

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

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

**AND**

**IN THE MATTER** of Hearing Stream 09 –  
Resort Zone chapters

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**OPENING REPRESENTATIONS / LEGAL SUBMISSIONS FOR  
QUEENSTOWN LAKES DISTRICT COUNCIL**

**Hearing Stream 09 – Resort Zones (Jacks Point, Waterfall Park and Millbrook)**

**13 February 2017**

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**MAY IT PLEASE THE PANEL:**

**1. INTRODUCTION**

**1.1** These legal submissions are made on behalf of Queenstown Lakes District Council (**Council**) in respect of the Resort Zones hearing of the Proposed District Plan (**PDP**). The three chapters (including definitions used within), and submissions on them that are being considered in their entirety are:

- (a) Chapter 41 – Jacks Point Zone;
- (b) Chapter 42 – Waterfall Park; and
- (c) Chapter 43 – Millbrook Resort Zone (**MRZ**).

**1.2** Specific provisions from the PDP subdivision chapter are also being considered in this hearing.

**1.3** These opening submissions address the following matters:

- (a) strategic overview of Resort chapters;
- (b) scope of this hearing;
- (c) scope issues arising from submissions and submitter evidence;
- (d) specific issues relating to the individual chapters (note we do not cover all outstanding matters); and
- (e) order of witnesses.

**1.4** These submissions address key matters in dispute, but are not a comprehensive response to all evidence that has been filed, which will be covered through expert's summaries of evidence, during the course of the hearing and in the Council's right of reply if necessary.

**1.5** There are a number of issues raised in evidence for submitters that are accepted, and also a number of issues raised that are contested and/or not accepted by the Council. In order to assist the Hearing Panel (**Panel**) the summaries of the Council's evidence have responded, at a very general level, to some of the key issues raised in submitters' evidence.

1.6 The Council refers to and adopts the opening legal submissions presented at the Strategic Direction hearing, in terms of Council's functions and statutory obligations (section 3) and relevant legal considerations (section 4).<sup>1</sup> Those submissions are not repeated here, but in summary, the Environment Court gave a comprehensive analysis of the mandatory requirements in *Long Bay-Okura Great Park Society v North Shore City Council*.<sup>2</sup> Subsequent cases have updated the *Long Bay* summary following amendments to the RMA in 2005, the most recent and comprehensive of which was provided by the Environment Court in *Colonial Vineyard Limited v Marlborough District Council*.<sup>3</sup>

## 2. STRATEGIC OVERVIEW OF RESORT CHAPTERS

2.1 The Strategic Direction chapter promotes urban development in a logical manner that promotes a compact, well designed and integrated urban form, and urban areas that are desirable and safe places to live, work and play.<sup>4</sup>

2.2 The Urban Development Chapter sets out objectives and policies for managing the spatial location and layout of urban development. It promotes urban development that is integrated with infrastructure and services, and is undertaken in a manner that protects the environment, rural amenity and outstanding natural landscapes and features.<sup>5</sup> The chapter also promotes a compact and integrated urban form and manages the scale and location of urban growth within Urban Growth Boundaries (UGBs).<sup>6</sup>

2.3 The Jacks Point zone falls within the definition of 'urban development' in Chapter 2 (being development that by its scale, intensity, visual character, trip generation and/or design and appearance of

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1 Opening Representation / Legal Submissions for Queenstown Lakes District Council, Hearing Streams 1A and 1B - Strategic Chapters in Part B of the Proposed District Plan, dated 4 March 2016, at parts 4 and 5.

2 *Long Bay-Okura Great Park Society v North Shore City Council* EnvC Auckland A078/08, 16 July 2008 at [34].

3 *Colonial Vineyard Limited v Marlborough District Council* [2014] NZEnvC 55.

4 Appendix 1 Recommended Chapter 3 to Reply of Mr Matthew Paetz dated 7 April 2016 at redraft Objectives 3.2.2.1 and 3.2.3.1.

5 Appendix 2 Recommended Chapter 4 to Reply of Mr Matthew Paetz dated 7 April 2016 at redraft Objective 4.2.1. The s42A report by Ms Vicki Jones for Chapter 41 identifies at paragraph 5.24 that redraft Objective 4.2.1 is relevant to Chapter 41.

6 Appendix 2 Recommended Chapter 4 to Reply of Mr Matthew Paetz dated 7 April 2016 at redraft Objectives 4.2.3 and 4.2.4. The s42A report by Ms Vicki Jones for Chapter 41 identifies at paragraph 5.24 that redraft Objectives 4.2.3 and 4.2.4 are relevant to Chapter 41.

structures, is of an urban character typically associated with urban areas), however the Millbrook and Waterfall Park zones are specifically excluded, and are also not located within the UGBs as shown on the planning maps.<sup>7</sup>

### 3. SUBDIVISION CHAPTER: RECOMMENDED AMENDMENTS

- 3.1** Provisions from Chapter 27 (Subdivision) relating to minimum lot sizes and/or density (and submissions on them) on the Resort Zones, were deferred from Hearing Stream 4 to this hearing so that those submissions could be considered alongside the standards of the respective resort zones. For the Panel's convenience, this approach was described in the Subdivision s42A report,<sup>8</sup> in opening legal submissions for the Council at the subdivision hearing,<sup>9</sup> and confirmed in the Panel Minute dated 22 September 2016.
- 3.2** Ms Vicki Jones has recommended four key changes to the Right of Reply recommended revised Chapter 27, which are all specific to Jacks Point.<sup>10</sup>
- 3.3** It is worth emphasising that even with the Farm Preserve (FP) FP-1 and FP-2 Activity Areas removed, Ms Jones remains concerned about the controlled subdivision status recommended for the open space areas of Jacks Point Zone through the hearing on Chapter 27 (the activity status would be controlled, because of the existence of the Structure Plan).<sup>11</sup> While recognising that this general matter has already been heard by the Panel, Ms Jones considers it would be preferable in this particular context for subdivision (except for boundary adjustments) to be a discretionary activity within the open space activity areas of the Jacks Point Zone.<sup>12</sup> These changes have

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7 Appendix 2 Recommended Chapter 4 to Reply of Mr Matthew Paetz dated 7 April 2016.

8 S42A Report, Chapter 27 Subdivision dated 29 June 2016 at paragraphs 4.6-4.7 and 14.1.

9 Legal Submissions for Queenstown Lakes District Council, Hearing Stream 4, dated 22 July 2016, at paragraph 3.3.

10 S42A Report, Chapter 41 Jacks Point Zone dated 17 January 2017 at paragraph 1.4:

- adding a policy (27.3.13.4) acknowledging that the minimum lot size can be breached in the R(HD) areas in certain circumstances;

- adding a policy relating to both the R(HD) and R(JP) Activity Areas, emphasising the importance of imposing legal mechanisms that place restrictions on the bulk, location, and other design parameters when sites less than 300m<sup>2</sup> are created;

- extending the matters of discretion in Rule 27.7.11.3 for the creation of sites less than 300m<sup>2</sup> within the R(HD) Activity Areas, to retain discretion over the design controls being proposed; and

- removing all reference to the FP-1 and FP-2 and EIC Activity Areas.

11 Recommended Rules 27.7.1 and 27.7.4.

12 S42A Report, Chapter 41 Jacks Point Zone dated 17 January 2017 at paragraph 15.30.

not been made in Appendix 1 to Ms Jones's section 42A report, but she can draft a specific rule for the open space areas of Jacks Point Zone and include it in her right of reply.

- 3.4 For completeness it is noted that Ms Jones and Ms Ruth Evans do not recommend any changes to Chapter 27 in relation to the Waterfall Park or Millbrook Resort Zone respectively. Therefore the Council's position is that there is no minimum lot area standard for both the Millbrook and Waterfall Park zones.

#### 4. SUBMISSIONS / SCOPE ISSUES

- 4.1 The Panel's powers to recommend (and subsequently the Council's power to decide) are limited in that:

- (a) a submission must first, be *on* the proposed plan;<sup>13</sup> and
- (b) a decision maker is limited to making changes within the *scope of the submissions made on the proposed plan*.<sup>14</sup>

- 4.2 The legal principles addressing these two limbs were addressed in depth in the Council's submissions on Hearing Streams 1A and 1B<sup>15</sup> and in Hearing Stream 2.<sup>16</sup> Those principles are not repeated here but a summary for the benefit of those Panel members who did not sit during those hearings, is provided at **Appendix 1** of these submissions.

#### Scope to make changes to Jacks Point Zone

- 4.3 The Council submits that the scope of relief available for consideration for all three portions of the Jacks Point Zone (i.e., Hanley Downs, Jacks Point, and Homestead Bay) ranges from:

- (a) the notified Chapter 41 framework and Structure Plan, at one end of the spectrum of relief, to;

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13 Council's Opening Legal Submissions on Hearing Streams 1A and 1B dated 4 March 2016 at parts 5 and 7.

14 Council's Legal Reply on Hearing Streams 1A and 1B dated 7 April 2016 at part 2; Council's Legal Reply on Hearing Stream 2 dated 3 June 2016 at part 2.

15 Council's Legal Reply on Hearing Streams 1A and 1B dated 7 April 2016 at part 2.

16 Council's Legal Reply on Hearing Stream 2 dated 3 June 2016 at part 2.

(b) the ODP framework and Structure Plan, at the other end of the spectrum. If there are any specific submission points that seek something further along the scale than the ODP framework, then that submission will further increase the scope of relief available.

**4.4** With regard to the Hanley Downs portion of the Jacks Point Zone, a number of submissions ask that provisions relating to the State Highway access are replaced with the position agreed through Plan Change 44 (**PC44**). The Jacks Point landowners also seek the *policies* established through the PC44 process should be applied to Hanley Downs only. The only PC44 planning framework with any legal status that existed during the time that the submissions on Stage 1 of the PDP were lodged was the notified version. Which version of the State Highway access, and policy framework that was to eventuate through PC44, at the time of filing submissions was both unknown and uncertain (albeit of course, restricted through the scope of submissions). These submissions are inherently uncertain, and therefore the PC44 framework in its notified form, has been the relevant benchmark in terms of considering scope.

**4.5** Accordingly the Council's focus has been on the scope of relief set out in paragraphs 4.3(a) and 4.3(b) above, and in relation to the Hanley Downs portion, the notified PC44 planning framework if it sits further along the spectrum than the ODP framework and Structure Plan.

#### **S42A recommendations outside the scope of submissions made on the Resort Chapters**

**4.1** A decision maker is limited to making changes within the scope of *the submissions made on the* proposed plan.

**4.2** The s42A report authors have identified two provisions that they consider, on the merits, have not been sought within a submission, but would benefit from improvement. Regarding the Homestead Bay Village (**V(HB)**) Activity Area shown on the notified Structure Plan, Ms Jones considers a more appropriate approach might be to change

this to a new Homestead Bay residential activity area and apply the Hanley Downs Residential Activity Area provisions to it. For Millbrook, Ms Ruth Evans considers that as Rule 43.5.1 (which is a restricted discretionary activity) has no matters of discretion identified in the notified PDP, the activity status should be amended to fully discretionary. However, even when taking a generous view, it appears that there may not be scope to address these issues within the scope of the submissions received on the Resort Zones Chapters.

**4.3** In these instances the s42A report authors have provided their views on the merits of certain changes but have noted that there is unlikely to be scope to make them, and therefore the changes are not included in the Appendix 1 recommended chapters.<sup>17</sup>

## **5. SUBMITTER EVIDENCE**

### **Response to criticism in submitter evidence**

**5.1** I wish to respond at this point to some criticism made by some of the submitters' expert witnesses in their written statements of evidence, about the Council's s42A recommendations, and the manner in which they have considered further information and positions.

**5.2** In the case of Millbrook, a revised position was not filed formally with the Panel but was provided to Council officers by way of letter. This correspondence was attached to the s42A in order for it to become available to all submitters and part of the evidential foundation.

**5.3** There has been some criticism of Council experts, in terms of an assumption that Millbrook's revised position should be the Council's "starting point" for its s42A recommended chapter, and that any changes from that revised position should have been shown in further tracked changes.

**5.4** In relation to the Jacks Point zone, a "draft proposed position" was filed with the Panel on 15 December 2016, by way of memorandum. Mr Copeland for the Jacks Point submitters has made a number of

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17 S42A Report, Chapter 41 Jacks Point Zone dated 17 January 2017 at paragraph 13.22. S42A Report, Chapter 43 Millbrook Resort Zone dated 17 January 2017 at paragraph 14.7.

similar criticisms of Mr Heath, in that he has unduly focused on the notified version of the chapter rather than the draft proposed position.

- 5.5** The Council's duty under section 42A is to make recommendations on submissions on the *notified* provisions. That function cannot be circumvented by a submitter, even if a landowner/developer of the affected land, provides an updated position on the zone provisions that is different from the relief it was seeking through its original submission(s). Although the Council is grateful for the further work progressed by these submitters including working with other submitters to try and satisfy their concerns, the Council is not under any duty to use either Millbrook or Jacks Point's revised position as the 'base document' for its s42A recommendations.

#### **Response to comments in submitter evidence about without prejudice discussions**

- 5.6** Again, without intending to deflect the Panel's attention from the more substantive matters that it is required to make recommendations on, the Council has some concerns with the manner in which some statements of evidence filed on behalf of Jacks Point have referred to without prejudice discussions that occurred between Jacks Point and Council experts prior to the hearing. In particular, some of these statements attempt to set out what a Council's witness' view or position was.

- 5.7** The Council is concerned that the descriptions of the without prejudice conferencing in submitters' evidence is not always an entirely accurate reflection of what was said, and is in fact hear say.<sup>18</sup> The views of Council's experts are accurately set out in their primary evidence, and where their views have changed in response to any without prejudice discussions and/or submitter evidence filed with this Panel, this is set out in their respective summaries of evidence.

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18 For example, the statement of Mr Duane Te Paa dated 3 February 2017 at paragraph 34, 35, 37 and 45; and Mr John Darby's statement dated 3 February 2017 at paragraph 18.



## **6. ISSUES RELATING TO JACKS POINT ZONE<sup>19</sup>**

### **Background – Plan Change 44 (PC44)**

- 6.1** PC44 relating to the Hanley Downs portion of the Jacks Point zone in the PDP, is a change to the ODP, and the Council's decision on the change has been appealed. Three appeals on Plan Change 44 remain before the Environment Court. At the time of filing these legal submissions it is understood that no consent documentation has been filed in the Environment Court, although I am instructed that in respect of two appeals, obtaining a final signature is imminent.
- 6.2** Whether a settlement is reached through a consent order, or if any residual matters need to go to an Environment Court hearing, once the Court issues its final decisions on the appeals it is the ODP that will be amended to reflect that outcome. That process will have no legal effect on the outcomes of this hearing on the PDP Jacks Point Zone. The Panel is limited to considering the provisions as notified, and any submissions lodged on those provisions, as set out in section 4 above.
- 6.3** Some evidence has been filed that refers to evidence filed in the PC44 hearing, stating that, for example, they agree with it (for example, Mr Rider's evidence for Jacks Point). That PC44 evidence is not before this Panel and does not form part of the evidential foundation that the Panel must consider in making recommendations.

### **Council's section 42A position**

- 6.4** As will be apparent from the revised chapter attached to the s42A,<sup>20</sup> Ms Jones has comprehensively considered all submissions on the Jacks Point Zone, and taken into account expert evidence in order to make a number of recommended changes to the notified chapter.

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<sup>19</sup> This is not an exhaustive list of the outstanding issues, but focuses on some key issues.

<sup>20</sup> In a memorandum dated 1 February 2017, the Council has also provided further information requested in the Panel Minute of 25 January 2017. This further information includes the notified Structure Plan with the addition of roading and lot layout, and a digital version of the Structure Plan as recommended to be amended in the s42A report.

**6.5** As Ms Jones will explain through her evidence summary, some of her recommendations have changed in light of submitter evidence. In summary, the most substantive changes to the Structure Plan and recommended revised chapter are now:<sup>21</sup>

- (a) removing notified Farm Preserve 1 (FP-1) and Farm Preserve 2 (FP-2), and enabling Homesites HS37 - HS56 within the area notified as FP-1;
- (b) enabling a further 14 Homesites in two residential activity areas (notified R(HD)-G, and a new R(HD)-Fa Area);
- (c) amending building heights and making all buildings controlled in the V(JP) and V(HB) Activity Areas, requiring a Comprehensive Development Plan, and placing limits on the total retail and commercial gross floor area;
- (d) retaining the notified Education (E) Activity Area, and extending it adjacent to the Jacks Point Village in the manner outlined in Mr Thomson's evidence;
- (e) removing the notified Education Innovation Campus (EIC) and adding a new R(HD-SH)-3 Activity Area in its place;
- (f) making all buildings in the Homesites controlled (rather than permitted); and
- (g) amending the notified rules and structure plan to acknowledge the existence of a third connection to the State Highway.

**6.6** These submissions now consider some of the key matters of disagreement that are understood to remain, following the filing of s42A reports, Council's expert evidence and submitter evidence.

### **Farm Preserve 1 and Farm Preserve 2 and additional Homesites in residential areas**

**6.7** Ms Jones has recommended removing the FP-1 Activity Area and replacing it with the Open Space Golf (**OSG**) Activity Area, a Tablelands Landscape Protection Area (**TLPA/tablelands**) overlay, and the Peninsula Hill Landscape Protection Area (**PHLPA**) over the northern-most part. In her s42A report she recommended enabling

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21 At paragraphs 3(b), (c), (f), (h) and (j), and 4(a), (c)-(e) of her summary of evidence.

up to 13 Homesites within this area.<sup>22</sup> However, the evidence of Mr Te Paa for the JPROA seeks 20 Homesites.<sup>23</sup>

**6.8** Ms Jones has now changed her recommendations in response to submitter evidence. She recommends adding Homesites HS37-HS56 within the OSG as proposed by Ms Pfluger's evidence, but she does not support HS 51, 52 and 53,<sup>24</sup> in part because Ms Read is not satisfied that they could be appropriately absorbed into the landscape because they lack topographical containment.<sup>25</sup> With regard to the Tablelands overlay, Ms Jones now recommends amending its extent by removing the easternmost part and extending it over the notified areas R(HD)-F and R(HD)-G.<sup>26</sup>

**6.9** With regard to the FP-2 Activity Area, Ms Jones has recommended removing it and replacing it with the Open Space Landscape (OSL) Activity Area and the PHLPA overlay. She did not recommend any Homesites within this area<sup>27</sup> and her position has not altered following consideration of submitter evidence. Mr Te Paa for Jacks Point seeks two Homesites. Ms Read is opposed to these because of issues of visibility, particularly the effects of lighting at night, and because of the difficulties of establishing access, which Ms Read does not consider could be achieved without adverse effects on the landscape.<sup>28</sup>

**6.10** The Council's position is that the five Homesites to which Ms Read is opposed cannot necessarily be achieved without adverse effects on the landscape, and would be better considered more thoroughly through a discretionary activity resource consent process, with no presumption that residential activity will be appropriate. Therefore they should not be included in the final Structure Plan.

**6.11** Having considered submitter evidence, Ms Jones also now recommends enabling a further 14 Homesites within two residential activity areas. She recommends replacing notified R(HD)-F with the

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22 At paragraphs 1.2(a) and 15.21-15.24.

23 At paragraphs 10 and 24. See also the evidence of Mr John Darby for the JPROA at paragraph 28.

24 At paragraph 3(c) of her summary of evidence.

25 At paragraph 6 of her summary of evidence.

26 At paragraph 4(b) of her summary of evidence.

27 At paragraphs 1.2(b) and 15.25-15.29 of her s42A.

28 Ms Read's summary of evidence, paragraph 7.

R(HD)-Fa Area proposed in the evidence of Mr Te Paa, and providing for up to 14 Homesites within this area and also within the notified R(HD)-G area.<sup>29</sup>

### **Village Area (V)**

**6.12** In relation to the Jacks Point Village (**V(JP)**) Activity Area, Ms Jones has recommended increasing the permitted building height to 10m (restricted to three storeys). In the Homestead Bay Village (**V(HB)**) Activity Area she has recommended restricting commercial buildings to two storeys (noting that Ms Jones would recommend this activity area become primarily residential, if she had scope within submissions to do so). In both the V(JP) and V(HB) Activity Areas, Ms Jones has recommended making all buildings a controlled activity, including a requirement for a Comprehensive Development Plan (**CDP**) and control over a range of matters, including traffic generation and effects on the state highway.<sup>30</sup> Following consideration of submitter evidence, Ms Jones recommends that a CDP be required wherever consent is sought for a commercial, community, residential, or visitor accommodation activity (including the addition, alteration or construction of associated buildings).<sup>31</sup>

**6.13** Following Mr Timothy Heath's expert evidence and recommendations,<sup>32</sup> Ms Jones has also recommended limits on the total retail and commercial gross floor area, being 9.9 ha within V(JP), and 28,300m<sup>2</sup> within V(HB).<sup>33</sup> This does not correlate with the smaller areas supported by Mr Heath as there is no scope to impose caps as restrictive as Mr Heath is recommending.

**6.14** There is a difference in opinion between Council and Jacks Point as to whether a limit or cap on retail and commercial activity (as recommended by Mr Heath and Ms Jones) is necessary. Although Mr John Darby's evidence for the Jacks Point submitters states that it is essential that commercial activities should be restricted to the

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29 At paragraph 4(a) of her summary of evidence.

30 At paragraph 3(f) of her summary of evidence and paragraph 1.3(d) of the s42A report.

31 At paragraph 5(d) of her summary of evidence.

32 At paragraphs 7.2-7.3 of his evidence (see also paragraphs 3 and 6 of his summary of evidence).

33 At paragraphs 1.3(d) and 13.19-13.23 of her s42A.

Village precinct,<sup>34</sup> Mr Copeland supports a flexible, rather than prescriptive, approach to the total areas of different activity types within the Village Activity Area.<sup>35</sup>

**6.15** The Council submits that a limit on retail and commercial activity is appropriate, relying on the evidence of Mr Heath. Such a limit will also avoid the potential for retail and commercial activity at Jacks Point to develop at a scale and scope that would create tension with the PDP strategic directions objectives.<sup>36</sup>

**6.16** There is also a difference as to the appropriate size of the V(JP), which was notified with an area of 18.70 ha.<sup>37</sup> This dispute is related to the Education Precinct (**E**) and is discussed in the following section.

#### **Education Precinct (E) and Education Innovation Campus (EIC)**

**6.17** Mr Darby for Jacks Point confirms that a consolidated village activity area of approximately 26 ha is sought<sup>38</sup> and the figure attached to Mr Ferguson's evidence states 26.8ha. This includes the Education Precinct which Jacks Point seek to consolidate into the village and relies also on the ODP Hanley Downs Village area (which was notified as residential in the PDP). The figure given in Mr Brett Thomson's evidence for the "revised JP-V-E area" is 23.7 ha.<sup>39</sup> Mr Copeland's evidence further explains that the Jacks Point submitters seek a consolidated village of 26.8 ha, with a large component of that to be used for education.<sup>40</sup>

**6.18** Ms Jones considered that the E area was appropriately located on the notified Structure Plan, and that a further increase of 5 ha in the Village area would exacerbate Mr Heath's concerns about the scale of retail and commercial activity that is possible under the notified provisions.<sup>41</sup>

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34 At paragraph 25.

35 At paragraph 48.

36 See paragraph 2 of Mr Timothy Heath's summary of evidence.

37 See the s42A report at paragraph 13.4.

38 At paragraph 28.

39 At paragraph 28.

40 At paragraphs 74 and 76.

41 See paragraph 7.4 of the s42A report.

- 6.19** However, following consideration of submitter evidence Ms Jones now recommends that the E area should be extended as sought in Mr Thomson's evidence (but does not support absorbing the E area into the V(JP)).<sup>42</sup> She recommends retaining this area as a specific Education Activity Area, with the notified 45% coverage and 10 m height limit.
- 6.20** In regard to the notified EIC, Ms Jones recommended removing this in her s42A report and this removal was not challenged in submitter evidence. However, after considering submitter evidence as to what should replace the EIC, Ms Jones now recommends adding a new R(HD-SH)-3 Activity Area in this location.<sup>43</sup>

### **Urban Design**

- 6.21** The s42A report includes a summary of the main differences between the rules in the ODP and the notified PDP as they apply to the Jacks Point portion of the zone.<sup>44</sup>
- 6.22** Relevantly, under the ODP (Rule 12.2.3.2(xi) and (xii)), resource consent was required on a controlled activity basis for Outline Development Plans for Residential Activity Areas and Village Activity Areas, and design guidelines were included on the list of matters over which control was reserved. Under Rule 12.2.3.4(i)(b), buildings in the Lodge Activity Areas were discretionary, and compliance with any relevant Council approved development controls and design guidelines was included on the list of matters to which discretion was limited.
- 6.23** By contrast, in the PDP there is no requirement to obtain consent for an Outline Development Plan and no requirement for Council approval of design guidelines. In the notified PDP, buildings within the Homesites are permitted.<sup>45</sup>
- 6.24** In response to submissions, Ms Jones has recommended reinstating the controlled activity status for dwellings within the Homesites,

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42 At paragraphs 21-25 and 29 of his evidence.

43 At paragraph 4(e) of her summary of evidence.

44 S42A Report, Chapter 41 Jacks Point Zone dated 17 January 2017 at paragraphs 16.5-16.10.

45 S42A Report, Chapter 41 Jacks Point Zone dated 17 January 2017 at paragraphs 15.39 and 16.10(b).

buildings within the village, and recreational buildings in the OSL and OSG Activity Areas.<sup>46</sup> In her view, relying in part on the evidence of Dr Read,<sup>47</sup> the Homesite areas are too sensitive and the risks too great to rely wholly on covenants to ensure appropriate design and landscape treatment.<sup>48</sup>

**6.25** To assist the Panel, **Appendix 2** briefly summarises the key documents containing legal mechanisms by which the various design guidelines are imposed.

**6.26** Overall, and after consideration of submissions seeking that the plan resort to the ODP framework, the Council's position is that the non-RMA mechanisms, along with the introduction of some key standards in the PDP, are sufficient to control building design in the residential activity areas but that there is a need to incorporate statutory design control into the consenting process for buildings in other activity areas.

**6.27** Further, Ms Jones's recommendation that building in the Homesites should be a controlled activity allows Council to maintain some control over key design elements in an efficient and transparent way that is easily comprehensible to plan users.

### **Traffic / Access from State Highway 6**

**6.28** Ms Jones has recommended amending redraft Rule 41.5.6 to acknowledge that there will be three accesses into the zone from the State Highway, and that any more than this will require a restricted discretionary activity consent. She has also recommended removing the trigger rule requiring the Woolshed Road intersection to be upgraded.<sup>49</sup> In making these recommendations Ms Jones has relied in part on the evidence of Mr Samuel Corbett.

**6.29** Mr Corbett supports the three accesses, but has recommended that additional traffic modelling be undertaken to better understand the

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46 S42A Report, Chapter 41 Jacks Point Zone dated 17 January 2017 at paragraphs 15.39 and 16.12.

47 Evidence of Dr Marion Read dated 17 January 2017 at paragraph 15.5.

48 S42A Report, Chapter 41 Jacks Point Zone dated 17 January 2017 at paragraph 15.39.

49 At paragraphs 1.3(k) and 14.7-14.10. The three accesses are shown in Appendix D (Section 42A Jacks Point Structure Plan) of the Memorandum of Counsel on behalf of the Queenstown Lakes District Council dated 1 February 2017.

traffic effects at the resource consent stage. He is comfortable for the zoning to proceed at this point in time, while noting that traffic effects need to be a matter of discretion/control when considering proposed development within the villages.<sup>50</sup>

- 6.30** The evidence of Mr Anthony MacColl for the New Zealand Transport Agency (719) supports Mr Corbett's position as described in his paragraph 6.25, but does appear to endorse a push for traffic modelling to be completed prior to a decision on the rezoning.<sup>51</sup> No evidence has been filed by Jacks Point, presumably as Mr Corbett's evidence is not opposed.

### **Density in Residential Hanley Downs (R(HD))**

- 6.31** Mr Christopher Ferguson's evidence for Jacks Point raises concerns about the impact of visitor accommodation and community activities and the high levels of residential density proposed for the Residential Hanley Downs areas, particularly in regard to the maximum density of 45 residential dwellings/ha in R(HD)-E.<sup>52</sup> Mr Mike Coburn's evidence for the JPROA also raises this concern.<sup>53</sup>
- 6.32** The Council does not have any specific concerns about the level of density in R(HD). However, it appears to be a point of contention between JPROA and RCL, as the evidence of Mr Daniel Wells for RCL (632) supports the density rules as they apply to the proposed Jacks Point Zone.<sup>54</sup>
- 6.33** If the Panel is minded to consider that the notified provisions should be changed to address concerns about the level of density in R(HD), Ms Jones has advised that in order to achieve a good street layout, there may be merit in making subdivision a restricted discretionary activity in R(HD)-E including where the lot size is not less than 380m<sup>2</sup> (that is, where the first stage of subdivision is the creation of large lot development sites).

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50 At paragraphs 10-11.  
51 At paragraph 27.  
52 At paragraphs 14.9-14.13.  
53 At paragraphs 50-53.  
54 At paragraph 49.



## **New Open Space Community and Recreation (OSCR) sought by RCL**

- 6.34** RCL (632) have sought an amendment to the notified Structure Plan, to change the structure plan reference from Open Space Landscape Protection / Farming (**OSL**) and Open Space Residential Amenity (**OSA**) to Open Space Community and Recreation (**OSCR**).
- 6.35** RCL also sought two new rules. These would allow buildings as restricted discretionary activities within the OSCR, and restrict the use of the OSCR to recreation amenities (including commercial recreation), playgrounds, landscaping, pedestrian and cycle trails, lighting, community activities,<sup>55</sup> farming, stormwater retention, and underground services.
- 6.36** Through evidence, RCL has amended their relief to include an Education focus on the relevant site, as illustrated in Appendix 4 attached to the evidence of Mr Ben Espie.
- 6.37** Having considered submitter evidence, Ms Jones has not altered her position from her s42A report where she did not support creation of the OSCR.<sup>56</sup>

## **7. KEY OUTSTANDING ISSUES RELATING TO MILLBROOK ZONE<sup>57</sup>**

### **Urban Design matters**

- 7.1** Following the Council's review of submitter evidence, Counsel understands the substantive outstanding matter to be one relating to urban design guidelines. While design guidelines exist for the ODP portion of the MRZ, they are not referred to in the ODP itself. Those design guidelines do not cover the Dalgliesh Farm component of the MRZ. The notified chapter included a specific reference to the Millbrook zone guidelines, in both rules and matters of discretion. No submitter has asked that this be removed.

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55 The definition of "community activities" in notified Chapter 2 of the PDP includes education.

56 At paragraphs 13.24-13.44 of the s42A report.

57 This is not an exhaustive list of the outstanding issues, but focuses on some key issues.

- 7.2** Mr Edmonds,<sup>58</sup> on behalf of Millbrook Country Club Limited (**MCCL**), recommends that a number of standards relating to specific heights, recession planes, cladding and roofing materials, colours, landscaping species be included in the chapter, rather than in any design guidelines. Ms Taylor, on behalf of X-Ray Trust Limited (356) also considers that specific heights and recession plan rules should be located with the chapter rules. After considering this evidence, Ms Evans agrees that Rule 43.5.5 (standards) should be updated to include the heights above sea level and recession planes rather than them being located in the guidelines. In addition, Ms Evans agrees with Mr Edmonds' suggested amendments to the proposed Roadside Planting Overlay and associated rules<sup>59</sup> except that, following the expert advice of Ms Ayres, she recommends that the proposed rule should also require trees to be replaced if they become diseased or die.
- 7.3** Ms Evans does not agree that the very detailed standards relating to the likes of roof materials and colours, cladding types, joinery requirements and landscaping species are appropriate standards for a district plan, and would be excessively onerous and the likes of joinery requirements are not a matter for a district plan.
- 7.4** There remains some disagreement as to references in the recommended chapter, to Council approved Guidelines, including the amended/updated ones that do not exist at present, and that would cover the Dalgleish Farm extension. At the time of filing these legal submissions Ms Evans, Ms Taylor and Mr Edmonds are conferring on this final matter. Ms Evans will not be providing her evidence until the second day of the hearing, and I will be in a position to update the Panel on this matter, prior to that appearance.

### **Expansion of MRZ to included Dalgliesh Farm**

- 7.5** The expansion of the MRZ to include the Dalgleish Farm is another outstanding issue. There is general opposition to the notified zone expansion with several submitters opposing the expansion unless

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58 Statement of Evidence of John Edmonds on behalf of Millbrook dated 3 February 2017 at paragraphs 26 to 27.

59 Statement of Evidence of John Edmonds on behalf of Millbrook dated 3 February 2017 at paragraphs 19 to 23.

their own properties are rezoned.<sup>60</sup> At a very general level, submitters raised the effects on amenity of residents within and in the vicinity of Millbrook, including traffic, safety and noise as the reasons for their opposition. No expert evidence or submitter statements have been filed by these submitters.

**7.6** More specifically however, submitters X-Ray Trust (356) and Donaldson (446) oppose the expansion largely due to the landscape and visual amenity effects on their neighbouring land.<sup>61</sup> The X-Ray Trust has subsequently confirmed that the revised MCCL proposal satisfies any concerns they had raised in their submission. The MCCL amended Structure Plan is included in the Council's revised chapter, subject to the addition of a Roadside Protection Overlay (now recommended to be change to Landscape Protection (Malaghan) Activity Area).<sup>62</sup>

**7.7** Ms Evans' evidence for the Council is that both the X-Ray Trust and Donaldson submission points should be largely addressed by the revised MCCL proposal, with the exception of some of the detail (site specific heights, landscaping species etc) that was recommended for inclusion in the design guidelines in the s42A report.<sup>63</sup> As mentioned above, Ms Evans has now agreed that standards for heights above sea level and recession planes detail should be included in the Chapter 43 standards and not the guidelines.

### **Other matters**

**7.8** Without attempting to define each and every outstanding point of difference, the following are matters that have been identified as points sought by submitters that have not been accepted:

- (a) Williamson (449) sought a non-complying activity status for Commercial Recreation Activities within the Landscape Protection Area (**LPA**), including amendments to the policies

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60 S42A Report, Chapter 43 Millbrook Resort Zone at paragraph 8.1.

61 S42A Report, Chapter 43 Millbrook Resort Zone at paragraph 8.1.

62 The revised chapter is attached as Appendix 1 to Ms Evan's s42A report on Chapter 43 Millbrook Resort Zone dated 17 January 2017.

63 S42A Report, Chapter 43 Millbrook Resort Zone at paragraph 8.6 to 8.11.

to support that activity status.<sup>64</sup> Based on the recommendation of Ms Hannah Ayres, Ms Evans has recommended that this submission point be accepted in part, in that all buildings within an LPA are non-complying *except* for one existing farm building relocated from within the site (and restored), as a controlled activity.<sup>65</sup>

- (b) Some changes sought by QLDC in its corporate submission have not been accepted. These include prohibited activity status for a number of uses, and the inclusion of definitions of 'service activities' and 'industrial activities'.
- (c) X-Ray Trust sought definitions for 'ecological remnants' and 'valuable ecological remnants; which hasn't been recommended (and we understand not being pursued given their agreement to the MCCL position).
- (d) MCCL now supports the reformatting of assessment matters in Rules 43.4.5 and 43.4.6 into matters of discretion, which was a consequence of a QLDC corporate submission. There is one remaining matter of disagreement here, being the reference to the design guidelines, which will be discussed between experts prior to Ms Evans presenting her evidence on the second day of the hearing; and
- (e) Mr Edmonds discusses the provision of utility buildings in the Landscape Protection Activity Area (**LPAA**) as a permitted activity. However, Ms Ayres will confirm that she remains unconvinced that utility buildings up to 25m<sup>2</sup> should be a permitted activity in the LPAA and instead suggests a stricter activity status or more specific controls on utility buildings.

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64 S42A Report, Chapter 43 Millbrook Resort Zone at paragraph 10.1.

65 S42A Report, Chapter 43 Millbrook Resort Zone at paragraph 10.3, and Statement of Evidence of Hannah Ayres dated 17 January 2017 at paragraphs 11.14 to 11.18.

## **8. ISSUES RELATING TO WATERFALL PARK ZONE**

- 8.1** There are no submitter issues specific to the Waterfall Park zone that require recommendations by the Panel, in fact there was only one submission in support of the notified zone. The Council has however taken the opportunity to 'tidy' the chapter, by making some non-substantive amendments to ensure that the chapter is consistent with other chapters in the PDP.
- 8.2** In addition, Ms Vicki Jones in her evidence summary for this chapter will advise that she now recommends an amendment to the Subdivision Chapter, specifically reply Rule 27.7.12. In order to have a consistent approach to compliance with Structure Plans across the three Resort Zone chapters, she will recommend that Waterfall Park is included in that rule so that non-compliance with the Structure Plan is a discretionary activity.

## **9. WITNESSES**

- 9.1** The Council will be calling the following evidence in support of its position on Jacks Point Chapter 41:
- (a) Mr David Compton-Moen, urban design expert;
  - (b) Mr Timothy Heath, retail economic expert;
  - (c) Mr Samuel Corbett, transport expert (for efficiency reasons, we propose that Mr Corbett presents his evidence on both Jacks Point and Millbrook at this time);
  - (d) Ms Marion Read, landscape architect; and
  - (e) Ms Vicki Jones, Consultant Planner, who is the author of the section 42A report on the Jacks Point Chapter 41.
- 9.2** Ms Vicki Jones is also the author of the section 42A report on the Waterfall Park Chapter 42.

**9.3** The Council will be calling the following evidence in support of its position on Millbrook Chapter 43:

- (a) Ms Hannah Ayres, landscape architect;
- (b) Mr Samuel Corbett, transport expert; and
- (c) Ms Ruth Evans, Consultant Planner, who will present her 42A report on the Millbrook Chapter 43.

**DATED** this 13<sup>th</sup> day of February 2017



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S J Scott  
Counsel for the Queenstown Lakes  
District Council

**APPENDIX 1 –  
LEGAL PRINCIPLES ON SCOPE**

1. The legal principles regarding scope and the Panel's powers to recommend (and subsequently the Council's power to decide) are:
  - 1.1 a submission must first, be *on* the proposed plan;<sup>66</sup> and
  - 1.2 a decision maker is limited to making changes within the scope of *the submissions made on the proposed plan*.<sup>67</sup>
  
2. The two limb approach endorsed in the case of *Palmerston North City Council v Motor Machinists Ltd*,<sup>68</sup> subject to some limitations, is relevant to the Panel's consideration of whether a submission is *on* the plan change.<sup>69</sup> The two limbs to be considered are:
  - 2.1 whether the submission addresses the change to the pre-existing status quo advanced by the proposed plan; and
  - 2.2 whether there is a real risk that people affected by the plan change (if modified in response to the submission) would be denied an effective opportunity to participate in the plan change process.
  
3. The principles that pertain to whether certain relief is within the scope of a submitter's submission can be summarised as follows:
  - 3.1 the paramount test is whether or not amendments are ones which are raised by and within the ambit of what is fairly and reasonably raised in submissions on the PDP. This will usually be a question of degree to be judged by the terms of the PDP and the content of submissions;<sup>70</sup>
  - 3.2 another way of considering the issue is whether the amendment can be said to be a "foreseeable consequence" of the relief sought in a

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66 Council's Opening Legal Submissions on Hearing Streams 1A and 1B dated 4 March 2016 at Parts 5 and 7.

67 Council's Legal Reply on Hearing Streams 1A and 1B dated 7 April 2016 at part 2; Council's Legal Reply on Hearing Stream 2 dated 3 June 2016 at part 2.

68 [2014] NZRMA 519.

69 Council's Opening Legal Submissions on Hearing Streams 1A and 1B dated 4 March 2016 at paragraph 7.3-7.12.

70 *Countdown Properties (Northlands) Limited v Dunedin City Council* [1994] NZRMA 145, at 166.

submission; the scope to change a plan is not limited by the words of the submission;<sup>71</sup>

**3.3** ultimately, it is a question of procedural fairness, and procedural fairness extends to the public as well as to the submitter;<sup>72</sup> and

**3.4** scope is an issue to be considered by the Panel both individually and collectively. There is no doubt that the Panel is able to rely on "collective scope". As to whether submitters are also able to avail themselves of the concept is less clear. To the extent that a submitter has not sought relief in their submission and/or has not made a further submission on specific relief, it is submitted that the submitter could not advance relief.<sup>73</sup>

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71 *Westfield (NZ) Limited v Hamilton City Council* [2004] NZRMA 556, and 574-575.

72 *Ibid*, at 574.

73 Council's Legal Reply on Hearing Stream 2 dated 3 June 2016 at part 2.



**APPENDIX 2 –  
SUMMARY OF KEY DOCUMENTS CONTAINING LEGAL MECHANISMS BY  
WHICH DESIGN GUIDELINES ARE IMPOSED**

*Jacks Point Stakeholders Deed 2003*

1. The parties to the Jacks Point Stakeholders Deed 2003 (**the Deed**)<sup>74</sup> are Jacks Point Limited; Henley Downs Holdings Limited; Dickson Stewart Jardine, Jillian Frances Jardine and Gerard Brendan Boock ("Jardine"); and the Council. Key points about the Deed are:
  - 1.1 the Deed has Development Controls attached to it (clause 3 and Appendix A);
  - 1.2 the Development Controls can only be amended with the agreement of all the parties (clause 3(b));
  - 1.3 specific design guidelines for discrete areas within the Jacks Point Zone must be based on the Development Controls (clause 6); and
  - 1.4 the Deed requires the creation of design guidelines before a landowner can seek resource consent to subdivide or develop the land, unless the subdivision is to create a large title as an intermediate step (clause 7).
2. The Development Controls set out the organisation, membership and functions of the Design Review Board (clause 8).

*Jacks Point Residents & Owners Association – Constitution*

3. The constitution of the Jacks Point Residents & Owners Association (**JPROA**) is relevant in regard to the obligation to grant covenants, and it also contains bylaws defining design guidelines for discrete parts of the Jacks Point Zone.<sup>75</sup> Key points about the constitution are:
  - 3.1 all owners of Jacks Point land must be members of JPROA (clause 4.2);

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74 The Deed is attached as Appendix 7 to the s42A Report, Chapter 41 Jacks Point Zone dated 17 January 2017. The s42A report describes the Deed at paragraphs 5.36-5.43

75 The Deed is attached as Appendix 7 to the s42A Report, Chapter 41 Jacks Point Zone dated 17 January 2017

- 3.2 all members must grant a covenant over their title, securing their obligations as set out in the Constitution, and binding successors in title (clause 4.2(b));
- 3.3 the Constitution defines "Design Guidelines" as "means the design guidelines for each Precinct that form a part of the Bylaws";
- 3.4 there are three bylaws all in Schedule 2 of the Constitution:
- (a) Bylaws of the Northern Village Precinct of Jacks Point Residents & Owners Association Incorporated (**Northern Village Bylaws**);
  - (b) Bylaws of the Southern Village Precinct of Jacks Point Residents & Owners Association Incorporated (**Southern Village Bylaws**);
  - (c) Bylaws of the Residential Precinct of Jacks Point Residents & Owners Association Incorporated (**Residential Bylaws**);
- 3.5 all members of JPROA are obliged to comply with the bylaws for their precinct (clause 7.1); and
- 3.6 for the purposes of the Covenant, a Design Review Board (DRB) for each precinct is established under the bylaws for that precinct (clause 10.7). In practice, just one DRB exists.
4. The Northern Village Bylaws and the Southern Village Bylaws both define "Design Guidelines" in similar terms, being essentially any guidelines or controls imposed by the Queenstown Lakes District Plan or by the relevant Village Committee. The current design guidelines (for any village area) were imposed under Resource Consent RM080410.<sup>76</sup>
5. The Residential Bylaws define "Design Guidelines" as meaning the design guidelines attached to those bylaws at Schedule One, which contains:<sup>77</sup>
- 5.1 Residential Design Guidelines (version 3.0 September 2009);
  - 5.2 Comprehensive Design Guidelines (version 3.0 September 2009 RM 060903 and RM 090494); and
  - 5.3 Residential and Comprehensive (Multi-Dwelling) Design Guidelines 2013 (marked "Proposed – Subject to QLDC Approval").

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76 The Jacks Point Village Design Guidelines approved under RM080410 are attached as Appendix 5 to the evidence of Mr David Compton-Moen dated 17 January 2017

77 These three guidelines are attached as Appendices 2-4 to the evidence of Mr David Compton-Moen dated 17 January 2017

6. The Council applies the Residential Design Guidelines 2009, as these are referred to in the consent notices on the titles, although the Council understands that the DRB also draws on the Residential and Comprehensive (Multi-Dwelling) Design Guidelines 2013, which have not yet been approved by Council.

*Other Specific Design Guidelines*

7. As mentioned specific guidelines have been approved through the consent process. There are specific guidelines for the Preserve (Preserve Design Guidelines Version 1 June 2006).<sup>78</sup> Under RM050852, consent notices must be registered on the relevant lots, requiring buildings and landscaping to be undertaken in accordance with the Preserve Guidelines.
8. There are also specific Building and Landscape Design Guidelines approved under RM160171 for Hanley Downs. This was the first subdivision consent to establish an outline development plan for residential development within the Hanley Downs part of the Jacks Point Resort Zone and establish a new vehicle access at Woolshed Road. In addition to the design guidelines, a consent notice is required to be registered on the relevant titles. The conditions of the consent notice deal with dwelling heights and location of dwellings on building platforms.

*Easement Instrument EI 7017246.2 (the Jacks Point Covenant)*

9. As noted in paragraph 3.2 above, all members of JPROA must grant a covenant over their title. The relevant covenant appearing on the majority of those titles is Easement Instrument EI 7017246.2 (**Jacks Point Covenant**) (or something similar). Key points about the Jacks Point Covenant are:
  - 9.1 "Design Guidelines" are defined as "means the design guidelines that form part of the Bylaws";
  - 9.2 the covenant binds the landowner to comply with the Development Controls applicable to their allotment (clause 4.1(a), and the Design Guidelines applicable to their allotment (clause 4.1(b), and the DRB

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78 Attached as Appendix 6 to the evidence of Mr David Compton-Moen dated 17 January 2017. A more recent version of the Preserve Guidelines is available on the Jacks Point website at <https://static1.squarespace.com/static/553ed513e4b0322e4cce2c61/t/55662774e4b086a688de9fca/1432758132834/Preserve+Design+Guidelines.pdf> but the version attached to Mr Compton-Moen's evidence is the approved version on Council's files

process "as provided for in the Development Controls or as otherwise approved by the Council and the Society" (clause 4.1(c)); and

**9.3** the covenant binds the landowner not to commence construction of any proposed building without the consent of the Design Review Board (clause 4.1(d)).

**10.** Mr Mike Coburn's evidence for the JPROA explains that there are also a number of other specific covenants with similar effect to the Jacks Point Covenant (including the obligation to become a member of JPROA), and that these are registered over other areas including most of the Homesites in the ODP on the Tablelands/Valley slopes.