Resource Management
Act 1991**

AND

IN THE MATTER

**of an application for Private
Plan Change 53 filed by
Northlake Investments
Limited**

**MEMORANDUM OF SUBMISSIONS ON JURISDICTION
ON BEHALF OF
EXCLUSIVE DEVELOPMENTS LIMITED**

Dated this 19th day of June 2018

**FARRY.CO LAW
Barristers and Solicitors
Level 7, Forsyth Barr House
P O Box 5419
DUNEDIN 9058
Tel +64 3 477 8870
Fax +64 3 474 0390
E: mnidd@farry.co.nz**

FURTHER SUBMISSION BY EXCLUSIVE DEVELOPMENTS LIMITED

1. Exclusive Developments Limited have been given the right to respond to the Submissions filed on behalf of Willowridge Developments Limited and Central Land Holdings Limited in respect of this matter.
2. The case referred to by Counsel for Willowridge Developments Limited and Central Land Holdings Limited namely *Halswater Holdings Ltd v Selwyn District Council*¹ is significant because it discussed the requirements of submissions 'on' plan changes, stating that "*The limits on the scope of a submission on a plan change are that it must be "on" the plan change. The next step is that there has to be public notification*". The Court went on to note that if a person wants a remedy that goes much beyond what is suggested in the plan change so that, for example, a submission can no longer be said to be "on" the plan change then they may have to go about changing the plan in another way, e.g. by an individual's later request for a "private" plan change or by encouraging the Council to promote a variation of the plan change. Those procedures have the advantage that the notification process goes back to the beginning. A further consideration is that if the relief sought by a submission goes too far beyond the four corners of the plan change then the Council may not have turned its mind as to the effectiveness and efficiency" of what is sought in the submission. It follows that a crucial question for a council to decide when there is a very wide submission suggesting something radically different from a proposed plan as notified, is whether it should promote a variation so that there is time to have a section 32 analysis carried out and an opportunity for other interested persons to make primary submissions.
3. Further, the approach in *Halswater* was accepted by the High Court in *Clearwater Resort Ltd v Christchurch City Council*². In *Clearwater*, in determining whether a submission was 'on' a plan change, the Court's preferred approach was that:

"A submission can only fairly be regarded as "on" a variation if it is addressed to the extent to which the variation changes the pre-existing status quo. But if the effect of regarding a submission as "on" a variation would be to permit a planning instrument to be appreciably amended without real opportunity for participation by

¹ *Halswater Holdings Ltd v Selwyn District Council* (1999) 5 ELRNZ 205 at [39]

² *Clearwater Resort Limited v Christchurch City Council* HC Christchurch, AP34/02, 6 March 2003, William Young J at [69]

those potentially affected, this is a powerful consideration against any argument that the submission is truly "on" the variation."

While accepting that it was common for submissions to address issues in plans in different manners than what is proposed by local authorities, the Court nevertheless held that³:

"In a situation, however, where the proposition advanced by the submitter can be regarded as coming out of 'left field', there may be little or no real scope for public participation. Where this is the situation, it is appropriate to be cautious before concluding that the submission (to the extent to which it proposes something completely novel) is "on" the variation.

4. From Clearwater, it will be seen that the Court takes a very cautious approach in such situations where issues of scope and submissions 'on' a plan change are raised. Given the findings of the courts as to submissions 'on' plan changes, and on issues of scope, any proposal seeking to address such fundamental issues as density of housing, the extension of retail areas, the permitting of prohibited activities (meat and fish processing) cannot be 'on' the plan change as such changes are contrary to the nature and intent of the NSZ itself.
5. No Section 32 report/analysis has been undertaken, and as a result there is no genuine factual basis to accept such a proposal, given that the potential controls have not been fully considered as to their potential implications; and as no notification process would result from such a proposal, this would adversely affect persons wishing to make submissions on it.
6. Exclusive Developments Limited therefore entirely supports the Willowridge Developments Limited and Central Land Holdings Limited submissions and confirms its objection to the Applicant, Northlake Investments Limited, jurisdictional argument insofar as the changes sought by Northlake Investments Limited go beyond the notified changes referred to and do not address the concerns of the Submitters including Exclusive Developments Limited in relation to the effects from the proposal as notified.
7. Exclusive Developments Limited accordingly submits there is a lack of jurisdiction to introduce a New Policy or Objective in the Application by Northlake Investments Limited.

³ Ibid at [69]

8. There is further concern that the Queenstown Lakes District Council appears to have predetermined the issue somewhat by providing a draft new Objective and associated policies prior to any final determination of this matter and in the absence of any formal Application for same by Northlakes Investments Limited.

DATED this

19th

day of

June

2018

Signed:



Michael G Nidd
Counsel for Exclusive Developments Limited