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**BEFORE THE QUEENSTOWN-LAKES DISTRICT COUNCIL**

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<b>UNDER THE</b>	<b>RESOURCE MANAGEMENT ACT 1991</b>
<b>IN THE MATTER OF</b>	<b>Proposed Private Plan Change 54 to the Operative Queenstown-Lakes District Plan</b>
<b>BETWEEN</b>	<b>NORTHLAKE INVESTMENTS LIMITED</b>
	<b>Applicant</b>
<b>AND</b>	<b>OFFICE FOR MĀORI CROWN RELATIONS – TE ARAWHITI</b>
	<b>Submitter</b>

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**LEGAL SUBMISSIONS**

**19 July 2023**

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May it please the Panel

## **INTRODUCTION**

1. We act for the Office of Māori Crown Relations – Te Arawhiti (**Te Arawhiti**).
2. Te Arawhiti lodged a submission (#20) and further submission (#33) on Plan Change 54 (**PC54**).
3. The land commonly known as **Sticky Forest** (Section 2 of 5 Block XIV Lower Wanaka Survey District) is currently Crown land and is administered by Te Arawhiti. That land is committed in substitution for land at ‘the Neck’ which was originally allocated to individuals by the Crown under the South Island Landless Natives Act 1906 (**SILNA**). The Crown failed to transfer the land at ‘the Neck’, in breach of the Treaty of Waitangi. The Crown has committed Sticky Forest as redress for that breach.
4. Te Arawhiti has lodged briefs of evidence from:
  - 4.1 Ms Monique King – Senior Adviser Implementation at Te Arawhiti – in relation to the history of the Hāwea / Wānaka Sticky Forest land, the history of the land, the context in which PC54 has arisen, and the current and potential future use of the Sticky Forest land; and
  - 4.2 Ms Katrina Ellis – Planning Manager of the South Island at The Property Group – in relation to planning matters.

## **IMPORTANCE OF PROVIDING LEGAL ACCESS TO STICKY FOREST**

5. As Ms King explains, at present there is no legal access whatsoever to Sticky Forest, and there is very limited physical access. There is currently a network of informal walking and mountain biking trails on the land, which themselves are accessed via trails on adjoining private land to the south and reserve land to the west. PC54 proposes to establish legal road and infrastructure access to the boundary of Sticky Forest.
6. Northlake Investments Limited (**NIL**) has agreed to establish legal road and infrastructure access to Sticky Forest through its land. PC54 is an

opportunity to provide for access which is integrated with the road network in the Northlake Special Zone, as that road network is developed and constructed. The access link can be properly incorporated into the road network in an orderly way, and Mr Carr and Mr Penny have confirmed the proposed link can be adequately accommodated from a transport perspective.

7. Ms King has explained in her evidence the history behind the landlocking of Sticky Forest. It is not reasonable to expect the future landowners (who are receiving the land as redress for breaches of the Treaty of Waitangi and in fulfilment of commitments made to their ancestors) to live with the result of the historical landlocking, over which they had no control or knowledge. Irrespective of the future zoning and land use, the owners of Sticky Forest should be able to have reasonable physical and legal access to their land.

#### **SUMMARY OF TE ARAWHITI POSITION**

8. PC54 is a narrow plan change. Its purpose is to enable access and an infrastructure corridor through the Northlake Special Zone to Sticky Forest, and to expand the area available for urban residential purposes in the western part of the Northlake Special Zone.<sup>1</sup>
9. Te Arawhiti is interested in the proposed provision of legal road and infrastructure access to the Sticky Forest land and the amendments which are intended to manage traffic effects from land use on Sticky Forest and have been recommended in the s42A Report dated 29 June 2023 prepared by Mr Munro (**s42A Report**), and in the evidence of Mr Brown for NIL.
10. Establishing legal access to Sticky Forest addresses a straightforward issue of integrated management – landlocking and poor connectivity between landholdings and public road networks is undesirable. Where sensible opportunities arise to rectify access issues in an orderly and well-planned way as new development occurs, those opportunities should be taken.<sup>2</sup>

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<sup>1</sup> Northlake Investments Limited *Request for Plan Change* February 2022, at 1.1

<sup>2</sup> See for example *Rae v Tasman District Council* ENC Wellington W26/06, 6 April 2006.

11. The access proposed to Sticky Forest is necessary to link that property to the public road network and to enable reasonable use of the land, however PC54 is not determinative of any future land use on Sticky Forest.
12. Failing to establish the access link will have obvious adverse effects on the landowners of Sticky Forest. Regardless of zoning, meaningful use of the land in future depends on legal road access and infrastructure connections. The land surrounding Sticky Forest is becoming increasingly built-up and developed – the Northlake block is the last piece of undeveloped land adjacent to Sticky Forest through which to establish properly planned and integrated access.
13. Ms Ellis and Mr Munro identify that PC54 is consistent, in particular, with the Northlake Special Zone objective of providing “[d]evelopment that is well-connected internally and to networks outside the zone.” Mr Munro sets out at [8.6]-[8.11] of the s42A Report the benefits of PC54, and the reasons supporting provision of access, and Ms Ellis considers the positive effects of this plan change (and negative effects of declining) in her evidence.

#### **Amended provisions supported by Te Arawhiti**

14. Te Arawhiti strongly supports the drafting proposed by NIL for the new non-complying activity rule 15.2.3.4 (xx), which is now proposed to read as follows:<sup>3</sup>

In the Northlake Special Zone, any subdivision of Activity Area B6 that does not establish legal vehicle and infrastructure servicing access to Sticky Forest (Section 2 of 5 Block XIV Lower Wanaka Survey District).

15. Te Arawhiti also strongly supports the amended version of Policy 3.1 in the Northlake Special Zone proposed by NIL, as follows:<sup>4</sup>

3.1 To ensure that roading is integrated with existing development, and the existing road network, including provision for legal vehicle and infrastructure servicing access to Hāwea/Wānaka - Sticky Forest)

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<sup>3</sup> Brief of Evidence of Mr Brown, 6 July 2023, Attachment B.

<sup>4</sup> Noting that there should be a macron on Hāwea.

(Section 2 of 5 Block XIV Lower Wanaka Survey District) (to the west).

16. Provided the above amendments are accepted, Te Arawhiti no longer considers the original relief sought in its submission (a new policy and associated new provision in Chapter 15 Subdivision) is required.

**Amended provisions opposed by Te Arawhiti**

17. The s42A Report at [10.39] and [10.52] recommends the following additional amendments to the Northlake Special Zone and Subdivision chapter provisions to manage traffic effects from land use on Sticky Forest:

17.1 a new restricted discretionary activity rule to be added as new clause (v) to Rule 12.34.2.3 – requiring resource consent for *“Any traffic generated by land use activities within Sticky Forest (Section 2 of 5 Block XIV Lower Wanaka Survey District) seeking to access and use roads within the Northlake Special Zone”*;

17.2 matters of discretion to new restricted discretionary rule 12.34.2.3(v) as follows:

(a) Total traffic volumes and means to safely accommodate that.

(b) Provision of road or network upgrades to accommodate increased vehicular, cycle and pedestrian traffic.

(c) Streetscape amenity and the amenity of residential allotments adjoining a road or roads proposed to accommodate an increase in traffic volumes.

(d) In the case of forestry and/or construction-related traffic:

1. the limitation or avoidance of frequent or high-volumes of High Productivity Motor Vehicles (HPMV) (as defined in Land Transport Rule 41001/2016) and/or Heavy Commercial Vehicles (HCV);

2. the suitability of any Construction Traffic Management Plan or Forestry Traffic Management Plan, and any associated measures or temporary works proposed; and

3. the imposition of weight restrictions on roads.

- 17.3 an exclusion for the above new rule from 12.34.3 which provides that all restricted discretionary activities are to be processed on a non-notified basis; and
- 17.4 further amendments in relation to use of the roads by heavy vehicles:
- 17.4.1 to non-complying activity rule 15.2.3.4(xx) to include “a weight restriction so as to limit use by High Productivity Motor Vehicles (HPMV) (as defined in Land Transport Rule 41001/2016”); and
- 17.4.2 to rule 12.34.2.3(i)(b) to add reference to a weight restriction applying to High Productivity Motor Vehicles.
18. Te Arawhiti opposes those recommendations.
19. NIL’s evidence and “Part 1 legal submissions” dated 6 July 2023 proposed further amendments in response to the s42A Report’s recommendations, being:
- 19.1 new policy 3.7;
- 19.2 further amendments to the s42A Report’s new restricted discretionary rule 12.34.2.3(v) and matters of discretion; and
- 19.3 a new Site Standard xvi related to motorised vehicular traffic generated within Sticky Forest seeking to access and use roads within the zone.
20. Te Arawhiti opposes these proposed amendments.
21. The new provisions proposed by the s42A Officer and NIL are collectively referred to in these submissions, for convenience, as the **Traffic Provisions**.
22. The reasons why Te Arawhiti is opposed to the Traffic Provisions are explained below. Ms Ellis addresses these provisions further in her planning evidence.

## **ENVIRONMENT COURT APPEAL CONSIDERING ZONING AND EFFECTS OF LAND USE ON STICKY FOREST**

23. There is a live appeal in the Environment Court (*Bunker & Rouse v Queenstown-Lakes District Council* ENV-2018-CHC-69) considering the zoning and land use rules for Sticky Forest. This is an appeal from Council decisions on the Proposed District Plan.
24. The Environment Court is considering among other things:
  - 24.1 the appropriate land use zoning and provisions for the Sticky Forest land;
  - 24.2 provisions to manage effects arising from future harvest of plantation forest on the Sticky Forest land (including traffic effects); and
  - 24.3 traffic effects arising from the proposed rezoning and residential land use.
25. While the Panel cannot pre-empt the outcome of the Environment Court proceedings, it should be cognisant that the issue of the appropriate zoning of Sticky Forest, land use rules, and all associated effects are before the Environment Court for determination. PC54 is not the appropriate forum to consider these matters – there is insufficient evidence before the Panel to do so, there is limited scope in this plan change, and the Environment Court is already seized of a comprehensive appeal regarding land use on Sticky Forest.

## **PROPOSED TRAFFIC PROVISIONS CONTROLLING LAND USE ON STICKY FOREST**

26. The Traffic Provisions appear generally motivated by an assumption that the provision of access will somehow enable potential future land use at a large scale (residential development of the entire block of land, or harvest of the entire block of land) – though there is no identified basis for that assumption other than the hypothetical potential for such land use to occur. The Traffic Provisions also appear to be based on an assumption that

there would otherwise not be a process through which to consider the effects of any future land use.<sup>5</sup> Those assumptions are misplaced.

27. PC54 is narrow. It is about the establishment of legal road access to the Sticky Forest land, reflecting the general desirability of ensuring land is properly connected to road and infrastructure networks. Provision of access is important to ensure the land is use-able and properly connected to the rest of Wānaka. PC54 does not, in and of itself, authorise any future land use nor does it have any bearing on determining the activities that may legally take place on Sticky Forest under the District Plan according to the land's current zoning.

28. Te Arawhiti opposes the Traffic Provisions on the following specific grounds:

#### **Out of scope**

28.1 There is no scope to impose land use controls on Sticky Forest through PC54 – this plan change relates to the establishment of the access road through the Northlake Special Zone only. While the effects of creating the access road are relevant to the Panel's consideration, this does not open the door to speculation about possible future land use on Sticky Forest and associated traffic effects.

28.2 The s42A Report states that the provisions relate to effects which may be felt within the Northlake Special Zone. But that does not bring the provisions within scope – the question is whether the provisions relate to effects that arise from the PC54 proposal.<sup>6</sup>

28.3 The Traffic Provisions have been recommended in response to submissions which raise concerns about traffic related to possible future land use on Sticky Forest.<sup>7</sup> Those submissions are not

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<sup>5</sup> S 42A Report, at [10.23].

<sup>6</sup> Resource Management Act 1991, s 32(1)(c) requires evaluation of the proposal which "contains a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal."

<sup>7</sup> S42A Report, at [10.22] and [10.47].



properly “on” PC54 – they raise issues that would arise from a change of land use on Sticky Forest, not from the establishment of legal access in and of itself.<sup>8</sup> The submissions, s42A Report and accompanying traffic assessment are not focused on traffic generated by existing land use on Sticky Forest, for example.

- 28.4 The Traffic Provisions pre-empt the current Environment Court proceedings and future consenting processes associated with land use on Sticky Forest. Those processes are the appropriate points at which to consider effects arising from specific future activities on that land, and any effects that future activity may generate on adjoining land.

#### **Unlawful aspect**

- 28.5 Insofar as the Traffic Provisions attempt to place more stringent controls on harvesting of plantation forest, they are unlawful.
- 28.6 The Traffic Provisions purport to set rules which prevail over the Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017 (**NESPF**) and essentially make harvesting a restricted discretionary activity.
- 28.7 Harvesting of the plantation forest outside of the ONL overlay would be a permitted activity pursuant to the NESPF while the Sticky Forest land remains rurally zoned. Section 43B(1) RMA states that a rule which is more stringent than a national environmental standard prevails over the standard if the standard expressly says that a rule may be more stringent than it. The NESPF only allows district plan rules to be more stringent for a narrow range of reasons (including the protection of outstanding natural

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<sup>8</sup> A submission is on the plan change if:(a) the submission addresses the extent to which the plan change would alter the status quo; and (b) the submission does not cause the plan change to be appreciably amended without real opportunity for participation by those potentially affected. – see *Re Otago Regional Council* [2022] NZEnvC 69.

landscapes and features).<sup>9</sup> The NESPF does not enable a district plan rule to be more stringent to manage transport effects.

### Unnecessary

28.8 Regardless of the above legal issues, the Traffic Provisions are unnecessary. The provisions attempt to manage effects that are already managed by other aspects of the plan or by non-RMA methods, and they are based on speculation about the extent of the future land use on Sticky Forest.

28.9 The s42A report records that the Traffic Provisions are recommended because:<sup>10</sup>

...there is at this time no way of knowing what might come to be proposed within Sticky Forest, it is not possible to ascertain to any meaningful level of certainty what traffic and transportation impacts might result from the use and development of Sticky Forest within the [Northlake Special Zone] as a result of potential future traffic generated within Sticky Forest...

28.10 Sticky Forest is zoned rural and is partly covered by an outstanding natural landscape (**ONL**) overlay. Based on the present zoning, it is possible to identify the range of possible permitted activities that could be undertaken. Any other potential new land use will require resource consent in accordance with the provisions of the Plan. The applicable planning rules and consenting processes will manage the effects of those activities, including potential traffic effects, where relevant.

28.11 The extent to which the Panel may take into account potential future residential development on Sticky Forest is limited – the outcome of the rezoning appeal is not certain. However, for completeness and to ensure the Panel has the correct contextual information before it, Mr Penny’s evidence addresses the potential

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<sup>9</sup> Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017, reg 6.

<sup>10</sup> S 42A Report, at [1.4].

extent of future development sought through the rezoning appeal.<sup>11</sup>

28.12 In relation to the aspects of the Traffic Provisions seeking to manage traffic effects from potential future harvesting of the plantation forest:

28.12.1 Harvesting of any of the land which falls within the outstanding natural landscape (**ONL**) overlay will require resource consent from the Council, with non-complying activity status.

28.12.2 If the rezoning sought in the Environment Court is successful, most of the Sticky Forest land outside of the ONL will have an urban zoning and the NESPF will no longer apply to that land. Specific rules to manage harvesting of plantation forest (including traffic effects) are proposed as part of the rezoning request and are before the Environment Court for determination.

28.12.3 Regardless of the above, as Mr Carr explains (and as confirmed by Mr Penny),<sup>12</sup> potential temporary effects on safety or on roading infrastructure associated with any future use of the Northlake roads by logging trucks would not be unmanaged – traffic management permits will be required from the Council, as the Road Controlling Authority, in the event that there was ever a need for logging trucks to access Sticky Forest through the roads in the Northlake Special Zone. Mr Penny and Mr Carr explain that there are many potential ways in which traffic can be managed and effects could be mitigated, and the roads in

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<sup>11</sup> The scope of the rezoning sought on appeal is not open-ended and it could not result in rezoning of the entire Sticky Forest block of land. As Mr Penny explains, at most, approximately 150 residential lots could be delivered through the rezoning sought in the Environment Court appeal.

<sup>12</sup> Brief of Evidence of Mr Carr, 6 July 2023, at [29]-[39]; Brief of Evidence of Mr Penny, 13 July 2023 at [7.4]-[7.7].

question are sufficiently wide to accommodate use by heavy vehicles, if that were to be proposed in the future.

28.12.4 The existence of adequate methods outside of the District Plan rules to manage temporary traffic effects associated with logging goes to the necessity of the Traffic Provisions that are now proposed through PC54. Not all management of effects has to occur through plan rules. Section 75(1)(c) RMA says that a district plan must state rules “(if any)” to implement the policies, and s 75(2) allows district plans to include methods other than rules for implementing the policies. The Panel must be satisfied that the provisions proposed in PC54 are the most appropriate way to give effect to the purpose and Part 2 of the RMA and achieve the purpose of the plan change (and the objectives of the district plan),<sup>13</sup> regardless of whether the activities in issue are also subject to further regulation under a different statutory regime.<sup>14</sup> However, the Panel is entitled to conclude that the effects in question are adequately managed, and the objectives and policies of the Plan will be appropriately implemented, by a non-RMA method, and rely on that non-RMA method in determining whether further planning rules are necessary and appropriate.<sup>15</sup>

28.13 In relation to the aspects of the Traffic Provisions seeking to manage traffic effects from future development of Sticky Forest for residential use:

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<sup>13</sup> In a case involving a discrete plan change, a key issue is whether the plan change implemented the existing objectives of the district plan. See *WMG Yovich v Whangarei District Council* [2015] NZEnvC 199.

<sup>14</sup> *Eyre Community Environmental Safety Society Inc v Christchurch Regional Council* [2016] NZEnvC 178 at [53].

<sup>15</sup> *Southern Alps Air Ltd v Queenstown Lakes District Council* [2008] NZRMA 47 (HC) at [70]-[78]; in the plan change context, see *Bay of Islands Maritime Park Inc v Northland Regional Council* [2022] NZEnvC 228 at [164], [182], [196]-[198].

28.13.1 The transport effects associated with the rezoning proposed for Sticky Forest are being considered by the Environment Court.

28.13.2 Nevertheless, Mr Penny has provided evidence to this Panel which confirms that the traffic generated by potential development of Sticky Forest if the rezoning appeal is successful can be safely and appropriately accommodated by the Northlake Special Zone road network.

28.14 As Ms Ellis identifies, if the rezoning is not successful, resource consent would be required for most other land use change on Sticky Forest and traffic effects associated with other potential future land use would fall to be considered as part of any such future consenting process. Attempting to speculate about possible traffic effects from undefined and uncertain future land use is not necessary, nor is it appropriate, in the context of PC54.

#### **Inappropriate and incoherent**

28.15 The Traffic Provisions would place a set of highly specific land use controls on a single block of land into the plan, within zone provisions that do not apply to that land.

28.16 As Ms Ellis identifies, the Traffic Provisions proposed in the s42A Report are unduly restrictive – applying to literally any vehicle movement associated with land use on Sticky Forest, including apparently the owners visiting their land, emergency services, or those seeking to use the land for mountain biking.

28.17 Mr Brown suggests drafting that confines the restrictions to motorised vehicular traffic generated by residential, commercial or forestry activities.<sup>16</sup> However Mr Brown's amended provision is still overbroad and unduly restrictive (and contains the same

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<sup>16</sup> Brief of Evidence Mr Brown, 6 July 2023, at [2.27].

lawfulness issue discussed above in respect of plantation forestry activities).

28.18 These rules would place significant burden on the landowners and result in impractical and unnecessarily restrictive outcomes which are disconnected with the rationale put forward for the rules in the s42A Report.

28.19 In terms of plan workability and placement of the provisions in the plan itself, the Traffic Provisions are proposed to be located in the Northlake Special Zone chapter, despite managing land use on land with a totally different zoning outside of the Northlake Special Zone. Mr Brown acknowledges this difficulty in his evidence. As Ms Ellis identifies, it is inappropriate and incoherent from a planning perspective to place land use controls for Sticky Forest into the Northlake Special Zone – this would be a poor planning outcome, and it raises workability and useability concerns. Plan users cannot be expected to check the chapters of special zones for rules that apply to land with a rural or residential zoning.

#### **OTHER MATTERS RAISED BY SUBMITTERS**

##### **Submitters seeking access be withheld to prevent development on Sticky Forest**

29. There are various submitters who seek that the Panel decline PC54 so that legal access to Sticky Forest is withheld to keep the land incapable of use

for anything other than recreation, in order that mountain biking can continue.<sup>17</sup>

30. These submitters fail to acknowledge that recreational use and mountain biking on the Sticky Forest land is not a lawfully established activity and there is no expectation or right that it will be able to continue in future. The Crown has allowed recreational use of the land while transfer to the future owners is pending. Once the land has transferred it will be private land.
31. Attempting to force ongoing public use of this land by asking the Panel to perpetuate the landlocking is inappropriate – regardless of the use to which the land is put, the future landowners will have every right to exclude the public – irrespective of whether legal vehicle and infrastructure access exists. The positive effects experienced by mountain bikers using the land informally for recreation cannot trump the interests of landowners themselves, nor the public interest in ensuring that the public road network which is established as the Northlake Special Zone develops and is eventually vested in Council properly connects the landholdings in the district.
32. As discussed above, PC54 establishes a legal vehicle and infrastructure access point to Sticky Forest. It does not determine any future land use on Sticky Forest.

### **Bike Wanaka**

33. In addition to making the same submission points as addressed above seeking decline of PC54 so that existing use for mountain biking can continue, Bike Wanaka has also suggested in its submission that PC54 should be declined because PC54 and the Sticky Forest rezoning appeal should be dealt with as a single package in a future plan change process.

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<sup>17</sup> Kostya Marchenko (1), Ben Akin-Smith (4), Jacky Toepfer (6), Berit Landgraf (9), Emily Duguid (11), Barbara Beable (12), Timothy Skima (13), Mike Toepfer (14), Hamish Rudhall (17), Matt Lewis (18), Stephen Dennis (23), Bike Wanaka Inc (24), Joanna Ashe Marasti (26), Pierre Marasti (27), Janet Musker (29).

34. The rezoning proposal for Sticky Forest which is currently on appeal was originally made as a submission on the Proposed District Plan. PC54 is a private plan change to the Operative District Plan. This Panel must deal with the proposal before it, and it is perfectly capable of making integrated management decisions which take account of other planning processes that are currently afoot. Suggesting that PC54 and the Environment Court appeal should be abandoned and repackaged to be considered at an indeterminate future point is not integrated management – it would abandon currently well-advanced processes and create significant delay which will have the effect of perpetuating the status quo (a situation Bike Wanaka clearly perceives to be preferable).
35. PC54 is a clear example of integrated management – it deals with the issue of access to adjoining land while planning the roading network for the Northlake development. The Environment Court is seized of issues relating to the appropriate land use zoning and rules for the Sticky Forest land and that matter is well-advanced. There is no upcoming future plan change proposed of the sort that Bike Wanaka suggests would be better than current processes. The Panel for PC54 must determine the issue that has been put before it.

### **Kirimoko No 3 Limited Partnership**

36. Kirimoko No. 3 Limited Partnership (*Kirimoko*) seeks that PC54 be declined because it is concerned to ensure that access is not established through Kirimoko, and that “if PC54 is approved any roading access shall terminate within Sticky Forest and not extend to Kirimoko in future”. Kirimoko also seeks a further, future, plan change process which “deals with urban form, landscape issues, boundary treatments, access and infrastructure matters across Northlake, Sticky Forest and Kirimoko as one package”.
37. There is no suggestion that a road link through Sticky Forest to Kirimoko’s land would be established through PC54. PC54 is narrow and confined to establishing the access to Sticky Forest through Northlake. There is no scope for PC54 to result in the outcome that Kirimoko says it is concerned



about and, accordingly, no rational basis for declining the plan change as Kirimoko seeks. Similarly, if PC54 is approved there is no basis for including additional provisions which state that the roading access will terminate within Sticky Forest – that is already clear from the structure plan proposed as part of PC54. No further change is necessary to address Kirimoko’s concerns.

38. Kirimoko is a party to the Environment Court proceedings relating to future land use and zoning of the Sticky Forest land. That is the appropriate forum in which to raise issues regarding land use on the Sticky Forest land and integration of future land use with existing development patterns. PC54 is a narrow plan change and does not provide scope for the matters which Kirimoko raises.

## **PART 2 MATTERS**

39. The obligation in s 8 RMA to have regard to the principles of the Treaty of Waitangi has procedural and substantive implications, which decision-makers must always have in mind.<sup>18</sup> Section 8 requires all persons exercising functions and powers under the Act in relation to the use, development, and protection of natural and physical resources (that includes this Panel) to take into account the principles of the Treaty of Waitangi.
40. The Treaty principles are relevant to the part of PC54 related to providing access to Sticky Forest – in particular the principle that past wrongs will be redressed, and active protection of the interests of the future owners of Sticky Forest. The Council should have particular regard to the history and status of Sticky Forest as substitute SILNA land and redress land in considering whether to grant PC54 and what provisions are most appropriate for inclusion in the plan.
41. As Ms King’s evidence explains, Sticky Forest is committed to specified individuals as redress for historic breaches of the Treaty of Waitangi

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<sup>18</sup> *Environmental Defence Soc Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 38, at [88].

experienced by their ancestors. Refusing the legal vehicle and infrastructure access proposed through PC54 would perpetuate the landlocking issue and significantly limit the owners' ability to pursue any reasonable use of the land (regardless of whether the rezoning currently on appeal is granted). That would be a perverse result, given those individuals are not themselves responsible for the landlocked state of the land, and given the land is provided to compensate for past wrongs associated with their ancestors' dispossession of land in the South Island.

42. The suggestion by some submitters that the future landowners should be deprived of reasonable access to their land so that Sticky Forest is forced to remain a recreational asset for certain parts of the community is unrealistic (once the land is transferred it will be private land and even if no development occurred, the owners would have every right to deny access by the public) and contrary to s 8. It would be an empty form of redress if the future landowners are forced to maintain the land as a recreational park for the public, and the purpose of the Act would be undermined.
43. Granting PC54 with the amendments to Policy 3.1 in the Northlake Special Zone and rule 15.2.3.4(xx) discussed above, and without the Traffic Provisions, would be the outcome most consistent with s 8 of the Act.

**ACCESS DEED AND NORTHBROOK RETIREMENT VILLAGE CONSENT DO NOT AFFECT COUNCIL'S POWERS OR DISCRETION IN RELATION TO DETERMINING PC54**

44. There is an agreement in the form of a deed between the Crown, NIL, and the Council which has been executed to provide for the mechanics of establishing access. The relevant details of that deed of access have been identified by NIL and by the s42A Report. Te Arawhiti agrees with the s42A Officer's summary and the conclusion at [4.31] that the access deed and conditions of the Northbrook Retirement Village consent do not limit or affect the Council's discretion to consider and determine PC54.

**CONCLUSION**

45. Te Arawhiti seeks that PC54 be accepted, specifically that Northlake Special Zone Policy 3.1 and proposed new rule 15.2.3.4(xx) are approved as contained in Mr Brown's latest drafting attached as Attachment B to his evidence.
46. Te Arawhiti seeks that the Traffic Provisions recommended by the s42A Report and as amended by NIL are declined.

19 July 2023



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A Hill  
Counsel for Office for Māori-Crown Relations  
– Te Arawhiti