

BEFORE THE QUEENSTOWN LAKES DISTRICT COUNCIL

In the matter of **The Resource Management Act 1991**

And **A requested change to the Northlake Special Zone of the Queenstown
Lakes District Council's Operative District Plan – Plan Change 53 (PC53)**

LEGAL SUBMISSIONS FOR EXCLUSIVE DEVELOPMENTS LIMITED

IN OPPOSITION TO PLAN CHANGE 53

6 June 2018

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MAY IT PLEASE THE PANEL:

1. Introduction

- 1.1 Exclusive Developments Limited ("EDL") owns nearly 39 hectares of land adjacent to the Northlakes' property on the Eastern side of Outlet Road, called the "Hikuwai" subdivision. This land forms part of the "Northlake Special Zone" and was rezoned residential pursuant to that zoning on 17 December 2015. The Hikuwai subdivision runs coterminous to Northlakes' property along Outlet Road and as is evident in the site map attached at **Appendix 1**.
- 1.2 EDL bought this land in August 2016. EDL is developing the site into 200 individual residential lots in stages. Council have approved the Outline Development Plan relating to the first four stages of development and granted earthworks' consent. EDL submitted its application for resource consent in July 2017. Resource consent is pending.
- 1.3 The majority of sections for Stages 1-3 are under contract and there are 22 sections which border Outlet Road and which are directly affected by the proposed Plan 53 changes. 16 of these are part of Stages 1-3 and are under contract. 1 section is part of Stage 4 and is under contract.
- 1.4 There are accordingly 17 purchasers within the Hikuwai subdivision who will be severely impacted by the proposed plan changes given their very close proximity to the proposed retail/commercial zone under consideration and the fact that their properties front on to Outlet Road. However, it is arguable that all prospective purchasers within the Hikuwai subdivision will be affected to a greater or lesser extent by the plan changes.
- 1.5 EDL objects to the proposed Plan 53 changes submitted by the Applicant, Northlake Investment limited ("NIL") which seek to:
 - Alter the Northlake Special Zone Structure Plan boundaries to increase the size of the zones (Activity Area D1) where retirement villages and commercial activities are provided for to enable higher housing densities on flat areas of the Northlake Special Zone.

- Amend the rule limiting retail floor area from 200m² per activity with a maximum floor area of 1000m² to allow up to 2,500m² total retail floor area, and a single retail activity of up to 1,250m² gross floor area to facilitate a supermarket (while retaining the 200m² cap for other commercial and retail activities).
- Undertake amendments to rules controlling landscaping and the bulk and location of development to recognise the extension to Activity Area D1, with regard to the setback of buildings, building height, access, and landscaping adjacent to Outlet Road.
- Amend a rule that states that fish and meat processing is prohibited to permit fish and meat processing that is ancillary to a retail activity such as a supermarket, within Activity Area D1.
- Delete a rule in the Subdivision, Development and Financial Contributions Chapter 15 that requires a minimum amount of house lots to be approved prior to permitting community facilities.
- Amend the sign rules in Chapter 18 Signs where they relate to the Northlake Special Zone.

1.6 EDL submits that the proposed changes would result in serious detrimental effects on the integrity of the Special Zone, including such changes, that will have:

- A significant impact on traffic and vehicle movements;
- Inappropriate and unacceptable height and building density effects;
- Inappropriate and unacceptable land use activities for meat and fish processing in the Special Zone;
- Increased stormwater flows without appropriate arrangements or mitigation measure in place including increased stormwater discharge into Clutha River;
- Inadequate water supply and detrimental water storage implications;

- Detrimental impact on landscape, streetscape and ecology values;
- Detrimental impact on urban design and residential environment.

2. Legal framework

2.1 The Resource Management Act 1991 ("the RMA") in governing the management of the environment has its approach firmly rooted in the concepts of sustainable management, the integrated management of resources and the value of public participation. The legal framework of relevance is set out in sections 31, 32, 34 and 72-76 of the RMA.

2.2 The matters that need to be addressed are set out by the Court in *Colonial Vineyard Ltd v Marlborough DC*¹ and *Reiher v Tauranga City Council*² as follows:

"[10] In examining a provision under the Act, including Section 32, we must consider:

- a) Whether it assists the territorial authority to carry out its functions in order to achieve the purpose of the Act;*
- b) Whether it is in accordance with Part 2 of the Act;*
- c) If a rule, whether it achieves the objectives and implements the policies of the plan;*
and
- d) Whether having regard to efficiency and effectiveness, the provisions are the most appropriate way to achieve the objectives of the proposed plan, having regard to the benefits, the costs and the risks of not acting.*

[11] In doing so the Court must take into account the actual and potential effects that are being addressed to consider the most appropriate provisions, if any, to respond to this."

2.3 s74 of the RMA requires a territorial authority to prepare and change its district plan in accordance with its functions under s 31 (among other things). These functions include 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.³

¹ *Colonial Vineyard Ltd v Marlborough District Council* [2014] NZEnvC 55

² *Reiher v Tauranga City Council* [2014] NZEnvC 141

³ S31(1)(a) Resource Management Act 1991

2.4 S74(2) provides that in addition to requirements of s75(3) and (4) a change to a district plan requires a territorial authority to have regard to: (relevant for these purposes):

- any proposed regional policy statement; or
- proposed regional plan;
- any management plans and strategies prepared under other Acts;
- the extent to which the district plan needs to be consistent with plans or proposed plans of adjacent territorial authorities.

2.5 In legal submissions made for NIL on 5 June 2018, Mr Goldsmith referred to the decision of *Appealing Wanaka Inc v Queenstown Lakes District Council*⁴ and noted that it “arguably simplified the statutory considerations somewhat as follows...”, before going on to list the statutory considerations referred to at paras [34], [35] and [37] of that judgment.

2.6 The difficulty with this decision and how it has been interpreted in more recent cases, is also expanded upon in Mr Goldsmith's submissions, although Mr Goldsmith does not refer to the most recent decision considering the case in 2018: *Self Family Trust v Auckland Council*⁵ (attached at **Appendix 2**). Here the court stepped through the decision of *Royal Forest & Bird v BOP Regional Council*⁷ and its consideration of the *Appealing Wanaka* decision, noting Wylie J's comments from the *Royal Forest & Bird* decision⁸:

“In my judgment, the Environment Court erred when it proceeded primarily by reference to the RCEP's objectives, with only limited reference to the RPS and the NZCPS. Its approach in effect ignored the statutory directive contained in s 67(3). That subsection is clear in its terms. It requires that decision-makers promulgating regional plans must ‘give effect to’, inter alia, National Policy Statements and Regional Policy Statements. The Environment Court failed to have regard to the majority of the Supreme Court's finding that the words ‘give effect to’ mean to implement, and that this is a strong directive, creating a firm obligation on the part of those subject to it.”

⁴ *Appealing Wanaka Inc v Queenstown Lakes District Council* [2015] NZEnvC 139

⁵ Submissions by Mr Goldsmith dated 5 June 2018 at para [10] and [13]

⁶ *Self Family Trust v Auckland Council* [2018] NZEnvC49

⁷ *Royal Forest & Bird Protection Society of New Zealand Incorporated v Bay of Plenty Regional Council* [2017] NZHC 3080

⁸ *Self Family Trust v Auckland Council* [2018] NZEnvC at [472]

- 2.7 Wylie J disagreed⁹ with the approach taken by the Environment Court in *Appealing Wanaka* that:

"... 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 this case the QLDP ... 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 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. 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."

- 2.8 The Court in *Self Family Trust v Auckland Council* noted¹⁰ that it was:

*"easy to see why Wylie J was critical: quite apart from section 72(3)(b) RMA'S express direction that a district plan (and change) must give effect to the NZCPS, the language of *Appealing Wanaka* is redolent of the "subject to part 2" test in section 104 RMA which applies to resource consents (not plan changes)."*

*"What the Environment Court appears to have been reaching for (apart from simplicity) in *Appealing Wanaka* was that on a plan change there are often many objectives and policies in the document being changed or in other statutory instruments underneath an NPS which are beyond challenge and indeed may be intended to guide subordinate plan changes. The logic of the *Appealing Wanaka* argument is:*

(1) King Salmon¹¹ states, in effect, that the NZCPS gives effect to

⁹ *Royal Forest & Bird Protection Society of New Zealand Incorporated v Bay of Plenty Regional Council* [2017] NZHC 3080

¹⁰ *Self Family Trust Limited v Auckland Council* [2018] NZEnvC at para 474

¹¹ *Environmental Defence Society v The New Zealand King Salmon Co Limited* [2014] NZSC 38 [2014] 1 NZLR 593

and “particularises” Part 2 of the RMA in general and section 6(a) and 6(b) of the Act in particular;

(2) normally there should be no need to look at Part 2 of the RMA when making decisions¹² — “... section 5 should not be treated as the primary operative decision-making provision”;

(3) by analogy the AUP gives effect to and particularises the NZCPS (“it certainly claims to do so in the introductory D10.1 Background”) to Chapter D10);

(4) again by analogy with King Salmon, there is (usually) no need to look at the NZCPS unless the AUP is uncertain, incomplete or illegal.”

- 2.9 The way in which the Environment Court has considered how to interpret and approach the relevant provisions of the Resource Management Act is relevant as a precedent for how the Panel should go about considering the Plan 53 changes.
- 2.10 It is submitted by Mr Goldsmith that the plan changes are very much at the simple end of the spectrum and that the PC53 does not seek to make any changes to the objectives and policies of the Northlakes Special Zone (NSZ), let alone any “higher order” objectives and policies of the Operative District Plan (ODP).¹³
- 2.11 It is respectfully submitted that this is not the case. The plan changes under consideration are not at the simple end of the spectrum. They go to the heart of the zoning objectives and would be seeking to amend the NSZ’s objectives and policies in a variety of ways as well as requiring significant amendments to several sections of the NSZ rules, the Outline Development Plan, the Northlake Structure Plan and the District Plan. The NSZ specifically notes that the NSZ development is “to be consistent with the Northlake Structure Plan”. It is noted that the Plan Changes are looking to include certain prohibited activities such as “fish or meat processing”¹⁴.
- 2.12 It is submitted that, the purposes and principles of the RMA under s5 in relation to sustainable management may be of relevance, particularly s5(2)(b) which requires natural and physical resources to be managed...***while avoiding, remedying or mitigating any adverse effects of activities on the environment*** [emphasis added].

3. NSZ objectives and policies engaged and detrimental effects on the integrity of the NSZ

¹² Ibid at [130]

¹³ Submissions made for NIL by Mr Goldsmith dated 5 June 2018 at para[11]

¹⁴ Prohibited activity under NLSZ at para 12.X.4.6 (i)

3.1 The NSZ includes 6 objectives. It is submitted that the proposed Plan Changes will breach those objectives and associated NSZ Rules as they relate to traffic and vehicle movements, unacceptable land use activities, increased stormwater flows and infrastructure considerations, increased height and building density effects and the provision of community activities. The only way to give effect to the objectives and policies is to amend them. Otherwise, NIL will be non-complying. It is EDL's submission that the changes required are significant.

Effects of Traffic and Vehicle Movements

(Objective 2: Urban Design, Objective 3: Connectivity, Objective 6: Infrastructure)

3.2 In relation to Urban Design, the objective of the zone is to demonstrate best practice in urban design including the location of activity areas, roading networks etc¹⁵. In relation to Connectivity the objective under the NSZ is (inter alia) to ensure roading is well-connected internally and to networks outside the zone (including promoting a logical and legible road lay-out. In relation to Infrastructure the objective is to (inter alia) provide safe and efficient road access to the zone from Aubrey Road and Outlet Road.

3.3 The proposed plan changes will generate additional traffic from the increased residential density, commercial floor area and the presence of a supermarket as referred to in the submitter's evidence and testimony given by Mr Andy Carr. This is accepted. The NL subdivision has been designed and the roads completed, with the result that the routes for traffic to take, down Northburn Road and Mt Linton Avenue to access the D1 zone are considerably narrower and not suitable as an accessway to the D1 zone.

3.4 Mr Carr submitted in evidence that vehicles are far more likely to take the route down Outlet Road and he has calculated the increased capacity and pressure on Outlet Road consequent on the Plan Changes, based on residents within Northlakes and those frequenting a retirement village and/or supermarket of this size from the available catchment area. An estimate of between 127 and 159 vehicles for the increased residential lots each hour is referred to and approximately 180 per peak hour (2 way) for the supermarket. It would seem obvious with these numbers that traffic will back up on Outlet Road and will lead to increased traffic traveling the routes of Northburn Road and Mt Linton Avenue. This is of concern.

¹⁵ Objective 2 NSZ 12X2

- 3.5 But that concern is compounded, when the figures relied upon, do not appear to take account of traffic generated for the Hikuwai subdivision and those who will be accessing the Hikuwai subdivision directly opposite Northlake Drive on Outlet Road and using this as their main point of access. In this way the evidence underlying the assumptions with respect to traffic management in support of the plan changes is flawed and would seem to significantly underestimate the likely traffic impact.
- 3.6 It is respectfully submitted that the Plan Changes cannot be in keeping with principles of best practice in urban design and Objective 2 of the NSZ. Equally it is questionable whether this amount of traffic could safely and efficiently access Outlet Road and Aubrey Road in accordance with Objective 6 – Infrastructure, Policy 6.1.
- 3.7 Finally, it is submitted that the additional traffic generated by the proposed plan change will result in adverse effects on the amenity of adjoining properties. The increased density of housing and in particular the presence of a supermarket within the Northlake Special Zone (NSZ) will adversely affect the character and amenity of the wider NSZ through the introduction of larger commercial delivery vehicles and increased traffic and associated vehicle noise and headlight throw. The likely hours of operation for the supermarket will result in increased traffic volumes in the evenings when the receiving environment is likely to be more sensitive to noise and light spill.
- 3.8 It is noted that the potential adverse effects of the proposed plan change in terms of traffic and vehicle movements, and in particular construction and commercial traffic on Northburn Road and Mt. Linton Avenue are acknowledged by Council, albeit that it is recommended that these effects are addressed by using construction management plans and signage to direct such traffic to use Outlet Road through the resource consent process. It is submitted that while this approach may avoid adverse effects on Northburn Road and Mt. Linton Avenue, it fails to acknowledge or consider the adverse effects of the increased traffic being directed towards and focused on Outlet Road and its adjoining properties.

Effects of increased stormwater flows – Objective 6: infrastructure

- 3.9 EDL have significant concerns regarding the servicing of the proposed plan change and in particular the downstream effects of stormwater. Plan Change 45 was approved on the basis that

post-development stormwater flows are no greater than pre-development flows. This was the basis on which NIL obtained their resource consent. The impact downstream was supposed to be neutral. This was in accordance with QLDC's Land Development and Subdivision Code of Practice which provides at Clause 4.2.4:

"The implications on future development on adjoining and should be on the basis of replicating the pre-development hydrological regime whereby the maximum rate of discharge and peak flood levels post-development are no greater than pre-development."

- 3.10 The overall view from NL and the Council in their s42a report on stormwater impact as a result of the Plan Changes would seem to be as follows:

*"The applicant considers that stormwater design can be addressed through the outline development plan process. Mr Vail notes that no specific stormwater details have been provided, except to note that the applicant considers that options of collecting and controlling stormwater and discharging to the Clutha River, or to dispose of onsite using stormwater infiltration methods. I note that the former method of discharging stormwater to the Clutha may not be likely to implement Northlake Special Zone Policy 6.4 'to utilise low impact design solutions that minimise adverse environmental effects resulting from stormwater runoff'. Mr Vail accepts that stormwater details are provided these can be addressed at the time of the outline development plan and subdivision through the QLDC Land Development and Subdivision Code of Practice, and provisions in the NSZ and the ODP's Subdivision, Development and Financial Contributions Chapter 15. Overall, Mr Vail considers that the approach to stormwater is acceptable but that detailed review will be required at the time of a more detailed outline development plan or subdivision resource consent application."*¹⁶

- 3.11 It is submitted that with such scant evidence on stormwater there is little for EDL to submit upon other than to provide the Commissioners with some background as regards the stormwater effects on the environment downstream as witnessed by EDL to date.
- 3.12 Although EDL could have provided expert evidence on this point, it recognised that there would be little for any expert to comment upon, based on what is included in support of the requester's plan changes which would seem to simply note that stormwater design will utilise

¹⁶ S42a Report paras 12.10 – 12.13

low impact design solutions and that the detail of such plans will be agreed in due course. More fundamentally however, it would be inappropriate for EDL to call expert evidence in relation to its stormwater systems at this juncture however, as EDL is still awaiting resource consent and Council's agreement to the stormwater system it has proposed on its site. At this stage, it would be premature for EDL's experts to make submissions about stormwater system design which are still under consideration.

- 3.13 It is of relevance that intensive development continues on the NIL site and this factor combined with the installation of the two 900mm pipes has resulted in EDL's land being flooded repeatedly. **Appendix 3** is a copy of a photograph taken during a moderate rainfall event on 12 October 2016 before the replacement of the small 300mm pipe between NIL's land and EDL's with two larger 900mm pipes.
- 3.14 Attached at **Appendix 4** is a copy of a photograph taken during a moderate rainfall event on 17 July 2016 after the small pipe between NIL's land and EDL's land was replaced with two 900mm pipes.
- 3.15 Further flooding events occurred on 17 August 2017, 1 February 2018, 28 April 2018 and 22 May 2018. (**Appendices 5,6,7 and 8**).
- 3.16 Although NIL have submitted that stormwater will be collected, treated and disposed via Low Impact Design and constructed so that there is no increase from pre to post – development flows leaving the site¹⁷ EDL do not believe that this requirement is being achieved on their land (being the land to the west of Outlet Road) currently or that it can be in the future. Put simply, EDL has no confidence in NIL's ability to manage its stormwater.
- 3.17 EDL's land has been flooded during moderate rainfall events on no less than five separate occasions. This has resulted in significant adverse environmental impacts which has seen the flooding cause walking and cycling tracks in the Hikuwai reserve downstream to be washed away and sediment and silt deposits discharged into the Clutha River. The Otago Regional Council have been involved and have taken enforcement action against NIL as a result. There have been a number of articles in the press regarding this and EDL is particularly concerned

¹⁷ See Page 36 of John Edwards and Associates' Report "Assessment and Effects on the Environment" appended to Plan request dated 14 December 2017.

that they are now also becoming the subject of bad press and a degree of public opprobrium, all due to NIL's inability to retain, treat and dispose of its stormwater appropriately.

(Appendices 9 and 10 by way of example).

- 3.18 As a result it is submitted that the Plan Changes will have an adverse impact on the NSZ's objective – infrastructure. The adverse environmental effects resulting from stormwater runoff over the past year, cannot be considered to be minor. Such flooding events put NIL in direct breach of the NSZ and also in breach of higher plans and policies of the QLDC (Lane Development and Subdivision Code of Practice) and ORC.
- 3.19 Finally, it should be noted that NIL also launched High Court proceedings against EDL¹⁸ for its failure to sign an easement in gross instrument with QLDC, providing for stormwater to be conveyed across EDL's land "*in any quantity*" which EDL noted at the time would be in breach of QLDC's Land Development and Subdivision Code of Practice and also highly premature given that EDL's stormwater and resource consent was still with QLDC awaiting sign off.
- 3.20 Although the proceedings have now been discontinued by NIL, the easement instrument wording is still with QLDC's solicitors Lane Neave who have confirmed that this will be the wording of the easement in gross instrument to be registered.
- 3.21 This therefore means that any suggestion by NIL that post-development flows of stormwater mirroring pre-development flows as noted in their evidence in support of the Plan Change, is a fallacy - this is not what the easement instrument to be registered will be providing, this is not what is occurring currently and this will seemingly not be the case in the future.
- 3.22 The downstream impacts of increased impervious surfaces and commercial development as a result of the proposed plan changes will therefore create even greater detrimental impact on the stormwater arrangements of the ESZ than those which exist currently.
- 3.23 It is worth noting that EDL is pursuing relief in the High Court¹⁹ as it believes that NIL is in breach of a 2013 Easement Agreement which governs the easement granted to NIL to convey

¹⁸ CIV-2017-425-000064 *Northlake Investments Ltd v Exclusive Developments Ltd*

¹⁹ CIV-2017-425-000064 HC Invercargill

its stormwater across EDL's land and which provides that NIL cannot increase the catchment area for its stormwater and that NIL will be responsible for infrastructure costs relating to the conveyance of this stormwater such as piping. EDL has already taken steps to divert NIL's stormwater at great expense so as to keep it separate from its own, to avoid its own stormwater discharge being contaminated by NIL's, which at various times has been obviously untreated. The current stormwater approach on the requestor's land is making it increasingly difficult for EDL to develop the land to the east of Outlet Road.

Building density effects – Objective 2 Urban design

- 3.24 The development of the EDL land is being progressed based on the density of development provided for by the NSZ and EDL consider that the increase in density provided for by the proposed plan change and the increase in impervious surfaces that are likely to result from the increased retail/commercial floor area and associated carparking will exacerbate this issue and result in significant adverse downstream effects. EDL would submit that further servicing information is required in order that Council can have certainty that the proposed plan change will accord with the National Policy Statement on Urban Development Capacity (which requires Council's to ensure that rezoned areas are appropriately serviced) and note that the requestor does not appear to have provided any such evidence in the pre-circulated statements and reports.
- 3.25 The proposed increase in retail/commercial floor area and the provision for a 1250m² supermarket will result in a significant increase in the bulk of retail/commercial buildings enabled by the NSZ. EDL consider that the increase in retail/commercial floor area and associated bulk of buildings, the inclusion of a supermarket and associated car parking with some 50 – 100 carpark spaces, signage and lighting, will result in adverse effects on the character and amenity of the wider NSZ including the EDL land to the east of Outlet Road. Potentially, the increased building heights and set back could block views and solar energy for properties surrounding those buildings in the D1 zone, whether on the Northlakes or Hikuwai subdivision.
- 3.26 Future retail/commercial buildings and associated signage and lighting will be visible in the key western outlook from the EDL land. This will predominantly impact on those purchasers/prospective purchasers at Hikuwai whose properties face toward NIL's subdivision.

Additionally, this will impact on those purchasers/prospective purchasers whose properties are close to the sites for the village centre/supermarket. The NSZ Rules require council/the Panel to have regard to the adverse effects of the non-residential activity on the outlook of people on adjoining sites, including the loss of residential character²⁰, when implementing a Plan's Policies and fulfilling its functions and duties under the Act.

- 3.27 For those purchasers at Northlakes, who own sites near to the village centre at Northlakes, it is submitted, that they bought into a subdivision where they were led into thinking that they would be getting a pool, fitness centre and tennis courts and somewhere that would be a central focal point for the community.²¹
- 3.28 A supermarket is not a "small scale neighbourhood retail activity". It doesn't serve the needs of a community in the way in which a pool or medical centre might. It is a commercial activity which many residents of NIL, particularly those bordering the site(s) where the supermarkets would be located, would be likely to object to. EDL would observe that they seem conspicuous by their absence in the hearing on the Plan Changes. Although purchasers of sites within NIL have not made submissions in relation to the Plan changes, EDL would note that this is likely due to the restrictive covenant within the Sale and Purchase agreements which prevents purchasers in the Northlakes' subdivision from doing so, i.e.:

"26: No objection

26.1 The Purchaser covenants that:

- (a) (i) It will not object to or Lodge any Submission against any Planning Proposal;
- (ii) Obtain an order, injunction or other remedy or make any complaint against any contractor or consultant which relates to Development..."

- 3.29 Procedural fairness extends to the public as well as to the submitter and the council. It does not seem fair that those with a vested interest in the outcome of the Plan Changes would be prevented from making submissions in opposition.

4. Trade Competitor

²⁰ 12.34.5.2 (vi)(i)

²¹ 12.X.1 para II Community

4.1 Under the RMA²², any person may make a submission but if the person is a trade competitor of the person who made the request, the person's right to make a submission is limited by subclause (1B). Subclause (1B) provides a trade competitor of the person who made the request may make a submission, only if directly affected by an effect of the proposed change that:

- adversely affects the environment; and
- does not relate to trade competition or the effects of trade competition

4.2 It is submitted that EDL is not a trade competitor for the following reasons:

- the Plan Changes to the NSZ apply to EDL as they do to NIL as both parties own land within the NSZ. It is difficult to see how they could be seen as trade competitors in this instance;
- EDL would not be opposing the Plan changes were it not for the environmental impacts noted in 3 above and other matters which impact on the legal test of whether the Panel has jurisdiction to amend the Plan in the ways requested;
- It has been noted by Mr Goldsmith in his submissions that the inclusion of a supermarket in the NSZ could be seen as a benefit to the residents of NL and adjacent properties at Hikuwai. EDL do not necessarily agree with this submission but would submit it is further evidence that EDL is not a trade competitor for the purposes of these submissions.

5. Conclusion

5.1 In summary, EDL oppose the Plan changes on the following grounds:

- (a) The Plan changes are significant and would require substantial change to the NSZ and District Plan including amending the Plan to bring a prohibited activity within the NSZ (fish and meat processing) amending the objective of the NSZ to provide for a supermarket to come within a "small scale retail activity", with a consequent rule change to the maximum total retail floor area not exceeding 1000m² and individual retail activity not exceeding 200m² and the removal of the condition requiring the community service of a pool to be installed.

²² S96(1) and 96(2) Resource Management Act 1991

(b) The implementation of these Plan Changes would have a deleterious impact on the surrounding residents of the Northlakes subdivision and those in the Hikuwai subdivision, who would suffer increased noise, vibration, glare, traffic and parking congestion as a result of the Plan Changes.

(c) The implantation of these Plan Changes would also have a significant impact on the environment, particularly as regards the stormwater run off from the increased impervious services and higher intensity of increased dwellings and commercial space in D1 and its downstream effects on EDL's land and discharges into the Clutha River.

5.2 Unless there are any questions from the Panel, those are EDL's submissions.

Legend:

Stage 1

Stage 1 (Large Lots)

Stage 2

Stage 3

Stage 4

Stage 5

Future Stages

Future Stages (Large Lots)

All Areas & Dimensions
Subject to Final Survey



Outlet Road

Aubrey Road

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Protection Ar

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Reserve

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Client Location:

Exclusive Developments Ltd
792 Aubrey Road
Wanaka

Purpose/Drawing Title:

Hikuwai Sales Plan
Approximate Areas & Dimensions

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APPENDIX "3"

12/10/16.



APPENDIX "4"

17/7/16.



Appendix "S"

17/8/17



Appendix "6"

15/4/18.



28/4/18.

Appendix "7"



"APPENDIX "8"

22/5/18

