

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 SEEKING LEAVE TO FILE FURTHER
SUBMISSIONS ON JURISDICTION ON BEHALF OF
WILLOWRIDGE DEVELOPMENTS LIMITED and CENTRAL
LAND HOLDINGS LIMITED**

Dated this 13th day of June 2018

MACALISTER TODD PHILLIPS

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BACKGROUND

- [1] By email dated 5 June 2018, Ms Evans circulated, a document titled “Summary of Matters Raised at the Hearing on 6 June 2018 – Planning: Craig Barr.”
- [2] The document produced by Mr Barr is the first time submitters have been provided with the jurisdictional basis for the introduction of new Objective 7, and associated policies.
- [3] While the Hearings Panel has not to date invited comment on the jurisdiction advanced by Mr Barr to support his new policy suite, given the focus of this issue to the legal submissions and evidence of my clients, it is submitted as a matter of procedural fairness, it is now proper to receive such comment.
- [4] The issue of jurisdiction should properly have been addressed in Mr Barr’s s42A report. The failure to do so has prejudiced my clients, because the jurisdictional basis to support the recommended changes has now only been provided as part of the officer’s reply.
- [5] Accepting my clients’ legal submissions in response to this narrow issue will not prejudice the Requestor. As Counsel understands it, the Requestor’s right of reply is to be exercised in writing, due at the end of the month.

RESPONSE TO MR BARR’S POSITION ON JURISDICTION

- [6] With respect, it is submitted that Mr Barr’s answer to the jurisdictional issue of where scope is to be found to introduce Objective 7, and associated policies is an incorrect application of the law to the facts of this case.

- [7] Mr Barr attaches a legal opinion provided to the Council as part of its Proposed District Plan process. That opinion is necessarily generic and not fact specific. It does not consider the specific issues in play in this plan change process. It therefore offers very little assistance to addressing the jurisdictional issue at large, other than setting out some statements of applicable law.
- [8] During the presentation of my legal submissions, I handed up the two *Halswater* cases.¹ Those cases are not referred to in the Council's legal advice. *Halswater* however, is directly on point.
- [9] Plan Change 53, being a private plan change is distinguishable in both character and scale to the Proposed District Plan to which the generic opinion relates.
- [10] The Proposed District Plan constitutes a district wide review of objectives, policies and rules, all are "up for submission", and all have been notified as a change to the status quo. By comparison, as was the case with *Halswater*, Plan Change 53 is dealing with a discrete plan change to an Operative Zone. As in *Halswater*, the only changes sought and notified were to rules:

*"[14]....However if the only change sought is to rules then those rules must be a method designed to implement some objective or policy. Such an objective or policy can either be in the plan (or plan change), or as proposed in the submission and reference."*²

- [11] That paragraph of *Halswater* is key in my submission. It is the complete answer to the jurisdictional issue faced by the Requestor, in that:

¹ C183/2000 and AP41/00 (HC)

² *Halswater C183/2000*

- [a] the objective/policy which implements the new rule is not contained in either the operative plan, or the change to it; and
- [b] there is no concomitant policy proposed in any submission.

[12] Paragraph [28] of *Halswater* is also pertinent:

“[28]....Normally if an objective or policy is approximately suggested by a submission then the Court will take a flexible approach to allow it to be assessed under section 32 of the Act.....However if the submissions and references do not contain any relevant suggestions for appropriate objectives and policies then the Court should not let the referrers remedy complete absence at the hearing....”

(emphasis added)

- [13] There is no reference made in any submissions to the Plan Change even “approximately suggesting” any change to the operative objective or policy framework. My clients submit again, there is quite simply a lack of jurisdiction to introduce the policy set suggested by Mr Barr.

RELIEF REQUESTING “REJECTION” OF THE PLAN CHANGE PROVIDES SCOPE

- [14] Mr Barr applies the legal opinion to the effect that because my client’s submissions sought the plan change be rejected, there is scope to introduce Objective 7 and associated policies. This is quite the “quantum leap” on any assessment, and on the facts is plainly wrong.
- [15] It is submitted that Mr Barr also “conflates” the jurisdictional test normally applied in the context of a resource consent application

where he refers to a “reduction” in effects from the proposal as notified.

- [16] Mr Barr’s amendments do not address the concerns of the submitters at all, rather they facilitate the outcome sought by the Plan Change, that is, a supermarket and additional retail provision. This very antithesis of what was sought by submitters. Rather than “addressing” the concerns of submitters, somewhat ironically his new policy suite arguably extends the retail provision within the Zone well beyond its notified ambit.

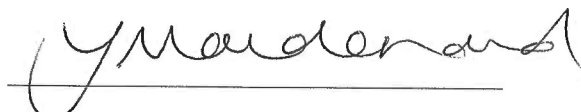
- [17] The legal opinion relied upon by Mr Barr contains the useful qualifier that amendments must not go beyond what was fairly and reasonably raised in the submission.

- [18] The amendments Mr Barr proposes are not within the continuum of what was notified and the relief sought – that is – what was fairly and reasonably raised in submissions.

- [19] By his own analysis, what was notified (a rule change only, with no changes to the operative policy framework) extends beyond that operative policy framework. The relief sought in submissions asks for the additional retailing capacity to be refused. No submissions ask for the policy framework to be revisited, on “enlarged.” To the contrary, impliedly the submissions support the existing policy framework, enabling as it does, small scale neighbourhood retail.

- [20] The amendments proposed by Mr Barr go beyond what was notified (i.e. the changes sought by Northlake) and cannot find any support from the relief sought by submitters. As above, Mr Barr’s amendments facilitate the additional retail sought by the rule change, being the very antithesis sought by the submitters – which was to maintain the status quo, so far as retail provision is concerned.

[21] If the Hearings Panel is in any doubt concerning the jurisdictional issues at large in this case, then it is respectfully submitted that they seek their own legal opinion with respect to the matters in issue.³



J E Macdonald

Counsel for Willowridge Developments Limited and Central Land Holdings
Limited

³ See also paragraph 2.5, Barr, Summary of Matters Raised.