

Before Queenstown Lakes District Council

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In the matter of            The Resource Management Act 1991

And                            The Queenstown Lakes District proposed District Plan Topic 09  
Resort Zones

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**LEGAL SUBMISSIONS FOR**

Jacks Point Residential No.2 Ltd, Jacks Point Village Holdings Ltd, Jacks Point Developments Limited, Jacks Point Land Limited, Jacks Point Land No. 2 Limited, Jacks Point Management Limited, Hanley Downs Land Holdings Limited, Hanley Downs Farm Holdings Limited, Coneburn Preserve Holdings Limited, Willow Pond Farm Limited (#762, #856 and #1275)

Jacks Point Residents and Owners Association (#765, and #1277)

Dated 10 February 2017

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## MAY IT PLEASE THE COMMISSIONERS

### INTRODUCTION

- 1 These legal submissions are presented on behalf of the submitters identified on the front cover page ("**Jack's Point**" and "**JPROA**" or collectively, "**Submitters**") in respect of Chapter 41 (Jacks Point Zone) ("**JPZ**") of the Queenstown Lakes District Council Proposed District Plan ("**PDP**").
- 2 The role of JPROA is explained in the evidence of Mike Coburn and in further detail below. JPROA is the body set up to operate and maintain the communal infrastructure, community facilities and open space in the zone, regulate house and landscape design and represent the interests of the members and the development of the community in contexts such as this. JPROA confirms its support for the position set out in these submissions, and the evidence presented jointly for Jacks Point and JPROA.

### OVERVIEW

- 3 These legal submissions address the following matters:
  - (a) An overview of the relevant history of the development of the Jack's Point Zone (**JPZ**) and the Submitters' involvement.
  - (b) An overview of the relevant history of Plan Change 44 and JPZ as notified in the PDP (chapter 41).
  - (c) A summary of the relief now sought for the JPZ arising from consideration of matters raised by other submitters and experts for the Council, including changes arising in response to evidence received from other submitters on 3 February.
  - (d) Key issues for consideration
  - (e) Statutory considerations
  - (f) Confirmation that the Commissioners have scope to accept the package of relief as now sought.

### HISTORY OF THE JACK'S POINT ZONE

- 4 The JPZ became partially operative in October 2004 and fully operative following resolution of appeals in 2006. A detailed history and rationale of the

JPZ is set out in the evidence of John Darby, director, experience master planner and landscape architect and representative of the Jack's Point submitter group.

- 5 The vision for the JPZ set back before and recorded in 2003 is to "*enable and achieve development of the Coneburn Land to create exceptional living environments and village communities centred around and based upon open space, natural and recreational values*". That vision was agreed to between the Council and the landowners of the time, including Jacks Point, and is appended to the section 42A report.<sup>1</sup>
- 6 Over the last 10 years as the Zone has developed needs and demands of the community have changed with time. The operative plan regime in place has been well tested and experience has shown which aspects of the planning regime work well, in terms of efficiently enabling quality urban design, landscape and amenity outcomes, and which aspects of it could be improved upon.
- 7 A significant proportion of the zone is still owned by the Jack's Point group entities, as shown in the ownership plan appended to Mr Darby's evidence. The developer of Jack's Point, informed by experience to date both at Jack's Point and around New Zealand, seeks to improve the planning provisions of the JPZ to better enable the full vision for the zone to be realised, in particular to ensure that:
  - (a) The zone continues to evolve towards the objective of a self sustaining community, with, at its heart, a vibrant village serving many needs of residents and visitors including commercial, retail, employment, health, education, diversity of dwelling types and visitor accommodation.
  - (b) Retention of the high quality urban residential settings that have been achieved to date;
  - (c) Provision of additional Preserve Homesites and corresponding protection and enhancement of the natural and open space values of the majority of the land in the zone.
- 8 The JPZ provisions are not set in stone. District Plans are required to be reviewed every 10 years. The Queenstown area has changed markedly in the last 10 years, as have the needs of the community. Jack's Point and JPROA are seeking that the council district plan review be amended so that the zone can be efficiently developed to its "completion" consistent with the high standard of urban design, landscape and amenity outcomes achieved to date, so that the

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<sup>1</sup> Jack's Point Stakeholder Deed, 29 August 2003.

zone can come into its own and play the role envisaged for it in the wider Queenstown community and economy.

- 9 Changes to the nature and scale of development in the zone in order to reach completion have been squarely anticipated since the zone's inception. It is unrealistic and unwise for a developer to not learn and move with the times, but instead to constantly strive to ensure optimum outcomes, especially for such an important and highly valued place such as Jack's Point. The fact that it is has always been expected that there will be the need to change and evolve the ultimate vision for the zone up to full development is illustrated by the suite of non-objection obligations that were placed on, and accepted by, purchasers (now residents) through the various covenants, and the Jack's Point Residents and Owners Association constitution. As confirmed by the Environment Court in *Coneburn Planning Ltd v QLDC [2014] NZEnvC 267* when assessing the relevance of a particular non-object covenant in the context of a resource consent application in the zone, it is entirely appropriate and in accordance with the purpose of the Resource Management Act for a relationship between developer and residents to be regulated by non-objection requirements, to give the developer the flexibility to complete development. (paragraphs 35 – 38). And now, 10 years on from the zone becoming operative, the developer is seeking to do just that – put in place the planning framework that will set up the appropriate framework for completion, so the final vision can be realised.
- 10 Additionally, one of the core institutions that is integral to the development, servicing and management of Jack's Point, is the Jack's Point Residents and Owners Association. The JPROA runs in accordance with its constitution, **attached as appendix 1**. Its Objects are to act for the benefit of Jacks Point<sup>2</sup> and the members of JPROA by; creating guidelines and having oversight of quality urban design outcomes, collecting levies in order to provide and maintain core community infrastructure utilities (roads, water supply, waste water treatment,<sup>3</sup> service lines) and communal facilities<sup>3</sup>, and ensuring the

<sup>2</sup> Defined as: "**Jacks Point**" means the integrated, residential and commercial development undertaken by the Developers and their associated and/or subsidiary companies within the Jacks Point Zone including but not limited to the recreational facilities, hotel/lodge, dwellings, commercial development, roading, lakes, open spaces, walkways, car parking, golf course, club house and all other associated infrastructure. At a Developer's option, exercisable by a Developer at any time on notice to the chairperson of the Area Committee, it shall in addition include other development undertaken within the Jacks Point Zone which is developed by an entity other than a Developer.

<sup>3</sup> Defined as: "**Communal Facilities**" means all land, lakes, wetlands, natural features, buildings, plant, equipment, facilities, Utilities (including, for clarity, any interest in the Infrastructure Association and the Water Company) and other amenities including any private roads, private ways, trails and walkways (whether public or private) within Jacks Point owned (whether directly or indirectly), leased, licensed, maintained or otherwise held, levied or operated in whole or in part by the Society from time to time including those facilities from time to time transferred to the Society by the Developer(s), by any other company which is directly or indirectly controlled by the Developer(s), or by any company of which the Developer(s) is a subsidiary (whether directly or indirectly).



observance of bylaws and covenants which act in addition to the District Plan requirements to ensure high quality living outcomes for the Zone. JPROA also has as one of its objects taking action with QLDC in circumstances where the issues affect or impact the Society, its members, the Communal Facilities and/or Jacks Point – hence JPROA's involvement in the DPR process.

- 11 While Jack's Point is in development phase, the controlling member is the developer, in order to ensure that the role JPROA plays complements and does not undermine the completion of the development of the zone and associated infrastructure.
- 12 The core roles of the JPROA and its functions are further addressed in the evidence of Mr Mike Coburn and Ken Gousmett more specifically in respect of the private infrastructure and utilities that services the Jacks Point part of the zone (water, waste water and roading).

#### **HISTORY OF PC44 AND THE DISTRICT PLAN REVIEW**

- 13 The recent planning history and development of the Zone provisions from before the Operative Plan resort zone chapter, through PC44 over only part of the JPZ, to now, is set out in the evidence of Mr Chris Ferguson from paragraph 4.1 Those details need not be repeated in these submissions; however I will draw attention to key aspects of the Submitters' roles and relationship with Council in particular through the development of a fully integrated zone for the DPR.
- 14 Of particular importance, and as discussed by Mr Ferguson from paragraph 4.17 the notified PDP Chapter 41 is as a result of significant consultation with and collaboration between Council and Jacks Point. Working with Council, Jack's Point undertook the preparation of the new Chapter 41 provisions as notified, including the new Structure Plan, formulated changes to Chapter 27 (Subdivision), and prepared the associated Section 32 Report. This work involved an update to the Coneburn Resource Study and an Assessment of Landscape and Visual Effects, for Council's review and acceptance. Following a period of consultation, review and editing from the Council, the final package was incorporated into the DPR by the Council when it was notified on 26 August 2015. Other major landholders, including RCL PTY Limited were invited to take part in the drafting of new plan provisions and the section 32 evaluation.
- 15 Before Chapter 41 was publicly notified within the PDP, Council was presented with a Recommending Report<sup>4</sup>, which presented the JPZ Chapter to be notified. Within this Report, one of the key reasons for recommending Chapter 41 as being included in stage 1 of the District Plan Review, rather than stage 2, was as follows:

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<sup>4</sup> Report for Agenda Item 16, District Plan Review: Resort Zone Provisions – Jacks Point, 30 June 2015

*A large volume of resource consents are generated for single house development in Jacks Point, and the consent process essentially duplicates the design review process that occurs. This creates an unnecessary burden both on the applicant and Council. In addition, Jacks Point has revisited its future development aspirations and changes to the Structure Plan and associated provisions are required.*

- 16 The Report to Council when assessing the options noted in respect of the Option 1 of retaining the status quo (i.e. the ODP) there were "no advantages" and that the disadvantages of retaining the status quo were:

*The current burden of unnecessary resource consents for new buildings would remain. Jacks Point's revised future development aspirations would not be provided for in the provisions, which would mean if they were to be progressed then potentially complex and risky resource consent processes would be required.*

- 17 The advantages of notifying the new chapter 41 were noted to be:

*Will reduce consenting burden for applicant and Council. Will provide for Jacks Point's revised development plans. Involves minimal reworking of other provisions, saving time and cost to make changes and justify them.*

- 18 The Report notes at para 17 that:

*The recommended option mitigates risk as it will help support economic wellbeing, in particular, whilst at the same time giving sensitive consideration to the environment, including the landscape values of the District.*

- 19 The Report confirms the recommended option is consistent with the policies in the Annual Plan, Long Term Plan and Economic Development Strategy (paragraphs 19 – 20), and that under the Local Government Act 2002 Purpose Provisions the recommended option:

*Will help meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses by streamlining consent processes and reducing the need for unnecessary resource consents;*

- *Can be implemented through current funding under the 10-Year Plan and Annual Plan;*
- *Is consistent with the Council's plans and policies; and*

• *Would not alter significantly the intended level of service provision for any significant activity undertaken by or on behalf of the Council, or transfer the ownership or control of a strategic asset to or from the Council.*

- 20 Council approved Chapter 41 for notification at the 30 June 2015 meeting on the basis of these recommendations.
- 21 Given this history of working with the Council, it was puzzling and concerning to see in some respects material changes proposed in the section 42A report and evidence contrary to the notified position. However through informal caucusing leading up to 3 February it seems there is now largely alignment between the experts on the issues, and that the 20 January evidence from Council has been overtaken in the sense that issues raised are now addressed.
- 22 Since notification of Chapter 41 in August 2015, initial<sup>5</sup> and further submissions<sup>6</sup> have been filed in respect of the Chapter. The scope of relief sought by the all the submitters is wide ranging, from retention of the operative framework, through to additions and expansions to the zone, and an increased level of permissiveness.<sup>7</sup> The number and range of submissions are indicative of the importance of the zone, and the vested interest many have in seeing its important values protected.
- 23 As part of its leadership role, the JPROA in particular has undertaken an exercise of contacting many submitters who are residents in the zone to discuss their submissions and preferred options to address matters raised. This has been a positive process. The set of provisions as tabled in the 3 February evidence is intended to address, to the extent possible, matters raised by submitters, whilst still ensuring the goal of fully developing the zone can be realised.
- 24 As will be recalled, the Jack's Point Submitter filed a Memorandum with the Hearings Panel and served this on all interested submitters outlining critical changes proposed to the relief sought, in order to address some matters raised by submitters.<sup>8</sup> The intent of filing this Memorandum and serving it in December was to provide sufficient time for Council and submitters to absorb the amended relief prior to completion of the section 42A report on 20 January and evidence exchange on 3 February, so that the hearing itself is as efficient as possible, with focus able to be brought easily on matters that remain outstanding.
- 25 In summary, the following are relevant and critical points to note for this Hearing:

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<sup>5</sup> 331 original submissions points from 37 submissions filed on Chapter 41

<sup>6</sup> 2030 further submission points from 36 further submitters filed on chapter 41

<sup>7</sup> A more fulsome summary of the submission lodged on Chapter 41 is detailed below in these submission addressing scope issues in section "Scope for Amended Relief"

<sup>8</sup> Memorandum of Counsel for submitters 0762 dated 15 December 2016

- (a) Jack's Point has committed considerable resources in the form of time, costs, leadership, and vision towards the Council District Plan Review Process;
- (b) Council and Jack's Point began very early engagement preparing the notified Chapter 41, in order to get to a position where its core objectives were considered to be 'the most appropriate means to achieve the purpose of the Act'.<sup>9</sup>
- (c) Councilors accepted the Council Staff recommended notification of Chapter 41 as part of the District Plan Review due to the benefits of reducing current costs of resource consent process for both council and home owners under operative regime, as well as to align the plan provisions with the intended development of the zone to streamline consent processes and remove the need for unnecessary consents. The council staff also recorded that chapter 41 as notified; *will help support economic wellbeing, in particular, whilst at the same time giving sensitive consideration to the environment, including the landscape values of the District*

#### UPDATED RELIEF PACKAGE

- 26 One of the key aspects of the PDP JPZ is the removal of the requirement for Outline Development Plans as an interim step in the planning approval process. In its place, is a more refined and detailed Structure Plan that combines with both regulatory and non-regulatory controls on subdivision (chapter 27), activity types and building locations, scale and design. Embedded in the Jack's Point set of controls is the requirement that buildings in the R (JP) activity areas and the Preserve Homesites continue to be required to go through the separate Design Review Board process and compliance with the relevant Design Guidelines, as explained in the evidence of Mike Coburn.
- 27 The complete package as now proposed and summarised below will provide the basis for the integrated management of the spatial layout and development of activities and buildings across the zone. The placement of activity areas in the Structure Plan take into account detailed assessments of constraints in order to protect existing urban amenity, natural and landscape values and water quality. Location and extent of activity areas also takes into account topography and infrastructure requirements, and reflects an extensive master planning approach based on designing the optimal town, that protects its surrounding natural and landscape values and only places development that accords with each area's capacity to absorb change. The Structure Plan provides the logical spatial positioning for the range of activities needed to support a fully integrated

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<sup>9</sup> Page 6, section 32 evaluation report: Jacks Point Zone

and self-sufficient community, meeting all needs, be they health, education, employment, leisure and entertainment, for all ages, all linked by crucial primary and secondary road access through the zone, public access routes through the zone, and strategic connections to the state highway.

- 28 Arising from discussions with residents, an amended set of plan provisions was provided to the Council and submitters by way of Memorandum dated 15 December 2016, in an attempt to address some issues raised. Subsequent to the receipt of the section 42A report, council evidence and then further evidence of submitters, further amendments have been made to Zone provisions, in an attempt to respond to additional matters raised by both council experts and submitters, and reach an optimum outcome. As part of this subsequent refinement of the plan provisions, Jack's Points' experts have informally caucused with Council's experts to try and narrow differences in opinion where possible, and present a package that to the greatest extent practicable is supported by all the experts.
- 29 In summary, the package of provisions now sought by the Submitters, and as detailed in Mr Ferguson's evidence of 3 February, is set out below. In addition, some provisions have been amended as a result of considering evidence from other submitters received on 3 February or consequential changes required. Those post 3 February amendments are identified and supplementary evidence will be led explaining the responses.

**Jacks Point Village and Education activity areas merge to become one activity area Village Jacks Point**

- 30 The notified Village activity area has been expanded to now include the notified "E" activity area, and to cater for the commercial, retail, education and accommodation activities that were previously provided for in the EIC. The one centralised Village includes the following key provisions.
- (a) 60% maximum building coverage across entire activity area;
  - (b) Retail limited to 300m<sup>2</sup>(amendment from 3 February version)' no cap on size of any single commercial activity other than retail, ;
  - (c) Comprehensive Development Plan (CPD) rule which requires a CPD for the whole of the Village activity area to be lodged as part of a consent for any commercial, community, residential, visitor accommodation activity in the Village as a controlled activity;
  - (d) Any development of land within the Village in the absence of a resource consent granted for the CPD is a discretionary activity;

- (e) Height limitation of 12m.

**20 Preserve Homesites on Open Space Golf (OSG) to replace notified Farm Preserve 1**

- 31 Activity Area FP-1 has been deleted from the Structure Plan and is replaced by 20 Preserve Homesites areas (shown as HS<sub>37</sub> – H<sub>56</sub>) with Open Space Golf (OSG) identified for the area around each.
- 32 Within the expanded area of OSG, the former open space corridors have been deleted and the alignment of trails have been refined, including to connect to the existing lakeside trail that runs through to Kelvin Heights.
- 33 The proposed regime that would apply to land use activities within Preserve Homesites HS<sub>37</sub> to H<sub>56</sub>) is as follows:
  - (a) All buildings are a permitted activity, subject to the established JPROA Design Review Board process and compliance with Preserve Design Guidelines. Where a covenant is not registered on the title requiring compliance with the Design Review Process and Design Guidelines, then building is a restricted discretionary activity.
  - (b) Land use activities are restricted to residential units (one per site). Visitor accommodation activities are subject to resource consent as a restricted discretionary activity.
  - (c) All buildings are limited to a footprint of 1000m<sup>2</sup>
  - (d) Permitted building height is limited to 5m above existing ground level
  - (e) Obligation for native revegetation of 3,000m<sup>2</sup> or 20% of the area of each homesite lot/title, whichever is the greater (as per operative plan).
  - (f) Limitations on earthworks and fencing.
  - (g) The external surfaces of any building within the Homesite Activity Area shall achieve a reflectance value of less than 30%, in the range of browns, greys and greens
  - (h) Any outdoor tennis court is non-complying in Tablelands Overlay
  - (i) Within both the HS and OSG Activity Areas, subdivision is a controlled activity with no minimum lot size, subject to the separate subdivision rules contained within Chapter 27.
  - (j) The land uses provided for in the OSG are amended to recognise the need for utilities, infrastructure and vehicle access through this land

associated with other activities anticipated within the zone, such as those necessary to service golf and other activities.

**Two Preserve Homesites on Open Space Landscape Protection (OSL) to replace notified Farm Preserve 2**

- 34 Activity Area FP-2 has been deleted from the Structure Plan and is to be replaced by two Preserve Homesites areas (shown as HS<sub>57</sub> – H<sub>58</sub>) with Open Space Landscape (OSL) identified for the area around each.
- 35 The proposed regime that would apply within Preserve Homesites HS<sub>57</sub> – H<sub>58</sub>, is as follows:
- (a) All buildings are a restricted discretionary activity, subject to an assessment of landscape and amenity values and of external appearance and design as well as the established JPROA Design Review Board process and compliance with Preserve Design Guidelines.
  - (b) Land use activities are restricted to residential units (one per site). Visitor Accommodation is subject to resource consent as a restricted discretionary activity.
  - (c) Building height is limited to 5m above existing ground level
  - (d) Obligation for native revegetation of 3,000m<sup>2</sup> or 20% of the area of the homesite lot/title, whichever is the greater (as per operative plan).
  - (e) The external surfaces of any building within the Homesite Activity Area shall achieve a reflectance value of less than 30%, in the range of browns, greys and greens
  - (f) Building coverage is restricted to 25% of each homesite area.

**Open Space Landscape**

- 36 All farm and recreation buildings (up to 10m) require controlled activity consent within the OSL outside of PHLP. Buildings not related to farming or recreation require discretionary consent;
- 37 Within both the HS and OSL Activity Areas, subdivision is a controlled activity with no minimum lot size, subject to the existing subdivision rules contained within Chapter 27.

**Peninsula Hill Landscape Protection Area (PHLPA)**

- 38 All buildings are non-complying, other than farm and recreational buildings which are controlled in OSL.

**Lake Shore Landscape Protection Area (LSLPA)**

- 39 All buildings are discretionary, other than farm and recreational buildings which are controlled in OSL.

**R(HD-SH)3 Activity Area to replace notified Education Innovation Campus**

- 40 The EIC Activity Area is deleted on the Structure Plan and is replaced with the Residential Activity Area R (HD-SH) 3. The regime sought for this Activity Area is:

- (a) Anticipated land uses are restricted to Residential Activities.
- (b) Residential density shall be between 12 – 22 units per hectare (net)
- (c) The maximum height of residential buildings is 8m.

**R(HD)F**

- 41 Residential buildings permitted. In R (HD) FA average density is 17 – 24 per ha. In R(HD)FB average density is 2 per ha. (net)
- 42 Residential development as a Restricted Discretionary Activity where residential activity results in either 3 or more attached units, or a density of more than 1 unit/380m<sup>2</sup>
- 43 The maximum height of residential buildings is 8m.
- 44 Buildings in R(HD) Fb outside of a residential building platform approved through subdivision is a restricted discretionary activity

**R(HD)G**

- 45 The average density of residential units is 2 per ha; same building controls as above for R(HD) F

**R(HD) E**

- 46 The average density of residential units is up to 24 per ha (net); same building controls as above for R(HD) F

**Visitor Accommodation in all activity areas**

- 47 Visitor Accommodation is provided for as a controlled activity within the Lodge Activity Area by virtue of all building being a controlled activity;
- 48 Within the Homesites it is a restricted discretionary activity



- 49 Within the Village it is a controlled activity, as long as accompanied by a Comprehensive Development Plan for the whole Village Activity Area and
- 50 Within all of the other activity areas visitor accommodation a fully discretionary activity, areas (through a breach of the structure plan rule).

#### **Commercial and retail activity in all activity areas**

- 51 As a result of consolidating the EIC into the Village post 3 February it was determined that further consequential changes are required. Commercial and retail activities are proposed to be provided for as follows:
- (a) Any single retail activity capped to 200m<sup>2</sup> in all activity areas, except the Jack's Point Village
  - (b) Any single retail activity capped at 300m<sup>2</sup> within the Jack's Point Village (and restricted discretionary above that cap)
  - (c) Total commercial activity in R (HD) and R (HD-SH) areas capped at 550m<sup>2</sup> and subject to restricted discretionary rule
  - (d) Commercial activity in Village controlled (with Comprehensive Development Plan)
  - (e) Commercial activity in remaining activity areas discretionary (as not in accordance with the Structure Plan)

#### **Residential activities in residential activity areas**

- 52 Residential buildings are permitted, subject to the following standards:
- (a) Within R(HD)A-E, R(HD-SH)1, and R(HD-SH)3 areas, residential activity with three or more residential units or a density more than one residential unit per 380m<sup>2</sup> will required controlled activity consent; within R(JP)1-3 and R(JP-SH)4 activity areas, the above would require restricted discretionary consent.
  - (b) 8m height limit.
  - (c) Additional standards in respect of planting, setbacks, fences, building colours, recession lines, glare, building coverage and outside storage.
  - (d) In addition, in the J(JP) residential areas landowners are bound through the Primary Covenant and membership to JPROA to comply with the Design Review Board process in compliance with the current Design Guidelines.

### **State Highway mitigation measures**

- 53 There is a standalone rule relating to the design of the State Highway mitigation measures, having regard to the nature of the approximately 3 different Activity Areas with frontage to this overlay.;
- (a) Within Highway Landscape Protection Area, all buildings are discretionary.
  - (b) Design of State Highway mitigation is controlled activity.
  - (c) Any subdivision or development prior to approved State Highway mitigation being implemented is a discretionary activity.
  - (d) Planting which obscures view from the State Highway to the mountain peaks beyond the zone requires discretionary consent.

### **Access to the zone**

- 54 Three state highway access points are proposed for the Structure Plan.
- 55 As a result of considering the evidence of Mr McColl for NZTA on 3 February, a revised set of provisions regarding access to the zone, in respect of the Woolshed Road intersection in particular, is proposed. The activities that will include a matter of control or discretion in respect of effects on the safety and efficiency of the State Highway 6 road network at any intersections with the Jacks Point Zone are:
- (a) Education and daycare activities in R (HD)
  - (b) Commercial activities in R (HD) and R (HD-SH)
  - (c) Subdivision in R(HD) and R (HD-SH)
- 56 The use of Woolshed Road as a connection to the zone (by any traffic other than construction traffic) is permitted subject to upgrading at the state highway intersection which will require NZTA approval at the time.

### **Retention of OSL (not conversion to OSCRA as sought by submitter #632 )**

- 57 The rezoning of the land to OSCRA is opposed and retention of OSL supported.
- 58 If OSL is retained, only farm buildings are controlled (subject to 10m height limit); and other buildings are discretionary.

**Retention of OSL to north of R(HD-SH) 3 (not conversion to "Village Woolshed Road") as sought by submitter number #789**

- 59 The submission by Vivo Capital Ltd (#789) seeks to rezone a parcel of OSL land, located within the Highway Landscape Protection Area, and on the western side of Woolshed Road as Village Woolshed Road and Residential Woolshed Road. There are no specific provisions included in the submission other than the requirement of an outline development plan process to be applied to the area. The rezoning is opposed.
- 60 Furthermore, the submission does not provide sufficient detail for a decision in favour of the submission to be accepted, and the submitter has not lodged any evidence or intention to appear in support of the submission. Under section 41C (7) you have the ability to strike out submissions that are frivolous, disclose no reasonable case or that would otherwise be an abuse of the hearing process to be allowed to be taken further. In the circumstances it seems inappropriate to leave such a material submission live, when no case has been presented, and we request the submission be struck out as it meets the grounds set out in section 41C (7).
- 61 IF OSL/ HLP is retained, all buildings (other than farm buildings in OSL) will be discretionary.

**SUMMARY OF RELEVANT PDP SUBMISSIONS AND EVIDENCE TO DATE**

- 62 Jack's Point submitted, and presented evidence and legal submissions on hearing stream O4 in respect of the Subdivision Chapter 27 and Hearing Stream 05 Chapter 36 Noise. The proposed integration with relief sought for Chapters 27 and 36 is addressed in Mr Ferguson's evidence from paragraph 4.46 page 21.
- 63 Jack's Point adopts the legal submissions and evidence presented by Darby Partners Planning LP submitter #608 on Hearing Stream 1 (Chapter 3 Strategic Direction, Chapter 4 Urban Development, Chapter 6 Landscapes). The integration and relationship of the relief sought for Chapter 41 and the JPZ with Chapters 3, 4 and 6 is addressed in Mr Ferguson's evidence from paragraph 5.1.5.
- 64 To understand the full planning framework being advanced by Jack's Point, one needs to also be familiar with the relief sought in the related hearing streams, which is summarised by Mr Ferguson.

## KEY ISSUES

### *Jacks Point Village*

- 65 The ultimate aim is to have a set of provisions that enable and incentivise the creation of a vibrant and successful heart of the Jacks Point community, providing for the majority of the residents' and visitors' needs. In the agreements between the parties visitor accommodation and high density residential with mixed uses is a key function of the Village. The proposed visitor accommodation activity in R (HD) E inconsistent with ensuring cohesion with the Village.
- 66 In terms of scale of the Village overall it is important to bear in mind that the Village as now proposed is effectively a reduction from the Operative position, and a reduction from the notified position. As detailed in the evidence of Brett Thomson from paragraph 27 the Operative Plan had two Village areas for Jacks Point and Henley Downs, with a total of 28.95 ha. The notified DPR had the Village, the EIC and the Education and Health activity areas, totalling 37.04 ha.
- 67 Having considered the expert evidence of Council in particular, relating to urban design and retail economics, the EIC, E and V is now consolidated into one Village area of 26.80 ha, a large portion of which is also envisaged for education, not commercial or retail. This is a decrease from the Operative position and when one looks at the zone as a whole, a decrease from the notified position in terms of land available for commercial, retail and community activities.
- 68 Equally as important is that the package now proposed, adopts and refines the section 42A report writer's concept of a controlled activity framework with a Comprehensive Development Plan.
- 69 As notified the EIC contained no cap on the size of any single commercial activity, and throughout the zone the notified zone capped any single retail activity at 200m<sup>2</sup>. This regime is generally carried through to the Village provisions to ensure individual commercial non-retail activities (e.g. offices or restaurants) are not unnecessarily restricted in size, and to provide slightly more flexibility with any single retail activity in the village capped at 300m<sup>2</sup>) The Village also has significant potential to meet the currently unsatisfied demand for quality visitor accommodation in the district, as visitor numbers continue to climb.
- 70 The experts confirm these provisions give confidence that the Village area as a whole will be carefully designed and laid out so that both internally and when viewed from the outside, a very high amenity value is retained and the surrounding open space and landscape values are not compromised. The

consolidation of commercial, retail, community, residential and visitor accommodation into the Village area maximises the opportunity for creation of a vibrant mixed use centre of Jacks Point, to meet the residents' needs.

***R(HD)-E activity area***

- 71 Key to the success of the Village is its immediate surroundings, which is primarily R (HD) E. As noted by Mr Thomson at para 37, "a successful commercially viable and compact Village can only be achieved if Village 'activities' are contained in the Village area", including for example visitor accommodation. High density (increased and very high density) R and VA in R (HD) areas generally, and particularly R (HD) E is contrary to key understandings amongst the parties which led to RCL and Jack's Point to agree to Village consolidation to avoid competition.
- 72 The evidence of Mr Dan Wells for RCL supports the proposed density of up to 45 dwelling equivalents per hectare and medium density residential development as a controlled activity.
- 73 Of primary concern to JPROA and several of the resident submitters, is whether the proposed density is in breach of site coverage agreements, and what design and master planning controls can be prescribed to ensure a high quality outcome is achieved despite this extremely high density area. In response, as addressed by Mr Darby at paragraph 21 and Mr Thomson from paragraph 38 a recommend a maximum density of 24 dwelling equivalents per hectare is now proposed. This is also along the same theme as Council's expert Dave Compton-Moen's recommendation that the minimum lot size be 380m<sup>2</sup>. A density of 45 dwellings per ha is more than double the density that would be achieved with lot sizes of 350m<sup>2</sup><sup>10</sup> On this point, it is noted that Mr Wells table after his page 50 is misleading. It is an attempt to show the average lot size under the "high" density scenario, but contrary to the provisions of the density rule, it has not been calculated on a "net" basis (which requires allowance in the order of for use of 30 – 35% of land for open space, roading, car parking, infrastructure etc).
- 74 Jack's Point and JPROA also seek that visitor accommodation be discretionary (rather than restricted discretionary) in R (HD) areas generally, and particularly in R(HD)E. This will in part minimise the risk of medium density housing defaulting to hotel use and the associated adverse effects that has on residential amenity. It also brings the R (HD) areas more in line with the R (JP) areas, to assist with cohesion across the zone.

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<sup>10</sup> Evidence of Mr Darby, paragraph 21.

- 75 The evidence of Mr Darby and Mr Thomson in particular is that the permissive controlled status for medium density residential, combined with the even higher anticipated maximum density, could cause significant urban design problems. Similarly Mr Ferguson is of the view that it causes problems in a planning context. The proposed density and likely mix of activities that could flow from that is not consistent with a residential neighbourhood.
- 76 The controls the Submitters are proposing are considered to be minimum constraints to manage quality control within R (HD) E so that it does not detract from the function of the Village, achieves a quality urban design outcome and does not detract from the views over the activity area to the north west. The proposed maximum density of 24 dwellings per hectare will still enable provision for a significant expanded area of residential living products and diversities of sizes and densities, which is supported. However the densities sought need to be consistent with what is regarded as a residential neighbourhood.
- 77 An additional concern that has arisen through consideration of the potential for high density development in R (HD) E in particular relates to the management of stormwater from what will be a potentially significant area of hard surfaces.<sup>11</sup> The nearby Lake Tewa and Wetland are important community and natural resources, and water quality is to be protected. Currently subdivision (if controlled when in accordance with a Structure Plan, as recommended in Councils right of reply to Chapter 27) reserves as a matter of control "stormwater design and disposal". Also, if a subdivision proposal breaches prescribed densities, or is for lots of 380m<sup>2</sup> or less, subdivision becomes discretionary, enabling full consideration of issues including stormwater. These provisions along with the integrated management by Otago Regional Council through its rules relating to damming, diversion and discharge, are required to give effect to the NPS Freshwater Management, ensuring no reduction in water quality.

### **Infrastructure and Open Space**

- 78 To the south east of the Village is the OSL activity area, which in part serves as important open space, but more critically is consented and used for the discharge of treated waste water, and subject to an easement in favour of JPROA to enable that discharge. The extent and importance of that waste water treatment area is addressed in the evidence of both Ken Gousmett and Mike Coburn, and the sustainable management and ongoing efficient use of that part of the zone's infrastructure counts against any reclassification of this land.

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<sup>11</sup> Brett Thomson, Evidence in Chief dated 3 February, paragraph 40.

- 79 There is no intention to move the area over which the treated waste water is currently discharged. Contrary to Mr Wells' and Mr White's assumptions, there is no agreement to move the waste water treatment driplines, and no investigation of alternative sites has been undertaken, if the capacity to service that area needed to be replaced.
- 80 It is inexplicable for the submitter to seek to re-categorise the area to enable construction of a school, over exactly the area which is subject to both the easement and the Otago Regional Council discharge consent.
- 81 This submission should be declined. There is no need for the area to cater for schooling, as within all the R (HD) activities areas, education is provided for as a controlled activity which is supported, and is similarly now provided for in the consolidated village. But more importantly, the land cannot support an activity such as a school while also serving its current consented use, secured also by the easement in favour of the JPROA.

#### **Protection of open space and landscape values**

- 82 As a result of careful consideration of points made by submitters,<sup>12</sup> and through the informal caucusing with the landscape and planning experts for Council, the amended proposals in respect of R (HD) F and G, and the replacement of FP-1 with 20 carefully selected Preserve Homesites are considered to fully address points made in respect of the need to protect open space and landscape values of these areas, while enabling the appropriate use of these areas, and provision of a diverse range of sites for homes.

#### **Relevance of the Outstanding Natural Landscape line and protection of ONL**

- 83 FP 2 as notified is now replaced by the two Preserve Homesites within the ONL, along with the associated provisions of the OSL, PHLPA and LSLPA to provide layers of protection appropriate to the areas landscape character. These two sites were the subject of site visits and informal caucusing between Ms Pfluger, Mr Te Paa and Dr Read the expert for the Council. As a result and as recorded by Ms Pfluger:

*[70] FP-2 has undergone substantial changes since the preparation of the S42a report. It is now proposed to identify two Preserve Home Site Areas (HS 57 and 58), one in each of the two folds of the landform that have a higher ability to absorb change. Within these areas, all residential units and visitor accommodation is provided for as a restricted discretionary activity and farm buildings are a controlled activity (non-notified). All building development*

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<sup>12</sup> Including Jacks Point landowner submitters (referred to in para 9.6 of Ms Jones's 42a report) and submitters; Taverner (131); Geddes (540); Williams (605); Williams (601); Schrantz (195); Cunningham (645); and Fong (1128)

*outside the home sites and the Peninsula Hill Landscape Protection Area is a discretionary activity (unrestricted). Within the PHLPA all building development is a non-complying activity.*

84 The resulting package, it is submitted, results in protection of the ONL values while allowing for an appropriate level of use with controls ranging from restricted discretionary to non-complying.

85 In terms of the relevance of the ONL, no changes are sought to the ONL line itself, which runs through this part of the special zone. The Environment Court decision in *WESI v WLDC (C90/2005)*<sup>13</sup> determined the categories of ONL and VAL land at Jack's Point. In this decision, Judge Jackson confirmed the landscape classification as follows:

*[14] The consent authority (and on appeal this Court) is not required to classify the landscape in other zones. Neither is it precluded from doing so. We also note that there is no requirement to determine landscape category prior to assessing resource consent proposals, though we consider it good practice to do so, so that all parties are clear at an early stage about what criteria proposals are required to satisfy.*

86 Judge Jackson's extract above was in light of the ODP Rule 5.4.2.1 which requires rural general zoned land to be classified as one of the three QLDC 'categories' of landscape (being, ONL, VAL, and ORL). The equivalent now proposed in the PDP is more direct, and provides:

*Identify the District's Outstanding Natural Landscapes and Outstanding Natural Features on the Planning Maps and classify the Rural Zoned landscapes as:*

- *Outstanding Natural Feature (ONF)*
- *Outstanding Natural Landscape (ONL)*
- *Rural Landscape (RL)*<sup>14</sup>

87 As set out in the evidence of Mr Ferguson from paragraph 5.25, the chapter 6 provisions are in a state of flux. Under the heading "application of the landscape provisions" 6.4.1.2 as notified states that landscape categories only apply to the rural zone, with the exception of those parts of the rural zone carved out in 6.4.1.3. It is clear that the chapter 6 landscape assessment matters do not apply to the JPZ, and the most practical interpretation is that objectives and policies as they apply to ONL also do not directly apply to land that is not zoned as rural, especially when land is also identified as being

<sup>13</sup> *Wakatipu Environmental Society v Queenstown Lakes District Council* (Environment Court, May 2005, C90/2005).

<sup>14</sup> Right of reply rule 6.3.1.1



squarely within the Urban Growth Boundary, as it the case with Jack's Point. However, regardless, it is submitted that with the amendments to FP2 and R(HD)F, the ONL values are protected, and this conclusion is supported by Ms Pfluger,<sup>15</sup> and was the subject of much discussion during informal caucusing with Dr Read..

### Access into and through the zone

- 88 Critical to the optimal layout of the zone, is access. As notified, chapter 41 only envisaged 2 access points off the State Highway, and there was a difference in opinion as to **when** the 2<sup>nd</sup> access, through Woolshed Road, should be required.
- 89 The Submitters have reflected on the evidence from NZTA and Scope Resources (#342)<sup>16</sup> in particular received on 3 February, and agree the provisions need to provide certainty on the mechanism that will ensure access to the zone is upgraded when required.
- 90 All parties agree that Woolshed Road is an appropriate access into the zone<sup>17</sup>, subject to appropriate upgrading of the intersection with the State Highway. As a primary road access through the zone to its centre, it will eventually fulfil an important primary roading function to the internal layout of the zone, and a third access adds to the resilience of transport to, from and through the zone.
- 91 The issue of whether or not there needs to be an immediate trigger that requires the upgrade and subsequent use of Woolshed Road has now been superseded by the consenting of an additional access off the State Highway to service the proposed subdivision in part of R (HD) C and A.
- 92 The question of when Woolshed Road should be upgraded in the medium term, so that it can be used for general access into the zone when the scale of traffic movements and size of the community justify it, can be addressed by ensuring that the appropriate rules reserve as a matter of discretion or control, effects on the safety and efficiency of the State Highway 6 network at any intersection with the Jacks Point Zone , so that at the point in time it is apparent Woolshed Road is required, Council has the requisite ability to do so. The Submitters therefore propose that the set of provisions reserving this control/discretion is added to the following activity rules on this matter work as follows:
- (a) Education and daycare activities in R (HD)
  - (b) Commercial activities in R (HD) and R (HD-SH)

<sup>15</sup> Evidence of Ms Pfluger at paras 91, 94, and 97.

<sup>16</sup> Evidence in Chief, Nick Geddes, 2 February 2017, paragraph 10.

<sup>17</sup> Evidence of Mr Ferguson at section 10, Ms Jones s42a report at para 14.4, Evidence of Dan Wells at para 64

(c) Subdivision in R(HD) and R (HD-SH)

93 Attempting to model a particular trigger, or specify a particular scale of upgrade, is not of assistance, contrary to Mr Geddes' evidence for Scope Resources. On review of the separate Submission from Scope Resources and others #361, seeking to rezone the land on the opposite side of the State Highway just north of Woolshed Road to "Industrial B" zoning, it is apparent that it would not be appropriate, sensible or at all helpful to do modelling and set triggers in isolation of what may or may not be the future use of the adjacent Scope Resources land. **Attached as Appendix 2** for ease of reference is one of the appendices to submission 361 showing the extent of the site proposed for rezoning to Industrial B. A trigger for opening up access through Woolshed Road is meaningless without a more comprehensive understanding of likely use of the land on the other side of the Highway. Until that time, reserving as a matter of discretion effects on the safety and efficiency of the State Highway 6 network at any intersection with the Jacks Point Zone to an appropriate set of activities that generate traffic movements off and on the state highway ensures that the need for opening up Woolshed Road can be addressed at the appropriate time in the future.

## RELEVANT STATUTORY PLANNING INSTRUMENTS

### *National Policy Statement Urban Development Capacity 2016 ("NPS-UDC")*

94 The NPS-UDC came into force on 01 December 2016. In terms of statutory weighting, the PDP must 'give effect to' any national policy statement (including the NPS-UDC<sup>18</sup> which has the effect of requiring that the PDP, and the planning framework as a whole, 'implement'<sup>19</sup> the statutory direction of the NPS-UDC. This is a strong directive creating obligations on those subject to it.

95 I note the evidence of both Mr Ferguson and Ms Jones confirms that Queenstown Lakes District is identified as a 'High Growth Area' in accordance with the NPS-UDC. Both experts also confirm that the JPZ is consistent with the relevant provisions of the NPS-UDC, given its zoning will provide for considerable growth capacity in the form of increased housing and land supply- both residential and mixed use commercial, community, and visitor accommodation zoned land.

96 In response to para 5.17 of Ms Jones's evidence, it is submitted the application of the NPS-UDC can be applied more confidently and with more certainty. Ms Jones considers whether Jacks Point in and of itself is an 'urban area' within the

<sup>18</sup> Section 75(3)(a) RMA

<sup>19</sup> The Supreme Court in *Environmental Defence Society v New Zealand King Salmon Limited* [2014] NZSC 38, at para [77] determined that to 'give effect to' simply means to 'implement'

meaning of the NPS-UDC, and therefore leaves open the question of whether particular 'high growth' provisions are relevant or not to the Zone.

97 Ms Jones considers that OA1, OA2, OA3, OB1, OC1, OD1, and OD2 "may" be relevant. I submit, in the alternative, that the entire NPS-UDC is of relevance by virtue of the District containing a high growth urban area and Jack's Point being included in the Urban Growth Boundary and clearly destined to be developed into an urban area of significant size. In particular, those provisions which have immediate effect are pertinent to consider in this hearing, as follows:

98 All Objectives (OA1 - OD2), Outcomes for planning decisions (PA1 – PA4), Responsive Planning (PC1 to PC4), and Coordinated Evidence and Decision-Making (PD1 –PD4)<sup>20</sup>. In addition, the following provisions will need to be complied with before the end of this year:

- (a) Begin to monitor indicators under policy PB6 within 6 months of this NPS coming into effect.
- (b) Begin to use indicators of price inefficiency under policy PB7 by 31 December 2017.
- (c) Completed the housing and business development capacity assessment under policy PB1 by 31 December 2017.

99 All objectives listed above are stated as applying to 'all decision-makers when making planning decisions **that affect an urban environment**' which is clearly the case for the JPZ. Each of these objectives is enabling towards the overall purpose of the NPS-UD, stated as follows:

*This national policy statement is about recognising the national significance of:*

- (a) *urban environments and the need to enable such environments to develop and change; and*
- (b) *providing sufficient development capacity to meet the needs of people and communities and future generations in urban environments.*

100 The yield calculations for the future development capacity of the Jacks Point Zone discussed in para 5.3 of Mr Ferguson's evidence are clearly relevant as a contributing factor that will affect the Queenstown urban environment and ensuring that there is sufficient and feasible development capacity in that urban environment.

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<sup>20</sup> Page 17, NPS-UDC, timeframes to implement national policy statement

- 101 The NPS-UDC introductory guidance document further supports this interpretation that consideration of the JPZ's contribution to the urban area of Queenstown is within scope of the NPS, by the following statement:

*To be clear, however, the NPS-UDC policies should not just be applied to the area within the geographic boundaries of Statistics New Zealand's urban areas.<sup>21</sup>*

- 102 The policies identified above are also explicitly written in the NPS-UDC itself as 'not restricted to the boundaries of the urban area'. PA1 is the central policy of the NPS-UDC, stating that local authorities must ensure there is sufficient, feasible development capacity at any one time. This policy does not direct local authorities as to how or where this development capacity should be provided.
- 103 The critical aspect of applying this policy is the definition of 'development capacity' as follows:

*Development capacity means in relation to housing and business land, the capacity of land intended for urban development based on:*

*a) the zoning, objectives, policies, rules and overlays that apply to the land, in the relevant proposed and operative regional policy statements, regional plans and district plans; and*

*b) the provision of adequate development infrastructure to support the development of the land.*

- 104 And the corresponding definition of 'feasible':

*Feasible means that development is commercially viable, taking into account the current likely costs, revenue and yield of developing; and feasibility has a corresponding meaning.*

- 105 As determined in the evidence of Ken Gousmett, Mike Coburn, and Mike Copeland, in particular, the JPZ meets the short term requirements to provide development capacity which is feasible, zoned, and serviced with infrastructure.
- 106 Policy PC4 directs councils to consider all practicable options available to provide sufficient development capacity and enable development, and suggests examples of what must be considered. These cover regulations and plan making, consenting processes, and statutory tools and other methods available under other legislation (such as long-term strategic planning). The current review of the District Plan presents a one in at least ten year opportunity to take advantage of the ability to ensure future zoning will provide for development capacity in the

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<sup>21</sup> Introductory Guide to the National Policy Statement on Urban development capacity 2016, Ministry for the Environment, at page 7

short, medium, and long term. Because the Council has not yet completed its monitoring requirements to detail feasible development capacity in the District, this opportunity should be taken advantage of on the assumption that additional development capacity will be required over the lifetime of the Plan.

***National Policy Statement Freshwater Management 2014 ("NPSFM")***

- 107 The NPSFM is required to be given effect to in the preparation of a district plan (s75(3)). This national policy statement sets out objectives and policies that direct local government to manage water in an integrated and sustainable way, while providing for economic growth within set water quantity and quality limits. The national policy statement is a first step to improve freshwater management at a national level.
- 108 Since its operation in 2014, the NPSFM has begun to be rigorously tested and upheld by the Environment Court. The Environment Court's decision in *Ngati Kahungunu Iwi Authority v Hawkes Bay Regional Council* [2015] provided important considerations for interpreting the objectives of the NPSFM; ultimately upholding its higher order objectives as being 'unequivocal' (without recourse to a Part 2 interpretation of those provisions)<sup>22</sup>.
- 109 The core objectives of the NPSFM are as follows:

***Objective A1***

*To safeguard:*

- a) the life-supporting capacity, ecosystem processes and indigenous species including their associated ecosystems, of fresh water; and*
- b) the health of people and communities, at least as affected by secondary contact with fresh water; in sustainably managing the use and development of land, and of discharges of contaminants.*

***Objective A2***

*The overall quality of fresh water within a region is maintained or improved while:*

- a) protecting the significant values of outstanding freshwater bodies;*
- b) protecting the significant values of wetlands; and*

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<sup>22</sup> *Ngati Kahungunu Iwi Authority v Hawkes Bay Regional Council* [2015] NZEnvC 50 at [59] referring to Objective A1 in particular

*c) improving the quality of fresh water in water bodies that have been degraded by human activities to the point of being over-allocated*

- 110 The *Ngati Kahungunu* decision made it clear that the above objectives (A2 in particular) do not permit planning instruments to contemplate degradation of a particular water course even where quality overall is maintained or enhanced across the region. Although this decision was in the context of a regional councils' plan making functions, the intent and interpretation is equally applicable to a territorial authority's functions under s31, in particular subsections (a) and (e):

*(a) 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:*

*(e) the control of any actual or potential effects of activities in relation to the surface of water in rivers and lakes:*

- 111 It follows from the package of evidence produced by the Submitters that the requirements of the NPSFM are met through the revised Jacks Point Chapter, in that it ensures water quality is maintained or enhanced, and not degraded.

#### **SCOPE FOR AMENDED RELIEF**

- 112 The Structure Plan appended to the evidence of Mr Ferguson, along with the refined set of zone provisions, shows the activity area layout and associated controls which give effect to the overall vision as stated in Mr Darby's evidence. Mr Ferguson also describes in more detail and in planning terms, the respective plan provisions that will drive the outcomes in each JPZ activity area.
- 113 Collectively, the breadth of submissions on the JPZ as notified are extensive. These range from reinstatement of the ODP provisions, to retention of the PDP as notified, to specific provision for further development. The amended relief now sought by Jacks Point in respect of the notified EIC, FP 1 and 2, V and E Activity Areas, along with other miscellaneous changes such as to the matters of discretion relating to the timing of the upgrade of Woolshed Road are all intended to respond positively to matters raised by submitters, or to further refine the relief sought by Jacks Point. The modified relief sought reduces the nature and scale of activities, (including in respect of the single consolidated Village as compared to the Operative Plan Villages sought by some submitters, and the EIC land area and activities as notified). It is submitted the modified relief provides more certainty in respect of the same, than the PDP as notified.

- 114 Counsel for the Submitters has already provided comprehensive submissions on the concept of 'collective scope' within these PDP hearings which are relied upon and are not repeated here.<sup>23</sup>
- 115 The summarised position from High Court precedent, is that as long as solutions presented by submitters are within scope of all the submissions lodged and the matters generally raised in a submission, a submitter may address the Panel, seek relief on those matters, and the Panel shall consider such matters as being in the scope of its decision:

*The local authority or Tribunal must consider whether any amendment made to the plan change as notified **goes beyond what is reasonably and fairly raised** in submissions on the plan change... It will usually be a question of degree to be judged by the terms of the proposed change and of the content of the submissions.*<sup>24</sup>

- 116 Furthermore, The Environment Court in *Motiti Rohe Moana Trust v Bay of Plenty Regional Council* noted the distinction between plan “reviews” (involving whole plans) and plan “changes” (involving only parts of plans)<sup>25</sup> suggesting that the case law for plan changes/variations needs to be applied with caution for plan reviews as a narrower range of issues are involved.<sup>26</sup> The Court went on to suggest that in relation to plan reviews there can be a **wider range** of potential valid submissions.
- 117 In *Bluehaven v Western Bay of Plenty District Council*<sup>27</sup>, the Environment Court was concerned with whether appeals were within the scope of Plan Change 72 to the operative Western Bay of Plenty District Plan. At paragraph [40] of the *Bluehaven* decision, the Court made the distinction between submissions on a proposed plan and submissions in the context of a review of an entire planning instrument. The Court noted that where it is a full plan review, the methods and the objectives could be open to challenge by way of submissions, because a review is not considered within any existing framework or operative plan provisions.
- 118 The Environment Court decision in *Vivid Holdings Ltd (re an application)* is of assistance for the proposition that relief can be pursued in the general scope between that which is notified and an original submission:

<sup>23</sup> The Commission are referred to the Submission of Ms Baker-Galloway, Topic 01B

<sup>24</sup> *Countdown Properties (Northlands) Ltd v Dunedin City Council* [1994] NZRMA 145 (HC) at page 41.

<sup>25</sup> *Motiti Rohe Moana Trust v Bay of Plenty Regional Council* [2016] NZEnvC 190 at [29] – [42].

<sup>26</sup> *Ibid* at [43] – [45].

<sup>27</sup> *Bluehaven v Western Bay of Plenty District Council* [2016] NZEnvC 191

*...any decision of the Council, or requested of the Environment Court in a reference, must be:*

*(a) fairly and reasonably within the general scope of:*

*(i) an original submission; or*

*(ii) the proposed plan as notified; or*

*(iii) somewhere in between*

*provided that:*

*(b) the summary of the relevant submissions was fair and accurate and not misleading.<sup>28</sup>*

[Footnotes omitted]

119 The local authority (and the Environment Court on appeal) also has the power to make consequential changes, provided they are reasonably foreseeable.<sup>29</sup>

120 In summary, the amended relief sought by Jack's Point either reduces or maintains the scale and intensity of activities and level of effects compared to the zone provisions as notified and provides more certainty in respect of the same.

#### ***FP-1 Activity Area – now Preserve Homesites on Eastern Tablelands***

121 As notified, the former FP-1 Activity Area provides for residential and visitor accommodation activities, farming, farm buildings, trails, recreation and mining as controlled (R41.4.9.8). The anticipated density of this area would have allowed for rural lifestyle type development of up to **34 dwellings**, being 4000m<sup>2</sup> minimum lot size and an average of 2ha. This has been replaced by the identification of **20** carefully identified and located homesite areas, with dwellings permitted within those sites. This approach relies on individual sites being selected for residential development based on their suitability to absorb development minimising visual effects.

122 Open Space Golf ("**OSG**") now surrounds the balance of the previous FP-1 activity area outside of the homesites on the lower areas of Peninsula Hill, which will provide for the creation and management of open space, and which may include native revegetation within the open space areas. OSG as notified provides for golf courses including earthworks, grounds keeping, driving range,

<sup>28</sup> *Re an application by Vivid Holdings Limited* Environment Court, Christchurch, 17/5/1999, C086/99, Judge Jackson at [19]

<sup>29</sup> First Schedule, clause 10(2)(b); *Westfield (New Zealand) Ltd v Hamilton City Council* [2004] NZRMA 556 at [73].



administrative offices, mining, sales and commercial instruction. Buildings for administrative offices associated with the golf course are permitted subject to an 8m height standard (R 41.5.12.2) and subdivision is a controlled activity. There are no specific submissions on the OSG structure plan activities. This new layout reduces the opportunity for fragmentation of the tablelands overlay through rural living development than as could have occurred through FP-1 as notified.

123 In summary, the activity status changes from the PDP to this amended relief are as follows:

- (a) FP-1 provided for farm buildings as controlled (R41.4.3.2), and visitor accommodation as restricted discretionary (R41.4.3.3). Residential activity in FP-1 on a site created in accordance with Rule 27.8.9.2 (right of reply Rule 27.7.11.2) was permitted or, if not in accordance with 27.8.9.2 then it was a restricted discretionary activity (Rule 41.4.3.3); Subdivision is a controlled activity with no minimum lot size. Up to 34 dwellings was anticipated.
- (b) Now as proposed, buildings in homesites are to be permitted, subject to standards of 5m height (proposed rule 41.5.12.2) and not to exceed a total building footprint of 1000m<sup>2</sup> (proposed rule 41.5.1.2). Outside of the homesites, subdivision is still controlled in the OSG, however activities to not include residential and visitor accommodation. Only 20 homesites are now identified.

124 These proposed amendments result in more certainty as to the locations of buildings than the PDP as notified. Furthermore, the reduced number of residential sites reduces the scale of activity and built form compared to that as notified. A number of submitters<sup>30</sup> opposed the notified zoning of FP-1 predominantly on the basis of rezoning previous open space notations.

125 In light of *Re Vivid Holdings*, the lesser relief now pursued is considered to be fairly and reasonably raised in the course of all submissions, and is 'in-between' the notified proposal and the collective views of a number of submitters seeking retention of open space in the FP-1 area.

#### ***FP-2 Activity Area – now Preserve Homesites HS57-58 and OSL***

126 Previously the FP-2 Activity Area as notified provided for restricted discretionary development within two contained areas of the land. This has now been replaced by the careful siting of proposed Homesites 57 and 58 in the area

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<sup>30</sup> Schrantz, Taverner, Ford, Jamieson, Judd/Bayliss, Ashford-Tait, Thomson, Page/Holzmann, Andrews, Moran, T Williams, Bamber, Cunningham, Sanders/Clements, Tilsley/Ruthven, Dowell, Westenberg, Harris-Wingrove

surrounded by Open Landscape Protection (OSL), beyond the OSL of each homesite remains the PHLPA overlay. In addition, greater certainty is provided regarding the landscape outcomes for the visually sensitive parts of the ONL, compared to the PDP as notified.

- 127 To ensure that the visually sensitive areas of the ONL are adequately protected, status of any building development within the Peninsula Hill Landscape Protection Area is now proposed to be non-complying, compared to previously discretionary. Additionally, the policy framework relating to this area has been strengthened to provide for a more robust protection of landscape values.
- 128 In summary, the activity status changes from the PDP to this amended relief are as follows:
- (a) As notified, any residential unit in the FP2 activity area and any visitor accommodation was a restricted discretionary activity (R 41.4.3.3) and any building in the PHLP was discretionary (R 41.4.3.4). Farm buildings were controlled (R 41.4.3.2). The density requirements were a 2ha minimum lot size and an average of 40ha.
  - (b) Now as proposed, residential and visitor accommodation is limited to the two homesites identified, and surrounding OSL provide landscape protection and are largely retained as notified with a recognition that there is a need for utilities, infrastructure and vehicle access through this land to service the dwellings in the Homesites. Buildings in the two homesites and visitor accommodation will still be restricted discretionary. Buildings are limited to 5m (the same as notified), however the 1000m<sup>2</sup> limitation is now removed. This however offset by the restriction and careful siting of the homesite.
  - (c) As for FP-1 above, these amendments represent an outcome that is more certain, and that is reduced in terms of nature and scale of activity and effects, than the PDP as notified and the combined submissions in opposition.

***EIC Activity Area – now Residential Activity Area R(HD-SH)-3 and commercial and education activities moved to Village***

- 129 The EIC Activity Area is replaced with the R (HD-SH) 3, and the commercial, retail and education aspects of the EIC moved into the village. As notified the EIC provided for technology based activities including commercial and medical research, laboratories, training, educational facilities, specialist health care and associated administrative, office, accommodation, retailing and recreation facilities (R41.4.9.5). The size of individual commercial activities had no restriction, and retail was capped at 200m<sup>2</sup> for each single retail activity.

- 130 The new R(HD-SH) 3 area narrows the types of activities anticipated from the wide list above for this site, to primarily residential. The residential density is proposed at the same level as R(HD-SH) 1 with 12-22 ha per ha. Overall site coverage would be low (not exceeding 30%) compared to that as notified as potentially up to 70%. Building height would be limited to 8m for residential buildings compared to as notified, R 41.5.12.2 which contemplated commercial activity buildings up to 15m. Screening for views from the highway is still proposed along the northern boundary of the area, the same as notified.
- 131 As confirmed in the evidence of Ms Pfluger (at para 84); the now proposed scale of built form within the residential area will be less than originally proposed within the EIC in terms of height and site coverage.
- 132 Those submissions in support of the EIC as notified<sup>31</sup> support the provision of education activities and facilities generally in the Jacks Point Zone; those submissions are therefore addressed by ensuring sufficient land in the consolidated Village to provide for those facilities. Some submitters<sup>32</sup> sought reinstatement of the Operative Plan provisions which had no EIC. In light of *Vivid Holdings*, relief between the ODP and the PDP as notified is extremely broad, and would encompass the reduced nature and scale of the R(HD-SH)-3 activity area now proposed as compared to the EIC as notified.

***Education activity area (E) - now Jacks Point Village expanded***

- 133 The Education activity area as notified provides for Educational and Day Care Facilities. The Jacks Point Submission (0762) submitted to expand the scope of this area to also provide for health care facilities ("E/H"). As now proposed the single consolidated Village area now absorbs the previous E area and provides for these activities within a broader range of Village activities to consolidate and take up the capacity left by removal of the EIC, including: residential and visitor accommodation, activities such as bars, restaurants, theatres, conference, cultural and community facilities and office and administration activities ancillary to the above activities, small-scale commercial activities, health activities, educational activities, office and administration activities, and indoor and outdoor recreation facilities.
- 134 The area is located next to the Village amenities, Lake Tewa and the residential neighbourhoods. Due to its central location this area can be well integrated into the central part of Jacks Point given its location in proximity to the village core. The amended proposal retains the provision of activities as notified whilst consolidating these into one activity area. This consolidation is a logical

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<sup>31</sup> Otago Polytechnic, Ministry of Education

<sup>32</sup> Schrantz, Taverner, Ford, Jamieson, Judd/Bayliss, Ashford-Tait, Thomson, Page/Holzmann, Andrews, Moran, T Williams, Bamber, Cunningham, Sanders/Clements, Tilsley/Ruthven, Dowell, Westenberg, Harris-Wingrove

inclusion with the existing Village and will have low effects in terms of landscape character and amenity.

135 In summary, the activity status changes from the PDP to this amended relief are as follows:

- (a) Under the "E" area as notified, activities other than educational and day care facilities are a discretionary activity (R 41.4.9.4). Facilities that do accord with that purpose are controlled in accordance with R 41.4.2

*"Day Care Facilities" are defined as: Means land and/or buildings used for the care during the day of elderly persons with disabilities and/or children, other than those residing on the site;*

*"Education Facilities" are defined as: Means land and/or buildings used for the provisions of regular instruction or training and includes their ancillary administrative, cultural and commercial facilities*

- (b) There is no maximum total volume of earthworks (R 41.5.4.1), buildings can be up to 10m in height (R 41.5.12.2), buildings shall not exceed a maximum site coverage of 45% beyond which restricted discretionary consent is required (R41.5.15.1).
- (c) The Jacks Point submission sought relief to include health care activities within the E area, "Health Care Facilities" being defined in the PDP as: *Means land and/or buildings used for the provision of services relating to the physical and mental health of people and animals but excludes facilities used for the promotion of physical fitness or beauty such as gymnasias, weight control clinics or beauticians.*
- (d) Under the Village rules now proposed, the anticipated activities (compared to E/H) will include commercial, community, residential and visitor accommodation activities and associated buildings as controlled (41.4.8) subject to compliance with a detailed Comprehensive Development Plan Buildings up to 12m height, and a total building coverage of 60% over the whole village area is proposed. Retail continues to be capped to 200m<sup>2</sup> per activity, and the treatment of commercial activities established in the EIC (no cap for each commercial site) is transferred to the Village.

136 Collectively, there are no opposing submissions to the specific Village and E activity areas as notified (other than the Jacks Point submissions to expand the activities that can take place in E and those in opposition seeking to reinstate the ODP position generally). The broad nature of comprehensive health care and education facilities lends itself to the expectation of necessary associated

facilities such as community, office, accommodation, etc. These facilities all ensure an integrated and working activity area function sustainably.

- 137 For the purposes of scope, the remaining changes to evaluate are the height increase of 2m and the increase in overall building coverage. However, the new requirement for a Comprehensive Development Plan for the whole Village activity area, and the associated change in activity status from permitted to controlled with control retained over several matters that will impact on the scale and layout of buildings, mean that there is scope for the proposed expansion of V or E, when assessed comprehensively.
- 138 In terms of scale of the Village overall, the Operative Plan had two Village areas for Jacks Point and Henley Downs, with a total of 28.95 ha. The notified DPR had only one Village, the EIC and the Education and Health activity areas, a large component of which were target to education activities totalling 37.04 ha. That is all now consolidated into the proposed Village area of 26.80 ha, a portion of which is also envisaged for education, not commercial or retail. This is a **decrease** from the Operative position and in terms of scope when one looks at the zone as a whole, a **decrease** from the notified position in terms of land available for commercial, retail and community activities.

## CONCLUSION

- 139 The plan provisions being advanced by Jack's Point are intended to enable a particular vision to be achieved – a vision that council signed up to in 2003, and that through the notification of chapter 41, continue to support. The provisions as now advanced are the result of vast experience and an indepth knowledge and detailed understanding of the site and its ability to absorb change. Chapter 41 started out as the result of working together with council, and now at this stage of the process the proposed provisions are the result of further hard work and informal caucusing between the submitter and council experts.
- 140 The protections in the plan combined with the non statutory protections enforced by the JPROA and the imposition of restrictive covenants will combine to see that vision realised.
- 141 This District Plan Review should see out the completion of the development of the Jacks Point Zone, to the point where the council and the developer's vision as set out back in 2003 is achieved – an exceptional living environment and village community centred around and based upon open space, natural and recreational values.

Dated 10 February 2017

A handwritten signature in blue ink that reads "Maree Baker-Galloway". The signature is fluid and cursive, with a long, sweeping tail on the final letter.

Maree Baker-Galloway/Rosie Hill

Counsel for Jack's Point and JPROA

# Jack's Point Constitution

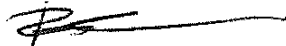
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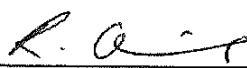
**Jack's Point**


QUEENSTOWN, NEW ZEALAND  
[WWW.JACKSPOINT.COM](http://WWW.JACKSPOINT.COM)

**CONSTITUTION OF JACKS POINT RESIDENTS &  
OWNERS ASSOCIATION INCORPORATED**

  
Name: \_\_\_\_\_  
Member Raylene McQueen

  
Name: \_\_\_\_\_  
Member Barry Robertson

  
Name: \_\_\_\_\_  
Member Rose Quirk

  
Dated: \_\_\_\_\_ 2015



**CONSTITUTION OF JACKS POINT  
RESIDENTS & OWNERS ASSOCIATION  
INCORPORATED**

**We certify that this document is the Constitution of  
Jacks Point Residents & Owners Association Incorporated**

\_\_\_\_\_  
Name:  
Committee Member

\_\_\_\_\_  
Name:  
Committee Member

\_\_\_\_\_  
Name:  
Committee Member

\_\_\_\_\_ 2015  
Dated:

## INTRODUCTION

### 1. NAME

- 1.1 **Name of Society:** The name of the Society shall be Jacks Point Residents & Owners Association Incorporated.

### 2. DEFINITIONS AND INTERPRETATION

- 2.1 **Definitions:** In these rules, unless the context otherwise requires:

**"Act"** means the Incorporated Societies Act 1908.

**"Area Committee"** means the committee members from time to time appointed under clause 12 to manage those affairs of the Society described in that clause in this Constitution.

**"Area Controlling Member"** means Jacks Point Management Limited, or any assignee and/or successor in title whether in whole or in part or parts of Jacks Point, that continues the promotion and carrying out of such development and that Jacks Point Management Limited nominates as the Area Controlling Member.

**"Area Matter"** has the meaning given to it in clause 12.5.

**"Authority"** means any local body government or other authority having jurisdiction or authority over or in respect of any part of Jacks Point or its use.

**"Bank"** means a bank registered under the Reserve Bank of New Zealand Act 1989.

**"Bylaws"** means the Residential Bylaws, the Southern Village Bylaws and the Northern Village Bylaws, as the context requires, as amended from time to time under rule 16.6.

**"Capital Improvements"** means structural repairs to, and the replacement or renewal of, the Communal Facilities; or the funding of the Water Company, directly or through the Infrastructure Association by way of loans and/or capital for such purposes.

**"Classes of Membership"** means those classes specified in or created pursuant to rule 4.5.

**"Commercial Member"** means a Member whose Developed Property is designated to be used for commercial purposes at Jacks Point by an instrument on the Owner's Title or is reasonably determined by the Society to be, or as being, used primarily for commercial purposes at Jacks Point.

**"Commercial Property"** has the meaning given to it in the Village Golf Course Deed.

**"Committee"** means the Area Committee and each of the Precinct Committees, as the context requires.

**"Communal Facilities"** means all land, lakes, wetlands, natural features, buildings, plant, equipment, facilities, Utilities (including, for clarity, any interest in the Infrastructure Association and the Water Company) and other amenities including any private roads, private ways, trails and walkways (whether public or private) within Jacks Point owned (whether directly or indirectly), leased, licensed, maintained or otherwise held, levied or operated in whole or in part by the Society from time to time including those facilities from time to time transferred to the Society by the Developer(s), by any other company which is directly or indirectly controlled by the Developer(s), or by any company of which the Developer(s) is a subsidiary (whether directly or indirectly).

**"Constitution"** means this Constitution as amended or added to, including all schedules to this Constitution, but excluding the Appendices.

**"Controlling Member"** means any or all of the Residential Controlling Member, the Northern Village Controlling Member, the Southern Village Controlling Member, and the Area Controlling Member, as the context requires.

**"Covenant"** has the meaning set out in rule 4.2.

**"Default Interest Rate"** means five per cent above the 90 day bill rate disclosed on Reuters screen page BKBM (or its successor's page) at 11.00am on the due date for payment.

**"Design Guidelines"** means the design guidelines for each Precinct that form a part of the Bylaws.

**"Developed Property"** means, subject to clause 8.2, a property within Jacks Point:

- a. for which a separate title (including, without limitation, a unit title or a certificate of title for an estate in fee simple) has issued; and
- b. which either:
  - i. is a bare lot available for immediate development as:
    - (1) a residential property;
    - (2) a commercial property (including commercial accommodation); or
    - (3) any other use permitted within Jacks Point;
 including, in each case, a lot on which development/construction has commenced; or
  - ii. has been fully developed as:
    - (1) a residential property;

- (2) a commercial property (including commercial accommodation); or
  - (3) any other use permitted within Jacks Point; but
- c. does not include:
- i. a Golf Course property unless all of the registered proprietors of the Golf Course, including the Golf Course Operator, notify the Society that such a property is for the purposes of this definition to be a Developed Property;
  - ii. any lot that is capable of further subdivision and that is not in any way restricted by a Non-Subdivision Covenant, unless the then registered proprietor of the lot, Golf Course Operator and the Society have entered into a Property Deed. From the date provided in the Property Deed, the lot and any property contained in a separate title resulting from a subdivision of the lot (including, without limitation, a unit title or a certificate of title for an estate in fee simple but excluding any land owned by the Society or the Infrastructure Association as a Communal Facility) will be a Developed Property for the purposes of this definition.

**"Developer"** means

- (a) in respect of the Northern Village Precinct, Northern Village Precinct Developer Limited promoting or carrying out the development (including maintenance) of the Northern Village Precinct including any:
  - i. Related Entity of Northern Village Precinct Developer Limited which undertakes any part of the development or maintenance of the Northern Village Precinct; or
  - ii. Assignee and/or successor in title whether in whole or in part or parts of the Northern Village Precinct, that continues the promotion and carrying out of such development,

which is nominated as such in writing by Northern Village Precinct Developer Limited; and
- (b) in respect of the Southern Village Precinct, Southern Village Precinct Developer Limited promoting or carrying out the development (including maintenance) of the Southern Village Precinct including any:
  - iii. Related Entity of Southern Village Precinct Developer Limited which undertakes any part of the development or maintenance of the Southern Village Precinct; or
  - iv. Assignee and/or successor in title whether in whole or in part or parts of the Southern Village Precinct, that

continues the promotion and carrying out of such development,

which is nominated as such in writing by Southern Village Precinct Developer Limited; and

- (c) In respect of the Residential Precinct, Jacks Point Developments Limited promoting or carrying out the development (including maintenance) of the Residential Precinct, including any:
- i. Related Entity of Jacks Point Developments Limited that undertakes any part of the development or maintenance of the Residential Precinct; or
  - ii. Assignee and/or successor in title whether in whole or in part or parts of the Residential Precinct, that continues the promotion and carrying out of such development,

which is nominated as such in writing by Jacks Point Developments Limited.

**"District Plan"** means the Queenstown-Lakes District Plan.

**"Expense Year"** means each 12 month period commencing on 1 July and ending on 30 June, or such other 12 month period as the Area Committee from time to time sets.

**"Golf Club"** means Jacks Point Golf Club Incorporated or any other golf club appointed under a Golf Course Encumbrance.

**"Golf Course"** means the Jacks Point golf course, any clubhouse and ancillary facilities, if any, including driving range and practise areas.

**"Golf Course Deed"** means the deed to be entered into by the Society to be called "Deed – Sale of Golf Assets and Neighbouring Developers" which for information and identification purposes is annexed to this Constitution as Appendix 1, or any replacement of that deed pursuant to its terms.

**"Golf Course Encumbrances"** means the encumbrances to be granted to the Society in respect of the Golf Course which for information and identification purposes are annexed to this Constitution as Appendix 2.

**"Golf Course Expenses"** means:

- a. the Golf Levy; but
- b. if the Golf Course is a Communal Facility, then all payments, costs and expenses properly or reasonably assessed or assessable, paid or payable or otherwise incurred in respect of all direct costs of repairs, maintenance, renovations and landscaping of the Golf Course, and administration of the Golf Course and its business.

**"Golf Course Interest"** includes:

- a. any estate or interest in the land upon which the Golf Course is located;
- b. any shares in a company that is the registered proprietor of any estate or interest in the land upon which the Golf Course is located;
- c. any shares in a company that owns or operates the business of the Golf Course (in whole or in part);
- d. the business of the Golf Course (in whole or in part);
- e. any assets of the business of the Golf Course (in whole or in part).

**Golf Course Operator**" means Jacks Point Golf Course Limited, its successors and any permitted assigns under the terms of the Golf Course Deed.

**"GST"** means goods and services tax charged under the Goods and Services Tax Act 1985.

**"Infrastructure Association"** means the Resort Zone Infrastructure Association Incorporated.

**"Infrastructure Association Costs"** means the sum of all levies, payments and expenses properly payable by the Society in respect of or to the Infrastructure Association.

**"Initial Price"** in respect of any Developed Property, means:

- a. for a Developed Property which has only been sold by the Developer to its first Owner, the aggregate of the price (inclusive of GST) at which the Developed Property is sold and the costs of construction (inclusive of GST) on that Developed Property;
- b. for a Developed Property which has been further on sold from an Owner (not being the Developer) to another Owner:
  - i. the aggregate of the latest sale price (inclusive of GST) and the costs of construction on that Developed Property (if at the time of sale it was a bare section) (inclusive of GST); or at the sole option of the relevant Precinct Committee in which the Developed Property is located.
  - ii. the value provided by a valuation obtained from Quotable Value Limited (New Zealand) of that Developed Property.

**"Invitee"** means any invitee or staff of or any visitor to an Owner or Occupier.

**"Jacks Point"** means the integrated, residential and commercial development undertaken by the Developers and their associated and/or subsidiary companies within the Jacks Point Zone including but not limited to the recreational facilities, hotel/lodge, dwellings, commercial development, roading, lakes, open spaces, walkways, car parking, golf

course, club house and all other associated infrastructure. At a Developer's option, exercisable by a Developer at any time on notice to the chairperson of the Area Committee, it shall in addition include other development undertaken within the Jacks Point Zone which is developed by an entity other than a Developer.

**"Jacks Point Zone"** means the residential and commercial development zone called the Jacks Point Zone established by the Queenstown Lakes District Council as a resort zone under Part 12 of the District Plan.

**"Joint Precinct Matter"** has the meaning given to it in clause 12.4.

**"Lodge"** means the lodge and visitor development on all or part of the land contained or formally contained in lots 1, 2 and 3 DP447241.

**"Manager"** means the manager/s or management company/ies of the Society (if any), appointed under rule 13.1. Where no manager/s have been appointed, any reference to the "Manager" in this Constitution shall be deemed to be, where appropriate, a reference to the Committee in question, subject to rule 12.19.

**"Member"** means each person who shall from time to time be a member of the Society under rules 4.1 to 4.10.

**"Members' Interest Group"** has the meaning set out in rule 16.5.

**"Member's Proportion"** means, in relation to each Developed Property, the proportion that:

- a. the Section Value of such Developed Property bears to the Total Value; or
- b. the land area of such Developed Property bears to the sum total of the land areas of all Developed Properties; or
- c. the land area of such Developed Property bears to the sum total of the land areas for all Developed Properties where the appropriate Committee bands the land area of that particular Developed Property with other Developed Properties of similar area, or by Precinct, and the total land area is calculated using an appropriate average for such "bandings".

**"Membership"** means a membership of the Society.

**"Non-Subdivision Covenant"** means a registered land covenant or encumbrance of any sort prohibiting a lot from subdivision.

**"Northern Village Bylaws"** means the Bylaws applicable to the Northern Village Lots as initially contained in Schedule 2 and as amended or added to from time to time pursuant to rule 16.6.

**"Northern Village Committee"** means the committee members from time to time appointed under clause 12 to manage those affairs of the Northern Village Precinct described in that clause in this Constitution.

**"Northern Village Controlling Member"** means Northern Village Precinct C.M. Limited or any assignee and/or successor in title whether in whole or in part or parts of the Northern Village Precinct, that continues the promotion and carrying out of such development and that RCL Henley Downs Limited nominates as the Northern Village Controlling Member.

**"Northern Village Design Review Board"** means the design review board appointed in respect of the Northern Village Precinct under clause 10.7.

**"Northern Village Lot"** means a Developed Property created from any part of the Northern Village Precinct.

**"Northern Village Member"** means a Member who owns a Northern Village Lot.

**"Northern Village Precinct"** means the area shown as such on the plan in Schedule 3.

**"Occupier"** means any person occupying any Developed Property under any lease, licence or other occupancy right and shall include the Owner and all members of an Owner's family.

**"Operating Expenses"** means the total sum of all rates, taxes, payments, costs, liabilities and expenses of the Society paid or payable, properly or reasonably assessed or assessable, or otherwise incurred:

- a. in respect of the Communal Facilities;
- b. in the operation of the Society (including, without limitation, the management fees and expenses, as referred to in rule 13.1);
- c. in the administration and enforcement of a scheme for the provision of services, benefits, facilities and Utilities to Developed Properties; and
- d. as required by any resource consent granted in respect of Jacks Point to be undertaken by the Society in respect of the maintenance and upkeep of Jacks Point;

and will include, but not be limited to the following:

- e. all rates levied by any Authority which are at any time levied upon the Communal Facilities or upon the Society in respect of the Society's interest in the Communal Facilities or are paid or payable by the Society as a result of the receipt of any money under this Constitution;
- f. all premiums and costs payable by the Society in respect of all policies of insurance effected on the Communal Facilities for sums insured up to their full replacement value or, at the option of the Society, to their full value on an indemnity covered basis against loss, damage or destruction by such risks as the Society may deem necessary or desirable, including consequential loss and public risk liability;



- g. the cost of operating, supplying, servicing, maintaining, inspecting, testing, and repairing all services and Utilities from time to time provided to Owners or generally at Jacks Point, including (without limitation) watering equipment and systems, any water features, communications, equipment and systems (including without limitation, telephone, cable television and satellite television equipment and systems), fire fighting and protection equipment and systems, emergency or other alarm services or systems, security and monitoring services and systems, electrical and plumbing services, waste and rubbish compression and disposal systems and the plant and equipment required for any of such or other services and systems;
- h. all charges for lighting, gas and power, and all other forms of energy incurred by the Society in connection with the Communal Facilities, and other services or requirements furnished or supplied to the Communal Facilities for the general benefit or purposes of the Communal Facilities, including maintenance costs of lighting and power systems and equipment;
- i. all sanitation costs in respect of Jacks Point, including the costs of the removal and disposal of all waste and garbage from all properties contained in Jacks Point;
- j. all costs for the provision, at intervals deemed appropriate by the Society, of security services to the Communal Facilities or Jacks Point;
- k. all costs of repairs, maintenance, renovations and landscaping of the Communal Facilities. For clarity, and without limitation, this includes Communal Facilities that are not owned by the Society, but that the Society is obliged to or agrees to maintain from time to time;
- l. all Golf Course Expenses;
- m. all costs and expenditure (including the cost of attaining a necessary report) payable, incurred or suffered by the Society in complying with the Society's obligations under the Building Act 2004;
- n. any other items of expense which the Society, acting reasonably, considers necessary to incur for the good management and appearance of the Communal Facilities;
- o. all costs of managing, controlling, and administering the Communal Facilities, including such costs that consist of wages, allowances or other emoluments paid to persons employed by or contracted to the Society;
- p. all wages, allowances and other emoluments and any other payments by way of compensation including redundancy compensation paid or allowed to employees engaged for any of the foregoing purposes together with all taxes and levies thereon;

q. Water Company Costs and Infrastructure Association Costs;

but will exclude for the purposes of calculating the Member's Proportion in an Expense Year:

r. costs of any Capital Improvements; and

s. any operating costs which are recovered pursuant to the levies set under rules 6.3a, 6.3b, 6.3d and/or 6.3e in that Expense Year;

**"Owner"** means each person registered as a proprietor (whether individually or with others) of a Developed Property.

**"Owner's Title"** means the certificate of title issued for an Owner's Developed Property.

**"Precinct"** means the Residential Precinct, the Northern Village Precinct or the Southern Village Precinct, as the context requires.

**"Precinct Committee"** means the Residential Committee, the Northern Village Committee or the Southern Village Committee, as the context requires.

**"Property Deed"** means an irrevocable deed confirming that a lot is for the purposes of the definition of **"Developed Property"** to be a Developed Property under this Constitution. The Property Deed may include a requirement for a covenant to be registered against the certificate of title for the lot to record the contents of the Property Deed.

**"Quarter"** means, respectively, the period of three calendar months between 1 July and 30 September, 1 October and 31 December, 1 January and 31 March or 1 April and 30 June in any year, and **"Quarterly"** shall have an equivalent meaning where the context permits.

**"Rating Valuation"** means the capital value of any Developed Property as it appears on the district valuation roll pursuant to the Rating Valuations Act 1998 or any successor to the district valuation roll.

**"Registrar"** means the person holding office from time to time as Registrar of Incorporated Societies in terms of the Act.

**"Related Entity"** in relation to a person means:

- a. any holding company of the person; or
- b. any person that is an associated person (as defined by the Securities Act 1978) or subsidiary of that holding company or of the person.

**"Rental Agency"** means such entity as is established or appointed by the relevant Precinct Committee to control and administer the letting of Developed Properties for residential accommodation purposes within that Precinct and if no such entity has been established by the relevant

Precinct Committee, means the Society or any such entity established by the Society for that purpose.

**"Residential Bylaws"** means the by-laws applying to Developed Properties in the Residential Precinct, as initially contained in Schedule 2 and as amended or added to from time to time pursuant to rule 16.6.

**"Residential Committee"** means the committee members from time to time appointed under clause 12 to manage those affairs of the Residential Precinct described in that clause in this Constitution.

**"Residential Controlling Member"** means Residential Precinct C.M. Limited or any assignee and/or successor in title whether in whole or in part or parts of the Residential Precinct, that continues the promotion and carrying out of such development and that Residential Precinct C.M. Limited nominates as the Residential Controlling Member.

**"Residential Design Review Board"** means the design review board appointed in respect of the Residential Precinct under clause 10.7.

**"Residential Golf Levy"** means, any levy which the Society has agreed to pay the owner of the Golf Course or the Golf Course Operator under the Golf Course Encumbrances.

**"Residential Lot"** means a Developed Property created from any part of the Residential Precinct.

**"Residential Member"** means a Member whose Developed Property is designated to be used for residential purposes at Jacks Point by an instrument on the Owner's Title or is reasonably determined by the Society to be, or as being, used primarily for residential purposes at Jacks Point.

**"Residential Precinct Member"** means a Member who owns a Residential Lot.

**"Residential Precinct"** means the area shown as such on the plan in Schedule 3.

**"Section Value"** means, in respect of each Developed Property:

- a. the Rating Valuation; or
- b. if the Rating Valuation is not available, or if the Rating Valuation does not take account of construction on that Developed Property (where that construction is material), the Initial Price.

**"Service Lines"** means underground power cables, underground telephone and electronic data and computer media services, underground gas supply lines (if any) and underground water supply lines.

**"Society"** means Jacks Point Residents & Owners Association Incorporated.

**"Southern Village Bylaws"** means the Bylaws applicable to the Southern Village Lots as initially contained in Schedule 2 and as amended or added to from time to time pursuant to rule 16.6.

**"Southern Village Committee"** means the committee members from time to time appointed under clause 12 to manage those affairs of the Southern Village Precinct described in that clause in this Constitution.

**"Southern Village Controlling Member"** means Southern Village Precinct C.M. Limited or any assignee and/or successor in title whether in whole or in part or parts of the Southern Village Precinct, that continues the promotion and carrying out of such development and that Southern Village Precinct C.M. Limited nominates as the Southern Village Controlling Member.

**"Southern Village Design Review Board"** means the design review board appointed in respect of the Southern Village Precinct under clause 10.7.

**"Southern Village Lot"** means a Developed Property created from any part of the Southern Village Precinct. .

**"Southern Village Member"** means a Member who owns a Southern Village Lot.

**"Southern Village Precinct"** means the area shown as such on the plan in Schedule 3.

**"Special Resolution"** means a resolution of the Society in general meeting passed by a majority of not less than 75% of such Members (which, for the purposes of this definition, includes the Controlling Member (if any)) entitled to vote in person or by proxy on the question.

**"Total Value"** means the sum total of the Section Values of all Developed Properties as at a given date. Where the calculation is in respect of a Precinct "Total Value" means the sum total of the Section Values of all Developed Properties in the Precinct as at a given date.

**"Users of the Member's Developed Property"** means any users of the Member's Developed Property, including any mortgagee in possession of that Member's Developed Property, the Occupiers of such Member's Developed Property, the Invitees of such Occupier, the Invitees of such Member and the purchaser of such Member's Developed Property.

**"Utilities"** means the following utilities and services:

- a. **Sealed vehicle access** over all roading within Jacks Point, including roading which is accessible to the general public connecting to the adjoining State Highway;
- b. **Sewage treatment plants, disposal systems, wastewater and storm water disposal systems, and related reticulation** connecting to all Developed Properties and Communal Facilities within Jacks Point;

- c. Service Lines connecting all Developed Properties and Communal Facilities within Jacks Point to appropriate supply networks, which, for clarity, may supply both Jacks Point and adjoining lands to the north and to the south;
- d. Domestic and irrigation water systems (including storage tanks, treatment facilities, reticulation, etc) connecting all Developed Properties and Communal Facilities within Jacks Point to water supply systems sourced from Lake Wakatipu and supplying both Jacks Point and, if applicable, adjoining lands to the north and to the south,

and in each case includes the supply of services and utilities as applicable, and any other services and utilities (such as by way of example only, rubbish collection services) that may be required at Jacks Point.

**"Utilities Suppliers"** has the meaning given to it in clause 10.4.

**"Vendor"** means any person who purchases a Developed Property with a view to it being offered for sale to the public in New Zealand and the Developed Property has not previously been offered for sale to the public in New Zealand.

**"Village Developer"** means a person or entity which is both:

- (a) a Developer; and
- (b) undertaking physical works to convert its land in the Southern Village Precinct or the Northern Village Precinct from bare land into Developed Properties.

**"Village Golf Course Deed"** means the deed in respect of golf levies and rights to use the Golf Course between the Golf Course Operator and the Society in respect of the land represented by the Northern Village Precinct and the Southern Village Precinct (and therefore the Northern Village Lots and the Southern Village Lots) annexed as Appendix 3.

**"Village Golf Levy"** means any levy charged under clause 5.2;

**"Village Owner"** has the meaning given to it in the Village Golf Course Deed.

**"Water Company"** means Coneburn Water Supply Co Limited.

**"Water Company Costs"** means the sum of all levies, payments and expenses properly payable by the Society in respect of or to the Water Company.

**"Water Deed"** means the deed to be called Deed Pertaining to Jacks Point Water Supply to be entered into by the Society in respect of water supply to the Jacks Point Zone, or any replacement of that deed pursuant to its terms, which for information and identification purposes is annexed to this Constitution as Appendix 4.

**"Working Day"** means a day of the week other than:

- a. Saturday, Sunday, Good Friday, Easter Monday, the day on which ANZAC Day is publicly observed, the Sovereign's Birthday, Labour Day and the day on which Waitangi Day is publicly observed;
- b. A day in the period commencing the 25<sup>th</sup> day of December in any year and ending with the 2<sup>nd</sup> day of January in the following year;
- c. If the first day of January in any year falls on a Friday, the following Monday;
- d. If the first day of January in any year falls on a Saturday or Sunday, the following Monday and Tuesday.

**2.2 Interpretation:** In this Constitution, unless the context otherwise requires:

- a. words denoting the singular shall include the plural and vice versa;
- b. one gender shall include the other gender;
- c. words denoting persons shall include any individual, company, corporation, firm, partnership, joint venture, association, organisation, trust, state, agency of a state, municipal authority, government or any statutory body in each case whether or not having separate legal identity;
- d. any covenant or agreement on the part of two or more persons shall bind those persons jointly and severally;
- e. reference to anything of a particular nature following upon a general statement shall not in any way derogate from, or limit the application of the general statement, unless the particular context requires such derogation or limitation;
- f. any reference to "month" or "monthly" shall mean, respectively, calendar month or calendar monthly;
- g. references to rules are references to rules in this Constitution;
- h. the table of contents, the section headings and clause headings have been inserted for convenience and a quick guide to the provisions of this Constitution and shall not form part of this Constitution or affect its interpretation in any way;
- i. reference to any statute, regulation, ordinance or Bylaw shall be deemed to extend to all statutes, regulations, ordinances or Bylaws amending, consolidating or replacing the same;

### 3. OBJECTS

**3.1 General:** The Society is formed to promote the following objects for the benefit of Members and/or Jacks Point:



- a. The promulgation and enforcement of Bylaws and covenants benefiting Members and/or Jacks Point generally.
- b. The creation and implementation of appropriate Design Guidelines and control mechanisms in respect of each Developed Property,
- c. The proper supply, operation, maintenance, repair, renovation and replacement of the Communal Facilities (whether owned directly or indirectly, leased or licensed by the Society or not).
- d. Providing and maintaining services, Utilities and benefits (including access to the Golf Course) to Members, and the proper landscaping of any landscaped area on any Developed Property.
- e. The ownership and continued ownership, leasing or licensing of any Communal Facilities owned (directly or indirectly) by, or leased or licensed to the Society (but, for avoiding doubt, not any Utilities that are not owned by, or leased or licensed to, or in respect of which the Society has entered into a formal management agreement for the benefit of, the Society).
- f. The full and proper use of the Communal Facilities by Members and, where appropriate, members of the public.
- g. The promulgation and enforcement of Bylaws and covenants to ensure that obligations regarding the management of any water bodies, wetlands, natural features, and Department of Conservation property, including compliance with all relevant laws and requirements of government departments (including the Overseas Investment Office and Land Information New Zealand) are upheld.
- h. Providing communication between members of the Society, Golf Course Operator, Water Company and any Utilities company formed for the supply of Utilities to Jacks Point and any neighbouring developments, and established by the Developer(s) or others within the Jacks Point Zone.
- i. Facilitating the installation and maintenance of Service Lines and the supply of Utilities to properties within Jacks Point.
- j. The performance and enforcement by the Society of its obligations and rights under the Golf Course Deed, Golf Course Encumbrances and the Water Deed (and any other deeds or agreements relating to water supply within the Jacks Point Zone which are anticipated by the Water Deed) for the benefit of the Members.
- k. The levying of Members for the purpose of meeting the objects set out in this rule 3.
- l. To engage in community discussion and/or actions on local issues with Queenstown Lakes District Council, other local or regional authorities, community groups, developers and/or individuals in circumstances where the issues have (or have the potential to)

affect or impact on Society, its members, Communal Facilities and/or Jacks Point.

- 3.2 **Pecuniary gain not to be an object:** The Society does not have as an object the pecuniary gain of Members, and (subject to rule 16.1) no Member shall be entitled to receive any dividend out of any levy, fee, donation or other income or funds of the Society.
- 3.3 **Shares held by Society in utility company:** The Society must not hold shares in any company that holds, maintains or manages any of the Utilities or the Communal Facilities, including (beneficially though the Infrastructure Association) the Water Company, unless the constitution of that company provides that it cannot carry on:
- a. trading activities for a profit; or
  - b. business for a profit.
- 3.4 **Members may contract:** A Member may enter any agreement or understanding with the Society for the supply of any goods or services for such consideration and on such other terms and conditions as would be reasonable if that person were not a Member.

#### 4. MEMBERSHIP

- 4.1 **First Members:** The first Members ("**First Members**") of the Society shall be those members named in Schedule 1. The First Members (other than the **Controlling Member**) shall resign from the Society as soon as more than 15 Owners (other than the **Controlling Member**) are Members.
- 4.2 **Owners to be Members:** Each Owner shall be a Member, and only Owners shall be Members, and for that purpose:
- a. Each Member for so long as they are an Owner shall remain a Member in good standing of the Society and comply with the obligations under this Constitution.
  - b. Each Owner shall (immediately when called upon to do so) grant in favour of the Society an encumbrance and/or covenants ("Covenant") to be noted against that Owner's Title, securing that Owner's obligations to become and remain a Member, and to perform the obligations of a Member as set out in this Constitution and otherwise containing the terms required by the Society. Each Covenant will bind the respective Owner's successors in title so that contemporaneously with the acquisition of any interest in any Developed Property all such successors in title must become and remain a Member, and observe and perform the obligations of a Member as set out in this Constitution. In order to facilitate the effectiveness of the Covenants, each Owner shall comply with rule 9.2. The Covenants shall be prepared by the solicitors for the Society, and the respective Members shall pay the reasonable legal fees and disbursements of the Society's solicitors.



- c. A Member shall cease to be a Member immediately upon the registration of a transfer of the Owner's Title (after the Society has consented to such transfer in terms of rule 7.2d), provided that such cessation shall not relieve a person of any obligation or liability arising before that person ceased to be a Member.
  - d. Each Member shall, before ceasing to be an Owner, provide the Society with the particulars and documentation necessary for maintenance of the register of Members pursuant to rule 4.6 in respect of the new Owner of its Developed Property. Upon the registration of the transfer of the Owner's Title to the new Owner, the new Owner shall become a Member.
- 4.3 **Fee:** The Society shall be entitled from time to time to set such reasonable fee in relation to the issue of a Membership or transfer of a Membership as the Society in its sole discretion will determine. If the Society incurs any third party costs in relation to the issue of a Membership or the transfer of a Membership (including, without limitation, solicitor client costs), the applicant (in the case of the issue of a Membership) or the seller (in the case of the transfer of a Membership) shall meet those reasonable third party costs.
- 4.4 **Appointment of Controlling Member: Until:**
- a. the development of Jacks Point is fully completed as determined by the Area Controlling Member at its sole discretion, there shall be an Area Controlling Member ;
  - b. the development of the Residential Precinct is fully completed as determined by the Residential Controlling Member at its sole discretion, there shall be a Residential Controlling Member;
  - c. the development of the Northern Village Precinct is fully completed as determined by the Northern Village Controlling Member at its sole discretion, there shall be a Northern Village Controlling Member;
  - d. the development of the Southern Village Precinct is fully completed as determined by the Southern Village Controlling Member at its sole discretion, there shall be a Southern Village Controlling Member;

and, in each case, when the appropriate Controlling Member determines such completion, that Controlling Member is deemed to have resigned as Controlling Member.

The purpose of the Controlling Members is to ensure that the Developer(s) can develop Jacks Point as a premium development in accordance with the Jacks Point Zone. The Controlling Members shall have only the rights specified in this Constitution, and shall have no other rights or obligations of a Member in the Controlling Member's capacity as Controlling Member. No reference in this Constitution to a "Member" shall be taken as including a reference to the Controlling Member in its capacity as Controlling Member.

4.5 **Classes of Membership:** The following classes of Membership are established:

- a. Residential Precinct Members; and
- b. Northern Village Members; and
- c. Southern Village Members.

In addition to the above classes the relevant Precinct Committee may at any time specify sub-classes of Membership within its Precinct (including between Residential Members and Commercial Members) to recognise any category of usage and levies that may be appropriate. However no new sub-classes of Membership may be created if their creation in any way prevents the Society from recovering all of the levies which the Society, on a reasonable basis, needs to charge to Owners of that Precinct.

4.6 **Register of Members:** The Society shall maintain a register of Members recording and holding the following particulars and documentation:

- a. **For each Member:**
  - i. *Particulars:* name, postal and email addresses, occupation, telephone number and facsimile number (at home and at work) and similar details for a third party to be contacted in the event of absence or emergency; and
  - ii. *Documentation:* a duly signed direct debit authority for the purposes of rule 6.5 and duly signed written acknowledgement for the purposes of rule 7.2d.ii(2).
- b. **For each Occupier:** Name, postal and email addresses, occupation, telephone number and facsimile number (at home and at work) and similar details for a third party to be contacted in the event of absence or emergency.
- c. **Membership:** the date upon which each Member became a Member.
- d. **Voting:** Where there is more than one Owner of a Developed Property, which of such Owners is entitled to vote in accordance with rule 15.2 and where a Member is a corporation and has appointed a representative under rule 15.9, the name and contact details of that representative.
- e. **Class of Membership:** the class (and sub-class, if any) of Membership to which that Owner belongs and what Interest Groups, if any, that Member belongs to.
- f. **Other:** Any other particulars and documentation reasonably required by the Area Committee from time to time.

- 4.7 **No notice of trust:** No notice of any trust express, implied or constructive, will be entered on the register of Members.
- 4.8 **Register to be audited:** The Area Committee shall ensure that a qualified auditor (being a member of the Institute of Chartered Accountants or its successor) audits the register of Members once a year.
- 4.9 **Not assignable:** The rights, privileges and obligations of a Member are not assignable.
- 4.10 **More than one Owner:** If there is more than one Owner for a Developed Property:
- a. such Owners shall collectively constitute one Member and the liability of such Owners in relation to their Membership will be joint and several; and
  - b. such Owners will nominate one of their number to be their agent and:
    - i. such nominee will be deemed to be agent of and acting on behalf of all such Owners; and
    - ii. where the Constitution requires notice in respect of anything concerning or connected with the relevant Membership to be forwarded by the Society, the Society will be deemed to have discharged its obligation to notify the Owners if it has given notice to the nominee; but
    - iii. if no such nomination is made, the nominee shall be deemed to be the Owner appearing first on the Owner's Title.
- 4.11 **Address for service:** Subject to rule 4.12, the particulars given by each Member under rule 4.6a.i shall be the address for service at which any communication or notice in writing by the Society may be served on that Member by any of the following methods:
- a. By way of post to any postal address provided by the Member or to the current address to which the local authority sends rates demands for that Member, in which case the communication or notice shall be deemed to have been served within seven days of posting of any such communication or notice.
  - b. By way of facsimile or email to any facsimile number or email address provided by the Member in which case the communication or notice shall be deemed to have been served immediately upon faxing or emailing any such communication or notice to the Member.
  - c. By personally delivering any communication or notice to a Member in which case the communication or notice shall be deemed to have been served on all Owners if served on the Member who is the nominee of the Owners under rule 4.10b.

- 4.12 **Service on Occupier:** The Society may elect to serve any communication or notice on an Occupier of a Developed Property at the particulars given under rule 4.6b by any of the methods specified in rule 4.11 and such communication or notice shall be deemed to have been served on the Owner of that Developed Property.

## 5. USE OF COMMUNAL FACILITIES AND GOLF COURSE

- 5.1 **Use of Communal Facilities:** Subject to any rules of the Society relating to the use of the Communal Facilities, and subject to rule 5.3, each Member and Occupier shall be entitled to make full use of the Communal Facilities.
- 5.2 **Use of Golf Course:** While the Golf Course does not form part of the Communal Facilities, different Precincts have different arrangements to allow Members within the Precinct to use the Golf Course, as set out in this clause.
- a. Members are eligible to play the Golf Course as follows:
- i. the Residential Precinct Members are eligible to play the Golf Course under the Golf Course Encumbrances;
  - ii. in addition to Members in respect of the Lodge, the operator of a hotel in respect of the Lodge is eligible to play the Golf Course pursuant to agreements reached between it and the Golf Course Operator;
  - iii. the Northern Village Members and the Southern Village Members are eligible to play the Golf Course under the Village Golf Course Deed;
  - iv. Owners of Commercial Properties are not eligible to play the Golf Course.
- b. The Society, and Members (except Owners of Commercial Properties), acknowledge that the Golf Course Operator has entered these separate arrangements to allow Members to use the Golf Course in the manner set out in those various arrangements.
- c. It is acknowledged that, under the Golf Course Encumbrances and the Village Golf Course Deed, the Golf Course Operator may impose such rules and regulations itself, directly to users of the Golf Course, and/or may impose such rules and regulations upon the Golf Club, which in turn will impose those rules and others upon members of the Golf Club.
- d. Each Village Owner agrees that by becoming a Member it is bound by the Village Golf Course Deed, including both the rights and the obligations of Village Owners under it. Each Village Owner also acknowledges that:

- i. under the Village Golf Course Deed, the Golf Course Operator will charge a Levy, as defined in the Village Golf Course Deed, (called "Village Golf Levy") directly to each Village Owner; and
- ii. if the Village Golf Levy is not paid by each Village Owner directly to the Golf Course Operator, the Village Golf Levy, plus any penalty interest in respect of the Village Golf Levy will be charged by the Golf Course Operator to the Society; and
- iii. the Society will levy that Village Owner a sum equal to the unpaid Village Golf Levy (including interest), and that levy will be payable by that Village Owner, immediately upon the Society charging it, as set out below:
  - (1) If any Village Owner does not pay its Village Golf Levy, or any part of it, by the due date for payment, and if the Golf Course Operator gives notice in writing of this (including an appropriate GST invoice) to the Society, then the following provisions apply:
  - (2) The total of that unpaid Village Golf Levy (excluding any interest payable ("Interest") by the Village Owner to the Golf Course Operator) will immediately be deemed to be payable by the Society to the Golf Course Operator in the manner set out in this clause; and
  - (3) The Society will charge a levy to that Village Owner equal to the unpaid Village Golf Levy (including Interest) and take all reasonable steps to immediately cause that Village Owner to pay that sum to the Society; and
  - (4) Immediately upon receipt of the unpaid Village Golf Levy from the Village Owner, the Society will pay a sum equal to the unpaid Village Golf Levy (excluding Interest) to the Golf Course Operator; and
  - (5) The Society will retain the Interest in consideration of recovering and paying the Golf Course Levy to the Golf Course Operator; and
  - (6) The Society can exercise all of its rights under rule 9.3c to recover the Village Golf Levy and Interest.

- 5.3 Persons not entitled to use Communal Facilities:** No person, other than those persons set out in rule 5.1, or those permitted by way of a lease agreement, which the Society has passed by Special Resolution, shall be entitled to use the Communal Facilities, except as any resource consent granted in respect of Jacks Point, any covenant or other consent or instrument requires any part of the

Communal Facilities to be available for use by the general public or any section or class of it.

- 5.4 **Acquisition of Golf Course:** The Society may not at any time acquire the Golf Course Interest, except if first approved by a Special Resolution passed by the Members of each Precinct and subject to the provision of information required by rule 5.5. For the sake of clarity, a proposed acquisition of the Golf Course Interest is an Area Matter. A Member is not entitled or eligible to vote on that Special Resolution, where that Member or a Related Entity:
- a. is the vendor of a Golf Course Interest;
  - b. has sold a Golf Course Interest to a third party with a view to that person on-selling the interest (whether to the Society or otherwise) and that person is the vendor of the interest in question.
- 5.5 **Information to be provided by Members:** Before any Special Resolution as required by rule 5.4 is put to the Society, the Society must send to all Members entitled to vote on that Special Resolution the following information:
- a. financial statements relating to the Golf Course Interest for the previous year and a summary of the financial statements for the previous five years in accordance with Securities Act (Jacks Point Development) Exemption Notice SR2006/20;
  - b. details of the Golf Course Interest that it is proposed is sold or transferred to the Society;
  - c. a report by an independent registered valuer addressed to the Society and dated not more than 3 months before the date of any Special Resolution, as to the capital value of the Golf Course;
  - d. a statement by the directors of the owner of the Golf Course as to whether, after due enquiry by them in relation to the period between the date of the financial statements referred to in rule 5.5a and the date that those statements are provided to the Society in relation to the Special Resolution required under rule 5.4, there has, in their opinion, arisen any circumstances that materially adversely affect:
    - i. the profitability or activities of the Golf Course Interest; or
    - ii. the value of the assets of the Golf Course Interest; or
    - iii. the ability of the business of the Golf Course Interest to pay its liabilities due within the next twelve months; and
  - e. particulars of any material matters relating to the decision of the Society to acquire the Golf Course Interest.

## 6. COMPUTATION AND PAYMENT OF LEVIES

### 6.1 General Principles:

- a. The Society is responsible for setting the levies described in this section 6. All levies must be set in a way that is fair and equitable to the Society, to all Members and all Classes of Membership. All levies must also adhere to any agreement entered into in respect of any of those Members or groups, including without limitation the Residential Members, the Commercial Members, or any Members' Interest Group as defined under rule 16.5. The levies for an Expense Year will be set by;
  - b. (i) in relation to the Communal Facilities where they relate to the use by all Members the Area Committee taking into account the estimated Operating Expenses for the Expense Year and any contingency sums/special levies contemplated under rule 6.9;
  - (ii) in relation to any matter that predominantly concerns or affects a Precinct, the Area Committee and the relevant Precinct Committee together provided that where agreement is not reached within 5 Working Days then as determined in accordance with clause 16.16;
  - (iii) in relation to any matter which solely affects a Precinct then that Precinct Committee alone may make the decision;
- c. For the purpose of setting and collecting levies under this rule 6:
  - i. the Society must not levy any Developed Property:
    - (1) before the earlier of the date
      - (aa) the Developer notifies the Society that it may levy such a Developed Property from; or
      - (bb) the date that is 15 months after the date that the property meets the definition of Developed Property,
 whichever date first occurs;
    - (2) while the Owner of that Developed Property is a Developer;
 (an "Excluded Property");
  - ii. references to "Developed Property" in this rule 6 shall be deemed to exclude any Excluded Property; and any defined terms that require reference back to the definition of Developed Property when used in this rule 6 shall likewise be deemed to exclude any Excluded Property. By



- way of example only, the calculation of Member's Proportion shall not include any Excluded Property;
- iii. for the purposes of the Village Golf Levy, no Developed Property will be an Excluded Property.
- d. Subject to the general principles in clause 6.1 a and b., levies may be fixed in any of the following ways or in any combination of them:
- i. uniform annual charges ("**fixed charges**") provided that such levy must always be reasonable taking into account the nature of that Utility, service or other thing to which the charge relates and the location of Jacks Point. That levy may be payable per Member, Class of Membership, or per Members' Interest Group (such as by way of example only, per Residential Member or any subset of Residential Member with identical interests);
  - ii. variable usage charges ("**variable charges**") provided that such levy must always be reasonable taking into account the nature of that Utility, service or other thing to which the charge relates and the location of Jacks Point. That levy may be payable per Member, or per Members' Interest Group (such as by way of example only, per Residential Member or any subset of Residential Member with identical interests);
  - iii. charges calculated on the basis of each Member's Proportion. For clarity, some charges may be calculated based on paragraph a. of the definition of Member's Proportion, other charges may be calculated based on paragraph b. of that definition and other charges may be calculated based on paragraph c. of that definition. ("**Members Proportion charge**");
  - iv. contingency sums/special levies under rule 6.9 ("**Special Charge**"); and
  - v. one-time connection/disconnection charges for connection and disconnection under rule 6.6 ("**connection charge**").
- e. Where a Residential Member's Developed Property comprises more than one Residential Unit or commercial tenancy, then to the extent that the Queenstown Lakes District Council and/or the Otago Regional Council levies charges or surcharges for services, utilities, connections or benefits based on the number of Residential Units and/or commercial tenancies on a lot (or would do so if the Developed Property were not in the Jacks Point Zone), the Society may calculate the levies for a Developed Property as if each Residential Unit or commercial tenancy were a Developed Property. For the purposes of this rule 6.1e a Residential Unit means a single self contained household unit, whether of one or more persons, and includes accessory buildings. Where more than one kitchen and/or laundry facility is provided on the lot there shall be deemed to be more than one Residential Unit.



**6.2 Precinct Costs and Golf:** In setting levies:

- a. To the extent that any Operating Expenses are incurred by the Society in respect of one or more Precincts, but not in respect of other Precinct(s), those Operating Expenses will be attributed to the particular Precinct(s) (and therefore Classes of Membership) in respect of which they are incurred, when the levies for that Precinct are calculated;
- b. The Residential Golf Levy will be deemed not to be an Operating Expense incurred in respect of the Northern Village Precinct and the Southern Village Precinct. Therefore the Residential Golf Levy will be excluded in calculating levies payable by Northern Village Members and Southern Village Members;
- c. The Residential Golf Levy will be attributed to Residential Precinct Members only, in calculating their respective levies;
- d. The Village Golf Levy (if any) will be charged in the manner described in clause 5.2;
- e. Where any part of levies are attributed to a Precinct in this manner, the calculation of the Members' Proportion in respect of that part of the levy, will use the Total Value or land area, as appropriate, of the Precinct.

**6.3 Levies:** Levies shall be fixed for each Member's Developed Property in accordance with this rule 6.3. Prior to or as soon as practicable after the commencement of each Expense Year, the Society shall by written notice advise each Member of:

- a. the fixed charges for that Expense Year;
- b. the rate for any variable charges for that Expense Year;
- c. the Society's estimate of that Member's Proportion charges for that Expense Year ("**the Society's Estimate**");
- d. any Special Charges for that Expense Year;
- e. any one time connection charges that the Society is levying in that Expense Year;

which, for clarity, may in each case take into account the anticipated new Developed Properties which will become available during that Expense Year.

**6.4 New Developed Properties:** When a property becomes a Developed Property the Society shall advise the Member of that new Developed Property in writing of:

- a. the Society's Estimate for that Expense Year which shall be charged as follows:

$$\frac{A}{B} \times \text{the Society's Estimate}$$

Where: "A" means the number of days remaining in the Expense Year from the date the property becomes a Developed Property; and

"B" means the total number of days in the Expense Year;

- b. the fixed charges for that Expense Year (which shall be charged in the same proportion as the Society's Estimate);
- c. any variable charges;
- d. any Special Charges for that Expense Year; and
- e. any connection charges.

**6.5 Payment of levies:** Subject to rule 6.7, each Member shall, on the first day of each Quarter in each Expense Year, pay:

- a. one quarter of the Society's Estimate except if a Member has a new Developed Property in the relevant Expense Year (as provided for under Rule 6.4) that Member will pay  $\frac{x}{4}$  of the Society's Estimate. "x" means the number of Quarters left in the Expense Year from the date the property meets the definition of a Developed Property;
- b. any fixed charge that the Society has decided is payable for that Quarter;
- c. any Special Charge that the Society has decided is payable for that Quarter; and
- d. the specific variable charges applicable to that Member's usage, as per notification by the Society to that Member of the usage to which such charge relates;

by direct debit to a bank account nominated by the Society.

**6.6 Connection Charges:** One time connection charges are payable as determined by the Society from time to time which, without limitation, may include payment in advance of connection.

**6.7 Statement of Operating Expenses:**

- a. As soon as practicable after the end of each Expense Year the Society shall provide to each Member an itemised statement of the actual Operating Expenses for the just completed Expense Year in accordance with rule 12.13.
- b. If:

- i. the actual Operating Expenses for the previous Expense Year (as shown in the financial statements completed in accordance with rule 12.13) are greater than the total levies fixed for that Expense Year under rule 6.3, the Society shall add the difference to the Society's total estimate of the Operating Expenses for the then current Expense Year; or
- ii. the actual Operating Expenses for the previous Expense Year (as shown in the financial statements completed in accordance with rule 12.13) are less than the total levies fixed for that Expense Year under rule 6.3, the Society shall credit the difference to the Society's estimate of the Operating Expenses for the then current Expense Year.

**6.8 Interim Payments:** If the Society has failed to advise a Member of the levies fixed under rule 6.3 for an Expense Year before the date the first Quarterly payment is due under rule 6.5, the Member shall on that date and every other date on which a payment is due under rule 6.5 until the levies fixed under rule 6.3 are available, pay one quarter of the total levies levied by the Society for the previous Expense Year (or, if the Member's property was a new Developed Property in that Year, that would have been payable by that Member). On the levies being fixed under rule 6.3 for the Expense Year and being advised to that Member:

- a. If the aggregate of a Member's payments made under this rule 6.8 during the Expense Year exceeds the aggregate of payments which should have been made under rule 6.5, the Society shall deduct the difference from the payment due by that Member in the next Quarter for the then Expense Year.
- b. If the aggregate of a Member's payments under this rule 6.8 during the Expense Year is less than the aggregate of payments which should have been made under rule 6.5, the Member shall immediately pay the Society the difference.

**6.9 Special Charges:** Subject to the general principles in clause 6.1a and b, the Area Committee and the relevant Precinct Committee where required under clause 6.1b may from time to time fix:

- a. an additional levy to be paid by each Member to be set aside as a sinking fund to allow for and meet the costs of Capital Improvements, provided that any levy payable by a Member under rule 6.9a shall be equal to that Member's Proportion of the total estimated cost to be provided for and met from the proceeds of the levies paid by all Members; and
- b. such other levies, payable by each Member at such times as are set by the Society, as the Society considers are necessary for it to meet its obligations under this Constitution provided that any levy payable by a Member under rule 6.9b shall be equal to that Member's Proportion of the total estimated cost to be provided for and met from the proceeds of the levies paid by all Members; and

- c. such levies, payable by each Member of a Member's Interest Group at such times as are set by the Society, as the Society, acting reasonably, considers are necessary for any Members' Interest Group, provided that any levy payable by a Member of a Members' Interest Group under this rule 6.9c shall be equal to that Member's Proportion (but where such calculation of the Total Value shall be deemed to be the sum total of the Section Values of Developed Properties of the Members' Interest Group, and the total land areas shall be deemed to be that of the Developed Properties of the Members' Interest Group) of the total estimated cost to be provided for and met from the proceeds of the levies paid by all Members of that Members' Interest Group;
- d. such levies as are required to charge to Members the Sinking Funds and Other Capital Levies (as defined in the Water Deed) or similar charges payable by the Society to the Water Company or the Infrastructure Association;

and in each case the Area Committee and the relevant Precinct Committee where required under clause 6.1b will determine if that Member's Proportion will be calculated under paragraph a. or paragraph b. or paragraph c. of the definition of Member's Proportion.

- 6.10 **Estimate of Levies:** The Society shall provide to a Member within five Working Days of receiving a request, a statement of the levies that are estimated to be or were payable by that Member under this rule 6 for the period commencing from incorporation of the Society and ending on 30 June 2010 that:
- a. comprises estimates, historical data or both;
  - b. is itemised in relation to the different Communal Facilities and services provided in relation to the development at Jacks Point;
  - c. contains a statement in relation to each of the Communal Facilities and services as to whether the levy is fixed, variable or based on the Member's Proportion;
  - d. contains a statement as to which of the Communal Facilities and services were, or are expected to be, provided in each Expense Year within that period;
  - e. contains a statement as to what stage the development at Jacks Point is at, or is expected to be at, at the end of each Expense Year within the period;
  - f. contains, if a levy is based on the Member's Proportion, a statement of a formula by which the levy can be calculated together with a worked example; and
  - g. contains a statement of the principal assumptions on which any estimates are based.
- 6.11 **Balance of Capital Levies:** The Members acknowledge that, under the Water Deed, the Society may have Credit Balances paid

to the Water Company against future JPROA Sinking Fund Levies and/or JPROA Other Capital Levies (as those phrases are defined in the Water Deed). Alternatively, the Society may hold capital levies or the equivalent ("**Sinking Funds Held**") to be paid in the future to the Water Company by way of Sinking Funds or Other Capital Levies, or similar. All such Credit Balances and Sinking Funds Held, as at 1 October 2015 will be for the credit of the Residential Precinct Members only in respect of future levies or sinking funds or capital charges payable by the Society in respect of JPROA Sinking Funds and/or JPROA Other Capital Levies.

## 7. OBLIGATIONS OF MEMBERS

- 7.1 **Covenants and Bylaws:** Each Member agrees to promptly and fully comply with:
- a. the terms of this Constitution;
  - b. the Residential Bylaws if that Member is a Residential Precinct Member;
  - c. the Northern Village Bylaws if that Member is a Northern Village Member;
  - d. the Southern Village Bylaws if that Member is a Southern Village Precinct Member;
  - e. any covenants given in favour of the Society by such Member (whether by separate deed of covenant or as noted against each Owner's Title).

No amendment to this Constitution shall be made that results in there being any conflict between the provisions of this Constitution (including any rule or Bylaw) and the provisions of the Covenant (as described in rule 4.2).

- 7.2 **Sale of Developed Property:** Where a Member sells ("**the Seller**" and, for the sake of clarity, "**the Seller**" includes any mortgagee, receiver, liquidator, assignee, or other entity exercising a power of sale under a New Zealand Court order, act of Parliament, mortgage, charge, or other document) a Developed Property:
- a. Notwithstanding any other rule in this Constitution, the Seller shall remain liable for sums owed to the Society by that Seller.
  - b. Without limitation, the Seller shall continue to be liable as a primary and principal debtor for all indebtedness of the purchaser of the Developed Property ("**the Purchaser**") to the Society until such time as:
    - i. the transfer of the certificate of title for that Developed Property to the Purchaser is registered at Land Information New Zealand; and

- ii. the Purchaser is bound by the Covenant secured against the Developed Property; and
  - iii. the Seller has complied with its obligations under this rule 7.2 and rule 9.2.
- c. The Purchaser shall be liable as if a Member for all indebtedness of the Seller to the Society in respect of the Developed Property purchased and a statement of the Society given under rule 7.5 shall (in the absence of manifest error) be conclusive as to the sum of this indebtedness.
- d. The Seller must obtain the consent of the Society to the transfer of the Seller's Developed Property prior to the date of transfer. The Society hereby delegates the power to grant or decline such consent to the Precinct Committee in respect of the Precinct which the Seller's Developed Property belongs to. Notwithstanding anything else contained in this rule 7.2, that Precinct Committee may decline to consent to a transfer of the Seller's Developed Property until:
- i. the Seller has performed its obligations as a Member as set out in this Constitution, including (without limitation):
    - (1) the Seller's payment of all sums owed to the Society in full (including any fees charged or costs incurred under rule 4.3); and
    - (2) the Seller's provision of the Purchaser's particulars and documentation in accordance with rule 4.2d, and
  - ii. the Purchaser has:
    - (1) given an undertaking to pay immediately on settlement the levy which the Society will require under rule 6.5 for the next Quarter of its proposed membership in the Society; and
    - (2) given a written acknowledgement to the Society that it has read and understood this Constitution, all then current Bylaws (being the Jacks Point Bylaws or the Henley Downs Bylaws, as the case may be) and the Covenant.

**7.3 Lease of Developed Property:** No Member shall:

- a. For the purpose of this rule 7.3 the term "lease" means any change in possession of a Developed Property for consideration including any form of lease, tenancy, licence, or assignment and includes providing accommodation to any paying guest, and the term "lessee" means any person taking possession under a lease.
- b. No Member shall lease the Member's Developed Property for any period shorter than 32 days other than through the Rental Agency



for their Precinct pursuant to rule 7.3d below. Where this rule 7.3b applies, Members must not advertise the Member's Developed Property for lease other than through the Rental Agency. This rule 7.3b shall not apply to a lease to friends or family of the Member, being persons known to the Member who have not been introduced to the Member's Developed Property through any form of marketing, provided that the Member notifies the Rental Agency of the names and contact details of the lessee under such lease.

- c. No Member shall lease the Member's Developed Property for more than a total of 90 days in any calendar year where that total is made up of a number of different lease terms each shorter than 32 days. The period of 90 days referred to in this rule 7.3c may be reduced by the Rental Agency from time to time, at its discretion, to achieve consistency with any requirement of an Authority to obtain resource consent for visitor accommodation activity and/or with any commercial/visitor accommodation activity rating levy.
- d. Any Developed Property leased through the Rental Agency pursuant to rule 7.3b above shall be leased by the Rental Agency on behalf of the Member at the market rent applicable for that type of Developed Property in Jacks Point and otherwise on normal residential leasing and commission conditions applicable as between landlord/rental agent and landlord/tenant.
- e. No Member shall lease the Member's Developed Property for any period of 32 days or longer ("lease period") without first notifying the Rental Agency for their Precinct of such lease and the names and contact details of the lessee. The Rental Agency is permitted to disclose those details to the Society to enable the Society to generally monitor and manage security within Jacks Point. No Member may lease the Member's Developed Property pursuant to this rule 7.3e for more than a total of 12 lease periods within a calendar year.

**7.4 Change of Control:** Where any Member is an unlisted company or any Occupier is an unlisted company then any change in the legal or beneficial ownership of any of its shares, issue of new capital or amalgamation which results in a change in the effective management or control of the company is deemed to be a transfer of the Seller's Developed Property requiring compliance with Rule 7.2d.i.

**7.5 Society to provide statement:** The Society shall, on application by a Member, or any person authorised in writing by such Member, provide the Member or authorised person with a statement of the indebtedness of the Member to the Society calculated to the date specified in the application. The statement shall show:

- a. the levies payable by such member for the current Expense Year calculated in accordance with rule 6;
- b. payments made by the Member on account of Operating Expenses or other moneys owing in the current Expense Year;

- c. payments due from the Member on account of Operating Expenses or other moneys owing in the current Expense Year, and not paid by the Member; and
- d. any accumulated unpaid default interest.

7.6 **Payment of Rates and Compliance With Obligations:** For clarity, each Member acknowledges that it is still liable to pay rates levied by the Queenstown Lakes District Council and/or by the Otago Regional Council (or their successors) and to otherwise comply with all legal obligations in respect of that Member's Developed Property.

7.7 **Compliance with Infrastructure Association Obligations:** Each Member agrees to promptly and fully comply with any obligation imposed by the constitution or rules of the Infrastructure Association, where the Society has an obligation to cause Members to do this, so that the Society is never in breach of such obligations.

## 8. ONGOING DEVELOPMENT

8.1 **Future Development:** The Members acknowledge that development of Jacks Point is ongoing. The Society must allow any Developer such access to, and interests in, the Communal Facilities as are necessary or desirable for the development of Jacks Point to proceed, and to allow any Developer to add, replace, alter or remove where not required structures and services forming part of the Communal Facilities, and to procure that its Members amend this Constitution if such amendment is necessary or desirable for the development to proceed. The Members further acknowledge that the provisions of this rule 8.1 do not limit any other obligations agreed to by a Member or otherwise binding on a Member. Each Member agrees:

- a. to grant and now grants the applicable Developer access to the Developed Property of that Member with such vehicles, machinery and tools as that Developer desires for the purpose of proceeding with the development. However, the applicable Developer shall:
  - i. make good any damage caused by that Developer accessing a Developed Property of that Member under the provisions of this rule 8.1a; and
  - ii. in so doing, shall not unreasonably interfere with that Member's quiet enjoyment of that Member's Developed Property,
- b. to, and hereby grants, such easements in favour of the Developers, any Member and/or the Society over or under the Member's Developed Property as are required for Jacks Point to proceed or as may be necessary or desirable for development of Jacks Point, that easement to include terms equivalent to those set out in rules 8.1.a.i and 8.1.a.ii;
- c. not to prevent, hinder or obstruct the use by any Developer of the Communal Facilities, the addition, replacement, alteration or



removal where not required of structures or services forming part of the Communal Facilities by that Developer, or the granting of any interests in the Communal Facilities by the Society to a Developer;

- d. that neither the Member nor the Society shall oppose, or take part in any opposition to, the development of Jacks Point;
- e. to support any resolution to amend this Constitution, where the Society is bound by agreement with a Developer to procure such amendment;
- f. to sign any document or do any other thing reasonably necessary to support any resource consent or other authorisation applied for by or on behalf of any Developer in respect to the development of the Jacks Point Zone;
- g. to permit the Society to temporarily close the Communal Facilities as may be required for the development to proceed or as may be necessary or desirable for the development of the Jacks Point Zone.

## 8.2 Timing of Village Developed Properties:

- a. Each Village Developer in respect of the Southern Village Precinct and the Northern Village Precinct may elect when their land in those Precincts becomes Developed Properties, and therefore when the Non-Subdivision Covenant will be registered.
- b. However each Village Developer must register the Non-Subdivision Covenant over any part of that land so that each lot within that part of the land becomes a Developed Property on or before the earlier of any of the following dates:
  - (i) the date that lot would become a Developed Property, except for the registration of the Non-Subdivision Covenant; and
  - (ii) the date that lot ceases to be owned by a Village Developer; and
  - (iii) if that land is still owned by a Village Developer, the date that any physical works are carried out on the land, including ground works, pursuant to a building consent.
- c. Notwithstanding rule 8.2b such part of the land in the Northern Village Precinct or the Southern Village Precinct is deemed to be a Developed Property upon the earliest of the dates contained in rule 8.2b(i) to (iii) regardless of whether the Non-Subdivision Covenant has been registered

## 9. BREACH OF OBLIGATIONS

- 9.1 **Occupiers:** A reference to an act or omission by any Member shall include any act or omission by any Users of the Member's Developed Property.

- 9.2 Each Member must, without limitation and in addition to the requirements of rules 4.2 and 7.2:
- a. procure that all leases, licences, agreements for sale and purchase and all other agreements and documents that relate to the Member's Developed Property include a provision for the benefit of the Society that requires all such Users of the Member's Developed Property to comply with this Constitution, all then current Bylaws applicable to that Member and any covenants given in favour of the Society by that Member;
  - b. make all Users of the Member's Developed Property aware of the Covenant;
  - c. attach a copy of this Constitution, all then current Bylaws that apply to that Member and any covenants given in favour of the Society by that Member to all leases, licences, agreements for sale and purchase and all other agreements and documents that relate to the Member's Developed Property; and
  - d. take all reasonable steps (including enforcing the terms of all leases, licences, agreements for sale and purchase and all other agreements and documents that relate to the Member's Developed Property) to ensure that all Users of the Member's Developed Property comply with this Constitution. In any case of persistent default by a User of the Member's Developed Property of this Constitution, the Owner shall on demand by the Society and where legally possible, terminate the Users' of the Member's Developed Property rights to the Developed Property.
- 9.3 **Consequences:** Without prejudice to the Society's other rights and remedies, upon any breach of this Constitution by a Member ("**Offending Member**"):
- a. Where damage has been caused to the Communal Facilities, the Offending Member shall immediately make good such damage to the standard reasonably required by the Society.
  - b. If such default continues for seven days after notice is given by the Society to the Offending Member to remedy the default, the Society may do anything, including paying money, necessary to remedy the default.
  - c. All money paid and the expenses incurred by the Society (including any legal costs of the Society) in remedying, or attempting to remedy, any breach by an Offending Member of this Constitution, or incurred in the exercise, or attempted exercise, or enforcement, or attempted enforcement of any power, right or remedy of the Society in respect of such breach, shall be a debt due from the Offending Member to the Society.
  - d. If any money payable by an Offending Member to the Society is in arrears and unpaid at the date, being seven days after the date specified in any invoice or demand for payment ("Due Date") (and, whether or not formal demand for payment has been made and

without any formal demand being necessary), such money shall be payable by the Offending Member to the Society immediately on demand. Any money payable to the Society by an Offending Member after the Due Date:

- i. will bear interest at the Default Interest Rate, computed on a daily basis from the Due Date until the date of payment in full; and
  - ii. in addition, the Society may also on the Due Date (or at any time between the Due Date and the date all such money is paid) charge the Offending Member a penalty fee of 10% of the amount owing (including any amount owing from previous invoices), to the intent that the Society may charge a further penalty of 10% on the same money payable, to the extent such money is not paid by the next Due Date.
- e. If such default continues for seven days after notice is given by the Society to the Offending Member to remedy the default (provided that the notification period may in the Society's sole discretion be abridged in the event the Society considers that necessary) then, in addition to the consequences set out in rule 9.3, the Society may give further notice to the Offending Member suspending, for such time as the Society may determine, the Offending Member's right to use the Communal Facilities, and/or receive the supply of any Utility services, provided that nothing in this rule will relieve the Offending Member from the Member's obligation to pay any levies or other monies payable to the Society under the terms of this Constitution.

9.4 Without prejudice to rules 9.1 to 9.3 (inclusive) each Member acknowledges that there is likely to be a covenant registered over that Member's Developed Property in favour of land owned by the Society restricting subdivision of that Developed Property and regulating timeframes for completion of construction and landscaping on that Developed Property, ("Property Covenant"). If:

- a. a Member ("Infringing Member") breaches the terms of the Property Covenant; and
- b. another Member who is affected by that breach complains to the Society and refers to this rule 9.4;
- c. the Society is reasonably satisfied that the Infringing Member has in fact breached the Property Covenant,

then the Society, as Owner of the land that is the dominant tenement in respect of such Property Covenant shall take appropriate action to enforce the Property Covenant. For clarity, the Society may, but is not obliged to, take any action in relation to a land covenant that is registered not only in favour of land owned by the Society but also in favour of land owned by other persons.

## THE SOCIETY

### 10. POWERS AND OBLIGATIONS OF THE SOCIETY

- 10.1 **Bylaws:** In the fulfilment of the purposes and objects of the Society, but subject to rule 16.6, the Society shall from time to time promulgate, amend and distribute to Members Bylaws for the use of the Communal Facilities (including any restrictions on use for **security**, maintenance or other reasons), Bylaws concerning the behaviour of Users of the Members' Developed Properties and Bylaws governing the use of Developed Properties.
- 10.2 **Repair of Communal Facilities:** The Society shall ensure the proper operation, maintenance, repair, renovation and replacement of the Communal Facilities. Each Member agrees and allows the Society (or any parties engaged under rule 10.4) access to the Developed Property of that Member for the purposes of this rule 10.2. However, the Society shall make good any damage caused by such access within a reasonable time frame after the completion of any work carried out to give effect to this rule 10.2.
- 10.3 **Insurance:** The Society shall effect and maintain all insurances as it considers prudent with respect to the Communal Facilities, the Society's affairs and members of the Committees, and shall meet all costs of such insurance (which shall include all valuations and other professional fees required or deemed desirable for the purposes of such insurances and the cost of certificates relating to such insurances). Insurance regarding members of the Committees may be effected, without limitation, in respect of:
- a. Liability, not being criminal liability, for any act or omission in a Committee member's capacity as such; and
  - b. Costs incurred by that Committee member in defending or settling any claim or proceeding relating to any such liability, and
  - c. Costs incurred by that Committee member in defending any criminal proceedings in which he or she is acquitted.
- 10.4 **Service contractors and utility suppliers:**
- a. For the supply and maintenance of Utilities or services (including **security**, landscaping, rubbish collection or other such essential services as each Precinct Committee considers desirable) to Jacks Point, the Society may, from time to time, nominate for its Precinct:
    - i. service contractors;
    - ii. Utilities suppliers;
    - iii. an exclusive service contractor for a particular service; or
    - iv. an exclusive Utilities supplier.

(collectively "Utilities Suppliers")

- b. Any Member wishing to contract for services or Utilities to that Member's Developed Property must use the Utilities Suppliers who have been nominated by the relevant Precinct Committee.
  - c. Where service contractor(s) or Utilities supplier(s) have been nominated in this way, every Member must comply with all guidelines for use of the particular services or Utilities reasonably imposed by such Utilities Suppliers.
- 10.5 **Transfer of Facilities:** The Society acknowledges that a Developer may from time to time transfer land and/or facilities for communal use to the Society, including Utilities and the Society must accept transfer of such facilities.
- 10.6 **Agreement to Grant Easements:** Each Member agrees to grant any easements and/or covenants in favour of the Society over or under that Member's Developed Property which are necessary to permit the Society access to that Member's Developed Property to give effect to this Constitution or any Bylaw.
- 10.7 **Design Review Board:** For the purposes of the Covenant, the Design Review Board (as defined in the Covenant) shall be deemed to be:
- a. the Residential Design Review Board established pursuant to the Residential Bylaws in respect of the Residential Precinct and Residential Lots; and
  - b. the Northern Village Design Review Board established pursuant to the Northern Village Bylaws in respect of the Northern Village Precinct and Northern Village Lots; and
  - c. the Southern Village Design Review Board established pursuant to the Southern Village Bylaws in respect of the Southern Village Precinct and Southern Village Lots.
- 10.8 **Design Guidelines:** For the purposes of the Covenant, the Design Guidelines (as defined in the Covenant) shall be deemed to be:
- a. the Design Guidelines established pursuant to the Residential Bylaws in respect of the Residential Lots; and
  - b. the Design Guidelines established pursuant to the Northern Village Bylaws in respect of the Northern Village Lots; and
  - c. the Design Guidelines established pursuant to the Southern Village Bylaws in respect of the Southern Village Lots.

## 11. LIMITATIONS OF THE SOCIETY

- 11.1 **No indebtedness:** The Society shall not borrow any money, other than short-term borrowing to cover any temporary shortfall in meeting the Society's obligations under this Constitution, except by Special Resolution.

- 11.2 **No encumbrances:** The Society shall hold the Communal Facilities in its own name and shall not mortgage, charge, encumber, transfer or otherwise deal with such Communal Facilities, except by Special Resolution, provided that where the Society is obliged to grant any interest in or right in respect of the Communal Facilities by any agreement with a Developer, such interests or rights may be granted by the Area Committee unless such encumbrance or charges also affects a Precinct on which case the approval of the Precinct Committee concerned shall also be required.
- 11.3 **No investments:** The Society shall hold all funds with a Bank, and shall not invest those funds other than by deposit with a Bank, except by Special Resolution.
- 11.4 **No improper use:** All Communal Facilities designed for recreational purposes shall be used only for such purposes.
- 11.5 **Application of funds:** All money paid to the Society by Members in accordance with this Constitution is to be applied exclusively for the purposes of:
- a. owning, administering, maintaining, replacing and renewing the Communal Facilities and the Golf Course in relation to any levies specifically set and levied for the Golf Course;
  - b. managing and administering the Society and administering and enforcing this Constitution;
  - c. providing services, Utilities, facilities and benefits to Members; and
  - d. such further or other incidental matters as the Area Committee may deem beneficial for Members.

## OPERATION OF THE SOCIETY

### 12. COMMITTEES

- 12.1 **Powers:** The administration of the Society shall be vested in the Society in general meeting, and shall be delegated to the Area Committee in respect of Area Matters and Precinct Committees in respect of Precinct Matters in accordance with this Constitution.
- 12.2 **Area Committee Powers:** The Area Committee may exercise all the powers, authority and discretions of the Society as permitted by this Constitution except for such rights and powers which this Constitution gives to the Precinct Committees. The Area Committee may further delegate any of its powers, not otherwise delegated, to the Precinct Committees. The Area Committee may also delegate any of its powers to sub-committees of the Area Committee consisting of such member or members of their body as they think fit or to the Manager of the Area Committee.



- 12.3 **Precinct Committee Powers:** Each Precinct Committee shall have the exclusive jurisdiction (to the exclusion of the Area Committee, but subject to clause 14), within their respective Precincts, to make decisions on the following matters ("Precinct Matters"):
- a. Promulgate, vary, amend or rescind the Bylaws in respect of its Precinct, subject to the limitations set out in clause 16.6;
  - b. Nominate the Rental Agency applicable to its Precinct;
  - c. Grant or decline any consent to the transfer of a Seller's Developed Property within the Precinct as contemplated by rule 7.2;
  - d. Nominate Utilities Suppliers for the purposes of rule 10.4;
  - e. Any other matter that either:
    - (a) effects that Precinct exclusively; or
    - (b) on balance materially affects that Precinct without materially affecting the other Precincts.
  - f. Any other matter delegated to the Precinct Committees by the Area Committee.
  - g. The application of the Design Guidelines and Design Review Board approval and/or consents for all development within its Precinct.
- 12.4 **Joint Precinct Decisions:** Any Precinct Matter that affects two Precincts, but not all three Precincts, will be deemed to be a "Joint Precinct Matter" and not an Area Matter. If the two affected Precinct Committees agree that it is a Joint Precinct Matter, and also agree the outcome of the Joint Precinct Matter, then those two Precinct Committees may make that Joint Precinct Matter. If they do not agree that it is a Joint Precinct Matter, then that matter is deemed to be an Area Matter.
- 12.5 **Area Matters:** Subject to the previous rule, any matter that is not a Precinct Matter is deemed to be an Area Matter. The Area Committee shall have the exclusive jurisdiction to decide Area Matters, but subject to clause 14. In the event that an Area Matter arises which materially affects a Precinct, but is not deemed to be a Precinct Matter or a Joint Precinct Matter, then that Area Matter will be an "Area/Precinct Matter" if either:
- a. that Area Matter is decided at an Area Committee meeting, at which the affected Precinct is represented by Area Committee members, and the members representing the affected Precinct vote against the matter; or
  - b. that Area Matter is decided at an Area Committee meeting, at which the affected Precinct is not represented by Area Committee members; and

- i. the members representing the affected Precinct on the Area Committee, within seven days of the Area Committee meeting, call for a second meeting, in which case that second meeting must be held within seven days of the members representing the affected Precinct calling the meeting; and
    - ii. the Area Committee makes the same decision at that second meeting, and the affected Precinct vote against the matter.
- 12.6 **Disputes:** If there is dispute as to what Precinct/Precincts a Precinct Matter relates to or whether it is a Precinct Matter or an Area Matter or whether it is an Area/Precinct Matter, the dispute will be resolved by the Area Committee. The Area Committee will resolve disputes in one of the following ways:
- a. Unanimously deciding it is a Precinct Matter, an Area Matter, a Joint Precinct Matter or an Area/Precinct Matter, and which Precinct(s) it relates to if relevant, but failing such a unanimous decision;
  - b. Causing that decision to be determined under rules 16.14 and 16.15.
- 12.7 **Size of Precinct Committees:** Each of the Precinct Committees will consist of a minimum of three and a maximum of five members. The number of members will be three, or such other number (but not more than five) as determined by the Members of each Precinct by an ordinary resolution of those Members.
- 12.8 **Size of Area Committee:** The Area Committee will consist of six members. Two members will be appointed, and can be removed, by each Precinct Committee by notice in writing to the Society.
- 12.9 **Composition of Committees:** Each of the Committees shall include the following persons:
- a. a chairperson; and
  - b. a treasurer/secretary
- 12.10 **Chairperson:** Subject to Rule 12.15, each Committee from time to time shall appoint, remove and replace a chairperson for such term as it sees fit from one of their number to chair Committee meetings and otherwise exercise the powers of the chairperson set out in this Constitution.
- 12.11 **Chairperson to have casting vote:** In the case of a tie in votes, the chairperson may exercise a casting vote.
- 12.12 **Duties of Treasurer/Secretary:** The treasurer/secretary for each of the Committees shall:



- a. convene general meetings when requested to do so in accordance with this Constitution;
  - b. attend all meetings of the Committee and have full speaking rights at such meetings;
  - c. give all notices required to be given by these rules or the Committee;
  - d. keep minutes at all general meetings and Committee meetings and enter into the minute book:
    - i. the time, date and venue of such meeting;
    - ii. all business considered and resolutions passed at such meeting;
    - iii. with all such minutes signed by the chairperson, and such signed minutes shall be accepted as a correct and accurate record of the business transacted at such meetings without any further proof of the facts contained in such minutes.
- 12.13 **Area Committee Treasurer/Secretary:** In addition, the treasurer/secretary of the Area Committee shall:
- a. hold in safe custody the common seal of the Society;
  - b. receive, and issue receipts for, all annual levies, additional fees, and any other moneys paid to the Society;
  - c. operate and maintain a current bank account in the name of the Society;
  - d. pay all accounts properly incurred by or on behalf of the Society;
  - e. report immediately to the Society any Member who fails to pay annual levies or additional fees within the prescribed period;
  - f. keep all financial records and any security documents in safe custody;
  - g. compile all proper accounting records from time to time as required by the Act or by the Area Committee which give a true, fair and complete account of the financial affairs and transactions of the Society; and
  - h. compile the financial statements immediately following each financial year as required by the Act, and provide for the auditing of those records and the distribution of the audited financial statements to Members as soon as reasonably practicable after each audit is completed and in any case within five months of the end of the Expense Year.

- 12.14 **Relevant Controlling Members:** The Society and the Members acknowledge that each Precinct and Committee (including the Area Committee) has a Controlling Member. Those Controlling Members have various rights and powers under this Constitution, including this clause 12. For these purposes:
- a. The Area Controlling Member is the Controlling Member in respect of the Area Committee;
  - b. The Residential Controlling Member is the Controlling Member in respect of the Residential Committee;
  - c. The Northern Village Controlling Member is the Controlling Member in respect of the Northern Village Committee;
  - d. The Southern Village Controlling Member is the Controlling Member in respect of the Southern Village Committee.
- 12.15 **Appointment of Chairperson and Treasurer/Secretary:** The chairperson of each Committee shall be the nominee of that Committee's Controlling Member at its option (if there is one). Where there is no Controlling Member the chairperson shall be as elected by the relevant Committee at every annual general meeting of the Society. The treasurer/secretary shall be the Manager's nominee or, where no Manager has been appointed, such other person as that Committee shall appoint from time to time.
- 12.16 **Rotation of Precinct Committees:** At the annual general meeting of the Society in every year one third of the members of each Precinct Committee, or if the number is not a multiple of three then the number nearest to one third, shall retire from office. The Precinct Committee members to retire shall be those who have been longest in office since they were last elected. If two or more of those Precinct Committee members were last elected on the same day, the Precinct Committee members to retire (unless they otherwise agree) shall be determined by lot. A retiring Precinct Committee member is eligible for re-election, and shall act as a Precinct Committee member throughout the meeting at which that Precinct Committee member retires.
- 12.17 **Duration of Membership:** A Precinct Committee member shall hold the elected position until the earliest of:
- a. removal from office at an annual general meeting under the previous rule;
  - b. the date written resignation from the position is received by the Society;
  - c. the date of removal from such position by the Members of the Precinct by an ordinary resolution of those Members;
  - d. the date of cessation of Membership of the Precinct Committee member or of the entity associated with that member.

- 12.18 **Casual vacancies on Precinct Committees:** In the event of a casual vacancy in any position on a Precinct Committee the remaining Precinct Committee members may appoint another Member to fill the casual vacancy until the position is filled pursuant to this Constitution.
- 12.19 **Manager and Controlling Member:** Notwithstanding any other rule in this Constitution:
- a. The nominee of the Manager of each Committee shall remain as treasurer/secretary of that Committee, for so long as it remains Manager; and
  - b. The nominee of that Committee's Controlling Member shall remain as chairperson of that Committee, for so long as it remains Controlling Member;

The Society shall not be entitled to remove either from those positions for any reason whatsoever. Any Precinct Controlling Member shall be entitled to exercise all the powers of the Committee for that Precinct referred to in rule 12. The Area Controlling Member, if any, shall be entitled to exercise all of the powers of the Area Committee referred to in rule 12. Where no Manager/s have been so appointed, any reference to the "Manager" in this Constitution shall be deemed to be the Controlling Member.

- 12.20 **Conduct of Meetings:** Each of the Committees may meet together, adjourn and otherwise regulate their meetings and procedures for conducting its business as it thinks fit. Each of the Committees may meet at any time and the Committee's secretary shall, upon the request of the Committee's chairperson or any three Committee members, convene a meeting of that Committee.
- 12.21 **Quorum:** A majority of the members of the relevant Committee from time to time, provided that such majority includes that Committee's Controlling Member (if there is one), shall form a quorum for a Committee meeting. No business of the Committee shall be conducted at any time when less than a quorum is present at the same time and place.
- 12.22 **Voting:** Subject to the following rule, and any other rule expressly to the contrary, resolutions of the Committees shall be passed by majority. Each Committee member shall be entitled to exercise one vote. However, the Controlling Member of that Committee (if there is one) shall be entitled to exercise a number of votes equal to one more than the number of votes required to make the decision in question. Notwithstanding any contrary provision in this Constitution, a resolution in writing signed by such of the Committee members as would constitute a quorum at a Committee meeting shall be as valid and effectual as if it had been passed at a meeting of the Committee duly convened and constituted.
- 12.23 **Area Voting:** From the date on which there ceases to be an Area Controlling Member, the Area Committee members representing

each Precinct will, together, cast a number of votes equal to the number of Developed Properties in their Precinct.

- 12.24 Implementation of Precinct Matters:** When a Precinct Matter is decided the Precinct Committee will give notice to the Area Committee of the decision that has been made and in this notice direct the Area Committee to take any actions that are required to fulfil the decision. The Area Committee must implement the directions of the Precinct Committee in respect of a Precinct Matter.
- 12.25 Validity of Committee's actions:** All acts properly done by any meeting of a Committee or by any person acting as a Committee member, notwithstanding that it may afterwards be discovered that there was some defect in the appointment or continuance in office of any such Committee member, or that they were disqualified, shall be as valid as if every such person had been duly appointed or had duly continued in office and was qualified to be a Committee member.
- 12.26 Bank accounts:** The Society shall establish a bank account with a Bank and any drawings on that account (including any cheque drawn on that account) shall be made only under the signature of the Manager of the Area Committee and one other member of the Area Committee.
- 12.27 Deeds:** Any contract which, if made between private persons, must be by deed shall, when made by the Society, be in writing under the common seal of the Society, to be affixed in accordance with rule 12.29.
- 12.28 Other Documents:** All other documents and written announcements requiring execution on behalf of the Society must be signed by the chairperson of the Area Committee.
- 12.29 Seal:** The Area Committee shall obtain a common seal for the use of the Society and shall provide for its safe custody. The common seal shall not be used except by resolution of the Area Committee. Every instrument to which the common seal is affixed shall be signed by the chairperson and one other member of the Area Committee
- 12.30 Execution by Area Committee:** The Area Committee shall be required to execute all documents that a Precinct Committee requires the Area Committee to execute where such document or announcement relates to a Precinct Matter which has been duly authorised by the Precinct Committee in accordance with the objects and rules in this Constitution.

### 13. **MANAGER**

- 13.1 Duties:** Subject to rule 12, the Area Committee and each Precinct Committee may:
- a. appoint, remove and replace a Manager from time to time to carry out such of the obligations of the Area Committee and each

Precinct Committee (as applicable), and to exercise such of the discretions and powers of the Society, as the appropriate Committee shall see fit acting reasonably;

- b. enter into and terminate from time to time management agreement(s) or equivalent arrangements whereby the appropriate Area Committee appoints a third party to carry out certain of the obligations of the Society to operate, maintain, repair, renovate and replace all or any of the Communal Facilities,

and the appropriate Committee may pay any fee or expense associated with either such appointment or outsource.

#### 14. GENERAL MEETINGS

14.1 **Annual general meeting:** In addition to any other meetings in that year, the Society shall hold an annual general meeting each year which must be held:

- a. not later than 18 months after the date of the last annual general meeting or in respect of the first annual general meeting not later than 18 months after the Society's date of registration; and
- b. not later than six months after the end of each Expense Year.

The Area Committee will determine the time and place of each year's annual general meeting but this meeting must be held in the Queenstown district of New Zealand.

14.2 **Special general meetings:** A general meeting other than an annual general meeting may be requested by:

- a. the Area Committee; or
- b. any Precinct Committee; or
- c. by written requisition signed by not less than 25% of current Members of any Precinct; or
- d. by written notice of any Controlling Member.

The treasurer/secretary of the Area Committee shall call a special general meeting within 14 days of receiving an effective request.

14.3 **Powers of the Society in general meeting:** Unless this Constitution expressly provides otherwise, the Society in a general meeting may, by resolution, exercise all powers, authorities and discretions of the Society notwithstanding that any such power, authority and discretion may have been delegated to any of the Committees by or pursuant to this Constitution.

14.4 **Quorum:** No business shall be transacted at any general meeting of the Society unless the quorum is present when a meeting proceeds to business. The quorum shall be not less than 25% of

Members eligible to vote at general meetings, present in person or by proxy.

- 14.5 **Notice of general meeting:** A notice of general meeting of the Society shall be sent to every Member and to each Controlling Member not less than 14 days before the date of such meeting. Such notice shall specify:
- a. the date, time and venue of such meeting;
  - b. the nature of the business to be transacted at the meeting in sufficient detail to enable a Member to form a reasoned judgement in relation to it; and
  - c. the text of any Special Resolutions to be submitted to the meeting.
- 14.6 **Failure to give notice:** The accidental omission to give notice, or the non-receipt of such notice by a Member, shall not invalidate the proceedings at any such meeting provided that notice is given to each Controlling Member.
- 14.7 **The chairperson:** The chairperson at any general meeting shall be:
- a. the chairperson of the Area Committee; or
  - b. if the chairperson is not present or is unwilling to take the chair, then those Area Committee members who are present may choose one of their number to chair the meeting; or
  - c. if for any reason no chairperson is selected by the Area Committee, any Member appointed by a majority of Members present in person or by proxy.
- 14.8 **Adjournment:** If a quorum is not present within half an hour from the time appointed for the holding of a general meeting convened on requisition of Members, the meeting shall be dissolved. In any other case the meeting shall stand adjourned to the same day in the next week, at the same time and place, or to such other day and at such other time and place as the Area Committee shall determine (such date not to be later than 14 days from the date of the adjourned meeting). If at such adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the Members present shall constitute a quorum.
- 14.9 **Adjourned meetings:** No business other than that business which might have been transacted at the meeting from which the adjournment took place, shall be transacted at any adjourned meeting. Members shall not be entitled to receive any notice in respect of adjourned meetings.
- 14.10 **Written Resolutions:** Notwithstanding any contrary provision in this Constitution, a resolution in writing signed by:



- a. 75% of the Members entitled to vote in person or by proxy at general meetings of each Precinct; or
- b. The Controlling Member entitled to exercise their powers in rules 15.3 to 15.6 provided that:
  - i. the Controlling Member has first provided every Member 14 days notice in writing of its intention to enter into such a resolution;
  - ii. every notice under this rule 14.10b shall outline the matter at issue together with a statement of intention from the Controlling Member that it intends to pass such resolution;
  - iii. during the 14 day notice period every Member shall have the right to provide written submissions to the Controlling Member regarding the matter at issue;
  - iv. the Controlling Member shall in good faith consider all submissions prior to entering into such written resolution;

shall be as valid and effectual as if it had been passed at a general meeting of the Society duly convened and constituted.

## 15. VOTING

- 15.1 **Entitlement to Vote:** The Members are entitled to vote at any general meeting as follows:
- a. Residential Precinct Members, alone, may vote in respect of a Precinct Matter that is in respect of the Residential Precinct or if the vote is to determine the size of its Precinct Committee under rule 12.7 ("Residential Vote"); and
  - b. Northern Village Members, alone, may vote in respect of a Precinct Matter that is in respect of the Northern Village Precinct or if the vote is to determine the size of its Precinct Committee under rule 12.7 ("Northern Village Vote"); and
  - c. Southern Village Members, alone, may vote in respect of a Precinct Matter is in respect of the Southern Village Precinct or if the vote is to determine the size of its Precinct Committee under rule 12.7 ("Southern Village Vote"); and
  - d. All Members may vote in respect of an Area Matter ("Area Vote").
- 15.2 **One Member one vote:** Where, under the previous rule, a Member is entitled to vote, each Member present at a general meeting of the Society (not at that time being in breach of this Constitution) shall be entitled to one vote for each Developed Property of which that Member is a registered proprietor. Such a vote may be exercised either in person or by proxy. Where there is more than one Owner in respect of any Developed Property such Owners are collectively a Member pursuant to rule 4.10, and only one such Owner shall be entitled to vote. In the absence of agreement between such

Owners as to who shall exercise this vote, the Owner appearing first on the Owner's Title shall be entitled to exercise that vote. On the death of any Member, the trustee of that Member's estate shall be entitled to exercise that Member's vote.

- 15.3 **Area Controlling Member's vote:** In an Area Vote, the Area Controlling Member (if there is one) shall be entitled:
- a. to exercise a number of votes equal to one more than the number of Members entitled to vote at any general meeting (including, for the sake of clarity, of any Members' Interest Group under rule 16.6); provided that
  - b. on any matter which must be passed by Special Resolution, to exercise a number of votes equal to 76% of the number of Members entitled to vote on that matter (including, for the sake of clarity, of any Members' Interest Group under rule 16.5),

but the Area Controlling Member is not able to exercise its power under this rule to pass the Special Resolution required under rule 5.4.

- 15.4 **Residential Controlling Member's vote:** In a Residential Vote, the Residential Controlling Member (if there is one) shall be entitled:
- a. to exercise a number of votes equal to one more than the number of Members entitled to vote at any general meeting (including, for the sake of clarity, of any Members' Interest Group under rule 16.6); provided that
  - b. on any matter which must be passed by Special Resolution, to exercise a number of votes equal to 76% of the number of Members entitled to vote on that matter (including, for the sake of clarity, of any Members' Interest Group under rule 16.5),

but the Residential Controlling Member is not able to exercise its power under this rule to pass the Special Resolution required under rule 5.4.

- 15.5 **Northern Village Controlling Member's vote:** In a Northern Village Vote, the Northern Village Controlling Member (if there is one) shall be entitled:
- a. to exercise a number of votes equal to one more than the number of Members entitled to vote at any general meeting (including, for the sake of clarity, of any Members' Interest Group under rule 16.6); provided that
  - b. on any matter which must be passed by Special Resolution, to exercise a number of votes equal to 76% of the number of Members entitled to vote on that matter (including, for the sake of clarity, of any Members' Interest Group under rule 16.5),

but the Northern Village Controlling Member is not able to exercise its power under this rule to pass the Special Resolution required under rule 5.4.



**15.6 Southern Village Controlling Member's vote:** In a Southern Village Vote, the Southern Village Controlling Member (if there is one) shall be entitled:

- a. to exercise a number of votes equal to one more than the number of Members entitled to vote at any general meeting (including, for the sake of clarity, of any Members' Interest Group under rule 16.6); provided that
- b. on any matter which must be passed by Special Resolution, to exercise a number of votes equal to 76% of the number of Members entitled to vote on that matter (including, for the sake of clarity, of any Members' Interest Group under rule 16.5),

but the Southern Village Controlling Member is not able to exercise its power under this rule to pass the Special Resolution required under rule 5.4.

**15.7 Exercise of Controlling Member's Vote:** In the event that any Controlling Member intends to exercise a vote under the previous four rules equivalent to one more than the number of Members entitled to vote at any meeting in accordance with those rules above, that Controlling Member shall:

- a. Provide 14 days notice in writing of its intention to exercise such vote to:
  - i. Every Member if it is an Area Vote; or
  - ii. Every Member of the appropriate Precinct if it is a Residential Vote, a Northern Village Vote, or a Southern Village Vote.
- b. every notice under this rule shall outline the matter at issue together with a statement of intention from that Controlling Member as to the vote it intends to cast;
- c. during the 14 day notice period every Member entitled to such notice shall have the right to provide written submissions to that Controlling Member regarding the matter at issue;
- d. that Controlling Member shall in good faith consider all submissions prior to exercising that Controlling Member's vote.

**15.8 Appointment of Mediator:** An independent mediator shall be appointed to act in a dispute between any Members and the appropriate Controlling Member concerning that Controlling Member's compliance with this Constitution when exercising its powers or performing its duties as the Controlling Member if:

- a. 50% or more of the Members comprising that Precinct; or
- b. 25% of all Members of the Society,

vote to appoint a mediator. The Members in question must promptly give full written particulars of the failure ("dispute") to that Controlling Member, and the dispute will be referred to mediation. The mediation process is:

- c. the parties will appoint a mediator and if they fail to agree the mediator will be appointed by the President of the New Zealand Law Society or the President's nominee;
- d. the parties must co-operate with the mediator in an effort to resolve the dispute;
- e. if the dispute is settled, the parties must sign a copy of the terms of settlement;
- f. if the dispute is not resolved within 14 days after the mediator has been appointed, or within any extended time that the parties agree to in writing, the mediation must cease;
- g. the cost of the mediator's fee and costs including travel, room hire, refreshments etc must be met as to half by the Society and as to half by that Controlling Member;
- h. the terms of settlement are binding on the parties;
- i. the terms of settlement may be tendered in evidence in any legal proceedings;
- j. the parties agree that written statements given to the mediator or to one another, and any discussions between the parties or between the parties and the mediator during the mediation period are not admissible in any arbitration or legal proceedings.

**15.9 Corporation representatives:** Any corporation which is a Member may, by resolution of its directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of the Society, and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which that person represents as that corporation could exercise if it were a natural person. References in this Constitution to a Member being present in person shall mean and include a representative appointed pursuant to this rule, and such person may also stand for election to a Committee.

**15.10 No vote if fees unpaid:** Unless all annual levies and additional fees presently payable by the Member to the Society have been paid in full, the Member shall not be entitled to vote at any general meeting of the Society, whether in his own right or as a proxy for another person.

**15.11 Voting at meetings:** At any general meeting:

- a. A properly notified resolution may be put to the vote by the chairperson or by any Member present at the meeting and entitled to vote.

- b. Resolutions put to the vote shall be decided on voices or a show of hands, unless a poll is demanded on or before declaration of the result of the voices or show of hands by:
    - i. the chairperson of the meeting; or
    - ii. at least five Members present in person or by proxy; or
    - iii. a Controlling Member (if there is one).
  - c. In the case of a resolution put to the vote of the meeting by voices or a show of hands, a declaration by the chairperson that such resolution has been carried or lost or an entry to that effect in the Society's minute book, shall be conclusive evidence of that fact, without further proof of the number or portion of votes recorded in favour of or against such resolution.
  - d. Resolutions shall be passed by a majority of votes, except where a Special Resolution or a unanimous resolution of all Members is required by this Constitution.
  - e. In the case of a tie in votes, the chairperson may exercise a casting vote.
  - f. A Member may exercise the right to vote either by being present or by proxy. A proxy for a Member is entitled to attend, to be heard and vote at a meeting of the Society as if the proxy were the Member. A proxy must be appointed by notice in writing signed by the Member and the notice must state whether the appointment is for a particular meeting or a specified term not exceeding twelve months. No proxy is effective in relation to a meeting unless a signed copy of the notice of appointment is delivered to the chairperson or the secretary of the Society at least 24 hours before the start of the meeting.
- 15.12 **Good faith:** Members shall, in exercising any vote at any general meeting, or as a Committee member, exercise such vote in good faith with a view to ensuring that all Members are treated fairly by the Society, and that each Member shall bear that Member's Proportion of Operating Expenses and of all costs and expenses to be met by levies made by the Society under rule 6, irrespective of whether any expenditure by the Society benefits all Members.

## GENERAL

### 16. GENERAL

- 16.1 **Dissolution:** The Society may be wound up in accordance with section 24 of the Act. Upon the winding up of the Society:
- a. ownership of the Communal Facilities (including, without limitation, any shares in Water Company) shall vest in, and
  - b. the then balance of any sinking fund collected by the Society in accordance with rule 6.9a shall be distributed to,

the Members as tenants in common in shares equal to the Member's Proportion under paragraph a. of the definition of Member's Proportion.

- 16.2 **Alteration of Constitution:** Subject to rule 16.3, 16.4, 16.5 and 16.6 this Constitution shall not be amended, added to or rescinded unless:
- a. such action is taken at an annual general meeting, or a general meeting convened for that purpose;
  - b. written notice of the proposed amendment, addition or rescission has been given to all Members in accordance with this Constitution;
  - c. such action is taken by Special Resolution; and
  - d. such action is taken with the written consent of the Area Controlling Member (if there is one).
- 16.3 **Rights of Controlling Member:** Notwithstanding any other rule in this Constitution, this Constitution shall not be amended, added to or rescinded so as to alter, add to or rescind rules 4.2, 4.4, 5.1, 7.1, 7.2, 8.1, 9.2, 10.1, 12.14, 12.14, 12.21, 12.21, 12.22, 12.23, 13.1, 14.2, 14.3, 14.4, 15, 16.1, 16.2, 16.3 or 16.5 so as to detrimentally affect the rights of any Controlling Member.
- 16.4 **Alteration of Certain Rules:** Notwithstanding rule 16.2:
- a. rules 3.3, 5.4, 5.5, 6.10, 12.12, 12.12 and 15.12 or any rule or part of a rule that would, if amended, have the effect of altering these rules so that a condition in the Exemption Notice would no longer be met must be approved by a Special Resolution and the Developers, the Area Controlling Member and any Vendor shall not vote on such resolution;
  - b. rules 5.2 and 8.2 may not be changed in any manner which is inconsistent with:
    - i. any contractual or other arrangement between the Owner(s) of the Lodge and the Golf Course Operator; or
    - ii. the Golf Course Encumbrances; or
    - iii. the Village Golf Course Deed.
- 16.5 **Alteration of Constitution Affecting Members' Interest Groups:** Notwithstanding rule 16.2 this Constitution shall not be amended, added to or rescinded in a manner that affects a Class of Membership or a Member's Interest Group unless:
- a. such action is taken at an annual general meeting, or a special general meeting convened for that purpose, and

- b. written notice of the proposed amendment, addition or rescission has been given to all Members in accordance with this Constitution and
- c. such action is taken by Special Resolution, and
- d. each Member's Interest Group or Class of Membership, as the case may be, affected by the amendment, addition or rescission passes a Special Resolution of that Member's Interest Group or Class of Members; and
- e. such action is taken with the written consent of the Area Controlling Member (if there is one) or if the amendment will affect a Class of Membership the relevant Precinct Controlling Member,

where a "Members' Interest Group" is defined as a group of Members whose:

- f. affected rights are identical; and
- g. whose rights are affected by the action or proposal in the same way.

For the purposes of the Constitution and the definition of the term "Members' Interest Group", one or more Members' Interest Groups may exist in relation to any action or proposal; and if an action is taken in relation to some Members and not others or expressly distinguishes between certain types of Members (such as by way of example on Residential Members), Members may fall into 2 or more Members' Interest Groups.

**16.6 Introduction, Alteration or Cancellation of Bylaws:** If a Precinct Committee wishes to promulgate new Bylaws or vary or cancel any Bylaws in respect of its Precinct:

- a. Subject to rule 16.6 that Bylaw shall not be effective until it is approved:
  - i. by the Northern Village Members in respect of the Northern Village Bylaws; or
  - ii. by the Southern Village Members in respect of the Southern Village Bylaws; or
  - iii. by the Residential Precinct Members in respect of the Residential Bylaws;

by resolution in accordance with rule 15; provided that, for the purposes of such resolution:

- (1) in respect of the Northern Village Bylaws, references to Members shall be deemed to refer to Northern Village Members and references to Controlling Member shall be read as references to the Northern Village Controlling Member; and

- (2) in respect of the Southern Village Bylaws, references to Members shall be deemed to refer to Southern Village Members and references to Controlling Member shall be read as references to the Southern Village Controlling Member; and
  - (3) in respect of the Residential Bylaws, references to Members shall be deemed to refer to Residential Precinct Members and references to Controlling Member shall be read as references to the Residential Controlling Member,
- b. If a Bylaw only regulates a Members' Interest Group, that Bylaw shall not be effective until it is approved by a majority resolution of the Members' Interest Group, in which case the process for notification and voting as set out under rule 15 shall be deemed to apply.
  - c. If a Bylaw relates to the use of the Communal Facilities, the proposed Bylaw or variation of it is an Area Matter, and that Bylaw shall, not be amended other than if it is approved by a majority resolution notified and voted upon in accordance with clause 15.
  - d. Notwithstanding anything else in this Constitution, any proposed variation to Bylaws which deals in any way with levies or any contributions by Members to the costs of the Society or (on a reasonable basis) with the manner in which Members interact or deal with other Members will be deemed to be an Area Matter, that Bylaw shall not be amended other than if it is approved by a majority resolution notified and voted upon in accordance with clause 15.
- 16.7 **Acceptance by Registrar:** No such amendment, addition or rescission shall be valid unless and until accepted by the Registrar.
- 16.8 **Registered office:** The registered office of the Society shall be situated at a place nominated by the Area Committee.
- 16.9 **Liability of Members:** No Members shall be under any liability in respect of any contract or other obligation made or incurred by the Society.
- 16.10 **Society to Indemnify:** The Society shall indemnify and keep indemnified:
- a. each Member against any liability properly incurred by such Member in respect of the affairs of the Society, to the extent of property owned by the Society; and
  - b. members of each Committee from and against any liability in respect of any act or omission in their capacity as a Committee member, to the extent of property owned by the Society, except where criminal liability is adjudged in respect of that Committee member.



- 16.11 **No action in favour of Members:** No action in law or otherwise shall lie in favour of any Member against any other Member, Committee, or any Committee member in respect of any act or omission pursuant to this Constitution. Nothing in this rule shall prevent an action in respect of any loss or expense arising from the wilful default of the person against whom such action is taken.
- 16.12 **Member to indemnify Society:** Each Member shall indemnify and keep indemnified the Society from and against any action, claim, demand, loss, damage, cost, expense and liability for which the Society may become liable in respect of or arising from any breach of this Constitution by the Member.
- 16.13 **Arbitration:** Any difference or dispute which may arise between a Member and the Society concerning this Constitution or any act or thing to be done, suffered or omitted under this Constitution, or concerning the construction of this Constitution shall be referred to the arbitration of a single arbitrator if the parties can agree upon one, but otherwise to two arbitrators (one to be appointed by either party) and an umpire (to be appointed by the arbitrators before entering upon the reference). Any dispute, difference or question as to the jurisdiction of the arbitrator shall be determined by the arbitrator. The arbitration shall be conducted in accordance with and subject to the provisions of the arbitration statutes for the time being in force in New Zealand. Such arbitration shall be a condition precedent to the commencement of any action at law.
- 16.14 **Tie-breaker:** If there is any dispute as to whether a matter is an Area Matter, a Precinct Matter or an Area/Precinct Matter, or there is a dispute concerning any of these matters in respect of which the relevant Committees or Controlling Members and if any Committee or Controlling Member gives notice to the Society, then:
- a. That Committee or Controlling Member will promptly give full written particulars of the dispute to the other Committees and Controlling Members; and
  - b. The Committees and Controlling Members will promptly meet together and in good faith try to resolve the dispute.
- 16.15 Subject to rule 12.5, if the dispute is not resolved within 14 days of written particulars being given (or any longer period agreed to by the Committees and Controlling Members) the dispute will be referred to the arbitration of a single arbitrator if the parties can agree upon one and failing agreement being reached on the arbitrator within 10 Working Days then an arbitrator appointed by the President of the New Zealand Law Society. Any dispute, difference or question as to jurisdiction of the arbitrator shall be determined by the arbitrator. Where the dispute is of the kind referred to in rules 12.5 or 12.6, the arbitrator must make his or her decision having proper regard to the number of Developed Properties within the Precinct(s) in question that are materially affected by the matter in dispute and the impact of the matter in dispute on those Developed Properties compared to the total

number of Developed Properties within the Society that are materially affected by the matter in dispute and the impact of the matter in dispute on those Developed Properties. The arbitration shall be conducted in accordance with and subject to the provisions of the arbitration statutes for the time being in force in New Zealand. Where the matter in dispute is one of the matters referred to in rules 12.5 or 12.6, all affected parties and the arbitrator will take all reasonable steps to cause the arbitration to be concluded within 30 days of the dispute being referred to arbitration. The determination of such arbitration shall be a condition precedent to the commencement of any action at law.

- 16.16 **Approval:** Where in this Constitution any reference is made to the approval or consent of the Society or a Developer:
- a. Such approval or consent shall be given at the sole discretion of the Society or that Developer, as appropriate;
  - b. No approval or consent given on any occasion by either the Society or that Developer shall serve as a precedent for, or be binding in any way with respect to, any future application for consent or approval; and
  - c. Such reference shall mean the prior written approval or consent of the Society or that Developer, as appropriate.
- 16.17 **Balance Date:** The financial year of the Society shall end on 30 June in each year.



**SCHEDULE 1**  
**FIRST MEMBERS**

Jacks Point Limited

Jacks Point Equities Limited

Jacks Point Land Limited

Jacks Point Golf Course Limited

Jacks Point Land Holdings Limited

**SCHEDULE 2**

**BYLAWS**

**BYLAWS OF  
THE NORTHERN VILLAGE PRECINCT OF  
JACKS POINT RESIDENTS & OWNERS ASSOCIATION INCORPORATED**

**BACKGROUND:**

- A. Under the rules of the Constitution:
- (i) The Society may from time to time promulgate, amend and distribute to Members Bylaws for the use of the Communal Facilities (including any restrictions on use for security, maintenance or other reasons), Bylaws concerning the behaviour of Users of the Members' Developed Properties and Bylaws governing the use of Developed Properties.
  - (ii) Members are required to comply with any Bylaws made by the Society from time to time.
- B. These Bylaws are promulgated by the Society in respect of the Northern Village Precinct and are effective from the date of the Society's AGM for the year 2015.

**BYLAWS:**

**1. DEFINITIONS AND INTERPRETATION**

1.1 In these Bylaws, unless the context otherwise requires:

**"Authority"** means any local body government or other authority having jurisdiction or authority over or in respect of any part of Jacks Point or its use.

**"Bylaws"** means these bylaws and any other bylaws made by the Society from time to time under the Constitution.

**"Commercial Activity"** means the use of a Developed Property for the display, offering, provision, sale or hire of goods, equipment or services and includes Visitor Accommodation and Homestay.

**"Communal Facilities"** has the meaning given to it in the Constitution.

**"Constitution"** means the Constitution of the Society as amended or added to, including all schedules to the Constitution, but excluding the appendices to the Constitution.

**"Design Guidelines"** means any guidelines or controls imposed or amended in respect of buildings and development from time to time by the Queenstown Lakes District Plan or by the Northern Village Committee, including under the Outline Development Plan or by any other lawful mechanism.

**"Developed Property"** has the meaning given to it in the Constitution.

**"Developer"** has the meaning given to it in the Constitution.

**"Development Controls"** means, to the extent they may apply to the Northern Village Precinct, the development controls dated July 2003 as approved by the Queenstown Lakes District Council pursuant to the Outline Development Plan for Jacks Point dated 15 August 2005 and as may be amended from time to time by the Northern Village Committee with the approval of the Queenstown Lakes District Council..

**"Development Plan"** means the plan attached to these Bylaws at Schedule Two.

**"District Plan"** means the Queenstown-Lakes District Plan.

**"Golf Course"** means the Jacks Point golf course, any clubhouse and ancillary facilities, if any, including driving range and practice areas.

**"Homestay"** means a residential activity where a Developed Property occupied by person(s) living permanently on the Developed Property is also used by paying guests.

**"Invitee"** means any invitee of or any visitor to an Owner or Occupier.

**"Jacks Point"** has the meaning given to it in the Constitution.

**"Jacks Point Zone"** means the residential and commercial development zone called the Jacks Point Zone established by the Queenstown Lakes District Council as a resort zone under Part 12 of the District Plan.

**"Landscape Architect"** means a person who has completed the academic requirements recognized or accredited by the New Zealand Institute of Landscape Architects or such other similar organisation approved by the Society from time to time.

**"Member"** has the meaning given to it in the Constitution.

**"Northern Village Committee"** has the meaning given to it in the Constitution.

**"Northern Village Controlling Member"** has the meaning given to it in the Constitution.

**"Northern Village Design Review Board"** means the Northern Village Design Review Board established pursuant to the design review procedure detailed in the Development Controls.

**"Northern Village Precinct"** has the meaning given to it in the Constitution.

**"Occupier"** means any person occupying any Developed Property under any lease, licence or other occupancy right and shall include the Owner and all members of an Owner's family.

**"Outline Development Plan"** means any outline development plan, or similar mechanism, which applies to the Northern Village Precinct, whether under the Queenstown Lakes District Plan, a resource consent, or any other lawful mechanism.

**"Owner"** means each person registered as a proprietor (whether individually or with others) of a Developed Property.

**"Owner's Title"** means the certificate of title issued for an Owner's Developed Property.

**"Recreational Device"** includes any skateboard, roller skate, inline skate, trolley, cart, toboggan or any similar recreational device.

**"Residential Member"** means a Member whose Developed Property is designated to be used primarily for residential purposes at Jacks Point by an instrument on the Owner's Title or is reasonably determined by the Society to be, or as being, used for residential purposes at Jacks Point, but excludes any Member whose Developed Property is within the part of Jacks Point identified as Village (V) in the Jacks Point Zone.

**"Service Lines"** means underground power cables, underground telephone and electronic data and computer media services, underground gas supply lines (if any) and underground water supply lines.

**"Signage"** means any trade, business, professional or advertising sign (including "for sale" and "for rent" signs) or any notice, name board or plate.

**"Society"** means Jacks Point Residents & Owners Association Incorporated.

**"Tablelands Access Lot"** means the land as approximately shown as Lot 103 on the Development Plan.

**"Tablelands Properties"** means the Developed Properties which are subdivided from the land approximately shown as Lot 21 on the Development Plan.

**"Users of the Member's Developed Property"** means any users of the Member's Developed Property including any mortgagee in possession of that Member's Developed Property, the Occupiers of such Member's Developed Property, the Invitees of such Occupier, the Invitees of such Member and the purchaser of such Member's Developed Property.

**"Utilities"** means the following utilities and services:

- (a) Sealed vehicle access over all roading within Jacks Point, including roading, which is accessible to the general public connecting to the adjoining State Highway;
- (b) Sewage treatment plants, disposal systems, wastewater and stormwater disposal systems, and related reticulation connecting to all Developed Properties and Communal Facilities within Jacks Point;
- (c) Service Lines connecting all Developed Properties and Communal Facilities within Jacks Point to appropriate supply networks, which, for clarity, may supply both Jacks Point and adjoining lands to the north and to the south;
- (d) Domestic and irrigation water systems (including storage tanks, treatment facilities, reticulation, etc.) connecting all Developed Properties and Communal Facilities within Jacks Point to water supply systems sourced from Lake Wakatipu and supplying both Jacks Point and, if applicable, adjoining lands to the north and to the south;

and in each case includes the supply of services and utilities as applicable, and any other services and utilities (such as by way of example only rubbish collection services) that may be required at Jacks Point.

**"Visitor Accommodation"** means the use of a Developed Property for short-term, fee paying, living accommodation where the length of stay for any fee paying guest or visitor is less than 32 days at any time.

- 1.2 Subject to clause 1.3, in the event of any conflict between the provisions of the Constitution, and the provisions of these Bylaws, the provisions of the Constitution shall prevail and be given priority.
- 1.3 In the event of any conflict between the definitions contained in the Constitution, and the definitions contained in these Bylaws, the definitions contained in these Bylaws shall prevail and be given priority.
- 1.4 A reference to an act or omission by any Member shall include any act or omission by Users of the Member's Developed Property.
- 1.5 An obligation to do something is also an obligation to permit or cause that thing to be done and an obligation not to do something is also an obligation not to permit or cause that thing to be done.
- 1.6 In these Bylaws, unless the context otherwise requires:
  - (a) words denoting the singular shall include the plural and vice versa;
  - (b) one gender shall include the other gender;
  - (c) words denoting persons shall include any individual, company, corporation, firm, partnership, joint venture, association, organisation, trust, state, agency of a state, municipal authority, government or any statutory body in each case whether or not having separate legal identity;
  - (d) any covenant or agreement on the part of two or more persons shall bind those persons jointly and severally;
  - (e) reference to anything of a particular nature following upon a general statement shall not in any way derogate from, or limit the application of the general statement, unless the particular context requires such derogation or limitation;
  - (f) any reference to "month" or "monthly" shall mean, respectively, calendar month or calendar monthly;
  - (g) references to rules are references to rules in the Constitution;
  - (h) the table of contents, the section headings and clause headings have been inserted for convenience and a quick guide to the provisions of these Bylaws and shall not form part of these Bylaws or affect its interpretation in any way;
  - (i) reference to any statute, regulation, ordinance or bylaw shall be deemed to extend to all statutes, regulations, ordinances or bylaws amending, consolidating or replacing the same.
  - (j) any term that is not defined in clause 1.1, but is defined in the Constitution, will have the meaning given to it in the Constitution.

## **BYLAWS REGARDING COMMUNAL FACILITIES**

### **2. USE**

- 2.1 No Member shall make improper, offensive or unlawful use of any Communal Facilities, and each Member shall use the Communal Facilities only for the purposes for which they were designed.
- 2.2 No Member shall fetter, obstruct or impede the use of any Communal Facilities by any other Member.
- 2.3 No Member shall place anything in or on Communal Facilities without the approval of the Society except as may be reasonably necessary for the Member to use the Communal Facilities.
- 2.4 No Member shall do any act which may prejudice or add to the premium payable in respect of any insurance of the Communal Facilities.
- 2.5 No Member shall do any act which detracts from the attractiveness or state of repair of any of the Communal Facilities. Any Member who discovers any damage to any of the Communal Facilities shall immediately report such damage to the Society.
- 2.6 No Member shall do any act which adversely affects any wetlands which form part of the Communal Facilities or deposit any material in or on any such wetland or allow any rubbish to escape from that Member's Developed Property into any such wetland.

### **3. PROHIBITED ACTS**

- 3.1 No Member shall operate any craft (whether motorised or not) on any body of water which forms part of the Communal Facilities without the prior approval of the Society.
- 3.2 No Member shall swim, wade, paddle, bathe in, or carry out any similar activity in or on, any body of water which forms part of the Communal Facilities without the prior approval of the Society.
- 3.3 No Member shall do anything whereby any obstruction, restriction or hindrance may be caused to any road, driveway and pathway (other than a driveway of that Member's Developed Property) or other parts of Jacks Point or to persons lawfully using them unless otherwise approved by the Society.
- 3.4 No Member shall pollute or contaminate the Communal Facilities.
- 3.5 No Member shall discharge onto or into the Communal Facilities any poisonous, noxious, dangerous or offensive substance or thing.
- 3.6 No Member shall allow any Developed Property to be used for any Commercial Activity without the prior approval of the Society; provided that in the case of Visitor Accommodation and Homestay that use is permitted in compliance with Rule 7.3 of the Constitution (Letting of Developed Property).

### **4. CLOSURE OF COMMUNAL FACILITIES**

- 4.1 From time to time, at any time and for any length of time (including permanently) the Society shall be entitled to close or restrict access to any or all of the Communal Facilities as the Society considers necessary for any reason including for the purposes of the Golf Course operation, maintenance, repair, grazing, recreational activity or security purposes.

## **5. ROADS**

- 5.1 No Member shall park any vehicle on the roads or any other Communal Facilities, other than in spaces specified by the Society from time to time as suitable for that purpose.
- 5.2 No Member shall operate any vehicle, or otherwise act, on the roads or any other Communal Facilities in an unlawful manner, including over any speed limit or contrary to any Bylaw promulgated by the Society from time to time.

## **BYLAWS REGARDING DEVELOPED PROPERTIES**

### **6. MEMBERS' RESIDENCES**

#### **6.1**

- (a) Each Member shall keep that Member's Developed Property (including all improvements and fences) in good repair and condition and shall not permit the accumulation of unsightly rubbish or materials or in any other way permit the appearance of that Member's Developed Property to detract from the general standards established for Jacks Point.
- (b) The Society shall notify a Member in writing if in its opinion that Member's Developed Property is not being kept in such condition. If the Member has not brought its Developed Property up to the condition required by the Society within 14 days of notice being served on that Member (or such longer period as the Society deems appropriate at its sole discretion), the Member shall be deemed to allow the Society to access its Developed Property in order to bring that Member's Developed Property up to that condition, at the cost of that Member.
- (c) Any cost(s) incurred by the Society under Bylaw 6.1(b) shall be payable to the Society by the Member immediately upon the Society serving notice of the same on that Member.

- 6.2 Each Member shall at all times duly and punctually pay all rates, taxes, charges and other outgoings payable in respect of that Member's Developed Property.
- 6.3 No Member shall erect on any Developed Property any aerials, satellite dishes or other communication receivers of any kind whatsoever, other than those approved by the Society which permission may in the Society's absolute discretion be withheld should it consider that these do not conform to the standards desirable for the development of Jacks Point.
- 6.4 No Member shall erect any second-hand or relocatable building on that Member's Developed Property.
- 6.5 No Member shall use that Member's Developed Property for the storage or accumulation of any rubbish or materials other than building materials during the period of construction of any improvement on that Member's Developed Property. During construction that Member shall cause any excess building material and/or rubbish to be stored in a sightly manner and removed from that Member's Developed Property without undue delay and in any event at a minimum of every two weeks.



6.6 No Residential Member shall:

- (a) provide less than a two-car garage on that Member's Developed Property within the Residential neighborhoods with the exception of Residential Neighborhoods N2A and N7 where a single garage can be built with a second carpark that is located and screened to the satisfaction of the Society
- (b) use visitor parking for anything other than temporary parking of non commercial vehicles
- (c) park boats, trailers, caravans, additional cars and trailer vehicles other than within a garage on that Member's Developed Property, except with the permission of the Society
- (d) allow the parking of any commercial vehicles owned or used by the occupier of the Members property unless it is within a garage or if cannot be accommodated within a garage shall be located and screened to the satisfaction of the Society.

6.7 Each Residential Member shall:

- (a) provide screened areas on that Member's Developed Property for clothes drying.
- (b) undertake all planting on that Member's Developed Property in accordance with:
  - (i) any landscape plan approved by the Northern Village Design Review Board or the Society from time to time; and
  - (ii) the Design Guidelines.
- (c) arrange for regular watering, fertilising and cutting of grass areas and watering, fertilising and pruning of trees and shrubs, removal of all weeds, rubbish and the maintenance of all driveways, footpaths and landscaping features on that Member's Developed Property.

6.8 No Member whose Developed Property is situated on those parts of Jacks Point identified as Residential (R) or Village (V) in the Jacks Point Zone shall:

- (a) allow or install any open, solid fuel fires within any residential building or on any residential Developed Property other than:
  - (i) any internal or external barbecue fire being operated for cooking purposes;
  - (ii) any low-emission solid fuel burner emitting no more than 1.5 gm of particulate per kilogram of fuel burnt and with 65% fitting efficiency when measured and assessed in accordance with NZS:4012:1999 and 4013:1999 or equivalent replacement standard.
- (b) allow or install any liquid petroleum gas cylinder larger than 10 kilograms within any residential building or on any residential Developed Property.

**7. DESIGN APPROVAL**

7.1 The Northern Village Design Review Board shall comprise four members appointed from time to time by the Northern Village Committee. The Northern Village Design Review Board shall comprise the following persons:

7.2 For so long as there is a Northern Village Controlling Member:

- (a) a representative of the Northern Village Controlling Member;

- (b) an architect appointed from time to time by the Northern Village Controlling Member;
- (c) a Landscape Architect appointed from time to time by the Northern Village Controlling Member; and
- (d) any other person or persons appointed by the Northern Village Controlling Member as Northern Village Design Review Board Members.

7.3 Where there is no Northern Village Controlling Member:

- (a) an architect appointed from time to time by the Northern Village Committee;
- (b) a Landscape Architect appointed from time to time by the Northern Village Committee;
- (c) such other person or persons as may be appointed by the Northern Village Committee.

7.4 The Northern Village Design Review Board shall publish from time to time Design Guidelines for the Northern Village Precinct (which may include guidelines in respect of each Developed Property) and may change the Design Guidelines from time to time.

7.5 If at any time an Owner desires to erect or construct on that Owner's Developed Property any building or structure or carryout any alteration to any existing building or structure on that Owner's Developed Property, the Owner shall:

- (a) Submit for approval to the Northern Village Design Review Board all plans, elevations, sections and specifications of the proposed building or structure or alteration, such approval not to be unreasonably withheld provided that the Owner's intended development or construction complies with the Design Guidelines;
- (b) Upon receiving the approval of the Northern Village Design Review Board, obtain the approval of the relevant Authority and any other statutory body having jurisdiction;
- (c) Subject to such approval being obtained, at the Owner's expense and to the reasonable satisfaction of the Northern Village Design Review Board, erect or construct the approved building or structure; and
- (d) Procure a code compliance certificate pursuant to the Building Act 2004.

7.6 All the costs of the design approval process (including without limitation any disbursements or professional charges of a member of the Northern Village Design Review Board) shall be met by the Owner seeking the approval.

7.7 Prior to commencing any physical works on the relevant Member's Developed Property, that Member shall pay to the Society a construction bond to be held by the Society as security to ensure that the Member complies with the approval of the Northern Village Design Review Board and as security for the costs of rectifying any damage caused by that Member to the Communal Facilities during the construction period. Any costs incurred by the Society in rectifying any breach of the approval or damage caused by the Member shall be deducted from such construction bond and any balance shall be released to the relevant Member upon provision by that Member

of a copy of the code compliance certificate for the relevant works. Any shortfall shall be paid by the Member forthwith upon demand.

- 7.8 Any disputes regarding the decision of the Northern Village Design Control Board shall be referred to an independent architect nominated by the president of the New Zealand Institute of Architects, whose decision shall be final. The Owner shall meet the costs of such determination.
- 7.9 Notwithstanding anything to the contrary contained in these Bylaws, the Constitution or the Design Guidelines, a Member shall be responsible for constructing, at that Member's cost, all vehicle crossings, driveways and parking areas serving that Member's Developed Property.
- 7.10 Each Member shall ensure that any construction works carried out on that Member's Developed Property shall proceed with all reasonable speed and shall not be left without substantial work being continued thereon for a period exceeding three months or, in respect of the completion of the exterior of any building, a period of nine months, such periods to commence on the date physical works actually commence.

## 8. SECURITY MEASURES

- 8.1 Each Member shall properly secure that Member's Developed Property when it is not occupied.
- 8.2 Each Member shall have any private security devices installed at that Member's Developed Property monitored so as to ensure:
- (a) prompt and effective response when those devices are activated; and
  - (b) deactivation by independent persons if a Member is absent from that Member's Developed Property.
- 8.3 Each Member may contract with a supplier of security services of that Member's choice for that Member's Developed Property provided that where the Society nominates a particular supplier of security services that Member must use that particular supplier in accordance with the Constitution. Each Member who contracts with a supplier of security services for that Member's Developed Property shall:
- (a) provide the Society with all information required by the Society regarding that supplier; and
  - (b) comply with all guidelines for use of the security services imposed by that supplier.

## 9. SALE OF DEVELOPED PROPERTY

- 9.1 If a Member intends to sell a Developed Property, the Member must immediately give the Society written notice of that intention and how the Member wishes to conduct the sale process including details of any real estate agent the Member wishes to engage. Such sale process must comply with any relevant Bylaws and/or instructions of the Society.
- 9.2 No Member shall hold any auction sale on any Developed Property without the prior written approval of the Society.

## 10. WATER METERS AND PRIMARY WASTEWATER TREATMENT TANKS

- 10.1 Each Member shall install a water meter for that Member's Developed Property of a type and specification and at a location as determined by the Society prior to

connecting to the water supply system. The installation of that water meter shall be at that Member's cost. The Society may levy that Member for water usage on a per cubic metre basis or as otherwise determined by the Society.

- 10.2 The cost of supply and installation of any water meter(s) by the Society may be deducted from a bond deposited under Bylaw 7.5.
- 10.3 No Developed Property may be occupied until there has been installed on that Developed Property the primary wastewater treatment tank required by the Society (and purchased from the Society or the Developer) for the primary treatment of wastewater on the Developed Property before disposal into the reticulated wastewater disposal system (or disposal to ground where allowed, as with the Tableland Properties).

#### 11. MONITORING AND MAINTENANCE OF INFRASTRUCTURE

- 11.1 Each Member shall ensure that the primary wastewater treatment tank and its associated infrastructure and any infrastructure related to the supply of potable water located on or under that Member's Developed Property are maintained in good order so that the wastewater disposal and potable water supply infrastructure available to other Members functions appropriately.
- 11.2 No Developed Property may be occupied unless Member has entered into a contract with a supplier approved by the Society for the monitoring and maintenance of the primary wastewater treatment tank located with the Members property. The Member shall authorise the supplier to release to the Society such information as the Society requests from time to time in respect of the maintenance and condition of the tank and associated system components.

#### OTHER BYLAWS

#### 12. ANIMALS, PETS ETC.

- 12.1 No Member shall allow any bird, pet or other animal ("**Pets**") to cause a nuisance to any other Member.
- 12.2 Without limiting Bylaw 12.1, each Member shall ensure, in respect of that Member's Pets, that:
- (a) the number and size of any Pets are reasonable given the size of that Member's Developed Property and the residential environment or neighbourhood within which that Developed Property is situated;
  - (b) when Pets are outside the boundaries of that Member's Developed Property, those Pets are under control and supervision at all times, where control shall have the same meaning as the QLDC Dog Bylaw or Policy;
  - (c) all Pets droppings are immediately picked up and disposed of;
  - (d) all Pets are maintained in a healthy and clean condition, and all laws and regulations relating to the keeping of such Pets are complied with;
  - (e) no dangerous Pets are kept within Jacks Point; and
  - (f) no grazing Pets are kept within Jacks Point without first obtaining the consent of the Society, at the Society's sole discretion.

- 12.3 Each Member shall be liable for the costs of repairing any damage to any Communal Facilities or another Member's Developed Property caused by that Member's Pets.
- 12.4 No Member shall allow any Developed Property or any Communal Facilities to become infested by pests including vermin or insects.
- 12.5 The Society may take any action it deems reasonably necessary or appropriate in respect of any Pets found on any part of the Communal Facilities in contravention of Bylaws 12.1 – 12.4.

### 13. **RESTRICTION OF ACCESS TO TABLELANDS**

- 13.1 No Member shall access or use the Tablelands Access Lot except:
- (a) Members who own Tablelands Properties and the Users of those Member's Developed Properties;
  - (b) as authorised by the Society for the purposes of maintenance or repair of the Tablelands Access Lot and other access lots, adjoining wetlands and/or any Utilities on or under the Tableland Lots;
  - (c) as authorised by the operator and/or owner of the Golf Course for the purpose of maintenance or repair of the Golf Course;
  - (d) the owner of the land approximately shown as Lot 24 on the Development Plan and that owner's invitees or occupiers for the purpose of access to that land;
  - (e) to the extent it comprises a walkway, cycle path or bridle path maintained by the Society and for that use.

### 14. **CONDUCT AND NOISE**

- 14.1 Each Member shall at all times comply with the requirements of all statutes, regulations and requirements of Authorities (including all planning instruments and consents) within Jacks Point.
- 14.2 No Member shall use any Developed Property or Communal Facility for any purpose which is illegal or may be injurious to the reputation of Jacks Point.
- 14.3 Each Member shall comply with any instructions from time to time issued by the Society or any of its agents for the efficient safe and harmonious use of the Communal Facilities and to otherwise give effect to these Bylaws and the Constitution.
- 14.4 No Member shall make or permit any improper or unreasonable noise within Jacks Point, nor act in any fashion so as to annoy, disturb or irritate any other Member or so as to breach any relevant planning instruments (including the District Plan) or any other requirements of any Authority.
- 14.5 No Member shall obstruct or interfere with or disturb or trespass upon the rights of any other Member to the quiet and uninterrupted occupation and enjoyment of that other Member's Developed Property.
- 14.6 Where intoxicating liquor is consumed within Jacks Point, each Member shall ensure that all laws governing the consumption of intoxicating liquor are complied with.
- 14.7 The Society reserves the right to exclude or evict from Jacks Point any person who in the opinion of the Society is under the influence of intoxicating liquor or illegal substances, or who in any manner acts in violation of the Constitution or these Bylaws.

**15. RUBBISH****15.1 No Member shall:**

- (a) Dispose of any rubbish on any Developed Property or any Communal Facility except into bins or receptacles especially provided or designed for rubbish disposal.
- (b) Place any private rubbish bins or receptacles on any part of the Communal Facilities except on the day advised by the Society as being the day for rubbish collection, or on the day prior to that day, and shall remove the emptied rubbish bin or receptacle on the day following rubbish collection.
- (c) Place any private rubbish bins or receptacles on any part of that Member's Developed Property which is visible from any Communal Facility or neighbouring Developed Property.

**16. SIGNAGE****16.1 No Member shall exhibit or put on any part of that Member's Developed Property or any Communal**

Facilities any Signage except:

- (a) in accordance with any Bylaws relating to Signage promulgated by the Society from time to time; or
- (b) where no such Bylaws exist, with the prior consent of the Society or the Northern Village Design Review Board; and
- (c) that Signage complies with any requirements of the Queenstown Lakes District Council.

**17. SKATEBOARDS & OTHER RECREATIONAL DEVICES****17.1 No Member shall use any Recreational Device (whether motorised or non-motorised) on any part of Jacks Point outside that Member's Developed Property except where that Member:**

- (a) is a disabled person using vehicles, implements and machinery (whether motorised or non-motorised) commonly used by disabled persons for personal transportation access in public pedestrian areas;
- (b) is using vehicles, implements and machinery (whether motorised or non-motorised) commonly used in the course of playing golf and is on the Golf Course (but subject at all times to the approval of the golf course operator and to compliance with the golf course operator's rules and requirements) or moving to or from the Golf Course for the purposes of playing golf



**BYLAWS OF  
THE SOUTHERN VILLAGE PRECINCT OF  
JACKS POINT RESIDENTS & OWNERS ASSOCIATION INCORPORATED**

**BACKGROUND:**

- A. Under the rules of the Constitution:
- (i) The Society may from time to time promulgate, amend and distribute to Members Bylaws for the use of the Communal Facilities (including any restrictions on use for security, maintenance or other reasons), Bylaws concerning the behaviour of Users of the Members' Developed Properties and Bylaws governing the use of Developed Properties.
  - (ii) Members are required to comply with any Bylaws made by the Society from time to time.
- B. These Bylaws are promulgated by the Society in respect of the Southern Village Precinct and are effective from the date of the Society's AGM for the year 2015.

**BYLAWS:**

**1. DEFINITIONS AND INTERPRETATION**

**1.1** In these Bylaws, unless the context otherwise requires:

**"Authority"** means any local body government or other authority having jurisdiction or authority over or in respect of any part of Jacks Point or its use.

**"Bylaws"** means these bylaws and any other bylaws made by the Society from time to time under the Constitution.

**"Commercial Activity"** means the use of a Developed Property for the display, offering, provision, sale or hire of goods, equipment or services and includes Visitor Accommodation and Homestay.

**"Communal Facilities"** has the meaning given to it in the Constitution.

**"Constitution"** means the Constitution of the Society as amended or added to, including all schedules to the Constitution, but excluding the appendices to the Constitution.

**"Design Guidelines"** any guidelines or controls imposed or amended in respect of buildings and development from time to time by the Queenstown Lakes District Plan or by the Southern Village Committee, including under the Outline Development Plan or by any other lawful mechanism..

**"Developed Property"** has the meaning given to it in the Constitution.

**"Developer"** has the meaning given to it in the Constitution.

**"Development Controls"** to the extent they may apply to the Southern Village Precinct, the development controls dated July 2003 as approved by the Queenstown Lakes District Council pursuant to the Outline Development Plan for Jacks Point



dated 15 August 2005 and as may be amended from time to time by the Southern Village Committee with the approval of the Queenstown Lakes District Council..

**"Development Plan"** means the plan attached to these Bylaws at Schedule Two.

**"District Plan"** means the Queenstown-Lakes District Plan.

**"Golf Course"** means the Jacks Point golf course, any clubhouse and ancillary facilities, if any, including driving range and practice areas.

**"Ground Level"** means:

- (a) where a covenant is registered against the certificate of title for a Developed Property which includes a plan recording the ground level applicable to that Developed Property, the level shown on that plan which is deemed to:
  - (i) be the finished ground level of that Developed Property at the date of the deposited plan which creates a separate certificate of title for that Developed Property; and
  - (ii) slope evenly between the contour lines shown on the plan recording the ground level applicable to that Developed Property.
- (b) where there is no covenant registered against the certificate of title for a Developed Property as described in (a) above, the natural ground level of that Developed Property as at 10 October 1995 (being "ground level") as determined pursuant to the District Plan.

**"Homestay"** means a residential activity where a Developed Property occupied by person(s) living permanently on the Developed Property is also used by paying guests.

**"Invitee"** means any invitee of or any visitor to an Owner or Occupier.

**"Jacks Point"** has the meaning given to it in the Constitution.

**"Jacks Point Zone"** means the residential and commercial development zone called the Jacks Point Zone established by the Queenstown Lakes District Council as a resort zone under Part 12 of the District Plan.

**"Landscape Architect"** means a person who has completed the academic requirements recognized or accredited by the New Zealand Institute of Landscape Architects or such other similar organisation approved by the Society from time to time.

**"Member"** has the meaning given to it in the Constitution.

**"New Zealand Registered Architect"** means a person registered by the New Zealand Registered Architects Board or such other similar organisation approved by the Society from time to time.

**"Occupier"** means any person occupying any Developed Property under any lease, licence or other occupancy right and shall include the Owner and all members of an Owner's family.

**"Outline Development Plan"** any outline development plan, or similar mechanism, which applies to the Southern Village Precinct, whether under the Queenstown Lakes District Plan, a resource consent, or any other lawful mechanism..

**"Owner"** means each person registered as a proprietor (whether individually or with others) of a Developed Property.

**"Owner's Title"** means the certificate of title issued for an Owner's Developed Property.

**"Recreational Device"** includes any skateboard, roller skate, inline skate, trolley, cart, toboggan or any similar recreational device. **"Residential Member"** means a Member whose Developed Property is designated to be used primarily for residential purposes at Jacks Point by an instrument on the Owner's Title or is reasonably determined by the Society to be, or as being, used for residential purposes at Jacks Point, but excludes any Member whose Developed Property is within the part of Jacks Point identified as Village (V) in the Jacks Point Zone.

**"Service Lines"** means underground power cables, underground telephone and electronic data and computer media services, underground gas supply lines (if any) and underground water supply lines.

**"Signage"** means any trade, business, professional or advertising sign (including "for sale" and "for rent" signs) or any notice, name board or plate.

**"Society"** means Jacks Point Residents & Owners Association Incorporated.

**"Southern Village Design Review Board"** means the Southern Village Design Review Board established pursuant to the design review procedure detailed in the Development Controls.

**"Southern Village Precinct"** has the meaning given to it in the Constitution.

**"Tablelands Access Lot"** means the land as approximately shown as Lot 103 on the Development Plan.

**"Tablelands Properties"** means the Developed Properties which are subdivided from the land approximately shown as Lot 21 on the Development Plan.

**"Users of the Member's Developed Property"** means any users of the Member's Developed Property including any mortgagee in possession of that Member's Developed Property, the Occupiers of such Member's Developed Property, the Invitees of such Occupier, the Invitees of such Member and the purchaser of such Member's Developed Property.

**"Utilities"** means the following utilities and services:

- (a) Sealed vehicle access over all roading within Jacks Point, including roading, which is accessible to the general public connecting to the adjoining State Highway;
- (b) Sewage treatment plants, disposal systems, wastewater and stormwater disposal systems, and related reticulation connecting to all Developed Properties and Communal Facilities within Jacks Point;
- (c) Service Lines connecting all Developed Properties and Communal Facilities within Jacks Point to appropriate supply networks, which, for clarity, may supply both Jacks Point and adjoining lands to the north and to the south;
- (d) Domestic and irrigation water systems (including storage tanks, treatment facilities, reticulation, etc.) connecting all Developed Properties and Communal Facilities within Jacks Point to water supply systems sourced from Lake Wakatipu and supplying both Jacks Point and, if applicable, adjoining lands to the north and to the south;

and in each case includes the supply of services and utilities as applicable, and any other services and utilities (such as by way of example only rubbish collection services) that may be required at Jacks Point.

**"Visitor Accommodation"** means the use of a Developed Property for short-term, fee paying, living accommodation where the length of stay for any fee paying guest or visitor is less than 32 days at any time.

- 1.2 Subject to clause 1.3, in the event of any conflict between the provisions of the Constitution, and the provisions of these Bylaws, the provisions of the Constitution shall prevail and be given priority.
- 1.3 In the event of any conflict between the definitions contained in the Constitution, and the definitions contained in these Bylaws, the definitions contained in these Bylaws shall prevail and be given priority.
- 1.4 A reference to an act or omission by any Member shall include any act or omission by Users of the Member's Developed Property.
- 1.5 An obligation to do something is also an obligation to permit or cause that thing to be done and an obligation not to do something is also an obligation not to permit or cause that thing to be done.
- 1.6 In these Bylaws, unless the context otherwise requires:
  - (a) words denoting the singular shall include the plural and vice versa;
  - (b) one gender shall include the other gender;
  - (c) words denoting persons shall include any individual, company, corporation, firm, partnership, joint venture, association, organisation, trust, state, agency of a state, municipal authority, government or any statutory body in each case whether or not having separate legal identity;
  - (d) any covenant or agreement on the part of two or more persons shall bind those persons jointly and severally;
  - (e) reference to anything of a particular nature following upon a general statement shall not in any way derogate from, or limit the application of the general statement, unless the particular context requires such derogation or limitation;
  - (f) any reference to "month" or "monthly" shall mean, respectively, calendar month or calendar monthly;
  - (g) references to rules are references to rules in the Constitution;
  - (h) the table of contents, the section headings and clause headings have been inserted for convenience and a quick guide to the provisions of these Bylaws and shall not form part of these Bylaws or affect its interpretation in any way;
  - (i) reference to any statute, regulation, ordinance or bylaw shall be deemed to extend to all statutes, regulations, ordinances or bylaws amending, consolidating or replacing the same.
  - (j) any term that is not defined in clause 1.1, but is defined in the Constitution, will have the meaning given to it in the Constitution.

## **BYLAWS REGARDING COMMUNAL FACILITIES**

## 2. USE

- 2.1 No Member shall make improper, offensive or unlawful use of any Communal Facilities, and each Member shall use the Communal Facilities only for the purposes for which they were designed.
- 2.2 No Member shall fetter, obstruct or impede the use of any Communal Facilities by any other Member.
- 2.3 No Member shall place anything in or on Communal Facilities without the approval of the Society except as may be reasonably necessary for the Member to use the Communal Facilities.
- 2.4 No Member shall do any act which may prejudice or add to the premium payable in respect of any insurance of the Communal Facilities.
- 2.5 No Member shall do any act which detracts from the attractiveness or state of repair of any of the Communal Facilities. Any Member who discovers any damage to any of the Communal Facilities shall immediately report such damage to the Society.
- 2.6 No Member shall do any act which adversely affects any wetlands which form part of the Communal Facilities or deposit any material in or on any such wetland or allow any rubbish to escape from that Member's Developed Property into any such wetland.

## 3. PROHIBITED ACTS

- 3.1 No Member shall operate any craft (whether motorised or not) on any body of water which forms part of the Communal Facilities without the prior approval of the Society.
- 3.2 No Member shall swim, wade, paddle, bathe in, or carry out any similar activity in or on, any body of water which forms part of the Communal Facilities without the prior approval of the Society.
- 3.3 No Member shall do anything whereby any obstruction, restriction or hindrance may be caused to any road, driveway and pathway (other than a driveway of that Member's Developed Property) or other parts of Jacks Point or to persons lawfully using them unless otherwise approved by the Society.
- 3.4 No Member shall pollute or contaminate the Communal Facilities.
- 3.5 No Member shall discharge onto or into the Communal Facilities any poisonous, noxious, dangerous or offensive substance or thing.
- 3.6 No Member shall allow any Developed Property to be used for any Commercial Activity without the prior approval of the Society; provided that in the case of Visitor Accommodation and Homestay that use is permitted in compliance with Rule 7.3 of the Constitution (Letting of Developed Property).

## 4. CLOSURE OF COMMUNAL FACILITIES

- 4.1 From time to time, at any time and for any length of time (including permanently) the Society shall be entitled to close or restrict access to any or all of the Communal Facilities as the Society considers necessary for any reason including for the purposes of the Golf Course operation, maintenance, repair, grazing, recreational activity or security purposes.

## 5. ROADS

- 5.1 No Member shall park any vehicle on the roads or any other Communal Facilities, other than in spaces specified by the Society from time to time as suitable for that purpose.
- 5.2 No Member shall operate any vehicle, or otherwise act, on the roads or any other Communal Facilities in an unlawful manner, including over any speed limit or contrary to any Bylaw promulgated by the Society from time to time.

## BYLAWS REGARDING DEVELOPED PROPERTIES

### 6. MEMBERS' RESIDENCES

#### 6.1

- (a) Each Member shall keep that Member's Developed Property (including all improvements and fences) in good repair and condition and shall not permit the accumulation of unsightly rubbish or materials or in any other way permit the appearance of that Member's Developed Property to detract from the general standards established for Jacks Point.
- (b) The Society shall notify a Member in writing if in its opinion that Member's Developed Property is not being kept in such condition. If the Member has not brought its Developed Property up to the condition required by the Society within 14 days of notice being served on that Member (or such longer period as the Society deems appropriate at its sole discretion), the Member shall be deemed to allow the Society to access its Developed Property in order to bring that Member's Developed Property up to that condition, at the cost of that Member.
- (c) Any cost(s) incurred by the Society under Bylaw 6.1(b) shall be payable to the Society by the Member immediately upon the Society serving notice of the same on that Member.

6.2 Each Member shall at all times duly and punctually pay all rates, taxes, charges and other outgoings payable in respect of that Member's Developed Property.

6.3 No Member shall erect on any Developed Property any aerials, satellite dishes or other communication receivers of any kind whatsoever, other than those approved by the Society which permission may in the Society's absolute discretion be withheld should it consider that these do not conform to the standards desirable for the development of Jacks Point.

6.4 No Member shall erect any second-hand or relocatable building on that Member's Developed Property.

6.5 No Member shall use that Member's Developed Property for the storage or accumulation of any rubbish or materials other than building materials during the period of construction of any improvement on that Member's Developed Property. During construction that Member shall cause any excess building material and/or rubbish to be stored in a sightly manner and removed from that Member's Developed Property without undue delay and in any event at a minimum of every two weeks.

6.6 No Residential Member shall:

- (a) provide less than a two-car garage on that Member's Developed Property within the Residential neighborhoods with the exception of Residential Neighborhoods N2A and N7 where a single garage can be built with a second carpark that is located and screened to the satisfaction of the Society
- (b) use visitor parking for anything other than temporary parking of non commercial vehicles
- (c) park boats, trailers, caravans, additional cars and trailer vehicles other than within a garage on that Member's Developed Property, except with the permission of the Society
- (d) allow the parking of any commercial vehicles owned or used by the occupier of the Members property unless it is within a garage or if cannot be accommodated within a garage shall be located and screened to the satisfaction of the Society.

6.7 Each Residential Member shall:

- (a) provide screened areas on that Member's Developed Property for clothes drying.
- (b) undertake all planting on that Member's Developed Property in accordance with:
  - (i) any landscape plan approved by the Southern Village Design Review Board or the Society from time to time; and
  - (ii) the Design Guidelines.
- (c) arrange for regular watering, fertilising and cutting of grass areas and watering, fertilising and pruning of trees and shrubs, removal of all weeds, rubbish and the maintenance of all driveways, footpaths and landscaping features on that Member's Developed Property.

6.8 No Member whose Developed Property is situated on those parts of Jacks Point identified as Residential (R) or Village (V) in the Jacks Point Zone shall:

- (a) allow or install any open, solid fuel fires within any residential building or on any residential Developed Property other than:
  - (i) any internal or external barbecue fire being operated for cooking purposes;
  - (ii) any low-emission solid fuel burner emitting no more than 1.5 gm of particulate per kilogram of fuel burnt and with 65% fitting efficiency when measured and assessed in accordance with NZS:4012:1999 and 4013:1999 or equivalent replacement standard.
- (b) allow or install any liquid petroleum gas cylinder larger than 10 kilograms within any residential building or on any residential Developed Property.

**7. DESIGN APPROVAL**

- 7.1 All buildings or developments or other structures within Jacks Point (for the purposes of this Bylaw 7, "**Structures**") shall comply with all relevant Design Guidelines and Development Controls.
- 7.2 Members shall submit the design of that Member's proposed Structure to the Southern Village Design Review Board for its written approval before commencing any work on that Structure or applying for any consent from any Authority necessary to undertake that work. The design shall be prepared by a New Zealand Registered Architect with landscape components prepared by a Landscape Architect or such



other qualified architectural graduates, designers and landscape designers approved by the Southern Village Design Review Board. The consent of the Southern Village Design Review Board shall not be unreasonably withheld or delayed where the design complies with, in the following order of priority:

- (a) the District Plan and any relevant resource consent;
- (b) the Development Controls; and
- (c) any Bylaws (including any relevant Design Guidelines).

- 7.3 All costs of the design approval process (including any disbursements or professional charges of a member of the Southern Village Design Review Board) shall be met by the Member seeking the approval.
- 7.4 A refundable bond of \$2,000 (or such other amount as the Southern Village Design Review Board reasonably determines) shall be deposited with the Society by the Member at the time of lodging any design for approval. The bond paid by the Member, minus any deductions and approval fees, shall be returned to the Member once the finished project matches the approved drawings to the satisfaction of the Southern Village Design Review Board.
- 7.5 A refundable bond of no less than \$5,000 (or such other amount as the Southern Village Design Review Board reasonably determines) shall be deposited with the Society by the Member prior to commencement of any work on any Structure, to cover any damage to any services provided by the Society or any Communal Facilities. The bond paid by the Member, minus any deductions to cover damage and any costs incurred pursuant to Bylaw 10 shall be returned to the Member once the work is completed to the satisfaction of the Southern Village Design Review Board.
- 7.6 The Southern Village Design Review Board may refuse to approve any plans which in its reasonable opinion do not meet the requirements of Bylaw 7.2.
- 7.7 The Southern Village Design Review Board and the Member shall comply with the approval process contained in the Development Controls and the Bylaws before undertaking any work on the proposed Structure:
- (a) The Member shall provide all documents required by the Southern Village Design Review Board for the Final Design Review (as referred to in the Development Controls) including:
    - (i) Legal Description of the relevant Developed Property.
    - (ii) Landscape Plan (1:100 scale):
      - (1) Utilities locations;
      - (2) drainage and location/size of soakage pits (dry wells);
      - (3) set backs – easements;
      - (4) sidewalks, stairways, parking, driveways, decks, patios, courtyards, swimming pools, awnings and walls, exterior lights, garage, other out-buildings;
      - (5) safety fencing location, height and appearance;
      - (6) planting location of planters, lawn area, new trees, natural ground cover areas, and associated plant species; and
      - (7) plant list including species, size, height at maturity.



- (iii) Building Plans (1:50 scale):
  - (1) plan of works;
  - (2) plans, sections, elevations;
  - (3) colours and materials identified; and
  - (4) any rooftop equipment, chimneys.
- (iv) Specifications:
  - (1) All exterior building materials and colours.
- (v) Such other documents as the Southern Village Design Review Board may require in any specific instance.
- (b) The Southern Village Design Review Board shall notify the Member in writing whether or not it has approved that Member's application within 21 days of the Member providing the Southern Village Design Review Board with all information required to provide for the completion of the Final Design Review.
- (c) The Member shall collect information it has provided to the Southern Village Design Review Board only after receiving notice under Bylaw 7.7(b).
- (d) If the Southern Village Design Review Board does not approve the Member's application, the Member and/or his or her architect may lodge an appeal with the Southern Village Design Review Board within 30 days of receiving notice under Bylaw 7.7(b).
- (e) If a Member lodges an appeal, a final decision will be made by the Southern Village Design Review Board acting as an expert based on written submissions from the Member.
- (f) If the Southern Village Design Review Board approves the Member's application:
  - (i) The Member shall acquire all necessary resource consents and building consents from the relevant Authority before undertaking any work on the Structure.
  - (ii) Where the proposed Structure is on a Tablelands Property, the Member shall provide the DRB with stage and completion certificates signed by the Architects who prepared the designs as specified in clause 7.2, or such other person approved by the Southern Village Design Review Board for:
    - (1) The foundations and building footprints have been built as per the approved plans,
    - (2) The wall framing is constructed in accordance with the approved plans and that the window recesses are constructed as per details approved,
    - (3) That the exterior cladding material approved is that ordered by the building company/builder, prior to its being installed on the framing,
    - (4) That the roofing material, prior to its being installed, is that which is approved
    - (5) That the completed building matches the approved design

- (6) That the landscaping has been completed according to the approved design
- (7) Any other stage required by the Southern Village Design Review Board
- (iii) The Member's builder shall excavate and form all necessary footings/slabs.
- (iv) Prior to pouring the necessary footings/slabs, the Member shall submit to the Southern Village Design Review Board an engineer's or surveyor's certificate confirming that all relevant grades, heights and locations are correct.
- (v) When work is completed, the Member shall notify the Southern Village Design Review Board and the Southern Village Design Review Board shall carry out a final inspection of the Structure, at which time the Member shall provide a copy of the code compliance certificate to the Southern Village Design Review Board.

## **8. SECURITY MEASURES**

- 8.1 Each Member shall properly secure that Member's Developed Property when it is not occupied.
- 8.2 Each Member shall have any private security devices installed at that Member's Developed Property monitored so as to ensure:
  - (a) prompt and effective response when those devices are activated; and
  - (b) deactivation by independent persons if a Member is absent from that Member's Developed Property.
- 8.3 Each Member may contract with a supplier of security services of that Member's choice for that Member's Developed Property provided that where the Society nominates a particular supplier of security services that Member must use that particular supplier in accordance with the Constitution. Each Member who contracts with a supplier of security services for that Member's Developed Property shall:
  - (a) provide the Society with all information required by the Society regarding that supplier; and
  - (b) comply with all guidelines for use of the security services imposed by that supplier.

## **9. SALE OF DEVELOPED PROPERTY**

- 9.1 If a Member intends to sell a Developed Property, the Member must immediately give the Society written notice of that intention and how the Member wishes to conduct the sale process including details of any real estate agent the Member wishes to engage. Such sale process must comply with any relevant Bylaws and/or instructions of the Society.
- 9.2 No Member shall hold any auction sale on any Developed Property without the prior written approval of the Society.

## **10. WATER METERS AND PRIMARY WASTEWATER TREATMENT TANKS**

- 10.1 Each Member shall install a water meter for that Member's Developed Property of a type and specification and at a location as determined by the Society prior to connecting to the water supply system. The installation of that water meter shall be at

that Member's cost. The Society may levy that Member for water usage on a per cubic metre basis or as otherwise determined by the Society.

- 10.2 The cost of supply and installation of any water meter(s) by the Society may be deducted from a bond deposited under Bylaw 7.5.
- 10.3 No Developed Property may be occupied until there has been installed on that Developed Property the primary wastewater treatment tank required by the Society (and purchased from the Society or the Developer) for the primary treatment of wastewater on the Developed Property before disposal into the reticulated wastewater disposal system (or disposal to ground where allowed, as with the Tableland Properties).

## **11. MONITORING AND MAINTENANCE OF INFRASTRUCTURE**

- 11.1 Each Member shall ensure that the primary wastewater treatment tank and its associated infrastructure and any infrastructure related to the supply of potable water located on or under that Member's Developed Property are maintained in good order so that the wastewater disposal and potable water supply infrastructure available to other Members functions appropriately.
- 11.2 No Developed Property may be occupied unless Member has entered into a contract with a supplier approved by the Society for the monitoring and maintenance of the primary wastewater treatment tank located with the Members property. The Member shall authorise the supplier to release to the Society such information as the Society requests from time to time in respect of the maintenance and condition of the tank and associated system components.

## **OTHER BYLAWS**

### **12. ANIMALS, PETS ETC.**

- 12.1 No Member shall allow any bird, pet or other animal ("**Pets**") to cause a nuisance to any other Member.
- 12.2 Without limiting Bylaw 12.1, each Member shall ensure, in respect of that Member's Pets, that:
- (a) the number and size of any Pets are reasonable given the size of that Member's Developed Property and the residential environment or neighbourhood within which that Developed Property is situated;
  - (b) when Pets are outside the boundaries of that Member's Developed Property, those Pets are under control and supervision at all times, where control shall have the same meaning as the QLDC Dog Bylaw or Policy;
  - (c) all Pets droppings are immediately picked up and disposed of;
  - (d) all Pets are maintained in a healthy and clean condition, and all laws and regulations relating to the keeping of such Pets are complied with;
  - (e) no dangerous Pets are kept within Jacks Point; and
  - (f) no grazing Pets are kept within Jacks Point without first obtaining the consent of the Society, at the Society's sole discretion.
- 12.3 Each Member shall be liable for the costs of repairing any damage to any Communal Facilities or another Member's Developed Property caused by that Member's Pets.

12.4 No Member shall allow any Developed Property or any Communal Facilities to become infested by pests including vermin or insects.

12.5 The Society may take any action it deems reasonably necessary or appropriate in respect of any Pets found on any part of the Communal Facilities in contravention of Bylaws 12.1 – 12.4.

### 13. RESTRICTION OF ACCESS TO TABLELANDS

13.1 No Member shall access or use the Tablelands Access Lot except:

- (a) Members who own Tablelands Properties and the Users of those Member's Developed Properties;
- (b) as authorised by the Society for the purposes of maintenance or repair of the Tablelands Access Lot and other access lots, adjoining wetlands and/or any Utilities on or under the Tableland Lots;
- (c) as authorised by the operator and/or owner of the Golf Course for the purpose of maintenance or repair of the Golf Course;
- (d) the owner of the land approximately shown as Lot 24 on the Development Plan and that owner's invitees or occupiers for the purpose of access to that land;
- (e) to the extent it comprises a walkway, cycle path or bridle path maintained by the Society and for that use.

### 14. CONDUCT AND NOISE

14.1 Each Member shall at all times comply with the requirements of all statutes, regulations and requirements of Authorities (including all planning instruments and consents) within Jacks Point.

14.2 No Member shall use any Developed Property or Communal Facility for any purpose which is illegal or may be injurious to the reputation of Jacks Point.

14.3 Each Member shall comply with any instructions from time to time issued by the Society or any of its agents for the efficient safe and harmonious use of the Communal Facilities and to otherwise give effect to these Bylaws and the Constitution.

14.4 No Member shall make or permit any improper or unreasonable noise within Jacks Point, nor act in any fashion so as to annoy, disturb or irritate any other Member or so as to breach any relevant planning instruments (including the District Plan) or any other requirements of any Authority.

14.5 No Member shall obstruct or interfere with or disturb or trespass upon the rights of any other Member to the quiet and uninterrupted occupation and enjoyment of that other Member's Developed Property.

14.6 Where intoxicating liquor is consumed within Jacks Point, each Member shall ensure that all laws governing the consumption of intoxicating liquor are complied with.

14.7 The Society reserves the right to exclude or evict from Jacks Point any person who in the opinion of the Society is under the influence of intoxicating liquor or illegal substances, or who in any manner acts in violation of the Constitution or these Bylaws.

### 15. RUBBISH

15.1 No Member shall:

- (a) Dispose of any rubbish on any Developed Property or any Communal Facility except into bins or receptacles especially provided or designed for rubbish disposal.
- (b) Place any private rubbish bins or receptacles on any part of the Communal Facilities except on the day advised by the Society as being the day for rubbish collection, or on the day prior to that day, and shall remove the emptied rubbish bin or receptacle on the day following rubbish collection.
- (c) Place any private rubbish bins or receptacles on any part of that Member's Developed Property which is visible from any Communal Facility or neighbouring Developed Property.

#### 16. **SIGNAGE**

- 16.1 No Member shall exhibit or put on any part of that Member's Developed Property or any Communal Facilities any Signage except:
- (a) in accordance with any Bylaws relating to Signage promulgated by the Society from time to time; or
  - (b) where no such Bylaws exist, with the prior consent of the Society or the Southern Village Design Review Board; and
  - (c) that Signage complies with any requirements of the Queenstown Lakes District Council.

#### 17. **SKATEBOARDS & OTHER RECREATIONAL DEVICES**

- 17.1 No Member shall use any Recreational Device (whether motorised or non-motorised) on any part of Jacks Point outside that Member's Developed Property except where that Member:
- (a) is a disabled person using vehicles, implements and machinery (whether motorised or non-motorised) commonly used by disabled persons for personal transportation access in public pedestrian areas;
  - (b) is using vehicles, implements and machinery (whether motorised or non-motorised) commonly used in the course of playing golf and is on the Golf Course (but subject at all times to the approval of the golf course operator and to compliance with the golf course operator's rules and requirements) or moving to or from the Golf Course for the purposes of playing golf.

**BYLAWS OF  
THE RESIDENTIAL PRECINCT OF  
JACKS POINT RESIDENTS & OWNERS ASSOCIATION INCORPORATED**

**BACKGROUND:**

- A. Under the rules of the Constitution:
- (i) The Society may from time to time promulgate, amend and distribute to Members Bylaws for the use of the Communal Facilities (including any restrictions on use for security, maintenance or other reasons), Bylaws concerning the behaviour of Users of the Members' Developed Properties and Bylaws governing the use of Developed Properties.
  - (ii) Members are required to comply with any Bylaws made by the Society from time to time.
- B. These Bylaws are promulgated by the Society in respect of the Residential Precinct and are effective from the date of the Society's AGM for the year 2015.

**BYLAWS:**

**1. DEFINITIONS AND INTERPRETATION**

**1.1** In these Bylaws, unless the context otherwise requires:

**"Authority"** means any local body government or other authority having jurisdiction or authority over or in respect of any part of Jacks Point or its use.

**"Bylaws"** means these bylaws and any other bylaws made by the Society from time to time under the Constitution.

**"Commercial Activity"** means the use of a Developed Property for the display, offering, provision, sale or hire of goods, equipment or services and includes Visitor Accommodation and Homestay.

**"Communal Facilities"** has the meaning given to it in the Constitution.

**"Constitution"** means the Constitution of the Society as amended or added to, including all schedules to the Constitution, but excluding the appendices to the Constitution.

**"Design Guidelines"** means the design guidelines attached to these Bylaws at Schedule One as added to or amended from time to time by the Society.

**"Developed Property"** has the meaning given to it in the Constitution.

**"Developer"** has the meaning given to it in the Constitution.

**"Development Controls"** means the development controls dated July 2003 as approved by the Queenstown Lakes District Council pursuant to the Outline Development Plan for Jacks Point dated 15 August 2005 and as may be amended from time to time by the Society with the approval of the Queenstown Lakes District Council.

**"Development Plan"** means the plan attached to these Bylaws at Schedule Two.



**"District Plan"** means the Queenstown-Lakes District Plan.

**"Golf Course"** means the Jacks Point golf course, any clubhouse and ancillary facilities, if any, including driving range and practice areas.

**"Ground Level"** means:

- (a) where a covenant is registered against the certificate of title for a Developed Property which includes a plan recording the ground level applicable to that Developed Property, the level shown on that plan which is deemed to:
  - (i) be the finished ground level of that Developed Property at the date of the deposited plan which creates a separate certificate of title for that Developed Property; and
  - (ii) slope evenly between the contour lines shown on the plan recording the ground level applicable to that Developed Property.
- (b) where there is no covenant registered against the certificate of title for a Developed Property as described in (a) above, the natural ground level of that Developed Property as at 10 October 1995 (being "ground level") as determined pursuant to the District Plan.

**"Homestay"** means a residential activity where a Developed Property occupied by person(s) living permanently on the Developed Property is also used by paying guests.

**"Invitee"** means any invitee of or any visitor to an Owner or Occupier.

**"Jacks Point"** has the meaning given to it in the Constitution.

**"Jacks Point Zone"** means the residential and commercial development zone called the Jacks Point Zone established by the Queenstown Lakes District Council as a resort zone under Part 12 of the District Plan.

**"Landscape Architect"** means a person who has completed the academic requirements recognized or accredited by the New Zealand Institute of Landscape Architects or such other similar organisation approved by the Society from time to time.

**"Member"** has the meaning given to it in the Constitution.

**"New Zealand Registered Architect"** means a person registered by the New Zealand Registered Architects Board or such other similar organisation approved by the Society from time to time.

**"Occupier"** means any person occupying any Developed Property under any lease, licence or other occupancy right and shall include the Owner and all members of an Owner's family.

**"Outline Development Plan"** means the plan of that name in respect of land contained in certificates of title OT156347 and 156346 approved under resource consent RM041269 granted on 24 March 2005 as varied under resource consent RM050538 granted on 15 August 2005 and subject to such further amendment as approved by the Queenstown Lakes District Council from time to time.

**"Owner"** means each person registered as a proprietor (whether individually or with others) of a Developed Property.

**"Owner's Title"** means the certificate of title issued for an Owner's Developed Property.



**"Recreational Device"** includes any skateboard, roller skate, inline skate, trolley, cart, toboggan or any similar recreational device.

**"Residential Design Review Board"** means the Design Review Board established pursuant to the design review procedure detailed in the Development Controls.

**"Residential Member"** means a Member whose Developed Property is designated to be used primarily for residential purposes at Jacks Point by an instrument on the Owner's Title or is reasonably determined by the Society to be, or as being, used for residential purposes at Jacks Point, but excludes any Member whose Developed Property is within the part of Jacks Point identified as Village (V) in the Jacks Point Zone.

**"Service Lines"** means underground power cables, underground telephone and electronic data and computer media services, underground gas supply lines (if any) and underground water supply lines.

**"Signage"** means any trade, business, professional or advertising sign (including "for sale" and "for rent" signs) or any notice, name board or plate.

**"Society"** means Jacks Point Residents & Owners Association Incorporated.

**"Tablelands Access Lot"** means the land as approximately shown as Lot 103 on the Development Plan.

**"Tablelands Properties"** means the Developed Properties which are subdivided from the land approximately shown as Lot 21 on the Development Plan.

**"Users of the Member's Developed Property"** means any users of the Member's Developed Property including any mortgagee in possession of that Member's Developed Property, the Occupiers of such Member's Developed Property, the Invitees of such Occupier, the Invitees of such Member and the purchaser of such Member's Developed Property.

**"Utilities"** means the following utilities and services:

- (a) Sealed vehicle access over all roading within Jacks Point, including roading, which is accessible to the general public connecting to the adjoining State Highway;
- (b) Sewage treatment plants, disposal systems, wastewater and stormwater disposal systems, and related reticulation connecting to all Developed Properties and Communal Facilities within Jacks Point;
- (c) Service Lines connecting all Developed Properties and Communal Facilities within Jacks Point to appropriate supply networks, which, for clarity, may supply both Jacks Point and adjoining lands to the north and to the south;
- (d) Domestic and irrigation water systems (including storage tanks, treatment facilities, reticulation, etc.) connecting all Developed Properties and Communal Facilities within Jacks Point to water supply systems sourced from Lake Wakatipu and supplying both Jacks Point and, if applicable, adjoining lands to the north and to the south;

and in each case includes the supply of services and utilities as applicable, and any other services and utilities (such as by way of example only rubbish collection services) that may be required at Jacks Point.

**"Visitor Accommodation"** means the use of a Developed Property for short-term, fee paying, living accommodation where the length of stay for any fee paying guest or visitor is less than 32 days at any time.

- 1.2 Subject to clause 1.3, in the event of any conflict between the provisions of the Constitution, and the provisions of these Bylaws, the provisions of the Constitution shall prevail and be given priority.
- 1.3 In the event of any conflict between the definitions contained in the Constitution, and the definitions contained in these Bylaws, the definitions contained in these Bylaws shall prevail and be given priority.
- 1.4 A reference to an act or omission by any Member shall include any act or omission by Users of the Member's Developed Property.
- 1.5 An obligation to do something is also an obligation to permit or cause that thing to be done and an obligation not to do something is also an obligation not to permit or cause that thing to be done.
- 1.6 In these Bylaws, unless the context otherwise requires:
- (a) words denoting the singular shall include the plural and vice versa;
  - (b) one gender shall include the other gender;
  - (c) words denoting persons shall include any individual, company, corporation, firm, partnership, joint venture, association, organisation, trust, state, agency of a state, municipal authority, government or any statutory body in each case whether or not having separate legal identity;
  - (d) any covenant or agreement on the part of two or more persons shall bind those persons jointly and severally;
  - (e) reference to anything of a particular nature following upon a general statement shall not in any way derogate from, or limit the application of the general statement, unless the particular context requires such derogation or limitation;
  - (f) any reference to "month" or "monthly" shall mean, respectively, calendar month or calendar monthly;
  - (g) references to rules are references to rules in the Constitution;
  - (h) the table of contents, the section headings and clause headings have been inserted for convenience and a quick guide to the provisions of these Bylaws and shall not form part of these Bylaws or affect its interpretation in any way;
  - (i) reference to any statute, regulation, ordinance or bylaw shall be deemed to extend to all statutes, regulations, ordinances or bylaws amending, consolidating or replacing the same.
  - (j) any term that is not defined in clause 1.1, but is defined in the Constitution, will have the meaning given to it in the Constitution.

## **BYLAWS REGARDING COMMUNAL FACILITIES**

### **2. USE**

- 2.1 No Member shall make improper, offensive or unlawful use of any Communal Facilities, and each Member shall use the Communal Facilities only for the purposes for which they were designed.
- 2.2 No Member shall fetter, obstruct or impede the use of any Communal Facilities by any other Member.

- 2.3 No Member shall place anything in or on Communal Facilities without the approval of the Society except as may be reasonably necessary for the Member to use the Communal Facilities.
- 2.4 No Member shall do any act which may prejudice or add to the premium payable in respect of any insurance of the Communal Facilities.
- 2.5 No Member shall do any act which detracts from the attractiveness or state of repair of any of the Communal Facilities. Any Member who discovers any damage to any of the Communal Facilities shall immediately report such damage to the Society.
- 2.6 No Member shall do any act which adversely affects any wetlands which form part of the Communal Facilities or deposit any material in or on any such wetland or allow any rubbish to escape from that Member's Developed Property into any such wetland.

### 3. PROHIBITED ACTS

- 3.1 No Member shall operate any craft (whether motorised or not) on any body of water which forms part of the Communal Facilities without the prior approval of the Society.
- 3.2 No Member shall swim, wade, paddle, bathe in, or carry out any similar activity in or on, any body of water which forms part of the Communal Facilities without the prior approval of the Society.
- 3.3 No Member shall do anything whereby any obstruction, restriction or hindrance may be caused to any road, driveway and pathway (other than a driveway of that Member's Developed Property) or other parts of Jacks Point or to persons lawfully using them unless otherwise approved by the Society.
- 3.4 No Member shall pollute or contaminate the Communal Facilities.
- 3.5 No Member shall discharge onto or into the Communal Facilities any poisonous, noxious, dangerous or offensive substance or thing.
- 3.6 No Member shall allow any Developed Property to be used for any Commercial Activity without the prior approval of the Society; provided that in the case of Visitor Accommodation and Homestay that use is permitted in compliance with Rule 7.3 of the Constitution (Letting of Developed Property).

### 4. CLOSURE OF COMMUNAL FACILITIES

- 4.1 From time to time, at any time and for any length of time (including permanently) the Society shall be entitled to close or restrict access to any or all of the Communal Facilities as the Society considers necessary for any reason including for the purposes of the Golf Course operation, maintenance, repair, grazing, recreational activity or security purposes.

### 5. ROADS

- 5.1 No Member shall park any vehicle on the roads or any other Communal Facilities, other than in spaces specified by the Society from time to time as suitable for that purpose.
- 5.2 No Member shall operate any vehicle, or otherwise act, on the roads or any other Communal Facilities in an unlawful manner, including over any speed limit or contrary to any Bylaw promulgated by the Society from time to time.

## BYLAWS REGARDING DEVELOPED PROPERTIES

## 6. MEMBERS' RESIDENCES

### 6.1

- (a) Each Member shall keep that Member's Developed Property (including all improvements and fences) in good repair and condition and shall not permit the accumulation of unsightly rubbish or materials or in any other way permit the appearance of that Member's Developed Property to detract from the general standards established for Jacks Point.
- (b) The Society shall notify a Member in writing if in its opinion that Member's Developed Property is not being kept in such condition. If the Member has not brought its Developed Property up to the condition required by the Society within 14 days of notice being served on that Member (or such longer period as the Society deems appropriate at its sole discretion), the Member shall be deemed to allow the Society to access its Developed Property in order to bring that Member's Developed Property up to that condition, at the cost of that Member.
- (c) Any cost(s) incurred by the Society under Bylaw 6.1b shall be payable to the Society by the Member immediately upon the Society serving notice of the same on that Member.

6.2 Each Member shall at all times duly and punctually pay all rates, taxes, charges and other outgoings payable in respect of that Member's Developed Property.

6.3 No Member shall erect on any Developed Property any aerials, satellite dishes or other communication receivers of any kind whatsoever, other than those approved by the Society which permission may in the Society's absolute discretion be withheld should it consider that these do not conform to the standards desirable for the development of Jacks Point.

6.4 No Member shall erect any second-hand or relocatable building on that Member's Developed Property.

6.5 No Member shall use that Member's Developed Property for the storage or accumulation of any rubbish or materials other than building materials during the period of construction of any improvement on that Member's Developed Property. During construction that Member shall cause any excess building material and/or rubbish to be stored in a sightly manner and removed from that Member's Developed Property without undue delay and in any event at a minimum of every two weeks.

6.6 No Residential Member shall:

- (a) provide less than a two-car garage on that Member's Developed Property within the Residential neighborhoods with the exception of Residential Neighborhoods N2A and N7 where a single garage can be built with a second carpark that is located and screened to the satisfaction of the Society
- (b) use visitor parking for anything other than temporary parking of non commercial vehicles
- (c) park boats, trailers, caravans, additional cars and trailer vehicles other than within a garage on that Member's Developed Property, except with the permission of the Society

- (d) allow the parking of any commercial vehicles owned or used by the occupier of the Members property unless it is within a garage or if cannot be accommodated within a garage shall be located and screened to the satisfaction of the Society.
- 6.7 Each Residential Member shall:
- (a) provide screened areas on that Member's Developed Property for clothes drying.
  - (b) undertake all planting on that Member's Developed Property in accordance with:
    - (i) any landscape plan approved by the Residential Design Review Board or the Society from time to time; and
    - (ii) the Design Guidelines.
  - (c) arrange for regular watering, fertilising and cutting of grass areas and watering, fertilising and pruning of trees and shrubs, removal of all weeds, rubbish and the maintenance of all driveways, footpaths and landscaping features on that Member's Developed Property.
- 6.8 No Member whose Developed Property is situated on those parts of Jacks Point identified as Residential (R) or Village (V) in the Jacks Point Zone shall:
- (a) allow or install any open, solid fuel fires within any residential building or on any residential Developed Property other than:
    - (i) any internal or external barbecue fire being operated for cooking purposes;
    - (ii) any low-emission solid fuel burner emitting no more than 1.5 gm of particulate per kilogram of fuel burnt and with 65% fitting efficiency when measured and assessed in accordance with NZS:4012:1999 and 4013:1999 or equivalent replacement standard.
  - (b) allow or install any liquid petroleum gas cylinder larger than 10 kilograms within any residential building or on any residential Developed Property.

## 7. DESIGN APPROVAL

- 7.1 All buildings or developments or other structures within Jacks Point (for the purposes of this Bylaw 7, "**Structures**") shall comply with all relevant Design Guidelines and Development Controls.
- 7.2 Members shall submit the design of that Member's proposed Structure to the Residential Design Review Board for its written approval before commencing any work on that Structure or applying for any consent from any Authority necessary to undertake that work. The design shall be prepared by a New Zealand Registered Architect with landscape components prepared by a Landscape Architect or such other qualified architectural graduates, designers and landscape designers approved by the Residential Design Review Board. The consent of the Residential Design Review Board shall not be unreasonably withheld or delayed where the design complies with, in the following order of priority:
- (a) the District Plan and any relevant resource consent;
  - (b) the Development Controls; and
  - (c) any Bylaws (including any relevant Design Guidelines).

- 7.3 All costs of the design approval process (including any disbursements or professional charges of a member of the Residential Design Review Board) shall be met by the Member seeking the approval.
- 7.4 A refundable bond of \$2,000 (or such other amount as the Residential Design Review Board reasonably determines) shall be deposited with the Society by the Member at the time of lodging any design for approval. The bond paid by the Member, minus any deductions and approval fees, shall be returned to the Member once the finished project matches the approved drawings to the satisfaction of the Residential Design Review Board.
- 7.5 A refundable bond of no less than \$5,000 (or such other amount as the Residential Design Review Board reasonably determines) shall be deposited with the Society by the Member prior to commencement of any work on any Structure, to cover any damage to any services provided by the Society or any Communal Facilities. The bond paid by the Member, minus any deductions to cover damage and any costs incurred pursuant to Bylaw 10 shall be returned to the Member once the work is completed to the satisfaction of the Residential Design Review Board.
- 7.6 The Residential Design Review Board may refuse to approve any plans which in its reasonable opinion do not meet the requirements of Bylaw 7.2.
- 7.7 The Residential Design Review Board and the Member shall comply with the approval process contained in the Development Controls and the Bylaws before undertaking any work on the proposed Structure:
- (a) The Member shall provide all documents required by the Residential Design Review Board for the Final Design Review (as referred to in the Development Controls) including:
- (i) Legal Description of the relevant Developed Property.
  - (ii) Landscape Plan (1:100 scale):
    - (1) Utilities locations;
    - (2) drainage and location/size of soakage pits (dry wells);
    - (3) set backs – easements;
    - (4) sidewalks, stairways, parking, driveways, decks, patios, courtyards, swimming pools, awnings and walls, exterior lights, garage, other out-buildings;
    - (5) safety fencing location, height and appearance;
    - (6) planting location of planters, lawn area, new trees, natural ground cover areas, and associated plant species; and
    - (7) plant list including species, size, height at maturity.
  - (iii) Building Plans (1:50 scale):
    - (1) plan of works;
    - (2) plans, sections, elevations;
    - (3) colours and materials identified; and
    - (4) any rooftop equipment, chimneys.
  - (iv) Specifications:
    - (1) All exterior building materials and colours.



- (v) Such other documents as the Residential Design Review Board may require in any specific instance.
- (b) The Residential Design Review Board shall notify the Member in writing whether or not it has approved that Member's application within 21 days of the Member providing the Residential Design Review Board with all information required to provide for the completion of the Final Design Review.
- (c) The Member shall collect information it has provided to the Residential Design Review Board only after receiving notice under Bylaw 7.7(b).
- (d) If the Residential Design Review Board does not approve the Member's application, the Member and/or his or her architect may lodge an appeal with the Residential Design Review Board within 30 days of receiving notice under Bylaw 7.7(b).
- (e) If a Member lodges an appeal, a final decision will be made by the Residential Design Review Board acting as an expert based on written submissions from the Member.
- (f) If the Residential Design Review Board approves the Member's application:
  - (i) The Member shall acquire all necessary resource consents and building consents from the relevant Authority before undertaking any work on the Structure.
  - (ii) Where the proposed Structure is on a Tablelands Property, the Member shall provide the DRB with stage and completion certificates signed by the Architects who prepared the designs as specified in clause 7.2, or such other person approved by the Residential Design Review Board for:
    - (1) The foundations and building footprints have been built as per the approved plans,
    - (2) The wall framing is constructed in accordance with the approved plans and that the window recesses are constructed as per details approved,
    - (3) That the exterior cladding material approved is that ordered by the building company/builder, prior to it being installed on the framing,
    - (4) That the roofing material, prior to it being installed, is that which is approved
    - (5) That the completed building matches the approved design
    - (6) That the landscaping has been completed according to the approved design
    - (7) Any other stage required by the Residential Design Review Board
  - (iii) The Member's builder shall excavate and form all necessary footings/slabs.
  - (iv) Prior to pouring the necessary footings/slabs, the Member shall submit to the Residential Design Review Board an engineer's or surveyor's certificate confirming that all relevant grades, heights and locations are correct.
  - (v) When work is completed, the Member shall notify the Residential Design Review Board and the Residential Design Review Board shall carry out a final inspection of the Structure, at which time the Member shall provide a



copy of the code compliance certificate to the Residential Design Review Board.

## **8. SECURITY MEASURES**

- 8.1 Each Member shall properly secure that Member's Developed Property when it is not occupied.
- 8.2 Each Member shall have any private security devices installed at that Member's Developed Property monitored so as to ensure:
- (a) prompt and effective response when those devices are activated; and
  - (b) deactivation by independent persons if a Member is absent from that Member's Developed Property.
- 8.3 Each Member may contract with a supplier of security services of that Member's choice for that Member's Developed Property provided that where the Society nominates a particular supplier of security services that Member must use that particular supplier in accordance with the Constitution. Each Member who contracts with a supplier of security services for that Member's Developed Property shall:
- (a) provide the Society with all information required by the Society regarding that supplier; and
  - (b) comply with all guidelines for use of the security services imposed by that supplier.

## **9. SALE OF DEVELOPED PROPERTY**

- 9.1 If a Member intends to sell a Developed Property, the Member must immediately give the Society written notice of that intention and how the Member wishes to conduct the sale process including details of any real estate agent the Member wishes to engage. Such sale process must comply with any relevant Bylaws and/or instructions of the Society.
- 9.2 No Member shall hold any auction sale on any Developed Property without the prior written approval of the Society.

## **10. WATER METERS AND PRIMARY WASTEWATER TREATMENT TANKS**

- 10.1 Each Member shall install a water meter for that Member's Developed Property of a type and specification and at a location as determined by the Society prior to connecting to the water supply system. The installation of that water meter shall be at that Member's cost. The Society may levy that Member for water usage on a per cubic metre basis or as otherwise determined by the Society.
- 10.2 The cost of supply and installation of any water meter(s) by the Society may be deducted from a bond deposited under Bylaw 7.5.
- 10.3 No Developed Property may be occupied until there has been installed on that Developed Property the primary wastewater treatment tank required by the Society (and purchased from the Society or the Developer) for the primary treatment of wastewater on the Developed Property before disposal into the reticulated wastewater disposal system (or disposal to ground where allowed, as with the Tableland Properties).

## **11. MONITORING AND MAINTENANCE OF INFRASTRUCTURE**

- 11.1 Each Member shall ensure that the primary wastewater treatment tank and its associated infrastructure and any infrastructure related to the supply of potable water located on or under that Member's Developed Property are maintained in good order

so that the wastewater disposal and potable water supply infrastructure available to other Members functions appropriately.

- 11.2 No Developed Property may be occupied unless Member has entered into a contract with a supplier approved by the Society for the monitoring and maintenance of the primary wastewater treatment tank located with the Members property. The Member shall authorise the supplier to release to the Society such information as the Society requests from time to time in respect of the maintenance and condition of the tank and associated system components.

## **OTHER BYLAWS**

### **12. ANIMALS, PETS ETC.**

- 12.1 No Member shall allow any bird, pet or other animal ("**Pets**") to cause a nuisance to any other Member.
- 12.2 Without limiting Bylaw 12.1, each Member shall ensure, in respect of that Member's Pets, that:
- (a) the number and size of any Pets are reasonable given the size of that Member's Developed Property and the residential environment or neighbourhood within which that Developed Property is situated;
  - (b) when Pets are outside the boundaries of that Member's Developed Property, those Pets are under control and supervision at all times, where control shall have the same meaning as the QLDC Dog Bylaw or Policy;
  - (c) all Pets droppings are immediately picked up and disposed of;
  - (d) all Pets are maintained in a healthy and clean condition, and all laws and regulations relating to the keeping of such Pets are complied with;
  - (e) no dangerous Pets are kept within Jacks Point; and
  - (f) no grazing Pets are kept within Jacks Point without first obtaining the consent of the Society, at the Society's sole discretion.
- 12.3 Each Member shall be liable for the costs of repairing any damage to any Communal Facilities or another Member's Developed Property caused by that Member's Pets.
- 12.4 No Member shall allow any Developed Property or any Communal Facilities to become infested by pests including vermin or insects.
- 12.5 The Society may take any action it deems reasonably necessary or appropriate in respect of any Pets found on any part of the Communal Facilities in contravention of Bylaws 12.1 – 12.4.

### **13. RESTRICTION OF ACCESS TO TABLELANDS**

- 13.1 No Member shall access or use the Tablelands Access Lot except:
- (a) Members who own Tablelands Properties and the Users of those Member's Developed Properties;
  - (b) as authorised by the Society for the purposes of maintenance or repair of the Tablelands Access Lot and other access lots, adjoining wetlands and/or any Utilities on or under the Tableland Lots;

- (c) as authorised by the operator and/or owner of the Golf Course for the purpose of maintenance or repair of the Golf Course;
- (d) the owner of the land approximately shown as Lot 24 on the Development Plan and that owner's invitees or occupiers for the purpose of access to that land;
- (e) to the extent it comprises a walkway, cycle path or bridle path maintained by the Society and for that use.

#### 14. **CONDUCT AND NOISE**

- 14.1 Each Member shall at all times comply with the requirements of all statutes, regulations and requirements of Authorities (including all planning instruments and consents) within Jacks Point.
- 14.2 No Member shall use any Developed Property or Communal Facility for any purpose which is illegal or may be injurious to the reputation of Jacks Point.
- 14.3 Each Member shall comply with any instructions from time to time issued by the Society or any of its agents for the efficient safe and harmonious use of the Communal Facilities and to otherwise give effect to these Bylaws and the Constitution.
- 14.4 No Member shall make or permit any improper or unreasonable noise within Jacks Point, nor act in any fashion so as to annoy, disturb or irritate any other Member or so as to breach any relevant planning instruments (including the District Plan) or any other requirements of any Authority.
- 14.5 No Member shall obstruct or interfere with or disturb or trespass upon the rights of any other Member to the quiet and uninterrupted occupation and enjoyment of that other Member's Developed Property.
- 14.6 Where intoxicating liquor is consumed within Jacks Point, each Member shall ensure that all laws governing the consumption of intoxicating liquor are complied with.
- 14.7 The Society reserves the right to exclude or evict from Jacks Point any person who in the opinion of the Society is under the influence of intoxicating liquor or illegal substances, or who in any manner acts in violation of the Constitution or these Bylaws.

#### 15. **RUBBISH**

- 15.1 No Member shall:
  - (a) Dispose of any rubbish on any Developed Property or any Communal Facility except into bins or receptacles especially provided or designed for rubbish disposal.
  - (b) Place any private rubbish bins or receptacles on any part of the Communal Facilities except on the day advised by the Society as being the day for rubbish collection, or on the day prior to that day, and shall remove the emptied rubbish bin or receptacle on the day following rubbish collection.
  - (c) Place any private rubbish bins or receptacles on any part of that Member's Developed Property which is visible from any Communal Facility or neighbouring Developed Property.

#### 16. **SIGNAGE**

- 16.1 No Member shall exhibit or put on any part of that Member's Developed Property or any Communal Facilities any Signage except:

- (a) in accordance with any Bylaws relating to Signage promulgated by the Society from time to time; or
- (b) where no such Bylaws exist, with the prior consent of the Society or the Residential Design Review Board; and
- (c) that Signage complies with any requirements of the Queenstown Lakes District Council.

**17. SKATEBOARDS & OTHER RECREATIONAL DEVICES**

17.1 No Member shall use any Recreational Device (whether motorised or non-motorised) on any part of Jacks Point outside that Member's Developed Property except where that Member:

- (a) is a disabled person using vehicles, implements and machinery (whether motorised or non-motorised) commonly used by disabled persons for personal transportation access in public pedestrian areas;
- (b) is using vehicles, implements and machinery (whether motorised or non-motorised) commonly used in the course of playing golf and is on the Golf Course (but subject at all times to the approval of the golf course operator and to compliance with the golf course operator's rules and requirements) or moving to or from the Golf Course for the purposes of playing golf.

# Residential Design Guidelines

VERSION 3.0 - SEPTEMBER 2009  
RESOURCE CONSENT - RM060903  
RESOURCE CONSENT - RM090494



## JACKS POINT – RESIDENTIAL DESIGN GUIDELINES

These Design Guidelines have been developed for the Residential Area in accordance with the Jacks Point Development Controls. The Jacks Point Development Controls shall be deemed to be part of these Design Guidelines if required for interpretation purposes.

Any Design Guidelines developed and approved by the Jacks Point Design Review Board (DRB) and Council for specific areas within the Residential Area, such as comprehensive developments, shall apply to those specific areas instead of and in replacement for these Design Guidelines.

All new development will be reviewed by the DRB and by Council under the District Plan. The following guidelines set out the objectives against which the development will be assessed. A preferred means of meeting each objective is also set out.

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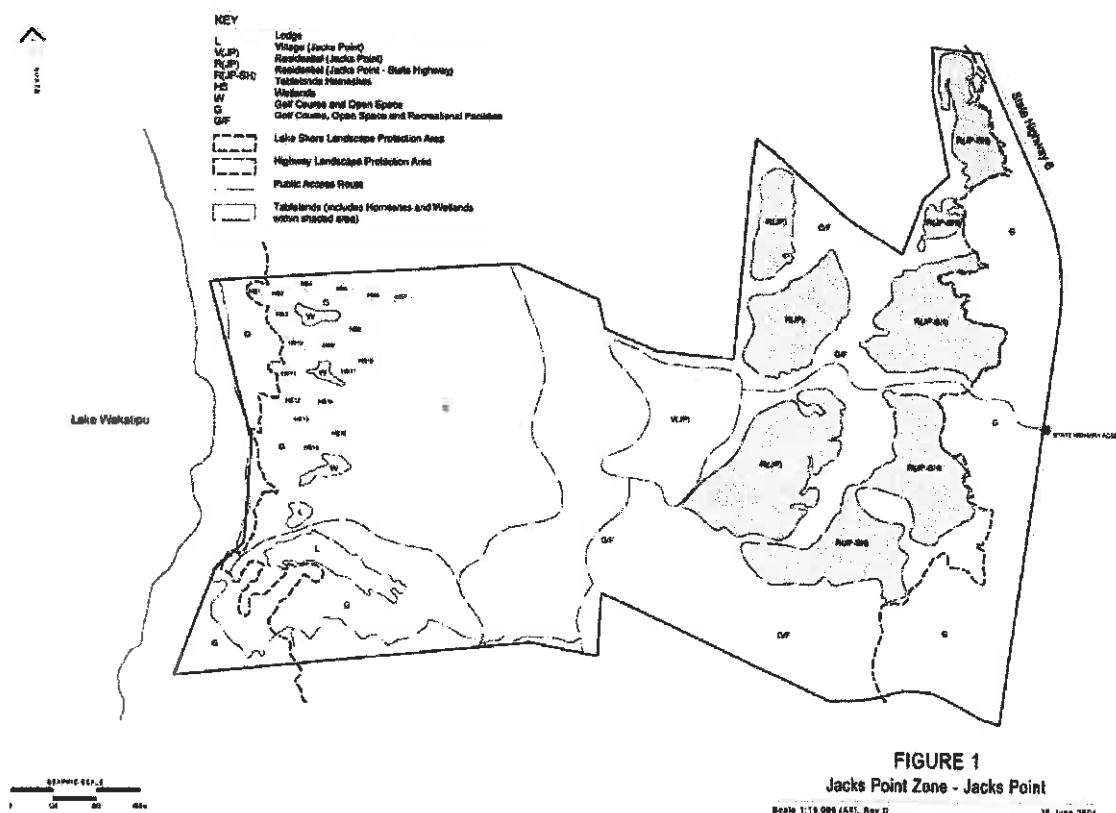
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## 1. SITE DESIGN CONTROLS

These objectives and associated controls apply to the following structure plan activity areas found in the Residential Landscape Character Unit.

- All 'R(JP)' and R(JP-SH) areas.



### OBJECTIVE:

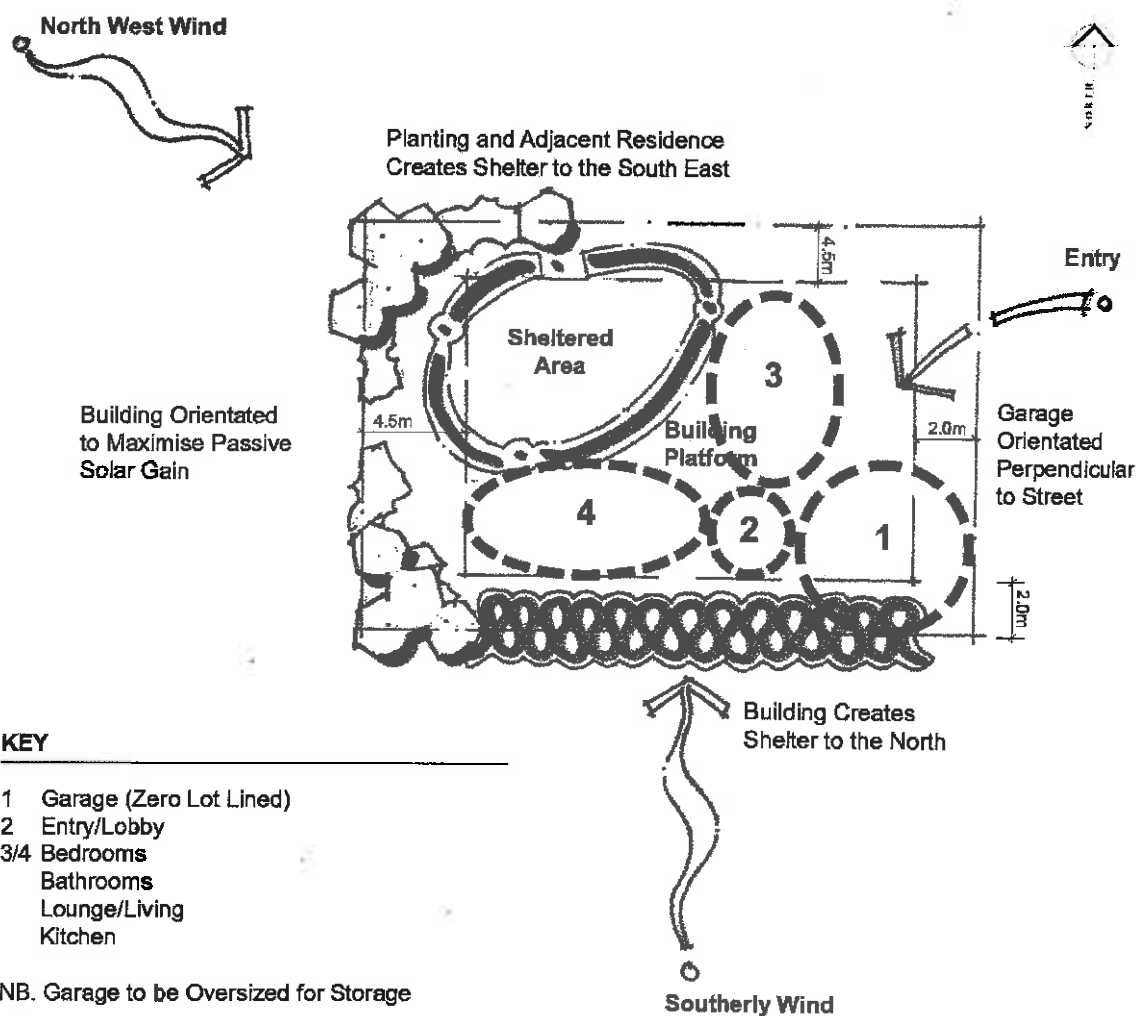
- To ensure individual building sites, streetscapes and neighbourhoods are developed in a coordinated manner, where the architectural and landscape components of the 'built environment' are balanced and residential amenity is maintained.

### CONTROLS / METHOD TO ACHIEVE OBJECTIVE:

#### Setbacks

- Two yard setbacks of 4.5m shall be provided and all other setbacks from remaining boundaries shall be 2m.
- Accessory buildings shall be permitted to be located within the yard setbacks provided that they are a maximum of 3.5 meters in height and do not exceed 7.5m in length parallel to that boundary, clad in locally sourced schist stone veneer or locally sourced schist stone and cement plaster mix (60 / 40) and with no windows or openings along that boundary (see also 'Garages').
- Chimneys, of a width no more than 1.2m parallel to the boundary may protrude into the setbacks by up to 1m.





**Figure 2**

#### Site Coverage

- Maximum site coverage for each lot shall be no greater than 300m<sup>2</sup> or 45% of the net site area, whichever is lesser.

#### Continuous Building Length

- Where the aggregate length along one elevation of buildings measured parallel to any internal boundary or internal boundaries exceeds 16m; either
- The entire building(s) shall be set back an additional 0.5m for every 6m of additional length or part thereof from the minimum yard setback (continuous façade(s) at the same distances from the boundary); Or
- That part of the building(s) which exceeds the maximum building length shall be progressively set back 0.5m for every 6m of additional length or part thereof from the minimum yard setback (varied façade(s) with stepped setbacks from the boundary).

## 2. ARCHITECTURAL CONTROLS

### OVERALL OBJECTIVES:

#### OBJECTIVE 1:

To ensure development is consistent with an overarching design language and style that is responsive to both the natural character of the site and respectful of the original vision for Jacks Point, - to create a high quality built environment, with a unique sense of place.

#### OBJECTIVE 2:

To develop a coordinated and limited palette of materials, colours and external finishes that have durability, honesty, integrity and are appropriate to the site's landscape setting.

### 2.1 BUILDING HEIGHT

#### OBJECTIVE:

Where necessary, to restrict building height to protect topographical and / or viewshafts.

#### CONTROLS / METHOD TO ACHIEVE OBJECTIVE:

- Building height is limited to a maximum of 8.0m (District Plan Zone Standard)
- Certain lots within the R-SH areas have a specified maximum height of 5.5m, as identified on the Certificate of Title for those lots.
- Height is measured from ground level as defined in the District Plan.

### 2.2 EXTERIOR CLADDING

#### OBJECTIVE 1:

To limit the range of cladding systems to ensure continuity of built form, contributing to the sense of place, and integrating with the natural landscape setting.

#### OBJECTIVE 2:

To provide a range of building materials that are sufficiently durable to withstand the climate extremes of mountain environments.

#### CONTROLS / METHOD TO ACHIEVE OBJECTIVE:

All exterior wall cladding shall be either:

- cedar weatherboard
- cedar board and batten
- Locally sourced schist stone veneer
- Locally sourced schist stone / plaster mix (up to 60% plaster cover)
- cement plaster finish over brick, masonry block or polystyrene block
- concrete tilt panels to an approved finish
- in-situ concrete walls to an approved finish
- concrete / rammed earth walls
- or a combination of 2 of the above materials
- Copper sheet cladding or approved metal finishes to read as subservient and secondary building materials.

### 2.3 EXTERIOR COLOUR & APPLIED FINISHES

#### OBJECTIVE:

To encourage the use of natural or 'raw' materials and colours that relate to the surrounding mountainous landscape.

### 2.4 ROOFING MATERIAL

#### OBJECTIVE 1:

To create a continuity of roofscape by limiting the range of materials used.

#### OBJECTIVE 2:

Utilise roofing materials with low reflectivity and recessive colours to assist building forms integrate with the surrounding landscape.

#### CONTROLS / METHOD TO ACHIEVE OBJECTIVE:

For residential dwellings roofing shall be either:

- Red cedar shakes or cedar shingles
- Copper tray (Note Review Clause of Outline Development Plan for Jacks Point can require treatment of Copper Tray)
- Black Zinc Tray
- Corten steel
- Membrane roofing systems for flat roofs (dark grey to black tones). Preference 'Bitumat' Polyflame
- Metal roofing with a standing seam steel tray profile. The requirements are:

Profile: A tray profile width of between 200mm – 300mm, seam to seam e.g. 'Mini Dek - Hi Rib (Calder Stewart), Hi Rib (Steel & Tube) or similar profile as approved by the DRB; OR A tray profile width of between 400mm – 500mm, seam to seam e.g. 'Eurotray'(Calder Stewart), 'Euroline' (Steel & Tube), or similar profile as approved by the DRB

Glare: All sheet metal roof colours must have a reflectivity value of 20% or less

Colour: The colour selection is limited to dark, recessive colours only in the range of browns, greys and blacks and as approved by the DRB. E.g:

- 'Colorcote Naturals' Range – 'Black' and 'Ironsand'
- 'Colorcote Designer Colours' Range – 'Weathered copper' and 'Slate'
- Or a combination of two of the above
- Within any lot in the R-SH areas, which adjoin or contain the Highway Landscape Protection Area, the following materials are excluded from the above list:
  - Untreated Copper tray
  - Corten Steel

### 2.5 ROOF PITCH

#### OBJECTIVE 1:

To create a built environment where the roofing component is recessive and low profile so as not to dominate the streetscape.

#### OBJECTIVE 2:

To ensure that dwellings are 'not readily visible' from the State Highway.

**CONTROLS / METHOD TO ACHIEVE OBJECTIVE:**

- Roof pitch (excluding stand alone garages) shall be between 20 to 40 degrees.
- Flat or flattish roofs associated with the main residential form shall have a maximum coverage of 30% of the total roofing area of the residential dwelling (excluding stand alone garages). Flat roofed areas are seen primarily as linking structures or adjuncts to the dominant form.
- Any lots in the R-SH areas which adjoin or contain the Highway Landscape Protection Area shall have the roof ridge line of any dwelling running parallel to the highway or have a 'hip' facing the State Highway.

**2.6 ROOF DETAILS****OBJECTIVE:**

To ensure that the quality of the roofing materials is followed through to the roofing details i.e. gutters, downpipes etc.

**CONTROLS / METHOD TO ACHIEVE OBJECTIVE:**

- All roofing details i.e. gutters, downpipes and flashings shall be of materials to complement the roof or wall materials.

**2.7 ROOF PENETRATIONS****OBJECTIVE:**

To ensure that roof penetrations (other than chimneys), are positioned to minimise their visual dominance.

**CONTROLS / METHOD TO ACHIEVE OBJECTIVE:**

- Ensure that roof penetrations, including aerials or dishes are discretely located or screened from public view.
- Chimneys are permitted to exceed the maximum height of buildings by 1.5m provided they do not exceed 1.1m width in any direction.

**2.8 WINDOWS / GLAZING & DOORS (FAÇADE ARTICULATION)****OBJECTIVE:**

To contribute to the visual richness of building forms, by ensuring that the details in building elevations are designed to punctuate and add depth to the elevation, while minimising reflectivity.

**CONTROLS / METHOD TO ACHIEVE OBJECTIVE:**

- Windows and doors should be recessed from the façade, avoiding the flat elevation look of aluminium joinery.
- All glazing for residential dwellings shall be double glazed.
- In R-SH areas, minimal glazing is permitted to be visible from State Highway 6

**2.9 GARAGES****OBJECTIVE 1:**

To minimise the dominance of garages on the streetscape and to encourage flat roofed or low profile roof forms to enable garages to read more as a component of landscape rather than of architecture.

**OBJECTIVE 2:**

To minimise the dominance of garages on the streetscape by encouraging parallel entry to garages rather than direct access from the street. To encourage efficient use of sites by locating garages within road setbacks where appropriate façade treatment of the garage facing the street is provided.

**OBJECTIVE 3:**

To minimise the dominance of visitor parking on the streetscape by providing central courtyard parking areas and to ensure space for visitor parking on the subject site, either by way of parallel entry to garages, or by setting direct entry garages back from the street.

**CONTROLS / METHOD TO ACHIEVE OBJECTIVE:**

- Maximum garage height of a stand alone garage is to be 3.5m.
- On front lots, the movement of vehicular entry to garages shall be parallel to the adjoining road (such that the garage door entrance does not open to the road). Note: accessways and courtyards are excluded from this control.

**Assessment Matter**

In considering a breach of this rule, consideration shall be given to the circumstances of the site including site constraints of topography and shape factor as to the appropriateness of not providing a parallel entrance to the garage.

In such circumstances where direct entry may be appropriate due to the above factors, the garage shall be setback from the road by at least the road setback to provide for adequate space on site for visitor parking in front of the garage.

- Garages shall be permitted to be located within the road boundary setback on front lots only where the façade of the garage facing the road is clad in, cedar, locally sourced schist stone veneer or locally sourced schist stone and cement plaster mix (60 / 40) with no glazing.

**2.10 OTHER BUILT FORM****OBJECTIVE 1:**

To ensure that accessory buildings do not unduly affect the openspace nature of the lot and the connectivity of openspaces within the site.

**CONTROLS / METHOD TO ACHIEVE OBJECTIVE:**

- Accessory buildings shall be permitted to be located within the yard setbacks provided that they are a maximum of 3.5m in height and do not exceed 7.5m in length parallel to that boundary, clad in locally sourced schist stone veneer or locally sourced schist stone and cement plaster mix (60 / 40) and with no windows or openings along that boundary.

**3. LANDSCAPE****3.1 DESIGN****OBJECTIVE 1:**

To create an integrated built environment where the architectural and landscape components of the neighbourhood are balanced.

**OBJECTIVE 2:**

To draw upon indigenous vegetation and locally sourced schist stone as defining characteristics of the residential neighbourhoods.

**CONTROLS / METHOD TO ACHIEVE OBJECTIVE:**

- Prior to construction all landscape designs are to be submitted to the DRB for approval in terms of meeting the planting requirements of the Design Guidelines and achieving a balance of architectural and landscape components on site.

**3.2 PLANTING****OBJECTIVE:**

To ensure a high degree of continuity within the neighbourhood planting, through the use of appropriate indigenous plants, whilst still encouraging individuality on a home by home basis.

**CONTROLS / METHOD TO ACHIEVE OBJECTIVE:**

- Not less than 75% of planted areas in residential lots shall be from the prescribed Jacks Point plant list, of which 50% shall be native species.

**3.3 BOUNDARY WALLS****OBJECTIVE 1:**

To ensure continuity in the streetscape and assist in blurring the legal demarcation of property lines, whilst at the same time defining spaces and privacy for homeowners.

**OBJECTIVE 2:**

Boundary walls should contribute to the visual interest and character of the street environment and should contribute to the safety of the street, by maintaining a visual connection between site development and the street environment.

**CONTROLS / METHOD TO ACHIEVE OBJECTIVE:**

- Street boundary walls shall be a maximum height of 1.5m dry stack and constructed of locally sourced schist stone with vertical capping in the agricultural stone wall style. For a limited length of 25% of the length of the street boundary the height of the wall may be increased to 1.8m along that street.
- Reserve boundary walls may be located along a maximum of 75% of the length of the total reserve boundary of a site, and shall be a maximum height of 1.5m dry stack and constructed of locally sourced schist stone with vertical capping in the agricultural stone wall style.
- Internal boundary walls shall be a maximum of 1.8m in height and in locally sourced schist stone or claddings approved for buildings.
- Walls in the Highway Landscape Protection Area are permitted along street boundaries only, and shall be dry stack walls constructed of locally sourced schist stone with vertical capping in the agricultural stone wall style at a maximum of 1.5m in height.

**3.4 FENCING****OBJECTIVE:**

To ensure compliance with all safety regulations and personal requirements of homeowners, whilst maintaining some degree of continuity amongst other wall and fencing types.

**CONTROLS / METHOD TO ACHIEVE OBJECTIVE:**

- Internal boundary fencing shall be a maximum of 1.8m high and in materials approved for building.
- Swimming pool, pet and or child proof fencing, internal to the property, must comply with any applicable NZ Standards and integrate with the house and landscape design.

- Any fencing of internal boundaries within the Highway Landscape Protection area shall be post, warratah and wire farm fencing only, in accordance with Appendix G of the approved Outline Development Plan
- Any fencing of street boundaries within the Highway Landscape Protection Area may be post, warratah & wire farm fencing only (street boundaries may alternatively be treated with walls as per Control 3.3 above), in accordance with Appendix G of the approved Outline Development Plan.

### 3.5 EXTERIOR LIGHTING

#### OBJECTIVE 1:

To preserve the nighttime ambience of the rural surrounds and to ensure that 'light spill', 'light trespass', and 'night sky pollution' is kept to a minimum, whilst maintaining a need for safety and security in the community.

#### OBJECTIVE 2:

Ensure that light does not trespass into neighbouring environments, nor overshoot its target.

#### CONTROLS / METHOD TO ACHIEVE OBJECTIVE:

- Low intensity, indirect light sources are to be used for all exterior lighting applications.
- The use of hoods, louvres, snoots and other attachments designed to direct light and minimise 'light spill' are required for any exterior lighting.
- Light sources are to be incandescent, halogen or other white light not sodium vapour or other light.
- Floodlighting or accent lighting is not permitted.



## 4. APPENDIX 4 – Recommended Plant Species

Species	Common Name	ECOLOGICAL GROUP					PLANT CATEGORY					
		Lake Shore Forest	Remnant Beech Forest	Wetland	Grey Shrubland	High Energy Streams	Tussock Land	Large Tree	Small Tree	Tall Shrub	Small Shrub	Sedge, Rush, Tussock
<i>Pseudopanax crassifolius</i>	lancewood	√	√	√				√				
<i>Pennantia corymbosa</i>	kaikomako	√	√	√				√				
<i>Hebe rakaiensis</i>		√	√	√		√				√		
<i>Coprosma linariifolia</i>		√	√		√			√				
<i>Dracophyllum longifolium</i>	inaka	√	√		√		√				√	
<i>Nothofagus fusca</i>	red beech	√	√					√				
<i>N. solandri</i> var. <i>cliffortioides</i>	mountain beech	√	√					√				
<i>Elaeocarpus hookerianus</i>	pokaka	√	√						√			
<i>Griselinia littoralis</i>	kapuka / broadleaf	√	√			√			√			
<i>Pseudopanax colensoi</i> var. <i>tematus</i>	mountain three finger	√	√			√				√		
<i>Astelia nervosa</i>		√	√			√						√
<i>Hoheria lyallii</i>	mountain ribbonwood	√	√			√			√			
<i>Olearia avicenniifolia</i>		√	√			√				√		
<i>Myrsine divaricata</i>	weeping mapou	√	√			√					√	
<i>Carex maorica</i>		√		√								√
<i>Pittosporum tenuifolium</i>	kohuhu	√		√		√			√			
<i>Aristotelia fruticosa</i>	mountain wineberry	√			√	√					√	
<i>Podocarpus hallii</i>	Hall's totara	√			√				√			
<i>Olearia fragrantissima</i>		√			√					√		
<i>Prumnopitys taxifolius</i>	matai	√						√				
<i>Schefflera digitata</i>	seven finger	√										
<i>Aristotelia serrata</i>	wineberry	√							√			
<i>Carpodetus serratus</i>	putaputaweta / marbleleaf	√				√			√			
<i>Cordyline australis</i>	ti kouka / cabbage tree	√				√			√			
<i>Fuchsia excorticata</i>	kotukutuku / tree fuchsia	√				√			√			
<i>Melicytus lanceolatus</i>	mahoe wao	√							√			
<i>Melicytus ramiflorus</i>	mahoe / whiteywood	√				√			√			
<i>Metrosideros umbellata</i>	southern rata	√							√			
<i>Myrsine australis</i>	red matipo	√							√			
<i>Pittosporum eugenioides</i>	tarata / lemonwood	√				√			√			
<i>Sophora microphylla</i>	kowhai	√				√			√			
<i>Coprosma lucida</i>	shining leaf Coprosma	√								√		
<i>Olearia arborescens</i>		√								√		
<i>Astelia fragrans</i>	bush lily	√				√						√
<i>Olearia cymbifolia</i>			√	√		√					√	
<i>Coprosma propinqua</i>	mingimingi		√		√	√					√	
<i>Coprosma crassifolius</i>			√		√	√					√	

5.		ECOLOGICAL GROUP					PLANT CATEGORY					
Species	Common Name	Lake Shore Forest	Remnant Beech Forest	Wetland	Grey Shrubland	High Energy Streams	Tussock Land	Large Tree	Small Tree	Tall Shrub	Small Shrub	Sedge, Rush, Tussock
<i>Olearia hectorii</i>			√		√					√		
<i>Cyathodes juniperina</i>	mingimingi		√		√	√					√	
<i>Hebe odora</i>			√			√	√				√	
<i>Coprosma rugosa</i>			√								√	
<i>Gaultheria antipoda</i>	tall snowberry		√								√	
<i>Leptospermum scoparium</i>	manuka			√	√					√		
<i>Olearia lineata</i>				√	√	√				√		
<i>Olearia nummularia</i>				√	√	√					√	
<i>Olearia bullata</i>					√					√		
<i>Hebe salicifolia</i>	willow-leaved Hebe			√		√					√	
<i>Aciphylla glaucescens</i>	blue speargrass			√								√
<i>Carex coriacea</i>	NZ swamp sedge			√			√					√
<i>Carex secta</i>	pukio			√		√						√
<i>Juncus distegus</i>	wiwi			√								√
<i>Juncus gregiflorus</i>	NZ soft rush			√								√
<i>Juncus sarophorus</i>	wiwi			√								√
<i>Schoenus pauciflorus</i>	bog rush			√								√
<i>Chionochloa conspicua</i>	bush tussock			√		√	√					√
<i>Cortaderia richardii</i>	toi toi			√		√	√					√
<i>Typha orientalis</i>	raupo / bullrush			√								√
<i>Phormium tenax</i>	harakeke/swamp flax			√		√	√					√
<i>Phormium cookianum</i>	mountain flax			√		√	√					√
<i>Olearia odorata</i>					√	√					√	
<i>Discaria toumatou</i>	matagouri				√	√				√		
<i>Meliccytus alpinus</i>	porcupine shrub				√		√				√	
<i>Corokia cotoneaster</i>	korokia				√	√					√	
<i>Carmichaelia petriei</i>	NZ broom				√	√	√				√	
<i>Ozothamnus sp.</i>	cottonwood				√	√	√				√	
<i>Hebe cupressoides</i>					√		√				√	
<i>Aciphylla aurea</i>	golden speargrass				√		√					√
<i>Chionochloa rigida</i>	narrow-leaved snow tussock				√		√					√
<i>Festuca novae zelandiae</i>	hard tussock				√		√					√
<i>Poa cita</i>	silver tussock				√	√	√					√
<i>Dracophyllum uniflorum</i>	turpentine shrub				√		√				√	
<i>Hebe subalpina</i>						√	√				√	
<i>Pimelia aridula</i>	NZ daphne						√				√	

# Comprehensive Design Guidelines

VERSION 3.0 - SEPTEMBER 2009

RESOURCE CONSENT - RM060903

RESOURCE CONSENT - RM090494



[jackspoint.com](http://jackspoint.com)

QUEENSTOWN | NEW ZEALAND

## JACKS POINT – COMPREHENSIVE DESIGN GUIDELINES

These Design Guidelines have been developed for Comprehensive Building Sites within the Residential Area in accordance with the Jacks Point Development Controls. The Jacks Point Development Controls shall be deemed to be part of these Design Guidelines if required for interpretation purposes.

Identification of a Comprehensive Building Site shall be determined by Jacks Point Design Review Board (DRB).

### IMPORTANT:

It is a requirement of the DRB, for applicants of comprehensive building sites to submit either a computer model or physical model of the proposed development.

The nature of comprehensive developments and the sites on which they may be located, means that creative design solutions which best reflect the objectives listed are desirable and appropriate.

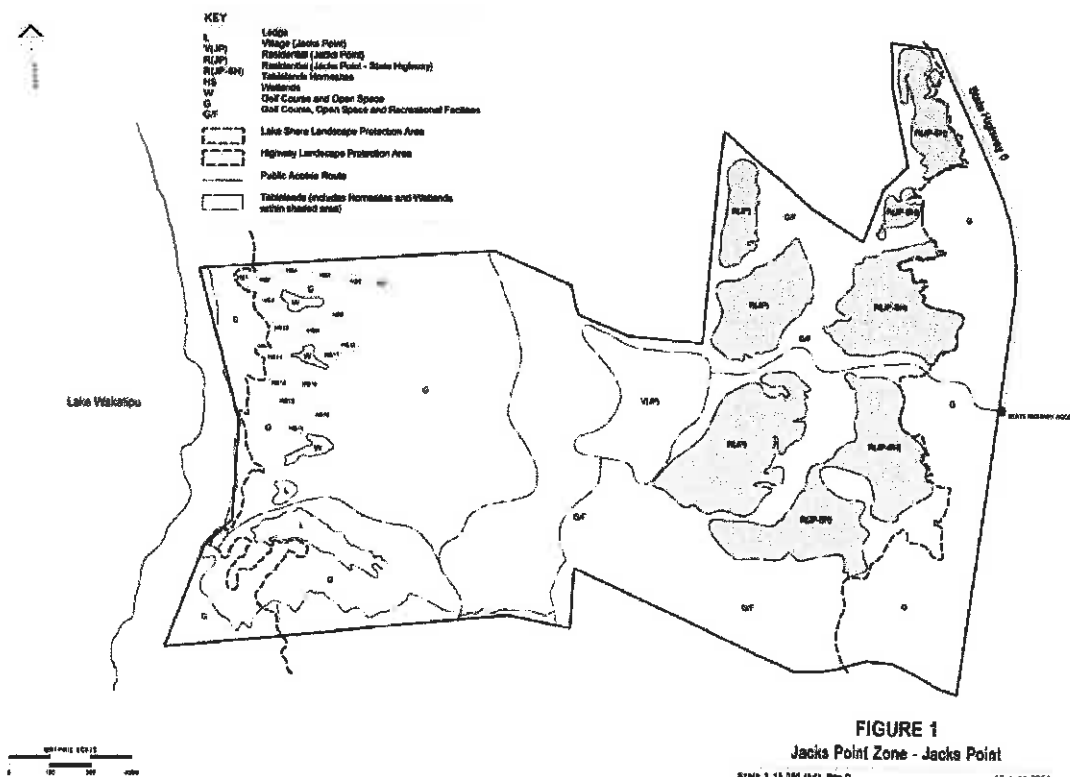
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## 1. SITE DESIGN CONTROLS

These controls refer to Comprehensive Building Sites within the following structure plan activity areas (Refer Partially Operative District Plan). These areas are found in the Residential Landscape Character Unit.

- All 'R (JP)' and 'R (JP-SH)'



### OBJECTIVE:

To ensure individual building sites, streetscapes and neighbourhoods are developed in a coordinated manner, where the architectural and landscape components of the 'built environment' are balanced, and residential amenity is maintained.

### CONTROLS / METHOD TO ACHIEVE OBJECTIVE:

#### Setbacks

- Two yard setbacks of 4.5m shall be provided, and all other setbacks from remaining boundaries shall be 2.0m.
- Accessory buildings shall be permitted to be located within the yard setbacks provided that they are a maximum of 3.5m in height and do not exceed 7.5m in length parallel to that boundary, clad in locally sourced schist stone veneer or locally sourced schist stone and cement plaster mix (60 / 40) and with no windows or openings along that boundary.
- Where a comprehensive site is made up of the aggregation of individual adjoining or adjacent lots, the setback controls outlined above shall only apply to road boundaries, reserve boundaries and boundaries with adjoining residential lots.

#### Building Coverage

- Maximum site coverage is 55%.

#### Continuous Building Length

- No unbroken building shall exceed 16m. Breaks in building length shall be a maximum of 2m in depth and 4m in width for the full height of the wall and shall include a discontinuous eave line and roof break.

#### Parking

- Two carpark spaces per unit / apartment are required.
- 0.5 visitor carpark spaces per unit / apartment shall be provided. If a visitor park is provided in front of the garage to a unit / apartment within the legal bounds of that unit, and does not obstruct the movement of any other vehicle to or from any other unit, then that unit shall not be included in the calculation for required visitor carpark spaces.
- Visitor carpark spaces not provided for directly in front of a unit shall be clearly marked as visitor carpark spaces.

## 2. ARCHITECTURAL CONTROLS

### OBJECTIVE 1:

To create a design language and style that is responsive to both the natural character of the site and respectful of the original vision of the developers, which is to create the highest quality built environment.

### OBJECTIVE 2:

To develop a restrictive palette of materials, colours and finishes that have durability, honesty, integrity and are appropriate to the sites landscape setting.

### OBJECTIVE 3:

To encourage greater architectural and elevational variety in comprehensive building design by minimising the horizontal massing of forms.

### 2.1 BUILDING HEIGHT

#### OBJECTIVE:

To ensure some degree of consistency with the QLDC District Plan and allow homeowners to build two storey dwellings, if desired.

#### CONTROLS / METHOD TO ACHIEVE OBJECTIVE:

- A maximum 8.0m height limit from ground level as defined within the District Plan is permitted.
- Certain lots within the R-SH areas have a specified maximum height of 5.5m as defined on the Certificates of Title for those lots.
- Height is measured from ground level as defined in the District Plan.

### 2.2 EXTERIOR CLADDING

#### OBJECTIVE 1:

To limit the type of cladding systems and thereby create a high degree of continuity amongst the built form and where one material reads as a primary or dominant material.

#### OBJECTIVE 2:

To provide a range of building materials that are sufficiently durable to withstand the climate extremes of mountain environments.

**CONTROLS / METHOD TO ACHIEVE OBJECTIVE:**

- All exterior wall cladding shall be either:
  - cedar weatherboard
  - cedar board and batten
  - Locally sourced schist stone veneer
  - Locally sourced schist stone / plaster mix (up to 60% plaster cover)
  - Smooth cement plaster finish over brick, masonry block or polystyrene block
  - concrete tilt panels to an approved finish
  - in-situ concrete walls to an approved finish
  - concrete / rammed earth walls
  - or a combination of 2 of the above materials
- Copper sheet cladding or approved metal finishes to read as subservient and secondary building materials.

**2.3 EXTERIOR COLOUR & APPLIED FINISHES****OBJECTIVE:**

To encourage the use of natural or 'raw' materials and colours reflective of the surrounding mountainous landscape.

**2.4 ROOFING MATERIAL****OBJECTIVE:**

To create a roofscape with a high degree of quality and continuity of materials, one that has low reflectivity and is recessive in colour.

**CONTROLS / METHOD TO ACHIEVE OBJECTIVE:**

- All roofing materials shall be either:
  - Red cedar 'taper sawn' shakes (or cedar shingles)
  - Copper tray (note review clause of Outline Development Plan for Jacks Point can require treatment of copper tray)
  - Black Zinc tray
  - Corten steel
  - Membrane roofing systems for flat roofs (dark grey to black tones). Preference 'Bitumat' Polyflame.
  - Metal roofing with a standing seam steel tray profile. The requirements are:
    - Profile: A tray profile width of between 200mm – 300mm, seam to seam e.g. 'Mini Dek - Hi Rib (Calder Stewart), Hi Rib (Steel & Tube) or similar profile as approved by the DRB; OR A tray profile width of between 400mm – 500mm, seam to seam e.g. 'Eurotray'(Calder Stewart), 'Euroline' (Steel & Tube), or similar profile as approved by the DRB
    - Glare: All sheet metal roof colours must have a reflectivity value of 20% or less
    - Colour: The colour selection is limited to dark, recessive colours only in the range of browns, greys and blacks and as approved by the DRB.
- e.g.
  - 'Colorcote Naturals' Range – 'Black' and 'Ironsand'
  - 'Colorcote Designer Colours' Range – 'Weathered copper' and 'Slate'
- Or a combination of two of the above
- Within any lot in the R-SH areas, which adjoin or contain the Highway Landscape Protection Area, the following materials are excluded from the above list:



 Untreated Copper tray

 Corten Steel

## 2.5 ROOF PITCH

### OBJECTIVE 1:

To create a built environment where as a general rule, the roofing component is recessive and of a flattish profile so as not to dominate the streetscape, but allow comprehensive building sites greater diversity of roof pitch to serve as a counterpoint and juxtaposition to the flatter pitches.

### OBJECTIVE 2:

To ensure that dwellings are 'not readily visible' from the State Highway.

### CONTROLS / METHOD TO ACHIEVE OBJECTIVE:

- Roof pitch (excluding stand alone garages) shall be between 20 to 40 degrees.
- Flat or flattish roofs associated with the main built form shall have a maximum coverage of 35% of the total roofing area of the built form (excluding stand alone garages). Flat roof areas are seen primarily as linking structures or adjuncts to the dominant form.
- Any lots in the R-SH area which adjoin or contain the Highway Landscape Protection Area are required to have the roof ridge line of any dwelling running parallel to the highway or have a 'hip' facing the State Highway, to assist in ensuring they are 'not readily visible' from State Highway 6.

## 2.6 ROOF DETAILS

### OBJECTIVE:

To ensure that the quality of the roofing materials is followed through to the roofing details i.e. gutters, downpipes etc.

### CONTROLS / METHOD TO ACHIEVE OBJECTIVE:

- All roofing details i.e. gutters, downpipes and flashings shall be of materials to match the roof or wall materials.

## 2.7 ROOF PENETRATIONS

### OBJECTIVE:

To ensure that roof penetrations (other than chimneys) are positioned to minimise the potential visual adverse effects.

### CONTROLS / METHOD TO ACHIEVE OBJECTIVE:

- Chimneys are permitted to exceed the maximum height of buildings by 1.5m provided that they do not exceed 1.1m width in any direction.
- Roof penetrations, including aerials or dishes are to be discretely located or screened from public view.

## 2.8 WINDOWS / GLAZING & DOORS

### OBJECTIVE:

To ensure that the details in buildings elevations are designed to add depth to the elevation, by recessing the window or door and thereby minimising reflectivity as well as avoiding the flat elevational look of modern aluminium joinery.

### CONTROLS / METHOD TO ACHIEVE OBJECTIVE:

- Windows and doors shall be recessed from the façade
- All glazing for residential dwellings shall be double glazed.
- In R-SH areas, minimal glazing is permitted to be visible from State Highway 6.

## 2.9 GARAGES

### OBJECTIVE 1:

To minimise the 'architectural' impact of garages on the streetscape by encouraging garages to be set back from the street at the same distance from the street as the primary built form, and / or to encourage flat roofed or flattish roofed forms for stand alone garages to enable garages to read more as a component of landscape rather than of architecture.

### OBJECTIVE 2:

To encourage garaging to be provided underground in a comprehensive manner where appropriate, or form part of the built design.

### OBJECTIVE 3:

The appropriateness of garages penetrating into road setbacks will be dealt with on a case by case basis considering urban design principals and the particular characteristics of size, dimensions and topography of individual sites.

### CONTROLS / METHOD TO ACHIEVE OBJECTIVE:

- Maximum garage height of stand alone garages is to be 3.5m.

## 3. LANDSCAPE CONTROLS

### OBJECTIVE 1:

To create an integrated built environment where the architectural and landscape components of the neighbourhood are balanced.

### OBJECTIVE 2:

To draw upon indigenous vegetation and locally sourced schist stone as defining characteristics of the residential neighbourhoods.

### CONTROLS / METHOD TO ACHIEVE OBJECTIVE:

- All landscape designs are to be submitted to the Design Review Board (DRB) and Council for approval as part of the application for comprehensive residential developments, in terms of meeting the planting requirements of the design guidelines and achieving a balance of architectural and landscape components on site.

## 3.1 PLANTING

### OBJECTIVE:

To ensure a high degree of continuity within the neighbourhood planting, through the use of appropriate indigenous plants, whilst still encouraging individuality on a home by home basis.

**CONTROLS / METHOD TO ACHIEVE OBJECTIVE:**

- Not less than 75% of planted areas in residential lots shall be from the prescribed Jacks Point plant list, of which 50% shall be native species. This excludes areas of lawn. The Design Review Board (DRB) may specify acceptable as well as unacceptable exotic plant species from time to time.
- No existing vegetation on any lot can be removed without the permission of the DRB.

**3.2 BOUNDARY WALLS****OBJECTIVE:**

To ensure continuity in the streetscape and assist in blurring the legal demarcation of property lines, whilst at the same time defining spaces and privacy for homeowners.

**CONTROLS / METHOD TO ACHIEVE OBJECTIVE:**

- Street boundary walls shall be a maximum height of 1.5m (as measured from original ground level on that boundary as defined in the District Plan), dry stack and constructed of locally sourced schist stone with vertical capping in the agricultural stone wall style.
- Internal boundary walls shall be a maximum height of 1.8m (as measured from the existing ground level, as defined in the District Plan) and a total maximum length of 20m on any one boundary constructed and finished in stone or claddings approved for building.
- Reserve boundary walls may be located along a maximum of 75% of the length of the total reserve boundary of a site, and shall be a maximum height of 1.5m, dry stack and be constructed of locally sourced schist stone with vertical capping in the agricultural stone wall style.
- Walls in the Highway Landscape Protection Area, are permitted along street boundaries only, and shall be dry stack walls constructed of locally sourced schist stone with vertical capping in the agricultural stone wall style at a maximum of 1.5m in height.

**3.3 FENCING****OBJECTIVE:**

To ensure compliance with all safety regulations and personal requirements of homeowners, whilst maintaining some degree of continuity amongst other wall and fencing types.

**CONTROLS / METHOD TO ACHIEVE OBJECTIVE:**

- Internal boundary fencing shall be a maximum of 1.8m high (as measured from original ground level as defined in the District Plan) and a total maximum length of 20m on any one boundary, constructed and finished stone or in claddings approved for building.
- Swimming pool, pet and or child proof fencing, internal to the property, must comply with any applicable NZ Standards, and integrate with the built form and landscape design.
- Any fencing of internal boundary fencing within the Highway Landscape Protection Area shall be in post, warratah and 8 gauge wire farm fencing only, in accordance with Appendix G of the approved Outline Development Plan.
- Any fencing of street boundaries within the Highway Landscape Protection Area may be post, warratah and 8 gauge wire farm fencing only (road boundaries may alternatively be treated with walls as per Control 3.2 above), in accordance with Appendix G of the approved Outline Development Plan.

**3.4 EXTERIOR LIGHTING****OBJECTIVE 1:**

To preserve the nighttime ambience of the rural surrounds and to ensure that 'light spill', 'light trespass', and 'night sky pollution' is kept to a minimum, whilst maintaining a need for safety and security in the community.

**OBJECTIVE 2:**

To ensure that light does not trespass into neighbouring environments, nor overshoot its target, exterior lighting should be kept to a minimum.

**CONTROLS / METHOD TO ACHIEVE OBJECTIVE:**

- Low intensity, indirect light sources are to be used for all exterior lighting applications.
- The use of hoods, louvres, snoots and other attachments designed to direct light and minimise 'light spill' are required for any exterior lighting.
- Light sources are to be incandescent, halogen or other white light not sodium vapour or other light.
- Floodlighting or accent lighting is not permitted.
- If a comprehensive building site has a common entry for the units / apartments then exterior lighting in the vicinity of the entry is encouraged.

## 4. APPENDIX 4 – RECOMMENDED PLANT SPECIES

Species	Common Name	ECOLOGICAL GROUP					PLANT CATEGORY					
		Lake Shore Forest	Remnant Beech Forest	Wetland	Grey Shrubland	High Energy Streams	Tussock Land	Large Tree	Small Tree	Tall Shrub	Small Shrub	Sedge, Rush, Tussock
<i>Pseudopanax crassifolius</i>	lancewood	√	√	√				√				
<i>Pennantia corymbosa</i>	kaikomako	√	√	√				√				
<i>Hebe rakaiensis</i>		√	√	√		√					√	
<i>Coprosma linariifolia</i>		√	√		√			√				
<i>Dracophyllum longifolium</i>	inaka	√	√		√		√				√	
<i>Nothofagus fusca</i>	red beech	√	√					√				
<i>N. solandri</i> var. <i>cliffortioides</i>	mountain beech	√	√					√				
<i>Elaeocarpus hookerianus</i>	pokaka	√	√						√			
<i>Griselinia littoralis</i>	kapuka / broadleaf	√	√			√			√			
<i>Pseudopanax colensoi</i> var. <i>ternatum</i>	mountain three finger	√	√			√				√		
<i>Astelia nervosa</i>		√	√			√						√
<i>Hoheria lyallii</i>	mountain ribbonwood	√	√			√			√			
<i>Olearia avicenniifolia</i>		√	√			√				√		
<i>Myrsine divaricata</i>	weeping mapou	√	√			√					√	
<i>Carex maorica</i>		√		√								√
<i>Pittosporum tenuifolium</i>	kohuhu	√		√		√			√			
<i>Aristotelia fruticosa</i>	mountain wineberry	√			√	√					√	
<i>Podocarpus hallii</i>	Hall's totara	√			√				√			
<i>Olearia fragrantissima</i>		√			√					√		
<i>Prumnopitys taxifolius</i>	matai	√						√				
<i>Schefflera digitata</i>	seven finger	√										
<i>Aristotelia serrata</i>	wineberry	√							√			
<i>Carpodetus serratus</i>	putaputaweta / marbleleaf	√				√			√			
<i>Cordyline australis</i>	ti kouka / cabbage tree	√				√			√			
<i>Fuchsia excorticata</i>	kotukutuku / tree fuchsia	√				√			√			
<i>Meliccytus lanceolatus</i>	mahoe wao	√							√			
<i>Meliccytus ramiflorus</i>	mahoe / whiteywood	√				√			√			
<i>Metrosideros umbellata</i>	southern rata	√							√			
<i>Myrsine australis</i>	red matipo	√							√			
<i>Pittosporum eugenioides</i>	tarata / lemonwood	√				√			√			
<i>Sophora microphylla</i>	kowhai	√				√			√			
<i>Coprosma lucida</i>	shining leaf Coprosma	√								√		
<i>Olearia arborescens</i>		√								√		
<i>Astelia fragrans</i>	bush lily	√				√						√
<i>Olearia cymbifolia</i>			√	√		√					√	
<i>Coprosma propinqua</i>	mingimingi		√		√	√					√	
<i>Coprosma crassifolius</i>			√		√	√					√	

Species	Common Name	ECOLOGICAL GROUP					PLANT CATEGORY					
		Lake Shore Forest	Remnant Beech Forest	Wetland	Grey Shrubland	High Energy Streams	Tussock Land	Large Tree	Small Tree	Tall Shrub	Small Shrub	Sedge, Rush, Tussock
<i>Olearia hectorii</i>			√		√				√			
<i>Cyathodes juniperina</i>	mingimingi		√		√	√					√	
<i>Hebe odora</i>			√			√	√				√	
<i>Coprosma rugosa</i>			√								√	
<i>Gaultheria antipoda</i>	tall snowberry		√								√	
<i>Leptospermum scoparium</i>	manuka			√	√				√			
<i>Olearia lineata</i>				√	√	√			√			
<i>Olearia nummularia</i>				√	√	√					√	
<i>Olearia bullata</i>					√				√			
<i>Hebe salicifolia</i>	willow-leaved Hebe			√		√					√	
<i>Aciphylla glaucescens</i>	blue speargrass			√								√
<i>Carex coriacea</i>	NZ swamp sedge			√			√					√
<i>Carex secta</i>	pukio			√		√						√
<i>Juncus distegus</i>	wiwi			√								√
<i>Juncus gregiflorus</i>	NZ soft rush			√								√
<i>Juncus sarophorus</i>	wiwi			√								√
<i>Schoenus pauciflorus</i>	bog rush			√								√
<i>Chionochloa conspicua</i>	bush tussock			√		√	√					√
<i>Cortaderia richardii</i>	toi toi			√		√	√					√
<i>Typha orientalis</i>	raupo / bullrush			√								√
<i>Phormium tenax</i>	harakeke/swamp flax			√		√	√					√
<i>Phormium cookianum</i>	mountain flax			√		√	√					√
<i>Olearia odorata</i>					√	√					√	
<i>Discaria toumatou</i>	matagouri				√	√			√			
<i>Melicytus alpinus</i>	porcupine shrub				√		√				√	
<i>Corokia cotoneaster</i>	korokia				√	√					√	
<i>Carmichaelia petriei</i>	NZ broom				√	√	√				√	
<i>Ozothamnus sp.</i>	cottonwood				√	√	√				√	
<i>Hebe cupressoides</i>					√		√				√	
<i>Aciphylla aurea</i>	golden speargrass				√		√					√
<i>Chionochloa rigida</i>	narrow-leaved snow tussock				√		√					√
<i>Festuca novae zelandiae</i>	hard tussock				√		√					√
<i>Poa cita</i>	silver tussock				√	√	√					√
<i>Dracophyllum uniflorum</i>	turpentine shrub				√		√				√	
<i>Hebe subalpina</i>						√	√				√	
<i>Pimelia aridula</i>	NZ daphne						√				√	





# DESIGN GUIDELINES

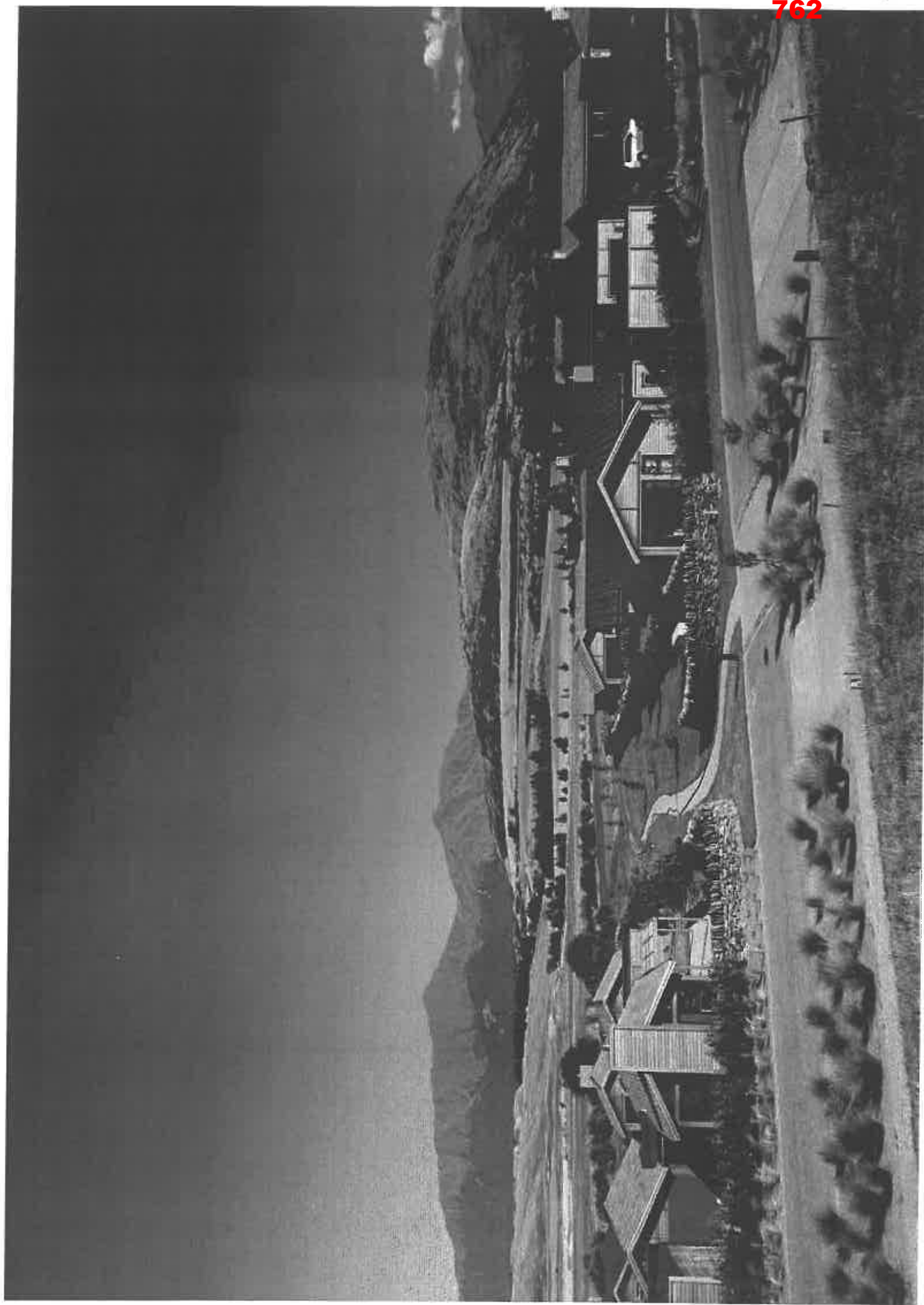
RESIDENTIAL & COMPREHENSIVE (MULTI-DWELLING)

2013

PROPOSED - SUBJECT TO QILDC APPROVAL







## INTRODUCTION

- Purpose of the Guidelines
- Queenstown Lakes District Council Consenting
- Other Relevant Documents
- Extent of Land Subject to Guidelines

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- 1.7 - Neighbourhood context

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- 3.6 - External Wall Materials
- 3.7 - Exterior Colour & Applied Finishes
- 3.8 - Roofing Materials
- 3.9 - Roof Details
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## 4 - IMPLEMENTATION STANDARDS & PHASING

- 4.1 - Phasing of Projects
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- 4.3 - Drawings & Changes to Plans
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## BACKGROUND & EXPLANATORY NOTES

- Amendments to the Design Guidelines
- Design Review Board (DRB)
- Overview of DRB & Consent Process
- Typical DRB Costs
- Becoming an Approved Designer
- Coneburn Development Controls
- Preferred Metal Tray and Membrane Roof Options
- Preferred Colours for Metal Tray Roofing
- JPROA guidelines for approving gravel driveways
- Construction signage & building containers
- Additional information





Jack's Point is a great place to live. Set amongst one of the most spectacular landscapes in the world it is an example of a **sustainable approach to settlement, where only 5% of the total land area will be built upon**. The environment combined with an integrated design approach continues to be the driving force in shaping the community.

Upon completion Jack's Point is expected to feature over **1,300 residential homes, a lakeside village with accommodation, restaurants & shops, a luxury lodge** and recreational amenities including the renowned **Championship Golf Course**. It is a unique opportunity for property owners to be a part of the creation of a world class township through the development of their new homes.

The character of Jack's Point, for both architecture and landscape has been shaped by the history of the land, and a requirement for built form to be subservient to the wider landscape. This has contributed to **a unique character in keeping with the alpine setting** – modern homes reminiscent of the rural vernacular of Central Otago nestled amongst a framework of indigenous scrub and beech forest, surrounded by an abundance of open space.

#### The character of Jack's Point is shaped by:

- Buildings with **simple architectural form** drawing inspiration from traditional rural homesteads and farm buildings complementary to the dramatic alpine setting;
- Central Otago farm heritage stone walls, rustic timber gates, open grazed farmland and native scrubland reminiscent of **the pioneer farming landscape**;
- **A natural palette of materials** with recessive tones to maintain subservience to the landscape;
- **A strongly native / endemic plant palette** derived from the surrounding environment and underlying ecology of the site;
- **An abundance of open space and trail network for recreation**, with informal definition of property boundaries fostering a strong sense of community.

While there is a requirement for new homes to be built in a style consistent with this character, **there is scope for homeowners to express individuality on a home by home basis**. This is executed by tight controls on form, materiality and site placement but the combination and expression of these elements can be unique.

A defining factor at Jack's Point continues to be the local environmental conditions. Summers are dry and can be hot, with high sunshine hours and temperatures. Winters are cold, snowfall is common and freezing conditions can predominate. Year round the prevailing breeze is from the south. This gives high regard to placement of glazing, outdoor courtyards, solar shelter and screening.



Figure 1: Jack's Point masterplan with residential zones



## PURPOSE OF THE GUIDELINES

The Design Guidelines have been developed to **preserve and enhance the value of your property**. They are controlled by the Jack's Point Residents & Owners Association Inc (JPROA) and are implemented through its Design Review Board (DRB). This review process is independent of Council consenting.

It is the principal document for the development of Jack's Point as a great residential enclave; supporting development in a coordinated manner in keeping with the vision of **'treading lightly on the land'** and with an **absolute commitment to this extraordinary landscape**.

The Jack's Point Design Review Board (DRB) has the responsibility of assessing whether a project **complies with the Design Guidelines** and the degree to which it enhances the amenity and streetscape. It assesses proposals against high level objectives and specific controls set out in this document. **In the case of some controls not being met the DRB has the right to approve a proposal if the objectives are met.**

The DRB is made up of a group of professionals chosen for their expertise and understanding of the objectives. In most cases, if the objectives of these guidelines are met then the

review process becomes part of the standard design process that a client would normally undertake with their design consultants. In other instances the DRB is required to work more extensively with property owners and their consultants to achieve a successful outcome that will meet the requirements of the guidelines.

The DRB's costs incurred in assessing projects is recoverable from the applicant.

## QUEENSTOWN LAKES DISTRICT COUNCIL CONSENTING

In addition to approval by the Jack's Point DRB **all proposals require standard QLDC resource and building consents**. While the information supplied for each may be similar, the assessment areas will differ.

The Objectives and Controls highlighted in italics in these guidelines will be assessed by both the DRB and also by QLDC as part of the resource consent application.

Each property at Jack's Point has a number of controls set down as part of the original development consent. These may include height restrictions, requirements to access from a side road, zone boundary or highway

landscape protection lines and retention of existing planting. The JPROA or QLDC can assist in providing details of whether any of these apply to your section and you will also find copies of the documents registered on your property's title.

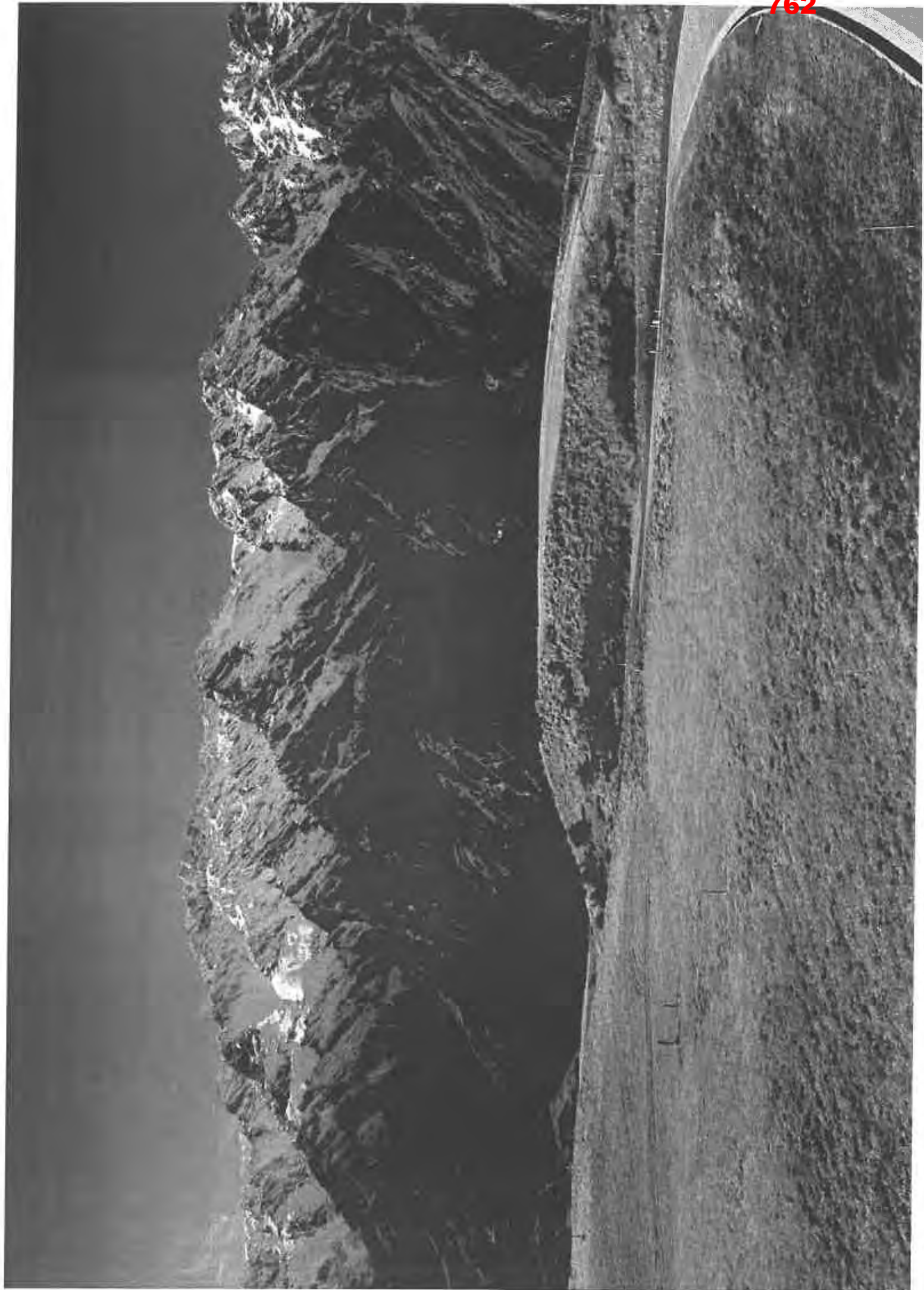
## OTHER RELEVANT DOCUMENTS

The Jack's Point Design Guidelines are subservient to the following documents:

- **QLDC District Plan** and relevant existing Resource Consents;
- **The Coneburn Development Controls** (wider development controls for Jack's Point growth zone as a whole).

## LAND COVERED BY GUIDELINES

These guidelines apply to **all development in the zones marked R(JP) (Residential Jack's Point) and R(JP-SH) (Residential Jack's Point - State Highway)** shown on Figure 1. They include the 'Comprehensive Design Guidelines' that apply for multi-dwelling developments in residential neighbourhoods (units or apartments) new homes and additions.







## OBJECTIVES

- 1.A *Maintain residential amenity by ensuring sites are developed in a co-ordinated manner;*
- 1.B *To promote a balance between built form and open space;*
- 1.C *To ensure building sites are developed to integrate with the existing topography of the land and surrounding neighbourhood.*

**PROPOSALS MUST MEET ALL OBJECTIVES**

Proposed - Subject to QLDC Approval

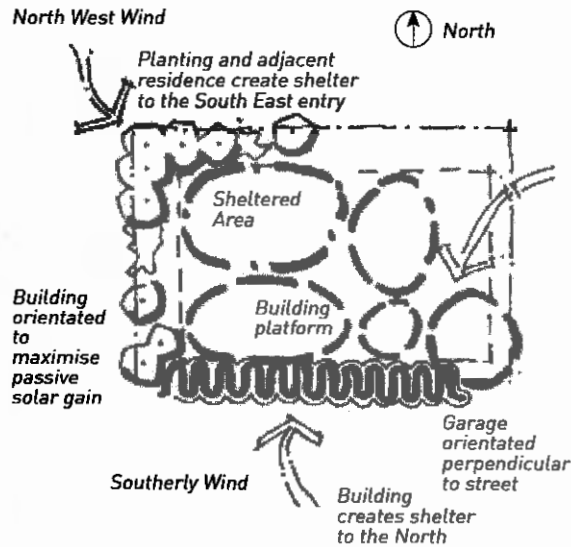
## CONTROLS

### 1.1 LAYOUT

1.1.1 Buildings and site features shall be located to give consideration to environmental conditions, views and privacy to adjoining neighbours without limiting any building envelope;

› See diagram 1

1.1.2 Site plans will be assessed against built form, boundary treatments, large specimen trees or any other relevant items in conjunction with the context plan submitted as part of the DRB approval.



› Diagram 1

### 1.2 SITE COVERAGE

1.2.1 For single dwelling developments, maximum site coverage for each lot shall be no greater than 300m or 45% of the net site area, whichever is lesser;

1.2.2 For comprehensive (multi dwelling) developments, maximum site coverage is 55%.

### 1.3 SETBACKS

1.3.1 Two yard setbacks of 4.5m to be provided and all other setbacks from remaining boundaries to be 2m

› See diagram 2; or

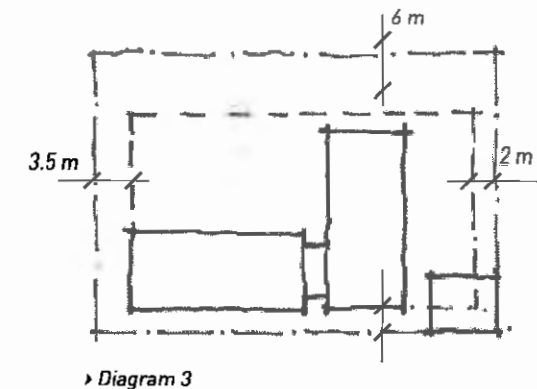
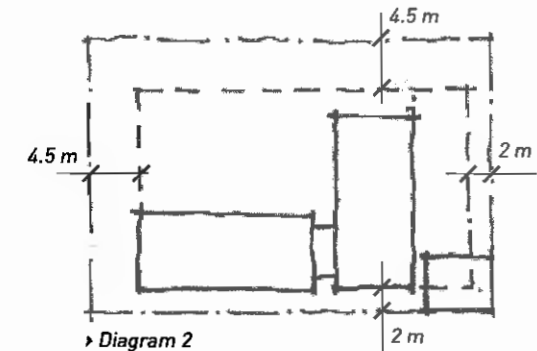
1.3.2 One yard setback of 6m plus 1 yard setback of 3.5m and all other setbacks from remaining boundaries to be 2m

› See diagram 3;

1.3.3 Chimneys of a width no more than 1.2m which are parallel to the boundary may protrude into the setbacks by up to 1m;

1.3.4 Accessory buildings including garages are permitted within the yard setbacks

› refer Architectural Design Controls, section 3.4 for details.



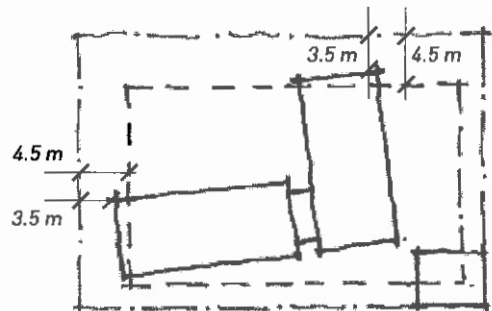
## 1.4 ABILITY TO SKEW

1.4.1 Buildings can be skewed up to 1m beyond the setbacks line to improve siting where:

- Encroachment is on a maximum of two sides; and
- The revised siting does not compromise the privacy and sunlight for an adjoining site to any greater extent than that which would otherwise apply;

› See diagram 4

1.4.2 Walls outside the setback lines do not include any windows or glazed doors.



› Diagram 4

## 1.5 ZERO YARD PROVISIONS

1.5.1 Zero yards apply for habitable rooms beyond those allowed for garages and accessory buildings;

1.5.2 The maximum length of the adjoining wall shall be 7.5m and height and profile of the wall shall be identical for each property;

1.5.3 Construction of the adjoining wall shall consist of a minimum of 200mm thick fully filled and reinforced concrete block or alternative solid construction with approved exterior cladding where exposed (including walls intending to be temporarily exposed);

1.5.4 Each side of the boundary and walls beyond the 7.5m shall continue beyond the building footprint to a minimum height of 1.8m to ensure that external privacy is maintained on each site

## 1.6 EARTHWORKS AND RETAINING

1.6.1 Sites shall be designed to minimise steep batter slopes;

1.6.2 Terraced walls are preferred over single, large retaining walls;

1.6.3 The preferred material for retaining walls, when visible from the street is dry stack or locally sourced schist clad. Other materials consistent with architectural wall materials can be utilized at the discretion of the DRB.

1.6.4 Tops of walls shall be graded to match topography, rather than stepped.

1.6.5 Vertical posts for retaining walls are to be buried at the rear of the wall, rather than visible to the front;

1.6.6 Where fall heights of >1m in height are proposed adjacent to a reserve these are to be fenced at the homeowners expense compliant to local authority requirements;

1.6.7 Steep batter slopes are to appear consistent with existing landform, and shall be planted as per the landscape guidelines (refer section 2.1 for planting densities on steep slopes)







## OBJECTIVES

- 2.A To build on the framework of established landscaping and maintain consistency between public and private space;*
- 2.B To form continuity within neighbourhoods whilst allowing individuality on a home by home basis;*
- 2.C To encourage an ecological approach to planting, based on local shrub tussock grassland and beech forest communities;*
- 2.D To blur the demarcation between legal property boundaries and promote community connectivity by creating open property boundaries while allowing for privacy and shelter;*
- 2.E To minimise the prominence of vehicles throughout neighbourhoods and maintain pedestrian priority to public spaces;*
- 2.F To preserve neighbourhood amenity by ensuring that site utilities, wastewater tanks or exterior service areas are not readily visible from neighbouring properties and public spaces;*
- 2.G To protect night time ambience of the rural environment by ensuring that light intensity and pollution is kept to a minimum, whilst maintaining safety in the community.*

**PROPOSALS MUST MEET ALL OBJECTIVES**



## CONTROLS

### 2.1 PLANTING

2.1.1 75% of shrubs shall be from the Jack's Point plant list and 75% of trees shall be from the Jack's Point plant list (Note: percentage is based on planted numbers for each;

› refer Jack's Point Plant list section 2.8;

2.1.2 Planting should flow through from adjacent reserve areas, streetscapes or residential sites;

2.1.3 Exotic or formal planting should be confined to the immediate context of the house or areas that are not visible from surrounding areas;

2.1.4 Coloured or cultivar plant varieties are discouraged;

2.1.5 Staking to be visually recessive - natural or dark stained timber;

2.1.6 For planting on steep slopes numbers are to be calculated for the actual surface area of the land, not the plan area. This is to ensure that steep slopes will have sufficient density to form a dense weed-free swathe over time;

2.1.7 Additional planting after a new development is complete is permitted without further reference to the DRB where the plants are:

- from the recommended plant list (refer section 2.8), or
- intended for consumption, or
- will not be visible from a public space, and
  - for a hedge is to be maintained at less than 1.8m in height or
  - for a tree is less than 4m in height at maturity.



Exotic planting within the vicinity of the house & yard

### 2.2 DRIVEWAYS & PARKING

2.2.1 Preferred driveway materials are exposed aggregate concrete or schist slab pavers;

2.2.2 Asphalt is acceptable when located in areas not readily visible from main spine roads;

2.2.3 Other materials can be approved at the discretion of the DRB;

2.2.4 Gravel driveways are permitted where they are:

- compressed local schist gravel, and
- on a rear lot which has a sealed access way, and the owner has obtained the approval of all owners of the sealed access way including the JPROA where relevant; or
- on a front lot and has a 10m exposed aggregate concrete (or other hard material acceptable to the DRB) threshold between the gravel and any road;

2.2.5 Crossings can be relocated to another location at the discretion of the DRB, and are to match the redundant crossing in terms of materiality, roadside drainage and services. The DRB may require the removal of the redundant crossing and re-landscaping the road reserve which must be undertaken as part of the project at the cost of the home owner;





## 2.3 SITE UTILITIES, WASTEWATER TANKS & EXTERIOR SERVICE AREAS

- 2.3.1 Exterior service areas are to be screened by way of a:
- 1.8m high semi-permeable screen of material consistent with that of the house, or;
  - 1.8m high dark stained horizontal timber slat fence or;
  - hedge consisting of 1.6m high plants at time of planting and at a sufficient spacing to form a visually impermeable screen.

- 2.3.3 Wastewater tanks are to be located within 20m from a hard stand area and easily accessible by foot. The above ground portion of buried tanks screen (vents and access) should be within a planted area;

- 2.3.4 Meter boxes and heat pump/air-conditioning units may be covered with a black or other approved coloured cover and located in an unobtrusive position.

*Note: Exterior service areas includes clothes lines, rubbish & recycling bins, meter boxes, heat pump / air conditioning units, composting areas, weed piles, timber stacks or any other item at the discretion of the DRB and JPROA.*

- 2.2.6 Driveways accessing main spine roads shall provide an on-site area for vehicle turning, to avoid cars reversing directly onto road;
- 2.2.7 House numbers to be the Jack's Point standard design approved by the DRB. Numbers may be installed on the house, a gate or fence post at the boundary or on a standalone macrocarpa post, or otherwise as approved by the DRB.



## 2.4 BOUNDARY TREATMENT, FENCING & GATES

- 2.4.1 A maximum of 50% of site boundaries to any one property can be defined with either a fence, wall or clipped hedge. All others to be open or planted. In the case of 100% boundary fencing being required then fencing shall be located fully within areas of planting to soften;
- 2.4.2 *Stone boundary walls shall be either:*
- *a maximum height of 1.5m dry stack and constructed of locally sourced schist stone with vertical capping in the agricultural stone wall style; or*
  - *a maximum height of 1.5m dry stack schist stone with a flat top;*
- 2.4.3 Fences shall be either:
- *dark or natural stained horizontal timber slat to 1.5m height surrounded by planting; or*
  - *macrocarpa post and wire, mesh or rail at 1.1m height surrounded by planting;*
- 2.4.4 Gates to the edge of sites are to be consistent with the Jack's Point gate style;
- 2.4.5 Hedges are to be maintained at 1.8m maximum height;
- 2.4.6 *Street and reserve boundaries can contain a locally sourced agricultural style schist dry-stack walls to a*

*maximum height of 1.5m along a maximum of 75% of the length;*

- 2.4.7 Internal boundaries between residences can contain either a dry stack wall or dark stained timber slat fence along a maximum of 75% of length;
- 2.4.8 *Walls in the Highway Landscape Protection Area are permitted along street boundaries only. Fencing*

*of boundaries within the Highway Landscape Protection area shall be macrocarpa post, warratah and wire farm fencing;*

- 2.4.9 Swimming pool, pet and or child proof fencing must be internal to the property and all fencing shall comply with any applicable local authority and safety standards and integrate with the house and landscape design.





## 2.5 MOUNDING OR LANDFORMS

- 2.5.1 Mounding is not promoted and owners are to utilise planting to create screening or shelter;
- 2.5.2 Any contouring is required to blend with existing topography to mimic natural landforms.

## 2.6 EXTERIOR LIGHTING

- 2.6.1 *Low intensity, indirect light sources are to be used for all exterior lighting applications;*
- 2.6.2 *The use of hoods, louvers and other attachments designed to direct light and minimize light pollution are required for any exterior lighting;*
- 2.6.3 *Light sources are to be incandescent, LED, or other white light not sodium vapour or other light;*
- 2.6.4 *Floodlighting or accent lighting is not permitted.*

## 2.7 MATERIALS GENERAL

- 2.7.1 Materials used for landscape features such as decks, pergolas, timber slat screens, stone fireplaces or retaining walls are to complement architectural materials where possible to form continuity between landscape and architecture;
- 2.7.2 A wide range of materials can be utilised for pavement materials, as a general rule naturally sourced materials are preferred. Landscape plans will be assessed on a case by case basis by the DRB.



Dark stained fence for a portion of the boundary to enable privacy between neighbours



✓ Complimentary



✓ Complimentary



✗ Contrasting





## 2.8 JACK'S POINT PLANT LIST

### 2.8.1 Trees

Botanical Name	Common Name	Sun	Mid Sun	Shade	Moist	Dry	Sheltered	Exposed
<i>Aristotelia serrata</i>	Wineberry	x	x		x	x		x
<b><i>Carpodetus serratus</i></b>	Putaputaweta / marbleleaf	x	x		x		x	
<i>Coprosma linariifolia</i>	Mikimiki	x	x		x	x		x
<i>Cordyline australis</i>	Ti kouka / cabbage tree	x	x		x	x		x
<i>Fuchsia excorticata</i>	Kotukutuku / tree fuchsia		x		x		x	
<i>Elaeocarpus hookerianus</i>	Pokaka		x		x		x	
<i>Griselinia littoralis</i>	Kapuka / broadleaf	x	x		x	x		x
<i>Hoheria lyallii</i>	Mountain ribbonwood	x			x			x
<i>Melicytus lanceolatus</i>	Mahoe wao	x	x		x		x	
<i>Melicytus ramiflorus</i>	Mahoe / whiteywood	x	x		x	x		x
<i>Metrosideros umbellata</i>	Southern rata	x	x		x	x		x
<i>Myrsine australis</i>	Mapou	x	x	x	x	x		x
<i>Nothofagus fusca</i>	Red beech	x	x		x	x	x	
<i>Nothofagus solandri</i> var. <i>cliffortioides</i>	Mountain beech	x	x		x	x	x	
<i>Pennantia corymbosa</i>	Kaikomako	x	x		x	x		x
<i>Pittosporum eugenioides</i>	Tarata / lemonwood	x	x		x	x		x
<i>Pittosporum tenuifolium</i>	Kohuhu	x	x		x	x		x
<i>Podocarpus hallii</i>	Hall's Totara	x	x		x	x		x
<i>Prumnopitys taxifolia</i>	Matai		x	x	x	x	x	
<i>Pseudopanax crassifolius</i>	Lancewood	x	x		x	x		x
<i>Sophora microphylla</i>	Kowhai	x	x		x	x	x	

## 2.8.2 Shrubs

Botanical Name	Common Name	Sun	Mid Sun	Shade	Moist	Dry	Sheltered	Exposed
<i>Aristotelia fruticosa</i>	Mountain wineberry	x			x			x
<i>Carmichaelia petriei</i>	NZ broom	x	x	x	x			x
<i>Coprosma crassifolia</i>	NZ Coprosma	x	x		x	x		x
<b><i>Coprosma lucida</i></b>	Shining Karamu		x	x	x	x		x
<i>Coprosma propinqua</i>	Mingimingi	x			x	x		x
<i>Coprosma rugosa</i>	Needle-leaved Mt Coprosma	x	x		x	x		x
<i>Corokia cotoneaster</i>	Korokia	x	x		x	x		x
<i>Cyathodes juniperina</i>	Mingimingi	x	x			x		x
<i>Discaria toumatou</i>	Matagouri	x			x	x		x
<i>Dracophyllum longifolium</i>	Inaka	x	x			x		x
<i>Dracophyllum uniflorum</i>	Turpentine shrub	x	x		x			x
<i>Gaultheria antipoda</i>	Tall snowberry	x		x	x	x	x	
<i>Hebe cupressoides</i>	Cypress Hebe	x				x		x
<i>Hebe odora</i>		x			x			x
<b><i>Hebe rakaiensis</i></b>		x			x	x		x
<i>Hebe salicifolia</i>	South Island Koromiko	x			x			x
<i>Hebe subalpina</i>		x			x	x		x

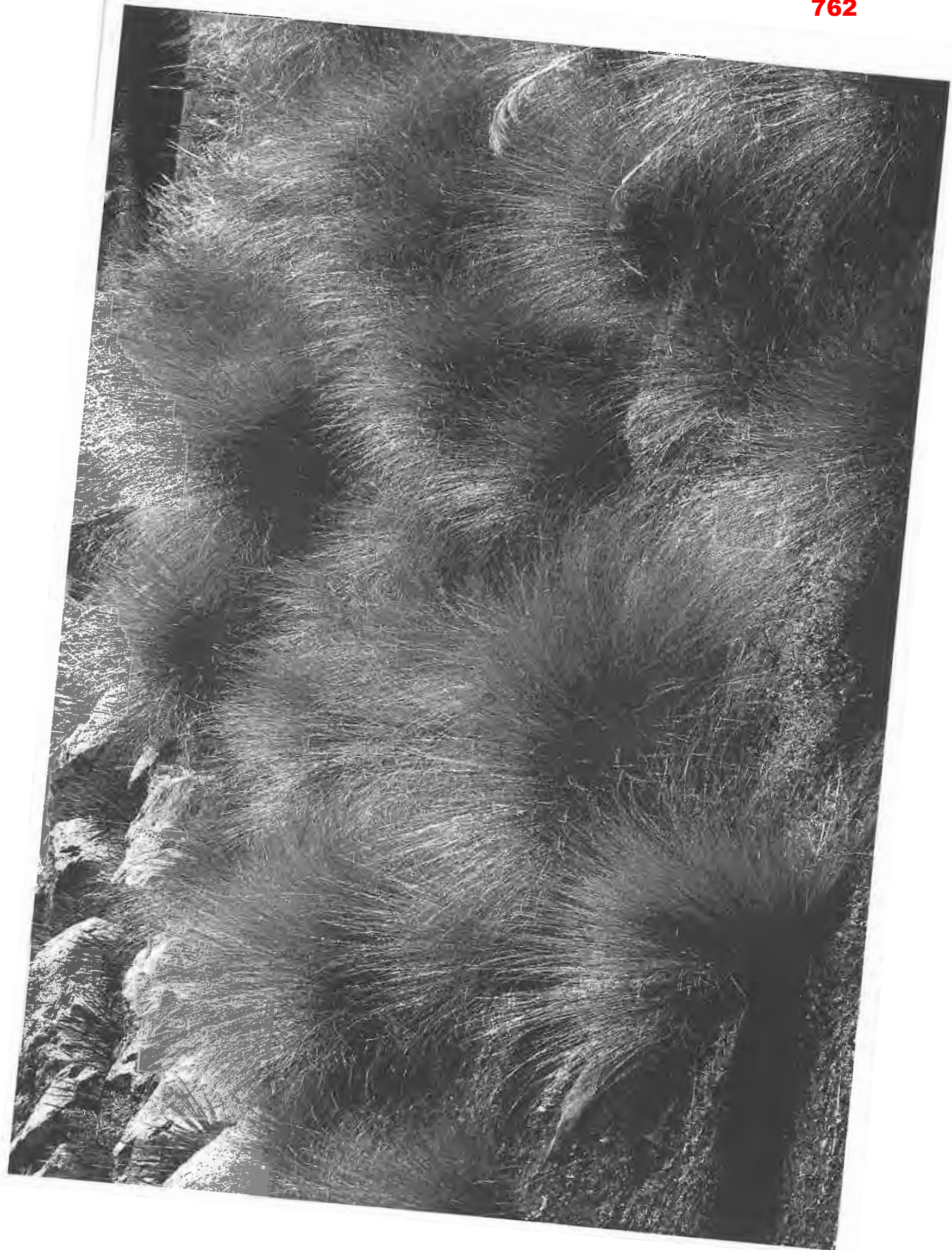


Botanical Name	Common Name	Sun	Mid Sun	Shade	Moist	Dry	Sheltered	Exposed
<i>Leptospermum scoparium</i>	Manuka	x	x		x	x		x
<i>Melicytus alpinus</i>	Porcupine shrub	x	x		x	x		x
<i>Myrsine divaricata</i>	Weeping mapou	x	x		x	x		x
<b><i>Olearia arborescens</i></b>	Southern Tree Daisy	x	x		x	x		x
<i>Olearia avicenniifolia</i>	Tree Daisy	x				x		x
<i>Olearia bullata</i>		x			x	x		x
<i>Olearia cymbifolia</i>		x	x		x	x		x
<i>Olearia fragrantissima</i>		x				x	x	
<b><i>Olearia hectori</i></b>		x			x	x		x
<i>Olearia lineata</i>	Tree Daisy	x	x		x	x		x
<i>Olearia nummulariaefolia</i>	Tree Daisy	x				x		x
<i>Olearia odorata</i>	Tree Daisy	x			x		x	
<i>Ozothamnus sp.</i>	Cottonwood	x			x	x		x
<i>Pimelea aridula</i>	NZ daphne	x			x	x		x
<i>Pseudopanax colensoi</i> var. <b>ternatus</b>	Mountain three finger		x	x	x	x		x

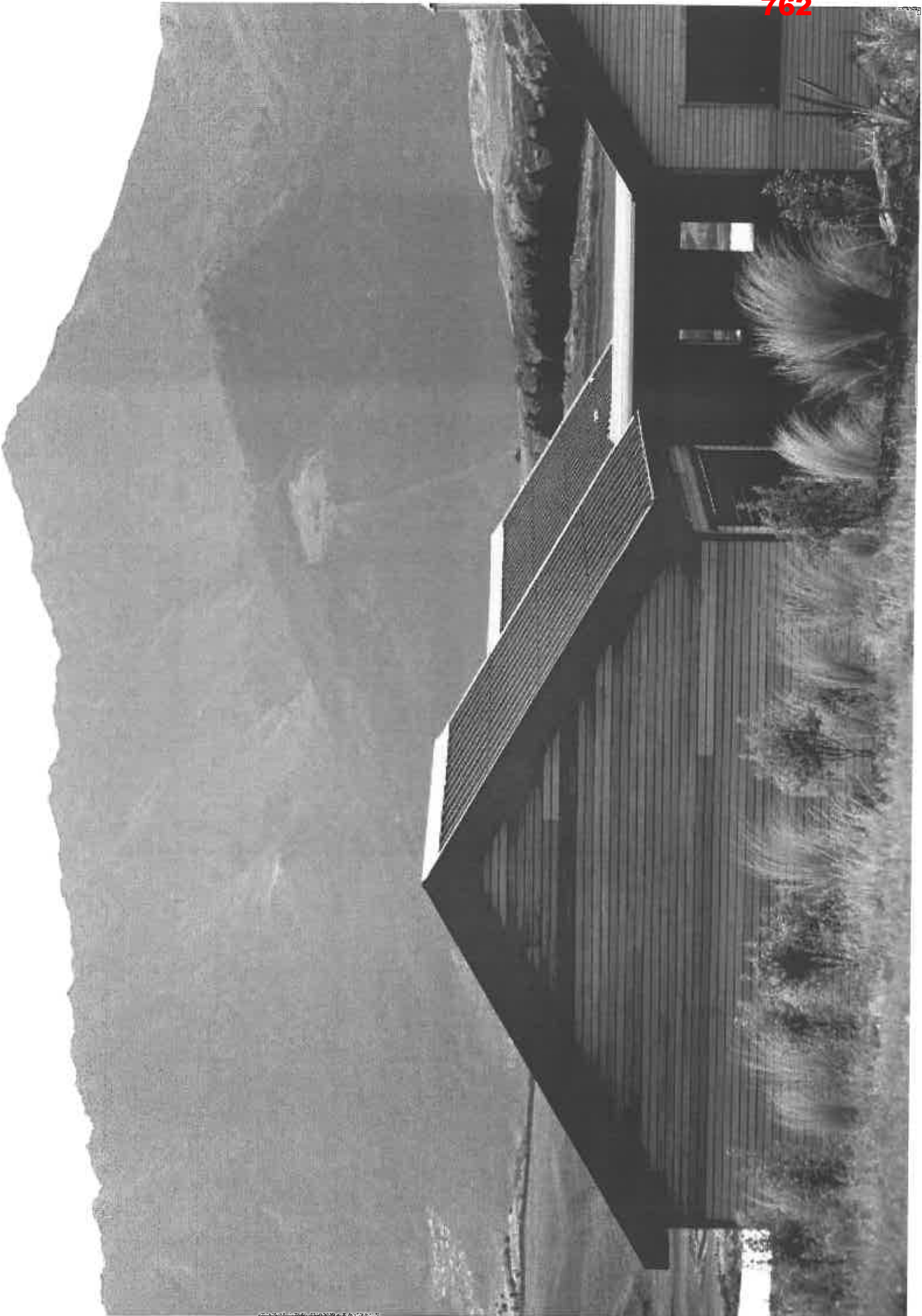
## 2.8.3 Grasses

Botanical Name	Common Name	Sun	Mid Sun	Shade	Moist	Dry	Sheltered	Exposed
<i>Aciphylla aurea</i>	Golden speargrass	x				x		x
<i>Aciphylla glaucescens</i>	Blue speargrass	x				x		x
<i>Astelia fragrans</i>	Bush lily		x	x	x		x	
<i>Astelia nervosa</i>	Mountain Astelia		x	x	x	x		x
<i>Carex coriacea</i>	NZ swamp sedge	x			x			x
<i>Carex maorica</i>	Carex	x	x		x			x
<i>Carex secta</i>	Purei	x	x		x			x
<i>Chionochloa conspicua</i>	Bush tussock	x	x		x	x		x
<i>Chionochloa rigida</i>	Narrow-leaved snow tussock	x			x	x		x
<i>Cortaderia richardii</i>	South Island Toeotoe	x			x	x		x
<i>Festuca novae zelandiae</i>	Hard tussock	x				x		x
<i>Juncus distegus</i>	Wiwi		x		x			x
<i>Juncus gregiflorus</i>	NZ soft rush		x		x			x
<i>Juncus sarophorus</i>	Wiwi	x	x		x			x
<i>Phormium cookianum</i>	Mountain flax	x			x	x		x
<i>Phormium tenax</i>	Harakeke/swamp flax	x			x	x		x
<i>Poa cita</i>	Silver tussock	x			x	x		x
<i>Schefflera digitata</i>	Seven finger	x	x		x	x	x	
<i>Schoenus pauciflorus</i>	Bog rush	x			x		x	
<i>Typha orientalis</i>	Raupo / bullrush	x			x			x











## OBJECTIVES

- 3.A To create a high quality built environment with an overarching design language that is responsive to the natural character of the site and respectful of the original vision for Jack's Point – to create a high quality built environment with a unique sense of place;
- 3.B To apply environmentally sustainable design (ESD) principles at a site design and architectural level;
- 3.C *To maintain a limited palette of materials, colours and external finishes that have durability, honesty, and integrity;*
- 3.D *To promote the use of natural or 'raw' materials and colours that relate to the alpine setting;*
- 3.E To reduce the dominance of applied finishes;
- 3.F To simplify collective built form by limiting complex architectural form and roof pitches, and ensuring that roof penetrations (other than chimneys) are positioned to reduce their visual dominance;
- 3.G *To create a continuity of roof-scape by limiting the range of materials with low reflectivity and recessive hues;*
- 3.H To enable a visual richness of elevations by ensuring that details are designed to punctuate and add depth whilst minimising reflectivity;
- 3.I To allow viewshafts whilst ensuring residential privacy by considering placement of windows in relation to neighbours;
- 3.J *To reduce the dominance of garages on the streetscape.*

## PROPOSALS MUST MEET ALL OBJECTIVES



## CONTROLS

### 3.1 BUILT FORM & ROOF PITCH

- 3.1.1 Simple gable roofed pavilions are preferred;
- 3.1.2 For single dwelling developments, the maximum continuous building length along the shorter boundary setbacks, ie. the 2m setbacks shall not exceed 16m. Any setbacks beyond this length shall have a minimum recess of 1.5m in depth and no more than 4m in length and include both the facade and roof & eave line before the building can return to the same line of the 16 metre direction.

*For comprehensive (multi dwelling) developments no unbroken building shall exceed 16m. Breaks in building length shall be a minimum of 2m in depth and 4m in width for the full height of the wall and shall include a discontinuous eave line and roof line at the break*

- 3.1.3 The maximum width of a gable is 6m for 2 story buildings, 8m for single story;
- 3.1.4 Gable ends to each site are limited to a maximum of 6, including outbuildings;
- 3.1.5 Roof pitch (excluding standalone

*garages) shall be between 25 and 45 degrees;*

- 3.1.6 Flat to flattish roofs associated with the main residential form shall have a maximum coverage of 30% of the total roofing area (excluding standalone garages). Flat roofed areas are seen primarily as linking structures or adjuncts to the dominant form;
- 3.1.7 Single pitched roofs which are secondary to the principal gable form (for example lean to roof) and are between 12 and 25 degrees are permitted up to a maximum width of 6m;
- 3.1.8 Roofs are to be simple without stacked roofs, hips and valleys or similarly complex forms;

- 3.1.9 Any lots in the R-SH areas which adjoin or contain the Highway Landscape Protection Area shall have the roof ridge line of any dwelling running parallel to the highway.

### 3.2 BUILDING HEIGHT

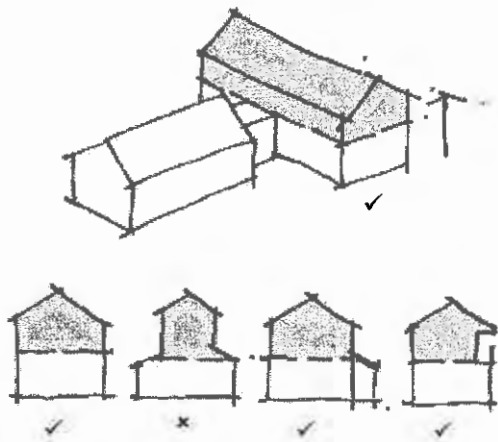
- 3.2.1 Building height is limited to a maximum of 8m (District Plan Zone Standard, height measured from ground level), except for sites that are allocated a specified building height which maybe from a defined RL.





### 3.3 UPPER FLOORS

- 3.3.1 The upper floor of the principle residential form shall derive its footprint from the lower plan:
- 3.3.2 Upper floor verandas or decks are to be formed out of the primary form of the building (including roofline), rather than attached to the side of the building;
- 3.3.3 For single dwelling developments, upper floors may be a maximum of 60% of the main building footprint;
- 3.3.4 Lightweight steel railings coloured black are preferred for safety from falls. Glass can be used if in a recessive location to minimise net reflectivity;
- 3.3.5 The principle living space of all residential buildings must relate to the landscape.



### 3.4 GARAGES, ON-SITE PARKING & ACCESSORY BUILDINGS

- 3.4.1 All homes to have a minimum 2 car garage.

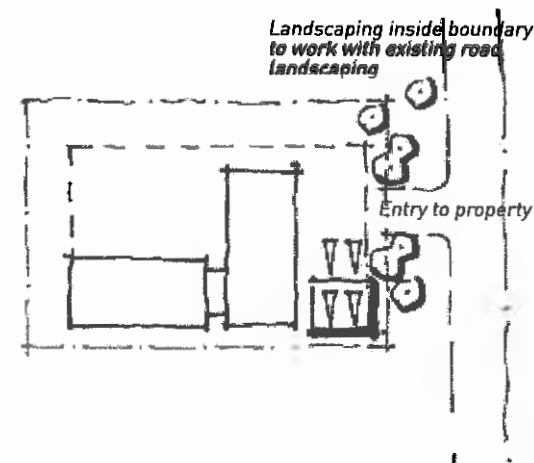
*Note: Jack's Point bylaws require that all vehicles, trailers or boats that are to be kept at the property be parked in a garage or be well screened from outside of the property;*

- 3.4.2 Comprehensive (multi-dwelling) sites must also provide on-site allowance for 1 visitor carpark for every 2 dwellings;
- 3.4.3 For main spine roads garage doors are to be perpendicular to rather than directly facing the street;

*Note: rear lots, access ways and courtyards are excluded from this control. Where site constraints limit garage access to direct access, these can be considered at the discretion of the DRB, and shall be set back to allow for on-site parking*

- 3.4.4 Accessory buildings including garages located within setbacks are to have the side facing the setback clad in locally sourced schist stone or bagged schist with <60% plaster, with no glazing;

- 3.4.5 Maximum garage height of a standalone garage is to be 3.5m. If a garage is to be located within 1m of the boundary then the maximum garage height is to be 2.8m;
- 3.4.6 Garages can be located within the primary built structure as long as all other requirements for garages are met;
- 3.4.7 Garden sheds, glass/tunnel houses and similar structures are permitted without further reference to the DRB where they are located in rear yards and not clearly visible from road areas or adjoining reserve land, are screened from boundaries, and:



Proposed - Subject to QLDC Approval

## 3 - ARCHITECTURAL

For a shed:

- are no more than 5 sqm in size and 2 m in height
- are clad in metal or other materials, finished to match the house
- all metals are painted in matt recessive colours in a range of dark browns, blacks, greys and with reflectivity of no more than 20%; or

For a glass or tunnel house:

- are no more than 5 sqm in size and 2 m in height
- all metal trims are finished in recessive colours.



Proposed - Subject to QLDC Approval

### 3.5 WINDOWS / GLAZING & DOORS (FAÇADE ARTICULATION)

3.5.1 Windows shall have a logical relationship within facades, with a consistent proportion and arrangement between each window;

3.5.2 The percentage of window to wall permitted in each elevation shall not exceed the following:

- North Elevation 80%
- West Elevation 50%
- East Elevation 30%
- South Elevation 20%

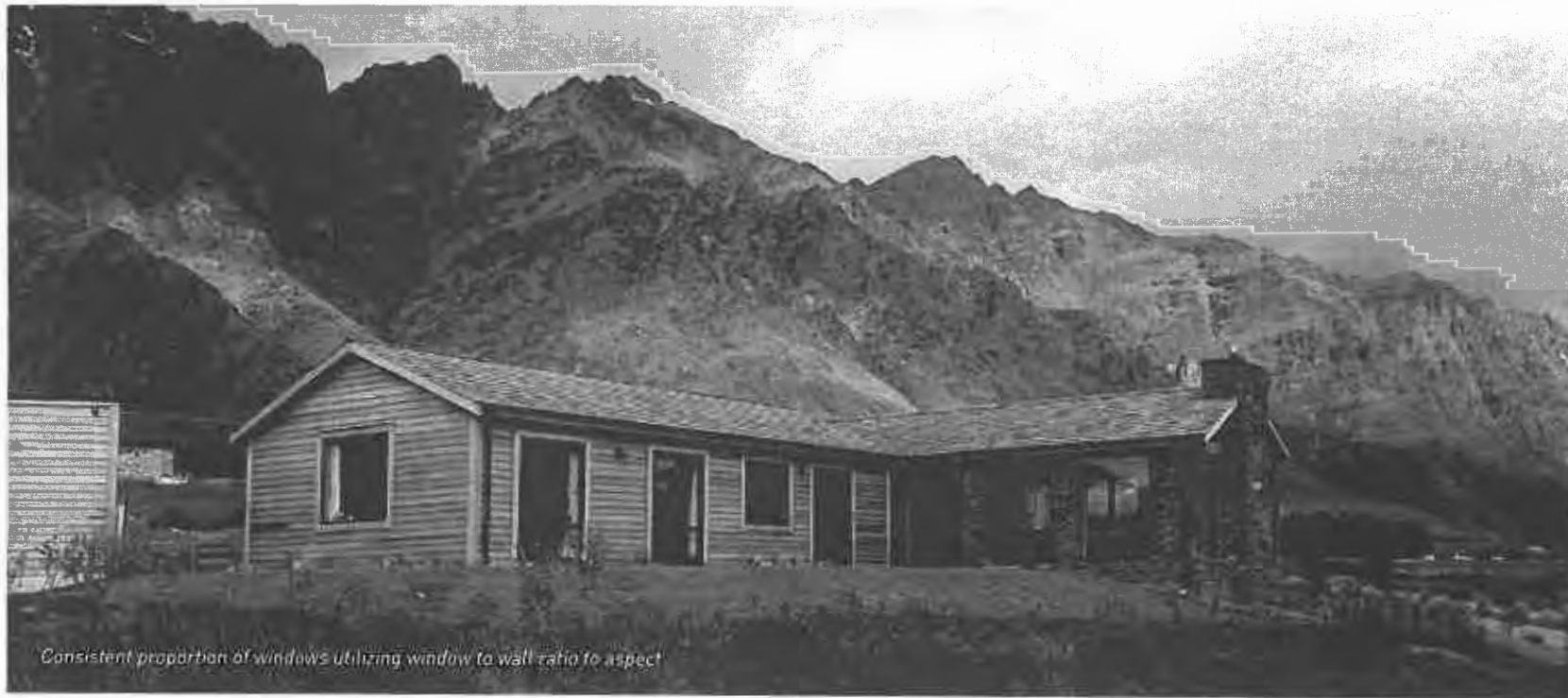
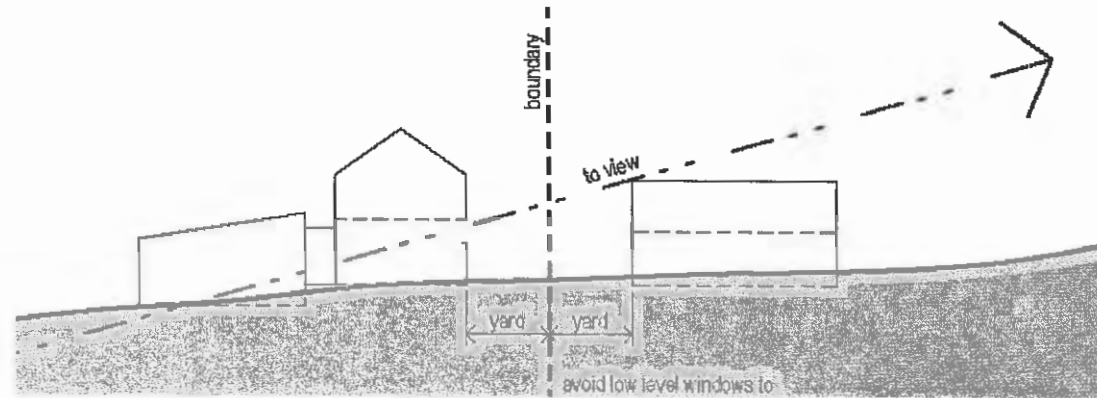
3.5.3 Where windows face the high level views of the greater landscape the views from those windows should not compromise the privacy of an adjoining neighbour by 'overlooking'

3.5.4 *Windows and doors should be recessed from the façade, avoiding the flat elevation look of aluminium joinery, to a minimum depth of 40mm;*

3.5.5 Facing boards to face fixed joinery are acceptable to a minimum width of 125mm;

3.5.6 Where aluminum joinery is used, a dark colour is preferred;

3.5.7 In R-SH areas, minimal glazing is permitted to be visible from the State Highway.



Proposed - Subject to QLDC Approval





Stone used in the landscape to promote a rural aesthetic.

## 3.6 EXTERNAL WALL MATERIALS

### 3.6.1 Exterior wall cladding shall be either:

- Cedar weatherboard, Redwood or similar approved; or
- Vertical Cedar, Redwood, or similar approved board and batten; or
- Tanalised plywood with 50 x 25 battens at maximum of 300mm centres, if finished in a dark matt recessive colour; or (Note: this option may require more maintenance by way of periodical re-staining);
- Locally sourced schist stone stacked horizontally; or
- Bagged schist with <60% plaster; or
- Concrete tilt panels to an approved finish; or
- In-situ concrete walls to an approved finish; or
- Concrete / rammed earth walls; or
- Copper sheet cladding or approved metal finishes to read as subservient; or
- Cement plaster finish over brick,

masonry or polystyrene block to read as a secondary element and which does not exceed total wall surfaces by 30%, or as a whole pavilion subordinate to another pavilion; or

- A combination of two of the above;

3.6.2 Cladding materials shall relate to the form of the building. A single material per pavilion or built form is preferred over complex or arbitrary use of material to facades;



✓ Material change to internal corner



✓ Material relating to form



✗ Material not relating to form

3.6.3 Material changes are to occur on an internal corner only;

3.6.4 Material use by pavilion or form shall be considered for a reduction in the visual mass of large buildings, to create a finer grain of collective built form;

3.6.5 Where board and batten is used with metal tray roofing, the battens and the roof seams are to line up;

3.6.6 Where a small amount of stone is desired, the use of stone in the landscape is preferred over a token or minor use of stone on a building façade.

## 3.7 EXTERIOR COLOUR & APPLIED FINISHES

3.7.1 Colours are to relate to surrounding environment;

3.7.2 Paint colours are to be recessive with a maximum LRV of 30% except where used in small quantities;

3.7.3 Paint is to be a matt finish;

3.7.4 Stain colours shall be of a natural hue or black, rather than with a coloured hue.





A continuity of roofscape. Unidirectional materials with low reflectivity & recessive hues



### 3.8 ROOFING MATERIAL

3.8.1 Roof cladding shall be either:

- Red cedar shakes or cedar shingles; or
- Copper tray (may require treatment).  
*Note: Untreated Copper tray is not permitted in Highway Landscape Protection Zone; or*
- Black zinc tray; or
- Corten steel *Note: not permitted in Highway Landscape Protection Zone; or*
- Metal roofing with a standing seam steel tray profile to meet the following criteria:
  - A tray profile upstand width of between 200 to 300mm or 400 to 500mm, measured seam to seam or similar as approved by the DRB. The profile is sharp and creates shadow and texture; and
  - A reflectivity value of 20% or less and have a G10 or similar matt finish; and
  - Dark recessive colours in the range of browns, greys and blacks;
- Membrane roofing systems for flat roofs in dark grey to black tones.

*Note: Preferred Metal and Membrane Roof Materials are included in the Background and Explanatory Notes.*

### 3.9 ROOF DETAILS

3.9.1 All roofing details i.e. gutters, downpipes and flashings shall be of material and colour to complement the roof or wall materials.

### 3.10 ROOF PENETRATIONS

3.10.1 Roof penetrations, including aerials or dishes to be discretely located or screened from public view and of a colour to match the roof or wall;

3.10.2 Chimneys are permitted to exceed the maximum height of buildings by 1.5m provided they do not exceed 1.1m width.



## 4.1 PHASING OF PROJECTS

- 4.1.1 Projects may be phased where appropriate. Owners can have all phases of the project approved in their initial DRB approval or can treat future phases as alterations to an existing dwelling. Stages must be clearly demonstrated on the plans. The first phase shall meet the requirements of the guidelines;
- 4.1.2 The DRB encourages owners who wish to phase their landscape plans to review the planting that can be added without future reference to the DRB.

## 4.2 IMPLEMENTATION STANDARDS

- 4.2.1 All landscaping projects are to be completed to a standard expected of a professional landscaper including appropriate use of mulch, top soil, fertilizer and quality of plants.

## 4.3 DRAWINGS & CHANGES TO PLANS

- 4.3.1 Drawings submitted to DRB shall match drawings submitted for construction and building consent. Alterations require the approval of the DRB;
- 4.3.2 Alterations to plans, except as specified below, are required to be re-submitted to the DRB for approval;
- 4.3.3 Minor alterations or additions can be made outside of DRB approval if from the following list:
- Additional planting as described in Planting 2.1
  - Change of driveway materials to exposed aggregate concrete;
  - Change of retaining walls materials to stacked schist stone;
  - Change of wall cladding from plywood to cedar board and batten subject to 100% of plywood being replaced;
  - Removal of exterior lighting;
  - Change to stain colours to natural, excluding plywood board and batten;
  - Change of metal roof tray to one of the preferred metal roof trays noted in the Background section (excludes Solar Rib);

- Increase strength of paint colour (e.g. change from Quarter to Half, Double to Triple of the approved colour);
- Replacement of up to 100% of shrubs which are not on the Jack's Point plant list and up to 10% of shrubs which are, subject to the replacement plants being of similar number, size at planting and maturity and all the replacement plants being from the Jack's Point plant list;
- Replacement of up to 50% of trees which are not on the Jack's Point plant list and up to 10% (or one if there are less than 10) of trees which are, subject to the replacement trees being of similar number, size at planting and maturity and all the replacement trees being from the Jack's Point plant list (excludes Beech and Lancewood);

## AMENDMENTS TO THE DESIGN GUIDELINES

The guidelines have been developed through experience gained during the development and intensification of the Jack's Point residential areas since September 2009.

Influences to this document have been:

- A review by Cheshire Architects 2009;
- Experience of interpretation by the Design Review Board 2009 – 2011;
- Contribution and advice given by existing property owners, architects and approved designers;
- Experience from completed projects and visible interpretation of previous versions of the guidelines;
- Experience from Fletcher Residential Homes in The Terraces;
- Monitoring of all open space plantings from the maintenance team and visible private plantings to the success of various plant species;
- A review by Architect Ian Athfield, members of the DRB and Darby Partners during 2012.

## DESIGN REVIEW BOARD (DRB)

The Jack's Point Design Review Board is set up under the Coneburn Development Controls.

The DRB has the responsibility of assessing whether a proposed project complies with the Design Guidelines and the degree to which it enhances the amenity and streetscape of Jack's Point, particularly from public spaces and neighbouring properties.

The DRB also includes in its assessment whether a proposed project complies with the Coneburn Development Controls and with the Bylaws.

**The members of the DRB are:**

- Developer Representative
- Registered Architect
- Landscape Architect
- QLDC Representative
- JPROA Representative
- Administrator (non-voting)

## OVERVIEW OF DRB & CONSENT PROCESS

The DRB process and requirements are set out in the Coneburn Development Controls, however below is a summary of the process. All steps are mandatory unless specifically noted.



### **Architects and Approved Designers**

The DRB will consider applications prepared by a Registered Architect with landscape components prepared by a Landscape Architect. The DRB will also consider applications that are prepared by architectural and landscape designers who have been granted approval by the DRB prior to making a DRB application relating to any property.

*Note: see later in this section on becoming a Jack's Point Approved Designer*

### **Site Visit**

Before commencing the design, owners and their design team must visit the site to ascertain it's setting, exposure to the elements and the context of the immediate neighbouring properties. Subsequent site visits may be combined with the Preliminary Design Meeting.

### **DRB Deposit**

Before the first meeting with the DRB lot owners need to pay their DRB deposit (or bond). See notes on deposits, bonds & charges later in this section.

### **Preliminary Design Meeting**

All projects require a preliminary meeting between two or more members of the DRB, owners and their designers. This is held at an early stage of design development to get feedback on how the preliminary design meets the guidelines, to address how personal objectives can be achieved within the design guidelines where that might not be straight forward and to discuss proposed site design. Owners may request additional preliminary meetings. The first preliminary meeting is normally held on site. The quantity and detail of information presented at a preliminary meeting is up to the design team.

### **Staking**

At any stage in the approval process, the DRB may request that a homeowner stake out any proposed design including location of any major landscaping features.

### **DRB Review**

Once the design is complete, owners submit their applications for review by the DRB. All must use the current application form and include all information and plans noted on

that form. Incomplete or illegible applications will not be considered. Once submitted the plans will be circulated to DRB reviewers for consideration at the next available DRB meeting. All forms, meeting schedules and last submission dates are on the Jack's Point website. The DRB will either approve the plans or issue advice noting the objectives of the Design Guidelines that have not been met. The DRB may also provide guidance or recommendations on what changes could be made to the plans to achieve the objectives. The design team reviews the applications in light of this and makes alterations/redesigns to achieve the objective. For minor changes and adjustments, the application may not require a further formal DRB review.

### **DRB Approval**

Once the DRB approves the plans, they will issue a written approval letter with a final set of plans stamped approved. These plans are required for QLDC consents.

### **QLDC Resource Consent & Building Consent**

Once DRB approval is issued, the owners can apply to QLDC for Resource and then Building Consent.

**Construction & Implementation**

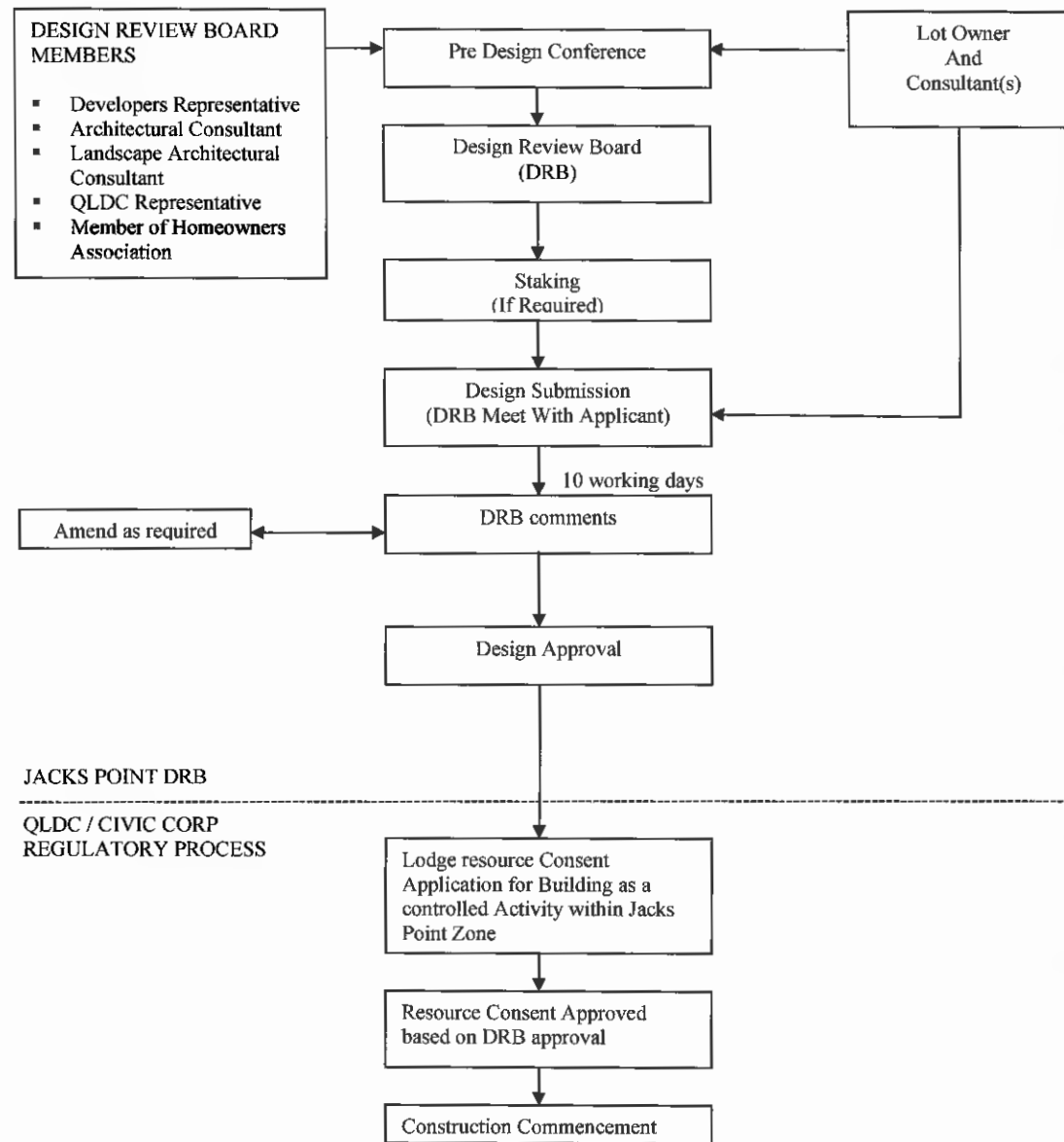
After Building Consent is issued and the building bond paid to the JPROA, earthworks and construction can begin. Owners must complete building and landscaping within the construction timeframes noted in the covenants registered on the property's title.

**Post Project Inspection**

After the development, including all landscaping is complete, owners should send the JPROA a copy of their Code Compliance Certificate and book a final inspection with the DRB. This inspection will also cover a JPROA inspection to confirm that all signage and construction materials have been removed and any damage to JPROA or neighbouring property has been repaired. Once both the DRB and JPROA are satisfied on these matters, they will issue the owner with a notice to this effect and refund any remaining balances of both DRB Deposit and Building Bonds.

**TYPICAL COSTS**

The DRB process is at the cost of the homeowner and is charged out based on actual costs of the review process. Before the





first DRB review, owners need to pay a deposit of \$2,000 (or a greater amount if requested by the DRB) per design. Costs incurred as part of the DRB process will be deducted from this deposit. If charges are higher than the deposit paid, the overrun will be charged out monthly and an additional deposit will be required to be paid if a sufficient credit balance to cover potential post completion review is not held by the DRB.

After the post completion review, when the completed project matches the approved plans, any balance of the deposit still held by the DRB will be released.

The DRB process typically costs less than \$2,000 where the design complies with the guidelines and other relevant documents, the application is by approved designers, is complete when submitted, there are no (or minimal) changes requested during the project and the design is implemented in accordance with the DRB approval issued.

## BECOMING AN APPROVED DESIGNER

Where owners wish to use designers who are not yet approved, the DRB requires that the designer apply to be accepted to submit a DRB application. The designer is responsible for all costs associated with this review and will need to pay a deposit to the JPROA to cover the DRB's costs prior to any such application being considered.

Background and Explanatory Notes

To be considered as an approved designer in either building or landscape, designers need to demonstrate:

- The standard of their overall design expertise is at levels generally expected of those with a tertiary degree level architectural qualification and considerable design experience; and
- That they understand the objectives of the relevant Design Guidelines and have the skills to implement these.

As a first step, designers should submit a portfolio of work plus details of qualifications and experience so the DRB can assess whether the design experience and qualifications requirements are likely to be met. The designer should then submit a preliminary design for a development at Jack's Point and materials to demonstrate their understanding of the Design Guidelines.

Approved designers are for either building or landscaping (not both). Usually the approval will be for single dwelling developments in residential neighbourhoods, i.e. will exclude multi-dwelling developments and developments in other areas of Jack's Point, eg. The Preserve or the Village.

No designer will be "Approved" until a design prepared by them has been successfully completed at Jack's Point and the DRB is satisfied that the development as completed meets the Design Guidelines and is of an acceptable quality.

## CONEBURN DEVELOPMENT CONTROLS

The Coneburn Development Controls form part of the original set of foundation documents for the development of the wider Jack's Point zone. They include principals for the development of the subdivision, individual homes and set out the agreed design review process for Jack's Point.

Implementation is largely through design guidelines.

Design Guidelines for different areas may include some or all of the materials and plants set out in the Coneburn Development Controls. For example, corrugated iron is included as a cladding material but is not one of the approved materials in the Residential Design Guidelines, although it is in the Village.

The Coneburn Development Controls can be downloaded from the Jack's Point website.

## PREFERRED ROOF CLADDING OPTIONS

Preferred metal tray roofing:

- Alpine Tray (Queenstown Roofing)
- Mini Dek - Hi Rib (Calder Stewart)
- Hi Rib (Steel & Tube)
- Eurotray (Calder Stewart)
- Euroline (Steel & Tube)
- Solar Rib. Acceptable where Photo-Voltaic Laminate (PVL) solar panels are

included. *(Note: This may be part of a staged project where the addition of the PVL solar panels is included in a later stage and all other solar power infrastructure is included in the first stage.)*

Preferred Membrane Roofing System  
 • 'Bitumat' Polyflame

## PREFERRED COLOURS FOR METAL ROOFING

- Black (Colorcote Naturals Range)
- Ironsand (Colorcote Naturals Range)
- Weathered copper (Colorcote Designer Colours Range)
- Slate (Colorcote Designer Colours Range)

## JPROA GUIDELINES FOR APPROVING GRAVEL DRIVEWAYS

The JPROA have indicated that they will approve compressed local schist gravel driveways that access onto a sealed area which is the property of the JPROA **only** where a 10m hard material threshold between the gravel and the JPROA property is included. This is due to the additional ongoing maintenance cost as a result of any gravel being transported onto JPROA property.

## CONSTRUCTION SIGNAGE & BUILDING CONTAINERS

The JPROA permits a minimum of construction signage and building containers to be onsite during construction subject to the following conditions:

- All signs must comply with the Jack's Point guidelines and be approved by the JPROA;
- Construction signs may be erected once DRB approval is issued;
- One sign only per site is permitted at any one time (excluding any legally required safety signage);
- Building containers must be in dark, recessive colours without bright logos or signwriting;
- Building containers may be moved onto the site after the building bond is paid to the JPROA;
- The building container should be located in such a way that is considerate of neighbours and minimizes its dominance; the location of building containers needs to be approved by the DRB or the JPROA before the container is moved onto the site.

## GARAGES

Main spine roads are Maori Jack Road, Orford Drive, Double Cone Road, Jacks Point Rise, Rannock Drive, McAdam Drive.

## ADDITIONAL INFORMATION

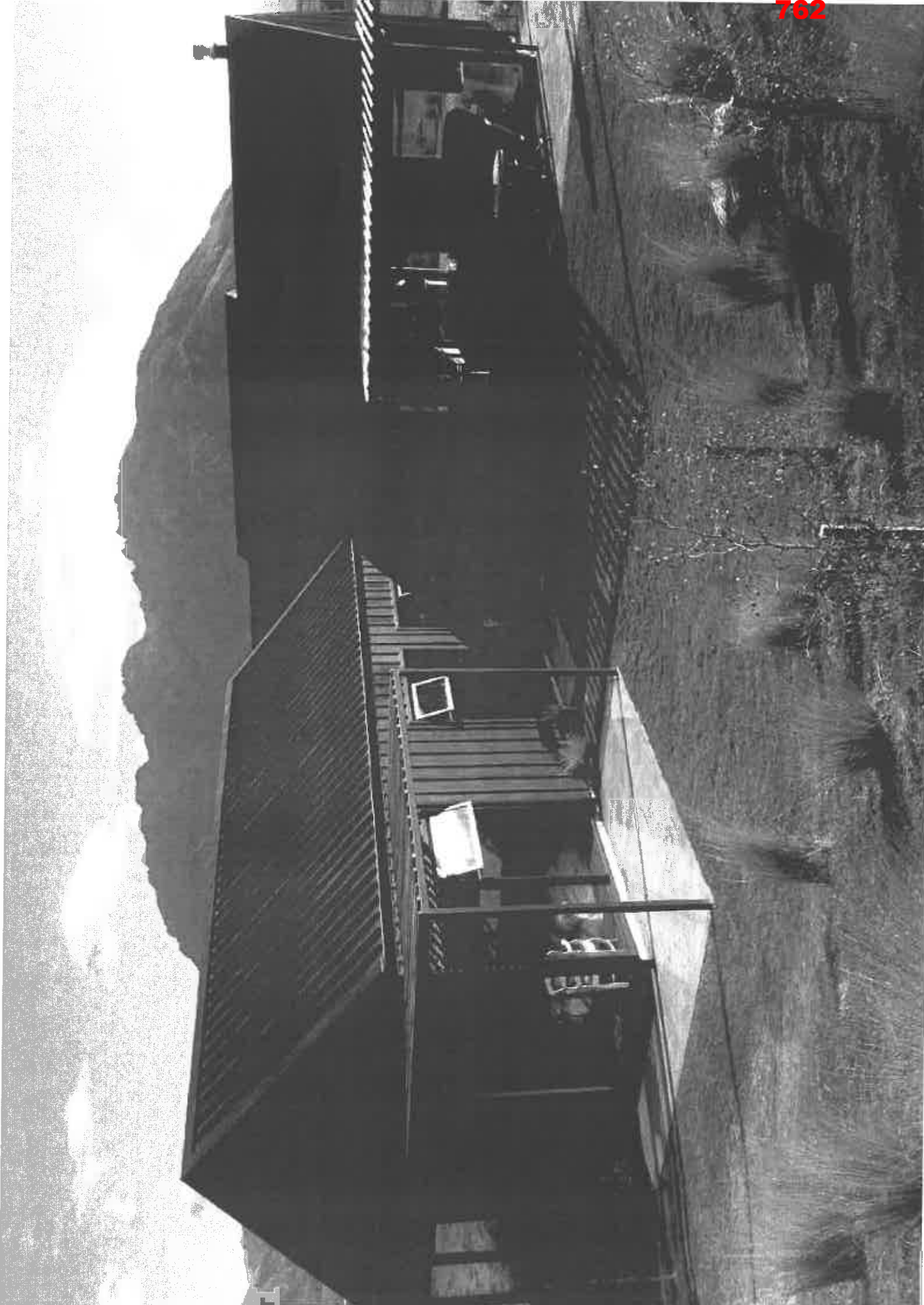
The Jack's Point website includes up to date information on designing and building your home at Jack's Point.

<http://www.jackspoint.com/society/building-your-home/>

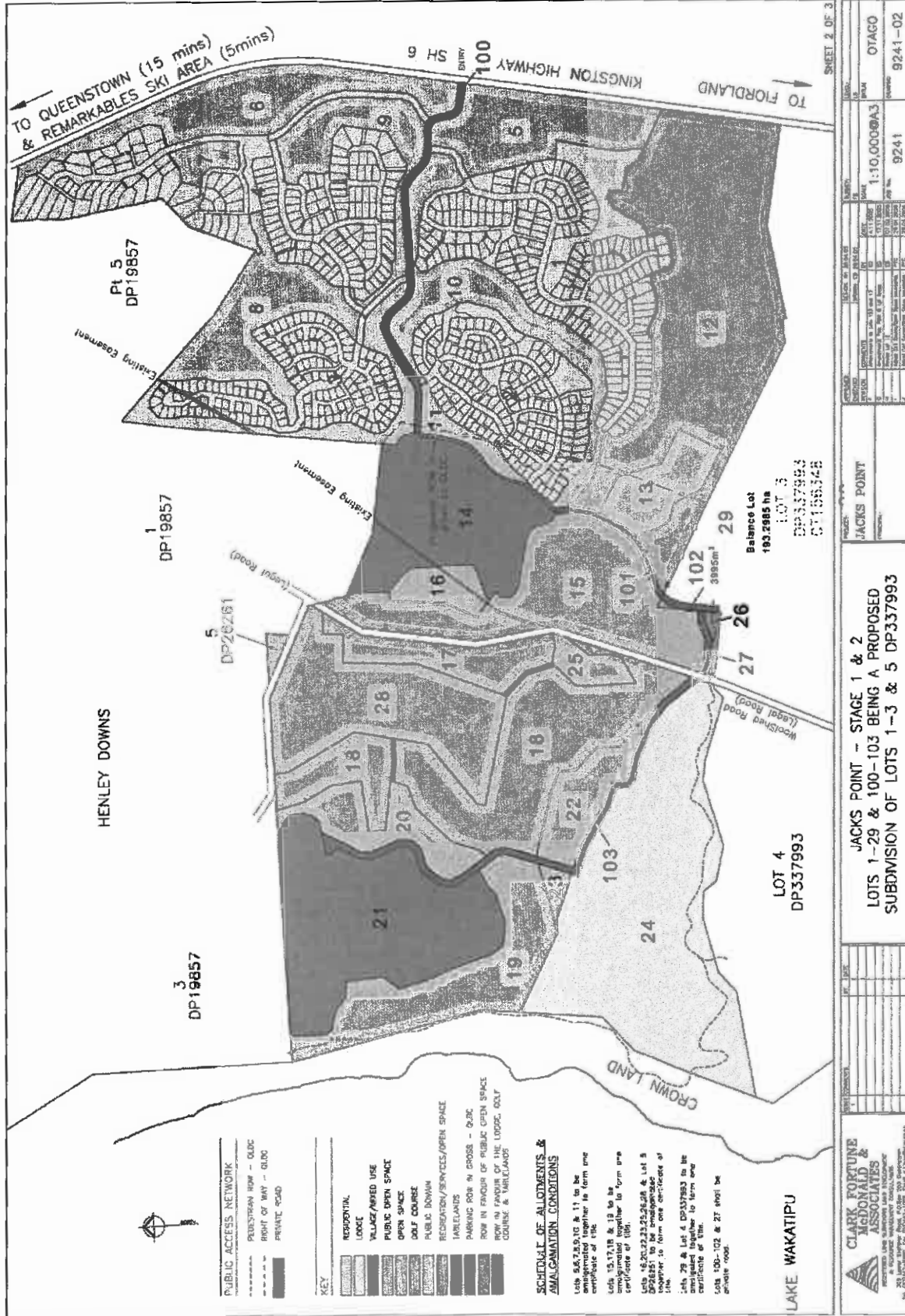
### Useful information includes:

- DRB meeting & dates completed submissions must be received
- DRB applications & booking forms
- A photo gallery of completed projects
- Local Registered & Landscape Architects
- Building & Landscaping firms based at Jack's Point
- Other construction suppliers associated with Jack's Point
- Details of DRB Deposit and Building Bonds





**SCHEDULE TWO**  
**Development Plan**



**SCHEDULE 3**  
**PRECINCT PLANS**





**KEY:**

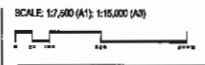
- Property boundaries (Landonline 2015)
- Proposed Scheme Boundaries
- Northern Village Precinct
- Southern Village Precinct
- Residential Precinct



V:\JP\_Jacks Point\JP\_9\_Development\CD\JP\_9\_3\_LEG-027\_Precinct Map.dwg



**DARBY PARTNERS**  
 Level 1, Steamer Wharf, Lower Beach Street  
 PO Box 1184, Queenstown 9346  
 Tel +64 3 650 2200 Fax +64 3 441 1461  
 info@darbypartners.co.nz  
 www.darbypartners.co.nz



PLAN STATUS:  
**CONTRACT PLAN**

**JACKS POINT  
 PRECINCT MAP**

DRAWN / REVIEWED: HFR/T  
 APPROVED:  
 DATE: 01.10.15

DRAWING NO:  
**JP\_9\_3\_LEG-027**

**APPENDIX 1**

**DEED – SALE OF GOLF ASSETS AND NEIGHBOURING DEVELOPERS**

**DEED – SALE OF GOLF ASSETS AND NEIGHBOURING  
DEVELOPERS**

between  
Jacks Point Residents & Owners  
Association Incorporated  
and  
Jacks Point Limited  
and  
Jacks Point Equities Limited  
and  
Jacks Point Land Limited  
and  
Jacks Point Golf Course Limited



BAIROPOTIUKI K. HEIHI & HUIARIKIHUNAHEIHI

QUEENSTOWN, DUNEDIN & CHRISTCHURCH  
NEW ZEALAND

Tel: 64 3 442 7570  
Fax: 64 3 442 8848  
E-mail: [lawyers@alclegal.com](mailto:lawyers@alclegal.com)  
PO Box 201  
Queenstown

**LAWLINK**

A MEMBER OF THE LAW SOCIETY OF NEW ZEALAND

**Deed – Sale of Golf Assets and Neighbouring Developers**

Date: 19th September

2006

**Parties**

---

1. Jacks Point Residents & Owners Association Incorporated ("the Society")
2. Jacks Point Limited ("JPL")
3. Jacks Point Equities Limited ("JPE")
4. Jacks Point Land Limited ("OwnerCo")
5. Jacks Point Golf Course Limited ("OperatorCo")

**Background**

---

- A. The Society represents landowners in Jacks Point. At the date of this deed JPL:
  - (i) owns the land out of which title(s) to the Freehold Land will issue; and
  - (ii) leases certain land under the Henley Downs Lease,
 both of which comprise the Golf Course. The Golf Course forms part of Jacks Point.
- B. It is intended that upon the issue of title(s) to the Freehold Land and the Leasehold Land (or shortly after that):
  - (i) OwnerCo will own the Freehold Land and the Leasehold Land which is part of Jacks Point; and
  - (ii) OperatorCo will operate the Golf Course pursuant to a lease and sublease from OwnerCo.
- C. It is also intended that OperatorCo will own and operate the Business.
- D. In consideration of this deed and in consideration of the Society, OwnerCo and OperatorCo entering into the Golf Encumbrances, the parties have agreed to grant each other the arrangements with regard to Neighbouring Developers set out in this deed.

**Agreement**

---

1. **Definitions and Construction**
  - Definitions**
  - 1.1 In this deed, unless the context otherwise requires:

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- "Business"** means the business undertaken by OperatorCo in respect of operating the Golf Course and by OperatorCo in respect of any golf-related business reasonably associated with the operation of the Golf Course.
- "Business Assets"** means any assets (tangible or intangible) including goodwill in respect of the Business, including OperatorCo's interest in the Freehold Land and the Leasehold Land.
- "Controlling Member"** has the meaning attributed to it in the Constitution.
- "Constitution"** means the Constitution of the Society, which is its rules for the purposes of the Incorporated Societies Act 1908.
- "Freehold Land"** means the area approximately shown on the plan attached to this deed (Lots 15, 17, 18 and 19).
- "Golf Assets"** means the Freehold Land and the Leasehold Land and the Business Assets.
- "Golf Course"** means the golf course situated on the Freehold Land and the Leasehold Land, and includes the Freehold Land and the Leasehold Land.
- "Golf Encumbrances"** means [describe the 2 encumbrances]
- "Grantor"** as to the Freehold Land and the Leasehold Land, means whomever of the following owns the Freehold Land and the Leasehold Land from time to time:
- (a) JPL; or
  - (b) OwnerCo; or
  - (c) any other company which is a subsidiary (whether directly or indirectly) of JPE; and
- as to the Business, means whomever of the following owns the Business from time to time:
- (a) OperatorCo; or
  - (b) any other company which is a subsidiary (whether directly or indirectly) of JPE; and
- as to the Shares, means whomever of the following owns the Shares from time to time:
- (a) JPE; or
  - (b) any other company which is a subsidiary (whether directly or indirectly) of JPE.



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- "Henley Downs Lease"** means:
- (a) an agreement to lease in respect of 7 holes of the Golf Course being approximately 24 hectares of land contained in Certificate of Title OT 17C/864, between Henley Downs Holdings Limited as lessor and JPL as lessee, under which the parties agree to register a memorandum of lease upon the issue of a freehold title for that land, thereby creating a leasehold title; or
  - (b) the memorandum of lease described in paragraph a, of this definition.
- "Jacks Point"** has the meaning attributed to it in the Constitution.
- "Jacks Point Zone"** means the residential and commercial development zone called the Jacks Point Special Zone established by the Queenstown Lakes District Council as a resort zone under Part 12 of the Queenstown Lakes District Plan.
- "Leasehold Land"** means:
- (a) the lessee's interest in the land described in the Henley Downs Lease; or
  - (b) the land contained in the leasehold title arising from the Henley Downs Lease.
- "Neighbouring Developer"** means any developer of Neighbouring Developments.
- "Neighbouring Developments"** means any development, other than Jacks Point, involving residential lots within the Jacks Point Zone which is being developed by a developer other than JPL or one of the subsidiaries of JPE.
- "Securities Act Exemption Information"** means the information set out in clause 6(1)(n) of the Securities Act (Jacks Point Development) Exemption Notice 2006 or any equivalent requirement to provide information pursuant to any other exemption notice in substitution for that Notice.
- "Subsidiary"** has the meaning attributed to it in the Companies Act 1993, or any equivalent definition in any Act or amendment or repeal of that Act.
- "Shares"** means all shares in the companies which own the Golf Course and/or the Business from time to time.
- "Term"** means the term described in clause 2.

**Construction**

- 1.2 In this deed, unless the context requires otherwise:
- a. References to clauses are to those named in this deed;
  - b. Headings are for convenience only and do not affect interpretation;
  - c. The singular includes plural and vice versa, and words importing any gender include the other genders;
  - d. Statute, regulation or by-law includes all statutes, regulations, or by-laws varying, consolidating or replacing them, and a reference to a statute includes all regulations or by-laws issued under that statute;
  - e. References to any party includes the successors and any permitted assigns of that party; and
  - f. A reference to "written" or "writing" includes facsimile communications.

**2. Term**

- 2.1 The term of this deed commences on the execution of this deed and expires on the earlier of the expiry date of the Henley Downs Lease or any earlier date of termination of the Henley Downs Lease.

**3. Sale to Society**

- 3.1 If, at any time during the Term, the Grantor wishes to sell any of the Golf Assets or any of the Shares (whether together, separately or partially) to the Society, the applicable Grantor will give the Securities Act Exemption Information to the Society either prior to:

- a. the applicable Grantor and the Society entering into an agreement for sale and purchase; or
- b. the Society confirming the sale and purchase;

on the basis that the Society requires the Securities Act Exemption Information prior to obtaining approval from its members to the purchase.

**4. Neighbouring Developments**

- 4.1 In consideration of the Golf Encumbrances and of the provisions of this deed, while JPL remains the Controlling Member, the Society will not admit as a member any owner of a lot in the Neighbouring Developments without the consent of JPL. The consent of JPL may be granted or refused at the absolute discretion of JPL.
- 4.2 If JPL, by notice in writing to the Society, requires the Society to admit lot owners in Neighbouring Developments as members of the Society:
- a. The Society will immediately admit those lot owners as members of the Society and on such terms as JPL gives notice to the Society, but those terms

AP J.P.

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will not be more favourable than those of members whose lots are within Jacks Point; and

- b. If the Neighbouring Developer or any lot owner within any of the Neighbouring Developments is paying any sum of money or other consideration, in consideration of the admission of its lot owners as members of the Society and/or in consideration of the acquisition of golfing rights in respect of the Golf Course, then JPL will retain any such sum or consideration. If such sum or consideration is paid to the Society, the Society will immediately pay it to JPL.

## 5. Notices

- 5.1 a. Any notice or other communication ("notice") given under this deed must be in writing.
- b. It may be served personally or sent to any of the relevant party's communication points listed below. Notwithstanding anything else in this clause, if notices are given by any method other than email, then a copy of the notice must also be sent by email to the appropriate email address listed below.
- c. Each party will notify the other in writing of any changes.

Party: Jacks Point Residents & Owners Association Incorporated  
 Address: C/- Anderson Lloyd Caudwell, 17 Marine Parade, Queenstown,  
 Attention: Warwick Goldsmith & Bryan Henderson  
 and by fax: 0-3-450-0799  
 and by email to both of the following:  
[bryan.henderson@alclegal.com](mailto:bryan.henderson@alclegal.com)  
[warwick.goldsmith@alclegal.com](mailto:warwick.goldsmith@alclegal.com)

Party: Jacks Point Limited  
 Address: C/- Anderson Lloyd Caudwell, 17 Marine Parade, Queenstown,  
 Attention: Warwick Goldsmith & Bryan Henderson  
 and by fax: 0-3-450-0799  
 and by email to both of the following:  
[bryan.henderson@alclegal.com](mailto:bryan.henderson@alclegal.com)  
[warwick.goldsmith@alclegal.com](mailto:warwick.goldsmith@alclegal.com)

Party: Jacks Point Equities Limited  
 Address: C/- Anderson Lloyd Caudwell, 17 Marine Parade, Queenstown,  
 Attention: Warwick Goldsmith & Bryan Henderson  
 and by fax: 0-3-450-0799  
 and by email to both of the following:  
[bryan.henderson@alclegal.com](mailto:bryan.henderson@alclegal.com)  
[warwick.goldsmith@alclegal.com](mailto:warwick.goldsmith@alclegal.com)

Party: Jacks Point Land Limited  
 Address: C/- Anderson Lloyd Caudwell, 17 Marine Parade, Queenstown,  
 Attention: Warwick Goldsmith & Bryan Henderson  
 and by fax: 0-3-450-0799  
 and by email to both of the following:

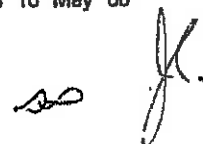
bryan.henderson@alclegal.com  
warwick.goldsmith@alclegal.com

Party: Jacks Point Golf Course Limited  
Address: C/- Anderson Lloyd Caudwell, 17 Marine Parade, Queenstown,  
Attention: Warwick Goldsmith & Bryan Henderson  
and by fax: 0-3-450-0799  
and by email to both of the following:  
bryan.henderson@alclegal.com  
warwick.goldsmith@alclegal.com

- 5.2 Notices are deemed served at the following times:
- a. when given personally, upon delivery;
  - b. when sent by post (other than airmail) or document exchange, 3 business days after posting;
  - c. when sent by airmail outside New Zealand, 5 business days after posting;
  - d. when sent by facsimile or email upon receipt of the correct answerback or receipt code.
- 5.3 Any notice which has been served on a Saturday, Sunday or public holiday is deemed to be served on the first business day after that day.
- 5.4 A notice may be given by an authorised officer, employee or agent.
- 5.5
- a. Notice may be given personally to a director, employee or agent of the party at that party's address or to a person who appears to be in charge at the time of delivery or according to sections 387 to section 390 (inclusive) of the Companies Act 1993.
  - b. If the party is a natural person, partnership or association, the notice may be given to that person or any partner or responsible person. If they refuse to accept the notice, it may be brought to their attention and left in a place accessible to them.
- 5.6 Time is of the essence.
6. Further Assurance
- 6.1 Each party will with due diligence sign all necessary deeds and documents and do everything that is reasonably required to carry out the terms of this deed.
- 6.2 If the Grantor is a subsidiary of JPE (whether directly or indirectly), JPE shall do all things necessary to procure that the Grantor complies with its obligations under this deed.
- 6.3 The parties agree that the obligations of the Grantor under this deed are joint and several.

## **7. Dispute Resolution**

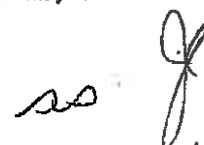
- 7.1** If a party has any dispute with the other party in connection with this deed:
- a. That party will promptly give full written particulars of the dispute to the other.
  - b. The parties will promptly meet together and in good faith try and resolve the dispute.
- 7.2** If the dispute is not resolved within 7 days of written particulars being given (or any longer period agreed to by the parties) the dispute will be referred to mediation.
- 7.3** A party must use the mediation procedure to resolve a dispute before commencing arbitration or legal proceedings.
- 7.4** The mediation procedure is:
- a. The parties will appoint a mediator and if they fail to agree the mediator will be appointed by the president of the New Zealand Law Society or the president's nominee.
  - b. The parties must co-operate with the mediator in an effort to resolve the dispute.
  - c. If the dispute is settled, the parties must sign a copy of the terms of the settlement.
  - d. If the dispute is not resolved within 14 days after the mediator has been appointed, or within any extended time that the parties agree to in writing, the mediation must cease.
  - e. Each party must pay a half share of the costs of the mediator's fee and costs including travel, room hire, refreshments etc.
- 7.5** The terms of settlement are binding on the parties and override the terms of the deed if there is any conflict.
- 7.6** The terms of settlement may be tendered in evidence in any mediation or legal proceedings.
- 7.7** The parties agree that written statements given to the mediator or to one another, and any discussions between the parties or between the parties and the mediator during the mediation period are not admissible in any arbitration or legal proceedings.
- 7.8** Either party may commence arbitration proceedings when mediation ceases under clause 7.4d.
- 7.9** If the dispute is referred to arbitration:
- a. The arbitration will be conducted by one arbitrator appointed by the parties.
  - b. If the parties cannot agree on an arbitrator within 14 days the appointment will be made by the president of the New Zealand Law Society or the president's nominee.





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- c. The arbitration will be conducted in accordance with the Rules in Schedules 1 and 2 of the Arbitration Act 1996.
- 7.10 Neither party will unreasonably delay the dispute resolution procedures in this clause 7.
- 7.11 This clause 7 does not apply to:
- a. Any dispute arising in connection with any attempted renegotiation of this deed; or
  - b. An application by either party for urgent interlocutory relief.
- 7.12 Pending resolution of any dispute the parties will perform this deed in all respects including performance of the matter which is the subject of dispute.
- 8. Waiver**
- 8.1 Any failure by a party to enforce any clause of this deed, or any forbearance, delay or indulgence granted by that party to any other party will not be construed as a waiver of the first party's rights under this deed.
- 9. General**
- 9.1 The warranties, undertakings, agreements and indemnities given under this deed or pursuant to this deed shall not merge on settlement of any of the transactions contemplated by this deed but shall remain enforceable to the fullest extent notwithstanding any rule of law to the contrary.
- 9.2 If any part of this deed is held by any Court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination shall not impair the enforceability of the remaining parts of this deed and they shall remain in full force and effect.
- 9.3 This deed constitutes the entire agreement between the parties on the subject matter of this agreement and supersedes and extinguishes all earlier negotiations, understandings and agreements, whether oral or written between the parties relating to the subject matter of this deed.
- 9.4 JPL and its successors or assigns may in its absolute discretion without the consent of the other parties to this deed, assign all or any of its rights and transfer its obligations under this deed to any other person.



**Signed by the parties**

Signed by Jacks Point Residents & Owners Association Incorporated by affixing its common seal in the presence of its authorised attorney Joanna May Schmelz

*Joanna May Schmelz*  
Director's signature

In the presence of: Sandra

Sarah Louise Swale  
Legal Executive  
Queenstown

Signed by Jacks Point Limited by: its authorised attorney Joanna May Schmelz

*Joanna May Schmelz*  
Director's signature

In the presence of: Sandra

\_\_\_\_\_  
Director's signature

Sarah Louise Swale  
Legal Executive  
Queenstown

\_\_\_\_\_  
Director's full name

\_\_\_\_\_  
Director's full name

Signed by Jacks Point Equities Limited by: its authorised attorney Joanna May Schmelz

*Joanna May Schmelz*  
Director's signature

In the presence of: Sandra

\_\_\_\_\_  
Director's signature

Sarah Louise Swale  
Legal Executive  
Queenstown

\_\_\_\_\_  
Director's full name

\_\_\_\_\_  
Director's full name

Signed by Jacks Point Land Limited by: its authorised attorney Joanna May Schmelz

*Joanna May Schmelz*  
Director's signature

In the presence of: Sandra

\_\_\_\_\_  
Director's signature

Sarah Louise Swale  
Legal Executive  
Queenstown

\_\_\_\_\_  
Director's full name

\_\_\_\_\_  
Director's full name

Signed by Jacks Point Golf Course

Limited by: its duly authorized attorney

Joanna May Schmelz

*[Handwritten signature]*  
\_\_\_\_\_  
Director's signature

\_\_\_\_\_  
Director's full name

In the presence of: *[Handwritten signature]*

\_\_\_\_\_  
Director's signature

Sarah Louise Swale  
Legal Executive  
Queenstown

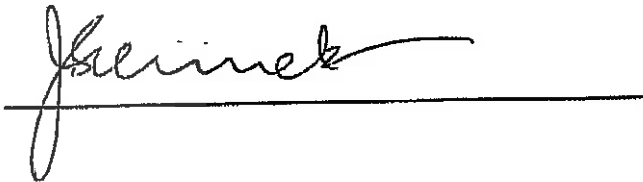
\_\_\_\_\_  
Director's full name

**CERTIFICATE OF NON-REVOCATION OF POWER OF ATTORNEY**

I, **Joanna May Schmelz** of Queenstown, Administration Manager hereby certify:

1. That by Deed dated the 27th day of June 2006 ("the Deed"), a copy of which was deposited in the Otago Land Registry Office, under number 6929597.2 I was appointed the lawful attorney of **JACKS POINT RESIDENTS & OWNERS ASSOCIATION INCORPORATED** ("the Society"), on the terms and subject to the conditions set out in the Deed.
2. That at the date hereof I have not received any notice or information of the revocation of that appointment by the commencement of liquidation of the Society, or otherwise.

Signed by **Joanna May Schmelz**



\_\_\_\_\_

at Queenstown this 19th day of September 2006

Signed in my presence:



\_\_\_\_\_

Signature of Witness

*Witness to complete in BLOCK letters (unless legibly printed)*

Witness name:

Occupation: Sarah Louise Swale  
Legal Executive  
Queenstown

Address:

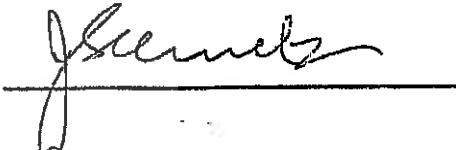
## CERTIFICATE OF NON-REVOCAION OF POWER OF ATTORNEY

I, Joanna May Schmelz of Queenstown, Administration Manager HEREBY CERTIFY:

1. THAT by Deed dated the 28th day of April 2006 ("the Deed"), a copy of which was deposited in the Otago Land Registry Office, under number 6848087.6 I was appointed the lawful attorney of JACKS POINT LIMITED ("the Company"), on the terms and subject to the conditions set out in the Deed.

2. THAT at the date hereof I have not received any notice or information of the revocation of that appointment by the commencement of liquidation of the Company, or otherwise.

SIGNED by Joanna May Schmelz



at Queenstown this 19th day of September 2006

SIGNED in my presence:

  
Signature of Witness

Witness to complete in BLOCK letters (unless legibly printed)

Witness name:

Occupation: Sarah Louise Swale  
Legal Executive  
Queenstown

Address:



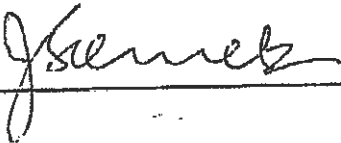
**CERTIFICATE OF NON-REVOCATION OF POWER OF ATTORNEY**

I, **Joanna May Schmelz** of Queenstown, Administration Manager **HEREBY CERTIFY:**

1. THAT by Deed dated the 28th day of April 2006 ("the Deed"), a copy of which was deposited in the Otago Land Registry Office, under number 6848087.2 I was appointed the lawful attorney of **JACKS POINT EQUITIES LIMITED** ("the Company"), on the terms and subject to the conditions set out in the Deed.

2. THAT at the date hereof I have not received any notice or information of the revocation of that appointment by the commencement of liquidation of the Company, or otherwise.

**SIGNED by Joanna May Schmelz**

  
\_\_\_\_\_

at Queenstown this 19th day of September 2006

**SIGNED in my presence:**

  
\_\_\_\_\_  
Signature of Witness

Witness to complete in **BLOCK** letters (unless legibly printed)

Witness name:

Occupation: Sarah Louise Swale  
Legal Executive  
Queenstown

Address:

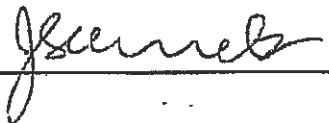
**CERTIFICATE OF NON-REVOCATION OF POWER OF ATTORNEY**

I, **Joanna May Schmelz** of Queenstown, Administration Manager **HEREBY CERTIFY:**

1. THAT by Deed dated the 28th day of April 2006 ("the Deed"), a copy of which was deposited in the Otago Land Registry Office, under number 6848087.10 I was appointed the lawful attorney of **JACKS POINT LAND LIMITED** ("the Company"), on the terms and subject to the conditions set out in the Deed.

2. THAT at the date hereof I have not received any notice or information of the revocation of that appointment by the commencement of liquidation of the Company, or otherwise.

SIGNED by **Joanna May Schmelz**

  
\_\_\_\_\_

at Queenstown this 19th day of September 2006

SIGNED in my presence:

  
\_\_\_\_\_  
Signature of Witness

Witness to complete in BLOCK letters (unless legibly printed)

Witness name:

Occupation: **Sarah Louise Swale  
Legal Executive  
Queenstown**

Address:

**CERTIFICATE OF NON-REVOCATION OF POWER OF ATTORNEY**

I, **Joanna May Schmelz** of Queenstown, Administration Manager **HEREBY CERTIFY:**

1. THAT by Deed dated the 28th day of April 2006 ("the Deed"), a copy of which was deposited in the Otago Land Registry Office, under number 8848087.12 I was appointed the lawful attorney of **JACKS POINT GOLF COURSE LIMITED** ("the Company"), on the terms and subject to the conditions set out in the Deed.

2. THAT at the date hereof I have not received any notice or information of the revocation of that appointment by the commencement of liquidation of the Company, or otherwise.

SIGNED by **Joanna May Schmelz**

  
\_\_\_\_\_

at Queenstown this 19th day of September 2006

SIGNED in my presence:

  
\_\_\_\_\_  
Signature of Witness

Witness to complete in BLOCK letters (unless legibly printed)

Witness name:

Occupation: **Sarah Louise Swale  
Legal Executive  
Queenstown**

Address:

**APPENDIX 2**  
**GOLF COURSE ENCUMBRANCES**

Approved by Registrar-General of Land under No. 2002/6117  
**Annexure Schedule 1**



Encumbrance instrument

Dated

Page 1 of 13 pages

**Terms** *(Continue in additional Annexure Schedule(s) if required.)*

1 Length of term
2 Payment date(s)
3 Rate(s) of interest
4 Event(s) in which the sum, annuity, or rentcharge becomes payable
5 Events(s) in which the sum, annuity, or rentcharge ceases to be payable

**Covenants and conditions** *(Continue in additional Annexure Schedule(s) if required.)*

**Continued on Annexure Schedule 2**

**Modification of statutory provisions** *(Continue in additional Annexure Schedule(s) if required.)*

**Continued on Annexure Schedule 2**

**All signing parties and either their witnesses or solicitors must sign or initial in this box.**



Approved by Registrar-General of Land under No. 2002/5032

**Annexure Schedule**Insert type of instrument  
"Mortgage", "Transfer", "Lease" etc

Encumbrance

Dated

Page 2 of 13 Pages



(Continue in additional Annexure Schedule, if required.)

**Annexure Schedule 2****Continuation of Nature of Security, Covenants and Conditions  
and Modification of Statutory Provisions****BACKGROUND**

- A. The Encumbrancer is registered as proprietor of the fee simple estate in the Freehold Land which is located within Jacks Point.
- B. The Encumbrancee has been established to provide for and administer a general scheme applicable to and for the benefit of the Jacks Point Land and each of the lots subdivided from the Jacks Point Land whose registered proprietors must be members of the Encumbrancee.
- C. The Leasehold Owner will be the registered proprietor of the lessee's interest in the Leasehold Land (which is also located within Jacks Point).
- D. The Golf Course, as part of the development of Jacks Point, will be operated on the Freehold Land and the Leasehold Land by OperatorCo pursuant to:
- i. a registered lease of the Freehold Land between the Encumbrancer (as lessor) and OperatorCo (as lessee); and
  - ii. a registered sublease of the Leasehold Land between the Leasehold Owner (as lessor) and OperatorCo (as lessee).
- E. Society Members will have certain access rights to the Golf Course pursuant to:
- i. this encumbrance in respect of the Encumbrancer's interest as registered proprietor of the Freehold Land ("the OwnerCo Freehold Encumbrance");
  - ii. an encumbrance instrument between the Encumbrancee (as encumbrancee) and the Leasehold Owner (as encumbrancer) in respect of the Leasehold Owner's interest as lessee of the Leasehold Land under lease number \_\_\_\_\_ ("the OwnerCo Leasehold Encumbrance");
  - iii. an encumbrance instrument between the Encumbrancee (as encumbrancee) and OperatorCo (as encumbrancer) in respect of the OperatorCo's interest as lessee of the Freehold Land under lease number \_\_\_\_\_ and as sublessee of the Leasehold Land under lease number \_\_\_\_\_ ("the OperatorCo Encumbrance").
- F. The existence and ongoing maintenance of the Golf Course is an integral part of Jacks Point. The Encumbrancee, by paying the levies in the OperatorCo Encumbrance, provides benefits to

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REF: 7025 - AUCKLAND DISTRICT LAW SOCIETY

Approved by Registrar-General of Land under No. 2002/5032

**Annexure Schedule**Insert type of instrument  
"Mortgage", "Transfer", "Lease" etc

Encumbrance

Dated

Page 3 of 13 Pages

*(Continue in additional Annexure Schedule, if required.)*

the Society Members being the right to use the Golf Course and additional value in each Society Member's property from being in a development which contains a well maintained Golf Course.

- G. The Encumbrancer wishes to encumber the Freehold Land for the benefit of the Encumbrancee on the terms and conditions contained in this OwnerCo Freehold Encumbrance.

**OPERATIVE PARTS****1. Interpretation**

- 1.1 In this OwnerCo Freehold Encumbrance unless the context otherwise requires:

"**Business**" means the business undertaken by OperatorCo in respect of operating the Golf Course and by OperatorCo in respect of any golf related business reasonably associated with the operation of the Golf Course.

"**Club**" means Jacks Point Golf Club Incorporated, or any other club or incorporated body appointed under clause 5.

"**Constitution**" means the constitution of the Encumbrancee, which is its rules for the purposes of the Incorporated Societies Act 1908.

"**Encumbered Golf Course**" means that part of the Golf Course which is located on the Freehold Land.

"**Encumbrancee**" means Jacks Point Residents & Owners Association Incorporated.

"**Encumbrancer**" means the registered proprietor of the Freehold Land from time to time.

"**Freehold Land**" means the land contained in fee simple certificate of title OT262755.

"**Golf Assets**" means:

- a. the Freehold Land; and
- b. the Leasehold Land; and
- c. any assets (tangible or intangible) including goodwill in respect of the Business, including OperatorCo's interest in the Freehold Land and the Leasehold Land.

"**Golf Course**" means the golf course located on the Freehold Land and the Leasehold Land, and includes the Freehold Land and the Leasehold Land.

"**Henley Downs Lease**" means:

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**Annexure Schedule**Insert type of instrument  
"Mortgage", "Transfer", "Lease" etc

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*(Continue in additional Annexure Schedule, if required.)*

a. an agreement to lease in respect of approximately 24 hectares of land contained in Certificate of Title OT 17C/864, between Henley Downs Holdings Limited as lessor and Jacks Point Land Limited as lessee, under which the parties agree to register a memorandum of lease upon the issue of a freehold title for that land (to be OT277414), thereby creating a leasehold title; or

b. the memorandum of lease described in paragraph a, of this definition.

"Jacks Point" has the meaning attributed to it in the Constitution.

"Jacks Point Land" means the land formerly contained in Lot 1, DP337993, certificate of title OT156346 and Lots 2 and 5, DP337993 and Lot 5, DP26261, certificate of title OT156347, except land contained in Lot 13 DP364700, certificate of title OT 262753.

"Jacks Point Zone" has the meaning attributed to it in the Constitution.

"Leasehold Land" means the land which is the subject of the Henley Downs Lease and contained in leasehold certificate of title OT \_\_\_\_\_.

"Leasehold Owner" means the registered proprietor of the lessee's interest in the Leasehold Land from time to time.

"LTA" means the Land Transfer Act 1952.

"Opening Date" means 31 December 2007 or such earlier date on which the Golf Course is declared open for play by OperatorCo.

"OperatorCo" means Jacks Point Golf Course Limited and its successors and assigns.

"OperatorCo Encumbrance" means the encumbrance instrument referred to in Background paragraph E.iii.

"OwnerCo Freehold Encumbrance" means this encumbrance instrument together with all annexure schedules.

"OwnerCo Leasehold Encumbrance" means the encumbrance instrument referred to in Background paragraph E.ii.

"PLA" means the Property Law Act 1952.

"Rent Charge" means the charge described in clause 2 of this OwnerCo Freehold Encumbrance.

"Society Member" means each Member (as defined in the Constitution) of the Encumbrancee.

"Shares" means all shares in the companies which own the Golf Course and/or the Business from time to time.

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**Annexure Schedule**Insert type of instrument  
"Mortgage", "Transfer", "Lease" etc

Encumbrance

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*(Continue in additional Annexure Schedule, if required.)***"Term"** means the term described in clause 2.1.

## 1.2 For the avoidance of doubt:

- a. Words importing the singular number include the plural and vice versa.
- b. A covenant to do something is also a covenant to permit or cause that thing to be done and a covenant not to do something is also a covenant not to permit or cause that thing to be done.
- c. References to the parties are references to the Encumbrancee and Encumbrancer.
- d. This OwnerCo Freehold Encumbrance binds or benefits the parties and their heirs, executors, successors and assigns in perpetuity of the Freehold Land.
- e. References to clauses are to those named in this OwnerCo Freehold Encumbrance.
- f. Headings are convenience only and do not affect interpretation.
- g. Words importing any gender include the other genders.
- h. Statute, regulation or by-law includes all statutes, regulations or by-laws varying, consolidating or replacing them, and a reference to a statute includes all regulations or by-laws issued under that statute.
- i. A reference to "written" or "writing" includes facsimile communications.

2. **Term and Rent Charge**

## 2.1 The term of this OwnerCo Freehold Encumbrance commences on the Opening Date and expires on the earlier of:

- a. The expiry date of the Henley Downs Lease or any earlier date of termination of the Henley Downs Lease; and
- b. The date on which any sale of the Golf Assets or the Shares to the Encumbrancee settles.

2.2 Subject to clause 2.4, the Encumbrancer encumbers the Freehold Land for the benefit of the Encumbrancee for the Term, with an annual rent charge ("the **Rent Charge**") of \$1.00 to be paid on each anniversary of the Opening Date.

## 2.3 If during the year preceding the Opening Date and each successive year after that there has been no breach of the covenants and obligations of the Encumbrancer contained in this OwnerCo Freehold Encumbrance, the Rent Charge will be deemed to have been paid.

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**Annexure Schedule**Insert type of instrument  
"Mortgage", "Transfer", "Lease" etc

Encumbrance

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*(Continue in additional Annexure Schedule, if required.)*

- 2.4 The Rent Charge will determine immediately and the Encumbrancer will be entitled to a release of this OwnerCo Freehold Encumbrance if all covenants expressed in this OwnerCo Freehold Encumbrance become obsolete or no longer enforceable or the Term has expired.
- 3. Covenant - Access to Golf Course**
- 3.1 The Encumbrancer covenants with the Encumbrancee that:
- a. All Society Members have the right to use the Encumbered Golf Course in terms of this clause 3.
  - b. If, for any reason (except when clause 6 applies), OperatorCo is unable or unwilling to provide to Society Members the access to the Encumbered Golf Course described in the OperatorCo Encumbrance, OwnerCo will either (at its option):
    - i. Enter an encumbrance with the Encumbrancee on terms consistent with the OperatorCo Encumbrance in respect of the levy payable by the Encumbrancee and granting the access right to the Society Members, both as described in the OperatorCo Encumbrance; or
    - ii. Cause another entity which has the right to grant such access rights to enter an encumbrance with the Encumbrancee on terms consistent with the OperatorCo Encumbrance in respect of the levy payable by the Encumbrancee and granting the access rights to the Society Members both as described in the OperatorCo Encumbrance.
- 3.2 The Encumbrancee acknowledges that owners of the 18 homesites within the Jacks Point Zone known as Henley Downs, neighbouring Jacks Point Land, will have the same rights to use the Encumbered Golf Course as the Society Members who own the 18 homesites within Jacks Point to have the right to use the Encumbered Golf Course. It is acknowledged that Society Members who own a homesite within Jacks Point, by paying a levy to the Encumbrancee which pays levies under the OperatorCo Encumbrance, have the right of either being a member of the Club or a Green Fees Player as provided in the OperatorCo Encumbrance.
- 4. Further Assurance**
- 4.1 Each party will with due diligence sign all necessary deeds and documents and do everything that is reasonably required to carry out the terms of this OwnerCo Freehold Encumbrance.
- 5. Covenant - New Club**
- 5.1 The Encumbrancee acknowledges that OperatorCo will grant access rights in respect of the Encumbered Golf Course to the Club on an annual or other basis. If, for any reason, OperatorCo does not grant such access rights to the incumbent Club at any time, the Encumbrancer covenants with the Encumbrancee that the Encumbrancer will cause such access rights to be granted to another incorporated body or club for the purposes of operating a golf club on the Encumbered Golf Course.

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**Annexure Schedule**Insert type of instrument  
"Mortgage", "Transfer", "Lease" etc

Encumbrance

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*(Continue in additional Annexure Schedule, if required.)***6. Default**

6.1 All the covenants expressed in this OwnerCo Freehold Encumbrance will be deemed to have become obsolete and no longer enforceable for the purposes of clause 2.4 after the expiry of 90 days if the Encumbrancer gives notice in writing to the Encumbrancee that the Encumbrancee:

- a. has not duly paid all payments owing to OperatorCo under the OperatorCo Encumbrance 14 days after the Encumbrancee receives written notice of OperatorCo demanding payment of them, and the parties to the OperatorCo Encumbrance have exhausted the arbitration procedure described in the OperatorCo Encumbrance; or
- b. has not fulfilled any of its obligations under this OwnerCo Freehold Encumbrance, the OwnerCo Leasehold Encumbrance or other obligations under the OperatorCo Encumbrance; and:
  - i. the default cannot be remedied; or
  - ii. the default can be remedied but has not been 21 days after the Encumbrancee receives written notice of the default, and the parties have exhausted the procedure described in clause 8 of this Encumbrance, or if applicable, the procedure described in the dispute resolution clause of the OwnerCo Leasehold Encumbrance or the OperatorCo Encumbrance, provided that this OwnerCo Freehold Encumbrance will not be deemed to have become obsolete and no longer enforceable for the purposes of clause 2.4 if the default is remedied before the Encumbrancee receives notice to that effect; or
- c. becomes liable to be or is placed in liquidation; or
- d. cannot pay its debts when they fall due.

**7. Liability**

- 7.1 Subject to clause 2 this OwnerCo Freehold Encumbrance binds the Encumbrancer's successors in title so that contemporaneously with the acquisition of any interest in the Freehold Land all such successors in title must comply with the covenants of this OwnerCo Freehold Encumbrance.
- 7.2 The Encumbrancer will do all things necessary to ensure that any invitees of the Encumbrancer on the Freehold Land and any lessees or occupiers of the Freehold Land comply with the provisions of this OwnerCo Freehold Encumbrance.

**8. Dispute Resolution**

- 8.1 If a party has any dispute with the other party in connection with this OwnerCo Freehold Encumbrance:

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**Annexure Schedule**Insert type of instrument  
"Mortgage", "Transfer", "Lease" etc

Encumbrance

Dated

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*(Continue in additional Annexure Schedule, if required.)*

- a. That party will promptly give full written particulars of the dispute to the others.
- b. The parties will promptly meet together and in good faith try and resolve the dispute.
- 8.2 If the dispute is not resolved within 7 days of written particulars being given (or any longer period agreed to by the parties) the dispute will be referred to mediation.
- 8.3 A party must use the mediation procedure to resolve a dispute before commencing arbitration or legal proceedings.
- 8.4 The mediation procedure is:
- a. The parties will appoint a mediator and if they fail to agree the mediator will be appointed by the president of the New Zealand Law Society or the president's nominee.
- b. The parties must co-operate with the mediator in an effort to resolve the dispute.
- c. If the dispute is settled, the parties must sign a copy of the terms of the settlement.
- d. If the dispute is not resolved within 14 days after the mediator has been appointed, or within any extended time that the parties agree to in writing, the mediation must cease.
- e. Each party must pay a half share of the costs of the mediator's fee and costs including travel, room hire, refreshments etc.
- 8.5 The terms of settlement are binding on the parties and override the terms of this OwnerCo Freehold Encumbrance if there is any conflict.
- 8.6 The terms of settlement may be tendered in evidence in any mediation or legal proceedings.
- 8.7 The parties agree that written statements given to the mediator or to one another, and any discussions between the parties or between the parties and the mediator during the mediation period are not admissible by the recipient in any arbitration or legal proceedings.
- 8.8 Either party may commence arbitration proceedings when mediation ceases under clause 8.4d.
- 8.9 If the dispute is referred to arbitration:
- a. The arbitration will be conducted by one arbitrator appointed by the parties.
- b. If the parties cannot agree on an arbitrator within 14 days the appointment will be made by the president of the New Zealand Law Society or the president's nominee.
- c. The arbitration will be conducted in accordance with the Rules in Schedules 1 and 2 of the Arbitration Act 1996.
- 8.10 Neither party will unreasonably delay the dispute resolution procedures in this clause 8.

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**Annexure Schedule**Insert type of instrument  
"Mortgage", "Transfer", "Lease" etc

Encumbrance

Dated

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*(Continue in additional Annexure Schedule, if required.)*

- 8.11 This clause 8 does not apply to:
- Any dispute arising in connection with any attempted renegotiation of this OwnerCo Freehold Encumbrance; or
  - An application by either party for urgent interlocutory relief.
- 8.12 Pending resolution of any dispute the parties will perform this OwnerCo Freehold Encumbrance in all respects including the performance of the matter which is the subject of dispute.
- 9. Modification of the Statutory Provisions**
- 9.1 Section 104 of the PLA applies to this OwnerCo Freehold Encumbrance but that otherwise (and without prejudice to the Encumbrancee's rights of action at common law as a rent-chargee):
- the Encumbrancee is entitled to none of the powers and remedies given to encumbrancees by the LTA and the PLA;
  - no covenants on the part of the Encumbrancers and their successor in titles are implied in this OwnerCo Freehold Encumbrance other than the covenants for further assurance implied by section 154 of the LTA.
- 9.2 The Encumbrancee consents to the registration of any of the following instruments executed by the Encumbrancer in respect of the Freehold Land and/or the Leasehold Land:
- The variation of a mortgage instrument or priority of mortgages (sections 102 (4) and 103(3) LTA);
  - The creation, variation or surrender of an easement (section 90E (3) LTA);
  - The registration of a lease, a lease variation instrument or the surrender of a lease (sections 115 (4), 116 (7) and 120 LTA);
  - The creation, variation or surrender of a land covenant; and
  - The disposal of a licence or shares to which the licence relates (section 121 I (1) LTA),
- and this consent will be deemed to be the consent of the mortgagee (which term includes encumbrance) as specified in the LTA to the registration of a particular instrument specified in clauses b to e inclusive above.
- 9.3 If it is determined that further written consent is required from the Encumbrancee in respect of the matters provided for under clause 9.2 (rather than deemed consent), then the Encumbrancee will immediately, at the request of the Encumbrancer, give that written consent.

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REF: 7025 - AUCKLAND DISTRICT LAW SOCIETY

Approved by Registrar-General of Land under No. 2002/5032

**Annexure Schedule**Insert type of instrument  
"Mortgage", "Transfer", "Lease" etc

Encumbrance Dated [ ] Page 10 of 13 Pages

*(Continue in additional Annexure Schedule, if required.)*

- 9.4 The Encumbrancer must give 7 days prior notice in writing to the Encumbrancee if it wishes to lodge any instruments to which clauses 9.2b to e apply at Land Information New Zealand for registration. If:
- the Encumbrancee does not object to that lodgement within 7 days of receiving notice by providing the Encumbrancer with full written details of the Encumbrancee's reasons for doing so; or
  - the arbitrator referred to under clause 9.5 rules that the instruments specified in the Encumbrancer's notice may be lodged,
- then the Encumbrancer shall be entitled to lodge the instruments specified in the Encumbrancer's notice.
- 9.5 If within 7 days of the Encumbrancer giving notice under clause 9.4, the Encumbrancee objects to the lodgement of the instruments specified in the Encumbrancer's notice by providing the Encumbrancer with full written details of the Encumbrancee's reasons for doing so then:
- The parties will promptly meet together and in good faith try and resolve the dispute;
  - If the dispute is not resolved within 7 days of the written objection being given (or any longer period agreed to by the parties) the dispute will be referred to arbitration;
  - The arbitration will be conducted by one arbitrator appointed by the parties involved;
  - If the parties cannot agree on an arbitrator within 7 days the appointment will be made by the President of the New Zealand Law Society or the President's nominee;
  - The arbitration will be conducted in accordance with the Rules in Schedules 1 and 2 of the Arbitration Act 1996;
  - No party will unreasonably delay the dispute resolution procedures in this clause;
  - This clause does not apply to an application by any party for urgent interlocutory relief.
- 9.6 Without limiting clause 9.2, the Encumbrancer must not lodge any instruments to which clauses 9.2b to e apply if the Encumbrancee objects to the lodgement of those instruments by providing the Encumbrancer with full written details of the Encumbrancee's reasons for doing so and the arbitrator referred to under clause 9.5 has not ruled that those instruments may be lodged.
10. **Waiver**
- 10.1 Any failure by a party to enforce any clause of this OwnerCo Freehold Encumbrance, or any forbearance, delay or indulgence granted by that party to any other party will not be construed as a waiver of the first party's rights under this OwnerCo Freehold Encumbrance.

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**Annexure Schedule**

Insert type of instrument  
 "Mortgage", "Transfer", "Lease" etc

Encumbrance

Dated

Page 11 of 13 Pages

*(Continue in additional Annexure Schedule, if required.)***11. General**

- 11.1 The warranties, undertakings, agreements and indemnities given under this OwnerCo Freehold Encumbrance or pursuant to this OwnerCo Freehold Encumbrance will not merge on settlement of any other transactions contemplated by this OwnerCo Freehold Encumbrance but will remain enforceable to the fullest extent notwithstanding any rule of law to the contrary.
- 11.2 If any part of this OwnerCo Freehold Encumbrance is held by any Court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination will not impair the enforceability of the remaining parts of this OwnerCo Freehold Encumbrance and they will remain in full force and effect.
- 11.3 Except for the Encumbrancee's statutory obligations, under no circumstances will this OwnerCo Freehold Encumbrance be varied.
- 11.4 Any notice required to be served on any party will be in writing and served in accordance with the PLA.
- 11.5 The Encumbrancer will pay the Encumbrancee's legal costs (as between solicitor and client) of and incidental to the enforcement or attempted enforcement of the Encumbrancee's rights, remedies and powers in this OwnerCo Freehold Encumbrance and will indemnify the Encumbrancee against all claims and proceedings arising out of the breach by the Encumbrancer of any of its obligations set out in this OwnerCo Freehold Encumbrance.
- 11.6 The Encumbrancee will pay the Encumbrancer's legal costs (as between solicitor and client) of and incidental to the release or attempted release of this OwnerCo Freehold Encumbrance under clause 6 and will indemnify the Encumbrancer against all claims and proceedings arising out of the breach by the Encumbrancee of any of its obligations set out in this OwnerCo Freehold Encumbrance.

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**Annexure Schedule**



Insert type of instrument  
"Mortgage", "Transfer", "Lease" etc

Encumbrance

Dated \_\_\_\_\_

Page 12 of 13 Pages

(Continue in additional Annexure Schedule, if required.)

**WESTPAC BANKING CORPORATION** as Mortgagee under Mortgage No. 6128838.3 hereby consents to the registration of the within encumbrance instrument but without prejudice to the Bank's rights powers and remedies under its said Mortgage executed by Westpac Banking Corporation.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2006

EXECUTED by  
**WESTPAC BANKING CORPORATION** )  
by: ) \_\_\_\_\_  
in the presence of: ) Authorized Signatory

**Witness**

Signature: \_\_\_\_\_

Name (full): \_\_\_\_\_

Occupation: \_\_\_\_\_

Address: \_\_\_\_\_

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**Annexure Schedule**
 Insert type of instrument  
 "Mortgage", "Transfer", "Lease" etc

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(Continue in additional Annexure Schedule, if required.)

**CERTIFICATE OF NON-REVOCAION OF POWER OF ATTORNEY**

I, \_\_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_ HEREBY CERTIFY:

1. THAT by Deed dated the 28th day of April 2006 ("the Deed"), a copy of which was deposited in the Otago Land Registry Office, under number \_\_\_\_\_, I was appointed the lawful attorney of **JACKS POINT LIMITED** ("the Company"), on the terms and subject to the conditions set out in the Deed.

2. THAT at the date hereof I have not received any notice or information of the revocation of that appointment by the commencement of liquidation of the Company, or otherwise.

SIGNED by: \_\_\_\_\_ (name)

\_\_\_\_\_ (signature)

at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 2006

SIGNED in my presence:

Signature of Witness

Witness to complete in BLOCK letters (unless legibly printed)

Witness name:

Occupation:


Address:

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Approved by Registrar-General of Land under No. 2002/6117

**Encumbrance Instrument**  
Section 101, Land Transfer Act 1952

Land registration district			<div style="border: 1px solid black; padding: 5px; width: 100px; margin: auto;"> <b>BARCODE</b> </div>
<div style="border: 1px solid black; padding: 2px;"> <b>OTAGO</b> </div>			
Unique identifier(s) or C/T (s)	All/part	Area/description of part or stratum	
<div style="border: 1px solid black; padding: 2px;"> <b>Continued on Annexure Schedule 2</b> </div>			
Encumbrancer		<i>Surname(s) must be <u>underlined</u> or in CAPITALS</i>	
<div style="border: 1px solid black; padding: 2px;"> <b>Jacks Point Golf Course Limited</b> </div>			
Encumbrancee		<i>Surname(s) must be <u>underlined</u> or in CAPITALS</i>	
<div style="border: 1px solid black; padding: 2px;"> <b>Jacks Point Residents &amp; Owners Association Incorporated</b> </div>			
Estate or interest to be encumbered		<i>Insert, eg, fee simple; leasehold in lease number, etc.</i>	
<div style="border: 1px solid black; padding: 2px;"> <b>Continued on Annexure Schedule 2</b> </div>			
Encumbrance memorandum number			
<div style="border: 1px solid black; padding: 2px;"> <b>Not applicable</b> </div>			
Nature of security		<i>State whether sum of money, annuity, or rentcharge, and amount.</i>	
<div style="border: 1px solid black; padding: 2px;"> <b>Continued on Annexure Schedule 3</b> </div>			
Operative clause		<i>Delete words in [ ], as appropriate</i>	
<div style="border: 1px solid black; padding: 5px;"> <p>The Encumbrancer encumbers for the benefit of the Encumbrancee the land in the above certificate(s) of title or computer register(s) with the above sum of money, annuity, or rentcharge to be raised and paid in accordance with the terms set out in the <del>{above encumbrance memorandum}</del> [Annexure Schedule(s)] and so as to incorporate in this encumbrance the terms and other provisions set out in the <del>{above encumbrance memorandum}</del> <del>{and}</del> [Annexure Schedule(s)] for the better securing to the Encumbrancee the payment(s) secured by this encumbrance, and compliance by the Encumbrancer with the terms of this encumbrance.</p> </div>			
<div style="border: 1px solid black; padding: 2px;"> Dated this                      day of </div>			
Attestation			
By its duly authorised and appointed attorney		Signed in my presence by the Encumbrancer	
		<i>Signature of witness</i> <i>Witness to complete in BLOCK letters (unless legibly printed)</i>	
		<b>Witness name</b>  <b>Occupation</b>	
<b>Signature [common seal] of Encumbrancer</b>		<b>Address</b>	

Certified correct for the purposes of the Land Transfer Act 1952.

[Solicitor for] the Encumbrancee

REF: 7008 - AUCKLAND DISTRICT LAW SOCIETY

Approved by Registrar-General of Land under No. 2002/6117  
**Annexure Schedule 1**



Encumbrance  
Instrument

Dated

Page  of  pages

**Terms** *(Continue in additional Annexure Schedule(s) if required.)*

1 Length of term
2 Payment date(s)
3 Rate(s) of interest
4 Event(s) in which the sum, annuity, or rentcharge becomes payable
5 Events(s) in which the sum, annuity, or rentcharge ceases to be payable

**Covenants and conditions** *(Continue in additional Annexure Schedule(s) if required.)*

**Continued on Annexure Schedule 3**

**Modification of statutory provisions** *(Continue in additional Annexure Schedule(s) if required.)*

**Continued on Annexure Schedule 3**

**All signing parties and either their witnesses or solicitors must sign or initial in this box.**

REF: 7008 -- AUCKLAND DISTRICT LAW SOCIETY

Approved by Registrar-General of Land under No. 2002/5032

**Annexure Schedule**



Insert type of instrument  
"Mortgage", "Transfer", "Lease" etc

Encumbrance

Dated [ ]

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(Continue in additional Annexure Schedule, if required.)

**Annexure Schedule 2**

Continuation of Unique Identifier (or C/Ts)	Continuation of Estate or Interest to be Encumbered
262755	Leasehold Interest in lease number [ ], being a lease of the fee simple estate OT 262755
	Leasehold Interest in lease number [ ], being a sublease of the leasehold interest in lease number [ ]

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Approved by Registrar-General of Land under No. 2002/5032

**Annexure Schedule**Insert type of instrument  
"Mortgage", "Transfer", "Lease" etc

Encumbrance

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(Continue in additional Annexure Schedule, if required.)

**Annexure Schedule 3****Continuation of Nature of Security, Covenants and Conditions  
and Modification of Statutory Provisions****BACKGROUND**

- A. The Encumbrancer is registered as proprietor of the lessee's interest in the Freehold Land and the sublessee's interest in the Leasehold Land, both of which are located within Jacks Point.
- B. The Encumbrancee has been established to provide for and administer a general scheme applicable to and for the benefit of the Jacks Point Land and each of the lots subdivided from the Jacks Point Land whose registered proprietors must be members of the Encumbrancee.
- C. The Freehold Owner is the registered proprietor of the fee simple estate in the Freehold Land.
- D. The Leasehold Owner is the registered proprietor of the lessee's interest in the Leasehold Land.
- E. The Golf Course, as part of the development of Jacks Point, is operated on the Freehold Land and the Leasehold Land by the Encumbrancer pursuant to:
- i. A registered lease of the Freehold Land from the Freehold Owner; and
  - ii. A registered sublease of the Leasehold Land from the Leasehold Owner.
- F. The Encumbrancer also owns the buildings on the Golf Course and will operate certain activities out of them.
- G. The Golf Course is to be maintained and operated to a best practice standard.
- H. Society Members will have certain access rights to the Golf Course pursuant to:
- i. This encumbrance in respect of the Encumbrancer's interest as lessee of the Freehold Land under lease number \_\_\_\_\_ and as sublessee of the Leasehold Land under lease number \_\_\_\_\_ ("OperatorCo Encumbrance");
  - ii. An encumbrance instrument between the Encumbrancee (as encumbrancee) and the Freehold Owner (as encumbrancer) in respect of the Freehold Owner's interest as registered proprietor of the Freehold Land ("OwnerCo Freehold Encumbrance");
  - iii. An encumbrance instrument between the Encumbrancee (as encumbrancee) and the Leasehold Owner (as encumbrancer) in respect of the Leasehold Owner's interest as lessee of the Leasehold Land under lease number \_\_\_\_\_ ("OwnerCo Leasehold Encumbrance").

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Approved by Registrar-General of Land under No. 2002/5032

**Annexure Schedule**
 Insert type of instrument  
 "Mortgage", "Transfer", "Lease" etc

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(Continue in additional Annexure Schedules, if required.)

- I. The existence and ongoing maintenance of the Golf Course is an integral part of Jacks Point. The Society, by paying the levies in this OperatorCo Encumbrance, provides benefits to the Society Members being the right to use the Golf Course and additional value in each Society Member's property from being in a development which contains a well maintained Golf Course.
- J. The Encumbrancer wishes to encumber the lessee's interest in the Freehold Land under lease number \_\_\_\_\_ and the sublessee's interest in the Leasehold Land under lease number \_\_\_\_\_ for the benefit of the Encumbrancee on the terms and conditions contained in this OperatorCo Encumbrance.

**OPERATIVE PARTS****1. Interpretation**

- 1.1 In this OperatorCo Encumbrance, unless the context otherwise requires:

"**Adult**" means a person aged 20 years or over as at the first day of the Operating Year in question.

"**Business**" means the business undertaken by the Encumbrancer in respect of operating the Golf Course and by the Encumbrancer in respect of any golf related business reasonably associated with the operation of the Golf Course.

"**Club**" means Jacks Point Golf Club Incorporated, or any other club or incorporated body appointed under clause 6.

"**Constitution**" means the constitution of the Encumbrancee, which is its rules for the purposes of the Incorporated Societies Act 1908.

"**Default Interest Rate**" means five per cent above the 90 day bill rate disclosed on Reuters screen page BKBM (or its successor's page) at 11.00am on the due date for payment.

"**Developed Property**" has the meaning given to it in the Constitution, and Developed Properties has the same meaning.

"**Encumbrancee**" means Jacks Point Residents & Owners Association Incorporated.

"**Encumbrancer**" means the registered proprietor of the lessee's interest in the Freehold Land and the sublessee's interest in the Leasehold Land from time to time.

"**Excluded Property**" has the meaning given to it in the Constitution (and in particular in clause 6.1b of the Constitution), and Excluded Properties has the same meaning.

"**Three Year Review Date**" means 1 July 2010 and every three years after that.

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Approved by Registrar-General of Land under No. 2002/5032

**Annexure Schedule**Insert type of instrument  
"Mortgage", "Transfer", "Lease" etc

Encumbrance Dated [ ] Page 5 of 19 Pages

*(Continue in additional Annexure Schedule, if required.)*

"Freehold Land" means the land contained in fee simple certificate of title OT262755 upon which 11 holes of the Golf Course are located.

"Freehold Owner" means the registered proprietor of the Freehold Land from time to time.

"Golf Assets" means:

- a. the Freehold Land; and
- b. the Leasehold Land; and
- c. any assets (tangible or intangible) including goodwill in respect of the Business, including the Encumbrancer's interest in the Freehold Land and the Leasehold Land.

"Golf Course" means the golf course situated on the Freehold Land and the Leasehold Land, and includes the Freehold Land and the Leasehold Land.

"Golf Course Expenses" means all payments, costs and expenses (excluding GST) properly or reasonably assessed or assessable, paid or payable or otherwise incurred by the Encumbrancer (as shown in the financial statements of the Encumbrancer for the Operating Year commencing on a Three Year Review Date) in respect of:

- a. all direct costs of repairs, maintenance, (including depreciation of equipment and lease of equipment), renovations and landscaping of the Golf Course; and
- b. the capital costs of repairs, maintenance, renovations, landscaping and improvements of the Golf Course including the capital costs of any equipment required in relation with the Golf Course; and
- c. the administration, operation and management of the activities related to the Golf Course, including the total labour costs of all persons undertaking these functions where these functions are a substantial part of that person's role; but
- d. excluding any internal maintenance of any club house at the Golf Course.

"Green Fees Player" means a player playing a casual round of golf on the Golf Course for green fees, who is not a member of the Club.

"GST" means goods and services tax charged in accordance with the Goods and Services Tax Act 1985.

"Henley Downs Lease" means:

- a. an agreement to lease in respect of approximately 24 hectares of land contained in Certificate of Title OT 17C/864, between Henley Downs Holdings Limited as lessor and Jacks Point Land Limited as lessee, under which the parties agree to register a

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Approved by Registrar-General of Land under No. 2002/5032

**Annexure Schedule**

Insert type of Instrument  
 "Mortgage", "Transfer", "Lease" etc

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*(Continue in additional Annexure Schedule, if required.)*

memorandum of lease upon the issue of a freehold title for that land (to be OT277414),  
 thereby creating a leasehold title; or

b. the memorandum of lease described in paragraph a of this definition.

"Index" means the New Zealand Consumer Price Index (all groups) published by the New Zealand Department of Statistics. The parties will use an appropriate alternative index if the Index is no longer published or the basis for calculating the Index has materially changed. The alternative index will be chosen by the President of the New Zealand Law Society or the President's nominee if the parties cannot agree.

"Jacks Point" has the meaning attributed to it in the Constitution.

"Jacks Point Land" means the land formerly contained in Lot 1, DP337993, certificate of title OT156346 and Lots 2 and 5, DP337993 and Lot 5, DP26261, certificate of title OT156347, except land contained in Lot 13 DP364700, certificate of title OT 262753.

"Jacks Point Zone" has the meaning attributed to it in the Constitution.

"Leasehold Land" means the land which is the subject of the Henley Downs Lease and contained in leasehold certificate of title OT \_\_\_\_\_ upon which 7 holes of the Golf Course are located.

"Leasehold Owner" means the registered proprietor of the lessee's interest in the Leasehold Land from time to time.

"Levy Paying Developed Property" means all Developed Properties, except Excluded Properties.

"Levy Per Property" means the sum, described as such, and calculated under clauses 4.2 and 4.3.

"Levy Review Date" means 1 July 2011 and every three years after that.

"LTA" means the Land Transfer Act 1952.

"Number of Levy Paying Developed Properties" means the number of Levy Paying Developed Properties from time to time. However, where a Society Member joins part way through an Operating Year, that Society Member's Levy Paying Developed Property will be deemed to be a fraction of a Levy Paying Developed Property equal to:

$$X + 4$$

where "X" is the number of complete or part quarters of that current Operating Year since the Society Member has joined. So, for the purposes of this calculation, in any Operating Year, if a Society Member obtains a Levy Paying Developed Property at any time during:

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**Annexure Schedule**Insert type of instrument  
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*(Continue in additional Annexure Schedule, if required.)*

- a. the first quarter commencing 1 July, that is deemed to be one Levy Paying Developed Property;
- b. the second quarter commencing 1 October, that is deemed to be three quarters of a Levy Paying Developed Property;
- c. the third quarter commencing 1 January, that is deemed to be one half of a Levy Paying Developed Property;
- d. the fourth quarter commencing 1 April, that is deemed to be a quarter of a Levy Paying Developed Property.

"Opening Date" means 31 December 2007 or such earlier date on which the Golf Course is declared open for play by the Encumbrancer.

"Operating Year" means each calendar year beginning 1 July after the Opening Date, and ending on the following 30 June, and includes any broken periods at the beginning and at the end of the Term.

"OperatorCo Encumbrance" means this encumbrance instrument together with all annexure schedules.

"OwnerCo Freehold Encumbrance" means the encumbrance instrument referred to in Background paragraph H.ii.

"OwnerCo Leasehold Encumbrance" means the encumbrance instrument referred to in Background paragraph H.iii.

"Partner" means:

- a. a spouse; or
- b. a de facto partner as defined in section 2D of the Property (Relationships) Act 1976; or
- c. a partner to a civil union as defined in sections 4 and 5 of the Civil Unions Act 2004.

"PLA" means the Property Law Act 1952.

"Rent Charge" means the charge described in clause 2.

"Quarter" has the meaning given to it in the Constitution.

"Society Member" means each Member (as defined in the Constitution) of the Encumbrancee.

"Shares" means all shares in the companies which own the Golf Course and/or the Business from time to time.

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**Annexure Schedule**
 Insert type of instrument  
 "Mortgage", "Transfer", "Lease" etc

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*(Continue in additional Annexure Schedule, if required.)*

"Term" means the term described in clause 2.

"Total Levy" means the amount payable from time to time by the Encumbrancee to the Encumbrancer under clause 4.1.

"Youth" means a person aged under 20 years as at the first day of the Operating Year in question.

1.2 For the avoidance of doubt:

- a. Words importing the singular number include the plural and vice versa;
- b. A covenant to do something is also a covenant to permit or cause that thing to be done and a covenant not to do something is also a covenant not to permit or cause that thing to be done;
- c. References to the parties are references to the Encumbrancee and the Encumbrancer;
- d. This OperatorCo Encumbrance binds or benefits the parties and their heirs, executors, successors and assigns in perpetuity of the lessee's interest in the Freehold Land and/or the sublessee's interest in the Leasehold Land;
- e. References to clauses are to those named in this OperatorCo Encumbrance;
- f. Headings are for convenience only and do not affect interpretation;
- g. Words importing any gender include the other genders;
- h. Statute, regulation or by-law includes all statutes, regulations, or by-laws varying, consolidating or replacing them, and a reference to a statute includes all regulations or by-laws issued under that statute; and
- i. A reference to "written" or "writing" includes facsimile communications.

2. **Term and Rent Charge**

2.1 The term of this OperatorCo Encumbrance commences on the Opening Date and expires on the earlier of:

- a. The expiry date of the Henley Downs Lease or any earlier date of termination of the Henley Downs Lease; and
- b. The date on which any sale of the Golf Assets or the Shares to the Encumbrancee settles.

2.2 Subject to clause 2.4, the Encumbrancer encumbers the lessee's interest in the Freehold Land under lease number \_\_\_\_\_ and the sublessee's interest in the \_\_\_\_\_

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REF: 7025 - AUCKLAND DISTRICT LAW SOCIETY



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**Annexure Schedule**Insert type of instrument  
"Mortgage", "Transfer", "Lease" etc

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*(Continue in additional Annexure Schedule, if required.)*

Leasehold Land under lease number \_\_\_\_\_ for the benefit of the Encumbrancee for the Term, with an annual rent charge ("the **Rent Charge**") of \$1.00 to be paid on each anniversary of the Opening Date.

- 2.3 If during the year preceding the Opening Date and each successive year after that there has been no breach of the covenants and obligations of the Encumbrancer contained in this OperatorCo Encumbrance, the Rent Charge will be deemed to have been paid.
- 2.4 The Rent Charge will determine immediately and the Encumbrancer will be entitled to a release of this OperatorCo Encumbrance if all covenants expressed in this OperatorCo Encumbrance become obsolete or no longer enforceable or the Term has expired.
- 3. Covenants**
- 3.1 The parties covenant with each other to perform their respective obligations set out in clauses 4, 5, 6 and 8 of this OperatorCo Encumbrance.
- 3.2 The Encumbrancer covenants that it will comply with its obligations as lessee in respect of the registered lease of the Freehold Land and/of the registered sublease of the Leasehold Land.
- 4. Levy**
- 4.1
- a. During each Operating Year during the Term, the Encumbrancee will pay the Total Levy to the Encumbrancer on the following basis:
- i. In respect of the Operating Years from the Opening Date to 30 June 2011 a sum equal to:
- Levy Per Property x Number of Levy Paying Developed Properties
- plus GST on that sum, or such lesser sum for that Operating Year as the Encumbrancer confirms to the Encumbrancee by notice in writing before the commencement of the Operating Year in question.
- ii. From 1 July 2011 a sum calculated under clause 4.4.
- b. The Total Levy will not be charged prior to the Opening Date. Subject to clause 4.3, during each Operating Year, a quarter of the Total Levy is payable in arrears on or before the last day of each Quarter.
- 4.2 For the following periods, the Levy Per Property shall be:
- a. Subject to clause 4.3, for the Operating Year beginning 1 July 2006 - \$650.00;
- b. Subject to clause 4.3, for the Operating Year beginning 1 July 2007 - \$650.00;

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**Annexure Schedule**
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- c. For the Operating Year beginning 1 July 2008 - \$800.00;
- d. For the Operating Year beginning 1 July 2009 - \$950.00; and
- e. For the Operating Year beginning 1 July 2010 - \$1,100.00.
- 4.3 If the Opening Date is part way through an Operating Year then the Levy Per Property will be altered as follows:
- a. If the Opening Date is between 1 July and 30 September (both inclusive) in the relevant Operating Year, the Levy Per Property will be the full amount set out in clause 4.2;
- b. If the Opening Date is between 1 October and 31 December (both inclusive) in the relevant Operating Year, the Levy Per Property will be three quarters of the full amount set out in clause 4.2, and one third of the Total Levy is payable in arrears on or before the last day of each of the remaining three Quarters in that year;
- c. If the Opening Date is between 1 January and 31 March (both inclusive) in the relevant Operating Year, the Levy Per Property will be one half of the full amount set out in clause 4.2, and one half of the Total Levy is payable in arrears on or before the last day of each of the remaining two Quarters in that year;
- d. If the Opening Date is between 1 April and 30 June (both inclusive) in the relevant Operating Year, the Levy Per Property will be one quarter of the full amount set out in clause 4.2, and the Total Levy is payable in arrears on or before the last day of the remaining Quarter in that year.
- 4.4 a. The Total Levy for the Operating Year commencing on a Levy Review Date will be the lesser of the sums calculated as follows:
- i.  $C \times \frac{D}{E}$ ; and
- ii.  $F \times \frac{D}{E}$
- where:
- C is the Golf Course Expenses for the Operating Year commencing on the most recent Three Year Review Date;
- D is the Index for the quarter ended 31 March, immediately before the Levy Review Date;
- E is the Index for the quarter ended 31 March, immediately before the date one year before the Levy Review Date;

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**Annexure Schedule**Insert type of instrument  
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*(Continue in additional Annexure Schedule, if required.)*

F is the Total Levy which is current immediately before the Levy Review Date.

b. The Golf Course Expenses and therefore the Total Levy will not be finalised under clause 4.4a at the commencement of the relevant Operating Year. Until the Total Levy can be calculated the Encumbrancee will make the quarterly payments calculated under clause 4.4a.ii. If, when the Golf Course Expenses are finalised, the Total Levy payable is calculated under clause 4.4a.i then the Encumbrancer will credit the difference between the amount paid and the amount that should have been paid to the amount payable in the following Quarter.

c. Except for a year that commences on a Levy Review Date (which will be reviewed under clause 4.4a) the Total Levy will be altered each year as at the first day of each Operating Year ("CPI Review Date"), the first such CPI Review Date to be 1 July 2012 as follows:

$$T = H \times \frac{I}{J}$$

where:

T is the Total Levy for the twelve months commencing on the CPI Review Date;

H is the Total Levy which is current immediately before the CPI Review Date;

I is the Index for the quarter ended 31 March, immediately before the relevant CPI Review Date;

J is the Index for the quarter ended 31 March, immediately before the date a year prior to the CPI Review Date.

**5. Access to Golf Course**

5.1 The Encumbrancer shall grant all Society Members the right to use the Golf Course in terms of this clause 5.

5.2 Subject to clause 5.3, the Encumbrancer will permit Society Members to use the Golf Course subject to any rules and regulations, in respect of the use of the Golf Course reasonably imposed by the Encumbrancer from time to time. Subject to clause 5.3, Society Members have this right to use the Golf Course, either as:

a. a member of the Club; or

b. a Green Fees Player.

5.3 The rights of Society Members to use the Golf Course in terms of clause 5.2 is limited to a maximum of 2 Adults and 2 Youths (collectively called "Eligible Persons") per Developed Property. The Eligible Persons must be nominated under clause 5.4 and must be:

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**Annexure Schedule**
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*(Continue in additional Annexure Schedule, if required.)*

- a. Persons who are individuals named as the Society Member or the Partner of a Society Member; or
- b. Natural persons who are the beneficial owners of shares in the Society Member, if the Society Member is a company and the Partner of any beneficial owner; or
- c. If the Society Member is a trust, natural persons who are the settlor or a trustee of the trust or a beneficiary of the trust specified by name (rather than by class) in the trust deed as a beneficiary or the Partner of such a person; or
- d. Youths who are the children of Adults who are Eligible Persons under clauses 5.3a, 5.3b, or 5.3c.
- 5.4 The Society Member must nominate the Eligible Persons by notice in writing to the Encumbrancer. The Society Member may from time to time vary the nomination by notice in writing to the Encumbrancer but only if:
- a. The existing nomination was made more than a year earlier; or
- b. One of the Eligible Persons has died and the nomination replaces only the deceased Eligible Person.
- 5.5 The Encumbrancee acknowledges that the Encumbrancer:
- a. will impose the rules and regulations described in clause 5.2 itself, directly upon users of the Golf Course, and/or will impose such rules and regulations upon the Club, which in turn imposes those rules and others upon members of the Club;
- b. without limiting the previous paragraph, may at any time, or from time to time, restrict the times at which a Green Fees Player or a member of the Club who does not have a handicap from an accredited golf club can use the Golf Course, or prohibit such a person from using the Golf Course, while acting reasonably; and
- c. will impose a levy upon the Club in consideration of the Encumbrancer granting members of the Club the right to play on the Golf Course.
- 5.6 The Encumbrancee acknowledges that green fees paid by Green Fees Players, including Eligible Persons who are Green Fees Players, will be paid to the Encumbrancer. The green fees payable by a Green Fees Player who is an Eligible Person will be no more than 75% of the published green fee rate in respect of the Golf Course from time to time.
- 5.7 The Encumbrancee acknowledges that owners of the 18 homesites within the Jacks Point Zone known as Henley Downs, neighbouring Jacks Point Land, will have the same rights to use the Golf Course as the Society Members who own the 18 homesites within Jacks Point have the right to use the Golf Course. It is acknowledged that Society Members who own a homesite within Jacks Point obtain the right to use the Golf Course by paying a levy to the Encumbrancee

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REF: 7025 --AUCKLAND DISTRICT LAW SOCIETY

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**Annexure Schedule**
 Insert type of instrument  
 "Mortgage", "Transfer", "Lease" etc

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*(Continue in additional Annexure Schedule, if required.)*

which pays the levies under this OperatorCo Encumbrance and either being a member of the Club or a Green Fees Player as set out in clause 5.2.

**6. New Club**

6.1 The Encumbrancee acknowledges that the Encumbrancer will grant access rights in respect of the Golf Course to the Club on an annual or other basis. If, for any reason, the Encumbrancer does not grant such access rights to the incumbent Club at any time, the Encumbrancer will cause such access rights to be granted to another incorporated body or club for the purposes of operating a golf club on the Golf Course.

**7. Further Assurance (etc)**

7.1 Each party will with due diligence sign all necessary deeds and documents and do everything that is reasonably required to carry out the terms of this OperatorCo Encumbrance.

**8. Default**

8.1 If the Encumbrancee fails to make any payment due under this OperatorCo Encumbrance, the Encumbrancee will pay interest on the full amount owing to the Encumbrancer at the Default Interest Rate, calculated on a daily basis, from the date payment was due until payment is made in full, including payment of interest under this clause. This clause is without prejudice to any other rights or remedies of the Encumbrancer.

8.2 All the covenants expressed in this OperatorCo Encumbrance will be deemed to have become obsolete and no longer enforceable for the purposes of clause 2.4 after the expiry of 90 days if the Encumbrancer gives notice in writing to the Encumbrancee that the Encumbrancee:

- a. has not duly paid all payments owing to the Encumbrancer under this OperatorCo Encumbrance 14 days after the Encumbrancee receives written notice from the Encumbrancer demanding payment of them, and the parties have exhausted the mediation procedure and (if the dispute is referred to arbitration) the arbitration procedure described in clause 10; or
- b. has not fulfilled any of its other obligations under this OperatorCo Encumbrance, the OwnerCo Freehold Encumbrance or the OwnerCo Leasehold Encumbrance, and:
  - i. the default cannot be remedied; or
  - ii. the default can be remedied but has not been 21 days after the Encumbrancee receives written notice of the default, and the parties have exhausted the procedure described in clause 10, or if applicable the dispute resolution clause of the OwnerCo Freehold Encumbrance or the OwnerCo Leasehold Encumbrance, provided that this OperatorCo Encumbrance will not be deemed to have become obsolete and no longer enforceable for the purposes of clause 2.4 if the default is remedied before the Encumbrancee receives notice to that effect; or

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**Annexure Schedule**Insert type of instrument  
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*(Continue in additional Annexure Schedule, if required.)*

- c. becomes liable to be or is placed in liquidation; or
- d. cannot pay its debts when they fall due.

**9. Liability**

- 9.1 Subject to clause 2, this OperatorCo Encumbrance binds the Encumbrancer's successors in title so that contemporaneously with the acquisition of the lessee's interest in the Freehold Land and/or the sublessee's interest in the Leasehold Land all such successors in title must comply with the covenants of this OperatorCo Encumbrance.
- 9.2 The Encumbrancer will do all things necessary to ensure that any invitees of the Encumbrancer on the Freehold Land and/or the Leasehold Land and any lessees or occupiers of the Freehold Land and/or the Leasehold Land comply with the provisions of this OperatorCo Encumbrance.

**10. Dispute Resolution**

- 10.1 If a party has any dispute with the other party in connection with this OperatorCo Encumbrance:
- a. That party will promptly give full written particulars of the dispute to the others.
  - b. The parties will promptly meet together and in good faith try and resolve the dispute.
- 10.2 If the dispute is not resolved within 7 days of written particulars being given (or any longer period agreed to by the parties) the dispute will be referred to mediation.
- 10.3 A party must use the mediation procedure to resolve a dispute before commencing arbitration or legal proceedings.
- 10.4 The mediation procedure is:
- a. The parties will appoint a mediator and if they fail to agree the mediator will be appointed by the president of the New Zealand Law Society or the president's nominee.
  - b. The parties must co-operate with the mediator in an effort to resolve the dispute.
  - c. If the dispute is settled, the parties must sign a copy of the terms of the settlement.
  - d. If the dispute is not resolved within 14 days after the mediator has been appointed, or within any extended time that the parties agree to in writing, the mediation must cease.
  - e. Each party must pay a half share of the costs of the mediator's fee and costs including travel, room hire, refreshments etc.
- 10.5 The terms of settlement are binding on the parties and override the terms of this OperatorCo Encumbrance if there is any conflict.

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Approved by Registrar-General of Land under No. 2002/5032

**Annexure Schedule**Insert type of instrument  
"Mortgage", "Transfer", "Lease" etc

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*(Continue in additional Annexure Schedule, if required.)*

- 10.6 The terms of settlement may be tendered in evidence in any mediation or legal proceedings.
- 10.7 The parties agree that written statements given to the mediator or to one another, and any discussions between the parties or between the parties and the mediator during the mediation period are not admissible in any arbitration or legal proceedings.
- 10.8 Either party may commence arbitration proceedings when mediation ceases under clause 10.4d.
- 10.9 If the dispute is referred to arbitration:
- The arbitration will be conducted by one arbitrator appointed by the parties.
  - If the parties cannot agree on an arbitrator within 14 days the appointment will be made by the president of the New Zealand Law Society or the president's nominee.
  - The arbitration will be conducted in accordance with the Rules in Schedules 1 and 2 of the Arbitration Act 1996.
- 10.10 Neither party will unreasonably delay the dispute resolution procedures in this clause 10.
- 10.11 This clause 10 does not apply to:
- Any dispute arising in connection with any attempted renegotiation of this OperatorCo Encumbrance; or
  - An application by either party for urgent interlocutory relief.
- 10.12 Pending resolution of any dispute the parties will perform this OperatorCo Encumbrance in all respects including performance of the matter which is the subject of dispute.
- 11. Modification of the Statutory Provisions**
- 11.1 Section 104 of the PLA applies to this OperatorCo Encumbrance but that otherwise (and without prejudice to the Encumbrancee's rights of action at common law as a rent-chargee):
- the Encumbrancee is entitled to none of the powers and remedies given to encumbrancees by the LTA and the PLA;
  - no covenants on the part of the Encumbrancers and their successor in titles are implied in this OperatorCo Encumbrance other than the covenants for further assurance implied by section 154 of the LTA.
- 11.2 The Encumbrancee consents to the registration of any of the following instruments executed by the Encumbrancer in respect of the Freehold Land and/or the Leasehold Land:

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**Annexure Schedule**

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- a. The variation of a mortgage instrument or priority of mortgages (sections 102 (4) and 103(3) LTA);
- b. The creation, variation or surrender of an easement (section 93E (3) LTA);
- c. The registration of a lease, a lease variation instrument or the surrender of a lease (sections 115 (4), 116 (7) and 120 LTA);
- d. The creation, variation or surrender of a land covenant; and
- e. The disposal of a licence or shares to which the licence relates (section 121 I (1) LTA),

and this consent will be deemed to be the consent of the mortgagee (which term includes encumbrance) as specified in the LTA to the registration of a particular instrument specified in clauses b to e inclusive above.

- 11.3 If it is determined that further written consent is required from the Encumbrancee in respect of the matters provided for under clause 11.2 (rather than deemed consent), then the Encumbrancee will immediately, at the request of the Encumbrancer, give that written consent.
- 11.4 The Encumbrancer must give 7 days prior notice in writing to the Encumbrancee if it wishes to lodge any instruments to which clauses 11.2b to e apply at Land Information New Zealand for registration. If:
- a. the Encumbrancee does not object to that lodgement within 7 days of receiving notice by providing the Encumbrancer with full written details of the Encumbrancee's reasons for doing so; or
  - b. the arbitrator referred to under clause 11.5 rules that the instruments specified in the Encumbrancer's notice may be lodged,
- then the Encumbrancer shall be entitled to lodge the instruments specified in the Encumbrancer's notice.
- 11.5 If within 7 days of the Encumbrancer giving notice under clause 11.4, the Encumbrancee objects to the lodgement of the instruments specified in the Encumbrancer's notice by providing the Encumbrancer with full written details of the Encumbrancee's reasons for doing so then:
- a. The parties will promptly meet together and in good faith try and resolve the dispute;
  - b. If the dispute is not resolved within 7 days of the written objection being given (or any longer period agreed to by the parties) the dispute will be referred to arbitration;
  - c. The arbitration will be conducted by one arbitrator appointed by the parties involved;
  - d. If the parties cannot agree on an arbitrator within 7 days the appointment will be made by the President of the New Zealand Law Society or the President's nominee;

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- e. The arbitration will be conducted in accordance with the Rules in Schedules 1 and 2 of the Arbitration Act 1996;
- f. No party will unreasonably delay the dispute resolution procedures in this clause;
- g. This clause does not apply to an application by any party for urgent interlocutory relief.
- 11.6 Without limiting clause 11.2, the Encumbrancer must not lodge any instruments to which clauses 11.2b to e apply if the Encumbrancee objects to the lodgement of those instruments by providing the Encumbrancer with full written details of the Encumbrancee's reasons for doing so and the arbitrator referred to under clause 11.5 has not ruled that those instruments may be lodged.
12. **Waiver**
- 12.1 Any failure by a party to enforce any clause of this OperatorCo Encumbrance, or any forbearance, delay or indulgence granted by that party to any other party will not be construed as a waiver of the first party's rights under this OperatorCo Encumbrance.
13. **General**
- 13.1 The warranties, undertakings, agreements and indemnities given under this OperatorCo Encumbrance or pursuant to this OperatorCo Encumbrance shall not merge on settlement of any of the transactions contemplated by this OperatorCo Encumbrance but shall remain enforceable to the fullest extent notwithstanding any rule of law to the contrary.
- 13.2 If any part of this OperatorCo Encumbrance is held by any Court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination shall not impair the enforceability of the remaining parts of this OperatorCo Encumbrance and they shall remain in full force and effect.
- 13.3 Except for the Encumbrancee's statutory obligations, under no circumstances will this OperatorCo Encumbrance be varied.
- 13.4 Any notice required to be served on any party will be in writing and served in accordance with the PLA.
- 13.5 The Encumbrancer will pay the Encumbrancee's legal costs (as between solicitor and client) of and incidental to the enforcement or attempted enforcement of the Encumbrancee's rights, remedies and powers in this OperatorCo Encumbrance and will indemnify the Encumbrancee against all claims and proceedings arising out of the breach by the Encumbrancer of any of its obligations set out in this OperatorCo Encumbrance.
- 13.6 The Encumbrancee will pay the Encumbrancer's legal costs (as between solicitor and client) of and incidental to the release or attempted release of this OperatorCo Encumbrance under clause 8 and will indemnify the Encumbrancer against all claims and proceedings arising out of

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**Annexure Schedule**



Insert type of instrument  
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*(Continue in additional Annexure Schedule, if required.)*

the breach by the Encumbrancee of any of its obligations set out in this OperatorCo Encumbrance.

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**Annexure Schedule**



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**CERTIFICATE OF NON-REVOCATION OF POWER OF ATTORNEY**

I, \_\_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_ HEREBY CERTIFY:

1. **THAT** by Deed dated the 28th day of April 2006 ("the Deed"), a copy of which was deposited in the Otago Land Registry Office, under number \_\_\_\_\_, I was appointed the lawful attorney of **JACKS POINT GOLF COURSE LIMITED** ("the Company"), on the terms and subject to the conditions set out in the Deed.

2. **THAT** at the date hereof I have not received any notice or information of the revocation of that appointment by the commencement of liquidation of the Company, or otherwise.

SIGNED by: \_\_\_\_\_ (name)

\_\_\_\_\_ (signature)

at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 2006

SIGNED in my presence:

\_\_\_\_\_  
Signature of Witness

Witness to complete in BLOCK letters (unless legibly printed)

Witness name:


Occupation:

Address:

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Approved by Registrar-General of Land under No. 2002/6117

**Encumbrance instrument**  
Section 101, Land Transfer Act 1952

Land registration district			<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: auto;"> <b>BARCODE</b> </div>
<div style="border: 1px solid black; padding: 2px;"> <b>OTAGO</b> </div>			
Unique Identifier(s) or CIT(s)	All/part	Area/description of part or stratum	
	All		
<b>Encumbrancer</b>		<i>Sumame(s) must be <u>underlined</u> or in CAPITALS</i>	
<div style="border: 1px solid black; padding: 2px;"> <b>Jacks Point Limited</b> </div>			
<b>Encumbrancee</b>		<i>Sumame(s) must be <u>underlined</u> or in CAPITALS</i>	
<div style="border: 1px solid black; padding: 2px;"> <b>Jacks Point Residents &amp; Owners Association Incorporated</b> </div>			
<b>Estate or interest to be encumbered</b>		<i>Insert, eg, fee simple; leasehold in lease number, etc.</i>	
<div style="border: 1px solid black; padding: 2px;"> <b>Leasehold interest in lease number _____ comprised in certificate of title _____</b> </div>			
<b>Encumbrance memorandum number</b>			
<div style="border: 1px solid black; padding: 2px;"> <b>Not applicable</b> </div>			
<b>Nature of security</b>		<i>State whether sum of money, annuity, or rentcharge, and amount.</i>	
<div style="border: 1px solid black; padding: 2px;"> <b>Continued on Annexure Schedule 2</b> </div>			
<b>Operative clause</b>		<i>Delete words in [ ], as appropriate</i>	
<div style="border: 1px solid black; padding: 5px;"> <p>The <b>Encumbrancer encumbers for the benefit of the Encumbrancee</b> the land in the above certificate(s) of title or computer register(s) with the above sum of money, annuity, or rentcharge to be raised and paid in accordance with the terms set out in the <del>above encumbrance memorandum</del> [Annexure Schedule(s)] and so as to incorporate in this encumbrance the terms and other provisions set out in the <del>above encumbrance memorandum</del> [and] [Annexure Schedule(s)] for the better securing to the Encumbrancee the payment(s) secured by this encumbrance, and compliance by the Encumbrancer with the terms of this encumbrance.</p> </div>			
<div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <b>Dated this</b>                      <b>day of</b> </div>			
<b>Attestation</b>			
<div style="border: 1px solid black; padding: 5px;">                 By its duly authorised attorney and agent             </div>		<div style="border: 1px solid black; padding: 5px;"> <b>Signed in my presence by the Encumbrancer</b> </div>	
<div style="border: 1px solid black; padding: 5px; height: 80px;">                 Signature [common seal] of Encumbrancer             </div>		<div style="border: 1px solid black; padding: 5px;">                 Signature of witness  <i>Witness to complete in BLOCK letters (unless legibly printed)</i> </div>	
<div style="border: 1px solid black; padding: 5px;">                 Signature [common seal] of Encumbrancer             </div>		<div style="border: 1px solid black; padding: 5px;">                 Witness name             </div>	
<div style="border: 1px solid black; padding: 5px;">                 Signature [common seal] of Encumbrancer             </div>		<div style="border: 1px solid black; padding: 5px;">                 Occupation             </div>	
<div style="border: 1px solid black; padding: 5px;">                 Signature [common seal] of Encumbrancer             </div>		<div style="border: 1px solid black; padding: 5px;">                 Address             </div>	

Certified correct for the purposes of the Land Transfer Act 1952.

 [Solicitor for] the Encumbrancee



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**Annexure Schedule 1**



Encumbrance instrument

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**Terms** *(Continue in additional Annexure Schedule(s) if required.)*

1	Length of term
2	Payment date(s)
3	Rate(s) of interest
4	Event(s) in which the sum, annuity, or rentcharge becomes payable
5	Event(s) in which the sum, annuity, or rentcharge ceases to be payable

**Covenants and conditions** *(Continue in additional Annexure Schedule(s) if required.)*

**Continued on Annexure Schedule 2**

**Modification of statutory provisions** *(Continue in additional Annexure Schedule(s) if required.)*

**Continued on Annexure Schedule 2**

**All signing parties and either their witnesses or solicitors must sign or initial in this box.**

Approved by Registrar-General of Land under No. 2002/5032

**Annexure Schedule**Insert type of instrument  
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*(Continue in additional Annexure Schedule, if required.)***Annexure Schedule 2****Continuation of Nature of Security, Terms, Covenants and Conditions  
and Modification of Statutory Provisions****BACKGROUND**

- A. The Encumbrancer is registered as proprietor of the lessee's interest in the Leasehold Land which is located within Jacks Point.
- B. The Encumbrancee has been established to provide for and administer a general scheme applicable to and for the benefit of the Jacks Point Land and each of the lots subdivided from the Jacks Point Land whose registered proprietors must be members of the Encumbrancee.
- C. The Freehold Owner is the registered proprietor of the fee simple estate in the Freehold Land (which is also located within Jacks Point).
- D. The Golf Course, as part of the development of Jacks Point, will be operated on the Freehold Land and the Leasehold Land by OperatorCo pursuant to:
- i. a registered lease of the Freehold Land between the Freehold Owner (as lessor) and OperatorCo (as lessee); and
  - ii. a registered sublease of the Leasehold Land between the Encumbrancer (as lessor) and OperatorCo (as lessee).
- E. Society Members will have certain access rights to the Golf Course pursuant to:
- i. this encumbrance in respect of the Encumbrancer's interest as lessee of the Leasehold Land under lease number \_\_\_\_\_ ("the **OwnerCo Leasehold Encumbrance**");
  - ii. an encumbrance instrument between the Encumbrancee (as encumbrancee) and the Freehold Owner (as encumbrancer) in respect of the Freehold Owner's interest as registered proprietor of the Freehold Land ("the **OwnerCo Freehold Encumbrance**");
  - iii. an encumbrance instrument between the Encumbrancee (as encumbrancee) and OperatorCo (as encumbrancer) in respect of the OperatorCo's interest as lessee of the Freehold Land under lease number \_\_\_\_\_ and as sublessee of the Leasehold Land under lease number \_\_\_\_\_ ("the **OperatorCo Encumbrance**").
- F. The existence and ongoing maintenance of the Golf Course is an integral part of Jacks Point. The Encumbrancee, by paying the levies in the OperatorCo Encumbrance, provides benefits to the Society Members being the right to use the Golf Course and additional value in each Society Member's property from being in a development which contains a well maintained Golf Course.

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REF: 7025 – AUCKLAND DISTRICT LAW SOCIETY

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**Annexure Schedule**Insert type of instrument  
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*(Continue in additional Annexure Schedule, if required.)*

- G. The Encumbrancer wishes to encumber the lessee's interest in the Leasehold Land under lease number \_\_\_\_\_ for the benefit of the Encumbrancee on the terms and conditions contained in this OwnerCo Leasehold Encumbrance.

**OPERATIVE PARTS**

## 1. Interpretation

- 1.1 In this OwnerCo Leasehold Encumbrance unless the context otherwise requires:

"**Business**" means the business undertaken by OperatorCo in respect of operating the Golf Course and by OperatorCo in respect of any golf related business reasonably associated with the operation of the Golf Course.

"**Club**" means Jacks Point Golf Club Incorporated, or any other club or incorporated body appointed under clause 5.

"**Constitution**" means the constitution of the Encumbrancee, which is its rules for the purposes of the Incorporated Societies Act 1908.

"**Encumbered Golf Course**" means that part of the Golf Course that is located on the Leasehold Land.

"**Encumbrancee**" means Jacks Point Residents & Owners Association Incorporated.

"**Encumbrancer**" means the registered proprietor of the lessee's interest in the Leasehold Land from time to time.

"**Freehold Land**" means the land contained in fee simple certificate of title OT262755.

"**Freehold Owner**" means the registered proprietor of the fee simple estate in the Freehold Land from time to time.

"**Golf Assets**" means:

- a. the Freehold Land; and
- b. the Leasehold Land; and

any assets (tangible or intangible) including goodwill in respect of the Business, including OperatorCo's Interest in the Freehold Land and the Leasehold Land.

"**Golf Course**" means the golf course situated on the Freehold Land and the Leasehold Land, and includes the Freehold Land and the Leasehold Land.

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**Annexure Schedule**Insert type of instrument  
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*(Continue in additional Annexure Schedule, if required.)***"Henley Downs Lease"** means:

- a. an agreement to lease in respect of approximately 24 hectares of land contained in Certificate of Title OT 17C/864, between Henley Downs Holdings Limited as lessor and the Encumbrancer as lessee, under which the parties agree to register a memorandum of lease upon the issue of a freehold title for that land (to be OT277414), thereby creating a leasehold title; or
- b. the memorandum of lease described in paragraph a, of this definition.

**"Jacks Point"** has the meaning attributed to it in the Constitution.**"Jacks Point Land"** means the land formerly contained in Lot 1, DP337993, certificate of title OT156346 and Lots 2 and 5, DP337993 and Lot 5, DP26261, certificate of title OT156347, except land contained in Lot 13 DP364700, certificate of title OT 262753.**"Jacks Point Zone"** has the meaning attributed to it in the Constitution.**"Leasehold Land"** means the land which is the subject of the Henley Downs Lease and contained in leasehold certificate of title OT \_\_\_\_\_.**"LTA"** means the Land Transfer Act 1952.**"Opening Date"** means 31 December 2007 or such earlier date on which the Golf Course is declared open for play by OperatorCo.**"OperatorCo"** means Jacks Point Golf Course Limited and its successors and assigns.**"OperatorCo Encumbrance"** means the encumbrance instrument referred to in Background paragraph E.iii.**"OwnerCo Freehold Encumbrance"** means the encumbrance instrument referred to in Background paragraph E.ii.**"OwnerCo Leasehold Encumbrance"** means this encumbrance instrument together with all annexure schedules.**"PLA"** means the Property Law Act 1952.**"Rent Charge"** means the charge described in clause 2 of this OwnerCo Leasehold Encumbrance.**"Society Member"** means each Member (as defined in the Constitution) of the Encumbrancee.**"Shares"** means all shares in the companies which own the Golf Course and/or the Business from time to time.

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*(Continue in additional Annexure Schedule, if required.)***"Term"** means the term described in clause 2.1.

## 1.2 For the avoidance of doubt:

- a. Words importing the singular number include the plural and vice versa.
- b. A covenant to do something is also a covenant to permit or cause that thing to be done and a covenant not to do something is also a covenant not to permit or cause that thing to be done.
- c. References to the parties are references to the Encumbrancee and Encumbrancer.
- d. This OwnerCo Leasehold Encumbrance binds or benefits the parties and their heirs, executors, successors and assigns in perpetuity of the lessee's interest in the Leasehold Land.
- e. References to clauses are to those named in this OwnerCo Leasehold Encumbrance.
- f. Headings are convenience only and do not affect interpretation.
- g. Words importing any gender include the other genders.
- h. Statute, regulation or by-law includes all statutes, regulations or by-laws varying, consolidating or replacing them, and a reference to a statute includes all regulations or by-laws issued under that statute.
- i. A reference to "written" or "writing" includes facsimile communications.

2. **Term and Rent Charge**

## 2.1 The term of this OwnerCo Leasehold Encumbrance commences on the Opening Date and expires on the earlier of:

- a. The expiry date of the Henley Downs Lease or any earlier date of termination of the Henley Downs Lease; and
- b. The date on which any sale of the Goff Assets or the Shares to the Encumbrancee settles.

2.2 Subject to clause 2.4, the Encumbrancer encumbers the lessee's interest in the Leasehold Land under lease number \_\_\_\_\_ for the benefit of the Encumbrancee for the Term, with an annual rent charge ("the **Rent Charge**") of \$1.00 to be paid on each anniversary of the Opening Date.2.3 If during the year preceding the Opening Date and each successive year after that there has been no breach of the covenants and obligations of the Encumbrancer contained in this OwnerCo Leasehold Encumbrance, the **Rent Charge** will be deemed to have been paid.

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*(Continue in additional Annexure Schedule, if required.)*

- 2.4 The Rent Charge will determine immediately and the Encumbrancer will be entitled to a release of this OwnerCo Leasehold Encumbrance if all covenants expressed in this OwnerCo Leasehold Encumbrance become obsolete or no longer enforceable or the Term has expired.
3. **Covenant - Access to Golf Course**
- 3.1 The Encumbrancer covenants with the Encumbrancee that:
- a. All Society Members have the right to use the Encumbered Golf Course in terms of this clause 3.
  - b. If, for any reason (except when clause 6 applies), OperatorCo is unable or unwilling to provide to Society Members the access to the Encumbered Golf Course described in the OperatorCo Encumbrance, OwnerCo will either (at its option):
    - i. Enter an encumbrance with the Encumbrancee on terms consistent with the OperatorCo Encumbrance in respect of the levy payable by the Encumbrancee and granting the access right to the Society Members, both as described in the OperatorCo Encumbrance; or
    - ii. Cause another entity which has the right to grant such access rights to enter an encumbrance with the Encumbrancee on terms consistent with the OperatorCo Encumbrance in respect of the levy payable by the Encumbrancee and granting the access rights to the Society Members both as described in the OperatorCo Encumbrance.
- 3.2 The Encumbrancee acknowledges that owners of the 18 homesites within the Jacks Point Zone known as Henley Downs, neighbouring Jacks Point Land, will have the same rights to use the Encumbered Golf Course as the Society Members who own the 18 homesites within Jacks Point to have the right to use the Encumbered Golf Course. It is acknowledged that Society Members who own a homesite within Jacks Point, by paying a levy to the Encumbrancee which pays levies under the OperatorCo Encumbrance, have the right of either being a member of the Club or a Green Fees Player as provided in the OperatorCo Encumbrance.
- 3.3 The Encumbrancer covenants that it will comply with its obligations as lessee in respect of the registered lease of the Leasehold Land.
4. **Further Assurance**
- 4.1 Each party will with due diligence sign all necessary deeds and documents and do everything that is reasonably required to carry out the terms of this OwnerCo Leasehold Encumbrance.
5. **Covenant - New Club**
- 5.1 The Encumbrancee acknowledges that OperatorCo will grant access rights in respect of the Encumbered Goff Course to the Club on an annual or other basis. If, for any reason,

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**Annexure Schedule**Insert type of instrument  
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*(Continue in additional Annexure Schedule, if required.)*

OperatorCo does not grant such access rights to the incumbent Club at any time, the Encumbrancer covenants with the Encumbrancee that the Encumbrancer will cause such access rights to be granted to another incorporated body or club for the purposes of operating a golf club on the Encumbered Golf Course.

**6. Default**

6.1 All the covenants expressed in this OwnerCo Leasehold Encumbrance will be deemed to have become obsolete and no longer enforceable for the purposes of clause 2.4 after the expiry of 90 days if the Encumbrancer gives notice in writing to the Encumbrancee that Encumbrancee:

- a. has not duly paid all payments owing to OperatorCo under the OperatorCo Encumbrance 14 days after the Encumbrancee receives written notice of OperatorCo demanding payment of them, and the parties to the OperatorCo Encumbrance have exhausted the arbitration procedure described in the OperatorCo Encumbrance; or
- b. has not fulfilled any of its obligations under this OwnerCo Leasehold Encumbrance, the OwnerCo Freehold Encumbrance or other obligations under the OperatorCo Encumbrance; and:
  - i. the default cannot be remedied; or
  - ii. the default can be remedied but has not been 21 days after the Encumbrancee receives written notice of the default, and the parties have exhausted the procedure described in clause 8 of this Encumbrance, or if applicable, the procedure described in the dispute resolution clause of the OwnerCo Freehold Encumbrance or the OperatorCo Encumbrance, provided that this OwnerCo Leasehold Encumbrance will not be deemed to have become obsolete and no longer enforceable for the purposes of clause 2.4 if the default is remedied before the Encumbrancee receives notice to that effect; or
- c. becomes liable to be or is placed in liquidation; or
- d. cannot pay its debts when they fall due.

**7. Liability**

7.1 Subject to clause 2, this OwnerCo Leasehold Encumbrance binds the Encumbrancer's successors in title so that contemporaneously with the acquisition of any interest in the Leasehold Land all such successors in title must comply with the covenants of this OwnerCo Leasehold Encumbrance.

7.2 The Encumbrancer will do all things necessary to ensure that any invitees of the Encumbrancer on the Leasehold Land and any lessees or occupiers of the Leasehold Land comply with the provisions of this OwnerCo Leasehold Encumbrance.

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**Annexure Schedule**Insert type of instrument  
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*(Continue in additional Annexure Schedule, if required.)*

- 8. Dispute Resolution**
- 8.1 If a party has any dispute with the other party in connection with this OwnerCo Leasehold Encumbrance:
- That party will promptly give full written particulars of the dispute to the others.
  - The parties will promptly meet together and in good faith try and resolve the dispute.
- 8.2 If the dispute is not resolved within 7 days of written particulars being given (or any longer period agreed to by the parties) the dispute will be referred to mediation.
- 8.3 A party must use the mediation procedure to resolve a dispute before commencing arbitration or legal proceedings.
- 8.4 The mediation procedure is:
- The parties will appoint a mediator and if they fail to agree the mediator will be appointed by the president of the New Zealand Law Society or the president's nominee.
  - The parties must co-operate with the mediator in an effort to resolve the dispute.
  - If the dispute is settled, the parties must sign a copy of the terms of the settlement.
  - If the dispute is not resolved within 14 days after the mediator has been appointed, or within any extended time that the parties agree to in writing, the mediation must cease.
  - Each party must pay a half share of the costs of the mediator's fee and costs including travel, room hire, refreshments etc.
- 8.5 The terms of settlement are binding on the parties and override the terms of this OwnerCo Leasehold Encumbrance if there is any conflict.
- 8.6 The terms of settlement may be tendered in evidence in any mediation or legal proceedings.
- 8.7 The parties agree that written statements given to the mediator or to one another, and any discussions between the parties or between the parties and the mediator during the mediation period are not admissible by the recipient in any arbitration or legal proceedings.
- 8.8 Either party may commence arbitration proceedings when mediation ceases under clause 8.4d.
- 8.9 If the dispute is referred to arbitration:
- The arbitration will be conducted by one arbitrator appointed by the parties.
  - If the parties cannot agree on an arbitrator within 14 days the appointment will be made by the president of the New Zealand Law Society or the president's nominee.

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

REF: 7025 - AUCKLAND DISTRICT LAW SOCIETY

Approved by Registrar-General of Land under No. 2002/5032

**Annexure Schedule**Insert type of instrument  
"Mortgage", "Transfer", "Lease" etc

Encumbrance

Dated

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*(Continue in additional Annexure Schedule, if required.)*

- c. The arbitration will be conducted in accordance with the Rules in Schedules 1 and 2 of the Arbitration Act 1996.
- 8.10 Neither party will unreasonably delay the dispute resolution procedures in this clause 8.
- 8.11 This clause 8 does not apply to:
- a. Any dispute arising in connection with any attempted renegotiation of this OwnerCo Leasehold Encumbrance; or
  - b. An application by either party for urgent interlocutory relief.
- 8.12 Pending resolution of any dispute the parties will perform this OwnerCo Leasehold Encumbrance in all respects including the performance of the matter which is the subject of dispute.
- 9. Modification of the Statutory Provisions**
- 9.1 Section 104 of the PLA applies to this OwnerCo Leasehold Encumbrance but that otherwise (and without prejudice to the Encumbrancee's rights of action at common law as a rent-chargee):
- a. the Encumbrancee is entitled to none of the powers and remedies given to encumbrancees by the LTA and the PLA;
  - b. no covenants on the part of the Encumbrancers and their successor in titles are implied in this OwnerCo Leasehold Encumbrance other than the covenants for further assurance implied by section 154 of the LTA.
- 9.2 The Encumbrancee consents to the registration of any of the following instruments executed by the Encumbrancer in respect of the Freehold Land and/or the Leasehold Land:
- a. The variation of a mortgage instrument or priority of mortgages (sections 102 (4) and 103(3) LTA);
  - b. The creation, variation or surrender of an easement (section 90E (3) LTA);
  - c. The registration of a lease, a lease variation instrument or the surrender of a lease (sections 115 (4), 116 (7) and 120 LTA);
  - d. The creation, variation or surrender of a land covenant; and
  - e. The disposal of a licence or shares to which the licence relates (section 121 I (1) LTA),

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

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**Annexure Schedule**Insert type of instrument  
"Mortgage", "Transfer", "Lease" etc

Encumbrance

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*(Continue in additional Annexure Schedule, if required.)*

and this consent will be deemed to be the consent of the mortgagee (which term includes encumbrance) as specified in the LTA to the registration of a particular instrument specified in clauses b to e inclusive above.

- 9.3 If it is determined that further written consent is required from the Encumbrancee in respect of the matters provided for under clause 9.2 (rather than deemed consent), then the Encumbrancee will immediately, at the request of the Encumbrancer, give that written consent.
- 9.4 The Encumbrancer must give 7 days prior notice in writing to the Encumbrancee if it wishes to lodge any instruments to which clauses 9.2b to e apply at Land Information New Zealand for registration. If:
- a. the Encumbrancee does not object to that lodgement within 7 days of receiving notice by providing the Encumbrancer with full written details of the Encumbrancee's reasons for doing so; or
  - b. the arbitrator referred to under clause 9.5 rules that the instruments specified in the Encumbrancer's notice may be lodged,
- then the Encumbrancer shall be entitled to lodge the instruments specified in the Encumbrancer's notice.
- 9.5 If within 7 days of the Encumbrancer giving notice under clause 9.4, the Encumbrancee objects to the lodgement of the instruments specified in the Encumbrancer's notice by providing the Encumbrancer with full written details of the Encumbrancee's reasons for doing so then:
- a. The parties will promptly meet together and in good faith try and resolve the dispute;
  - b. If the dispute is not resolved within 7 days of the written objection being given (or any longer period agreed to by the parties) the dispute will be referred to arbitration;
  - c. The arbitration will be conducted by one arbitrator appointed by the parties involved;
  - d. If the parties cannot agree on an arbitrator within 7 days the appointment will be made by the President of the New Zealand Law Society or the President's nominee;
  - e. The arbitration will be conducted in accordance with the Rules in Schedules 1 and 2 of the Arbitration Act 1996;
  - f. No party will unreasonably delay the dispute resolution procedures in this clause;
  - g. This clause does not apply to an application by any party for urgent interlocutory relief.
- 9.6 Without limiting clause 9.2, the Encumbrancer must not lodge any instruments to which clauses 9.2b to e apply if the Encumbrancee objects to the lodgement of those instruments by providing the Encumbrancer with full written details of the Encumbrancee's reasons for doing so and the arbitrator referred to under clause 9.5 has not ruled that those instruments may be lodged.

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

Approved by Registrar-General of Land under No. 2002/5032

**Annexure Schedule**Insert type of instrument  
"Mortgage", "Transfer", "Lease" etc

Encumbrance

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*(Continue in additional Annexure Schedule, if required.)***10. Waiver**

- 10.1 Any failure by a party to enforce any clause of this OwnerCo Leasehold Encumbrance, or any forbearance, delay or indulgence granted by that party to any other party will not be construed as a waiver of the first party's rights under this OwnerCo Leasehold Encumbrance.

**11. General**

- 11.1 The warranties, undertakings, agreements and indemnities given under this OwnerCo Leasehold Encumbrance or pursuant to this OwnerCo Leasehold Encumbrance will not merge on settlement of any other transactions contemplated by this OwnerCo Leasehold Encumbrance but will remain enforceable to the fullest extent notwithstanding any rule of law to the contrary.
- 11.2 If any part of this OwnerCo Leasehold Encumbrance is held by any Court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination will not impair the enforceability of the remaining parts of this OwnerCo Leasehold Encumbrance and they will remain in full force and effect.
- 11.3 Except for the Encumbrancee's statutory obligations, under no circumstances will this OwnerCo Leasehold Encumbrance be varied.
- 11.4 Any notice required to be served on any party will be in writing and served in accordance with the PLA.
- 11.5 The Encumbrancer will pay the Encumbrancee's legal costs (as between solicitor and client) of and incidental to the enforcement or attempted enforcement of the Encumbrancee's rights, remedies and powers in this OwnerCo Leasehold Encumbrance and will indemnify the Encumbrancee against all claims and proceedings arising out of the breach by the Encumbrancer of any of its obligations set out in this OwnerCo Leasehold Encumbrance.
- 11.6 The Encumbrancee will pay the Encumbrancer's legal costs (as between solicitor and client) of and incidental to the release or attempted release of this OwnerCo Leasehold Encumbrance under clause 6 and will indemnify the Encumbrancer against all claims and proceedings arising out of the breach by the Encumbrancee of any of its obligations set out in this OwnerCo Leasehold Encumbrance.

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

Approved by Registrar-General of Land under No. 2002/5032

**Annexure Schedule**

Insert type of instrument  
"Mortgage", "Transfer", "Lease" etc



Encumbrance

Dated

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(Continue in additional Annexure Schedule, if required.)

**CERTIFICATE OF NON-REVOCATION OF POWER OF ATTORNEY**

I, \_\_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_ HEREBY CERTIFY:

1. THAT by Deed dated the 28th day of April 2006 ("the Deed"), a copy of which was deposited in the Otago Land Registry Office, under number \_\_\_\_\_, I was appointed the lawful attorney of **JACKS POINT LIMITED** ("the Company"), on the terms and subject to the conditions set out in the Deed.

2. THAT at the date hereof I have not received any notice or information of the revocation of that appointment by the commencement of liquidation of the Company, or otherwise.

SIGNED by: \_\_\_\_\_ (name)

\_\_\_\_\_ (signature)

at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 2006

SIGNED in my presence:

\_\_\_\_\_  
Signature of Witness

Witness to complete in BLOCK letters (unless legibly printed)

Witness name:

Occupation:

Address:

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.



Form D

**Encumbrance Variation instrument**

(Section 101 Land Transfer Act 1952)

**Encumbrancer**

Jacks Point Land Limited

**Encumbrancee**

Jacks Point Residents &amp; Owners Association Incorporated

**Variation of Covenant**

The terms, covenants or conditions contained in the covenant(s) set out in Schedule A are hereby varied, negatived or added to, as set out in Schedule B.

**Schedule A***Continue in additional Annexure Schedule, if required*

Creating Instrument number	Unique Identifier
6993637.10	435175

**Schedule B***Continue in Annexure Schedule, if required*

Encumbrance Instrument 6993637.10 is amended at Annexure Schedule 2, clause 1.1 as follows:

1. The definition of "Society Member" is amended to read as follows:

*Means each Residential Member (as defined in the Constitution) of the Encumbrancee*

2. The definition of "PLA" is amended to read as follows:

*Property Law Act 2007*

Form D

**Encumbrance Variation instrument**

(Section 101 Land Transfer Act 1952)

**Encumbrancer**

Jacks Point Land Limited

**Encumbrancee**

Jacks Point Residents &amp; Owners Association Incorporated

**Variation of Covenant**

The terms, covenants or conditions contained in the covenant(s) set out in Schedule A **are hereby varied, negated or added to**, as set out in Schedule B.

**Schedule A***Continue in additional Annexure Schedule, if required*

Creating Instrument number	Unique Identifier
6993637.8	304556

**Schedule B***Continue in Annexure Schedule, if required*

Encumbrance Instrument 6993637.8 is amended at Annexure Schedule 2, clause 1.1 as follows:

1. The definition of "Society Member" is amended to read as follows:

*Means each Residential Member (as defined in the Constitution) of the Encumbrancee*

2. The definition of "PLA" is amended to read as follows:

*Property Law Act 2007*

Form D

**Encumbrance Variation instrument**

(Section 101 Land Transfer Act 1952)

**Encumbrancer**

Jacks Point Golf Course Limited

**Encumbrancee**

Jacks Point Residents &amp; Owners Association Incorporated

**Variation of Covenant**

The terms, covenants or conditions contained in the covenant(s) set out in Schedule A are hereby varied, negatived or added to, as set out in Schedule B.

**Schedule A***Continue in additional Annexure Schedule, if required*

Creating Instrument number	Unique Identifier
6993637.12	304560 304559

**Schedule B***Continue in Annexure Schedule, if required*

Encumbrance Instrument 6993637.12 is amended at Annexure Schedule 2, Clause 1.1 as follows:

1. The definition of "Society Member" is amended to read as follows:

*means each Residential Member (as defined in the Constitution) of the Encumbrancee*

2. The definition of "Levy Paying Developed Property" is amended to read as follows:

*means all Residential Lots, except Excluded Properties*

3. The definition of "PLA" is amended as follows:

*Property Law Act 2007*

**APPENDIX 3**  
**VILLAGE GOLF COURSE DEED**

## **Village Golf Course Deed**

between

Jacks Point Residents & Owners Association Incorporated

and

Jacks Point Golf Course Limited

## Village Golf Course Deed

Date:

2015

### Parties

**Jacks Point Residents & Owners Association Incorporated ("Society")**

**Jacks Point Golf Course Limited ("JPGCL")**

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### Background

- A. The Golf Course, as part of the development of Jacks Point, is operated by JPGCL.
- B. The Society and JPGCL have agreed about arrangements regarding the Golf Course for the Village, as set out in this deed.

### Agreement

#### 1. Interpretation

##### 1.1 For the purposes of this Deed:

"Adult" means a person aged 20 years or over as at the first day of the Operating Year in question.

"Average Residential Dwelling Area" means an area equal to the area of land (in square metres) contained in, or underlying, a Title for a Multi Developed Property to the intent that only the ground level land area (and not areas within units on different storeys is assessed) divided by the Number of Properties within that Multi Developed Property.

"Club" means Jacks Point Golf Club Incorporated, or any other club or incorporated body appointed under clause 5.

"Commercial Property" means a Developed Property within the Village which is not used and is not capable of being used for Residential Purposes.

"Constitution" means the constitution of the Society which is its rules for the purposes of the Incorporated Societies Act 1908.

"Default Interest Rate" means five percent above the 90 day bill rate disclosed on Reuters screen page BKBM (or its successor's page) at 11:00am on the due date for payment.

"Developed Property" has the meaning given to it in the Constitution.

"Golf Course" means the golf course situated on the land contained in computer interest register 304559 and 304560.



"Green Fees Player" means a player playing a casual round of golf on the Golf Course for green fees, who is not a member of the Club.

"GST" means goods and services tax charged in accordance with the Goods and Services Tax Act 1985.

"High Density Property" means each of the following, within the Village:

- (a) a Developed Property which has a land area of 300m<sup>2</sup> or less upon which is built a Residential Dwelling of three or more Storeys; or
- (b) a deemed Developed Property (pursuant to clause 3.4) within a Multi Developed Property, where:
  - (i) the Multi Developed Property has an Average Residential Dwelling Area of 300m<sup>2</sup> or less; and
  - (ii) that deemed Developed Property is a Residential Dwelling of three or more Storeys; or
- (c) a Multi Developed Property which is a building of three or more Storeys that contains deemed Developed Properties (pursuant to clause 3.4) and the Multi Developed Property upon which it is located has an Average Residential Dwelling Area of 300m<sup>2</sup> or less. For clarity, each such Residential Dwelling is treated as an individual High Density Property.

"Hotel" means a Developed Property within the Village which is operating for the letting of Hotel Keys, rooms or apartments for daily and/or short term letting, in the nature of a hotel, lodge, motel or similar or any part thereof (but excluding a Residential Key Development).

"Hotel Key" means a Hotel bedroom which is capable of being a separate room available for separate use by a guest of the Hotel, to the intent that (by way of illustration) a unit which contains two separate Hotel bedrooms will constitute two Hotel Keys.

"Jacks Point" has the meaning attributed to it in the Constitution.

"Levy" means the amount payable from time to time by each Village Owner to JPGCL under clause 3.

"Levy Commencement Date" means (in respect of any part of the Village) the date upon which that part of the Village becomes a Developed Property.

"Medium Density Property" means each of the following, within the Village:

- (a) a Developed Property which has a land area of 350m<sup>2</sup> or less upon which is built a Residential Dwelling of one or two Storeys; or
- (b) a deemed Developed Property (pursuant to clause 3.4) within a Multi Developed Property, where:
  - (i) the Multi Developed Property has an Average Residential Dwelling Area of 350m<sup>2</sup> or less; and
  - (ii) that deemed Developed Property is a Residential Dwelling of one or two Storeys; or

- (c) a Multi Developed Property which is a building of one or two Storeys that contains deemed Developed Properties (pursuant to clause 3.4) and the Multi Developed Property upon which it is located has an Average Residential Dwelling Area of 350m<sup>2</sup> or less. For clarity, each such Residential Dwelling is treated as an individual Medium Density Property.

"Multi Developed Property" has the meaning given to it in clause 3.3.

"Non-Subdivision Covenant" has the meaning given to it in the Constitution.

"Number of Properties" has the meaning given to it in clause 3.4.

"Operating Year" means each calendar year beginning 1 July, and ending on the following 30 June, and includes any broken periods at the beginning and at the end of the Term.

"OperatorCo Leasehold Encumbrance" means ENC 6993637.12 (including any variation of such encumbrance from time to time).

"Other Developed Property" has the meaning given to it in clause 3.2.

"Owner" has the meaning given to it in the Constitution.

"Partner" means:

- (a) a spouse; or
- (b) a de facto partner as defined in section 2D of the Property (Relationships) Act 1976; or
- (c) a partner to a civil union as defined in sections 4 and 5 of the Civil Unions Act 2004.

"Property" means one of any of the following:

- (a) Residential Dwelling; or
- (b) Medium Density Property; or
- (c) High Density Property; or
- (d) Other Developed Property; or
- (e) Hotel Key; or
- (f) Residential Key.

"Quarter" has the meaning given to it in the Constitution.

"Residential Dwelling" means a building, dwelling, unit or similar within the Village which is to be used as a single self-contained household unit for an individual or group of people who normally occupy the same primary residence.

"Residential Key Development" means a Developed Property within the Village which is operating for the letting, occupation or licensing of Residential Keys, rooms or apartments for occupation, for any period of duration, in the nature of a retirement home, retirement village, communal living development, lifestyle village, workers' accommodation or similar or any part thereof (but excluding a Medium Density Property, High Density Property, Other Developed Property or Hotel).

"Residential Key" means a bedroom in a Residential Key Development which is capable of being a separate room available for separate use by an occupier of the Residential Key Development, to the intent that (by way of illustration) a unit which contains two separate Residential Key Development bedrooms will constitute two Residential Keys.

"Residential Golf Levy" means the Total Levy ÷ the Number of Levy Paying Developed Properties (as both of those terms are defined in the OperatorCo Leasehold Encumbrance) plus GST on that sum.

"Residential Purpose" means any dwelling or building for residential use, accommodation for daily and short term letting, hotel rooms, retirement village accommodation, including a Residential Dwelling, Medium Density Property, High Density Property, Other Developed Property used as a dwelling, Hotel, or Residential Key Development.

"Society" means Jacks Point Residents & Owners Association Incorporated.

"Society Member" means each Member (as defined in the Constitution) of the Society.

"Storey" includes any storey which is underground.

"Title" means any certificate of title or similar including, without limitation, a computer freehold register, computer unit title register, computer composite register or computer interest register under the Land Transfer Act 1952.

"Village" means initially the land described as Lots 1-12, 103, 104 and 105 DP 409612 and includes any lot, unit or Title derived out of those titles, including as a result of any further subdivision (as that term is defined in the Resource Management Act 1991) of those Titles.

"Village Developer" has the meaning given to it in the Constitution.

"Village Owner" means each owner of a Developed Property created from the Village.

"Youth" means a person aged under 20 years as at the first day of the Operating Year in question.

1.2 In this Deed:

- (a) words importing the singular number include the plural and vice versa.
- (b) reference to any statute, regulation, ordinance, bylaw shall be deemed to extend to all statutes, regulations, ordinances, bylaws amending, consolidating or replacing the same.

**2. Roles of the Parties**

2.1 The parties agree that the Society will have the following role and obligations under this Deed, as further set out in the Constitution:

- (a) It will cause its Society Members to be individually bound by this Deed, as if they were a party to it, in the manner set out in the Constitution; and
- (b) It will cause each Village Owner to pay the Levy in the manner set out in this Deed; and

(c) If any Village Owner does not do so, the Society will pay that Levy to JPGCL and recover it from that Village Owner, in the manner set out in clause 3.7.

2.2 The parties acknowledge that the Society has entered this deed for the benefit of, and to bind, Society Members who are Village Owners. Accordingly, in terms of the Contracts Privity Act 1982, the covenants of this Deed bind and are enforceable by Village Owners.

2.3 This Deed binds JPGCL's successors in title of the Golf Course. Contemporaneously with the acquisition of any interest in the Golf Course, the parties will take all steps as are required to cause such successors in title to become bound by this Deed. However the liability of any such successor in title is limited to obligations and liabilities that accrue during that party's time as registered proprietor of the Golf Course, and a party remains liable for any antecedent breach prior to the transfer of its land.

### 3. Levy

#### 3.1

(a) During each Operating Year, from the Levy Commencement Date, each Village Owner will pay the Levy to JPGCL on basis set out in clause 3.

(b) Subject to clause 3.6, during each Operating Year, a quarter of the Levy is payable in arrears on or before the last day of each Quarter.

3.2 Commercial Properties will not pay a Levy. All other Developed Properties will pay a Levy, per Operating Year, which will be a sum equal to:

(a) 35% of the Residential Golf Levy per Developed Property for any High Density Property;

(b) 50% of the Residential Golf Levy per Developed Property for any Medium Density Property;

(c) 30% of the Residential Golf Levy per:

(i) Hotel Key for any Developed Property which is a Hotel or any part of a Hotel; or

(ii) Residential Key for any Developed Property which is a Residential Key Development or any part of a Residential Key Development;

(d) 100% of the Residential Golf Levy per Developed Property, for any other Developed Property or any other Property deemed to be a Developed Property under clause 3.4 ("Other Developed Property"). For the avoidance of doubt any Developed Property or deemed Developed Property that (for example) is bare land and therefore does not meet the definition of High Density Property, Medium Density Property, Hotel Key, or Residential Key is deemed to be an Other Developed Property.

3.3 JPGCL may, acting reasonably, from time to time, determine that a Developed Property, although contained in a single Title and/or a single Developed Property, contains more than one Property within any one of the following categories, or contains Properties which are a combination of the following categories:

- (a) Residential Dwellings; or
- (b) Medium Density Properties; or
- (c) High Density Properties; or
- (d) Other Developed Properties; or
- (e) Hotel Keys; or
- (f) Residential Keys.

Such a Developed Property is referred to as a "Multi Developed Property".

3.4 Where JPGCL determines that there is a Multi Developed Property, and gives notice to the Owner of that Multi Developed Property:

- (a) each Property within that Multi Developed Property will be deemed to be a Developed Property in its own right for the purposes of calculating the Levy under clause 3 and for the purposes of determining the right to use the Golf Course under clause 4; and
- (b) the number of Properties within that Title/Developed Property is called the "Number of Properties";

provided that in relation to Medium Density Properties, JPGCL shall not be able to determine that a Property is a Multi Developed Property where the second or additional dwelling or residence on that Multi Developed Property is in the nature of a smaller secondary self contained flat or apartment on that Property in the nature of granny flat type of accommodation.

3.5 By way of example only, JPGCL may determine that a Developed Property is a Multi Developed Property that contains:

- (a) two Medium Density Properties;
- (b) three High Density Properties;
- (c) four Other Developed Properties; and
- (d) a Hotel containing twenty Hotel Keys.

Accordingly, for the purposes of clause 3 and 4, that Developed Property will be treated as containing two deemed Medium Density Residential Properties, three deemed High Density Developed Properties, four deemed Other Developed Properties and twenty deemed Hotel Keys.

3.6 If the Levy Commencement Date is part way through an Operating Year then the Levy will be altered as follows:

- (a) If the Levy Commencement Date is between 1 July and 30 September (both inclusive) in the relevant Operating Year, the Levy will be the full amount calculated under clause 3.2;
- (b) If the Levy Commencement Date is between 1 October and 31 December (both inclusive) in the relevant Operating Year, the Levy will be three quarters of the full amount calculated under clause 3.2, and one third of the Levy is payable in

arrears on or before the last day of each of the remaining three Quarters in that year;

- (c) If the Levy Commencement Date is between 1 January and 31 March (both inclusive) in the relevant Operating Year, the Levy will be one half of the full amount calculated under clause 3.2, and one half of the Levy is payable in arrears on or before the last day of each of the remaining two Quarters in that year;
  - (d) If the Levy Commencement Date is between 1 April and 30 June (both inclusive) in the relevant Operating Year, the Levy will be one quarter of the full amount calculated under clause, and the Levy is payable in arrears on or before the last day of the remaining Quarter in that year.
- 3.7 If any Village Owner does not pay its Levy, or any part of it, including any interest ("Interest") payable under this deed in respect of it (together called "Unpaid Levy"), to JPGCL by the due date for payment, and if JPGCL gives notice in writing of this (including an appropriate GST invoice) to the Society, then:
- (a) The Unpaid Levy (excluding Interest) will immediately be deemed to be payable by the Society to JPGCL in the manner set out in this clause; and
  - (b) The Society will charge that Village Owner a levy equal to the Unpaid Levy pursuant to the Constitution (including Interest) and take all reasonable steps to immediately cause that Village Owner to pay that sum to the Society; and
  - (c) The Society acknowledges that it will take such steps to recover that Unpaid Levy from the Village Owner that it would take to recover any other levy payable by a Society Member under the Constitution; and
  - (d) Immediately upon receipt of the Unpaid Levy from the Village Owner, the Society will pay a sum equal to the Unpaid Levy (excluding Interest) to JPGCL; and
  - (e) The Society will retain the Interest in consideration of recovering and paying the Levy to JPGCL.

#### 4. Access to Golf Course

- 4.1 JPGCL shall grant each Village Owner the right to use the Golf Course from the Levy Commencement Date in terms of this clause 4.
- 4.2 Subject to clause 4.3, JPGCL will permit each Village Owner the right to use the Golf Course from the Levy Commencement Date subject to any rules and regulations, in respect of the use of the Golf Course reasonably imposed by JPGCL from time to time. Subject to clause 4.3, each Village Owner has this right to use the Golf Course, either as:
  - (a) A member of the Club; or
  - (b) A Green Fees Player.
- 4.3 The rights of Village Owners to use the Golf Course in terms of clause 4.2 is limited to a maximum of the following, if nominated under clauses 4.5 and 4.6:



- (a) 2 Adults per Developed Property for High Density Properties and Medium Density Properties;
  - (b) 2 Adults per Hotel Key or Residential Key;
  - (c) 2 Adults and 2 Youths per Developed Property for Other Developed Properties.
- Such people who are entitled to use the Golf Course are called "Eligible Persons".
- 4.4 The owners of Commercial Properties will have no rights to use the Golf Course.
- 4.5 The Eligible Persons must be nominated under clause 4.6 and must be:
- (a) Persons who are individuals named as the Village Owner or the Partner of a Village Owner; or
  - (b) Natural persons who are the beneficial owners of shares in the Village Owner, if the Village Owner is a company and the Partner of any beneficial owner; or
  - (c) If the Village Owner is a trust, natural persons who are the settlor or a trustee of the trust or a beneficiary of the trust specified by name (rather than by class), in the trust deed as a beneficiary or the Partner of such a person; or
  - (d) Youths who are the children of Adults who are Eligible Persons under clauses 4.5(a), 4.5(b) or 4.5(c).
- 4.6 The Village Owner must nominate the Eligible Persons by notice in writing to the JPGCL. The Village Owner may from time to time vary the nomination by notice in writing to JPGCL but only if:
- (a) The existing nomination was made more than a year earlier; or
  - (b) One of the Eligible Persons has died and the nomination replaces only the deceased Eligible Person.
- 4.7 Each Village Owner acknowledges that JPGCL:
- (a) will impose the rules and regulations described in clause 4.2 itself, directly upon users of the Golf Course, and/or will impose such rules and regulations upon the Club, which in turn imposes those rules and others upon members of the Club;
  - (b) without limiting the previous paragraph, may at any time, or from time to time, restrict the times at which a Green Fees Player or a member of the Club who does not have a handicap from an accredited golf club can use the Golf Course, or prohibit such a person from using the Golf Course, while acting reasonably; and
  - (c) will impose a levy upon the Club in consideration of JPGCL granting members of the Club the right to play on the Golf Course.
- 4.8 Each Village Owner acknowledges that green fees paid by Green Fees Players, including Eligible Persons who are Green Fees Players, will be paid to JPGCL. The green fees payable by a Green Fees Player who is an Eligible Person will be no more than 75% of the published green fee rate in respect of the Golf Course from time to time.

## 5. New Club

- 5.1 Each Village Owner acknowledges that JPGCL will grant access rights in respect of the Golf Course to the Club on an annual or other basis. If, for any reason, JPGCL does not grant such access rights to the incumbent Club at any time, JPGCL will cause such access rights to be granted to another incorporated body or club for the purposes of operating a golf club on the Golf Course.

## 6. Further Assurance

- 6.1 Each party will with due diligence sign all necessary deeds and documents and do everything that is reasonably required to carry out the terms of this Deed.

## 7. Default

- 7.1 If any Village Owner fails to make any payment due under this Deed, that Village Owner will pay interest on the full amount owing to JPGCL at the Default Interest Rate, calculated on a daily basis, from the date payment was due until payment is made in full, including payment of interest under this clause. This clause is without prejudice to any other rights or remedies of JPGCL.

## 8. Dispute Resolution

- 8.1 If a party has any dispute with the other party in connection with this Deed:
- (a) That party will promptly give full written particulars of the dispute to the others.
  - (b) The parties will promptly meet together and in good faith try and resolve the dispute.
- 8.2 If the dispute is not resolved within 7 days of written particulars being given (or any longer period agreed to by the parties) the dispute will be referred to mediation.
- 8.3 A party must use the mediation procedure to resolve a dispute before commencing arbitration or legal proceedings.
- 8.4 The mediation procedure is:
- (a) The parties will appoint a mediator and if they fail to agree the mediator will be appointed by the president of the New Zealand Law Society or the president's nominee.
  - (b) The parties must co-operate with the mediator in an effort to resolve the dispute.
  - (c) If the dispute is settled, the parties must sign a copy of the terms of the settlement.
  - (d) If the dispute is not resolved within 14 days after the mediator has been appointed, or within any extended time that the parties agree to in writing, the mediation must cease.
  - (e) Each party must pay a half share of the costs of the mediator's fee and costs including travel, room hire, refreshments etc.

- 8.5 The terms of settlement are binding on the parties and override the terms of this Deed if there is any conflict.
- 8.6 The terms of settlement may be tendered in evidence in any mediation or legal proceedings.
- 8.7 The parties agree that written statements given to the mediator or to one another, and any discussions between the parties or between the parties and the mediator during the mediation period are not admissible in any arbitration or legal proceedings.
- 8.8 Either party may commence arbitration proceedings when mediation ceases under clause 8.4(d).
- 8.9 If the dispute is referred to arbitration:
- (a) The arbitration will be conducted by one arbitrator appointed by the parties.
  - (b) If the parties cannot agree on an arbitrator within 14 days the appointment will be made by the president of the New Zealand Law Society or the president's nominee.
  - (c) The arbitration will be conducted in accordance with the Rules in Schedules 1 and 2 of the Arbitration Act 1996.
- 8.10 Neither party will unreasonably delay the dispute resolution procedures in this clause 8.
- 8.11 This clause 8 does not apply to:
- (a) Any dispute arising in connection with any attempted renegotiation of this Deed; or
  - (b) An application by either party for urgent interlocutory relief.
- 8.12 Pending resolution of any dispute the parties will perform this Deed in all respects including performance of the matter which is the subject of dispute.
- 9. General**
- 9.1 The warranties, undertakings, agreements and indemnities given under this Deed or pursuant to this Deed shall not merge on settlement of any of the transactions contemplated by this Deed but shall remain enforceable to the fullest extent notwithstanding any rule of law to the contrary.
- 9.2 If any part of this Deed is held by any Court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination shall not impair the enforceability of the remaining parts of this Deed and they shall remain in full force and effect.
- 9.3 Each Village Owner will pay JPGCL's legal costs (as between solicitor and client) of and incidental to the enforcement or attempted enforcement of JPGCL's rights, remedies and powers in this Deed and will indemnify JPGCL against all claims and proceedings arising out of the breach by JPGCL of any of its obligations set out in this Deed.

9.4 JPGCL will pay the Village Owner's legal costs (as between solicitor and client) of and incidental to the enforcement or attempted enforcement of the Village Owner's rights, remedies and powers in this Deed and will indemnify the Village Owner against all claims and proceedings arising out of the breach by the Village Owner of any of its obligations set out in this Deed.

## 10. Notice

10.1 Any notice required to be served on any party shall be in writing and in accordance with the Property Law Act 2007 or as the Society is permitted to give notice under the Constitution.

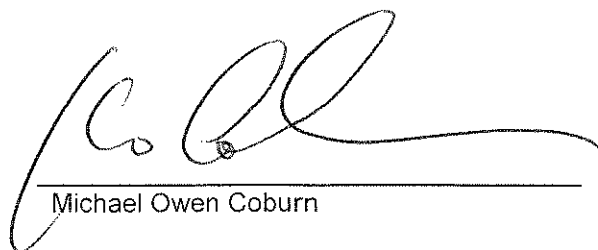
## 11. Liability

11.1 Each Village Owner will do all things necessary to ensure that any invitees of the Village Owner on the Golf Course and any lessees or occupiers of the Developed Property of the Village Owner comply with the provisions of this Deed.


## 12. Transfer of Golf Course to Society

12.1 The covenants in this Deed shall cease to apply in respect of any part of the Golf Course, including the fee simple Titles in respect of the Golf Course, which are transferred to the Society.

Signed by **Jacks Point Residents & Owners Association Incorporated** by its duly authorised attorney in the presence of:



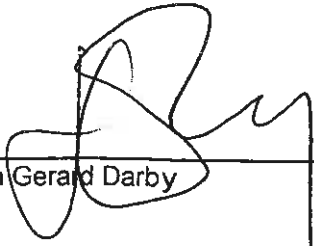
Michael Owen Coburn

  
 \_\_\_\_\_  
 Signature of witness

\_\_\_\_\_  
 Name of witness  
 Laura Jane McPhail  
 Solicitor  
 Occupation Queenstown

\_\_\_\_\_  
 Address

Signed for and on behalf of **Jacks Point Golf Course Limited** by John Gerard Darby, its duly authorised officer in the presence of:

  
\_\_\_\_\_  
John Gerard Darby

  
\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness ~~Kerry Amanda O'Donnell~~  
Solicitor  
Queenstown

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address

**APPENDIX 4**  
**WATER DEED**



## **Deed Pertaining to Jacks Point Water Supply**

between

Resort Zone Infrastructure Association Incorporated

and

Jacks Point Owners & Residents Association Incorporated

and

Henley Downs Residents and Owners Association Incorporated

and

Coneburn Water Supply Company Limited

## Deed Pertaining to Jacks Point Water Supply

Date:

16 JUNE

2015/6

### Parties

**Resort Zone Infrastructure Association Incorporated ("RZIA")**

**Jacks Point Owners & Residents Association Incorporated ("JPROA")**

**Henley Downs Residents and Owners Association Incorporated ("HDROA")**

**Coneburn Water Supply Company Limited ("WaterCo")**

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### Background

- A. Jacks Point Limited, JPROA and WaterCo entered a deed ("Original Water Deed") on 19 September 2006, on terms substantially the same as this deed, on the basis that JPROA was the only shareholder in WaterCo, and the only residents association which WaterCo supplied water to was JPROA.
- B. JPROA and HDROA have formed RZIA, among other things, to be the shareholder in WaterCo on behalf of both Residents Associations. Accordingly the parties enter this deed to capture all of the commercial terms of the previous deed, as they apply to this new structure.
- C. The Council requires there to be a single communal potable water supply installed to service the developments within the Jacks Point Zone. That water supply is operated on behalf of the residents. This communal water system will be managed by a special purpose company or other similar entity that is established pursuant to the Tripartite Agreement.
- D. WaterCo will supply potable water, on behalf of RZIA and the Residents Associations, to Society Members in Jacks Point and to any other landowners within the Jacks Point Zone who access water in terms of this deed. WaterCo will supply this water to all residents on the same terms, which will be the cost of such water. This cost will reflect the direct costs of operating and maintaining the water supply system to deliver water to landowners within the Jacks Point Zone plus the long term maintenance costs of preserving a quality water supply system for the future.
- E. The parties enter this deed to record the ongoing operation of WaterCo.

### Agreement

#### 1. Definitions and Construction

##### Definitions

- 1.1 In this deed, unless the context otherwise requires:

**"Bulk Water Charge"** means the sums charged by WaterCo to the Residents Associations under clauses 4.1(a), and 4.1(d).

**"Capital Expenditure"** has the meaning given to it in clause 6.1

"**Council**" means the Queenstown Lakes District Council.

"**Credit Balances**" has the meaning given to it in clause 6.6.

"**Developed Property**" has the meaning attributed to it in the constitutions or rules of HDROA and JPROA, or any equivalent meaning in any amended constitution or rules.

"**Easements**" means easements and/or covenants and/or similar registered documents which permit water to be taken from Lake Wakatipu to a storage facility on Jacks Point, and from there to land within Jacks Point.

"**GST**" means goods and services tax charged in accordance with the Goods and Services Tax Act 1985.

"**HDROA Sinking Fund Levy**" has the meaning given to it in clause 6.1.

"**HDROA Other Capital Levy**" has the meaning given to it in clause 6.1.

"**Jacks Point**" has the meaning attributed to it in the constitution of JPROA.

"**Jacks Point Stakeholders Deed**" means the deed dated 29 August 2003 between Jacks Point Limited (now Coneburn Land Holdings Limited), Henley Downs Holdings Limited, Dickson Stewart Jardine, Jillian Frances Jardine, Gerard Brendan Boock and Queenstown Lakes District Council.

"**Jacks Point Zone**" has the meaning attributed to it in the constitution of JPROA.

"**Joint Sinking Fund Levy**" has the meaning given to it in clause 6.1.

"**Joint Other Capital Levy**" has the meaning given to it in clause 6.1.

"**JPROA Other Capital Levy**" has the meaning given to it in clause 6.1.

"**JPROA Sinking Funds Levy**" has the meaning given to it in clause 6.1.

"**Licences**" means any licences to occupy or similar documents which permit water to be taken from Lake Wakatipu to a storage facility on Jacks Point, and from there to land within Jacks Point.

"**Material Right**" means any Easement or Licence reasonably required to permit the supply of water to a land owner within Jacks Point.

"**Option**" means the option granted by WaterCo to the Society to purchase the Water Infrastructure Assets as set out in clause 3.9.

"**Original Water Deed**" has the meaning given to it in Background A.

"**Public Domain**" means the land shown as Lot 13 of the attached plan and which is to vest in the Council as a recreation reserve or local purpose reserve.

"**Residents Associations**" means JPROA and HDROA.

"**Shares**" means all of the shares in the capital of WaterCo.

"**Sinking Funds**" has the meaning given to it in clause 6.1.

"**Society Member**" means a Member of either JPROA or HDROA (as defined in their constitutions), or any equivalent meaning in any amended constitution or rules.

**"Total Water Charges"** has the meaning given to it in clause 7.1.

**"Tripartite Agreement"** means an agreement dated 29 August 2003 between Jacks Point Limited (now Coneburn Land Holdings Limited), Henley Downs Holdings Limited, Dickson Stewart Jardine, Jillian Frances Jardine and Gerard Brendan Boock.

**"Water Consents"** means any resource consents, or any other consents, which permit WaterCo to take and use water for the purposes contemplated by this deed.

**"Water Infrastructure Assets"** means:

- (a) the Easements; and
- (b) the Licences; and
- (c) all physical improvements in, on or under the land which is the subject of the Easements and the Licences in respect of the supply of water, including, without limitation, water pipes, storage tanks, and pumps; and
- (d) any water permits or other rights to take water, whether under the Resource Management Act 1991, or otherwise, in respect of communal potable water to be supplied within the Jacks Point Zone.

**"Working Day"** means a day of the week other than:

- (a) Saturday, Sunday, Good Friday, Easter Monday, the day ANZAC Day is publicly observed, the Sovereign's Birthday, Labour Day and Waitangi Day;
- (b) a day in the period commencing the 25th day of December in any year and ending with the 2nd day of January in the following year;
- (c) if the first day of January in any year falls on a Friday, the following Monday, and
- (d) if the first day of January in any year falls on a Saturday or Sunday, the following Monday and Tuesday.

### **Construction**

1.2 In this deed, unless the context requires otherwise:

- (a) References to clauses are to those named in this deed;
- (b) Headings are for convenience only and do not affect interpretation;
- (c) The singular includes plural and vice versa, and words importing any gender include the other genders;
- (d) Statute, regulation or by-law includes all statutes, regulations, or by-laws varying, consolidating or replacing them, and a reference to a statute includes all regulations or by-laws issued under that statute;
- (e) References to any party includes the successors and any permitted assigns of that party; and
- (f) A reference to "written" or "writing" includes facsimile communications.

## 2. Term and Original Water Deed

- 2.1 The term of this deed will commence on the date of execution of it and will continue indefinitely.
- 2.2 From the date of this deed, the Original Water Deed is cancelled, without prejudice to any prior right or obligation under the Original Water Deed.

## 3. WaterCo Structure and Restrictions

- 3.1 WaterCo may not in any financial year make a taxable profit.
- 3.2 WaterCo will be a single purpose company, and may undertake no business or trading activity other than the supply of potable water within the Jacks Point Zone.
- 3.3 The obligations and restrictions in clauses 3.1 and 3.2 will be contained in the constitution of WaterCo.
- 3.4 WaterCo warrants to RZIA and the Residents Associations that:
- (a) WaterCo will at all times ensure that it complies with Drinking Water Standards of New Zealand 2005 or any other water standards applicable under New Zealand law to Jacks Point and will at all times provide such details of the maintenance and operation of the business of WaterCo to Council as Council requires; and
  - (b) WaterCo will at all times complete regular monitoring and maintenance of primary treatment tanks and water distribution systems in accordance with the recommendations of the designer of the tanks and the water distribution systems which form part of the Water Infrastructure Assets; and
  - (c) WaterCo will at all times ensure that it complies with the lawful requirements of the Council or its successor with regard to the supply of water pursuant to the Water Infrastructure Assets, whether under resource consents in respect of Jacks Point, or otherwise. Without limiting this, WaterCo will comply with any requirements imposed by any relevant resource consent in respect of the supply of water within Jacks Point upon the holder of that consent; and
  - (d) WaterCo will not sell any of the Water Infrastructure Assets, at any time, including at a time when WaterCo is in receivership or liquidation, other than to an entity which enters a deed with RZIA and the Residents Associations on terms consistent with this deed.
- 3.5 RZIA and the Residents Associations will take all reasonable steps to cause WaterCo to comply with the obligations in clause 3.4 at all times.
- 3.6 Subject to clause 3.7, RZIA and the Residents Associations will not, and will not permit any other person or entity other than WaterCo to, create or build another potable water supply scheme to supply water to the residents of Jacks Point. Without limiting this obligation, except as set out in this deed, RZIA and the Residents Associations will not use or give permission to any other person or entity other than WaterCo to use the Easements or the Licences or any encumbrances or easements or licences or other interests in land which are in favour of WaterCo for the carrying of water, while WaterCo remains duly incorporated in New Zealand.

- 3.7 Clause 3.6 shall not apply in the event that:
- (a) WaterCo is placed into liquidation or a receiver is appointed in respect of WaterCo;
  - (b) any Material Right is determined, terminated, surrendered or is at an end for any reason; or
  - (c) Council imposes any requirement under clause 16.b. of the Tripartite Agreement, concerning potable water supply to residents of Jacks Point.
- 3.8 WaterCo will not, and the RZIA will ensure that WaterCo does not, issue any new Shares to any person or entity other than RZIA.
- 3.9 WaterCo hereby grants RZIA an option to purchase the Water Infrastructure Assets on the following terms:
- (a) The Option may be exercised by RZIA for the period of three calendar months from either the date:
    - (i) WaterCo is placed in liquidation or a receiver is appointed in respect of WaterCo; or
    - (ii) any Material Right is determined, terminated, surrendered or is at an end for any reason; or
    - (iii) Council imposes any requirement under clause 16.b. of the Tripartite Agreement, concerning potable water supply to residents of Jacks Point.
  - (b) The purchase price for the Water Infrastructure Assets will be determined by an independent valuer who in setting the price must take into account the following:
    - (i) WaterCo's obligations under this deed, including the obligation for a purchaser to enter into a deed on the same terms as set out in clause 3.4(d).
    - (ii) WaterCo will not hold any of the Easements anticipated by this deed once it is in liquidation or receivership.
  - (c) The independent valuer will be appointed by agreement between WaterCo and RZIA, or failing agreement will be appointed by the President of the New Zealand Law Society.
  - (d) In accepting the transfer of the Water Infrastructure Assets, RZIA must take all reasonable steps to cause Coneburn Land Holdings Limited, and its successors, to comply with the Tripartite Agreement, to the extent that the Tripartite Agreement applies to the supply of water within the Jacks Point Zone on an ongoing basis.
  - (e) RZIA will be entitled to revoke the exercise of the Option within five Working Days of the value being set by the valuer.
  - (f) The remaining terms of the Option will be those that are customarily included in an option deed by solicitors practising in Otago.



- (g) Immediately after the purchase of the Water Infrastructure Assets is settled, RZIA, JPROA and HDROA will take all reasonable steps to sell the Water Infrastructure Assets to a new company, the shareholder of which will be RZIA, the structure of which will be the same as WaterCo, and which will be a party to a deed with RZIA, JPROA and HDROA on the same terms as this deed.

#### 4. **WaterCo Supply and Charges**

4.1 WaterCo will, on behalf of the RZIA and the Residents Associations, supply potable water to the Society Members. Subject to clause 4.2 WaterCo will charge the Residents Associations for the supply of such water in the following manner:

- (a) All Society Members, in both Residents Associations, will be charged for the consumption of water on the same basis. WaterCo will charge each of the Residents Associations for the supply of water to their Society Members, a single Bulk Water Charge. The Bulk Water Charge will be based on WaterCo's reasonable estimate of its expenses for providing water to the Resident's Association's Society Members for the period in a manner consistent with clause 4.2.
- (b) The terms and timing of payment of the Bulk Water Charge by the Residents Associations to WaterCo will be as agreed between WaterCo and the Residents Associations, having regard to the Residents Associations method and timing of collection of levies. Failing such agreement, the Bulk Water Charge is payable monthly in advance.
- (c) At the same time as WaterCo provides the Residents Associations with the account for their share of the Bulk Water Charge, it will provide written advice to the Residents Associations of the total volume of water delivered to each of the Residents Associations and each of their Society Members in the previous period and of the details of its estimated expenses upon which the charges are based (as described in clause 4.2) for the period which is being charged.
- (d) After the end of each financial year of WaterCo, and within a reasonable time after WaterCo has completed its annual accounts for taxation purposes, WaterCo will reconcile the Bulk Water Charges which it has charged to the Residents Associations under clause (a) against its actual expenses for taxation purposes for that financial year, and will:
  - (i) Send details of that reconciliation to the Residents Associations; and
  - (ii) If, during that financial year, WaterCo has charged more than its actual expenses for taxation purposes, immediately credit that excess to the Residents Associations against the next payments due by the Residents Associations to WaterCo;
  - (iii) If, during that financial year, WaterCo has charged less than its actual expenses for taxation purposes, immediately charge the Residents Associations for the shortfall, which the Residents Associations will pay to WaterCo within a reasonable time; and

- (iv) Make the refund or charges described in clauses 4.1(d)(ii) and 4.1(d)(iii) within such period of the end of the financial year as is necessary to ensure that WaterCo complies with clause 3.1.
  - (e) If either of the Residents Associations fails to make any payment due under this clause 4.1 ("the Defaulting Association"), The Defaulting Association will pay WaterCo interest on the full amount owing to WaterCo at a rate 5% above the 90 day bill rate disclosed on Reuters screen page BKBM (or its successor's page) at 11.00 am on the due date for payment calculated on a daily basis, until payment is made in full, including payment of interest under this clause. This clause is without prejudice to any other rights of WaterCo.
- 4.2 Because WaterCo may not make a taxable profit in any financial year, over the course of each financial year, WaterCo may only charge the Residents Associations a total sum under clause 4.1 equal to its expenses for taxation purposes.
- 4.3 The parties acknowledge that WaterCo will supply potable water to the owner(s) and/or operator of the golf course within the Jacks Point Zone. The supply of such water will be on the following terms:
  - (a) WaterCo will charge the owner(s) and/or operator of the golf course a sum equal to WaterCo's actual expenses in providing that water, calculated on the same basis as Society Members purchase water.
  - (b) such other commercial terms to be negotiated separately between WaterCo and the owner(s) and/or operator of the golf course within the Jacks Point Zone.
- 4.4 The parties acknowledge that following vesting of the Public Domain in the Council WaterCo will supply potable water to the Council in respect of the Public Domain. The supply of such water will be on the following terms:
  - (a) WaterCo will charge the Council a sum equal to WaterCo's actual expenses in providing that water, calculated on the same basis as Society members purchase water.
  - (b) such other commercial terms to be negotiated separately between WaterCo and the Council.
- 5. **Water Charges by the Society to Society Members**
- 5.1 The parties will cause each Developed Property to have a water meter installed which is capable of reading the volume of water supplied to each Developed Property. The Residents Association of which the Developed Property is a member will be responsible for the reading of those water meters to enable it to calculate the on-charging described in clause 5.2.
- 5.2 The Residents Associations will on-charge to the Society Members their share of the Bulk Water Charge, on the following basis:
  - (a) The Residents Associations will divide their share of the Bulk Water Charge into two sums:
    - (i) A fixed cost component which reasonably reflects the fixed costs disclosed by WaterCo under clause 4.1; and

- (ii) A variable cost component which reasonably reflects the variable costs disclosed under the same clause.
  - (b) The Residents Associations will apportion and charge that fixed cost component to their Society Members per Developed Property, on a reasonable basis, and will charge the variable component to their Society Members based on the proportionate use of water by each of their Society Members.
- 5.3 If a Society Member fails to make payment of the sums described in clause 5.2 and the Residents Association of which the Society Member is a member requests WaterCo by notice in writing then WaterCo will stop the supply of water to the defaulting Society Member's Developed Property until that Residents Association requests that water be resupplied.
- 5.4 WaterCo acknowledges and agrees that no sums charged under this deed will include any amount for effluent or waste water disposal. The parties agree that all effluent and waste water disposal services will be supplied by each of the Residents Associations directly to its Society Members, and each of the Residents Associations will levy their own Society Members separately for the provision of effluent and waste water disposal services.
- 6. WaterCo Capital Works**
- 6.1 The parties acknowledge and agree that:
  - (a) because WaterCo will in no financial year make a taxable profit, WaterCo has little or no ability to fund Capital Expenditure. "Capital Expenditure" is deemed to include the funding of future long term capital works programmes and the payment of interest and the repayment of principal in respect of borrowing permitted under this clause 6; and
  - (b) WaterCo owns the Water Infrastructure Assets on the basis that they are compliant with Drinking Water Standards of New Zealand 2005 and that they provide sufficient water capacity for all of the Developed Properties whose owners are JPROA Society Members and HDROA Society Members, (provided all developers creating Developed Properties whose owners become members of HDROA meet their contractual obligations, if any, to build water reservoir capacity to service their own development areas within HDROA to the intent and effect that HDROA Society Members can draw potable water from such reservoirs) calculated reasonably, based on the maximum volume of water permitted by the Water Consents; and
  - (c) If WaterCo is required to improve the quality of water above Drinking Water Standards of New Zealand 2005, or to increase its water capacity, WaterCo will need to fund any Capital Expenditure in respect of such improvement or increase by way of capital levies; and
  - (d) WaterCo will need to create sinking fund levies in respect of the long term replacement of the Water Infrastructure Assets, at the end of their life; and
  - (e) In order to fund the sorts of capital works described in paragraph (c), and to smooth the cost to the Society Members of the kind of capital works described in paragraph (d), WaterCo will impose capital levies on RZIA, so RZIA will levy the Residents Associations, as set out in this clause 6: and

- (f) for the purposes of this clause 6:
  - (i) the kinds of levies described in paragraph d will be called "Sinking Funds", as further set out below; and
  - (ii) the kinds of capital levies described in paragraph (c), other than Sinking Funds will be called "Other Capital Levies" as further set out below.
- (g) WaterCo will impose the following Sinking Funds on RZIA:
  - (i) RZIA will be required to pay the kind of Capital Expenditure described in paragraph 6.1(d) that WaterCo reasonably determines will exclusively service JPROA and/or JPROA Society Members which RZIA will levy to JPROA by way of capital levy ("JPROA Sinking Fund Levy").
  - (ii) RZIA will be required to pay the kind of Capital Expenditure described in clause 6.1(d) that WaterCo reasonably determines will exclusively service HDROA and/or HDROA Society Members which RZIA will levy to HDROA by way of capital levy ("HDROA Sinking Fund Levy").
  - (iii) RZIA will be required to pay the kind of Capital Expenditure described in clause 6.1(d) that WaterCo reasonably determines will service both Residents Associations and/or their Society Members which RZIA will levy to JPROA and HDROA as to 50% each by way of capital levy ("Joint Sinking Fund Levy")
- (h) WaterCo will impose the following Other Capital Levies on the Residents Associations:
  - (i) RZIA will be required to pay the kind of Capital Expenditure described in paragraph 6.1(c) that WaterCo reasonably determines will exclusively service JPROA and/or JPROA Society Members which RZIA will levy to JPROA by way of capital levy ("JPROA Other Capital Levy").
  - (ii) RZIA will be required to pay the kind of Capital Expenditure described in clause 6.1(c) that WaterCo reasonably determines will exclusively service HDROA and/or HDROA Society Members Which RZIA will levy to HDROA by way of capital levy ("HDROA Other Capital Levy").
  - (iii) RZIA will be required to pay the kind of Capital Expenditure described in clause 6.1(c) that WaterCo reasonably determines will service both Residents Associations and/or their Society Members which RZIA will levy to JPROA and HDROA as to 50% each by way of capital levy ("Joint Other Capital Levy")
- (i) These Sinking Fund levies and Other Capital Levies are payable by the Society Members to the Residents Associations, which will be paid by the Residents Associations to RZIA, and then by RZIA to WaterCo by way of loans unless they are collected as part of the Total Water Charges collected by WaterCo under clause 7.

## 6.2 Subject to clause 6.3:

- (a) WaterCo will submit to RZIA and the Residents Associations, annually, projected Capital Expenditure requirements, in relation to each of the Sinking

- Fund Levies and Other Capital Levies, for as many years in the future as it can reasonably predict.
- (b) The nature and sum of the Capital Expenditure requirements, the Sinking Fund Levies, and the Other Capital Levies described in those budgets, as varied by any amended budgets provided by WaterCo to RZIA and the Residents Associations during the financial year, will constitute notice by RZIA and WaterCo to the Residents Associations that WaterCo requires the Residents Associations to pay such Sinking Fund Levies and Other Capital Levies to RZIA and therefore to WaterCo at the time(s) specified in those budgets.
  - (c) The Residents Associations will levy their Society Members for the Sinking Funds Levies and Other Capital Levies so that they receive as part of the next levy payable by their Society Members sums not less than those levies.
  - (d) On or before the date each of those Sinking Fund Levies and Other Capital Levies is required by WaterCo, each of the Residents Associations will make payments to RZIA and RZIA will make a payment to WaterCo equal to each of those levies, which will be by way of an interest free advance by RZIA to WaterCo.
- 6.3 If at any time WaterCo requires money for working capital or capital expenditure purposes before such money would be available under the process described in clauses 6.1 and 6.2, then the RZIA (and the Residents Associations if required by RZIA) will take all reasonable steps to make interest free advances to WaterCo until WaterCo, RZIA and the Residents Associations can comply with the procedure described in clauses 6.1 and 6.2, at which date the funds paid to WaterCo pursuant to clause 6.2 will be used to repay those advances.
- 6.4 WaterCo may borrow from a bank or other external lender to fund capital expenditure in respect of potable water, and the Residents Associations may, if it agrees to do so, each provide a guarantee in respect of such borrowings to the lender.
- 6.5 WaterCo will take all reasonable steps, on an ongoing basis, to plan a long term capital works programme, and to fund future expenditure on such a programme by way of long term Capital Expenditure, so as to smooth the cost to Society Members of such long term capital works programmes.
- 6.6 On the date that RZIA becomes the shareholder in WaterCo, JPROA may have a balance of funds ("Credit Balances") paid to WaterCo in respect of capital levies or sinking funds, similar to the Sinking Fund and/or the Other Capital Levy. Any such Credit Balances will be credited against JPROA Sinking Fund Levies or JPROA Other Capital Levies, as appropriate.
- 6.7 Notwithstanding any other provision of this clause 6, WaterCo shall only be able to call for payment from a Resident's Association of Sinking Fund levies or Other Capital Levies or for other funds or advances for working capital and capital expenditure for each Developed Property whose owner is a member of that Residents Association and where the Resident's Association has not connected to an alternative supply a result of Council imposing any requirement under clause 16.b. of the Jacks Point Stakeholders Deed concerning potable water supply to residents of Jacks Point.



## 7. Direct Billing

- 7.1 Notwithstanding clauses 4, 5 and 6, WaterCo will, at the request of a Residents Association, charge the Society Members of that Residents Association directly for all sums ("Total Water Charges") payable under those clauses, provided:
- (a) That Residents Association gives at least six calendar months' notice in writing to WaterCo; and
  - (b) That Residents Association and WaterCo reach agreement under clause 7.3; and
  - (c) That Residents Association has provided the details described in clause 7.2; in which case:
    - (d) WaterCo, as agent for that Residents Association, will invoice the Society Members of the Residents Association directly for all sums payable by each Society Member to that Residents Association in respect of the Total Water Charges; and
    - (e) WaterCo will receive all sums received from those Society Members which have been so invoiced as agent for the Residents Association of which the Society Members belong; and
    - (f) WaterCo will account to the Residents Association for such receipts, and offset them against all sums payable by the respective Residents Association to WaterCo under this deed; but
    - (g) WaterCo shall be entitled to charge to that Residents Association, in addition to the Total Water Charges, the reasonable costs of WaterCo in providing this service of direct billing for that Residents Association. All such costs and charges shall be added to the Total Water Charges that are billed to Society Members of the Residents Association in question. Such costs will be determined by agreement between WaterCo and that Residents Association following good faith negotiation, and failing agreement pursuant to clause 8.
    - (h) WaterCo will have no obligation to pursue any such Society Member for payment of such sums.
- 7.2 The Residents Association, having given notice under this clause, must provide in a timely manner to WaterCo such details of the accounts to be rendered to Society Members, and the details of the Society Members themselves, as WaterCo reasonably needs to meet its obligations under this clause.
- 7.3 A Residents Association may terminate the arrangements described in this clause 7, in respect of it, by giving a minimum of six calendar months' notice in writing to WaterCo.
- 7.4 If WaterCo is providing the services described in this clause for a Residents Association, the Residents Association indemnifies WaterCo in respect of any costs, expenses, or other liabilities incurred by WaterCo in meeting its obligations under this clause (which the Residents Association concerned can direct WaterCo to add to the Total Water Charges billed to its Society Members), except to the extent such costs, expenses, or other liabilities were caused by an act or omission of WaterCo.



## 8. Dispute Resolution

- 8.1 If a party has any dispute with the other party in connection with this deed:
- (a) That party will promptly give full written particulars of the dispute to the other.
  - (b) The parties will promptly meet together and in good faith try and resolve the dispute.
- 8.2 If the dispute is not resolved within 7 days of written particulars being given (or any longer period agreed to by the parties) the dispute will be referred to mediation.
- 8.3 A party must use the mediation procedure to resolve a dispute before commencing arbitration or legal proceedings.
- 8.4 The mediation procedure is:
- (a) The parties will appoint a mediator and if they fail to agree the mediator will be appointed by the president of the New Zealand Law Society or the president's nominee.
  - (b) The parties must co-operate with the mediator in an effort to resolve the dispute.
  - (c) If the dispute is settled, the parties must sign a copy of the terms of the settlement.
  - (d) If the dispute is not resolved within 14 days after the mediator has been appointed, or within any extended time that the parties agree to in writing, the mediation must cease.
  - (e) Each party must pay a half share of the costs of the mediator's fee and costs including travel, room hire, refreshments etc.
- 8.5 The terms of settlement are binding on the parties and override the terms of the deed if there is any conflict.
- 8.6 The terms of settlement may be tendered in evidence in any mediation or legal proceedings.
- 8.7 The parties agree that written statements given to the mediator or to one another, and any discussions between the parties or between the parties and the mediator during the mediation period are not admissible in any arbitration or legal proceedings.
- 8.8 Either party may commence arbitration proceedings when mediation ceases under clause 8.4(d).
- 8.9 If the dispute is referred to arbitration:
- (a) The arbitration will be conducted by one arbitrator appointed by the parties.
  - (b) If the parties cannot agree on an arbitrator within 14 days the appointment will be made by the president of the New Zealand Law Society or the president's nominee.
  - (c) The arbitration will be conducted in accordance with the Rules in Schedules 1 and 2 of the Arbitration Act 1996.

- 8.10 Neither party will unreasonably delay the dispute resolution procedures in this clause
- 8.11 This clause 9 does not apply to:
- (a) Any dispute arising in connection with any attempted renegotiation of this deed; or
  - (b) An application by either party for urgent interlocutory relief.
- 8.12 Pending resolution of any dispute the parties will perform this deed in all respects including performance of the matter which is the subject of dispute.

## 9. **Further Assurances**

- 9.1 Each party will with due diligence sign all necessary deeds and documents and do everything that is reasonably required to carry out the terms of this deed.

## 10. **Waiver**

- 10.1 Any failure by a party to enforce any clause in this deed, or any forbearance, delay or indulgence granted by that party to any other party will not be construed as a waiver of the first party's rights under this deed.

## 11. **General**

- 11.1 The warranties, undertakings, agreements and indemnities given under or pursuant to this deed shall not merge on settlement of any of the transactions contemplated by this deed but shall remain enforceable to the fullest extent notwithstanding any rule of law to the contrary.
- 11.2 If any part of this deed is held by any Court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination shall not impair the enforceability of the remaining parts of this deed and they shall remain in full force and effect.
- 11.3 This deed constitutes the entire agreement between the parties on the subject matter of this deed and supersedes and extinguishes all earlier negotiations, understandings and agreements, whether oral or written between the parties relating to the subject matter of this deed.

Signed by **Resort Zone Infrastructure Association Incorporated** by affixing its common seal in the presence of:

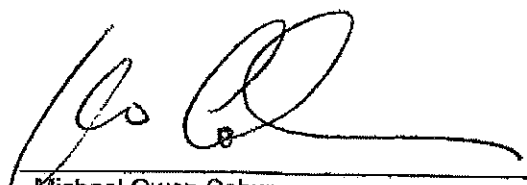


Authorised Witness

Authorised Witness

Common Seal

Signed by **Jacks Point Residents & Owners Association Incorporated** by its duly authorised attorney in the presence of:



Michael Owen Coburn

Signature of witness



Name of witness

Laura Jane McPhail

Solicitor

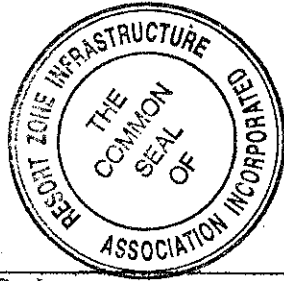
Occupation

Queenstown

Address

Signed by Resort Zone Infrastructure Association Incorporated by affixing its common seal in the presence of:

*[Signature]*  
\_\_\_\_\_  
Authorised Witness  
*[Signature]*  
\_\_\_\_\_  
Authorised Witness



Common Seal

Signed by Jacks Point Residents & Owners Association Incorporated by its duly authorised attorney in the presence of:

*[Signature]*  
\_\_\_\_\_  
Michael Owen Coburn

*[Signature]*  
\_\_\_\_\_  
Signature of witness

Name of witness      Laura Jane McPhail

Solicitor

Occupation      Queenstown

\_\_\_\_\_  
Address

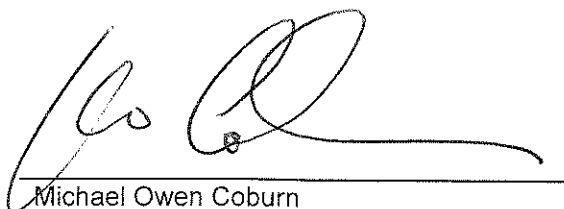
Signed by **Resort Zone Infrastructure Association Incorporated** by affixing its common seal in the presence of:

\_\_\_\_\_  
Authorised Witness

\_\_\_\_\_  
Authorised Witness

\_\_\_\_\_  
Common Seal

Signed by **Jacks Point Residents & Owners Association Incorporated** by its duly authorised attorney in the presence of:

  
\_\_\_\_\_  
Michael Owen Coburn

\_\_\_\_\_  
Signature of witness *LJ McPhail*

\_\_\_\_\_  
Name of witness **Laura Jane McPhail**

**Solicitor**

\_\_\_\_\_  
Occupation **Queenstown**

\_\_\_\_\_  
Address


Signed by **Henley Downs Residents and Owners Association Incorporated** by affixing its common seal in the presence of:

\_\_\_\_\_  
Authorised Witness

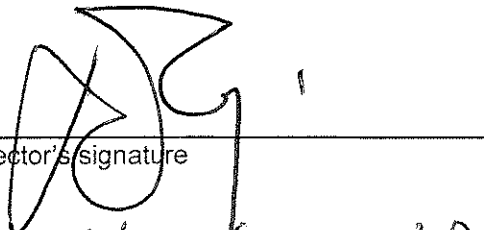
\_\_\_\_\_  
Authorised Witness

\_\_\_\_\_  
Common Seal

Signed by **Coneburn Water Supply Company Limited** by:

  
\_\_\_\_\_  
Director's signature

Donald Ian Fletcher  
Director's full name

  
\_\_\_\_\_  
Director's signature

John Cleveland Dorby  
Director's full name



Signed by **Henley Downs Residents and Owners Association Incorporated** by affixing its common seal in the presence of:

Warwick David Wightman  
Authorised Witness

Authorised Witness



Common Seal

Signed by **Coneburn Water Supply Company Limited** by:

Director's signature

Donald Ian Fletcher

Director's full name

Director's signature

John Wood Derby

Director's full name



