

**BEFORE THE HEARINGS PANEL FOR THE  
QUEENSTOWN LAKES DISTRICT COUNCIL DISTRICT PLAN**

**IN THE MATTER** of the Resource Management Act  
1991

**AND**

**IN THE MATTER** of the Hearing Stream 13  
– Queenstown Mapping

**BY** **JARDINE FAMILY TRUST and  
REMARKABLES STATION  
LIMITED**

**Submitter No. 715**

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**OPENING LEGAL SUBMISSIONS  
FOR JARDINE FAMILY TRUST AND REMARKABLES STATION LIMITED**

**HEARING STREAM 13 – QUEENSTOWN MAPPING**

**JULY 2017**

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**GALLAWAY COOK ALLAN  
LAWYERS  
DUNEDIN**

Solicitor to contact: P J Page  
P O Box 143, Dunedin 9054  
Ph: (03) 477 7312  
Fax: (03) 477 5564  
Email: phil.page@gallowaycookallan.co.nz

## **Background**

### **The Parties**

1. The Jardines via Remarkables Station Limited own Remarkables Station. The vast majority of Remarkables Station lies above the State Highway, within the ONL. The station will continue as a farm regardless of whether the submission is accepted.
2. In 2016 lots 6 and 7 DP 504891 were sold to Homestead Bay Trustees Limited, who succeeds the Jardines under section 2A of the Act. That company is represented through these submissions.

### **Zone History**

3. The Jacks Point Resort Zone in the operative Plan is in 3 parts. Henley Downs, Jacks Point, and Homestead Bay. The reason for this is historical.
4. The first proposal for the Jacks Point resort promoted by Mr John Darby involved only the middle section (Jacks Point). That part was wholly within Remarkables Station and was purchased from the Jardines by Jacks Point Limited.
5. After consultation with the Jardines and the owners of the neighbouring Henley Downs Station, the second and third sections were added to Variation 16 (Jacks Point).
6. At the time that Variation 16 was prepared, the issue addressed by the addition of the Homestead Bay structure plan was connectivity between the Jacks Point resort and Lake Wakatipu. The Jardines wished to retain Lot 8 (163.46 ha) inclusive of the airstrip as part of the Station.
7. With the development of the Jacks Point zone and the imminent development of lots 6 and 7, the Jardines must now confront the future of lot 8. Aside from the lease income from the NZone operation, lot 8 has ceased to play an economically useful role in the performance of Remarkables Station as a farm.

## Legal Principles

8. For the most part, the Jardines have no quarrel with the legal principles set out on Counsel for the Council's opening submissions for stream 13. How those principles are applied in the context of the Jardines' submission is really an evidence-based exercise.
9. There is an element of artificiality to the proposition that Part 2 remains relevant to the consideration of stream 13 submissions because the higher order provisions remain unsettled. That is literally true to a point, but it might be safely assumed that the Commissioners' decisions will follow the same "top down" sequence inherent in sections 75 and 32 of the Act. That approach has been affirmed by the Court of Appeal in *Man O'War* (in relation to the identification of ONLs). So, by the time you come to make decisions on the stream 13 hearings, the higher order decisions will have been made (albeit subject to rights of appeal). It would seem incoherent to depart from that sequence and return to Part 2 unless something arises that identifies an omission in the higher order provisions.
10. The Jardines do not say that there is any omission in the Proposed Plan's framework. What they say is simply:
  - a. The proposed activities that are within the notified zone boundaries represent a more efficient use of that land. There does not appear to be any dispute about that.
  - b. The land which is proposed to be brought within the zone, sandwiched as it is between existing development, more appropriately "fits" the objectives and policies of the Jacks Point Zone than the Rural zone, provided an appropriate structure plan that manages externalities can be devised. The Jardines say that such a plan has been devised.
11. Appendix 4 to Counsel for the Council's opening legal submissions addresses case law supporting the Council's position on infrastructure.
12. In summary, the point being made by Counsel for the Council is that land should not be rezoned for development if:
  - a. The service requirements of development cannot be met; or
  - b. The provision of such development would place a financial burden on the Council that it has not agreed to accept (e.g. through provision in the LTP).

13. The Jardines' case is that all of the land subject to its submission can be entirely self-served without any assistance of the Council. Therefore servicing is not an impediment to accepting the Jardines' submission.
14. During the course of detailed engineering design, it is possible that alternative servicing options (e.g. reticulating waste water to Frankton) may warrant consideration, but whether that occurs is not something the Jardines can impose upon the Council. Access to Council-owned infrastructure is something to be managed outside of the district plan, and on terms entirely under the control of the Council.
15. The Jardines are not in any way reliant upon JPROA for access to services. The use of Maori Jack Road requires agreement to be reached on maintenance and upgrade requirements. That is a private matter between the Jardines and JPROA. That is why an alternative access point to the State Highway has been proposed.

### **Higher Order provisions**

16. The Jardines' case is that the existing mapping (map 13) reveals an obvious missing piece of the Jacks Point jigsaw puzzle. Until that piece of the puzzle is added then Jacks Point cannot lay claim to being an example of comprehensive and integrated urban design.
17. It is submitted that the Jardines' relief better implements the following higher order provisions:
  - a. Chapter 3 Strategic Direction:
    - i. Policy 3.2.2.1.3 bullet point 1: connectivity and integration with existing urban development.
    - ii. Policy 3.2.2.1.5: ensure UGBs contain sufficient zoned land for future growth and a diversity of housing choice.
    - iii. Policy 3.2.2.1.6: enable competition through distribution of supply.
    - iv. 3.2.3.1.2 That larger scale development is comprehensively designed.
    - v. Objective 3.2.5.2 and policy 3.2.5.2.1: Direct urban growth to areas that have the potential to absorb change; within UGBs where these apply.
    - vi. 3.2.6.1.2: plan provisions can influence residential activity affordability.
    - vii. 3.2.6.2: ensure a mix of housing opportunities.

b. Chapter 4: Urban Development:

- i. 4.2.1.5: Urban development is contained with or immediately adjacent to existing settlements.
- ii. 4.2.2.4: Not all land within UGBs will be suitable for development.
- iii. 4.2.4.1, first two bullet points: natural environment is protected from encroachment from urban development and sprawl is avoided.
- iv. 4.2.4.2 last bullet point: development does not diminish the qualities of significant landscape features.

c. Chapter 6 Landscapes:

- i. Policy 6.3.1.7: When locating UGBs avoid impinging on ONLs, ONFs, and minimise disruption to the values derived from open rural landscapes.
- ii. 6.3.3.11: Recognise the importance of protecting the landscape character and visual amenity values from public places.
- iii. 6.3.1.12: Protect ONLs and ONFs
- iv. 6.3.2.2: Allow residential subdivision and development only in locations where the landscape character and visual amenity would not be degraded.
- v. 6.3.2.5: ensure incremental changes from development do not degrade landscape quality character or openness as a result of activities such as screen planting, mounding, and earthworks.

18. If you prefer the evidence of Mr Espie over that of Dr Read, then these provisions point to the submitter's relief being accepted.

19. Even on the basis of Dr Read's evidence on the effects of the earthworks proposed, policy 6.3.1.7 adopts a "minimise" approach to disrupting values derived from open rural landscapes. Avoidance of disruption of amenity values is not required. Within the Jacks Point zone provisions themselves, policy 42.2.1.16 anticipates the use of landscaping to mitigate adverse visual effects from the State Highway.

20. Avoidance is a policy approach within the ONL/ONFs only. That distinction properly reflects section 6(b) of the Act.

### **Shared Services?**

21. A Tripartite Agreement was entered into between the 3 structure plan parties in which the sharing of services was contemplated, and a mechanism for cost sharing was established for shared services. Jacks Point Limited did not pursue a joint services design with the Jardines.
22. The Jacks Point water supply is provided by another Darby company, Coneburn Water Supply Co Limited, and obtained through the Homestead Bay Land, via an intake on the Lake bed and tanks on the Jacks Point roche moutonnee. The Jardines do not propose to use that facility.
23. Aside from the Jardines' own private driveway, current vehicle access is available via Maori Jack Road (private) which was formed to replace the legal Woolshed Road that once extended all the way to Homestead Bay.
24. There is no legal obligation on the submitter to share services established by Jacks Point and administered by JPROA (FS#1277).
25. There are difficulties in the relationship with JPROA, which is effectively controlled by Mr Darby and Mr Coburn, who represent competing commercial interests. The Jardines suspect that the Darby interests are using their current dominant position to delay or frustrate the Jardines releasing sections to the market. Those difficulties cause the submitter to take the approach that, aside from the use of Maori Jack Road, the Jardines must assume that Homestead Bay will be entirely self sufficient for services. Indeed due to design difficulties with aspects of the Jacks Point infrastructure, that is likely to be the best approach in any event.

### **The Air Strip**

26. Lot 8 is owned by the Jardines' company that owns the farm, Remarkables Station Limited. Lot 8 includes the NZone air strip.
27. The air strip land is subject to a lease to NZone. The Jardines have no control over NZone operations during the currency of the lease.
28. The air strip has been under constant pressure from Mr Darby. The Jardines refused to sell it to Jacks Point Limited. Every opportunity to challenge the future of the NZone operations has been taken.<sup>1</sup> That pressure has been steadfastly resisted by the Jardines.

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<sup>1</sup> The Environment Court's decision on *Skydive Queenstown Limited* [2014] NZEnvC 108 records Mr Darby's views of the matter.  
PP-006000-121-80-V1

29. The Jardines take the view that Mr Darby and the Jacks Point purchasers have come to Jacks Point with their eyes and ears open, and with the NZone operation part of the existing environment. They say that the same approach applies to people who may come to residential development that may arise from the present submission.
30. Dr Chiles' evidence that states that no residential areas should be located within the 55 dB L<sub>DN</sub> sound level contour. Contour lines have not been applied to this airstrip, so rules that control houses within the contour would make no sense to anyone reading the Proposed Plan.
31. Airport Noise Standard NZS 6805:1992 does not contemplate that, within the 55 dB L<sub>DN</sub> contour, residential activity will be prohibited. That is the function of the 65 dB contour. What is contemplated is that new noise sensitive activities will be *“subject to a requirement to incorporate appropriate acoustic insulation to ensure a satisfactory internal noise environment.”*<sup>2</sup>
32. A rule may be devised to ensure that at the time of subdivision (after earthworks have been completed), contour lines are defined and appropriate steps taken to ensure an acceptable level in internal noise amenity. It needs to be remembered that unlike commercial airports, there is no possibility of night time flight operations and that the number of flights is controlled directly through the existing resource consent. The Commissioners can therefore have reasonable confidence that there are no public health issues at stake and that amenity concerns can be managed.

***JPROA: Ferguson's Third Issue: The visual effects of future development, including the appropriateness of the proposed mitigation on the characteristics of the landscape***

33. Mr Ferguson has not identified any policy basis on which existing residents can mount a complaint that the development of houses within the Jacks Point zone (if extended as requested by the submitter) may have an unacceptable adverse effect residential amenity values.
34. It is submitted that the issue only arises if the submitters proposed development were to occur in the Rural zone, which is not the proposal.

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<sup>2</sup> See *Skydive Queenstown Limited* [2014]NZEnvC108 at page 25.  
PP-006000-121-80-V1

35. Policies 41.2.1.1-41.2.1.4 are all externally focussed. They seek to manage externalities rather than within-zone effects. This means that Jacks Point residents have no legitimate expectation to a rural view from their houses.

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke extending to the right.

Counsel for submitter 715