



**QUEENSTOWN LAKES DISTRICT COUNCIL**

**COMMISSION TO CONSIDER PRIVATE PLAN CHANGE 44 COMPRISING**

**Commissioner David Whitney (Chair)  
Commissioner Lyal Cocks  
Commissioner Ian Munro**

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**REPORT & RECOMMENDATIONS OF INDEPENDENT COMMISSIONERS**

**PLAN CHANGE 44: HANLEY DOWNS**

**DATED: 28 JANUARY 2016**

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### Abbreviations

ACRAA	:	Agriculture, Conservation and Recreation Activity Area
EIC	:	Education Innovation Campus
FP	:	Farm/Preserve
GFA	:	Gross Floor Area
JPRZ	:	Jacks Point Resort Zone
NZTA	:	New Zealand Transport Agency
ONL	:	Outstanding Natural Landscape
ONL(WB)	:	Outstanding Natural Landscape (Wakatipu Basin)
Operative District Plan <u>or</u> District Plan	:	Queenstown Lakes District Plan
ORC	:	Otago Regional Council
PC 44	:	Proposed Plan Change 44
QLDC or Council	:	Queenstown Lakes District Council
RCL	:	RCL Queenstown Pty Ltd (the Requestor)
R(HD)	:	Residential (Hanley Downs)
RMA <u>or</u> the Act	:	Resource Management Act 1991
s.42A	:	Section 42A (of the RMA)
SH 6	:	State Highway 6
VAL	:	Visual Amenity Landscape

## 1.0 THE HEARING

The Hearing of Plan Change 44 (PC 44) and submissions thereto commenced on 25 November 2013 at the Crowne Plaza Hotel, Queenstown. It was adjourned at the request of the Requestor, RCL Queenstown Pty Ltd (“RCL”). During the period of adjournment the Requestor worked with the Council and a number of submitters and as a result a number of changes were made to the proposal.

The Hearing recommenced on 1 July 2015 and continued until 3 July 2015 at the Crowne Plaza Hotel, Queenstown.

In the intervening period Commissioner Gilmour stood down from the Commission and was replaced by Commissioner Cocks due to Commissioner Gilmour’s unavailability in 2015. It is noted in this context that the Hearing on 25 November 2013 had adjourned prior to the presentation of any substantive submissions or evidence; and accordingly the Commission that included Commissioner Cocks has been presented with and given consideration to all relevant submissions and evidence relating to PC 44.

In July 2015 the Requestor presented its changes as an amended proposal rather than an “either-or” option compared to the originally notified proposal. As such, the Commission’s deliberations and findings are limited to the amended proposal in front of it.

Commissioners undertook site visits prior to the 2013 Hearing, and again prior to the recommencement of the Hearing in 2015.

The Requestor controls a minority of land in the area subject to PC44. The majority of the land subject to PC44 is instead under the control of a group of related entities (all submitters) hereafter referred to as the “Henley Downs entities”<sup>1</sup>.

An arrangement had been reached between the parties whereby RCL was to provide evidence on behalf of the entire PC44 area on infrastructure servicing and transport matters, and for its own land holdings in respect of planning, urban design and landscape matters. RCL then, effectively, allowed the Henley Downs entities to give planning, urban design, landscape and supporting engineering evidence on its behalf for the balance of the PC44 land that was controlled by the submitter. RCL expressed no opinion on those matters addressed by the Henley Downs entities other than to confirm that it was comfortable that the various land use outcomes proposed by both parties could be satisfactorily integrated.

The Commission found this to be a satisfactory arrangement although, unusually, the effect of this was that a submitter played a role in the Hearing similar to a co-Requestor. As it had been invited to this role by the Requestor there was nothing untoward about this, including the submitter being granted a right of reply.

The Commission also records that it has received a large volume of information and evidence relating to PC 44. As is now standard practice, this has been indexed and posted to the Council’s website at <http://www.qldc.govt.nz/planning/district-plan/district-plan-changes/plan-change-44-henley-downs/>. This record is to be referred to for complete details of the information and evidence made available to the

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<sup>1</sup> They are Henley Downs Farm Holdings Ltd., Henley Downs Farm Ltd. (now succeeded by Willow Pond Farm Ltd.), and Henley Downs Land Holding Ltd.

Commission for its consideration. In light of that readily accessible information, the Commission has sought in preparing this report and recommendation to avoid unnecessary duplication or repetition.

## **2.0 APPEARANCES AND INFORMATION SIGHTED**

### ***For the Requestor:***

#### **RCL Queenstown Pty Ltd**

**Mr Mike Holm** and **Ms Phoebe Mason**, Legal Counsel, Atkins Holm Majurey

**Mr David Wightman**, Director, RCL Queenstown Pty Ltd

**Mr Robert Potts**, Principal Engineer, Lowe Environmental Impact Ltd

**Mr Gary Dent**, Principal Water Resources Engineer, Fluent Infrastructure Solutions Ltd

**Mr Glenn Davis**, Principal Environmental Scientist, Davis Consulting Group Ltd

**Mr Benjamin Espie**, Landscape Architect, Vivian and Espie Ltd

**Mr Tim Kelly**, Transport Engineer, Tim Kelly Transportation Planning Ltd

**Mr Daniel Wells**, Planning Consultant, John Edmonds and Associates Ltd

### ***For Submitters:***

#### **New Zealand Transport Agency**

**Mr James Coutts**, Planning Advisor and **Mr Tony Sizemore**, Transport Planning Manager

#### **Henley Downs Farm Holdings Ltd, Henley Downs Land Holdings Ltd, and Henley Downs Farm Ltd (now succeeded by Willow Pond Farm Limited) – “Henley Downs entities”**

**Ms Maree Baker-Galloway**, Legal Counsel, Anderson Lloyd

**Mr Richard Tyler**, Landscape Architect, Darby Partners Ltd

**Ms Yvonne Pfluger**, Principal Landscape Planner, Boffa Miskell Ltd

**Mr Ken Gousmett**, Engineer, Cavell Heights Ltd, T/A Construction Management Services of Queenstown

**Mr Chris Ferguson**, Planning Consultant, Boffa Miskell Ltd

#### **Queenstown Lakes District Council**

**Mr Blair Devlin**, Resource Consent Manager

#### **Wakatipu Wilding Conifer Control Group**

**Mr Peter Willsman**, Spokesperson

#### **Alexander and Jayne Schrantz**

**Mr Alexander Schrantz**, owner of Lot 35, The Preserve, Jacks Point

### ***Officers and Advisors in attendance:***

**Ms Vicki Jones**, Planning Consultant, Vision Planning Ltd

**Ms Marion Read**, Landscape Architect, Read Landscapes Ltd

**Ms Julia Chalmers**, District Plan Administrator, Queenstown Lakes District Council

***Other Information Sighted:***

Correspondence dated 1 July 2015 from **Mr Tom Scott**, Health Protection Officer at **The Southern District Health Board**, was tabled on 3 July 2015.

Correspondence dated 2 July 2015 from **Mr Wayne Scott**, Acting Chief Executive, **Otago Regional Council**, was tabled on 3 July 2015.

After the Hearing was adjourned, and as had been agreed at the Hearing, a written reply was received on 8 July 2015 from Ms Baker-Galloway on behalf of the Henley Downs entities. A written reply was then received on 10 July 2015 from Mr Holm on behalf of RCL.

The Replies incorporated various attachments and documents that had been referred to throughout the Hearing. These included Court decisions and documents relating to the Jacks Point Resort Zone (including covenants).

***Section 42A Report:***

Prior to the commencement of the hearing on 25 November 2013 the Commission received an initial section 42A report prepared by Ms Jones dated 14 September 2013, and a supplementary section 42A report, also prepared by Ms Jones, dated 15 November 2013. The initial section 42A report had attached to it an Urban Design Assessment dated 22 July 2013 prepared by Mr Tim Williams an Urban Designer at the QLDC; and a Landscape Assessment dated 28 July 2013 prepared by Dr Read.

An updated section 42A report dated 23 June 2015 was prepared by Ms Jones following receipt of the amended provisions of PC 44 from the Requestor which were attached to correspondence from Mr Holm dated 9 June 2015. The updated section 42A report had attached to it a report dated 19 June 2015 from Dr Read; Mr Williams's original Urban Design Assessment dated 22 July 2013; and written legal advice from Simpson Grierson (on scope issues) dated 26 May 2015.

Unless specifically stated to the contrary the section 42A reports referred to above are generically referred to as the "s.42A report" in this report.

***District Plan Review:***

The ongoing Review of the Queenstown Lakes District Plan was raised and discussed at the Hearing however this did not amount to any point of notable substance. No draft or proposed provisions of the District Plan Review were presented to the Commission and the District Plan Review [which has been publicly notified subsequent to the Hearing] is not relevant to the Commission's report and recommendations; or to the subsequent decision that is to be made by the Council on PC 44.

### **3.0 INTRODUCTION**

The land subject to PC 44 is held in 12 Computer Freehold Register Identifiers (Titles) as listed below:

<u>CFR Identifier</u>	<u>Legal Description</u>	<u>Area</u>
OT 17C/863	Lot 1 DP 25597	9084m <sup>2</sup>
392959	Lot 1 DP 398514	24.0320 ha
392960	Lot 2 DP 398514	18.5755 ha
392961	Lot 3 DP 398514	25.4590 ha
392962	Lot 4 DP 398514	16.7835 ha
392963	Lot 5 DP 398514	21.9990 ha
392964	Lot 6 DP 398514 & Lot 4 DP 19857	10.1783 ha
392965	Lot 7 DP 398514	34.7875 ha
529410	Lot 8 DP 398514, Lot 2 DP 19857, Lot 200 DP 381477 & Lot 201 DP 414673	413.0631 ha
529409	Lot 9 DP 398514	21.9870 ha
326407	Lot 34 DP 381477	29.8450 ha
326409	Lot 36 DP 381477	<u>29.7847 ha</u> 647.4030 ha

PC 44 as notified sought to rezone approximately 520ha of land known until now as Henley Downs. A document entitled “Changes to PC 44 from Notification” provided by the Requestor on 9 June 2015 advised that the total area of PC 44 as notified was in fact 541 ha (scaled); with the updated Structure Plan being 561 ha in total area. The Commission notes that this area is less than the area of all relevant parcels (as detailed above) but accepts that the parcels listed above include all land subject to PC 44. The difference is explained as PC 44 is not seeking to re-zone all of the land in the identified parcels; with areas of residual land to retain their underlying zoning.

The land subject to PC 44 is located generally to the north of the existing Jacks Point development. It is some 5.5km from Remarkables Park at Frankton and 12.5km from the Queenstown town centre. As is the case across the district, the site has been shaped by geological (glacial) processes and is defined by a north-south valley that runs along the base of the Remarkables Range. The land has been used for pastoral farming since original European settlement.

The land is zoned Jacks Point Resort Zone (JPRZ) being a Special Zone that is managed under Section 12 of the Operative District Plan. This zone provides for a variety of uses by way of a Structure Plan and activity areas that provide for various forms of housing, and a commercial node. It is proposed to retain the Special Zone in Section 12 but to change the activity areas and development control regime so as to provide for more housing and a different approach to commercial activity.

The request would also require changes to the following section of the District Plan:

## 15 – Subdivision

The request has been made by RCL Queenstown Pty Ltd. As discussed earlier the Henley Downs entities group of submitters has a substantial interest in the PC 44 land. The Henley Downs entities are in turn closely associated with the developer of Jacks Point and other related entities (including management entities).

Potentially relevant to our consideration of some submissions and environmental effects, we note that owners and residents within the Jacks Point development are subject to various civil covenants over what they may or may not object to, including in some instances a requirement to be supportive of certain future developments. This is a complicated situation and has been subject to case law<sup>2</sup>.

Lastly, the Commission wishes to draw a distinction between the following:

- a.) The notified PC 44 (2013) version; and
- b.) The revised PC 44 prepared for the commencement of the Hearing in 2013 (2013A) version; and
- c.) The further-revised PC 44 prepared for the reconvened Hearing (2015) version.

The Commission is to give consideration to the “final”, or 2015 version of PC 44 and this is the version of PC 44 that is the subject of this report and recommendations. The Commission records that for the purposes of section 32 of the RMA, the alternative outcomes to be assessed for PC44 are:

- a.) The status quo being the operative JPRZ allowing a variety of activities; or
- b.) The 2015 version of PC44 promoted by the Requestor and the Henley Downs entities to vary the operative zone; or
- c.) Any alternative raised in submissions.

There is no scenario whereby the removal of the operative JPRZ will be contemplated (i.e. an outright down-zoning to Rural General, Rural Lifestyle or Rural Residential) because no submission sought this. As such, several potential effects relating to the land’s development do not have to be determined by the Commission as they have been inherently addressed by the previous plan making process that led to the operative JPRZ, Structure Plan, and activity areas that are already in place.

## 4.0 NOTIFICATION AND SUBMISSIONS

PC 44 was notified for submissions on 27 March 2013 and the period for submissions closed on 30 April 2013. A summary of the decisions requested in submissions was publicly notified on 15 May 2013 and the period for further submissions closed on 29 May 2013.

A total of 25 original submissions and 7 further submissions were received. No submissions were late. **Appendix 2** contains a summary of the decisions requested and of the further submissions received. **Appendix 3** lists the names of the submitters and further submitters on PC 44.

With one exception there were no administrative or substantive challenges made to the submissions requiring determination by the Commission.

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<sup>2</sup> We were referred to *Coneburn Planning Limited v QLDC* [2014] NZEnvC 267 by Ms Baker-Galloway for the Henley Downs entities.

Whether or not the submission made by Alexander and Jayne Schrantz was in breach of the Jacks Point covenants was alluded to at the Hearing by Ms Baker-Galloway. Her view had firmed in her legal submissions in reply<sup>3</sup>:

- “79 As noted above Alexander Schrantz and Jayne Schrantz (Schrantz) are registered proprietors of Lot 35 DP 381477 (Lot 35) contained in certificate of title 326408.
- 80 Lot 35 is subject to the land covenant contained in E18349562.1 (Lot 35 Covenant, attached as H). Lot 35 is subject to a **very similar** covenant to the Primary Covenant. The Lot 35 Covenant, amongst other things, provides for **non-objection** covenants in relation to the Henley Downs Land (including lots 34 and 36). Clause 7.3 of the Lot 35 Covenant contains **nearly identical** wording to clause 8.6 from the Primary Covenant referred to above, and therefore the Environment Court ruling deeming it **written support** to the plan change applies.
- 81 Henley Downs has been nominated by the entities with the benefit of the covenant to receive the benefit of the non-object provisions contained in clause 7.1(b)(i) and (iii), 7.1 and 7.3 of the Lot 35 Covenant in relation to the majority of the land in Henley Downs. A similar nomination process occurred in the Coneburn case with the nominated developer entity then being able to benefit from the covenant.
- 82 Henley Downs wishes to emphasise that although it is entitled to and does ultimately rely on the covenant, it relies in the first instance on the merits of the Plan Change to avoid effects (ie effects that are more than de minimus) on the Schrantz property. Henley Downs is committed to continuing to work with the Schrantz’s as members of the Jacks Point community to address any matters that relate to the Plan Change or use and management of FP-1 and FP-2 Activity Areas.”

(our emphasis added in **bold**)

The Commission has taken from this that the Henley Downs entities, despite seeking to demonstrate how there will not be an inappropriate effect on the Schrantz property, are also relying on the applicable covenant to require the Schrantzs to not object to PC 44. The clear implication is that the Commission should disregard the concerns raised in the Schrantz submission.

The Commission has read the **Coneburn** decision and the covenants provided by Ms Baker-Galloway. We find that in the first instance, as invited by Ms Baker-Galloway’s reply, the merits of PC 44 as it relates to the Schrantz’s submission should be considered. If in that analysis the Commission identifies issues that could lead to a substantial change or rejection of part or all of PC 44, and if those issues are unique or substantially drawn from the Schrantz’s submission, it may then need to make a finding on whether the submission should be set aside due to the existence of the covenant.

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<sup>3</sup> Submissions in Reply of Ms Maree Baker-Galloway on behalf of the Henley Downs entities, 8 July 2015, at paragraphs 79-82.



In respect of this “wait and see” approach, the setting aside of a public submission to a plan change on the basis of a pre-existing restrictive covenant, while legal, is a matter that a Commission would approach very carefully of its own accord. The appropriate process for such action is that the party pressing for that action should present a firm and clear case for it. The Henley Downs entities did not make a firm and clear case. It mentioned the covenant only in passing at the Hearing; and even in the reply of Ms Baker-Galloway she leaves it to the Commission to draw its own conclusions on whether the covenant may equate to a ‘non objection’ or a ‘written approval’ [presumably equating to a generic supporting submission in the context of PC 44]. These are very different things, and the Commission notes that even if the Schrantzs were deemed to not object, the RMA plan-making process would still allow the Commission to consider effects on them along with all other members of the community that did not object to PC 44. Wording used by Ms Baker-Galloway in her reply including “*very similar*” and “*nearly identical*” when comparing different covenants and different RMA contexts raises significant doubts about whether the Schrantz submission should be disregarded by the Commission without considering its merit – especially in light of the ambiguity around whether or not the Henley Downs entities were even asking for that.

At the reconvened Hearing, Mr Devlin observed that the further revised proposal being the version of PC 44 before the Commission in 2015 had changed a great deal from the originally notified (2013) and then originally revised (2013A) versions of PC44. He suggested that had the 2015 version of PC44 been what was originally notified in 2013, the Council may have submitted differently or additionally. This begs a wider question of whether other reasonably informed persons presented with the “final” PC44 request might have submitted differently (or at all) had that version been notified in 2013. The Commission finds that this is in turn a function of whether there is legal scope for all or parts of the 2015 version of PC44 including the legal scope of the submissions and further submissions made to it. The Council (in its s.42A function) sought legal advice on the matter from Simpson Grierson<sup>4</sup>, which concluded that there may be scope issues with some of the revisions proposed. RCL and the Henley Downs entities both outlined reasons in the submissions of their counsel why they considered there were no scope issues.

The Commission has addressed this matter as part of the analysis of evidence and findings of fact in Section 8.1 of this report.

A consequence of the change to provisions which has occurred between the originally notified (2013) version and the (2015) version is that the points raised by submitters in many instances relate to specific provisions contained in the 2013 version and not in the 2015 version of PC 44, being the version of PC 44 which must now be considered by the Commission.

Notwithstanding this practical difficulty which has resulted from the evolution of PC 44 post-notification this report assesses the points raised by submitters and further submitters (noting that these still relate to the substance of PC 44 albeit that specific provisions have changed) and we make recommendations in Sections 8.2 – 8.10 as to whether these points should be **accepted, accepted in part, or rejected**.

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<sup>4</sup> Simpson Grierson opinion on PC44 scope to Ms Vicki Jones, 26 May 2015.

## 5.0 DESCRIPTION OF PLAN CHANGE 44

PC 44 applies to approximately 561 hectares of land generally identified in the District Plan as Henley Downs in the JPRZ. The zone enables residential development to a range of densities, including a landscape-driven overall layout, a higher density village and suburban-type residential core, and a lower density periphery.

Clause 22(1) of the First Schedule to the RMA requires a request for a plan change to be accompanied by a written explanation of the purpose of and reasons for the change. The 2013 section 32 report accompanying the request identified the purpose of the plan change as<sup>5</sup>:

*“This Plan Change Request seeks to amend the Queenstown Lakes District Plan as it applies to the area known as Henley Downs to create a new Henley Downs Special Zone which will enable a range of urban uses while protecting important natural and landscape values. In addition, to enable the rezoning, changes are proposed to Section 12 (Special Zones - Resort Zone), Section 15 (Subdivision) and Section 18 (Signs) of the District Plan.”*

It is noted that a new Henley Downs Special Zone and changes to Section 18 (Signs) are no longer proposed in the (2015) version of PC 44.

More explicit information on the “range” of urban uses to be enabled was found in the proposed provisions for the new zone, including the following, from the commencement of what would have been District Plan Part 12.30: Henley Downs Zone<sup>6</sup>.

*“The purpose of the Henley Downs Zone is to enable a settlement to establish which incorporates high standards of environmental management and urban design, while providing for the enjoyment of the spectacular landscape in and around the zone. The settlement is to integrate within the wider Wakatipu settlement pattern, functioning in a complementary manner to the neighbouring Jacks Point settlement.”*

Of additional importance regarding the purpose and scope of the Plan Change is the public notice for submissions issued by the Queenstown Lakes District Council on 27 March 2013. This was, to the Commission’s knowledge, never contested by the Requestor as an accurate and appropriate characterisation of the request. The Council’s notice described the purpose of the Plan Change as<sup>7</sup>.

*“To re-zone approximately 520 hectares of the northern-most (currently undeveloped) part of the ‘Resort Zone’ at Jacks Point as a new ‘Henley Downs Zone’. In summary, the re-zoning will expand the urban area and enable a higher density of residential development; remove the requirement to create a commercial village within the Henley Downs area; and retain the surrounding land as predominantly rural (through a ‘agricultural, conservation, and recreation’ activity area).”*

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<sup>5</sup> Section 32 report for Private Plan Change Request: Henley Downs, John Edmonds & Associates, February 2013, page 6.

<sup>6</sup> District Plan part 12.30: Henley Downs Zone, accompanying the request for private plan change in 2013, page x-1.

<sup>7</sup> Public Notice of Submissions for Private Plan Change 44, Queenstown Lakes District Council, 27 March 2013.

In summary the Plan Change request sought to enable a variety of residential and non residential activities, with somewhat loose parameters as to specific activities or their quantity, in a spatially defined area “known as Henley Downs”<sup>8</sup>. That area has been identified on maps accompanying PC 44 as notified.

The basis of the JPRZ in the Operative District Plan and, to a degree, PC44 is a foundation study known as the “*Coneburn Resource Study*”, 2002 (updated to 2015 by Mr Tyler as a part of the Henley Downs entities’ evidence). That was a wide ranging study that directly led to the identification of land that was most appropriate for urban development on the basis of having the least disruption or other effects on landscape, hydrological, and other patterns.

The land subject to PC 44 sits within a glacial valley between The Remarkables range (east) and a combination of Peninsula Hill, Jacks Point, a Lake Escarpment and elevated Tableland (west) as shown on Figure 11 of the evidence of Mr Tyler for the Henley Downs entities.

The land subject to PC 44 has been historically used for farming purposes, and in its present state is best described as transitional in nature. The land is predominantly cleared (and in parts still in pastoral use), with vegetation (apart from pasture) mainly used for shelter belts and visual buffering along State Highway 6. Other clusters of vegetation exist in association with wetlands and water bodies. Sitting amongst this is the partially developed Jacks Point area, resulting in pockets of suburban type residential activities and its ancillary infrastructure of roads, lighting, signage, walls and domestic landscaping.

PC 44 (as revised in 2015) seeks to follow a similar overall distribution of intensity to the operative Structure Plan for the JPRZ by way of its own Structure Plan, which is proposed to sit in the District Plan as a method to implement the relevant policies. It is intended that the Structure Plan will be a key mechanism governing the subdivision of land within PC 44. This is a common approach across Queenstown and the country, and is of itself unremarkable.

The proposed Structure Plan before the Commission contains a number of “activity areas”. The activity areas have been distributed on the basis of landscape and other constraints, and relate to different “packages” of policies, development controls and assessment matters. As a whole they enable a range of between 1,316 – 2,228 dwellings, with various community and commercial activities in addition to this. The Commission notes at the outset that a weakness to PC 44 was the lack of specificity surrounding exactly what type and quantity of activities were envisaged within the Education Innovation Campus (“EIC”) area although through its reply the Henley Downs entities sought to address this.

Consistent with the approach taken to the presentation of PC 44 at the Hearing by the RCL and Henley Downs entities’ separate approaches, the relevant activity areas for each of the two major interests will be discussed separately under their respective names below.

#### **RCL Queenstown Pty Ltd**

RCL controls the “central” part of the PC 44 land, anticipated to be the main suburban part of the development where the majority of housing enabled by PC 44 would be located. It adjoins, along an irregular boundary, the existing Jacks Point

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<sup>8</sup> Section 32 report for Private Plan Change Request: Henley Downs, John Edmonds & Associates, February 2013, page 5.

development. This includes an area identified in the Operative District Plan as a commercial village – V(JP). RCL proposes five residential activity areas, being:

- ▶ **R(HD)-A** – a ‘suburban’ residential neighbourhood of 22.16 ha, at an average net density of between 17 – 26 dwellings per hectare (“d/ha”).
- ▶ **R(HD)-B** – a ‘suburban’ residential neighbourhood of 21.61 ha, at an average net density of between 17 – 26 d/ha.
- ▶ **R(HD)-C** – a ‘suburban’ residential neighbourhood of 14.46 ha, at an average net density of between 15 – 22 d/ha.
- ▶ **R(HD)-D** – a ‘suburban’ residential neighbourhood of 28.4 ha, at an average net density of between 17 – 26 d/ha.
- ▶ **R(HD)-E** – a ‘suburban’ residential neighbourhood of 27.11 ha which includes land under the control of RCL and the Henley Downs entities, at an average net density of between 25 – 45 d/ha.

Additional or further subdivision or development in the above areas would require resource consent, typically as discretionary activities.

These activity areas have irregular but linear edges derived from detailed (but still conceptual) master planning undertaken by RCL. Together the RCL activity areas would enable 1,124 – 1,830 of the total PC 44 yield of dwellings, or over 80% of it. Although there are five residential activity areas, they are intended to be integrated into one suburban environment characterised by subtle, rather than strongly defined, edges between adjoining activity areas.

### **Henley Downs entities**

The Henley Downs entities (including associated Jacks Point entities) control almost all of the remainder of the PC 44 land, the exception being the Troon CFR Identifier (title) OT 17C/863 in the north western part of that land being Lot 1 DP 25597 which has an area of 9084m<sup>2</sup>. The activity areas proposed to apply to the land under the Henley Downs entities control are:

- ▶ **EIC** – a 13.23ha area proposed for education and technology-based activities, modelled on a tertiary campus concept and intended to form a transition between the denser residential PC 44 interior and the existing rural land outside of PC 44. The activities to be enabled (as presented at the Hearing) include technology based activities, commercial film or video production, education facilities, community activities (excluding hospitals) and visitor accommodation including ancillary commercial administrative, office, retailing, accommodation, food and entertainment facilities (eg. café).
- ▶ **R(HD-SH)-1** - residential activity area of 6.47ha, at a net average density of between 12-22 dwellings per hectare (“d/ha”).
- ▶ **R(HD-SH)-2** – residential activity area of 6.33ha, at a net average density of 1.4 du/ha and subject to a maximum of 7 units (with 2 existing).
- ▶ **FP-1** – 69.46 ha – providing for small farm preserve lots, subject to requirements for a ‘spatial layout plan’ used to determine the appropriate lot and building sites. FP-1 is to be subject to a maximum of 34 residential units. This maximum equates to what would result if a minimum 2ha area per site was applied.
- ▶ **FP-2** – 243.49 ha – providing for two large farm blocks and two identified home site areas (which could accommodate a number of dwellings or ancillary buildings), focusing on a natural north-south fold in the landform that would accommodate vehicular access rising up from the valley floor.
- ▶ **R(HD)-F** - residential activity area of 9.03ha, at a net average density of between 4 - 22 d/ha

- ▶ **R(HD)-G** - residential activity area of 4.65ha, at a net average density of between 2 - 10 d/ha.

Further subdivision or development in the above areas would require resource consent, typically as discretionary activities. Buildings within the Peninsula Hill Landscape Protection Area (FP-2) beyond the identified home site areas would be non-complying activities.

Excluding the EIC, R(HD-SH)-1 and R(HD)-F, the Henley Downs entities' activity areas enable notably lower density residential development than the RCL activity areas. FP1-and FP-2 provide for the lowest development densities, reflecting that these areas are elevated above and outside of the main central valley floor, including the Tablelands (FP1) and Peninsula Hill (FP-2). The notable characteristic of the EIC is that it is an entirely new proposition to those contained in the 2013 notified PC 44, including that it is on land that was not hitherto proposed to be developed in PC 44 (but is within the area identified as "Henley Downs" that PC 44 applies to).

### **Overall**

The interface between the RCL and Henley Downs entities' activity areas, as well as between the external edges of PC 44 and adjoining land, is proposed to be managed by way of a consent requirement for all subdivision including numerous assessment matters relating to integration and mitigation.

## **6.0 STATUTORY REQUIREMENTS**

Section 73(2) of the Resource Management Act 1991 (the Act) confirms that any person may request a territorial authority to change a district plan, and the district plan may be changed in the manner set out in Schedule 1 to the Act. Provisions specific to requests for plan changes are detailed in Part 2 of Schedule 1 to the Act.

Clause 10 of the First Schedule requires that a local authority give a decision on the matters raised in submissions, and the reasons for accepting or rejecting the submissions, although it is not required to give a decision that addresses each submission individually. The decision may also include making any consequential amendments necessary to the proposed plan change arising from submissions.

Section 75 of the Act prescribes the contents of district plans. Subsection (3) states:

- (3) a district plan must give effect to-*
  - (a) any national policy statement; and*
  - (b) any New Zealand coastal policy statement: and*
  - (c) any regional policy statement.*

Subsection (4) goes on to state that a district plan must not be inconsistent with a water conservation order or a regional plan on any matter specified of regional significance.

Section 74 requires that a territorial authority shall prepare and change its district plan in accordance with its functions under section 31, the provisions of Part 2, a direction given under section 25A(2), its duty under section 32 and any regulations. Section 74(2), (2A) and (3) state as follows:

*(2) In addition to the requirements of section 75(3) and (4), when preparing or changing a district plan, a territorial authority shall have regard to—*

*(a) Any –*

*(i) Proposed regional policy statement; or*

*(ii) Proposed regional plan of its region in regard to any matter of regional significance or for which the regional council has primary responsibility under Part 4; and*

*(b) Any—*

*(i) Management plans and strategies prepared under other Acts; and*

*(ii) [Repealed]*

*(iia) Relevant entry in the Historic Places Register; and*

*(iii) Regulations relating to ensuring sustainability, or the conservation, management, or sustainability of fisheries resources (including regulations or bylaws relating to taiapure, mahinga mataitai, or other non-commercial Maori customary fishing),—*

*to the extent that their content has a bearing on resource management issues of the district; and*

*(c) The extent to which the district plan needs to be consistent with the plans or proposed plans of adjacent territorial authorities.*

*(2A) A territorial authority, when preparing or changing a district plan, must take into account any relevant planning document recognised by an iwi authority and lodged with the territorial authority, to the extent that its content has a bearing on the resource management issues of the district.*

*(3) In preparing or changing any district plan, a territorial authority must not have regard to trade competition or the effects of trade competition.*

*(emphasis added by underlining)*

The Commission is only empowered to make a recommendation to the territorial authority in terms of the limits of its delegated authority under section 34A (1) of the Act.

## 7.0 THE EVIDENCE

### 7.1 Submissions and evidence for the Requestor

Mr Holm presented opening legal submissions for the requestor, including a summary of the progress made in the period since the Hearing was adjourned in 2013. At the outset he clarified that, based on the apparently correct name of the land's original farmer, the name of the area subject to PC 44 should be referred to as "Hanley Downs", rather than "Henley Downs".

Mr Holm's submissions included an overview of the case. He stated:

*"In essence, the rationale behind PC44 is to make more efficient use of a scarce natural resource in the Wakatipu Basin – readily developable residential land, not subject to major environmental or other constraints or encumbrances."*<sup>9</sup>

He advised the Commission that the existing Resort Zone applying to the PC 44 land enabled between 850 - 1,300 houses. The 2013 version of PC 44 enabled up to 2571 houses. The 2015 version provided for a range of 1,124 – 1,830 houses in the main urban area of the plan change, and 1,316 – 2,228 houses overall.

Mr Holm helpfully outlined the approach being taken to PC 44 by the relevant land owners, including the "split" between RCL's interests and those of the Henley Downs entities. Although the Henley Downs entities are submitters, Mr Holm confirmed that RCL as the requestor would be effectively seeking to call Henley Downs entities to speak to the request in relation to the land they controlled. In summary, RCL's interest in the PC 44 land is limited to a 'central' urban area adjacent to the Jacks Point development and which is proposed to be subject to five residential activity areas denoted as R(HD)-A to R(HD)-E. These were identified in orange on a land ownership map attached as Appendix 1 to Mr Holm's submissions.

Mr Holm also responded to the possibility that legal scope may limit some of the changes sought by RCL. In his submission, legal scope was not a problem in regards to the RCL land. Mr Holm advised that RCL's planner, Mr Wells, was proposing further changes to address issues identified by Ms Jones in her updated s.42A report. Following on from that, Mr Holm observed that there was substantial agreement between the requestor and the Council's s.42A report authors in respect of the RCL land. In Mr Holm's view, only limited issues remained in respect of:

- ▶ Need for additional residential zoning;
- ▶ Indicative open space;
- ▶ Detailed Site and Zone Standards; and
- ▶ Stormwater.

Mr Holm made it clear that his client RCL had "*no particular opinion*"<sup>10</sup> on the Henley Downs entities' preferences for the balance PC 44 land beyond the control of RCL, however he confirmed that RCL was comfortable that the combination of the RCL and Henley Downs entities' preferences together would be an appropriate resource management outcome for the land.

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<sup>9</sup> Legal submissions of Mr Mike Holm on behalf of RCL Queenstown PTY Ltd, paragraph 6.

<sup>10</sup> Verbal response of Mr Holm to questions from the Commission.

Lastly Mr Holm took the Commission through the legal tests for a plan change and, with reference to the evidence called by his client, outlined why in his submission those tests had been or could be readily passed such that PC 44 should be accepted.

**Mr Wightman** outlined the strategic objectives of RCL for the land and why it elected to request PC 44.

Mr Wightman also candidly discussed the various reasons why the requestor continued to pursue PC 44 to the Operative District Plan under the RMA as opposed to seeking a Special Housing Area under the Housing Accords and Special Housing Areas Act 2013 (the principal reason being that RCL wishes to promote more than just affordable housing and felt the RMA channel was the best fit). Mr Wightman described the central goal of PC 44 as:

*“... to provide affordable, mid-range residential development for which there is a considerable shortage in the Wakatipu Basin. The subject land provides an opportunity which is not available elsewhere in the Basin”.*<sup>11</sup>

In respect of contributing to Queenstown’s particular housing challenges, Mr Wightman confirmed that RCL’s current thinking is to have a variety of house and land packages available for in excess of \$500,000; but not in the \$700,000 - \$800,000 range, which he considered is already catered for. This matter was further clarified in Mr Holm’s written reply when he confirmed that the requestor intends to produce a range of housing in the entry-level under \$500,000 bracket and in the mid-level \$500,000-\$700,000 bracket; but not in the over \$700,000 bracket.

The Commission also acknowledges in the context of affordable housing that the Jacks Point Stakeholders Deed (which was referred to by several witnesses at the hearing) contains in Clauses 19-21 a section that relates to Community Housing. The Commission notes that the Deed specifically refers to “Henley Downs” and accepts Mr Wells’s opinion that the Deed applies to the land subject to PC 44.

Mr Wightman emphasised that RCL was motivated to develop and sell product to the market, and has no interest in land banking or holding land. This was to give the Commission confidence that PC 44 was a “real” proposition; and Mr Wightman emphasised that it is of critical importance that PC 44 proceed without undue delay.

**Mr Potts** addressed wastewater disposal from the PC 44 land. His evidence related to the entirety of PC 44, not just the portion RCL controls. He discussed the Jacks Point development and wider Queenstown household characteristics including average occupancy (including seasonal peak) and how this relates to typical wastewater flow allowances for the purposes of services planning. He estimated that a development of 2,178 dwellings in PC 44 would produce a 496,856m<sup>3</sup> wastewater flow per year<sup>12</sup>.

Mr Potts outlined the three likely options for managing this flow, being a Sedimentation Tank Effluent Pump (“STEP”) system, a Modified Gravity (“MG”) system, or a Grinder Pump Pressure Sewer (“GP”) system. For each, he then analysed issues of ownership, power supply, maintenance, and location. He concluded that all three options would be viable.

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<sup>11</sup> Evidence of Mr David Wightman on behalf of RCL Queenstown PTY Ltd, paragraph 12.

<sup>12</sup> Evidence of Mr Robert Potts on behalf of RCL Queenstown PTY Ltd, paragraph 16 / Table 1.



Mr Potts then proceeded to analyse options to pump directly to QLDC infrastructure, including likely routes for a rising main of between 7 – 8.1km to connect to an existing sewer at Frankton. RCL would in that scenario construct at its own expense (with the Council's approval) all connections and any pump station(s). This option was in Mr Potts's view the preferred option.

Mr Potts also gave consideration to a decentralised treatment option with dispersal to land, and considered where such land could be provided taking into account hydraulic loading, nutrient leaching, and resultant public health concerns. He concluded that this would also be viable, needing 23 – 62ha to satisfy likely Nitrogen loading; with 66 ha of suitable soils having been identified within Hanley Downs and Jacks Point.

Mr Potts concluded that reticulation of wastewater to the QLDC Shotover Wastewater Treatment Plant [Project Shotover] is a viable and economic option; and that should this not prove to be the preferred option, that there are also viable options for decentralised wastewater treatment and discharge to land.

**Mr Dent** addressed flooding issues relevant to a known alluvial fan hazard in the general locality, stormwater management and water supply. Mr Dent's analysis was focussed on the RCL land, as well as the Hanley Downs entities' properties adjacent to State Highway 6 including all R(HD) areas, the R(HD-SH) areas, and the EIC precinct. His evidence also discussed the remaining areas where it was relevant to his analysis, including a wetland shown on the proposed Structure Plan immediately west of the R(HD)-E area.

In his evidence, Mr Dent described the focus of his analysis as the “*Hanley Downs Urban Areas*”, or “*HDUA*”<sup>13</sup>. He was the only expert to use this term.

Mr Dent provided a very helpful summary of the landform of PC 44:

*“The HDUA lies in the bottom of a valley between the “Remarkables” range to the east and the southern flanks of Peninsula Hill to the west. Double Cone in the Remarkables rises to 2320 metres above sea level, the flanks of Peninsula Hill rise to approximately 400m above the valley floor at 834m above sea level. Adjacent areas of both the Remarkables and the flanks of Peninsula Hill drain to the HDUA. The valley drains both north to the Kawarau River that flows out of Lake Wakatipu at Frankton and to the south to Lake Wakatipu. The north/south divide in the valley floor catchment lies across the southern third of the HDUA”.*<sup>14</sup>

He then summarised the geological history as follows:

*“As glaciers receded from the Wakatipu basin Lake Wakatipu was formed. Following the recession of the glaciers the water level in the lake was 50m above its current level and therefore beach ridge and lake bottom sediment formations are evident at lower levels within the HDUA. Later, the waters in Lake Wakatipu dropped as a result of water flowing eastwards down what is now known as the Kawarau River gorge. Before the diversion eastwards and the drop in the lake level the Shotover River likely flowed through the site into Lake Wakatipu. As a result of the outlet to the east areas of the river terrace,*

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<sup>13</sup> Evidence of Mr Gary Dent on behalf of RCL Queenstown PTY Ltd, paragraph 5.

<sup>14</sup> Ibid, paragraph 9.

*stabilised beach ridge and abandoned lake bed materials exist within the HDUA*".<sup>15</sup>

And:

*"During the post-glacial period, that includes the period of time after the level of Lake Wakatipu dropped, erosion of the steep terrain of the west face of the Remarkables has resulted in alluvial fan activity below the steep slopes and this has extended as far west as the base of Peninsula Hill. Consequently major flood flows have deposited alluvial material over the former lake bottom and "river terrace" area just within, and to the north, of the HDUA"*<sup>16</sup>.

Mr Dent took the Commission through a flood analysis of the alluvial fan and related sediment transportation processes, hydrology, hazard assessment and conclusions. This included identifying a number of water catchments across the PC 44 land (Sheet SW-02 in Mr Dent's Appendices).

In Mr Dent's opinion, flood hazard risks could be satisfactorily mitigated by constructing two approximately 400m long flood banks so as to divert flows as necessary around the HDUA. The flood banks would be approximately 2 metres in height (for the "High" flood bank to the north) and approximately 1.5 metres in height (for the "Low" flood bank to the south) and would be designed to accommodate landscaping. This solution would manage flood risk in proposed development areas R(HD-SH)-1, R(HD)-C, R(HD)-A, R(HD)-D), and the EIC. Mr Dent recommended that any siting of buildings and infrastructure in the R(HD-SH)-2 area would require specific approvals.

Mr Dent was of the opinion that the implementation of the mitigation option outlined above would provide a normally acceptable level of flood risk for future urban development in the context of flooding from the alluvial fan catchments above the HDUA.

Mr Dent then presented on indicative stormwater management plan to address issues raised in the submission of Otago Regional Council. He confirmed that all stormwater infrastructure for collection and disposal would be constructed according to the Queenstown Lakes District Council's Development and Subdivision Engineering Standards. The plan included reference to the flood banks Mr Dent had previously proposed as well as culverts and pipes, detention ponds and wetlands. Mr Dent's analysis led him to conclude that the PC 44 land could be developed in a manner that satisfactorily managed its stormwater in terms of both quality and quantity as desired by the Otago Regional Council having regard to the solutions presented in the indicative stormwater management plan. A key characteristic of this was to manage PC 44 stormwater in terms of a northern and a southern stormwater catchment.

Mr Dent lastly confirmed that a satisfactory water supply was available to serve the entirety of PC 44 from the Jacks Point development supply network; with additional headworks capacity required through the provision of an additional pump (or pumps) at the lake pump station, additional reservoir storage and water treatment capacity.

**Mr Espie** provided evidence with respect to landscape and amenity effects in the context of the RCL land. Mr Espie has provided landscape analysis of PC 44 for and

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<sup>15</sup> Ibid, paragraph 15.

<sup>16</sup> Ibid, paragraph 16.

since the original 2013 version of PC 44 and so has a strong grasp of how PC 44 had evolved over time. Despite the changes, Mr Espie advised that much of his original 2013 analysis remains valid. Mr Espie was careful to confirm that his analysis was limited to the effects of the RCL proposal on the environment outside of and around the PC 44 land. He did not address internal amenity, layout or design issues within the RCL land.

Mr Espie commenced by summarising the key conclusions of his 2013 landscape and visual effects report. He also took the Commission through a further matter of resource management significance, being an approved Outline Development Plan granted by the Council pursuant to the operative Jacks Point Resort Zone for most of the RCL land (Appendix 2 to his evidence). An Outline Development Plan amounts to a detailed plan for future subdivision including urban blocks, lots, roads and open spaces. This was not argued by RCL as forming part of the existing environment to which PC 44 related, as it could possibly have been.

Mr Espie then outlined his understanding of PC 44 as it related to RCL's land and how the proposed development control regime (including consenting and assessment matters) could or would manage potential adverse landscape or amenity effects. Mr Espie approached his analysis in terms of:

- ▶ Treatment of the Eastern Edge of R(HD)-C and Mitigation of Visual Effects as Experienced from SH6.
- ▶ Treatment of the Northern Edge of R(HD)-A and the Creation of a Suitable Northern Entrance to the Zone.
- ▶ Treatment of R(HD)-E and the Hill Landform in that Area.

Overall, Mr Espie remained comfortable that the 2015 version of PC 44 would be appropriate in terms of his original 2013 PC 44 report:

*“Overall, I consider that the provisions of the amended PC44 appropriately deal with the mitigation of effects in the way that I recommended in my 2013 report. The RCL land is low-lying valley floor land in the centre of the Jack's Point area. In terms of broad scale landscape planning issues, it is an area of the district that is suited to suburban development”<sup>17</sup>.*

Mr Espie then turned to the submissions received in response to PC 44 and offered his analysis of the issues raised in them. Many of these fell, in Mr Espie's opinion, within the range of issues and matters that he had already provided an opinion on, however he identified two additional issues for consideration:

- ▶ Effects on elevated landforms within the proposed Hanley Downs area; and
- ▶ Effects on the Hensman and Scope properties.

In respect of elevated landforms (raised by the Queenstown Lakes District Council), Mr Espie described the applicable PC 44 planning provisions including the Structure Plan, various matters of control (or discretion) proposed to be retained by the Council and assessment matters. In Mr Espie's view these methods were sufficient to ensure an appropriate outcome eventuated with respect to the relevant landform features within the RCL land.

In respect of the Hensman and Scope properties, these are located on the eastern side of State Highway 6, north of the intersection with Woolshed Road.

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<sup>17</sup> Evidence of Mr Ben Espie on behalf of RCL Queenstown PTY Ltd, paragraph 32.

Mr Espie explained that his understanding was that the Scope property was a combination of gravel extraction and quarry activity and consented residential activity (on retired quarry land). Mr Espie also noted that the Scope property contains two approved building platforms at a relatively high elevation (approximately 460 masl) as shown on Mr Espie's Appendix 5.

The Hensman property includes a yard-based industrial activity as well as a dwelling and sheds or barns adjacent to the Remarkables Ski Area access road.

Based on his analysis of likely views from these sites to the RCL land, Mr Espie was satisfied that PC 44 would have at most only slight visual effects. As such, Mr Espie was comfortable that PC 44 remained appropriate.

Mr Espie then turned his attention to the s.42A reports, specifically a landscape assessment undertaken by Dr Marion Read. Mr Espie commented briefly on minor points of disagreement but was of the overall opinion that both he and Dr Read are comfortable with the PC 44 approach for RCL's land.

Mr Espie responded to questions raised by the Commission, relating to the changes proposed to address how the Jacks Point and Hanley Downs development areas would relate to one another. The Jacks Point area has developed utilising a "pod" type configuration where clusters of houses have been placed within the various folds and creases of the landform. The operative Henley Downs provisions of the JPRZ and the approved Outline Development Plan follow that pattern however the 2015 version of PC 44 proposes to change the Henley Downs part of the JPRZ to produce a more conventional and linear suburban development edge. Mr Espie emphasised the importance of addressing the interface with adjacent development at the subdivision design stage.

**Mr Davis** addressed the Commission on potential contamination due to the land's historical agricultural use. He presented a Preliminary Site Investigation that he had undertaken for RCL across the entirety of the PC 44 land (including the Henley Downs entities' land).

In Mr Davis's view, the historical (and current) farming use of the land triggered the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health which came into force on 1 January 2012. The site was part of Kawarau Falls Run farm; then part of Remarkables Station; and latterly part of Henley Downs farm. Farming activities undertaken have been identified as including sheep dusting yards, sheep wash, farm storage buildings, cattle wash and sump, and the broadacre application of agrichemicals. Offal pits, fuel tanks, and rubbish pits have also been identified on the site.

The Preliminary Site Investigation identified a range of pesticides and heavy metals, hydrocarbons, and biological hazards associated with farming activity on the property. Potential contaminants of concern associated with historic and current commercial/industrial operations at the property (including the site occupied by Delta – Lot 3 DP 398514) included:

- Hydrocarbons, PAH's, solvents, heavy metals (including copper, tin, and mercury), and BTEX.
- Polychlorinated biphenyls (PCBs), organochlorine, organonitro and organophosphorus substances.

- Pentachlorophenol (PCP), phenolics (creosote), antisapstain, fungicides and tributyltin (TBT).

The proposed Structure Plan for PC 44 would involve locating residential development on land that was subject to historical contamination. The Preliminary Site Investigation confirmed that this will require Detailed Site Investigations at the appropriate consenting stage to determine the risk to health from the proposed change in land use; but noted that it is highly unlikely that contamination is present that cannot be remediated.

**Mr Kelly** provided an expert traffic assessment of PC 44 in its entirety. Mr Kelly has reviewed the earlier traffic assessment provided for PC 44 (prepared by RDG Ltd), reviewed the submissions, liaised with the Council and NZTA, and has undertaken his own investigations. As a result of this, Mr Kelly identified three key transportation issues relevant to PC 44:

- ▶ External connectivity to State Highway 6 (location, form, safety, capacity, planning mechanism);
- ▶ External effects upon the wider road network; and
- ▶ Internal provision for roads, walking, cycling, bus routes.

Mr Kelly identified that the existing traffic volume on SH6 in 2014 is 3,480 vehicles per day (with 10% of these being heavy commercial vehicles). A growth rate of between 2% - 3% per year is evident. Mr Kelly considered that the crash record for the State Highway was unremarkable and not indicative of any limitation; albeit that he noted that an elevated crash rate on this portion of SH6 is largely attributable to problems associated with stray animals.

Mr Kelly noted that commencement of works on the Kawarau Bridge replacement on SH6 is imminent following confirmation of the proposed alignment; and that completion of the Kawarau Bridge is expected in 2017.

PC 44 would have two vehicle access points. The northernmost would be from the existing SH6 intersection with Woolshed Road (to be substantially upgraded). The southernmost would be the existing formed road access into Jacks Point at Maori Jack Road (proposed to connect internally with the PC 44 land and eventually with Woolshed Road to form an internal loop).

Mr Kelly analysed the difference between likely traffic generation possible if the operative land use zones were developed, and land use activity enabled by the 2015 version of PC 44. This resulted, based on assumptions made between Mr Kelly and Mr Wells [the Requestor's planning consultant], in up to 932 additional dwelling units, 1,400m<sup>2</sup> GFA less office space, around 2,600m<sup>2</sup> less retail space, and more educational activity (being the addition of a pre-school and secondary school). Mr Kelly then estimated the likely differences in traffic generation. This was calculated as being up to 2,350 additional average weekday arrival and departure trips (i.e. 4,690 trips in total).

Mr Kelly emphasised that his calculations made no allowance for commercial or technology-based activities within the proposed EIC area as it is as yet uncertain what activities might occupy this area. However he confirmed that it was unlikely that activities within the EIC area would materially change his view on the effects of PC 44 on the road network as a whole.

PC 44 will require the formation of a new intersection between SH6 and Woolshed Road. How and when this might occur, and whom would fund it, were of interest to the Commission (this matter progressed to a conclusion through the Hearing as will be discussed later). Mr Kelly provided a generic diagram of this intersection (his Figure 2) and he confirmed his view that such an intersection would not be operationally problematic or generate any new safety risks for SH6. In reaching this conclusion Mr Kelly acknowledged the key objectives, agreed with NZTA, that the intersection should at all times operate safely and at an acceptable level of service.

Mr Kelly also observed that without provision of a connection at Woolshed Road, the Maori Jack Road intersection with SH6 would be unable to accommodate the combined traffic demands associated with the 'balance' Jacks Point area and either the development permitted at Henley Downs by the operative JPRZ, or that proposed in PC 44. Accordingly the commitment to a new intersection at Woolshed Road as part of PC 44 will avoid any need to upgrade the Maori Jack Road intersection.

Mr Kelly also responded to relevant matters raised in submissions, including those submissions from:

- ▶ New Zealand Transport Agency;
- ▶ Queenstown Lakes District Council;
- ▶ Remarkables Park Ltd and Shotover Park Ltd;
- ▶ Otago Regional Council;
- ▶ The Southern District Health Board; and
- ▶ Peter Knox and Julie Horwood

In Mr Kelly's opinion the issues raised in the submissions are able to be addressed as detailed in his evidence.

In respect of Ms Jones's s.42A report Mr Kelly affirmed his opinion that up to 500 additional dwellings could be accommodated within the PC 44 area before the upgrade identified for Woolshed Road and SH6 is required [this figure subsequently being reduced to 300 following discussions with NZTA witnesses – see Section 7.3]. Mr Kelly also considered that any development within the proposed EIC area should be conditional upon the Woolshed Road intersection being upgraded.

**Mr Wells** provided resource management planning evidence in support of the RCL component of PC 44, drawing as appropriate on the expert evidence of those witnesses that preceded him. Mr Wells has been involved in PC 44 since the original 2013 version, and authored the original s.32 analysis that supported the request.

Mr Wells outlined the PC 44 proposal and why, in his view, it was a more desirable approach to developing the land than that provided for in terms of the operative zone. Mr Wells, while acknowledging the landscape justification of the operative zone's "pod" approach, was critical of its inefficiencies and shortcomings. Given the characteristics of RCL's land and the severity of the housing shortage issues facing Queenstown Mr Wells was firm in his view that a "more efficient" use of the land should be required.

Mr Wells took the Commission through the detail of the evolution of PC 44 from 2013, including the stated purpose of PC 44 as presented in the Council's public notice at the time of the notification of PC 44 as reproduced in Section 5.0 of this report.

In Mr Wells' opinion, the changes to PC 44 now proposed have arisen for four reasons:

- ▶ Comprehensively responding to the Henley Downs entities' submissions;
- ▶ Removing an Outline Development Plan method in response to the Environment Court's findings on the method in the Court's Third Interim Decision<sup>18</sup> on PC 19;
- ▶ Incorporating into, and ensuring consistency with, the Jacks Point Resort Zone provisions; and
- ▶ Responding to discrete issues raised by other submitters.

Mr Wells worked through these matters in detail and pointed out a number of changes to the proposed PC 44 provisions in response. In many instances he accepted the concerns of Ms Jones and sought to resolve differences between the requestor and the authors of the s.42A report.

Mr Wells then addressed the statutory requirements for a plan change including the section 32 tests. His conclusion was that the operative JPRZ provisions provide for urban development on the RCL land and that, for the reasons outlined in his evidence, PC 44 was superior to the status quo. This was primarily on the basis that it is a more efficient use of a scarce land resource, with few if any materially greater adverse environmental effects.

Mr Wells also discussed with the Commission a number of technical issues relating to the development of PC 44 land including when and why consent notices may be more effective than covenants, and how triggers for infrastructure upgrades could be implemented.

Attached to Mr Wells's evidence was a track-change version of the PC 44 plan provisions which detailed the RCL proposals. Mr Wells took the Commission through these provisions, identifying key amendments as he thought appropriate.

## 7.2 Submissions and evidence for the Henley Downs entities

**Ms Baker-Galloway** presented opening submissions for the Henley Downs entities that had each lodged submissions under their respective names. She briefly described the outcomes sought by the submitter (ie. the Henley Downs entities collectively) on the land that it controls that is subject to PC 44 as summarised in Section 5.0 of this report. Ms Baker-Galloway provided a general overview of the 2015 version of PC 44 as follows:

*"The plan provisions themselves, and the structure of it, are very different to that as notified. Once you have gotten over the hurdle of understanding those structural differences, the more important task for you is assessing the merits of what these provisions will achieve. Most importantly total yield is slightly less than as notified, residential areas are [in] the same place with a couple of small deviations of boundaries, development outside of the residential areas is more refined and certain than as notified (which was just blanket open discretionary) and important landscape and open space areas are protected"<sup>19</sup>.*

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<sup>18</sup> Pages 39-57, C93/2014

<sup>19</sup> Legal submissions of Ms Maree Baker-Galloway on behalf of Henley Downs entities, paragraph 17.

Ms Baker-Galloway then identified and worked through the issues of disagreement with the other parties, as she saw them. They were:

- ▶ Landscape, natural character and open space values;
- ▶ Reverse sensitivity;
- ▶ Traffic;
- ▶ Stormwater;
- ▶ Natural hazards;
- ▶ Integration with Jacks Point; and
- ▶ Infrastructure

For each, Ms Baker-Galloway addressed the relevant issue and summarised the corresponding evidence to be presented by the witnesses who appeared in support of the submissions by the Henley Downs entities.

In respect of the relevant legal tests for a plan change, Ms Baker-Galloway agreed with the submissions presented on behalf of RCL by Mr Holm.

Ms Baker-Galloway then took the Commission through matters of legal scope that had been raised through the s.42A report which (at Appendix A) included legal advice from Simpson Grierson.

Ms Baker-Galloway, with reference to case law<sup>20</sup>, identified the three general questions to be asked when considering scope:

- (a) Is the submission “on” the plan change spatially?
- (b) Is the submission “on” the plan change in terms of the provisions notified as being “in play”?
- (c) Is there a real risk that persons affected by the change have been denied the opportunity to participate in the process – a question relating to how clearly a submission spells out the changes it is seeking?

Ms Baker-Galloway added an additional matter for consideration to those stated in her written submissions being the effect of restrictive covenants which prevent objection to, say, a plan change; such that residents cannot be said to have been denied natural justice if the plan change is changed.

In Ms Baker-Galloway’s submission each of the three questions listed above can be satisfactorily answered in favour of finding that there is scope for the PC 44 changes now before the Commission. She helpfully prepared a table outlining where in her view authority for the changes that had been made to PC 44 (in terms of scope) came from.

**Mr Tyler** presented landscape architecture evidence in support of PC 44. Mr Tyler is an employee of Darby Partners Ltd, a key firm involved in the establishment and development of Jacks Point. Darby Partners Ltd provides master planning and other management services to the Henley Downs entities and also the Jacks Point Residents and Owners Association (“JPROA”).

Mr Tyler introduced the Commission to the Coneburn Resource Study 2002. He described it as:

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<sup>20</sup> Including *Motor Machinists Ltd v Palmerston North CC* [2012] NZEnvC 231.



*“... the main guiding tool underpinning all landuse and management based decisions at Jacks Point. Its purpose is to provide a framework to guide growth by way of landscape constraint and opportunity mapping...”<sup>21</sup>.*

Mr Tyler explained the reasons for and the process followed to update the Coneburn Resource Study, and the results this has led to. The update process occurred after the 2013 notification of PC 44. The results of the updated study then informed the design approach taken to the 2015 version of the PC 44 Structure Plan. Mr Tyler is of the opinion that the update provides support for the proposed PC 44 Structure Plan and associated plan change provisions at Jacks Point [being the area subject to PC 44].

In Mr Tyler’s view, the proposed PC 44 Structure Plan has much merit and will integrate well with the Jacks Point development.

Mr Tyler outlined the rationale behind the EIC including case studies of other campus-type precincts that the EIC had been modelled on for the purposes of establishing site coverage and height rules.

Mr Tyler also drew to the Commission’s attention the concept of a “Urban to Rural Transect”, essentially a continuum of density from predominantly open at one end (rural) and very dense at its other being an urban core (which is not applicable in the context of PC 44), with various degrees of intensity in between ranging from large lot residential, to suburban and medium density residential, to an urban centre (see Mr Tyler’s Attachment 2). Mr Tyler confirmed that this Transect is the concept behind the RCL/JPL Structure Plan; and that PC 44 seeks to provide a range of living opportunities from smaller terrace housing through to larger farming blocks.

Mr Tyler also provided a high level analysis of effects and impacts, including comparisons to the operative Structure Plan and the 2013 notified one. These included various modified aerial photographs which showed the 2015 Structure Plan activity areas overlaid (Mr Tyler’s Attachments 3-5).

**Ms Pfluger** presented a finer-grained landscape and visual impact analysis to complement the bigger-picture perspective offered by Mr Tyler. Her analysis included reference to several photomontages that identified, in the wider landscape, the broad extent of development likely under PC 44 (Ms Pfluger’s Figures 7-9 as presented in her Graphic Attachment).

Ms Pfluger’s analysis commenced with a description of the existing environment including reference to the Coneburn Resource Study and its update as discussed by Mr Tyler. Ms Pfluger then outlined the changes made to PC 44 which relate particularly to the land under the control of the Henley Downs entities [as described in Section 5.0 of this report]; and she then comprehensively commented on the s.42A report and the contents of submissions. Ms Pfluger acknowledged the appropriateness of a number of comments made, particularly by Dr Read, and Ms Pfluger identified a number of changes that had been made in the provisions of PC 44 to accommodate them.

A feature of PC 44 of particular landscape significance is the proposed activity area FP-2 on Peninsula Hill. Ms Pfluger was confident that the combination of spatial confinement (the two identified Homesite areas) and default discretionary or non-complying activity status of land use activities would ensure that any inappropriate

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<sup>21</sup> Evidence of Mr Richard Tyler on behalf of the Henley Downs entities, paragraph 13.

use or subdivision would be avoided. She stated in the context of Policy 4.2.5.3 of the Operative District Plan (which relates to Outstanding Natural Landscapes (Wakatipu Basin)) that:<sup>22</sup>

*“The Peninsula Hill ONL would only be affected by any buildings in FP-2. All other proposed areas fall outside the identified ONL (WB). The protection of landscape values within the ONL has been the key driver for design amendments within FP-2, which now contains only two identified homesites within areas that have a high ability to absorb change. Buildings within the remainder of these areas with high change absorption capacity would be discretionary, while they would be non-complying within the Peninsula Hill Landscape Protection Area. In my view, this high level of protection in combination with a high degree of certainty regarding potential building locations is a considerably better landscape outcome than the ACRAA, which formed part of the notified PC [44]. I have visited the vicinity of the two proposed homesites within the ONL and I consider them to be suitable in terms of their location and ability to absorb dwellings without compromising the landscape values of the Peninsula Hill landscape. The homesites can be accessed through low-lying folds in the landform which would mean that the access roads and dwellings would be difficult or impossible to see from SH6 and Lake Wakatipu. There will be no visibility from Jacks Point or Hanley Downs residential areas.”*

The thrust of Ms Pluger’s conclusion was that the activity areas in PC 44 had been shaped to have minimal external conspicuousness; were or would be extensively screened from such views; or were otherwise subject to consent requirements allowing landscape or visual effects to be considered. On this basis she concluded that PC 44 would maintain existing landscape values (once the existing JPRZ provisions were taken into account).

**Mr Gousmett** provided evidence regarding water, wastewater, and stormwater services (and also transportation); and he confirmed that he had reviewed the evidence provided on behalf of RCL by Messrs Dent, Potts and Kelly.

He endorsed the majority of RCL’s engineering experts’ conclusions (with some minor qualifications), and provided opinions based on his experience with the adjacent Jacks Point development.

Mr Gousmett disagreed with Mr Kelly regarding the matter of timing for a required upgrade to the Woolshed Road / State Highway 6 intersection. Specifically, Mr Gousmett recommended that the upgrade should be tied to the point that a specific level of zone traffic generation was reached, rather than at the time that any initial development within the EIC (or elsewhere) occurred. He discussed the submission of the NZTA in this regard.

Mr Gousmett also disagreed with an assessment matter [rule] sought by the Otago Regional Council relating to stormwater management (1 in 100 year recurrence interval events). Mr Gousmett accepted that Mr Dent had demonstrated how the assessment matter could be achieved; and his disagreement appeared to be one largely of principle. Mr Gousmett observed that this is not an assessment matter elsewhere in the District; and he noted that if accepted this may be the first district plan zone in Otago that has such a rule. Mr Gousmett was concerned that such a rule would exclude other legitimate and environmentally sustainable options for

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<sup>22</sup> Evidence of Ms Yvonne Pfluger on behalf of the Henley Downs entities, paragraph 76.

stormwater management and he considered that such a rule, if it were to be put in place, would be more appropriate in the ORC Water Plan or as a condition of consent (granted for example to divert or dam a watercourse).

Mr Gousmett disagreed with the need for further restrictions or requirements on wastewater treatment and disposal (emphasising that no spray irrigation of treated wastewater is proposed); and the recommendations to connect to the QLDC reticulated water supply, being matters contained in the submission of The Southern District Health Board.

Mr Gousmett concluded that in terms of infrastructure the effects of PC 44 are appropriate and are in keeping with the adjacent existing development.

**Mr Ferguson** presented his evidence in two parts, the first immediately following his client's opening submissions, and the second after the Henley Downs entities' other experts had presented their evidence. For convenience his evidence in total is summarised here in one place in this report.

Mr Ferguson outlined the process that he has been involved with, including working closely with RCL's planner Mr Wells, since January 2015. He emphasised that the key outcomes sought by the Henley Downs entities are to ensure that subdivision and development within the PC 44 land appropriately integrates with the existing and planned development at Jacks Point.

Mr Ferguson then took the Commission through the changes that had been proposed to PC 44 between the 2013A and 2015 versions. He provided a summary of the outcomes sought in each activity area. Mr Ferguson then outlined further changes he proposed based on the contents of the updated s.42A report. One method that had been proposed to be deleted (an "Outline Development Plan", or "ODP") was proposed to be replaced with a suite of other provisions; and Mr Ferguson observed that many of the design elements contained within an ODP can be implemented through the Structure Plan, including the provision of open space, primary and secondary roads, public trails and landscape protection areas.

Mr Ferguson noted that within the FP-1 Activity Area a "Spatial Layout Plan", or "SLP" was proposed with many similarities to the *ultra vires* ODP. The purpose of an SLP would be to help justify a move away from a minimum and average lot size approach that could lead to a homogenous development outcome, to a master plan led approach with a maximum overall yield of 34 lots/dwellings. The SLP would<sup>23</sup>.

- "(i) Identify the location of any sites intended to be developed for the purposes of enabling visitor accommodation activities.*
- (ii) Identify the location of residential building platforms (no greater than 1,000 m<sup>2</sup> in area)*
- (iii) Be accompanied by landscape analysis to ensure development is located within areas with the most capacity to absorb change*
- (iv) Provide an indicative subdivision lot layout*
- (v) Identify the location of protected open space*

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<sup>23</sup> Evidence of Mr Christopher Ferguson on behalf of the Henley Downs entities, paragraph 27.

- (vi) *Identification of significant rock outcrops, streams, ephemeral wetlands, swamps and grey shrubland habitats (taken from current assessment matters on subdivision)*"

Mr Ferguson confirmed his view that the entirety of proposed Activity Area FP-2 was within an ONL and that, relying on the analysis of Ms Pfluger and his own reading of the Operative District Plan Objective 4.2.5 ( and its Policies 1 (*Future Development*), 3 (*Outstanding Natural Landscapes (Wakatipu Basin)*), and 6 (*Urban Development*), he supported the two homesites proposed within the ONL . Also relying on Ms Pfluger's analysis, Mr Ferguson found that the EIC was appropriate in terms of 4.2.5 Policy 7 (*Urban Edges*).

Mr Ferguson also took the Commission to the Operative District Plan Objective 1 (in Section 4.5.3) and its Policies 1.1 to 1.5. These provisions relate to energy use and promote land use outcomes that minimise the need for travel and otherwise encourage energy efficiency.

Mr Ferguson was similarly comprehensive in addressing the remainder of the proposed activity areas relative to the Operative District Plan's objectives and policies. His view, in summary, was that PC 44 was consistent with these provisions and would on that basis be appropriate. Mr Ferguson then considered PC 44 in the context of section 32 of the Act and addressed the submissions received; and concluded that PC 44 as now presented is better than the notified 2013 version of PC 44.

Mr Ferguson also concluded, with respect to the ACRAA and the 2015 version of PC 44, as follows<sup>24</sup>:

*"The structure of the policies and rules required to provide for that [higher] level of certainty and to accommodate the appropriate development outcomes within the former ACRAA area are thus very different from the notified provisions. Ultimately that structure will better achieve the key objectives of the plan than reliance on the notified provisions, because they:*

- (a) *Avoid development within the most sensitive parts of the landscape*
- (b) *Enable limited development within those parts of the landscape that have the greatest capacity to absorb change*
- (c) *Are underpinned by robust analysis*
- (d) *Provide a greater diversity of living accommodation, employment options and open space and conservation protection*
- (e) *Consolidates the urban form*
- (f) *Creates a clear urban edge between the proposed urban areas and surrounding rural land*
- (g) *Mitigates the risk of flood hazard to acceptable levels using a return period of 1 in 100 years (with freeboard)"*

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<sup>24</sup> Evidence of Mr Christopher Ferguson on behalf of the Henley Downs entities, paragraph 120.

Mr Ferguson's view is that the proposed provisions of PC 44 are the most efficient and effective, taking into account the realistic alternatives, than the notified provisions to achieve the objectives of the Operative District Plan.

### 7.3 Submissions and evidence from other submitters

The **Southern District Health Board** provided a letter dated 1 July 2015 that was tabled at the Hearing. In this letter it confirmed its comfort with PC 44 as proposed, particularly the evidence of Mr Robert Potts; with the Board adding support for the option of connecting to the QLDC's Project Shotover for wastewater treatment and disposal.

The **Otago Regional Council** provided a letter dated 2 July 2015 that was tabled at the Hearing. In its letter the ORC confirmed its general agreement with the analysis of Ms Jones, outlined its discomfort at what it saw as a lack of its involvement with PC 44 since the 2013 adjournment, and reiterated its view that more detailed natural hazard analysis was required [with respect to alluvial fans]; and noted that at the time of writing its letter Mr Dent's evidence was not available for its review. A central concern to the ORC was the ongoing maintenance and assessment burden of any mitigation measures put in place to manage alluvial fan hazards at the northern end of the subject site.

Mr James Coutts, a Planning Advisor at **New Zealand Transport Agency**, appeared before the Commission in support of the NZTA's submission with Mr Tony Sizemore, Transport Planning Manager.

Mr Coutts outlined NZTA's interest in PC 44 and the state highway system and, after this introduction, he briefly stated the NZTA's position as detailed in its submission. Mr Coutts expressed support for the recommendations made by Ms Vicki Jones with respect to a trigger point of 500 households for the upgrading of the Woolshed Road intersection. Mr Coutts advised that NZTA, after discussions with the Requestor's traffic engineering consultant (Mr Kelly), now supported a trigger of 300 households (or equivalent) before the upgrade was required. It also supported a rule in PC 44 which would require that NZTA be served notice of the resource consent application that made provision for the upgraded intersection.

Mr Sizemore confirmed that tenders closed for construction of the Kawarau Bridge on 30 June 2015; and that completion of the Kawarau Bridge in 2017 (as advised by Mr Kelly) was a reasonable estimate.

Mr Devlin on behalf of **Queenstown Lakes District Council** provided professional planning evidence in support of the Council's submission. Mr Devlin provided a statement of evidence that was circulated prior to the reconvened hearing, and a written commentary at the Hearing, which took into account the changes made by RCL and the Henley Downs entities during their presentations to the Commission.

Mr Devlin outlined a number of concerns, including the question of scope. In Mr Devlin's view much of what is proposed on land under the control of the Henley Downs entities (shaded blue on Mr Holm's Appendix 1) in the 2015 PC 44 is beyond the scope of the notified (2013) PC 44. Mr Devlin supported comments made to this effect by the s.42A planner Ms Jones, as well as in the legal advice from Simpson Grierson. Mr Devlin analysed the summary of submissions (see **Appendix 2** to this report) and argued that a reasonable person could not have reasonably appreciated the changes that have been proposed as arising from those submissions. He was

particularly concerned with the EIC activity area, which he noted was described in Mr Ferguson's evidence at the hearing as a "mixed use node"<sup>25</sup>. Mr Devlin observed that the notified version of PC 44 made no mention of creating such a mixed use node.

Mr Devlin reviewed a number of the PC 44 provisions proposed by Mr Ferguson and outlined his (Mr Devlin's) concerns with respect to them in considerable detail. The Commission has chosen not to summarise Mr Devlin's comprehensive presentation on these matters but acknowledges that they are presented fully in his written commentary document presented at the hearing.

Mr Devlin was most critical of the way the RCL and Henley Downs entities' witnesses had supported the 2015 version of PC 44 by comparing it to the 2013 and 2013A versions – not with the Operative District Plan. Mr Devlin was also unsupportive of the proposed EIC in terms of its location, and he recommended that if provision was to be made for an EIC that this should be internally located within the development area adjacent to the Jacks Point village centre – V(JP).

While Mr Devlin supported a number of amendments proposed by Ms Jones, RCL and/or Henley Downs at the Hearing, he considered that numerous additional amendments were still required. Mr Devlin advised that he had not had as much time as he would have liked to prepare his written commentary, as the provisions of PC 44 were still being amended by Messrs Ferguson and Wells during the course of the Hearing. He emphasised that QLDC ultimately has to administer these provisions and seeks provisions that are clear, concise, unambiguous and well drafted; and which achieve the objectives of the zone.

The Commission acknowledges the difficulties faced by Mr Devlin which result in large part from the fact that the 2015 PC 44 provisions are not what were notified (being the version of PC 44 that the submission by QLDC actually relates to).

Mr Peter Willsman appeared on behalf of the **Wakatipu Wilding Conifer Control Group Incorporated**. Mr Willsman was supportive of PC 44 provided that it included methods to prohibit the planting of trees with wilding propensity, and to require removal of existing trees with such propensity prior to development. Mr Willsman advised that some 80,000 wilding trees had been removed from the face of The Remarkables (to the east of the PC 44 land) and that the cost of such removal equated to \$3.50 per tree. Mr Willsman emphasised the need to attack the source of wilding seeds.

**Mr Alexander Schrantz** discussed the concerns raised in the submission by himself and his wife **Mrs Jayne Schrantz**. The Schrantzs own a property known as Lot 35 in The Preserve at Jacks Point. This is at the north western end of the Tablelands area adjacent to the proposed FP-2 activity area in Henley Downs.

The Schrantz's main concerns with PC 44 related to the FP-1 and FP-2 areas. The submitters promoted that no changes be made to the current Open Space and Landscape Protection Areas in the Tablelands, which they consider are a fundamental component of the JPRZ. Mr Schrantz observed that additional development in this [Tablelands] area overturns the extensive consideration given to this matter in the context of Variation 16; the conclusion of which was to strictly limit development in the Tablelands to 36 highly restricted homesites in The Preserve.

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<sup>25</sup> Evidence of Mr Blair Devlin on behalf of Queenstown Lakes District Council (submitter), paragraph 2.12.

The submitters promoted that even if FP-1 and FP-2 proceed, no changes should be made to the zoning of Lot 34 and Lot 36 in The Preserve, which are immediately adjacent to the submitters' property. They also opposed a proposed public access route that had been indicated adjacent to their property.

The seriousness of the submitters is underlined by the fact that Mr Schrantz travelled from Hong Kong to appear in support of the Schrantz submission at the Hearing.

## **7.4 Section 42A report authors' response**

By the conclusion of the Hearing the position of the authors of the s.42A report was that only matters relating to landscape architecture and resource management planning remained in disagreement.

In terms of landscape architecture, Dr Read presented a comprehensive verbal response to the evidence that had been presented at the Hearing. The key points raised by Dr Read were that:

- a. The Coneburn Resource Study is comprehensive but is subject to a number of methodological limitations (for instance views beyond a distance of 2kms are automatically considered to have moderate significance).
- b. Maori Jack Road is a "public place" in terms of the Operative District Plan.
- c. The R(HD-SH)-2 will provide for an additional 5 dwellings and effectively "borrows" amenity from the surrounding context. This will have an effect on the amenity of the existing residents [Paterson & Troon].
- d. Dr Read supported the R(HD)-F and -G areas that had been reduced in scale and moved away from the ONL of Peninsula Hill. In her view R(HD)-G should be limited to a maximum of 8 dwellings only.
- e. In terms of Activity Area FP-1, Dr Read was concerned with the proposal and maintained her view that a lower intensity or perhaps 14 units was the limit of what was supportable albeit that she had not read the QLDC decision on Variation 16, extracts from which had been presented by Mr Schrantz. She also raised questions with respect to the provision to be made for visitors accommodation and farm buildings in the FP-1.
- f. In terms of Activity Area FP-2, Dr Read agreed that the proposed home sites would be largely hidden from view. She expressed a concern regarding night time lighting and its effects. She noted that such lighting would be visible from Fernhill and Sunshine Bay in Queenstown, and she considered this to be a significant adverse effect. She also noted that the relevant policies of the Operative District Plan seek to avoid development in an ONL.
- g. In general terms, Dr Read observed that a substantial reduction in design control was now proposed in FP-1 when compared to the JPRZ provisions relating to The Preserve and The Preserve Design Guidelines (which Dr Read tabled). The lack of guidelines is also a concern in the context of FP-2. She observed that this reduction in design control may impact on development quality.

- h. Dr Read did not agree with the analysis provided by Mr Tyler in support of the underlying landscape design approach used to justify a distinction between a “hard edge” or a “soft edge” (relating to transitions between intensity and ultimately the “Transect” tool promoted by Mr Tyler). She opined that it was largely philosophical in nature rather than technical and she considered all of the benefits of such an approach (as listed by Mr Tyler at paragraph 23(a)-(f) of his evidence) are debatable.
- i. Dr Read observed that the entry to Hanley Downs through Woolshed Road would be a very important experience and that a specific provision relating to this gateway would be important.

In terms of resource management planning, Ms Jones outlined her remaining concerns and recommendations in a written statement dated 3 July 2015. In her opinion PC 44 has improved considerably since June 2015; and there now appears to be considerable agreement amongst the planning experts on a number of significant matters, as listed in paragraph 1.3 of her written statement.

Based on her analysis of the Operative District Plan framework, she preferred the evidence of Dr Read to Mr Tyler, Mr Espie and Ms Pfluger, and Ms Jones made recommendations to amend the PC 44 Structure Plan to that end. Aside from that, Ms Jones’ key points had been addressed by the RCL and Henley Downs entities’ positions (albeit that these had changed throughout the Hearing).

Ms Jones’s written statement listed her areas of agreement and disagreement with PC 44. The majority of these disagreements related to the PC 44 District Plan provisions and could be addressed with the insertion of additional rules, limitations, restrictions or criteria. Specifically, concerns with Activity Areas FP-1 and FP-2, and the R(HD-SH) areas could be addressed.

In terms of more substantial opposition, Ms Jones was concerned with the EIC which she is not convinced is a good idea. She has concerns regarding the difficulty in ensuring that the EIC will not affect the vibrancy and success of other retail, commercial and employment centres. Ms Jones was of the view that there is real merit in providing for any such development adjacent to the Jacks Point village – V-JP; and she shared concerns that had been raised by the Commission with respect to the visual effects of parking along Woolshed Road.

In overall summary, the authors of the s.42A report were essentially comfortable with the RCL component of PC 44, but had numerous concerns or reservations in terms of the Henley Downs entities’ component of PC 44.

## **7.5 Reply from the Henley Downs entities**

Ms Baker-Galloway provided a comprehensive written reply to the Commission dated 8 July 2015. In it a number of changes were proposed to PC 44 in light of the s.42A report authors comments. The written reply included 10 attachments.

Ms Baker-Galloway provided submissions on a number of issues raised through the Hearing including:

- ▶ Section 32 (of the Act),
- ▶ Coneburn Study,
- ▶ Design Guidelines,



- ▶ Controls on density and diversity of lot sizes in residential areas,
- ▶ Jack's Point Stakeholder Deed,
- ▶ Woolshed Road,
- ▶ EIC,
- ▶ R(HD-SH) 1 and 2,
- ▶ R(HD)-F,
- ▶ R(HD-G),
- ▶ FP-1,
- ▶ FP-2,
- ▶ Non Objection Obligations (Covenants and JPROA Constitution),
- ▶ Jacks Point Primary Covenant, and
- ▶ the Jacks Point Residents and Owners Association Constitution.

Ms Baker-Galloway introduced through her submissions a number of material changes to both the provisions and Structure Plan for PC 44. The impact of these changes and the extent to which they do or do not address the concerns raised by the s.42A report authors and/or submitters is unclear in the absence of any expert evidence (particularly in respect of resource management planning) to justify or support them. In totality it amounted to a substantial amount of material which was introduced at a very late stage in the Hearing.

Nonetheless, Ms Baker-Galloway concluded that<sup>26</sup>:

*"...The Henley Downs' proposed provisions provide significantly greater certainty, benefits and protections than the Operative District Plan. Council's role and discretion is preserved on future applications for land use and subdivision and generally, making land available as a genuinely more efficient and appropriate use of physical and nature resources.*

*97. Overall, the submitter has taken on board the comments and recommendations that arose at the hearing and submits that the package attached to these submissions achieves the sustainable management purpose of the Act and is more appropriate than the status quo under the Operative District Plan or any other options."*

## 7.6 Reply from the requestor

Mr Holm presented a brief verbal reply on 3 July 2015 and emphasised that RCL's land had been zoned for residential purposes since 2003; and that it wished to proceed with development of it's land without delay with a potential yield of up to 1830 dwellings to increase the supply of medium priced housing in the Wakatipu Basin. Mr Holm also addressed matters raised at the hearing, including comments made by the s.42A report authors.

Mr Holm provided a formal written reply to the Commission dated 10 July 2015 which took into account the contents of the written reply provided earlier by Ms Baker-Galloway for the Henley Downs entities. Mr Holm provided two attachments with his written reply.

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<sup>26</sup> Submissions in reply of Ms Marie Baker-Galloway on behalf of the Henley Downs entities, at paragraphs 96 and 97.

Mr Holm submitted on the matters of affordable housing and scope; and on a range of the matters raised at the Hearing including: open space mapping and management, landscape, design matters, upgrade of Woolshed Road, wastewater disposal and the district plan review; and he confirmed that he had no comment to make on Ms Baker-Galloway's submission in reply. In essence Mr Holm submitted that ready and simple solutions had either been agreed or could be added to PC 44 as it related to the RCL component<sup>27</sup>:

*“With respect to the RCL land subject to PC44, there is substantial agreement between experts for the Council and RCL, and no major areas of substantive disagreement on planning, landscape or infrastructure issues. There are no unresolved issues which would warrant declining approval of PC44 for RCL’s land.”*

The Commission notes that by the end of the hearing RCL had essentially decoupled itself from the fate of the Henley Downs entities' land. Mr Holm at paragraph 41 of his reply submitted that whatever the fate of the “blue” [as identified at Mr Holm's Appendix 1] Henley Downs Farms land, RCL considers there is no reason to decline PC 44 as it relates to the RCL – owned land.

## **8.0 ASSESSMENT**

The Act requires that submission points are addressed by grouping them according to the provisions of the plan change to which they relate, or the matters to which they relate. For convenience, we have followed the approach taken in much of the planning evidence, and have grouped submission points on the basis of 9 topics.

The Commission has identified that the request is most appropriately determined with reference to the preliminary matter of scope; whole-of-request infrastructure and servicing matters; and then in terms of the specific land use activity areas proposed. These topics are:

1. Scope of matters before the Commission
2. Transportation
3. Water, wastewater and stormwater; flooding and hazards
4. Activity Areas R(HD)-A to R(HD)-E (proposed by RCL)
5. Activity Areas R(HD-SH)-1 and R(HD-SH)-2 (proposed by the Henley Downs entities)
6. Activity Areas R(HD)-F and R(HD)-G (proposed by the Henley Downs entities)
7. The EIC (proposed by the Henley Downs entities)
8. Activity Area FP-1 (proposed by the Henley Downs entities)
9. Activity Area FP-2 (proposed by the Henley Downs entities)
10. Overall PC 44 and Structure Plan

These topics are addressed in turn in Sections 8.1-8.10 below.

The full list of the submitters and further submitters to PC 44 is provided in **Appendix 3**.

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<sup>27</sup> Submissions in reply by Mike Holm/Phoebe Mason on behalf of RCL Queenstown Pty Ltd, at paragraph 46.

Our recommendations are structured as follows:

- The topic.
- A discussion which reflects our assessment of the evidence and the submission points that relate to each topic, as appropriate, and which provide the reasons for our recommendations.
- Our recommendations as these relate to the submission points that relate to each topic (in Sections 8.2-8.10). These state whether each submission point is to be **accepted**, **accepted in part** or **rejected**. We attach at **Appendix 1** PC 44 as amended by our recommendations.

Care is required when interpreting the submission points. In the first instance the submissions have been made in response to the specific provisions of PC 44 as notified in 2013; and PC 44 has been substantially amended subsequently. Allocating submission points to particular topics (as they relate to the current version of PC 44) requires a somewhat “belt and braces” approach.

Secondly the database used to prepare **Appendix 2** only allows the insertion of one topic per submission point. One submission point may therefore relate to a number of topics and generally only one topic (and usually the most prominent) is assigned to that submission point in the summary at **Appendix 2**. The Commission also acknowledges that the submission points represent a summary only of each submission; and that the actual submission or further submission concerned may contain additional material. Submission points are identified by three numbers (eg. 44/10/1) in the Summary at **Appendix 2** and in our recommendations in Sections 8.2 – 8.10 of this report.

The Commission confirms that it has given consideration to the full contents of all submissions and further submissions, copies of which were provided to the Commission prior to the hearing.

## **Summary of Findings**

The fundamental matter for us to determine is whether the PC 44 land that is subject to an existing urban zone should be subject to amended planning provisions, the effect of which is to significantly increase the yield of this land in terms of residential development. Following our consideration of PC 44 and the submissions and further submissions (including submissions and evidence presented at the Hearing), the section 32 analysis and supporting technical reports, and the s.42A report and attachments the Commission has concluded that PC 44 is appropriate, subject to amendments.

The Commission has acknowledged that all owners of the PC 44 land who appeared at the Hearing or who have lodged submissions and/or further submissions fundamentally support the intent of PC 44.

PC 44 is far from a textbook example of how a plan change should proceed through the statutory process. Significant change has occurred to the plan change between the notification of the plan change and its presentation to the Commission at the Hearing. Specific provisions continued to be amended up to the presentation of the reply by counsel for the Henley Downs entities. This has significantly increased complexity for the Commission in its consideration of the plan change; and has placed submitters in a difficult position as they have made formal submissions in

response to PC 44 as notified, and not to the current provisions which have been placed before the Commission for consideration.

As an initial finding, the Commission does not agree with the approach presented to it by a number of witnesses, which sought to justify the 2015 version of PC 44 by comparing it to the notified 2013 version. As discussed previously, the Commission does not agree that the different versions of PC 44 are available as options before it, as the Requestor has effectively replaced the notified 2013 version with the current 2015 version of PC 44.

We discuss the specific topics which relate to PC 44 as now presented to us in Sections 8.1-8.10 below. In some instances we have accepted or accepted in part submission points which has resulted in modifications to PC 44 as attached at **Appendix 1**.

Key outcomes that have resulted from the Commission's consideration are:

- Activity Areas R(HD)A to R(HD)E should proceed.
- Activity Areas R(HD-SH)-1 and R(HD-SH)2 should proceed.
- Activity Areas R(HD)-F and R(HD)-G should proceed.
- Activity Area EIC should not proceed.
- Activity Area FP-1 should not proceed.
- Activity Area FP-2 should not proceed.

## **8.1 Scope of matters before the Commission**

### **Discussion & Reasons**

The 2015 version of PC 44 is markedly different to the notified 2013 version. In considering the limits of scope, either for the requestor or for submitters as the case may be, the Commission has considered carefully the purpose of the plan change and the wording of submissions.

Mr Holm and Ms Baker-Galloway were very helpful in drawing to the Commission's attention the accepted tests for identifying whether or not a given proposition might be within scope. Their framework was materially the same as that identified by Simpson Grierson in its advice dated 26 May 2015 which informed the s.42A report.

First, the Commission has had to determine whether or not the 2015 components of PC 44 fall within the outcomes that could have been anticipated based on the purpose of the plan change. This purpose has been discussed earlier (at Section 5 of this report), and is as follows:

*“This Plan Change Request seeks to amend the Queenstown Lakes District Plan as it applies to the area known as Henley Downs to create a new Henley Downs Special Zone which will enable a range of urban uses while protecting important natural and landscape values. In addition, to enable the rezoning, changes are proposed to Section 12 (Special Zones - Resort Zone), Section 15 (Subdivision) and Section 18 (Signs) of the District Plan.”*

The Requestor's plan change request prepared in accordance with Clause 22 of the RMA's Schedule 1 included a spatial map of the "Henley Downs" area – this is shown as Figure 1 in Section 1.3 of the Plan Change request document<sup>28</sup> (and indeed is again shown on the document's front cover). That area is larger than the proposed "Structure Plan" development areas shown in the 2013 and 2013A versions of PC 44. So while the proposed EIC area (as an example) is at face value an extension to the Structure Plan area shown in the 2013 and 2013A versions, it is still within the geographic area identified and described within the plan change application. The Council, in accepting the plan change request and subsequently notifying it for submissions, must not have considered the wording of the request too ambiguous or broad.

The Commission notes that the Structure Plan shown in the notified (2013) version is inherently a "method" to implement the proposed plan provisions and was not of itself expressive of the limit of what PC 44 could lead to in terms of its stated purpose, objectives, policies, rules and so on.

The Commission finds that the purpose of the plan change clearly states that a mixture of different activities are sought. A reasonable person appraised of the facts could anticipate that through submissions and a hearing process the exact size, distribution and composition of activity areas could change whilst achieving the most appropriate "*range of urban uses*" described in the request. While the planning framework proposed as a part of and accompanying the request is in places restrictive as a means of assuring certainty over the outcomes that those provisions would govern, the Commission finds that this is not so procedurally determinative that those provisions limit the scope of matters that submitters or the consent authority may pursue.

In the first instance the changes made by the requestor to PC 44 between the 2013 and 2015 versions (including adjustments to the extent of the land subject to PC 44 as originally shown on Figure 1 in Section 1.3 of the Plan Change request) are held to be within the scope of the request with one exception, which is discussed further below.

In the second instance the Commission must consider whether or not submissions and further submissions received on PC 44 are "on" the plan change and also within scope. Of particular interest are the submissions of the Henley Downs entities as it is on the basis of these submissions that many of the changes proposed to PC 44 in the 2015 version have been made.

Having reviewed the submissions the Commission finds that there is scope for the changes to PC 44 that have been proposed (excluding the EIC). Although there are numerous material changes proposed in the 2015 version of PC 44 that are very different to the notified 2013 version, that of itself is not sufficient to confirm an absence of scope. The nature of the submissions and hearing process is that proposals as originally notified may well change, in some instances considerably.

To this end the Commission acknowledges the comments made by Mr Devlin that the Council may have submitted differently in 2013, had the 2015 version been what was notified. While this is true in terms of specific provisions, it is important to note that the intent and substance of the plan change remains. There is a difference between a submitter being unable to anticipate the range of outcomes that may be proposed as a consequence of a plan change (a matter of scope), and a submitter

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<sup>28</sup> Prepared by John Edmonds and Associates Ltd, February 2013.

being in a position where the timeframe between the presentation of a requestor's modified proposal being provided and a hearing being held may limit the extent of analysis the submitter may have preferred to undertake. The latter is governed by time limits prescribed within the RMA.

The Commission considers that there is a particular issue of scope with respect to the EIC. The Commission concurs with Mr Devlin that the 13 hectare EIC (as presented and modified at the hearing) could not have been anticipated by any person considering PC 44 as notified or the content of the relevant submissions. A substantial commercial/technology park is now proposed on 13 hectares which Mr Ferguson referred to in evidence as a "mixed use node". The Commission's conclusion is that the EIC falls outside the scope of PC 44.

While the Commission has concluded that the EIC falls beyond the scope of PC 44 the Commission considers it appropriate, through an abundance of caution, to address the merits of the EIC proposal in Section 8.7 of this report.

## **8.2 Transportation**

### **Discussion & Reasons**

The Commission finds that the transportation effects of PC 44, excluding the EIC, have been appropriately estimated and assessed. The traffic generation likely for the residential development will be similar, in terms of effects on the roading network, to the operative zone and can be safely and efficiently managed.

In terms of the EIC, the Commission finds that this area has been poorly assessed, including the likely traffic generation (from the scale and range of activity that would be enabled within it), from across the Wakatipu Basin or beyond.

The Commission finds that the distribution of density proposed and overall urban development pattern to be enabled by PC 44 is logical and will support future passenger transport services utilising the loop formed by Woolshed Road, Maori Jack Road and State Highway 6.

The Commission finds that the various options presented regarding the upgrade of the Woolshed Road intersection with State Highway 6 presented a number of uncertainties and shortcomings. In her reply on behalf of the Hanley Downs entities, Ms Baker-Galloway confirmed that the upgrade should be undertaken before any new residents of Hanley Downs use it. The Commission agrees with this but remains dissatisfied with the mechanisms through which this could be enforced. The Commission has recommended a site standard (Rule 12.2.5.1iv(c)) requiring this upgrade to occur prior to the occupation of any new building (consented after 28 January 2016) within the Hanley Downs area.

The Commission finds that the design of Woolshed Road immediately south of its intersection with State Highway 6 should exhibit a "gateway" function through its design and landscaping. This sentiment was agreed to by Ms Pfluger and Dr Read and for this reason the Commission has added a site standard (Rule 12.2.5.1ii(c)) that will ensure that this is an explicit consideration in the design and landscaping of the road. This may also extend to the management of land use frontages along the road or the management of vehicle accesses to properties.

Subject to the matters discussed above, the Commission accepts the evidence of the Requestor, the Henley Downs entities, NZTA and the s.42A report authors to the effect that PC 44 will raise no inappropriate adverse environmental effects or other issues that would justify a refusal to the plan change.

### **Commission's Recommendations**

1. That the submissions by the NZ Transport Agency (44/11/1, 44/11/2, 44/11/3, 44/11/4 & 44/11/5) be **accepted**.
2. That the submissions by Lakeside Estates Home Owners Association Inc (44/10/1), Otago Regional Council (44/12/4) supported by *The Southern District Health Board (44/12/4)*, Queenstown Lakes District Council (44/16/20) partly supported by *Scope Resources Ltd (44/16/20)*, Queenstown Lakes District Council (44/16/21) partly supported by *Scope Resources Ltd (44/16/21)* and by The Southern District Health Board (44/22/2 and 44/22/6) be **accepted in part**.

## **8.3 Water, wastewater and stormwater; flooding and hazards**

### **Discussion & Reasons**

Provision of reliable water and wastewater services are essential to the health and safety of the community, including but not limited to the future residents of the Hanley Downs portion of the JPRZ.

The Commission finds that there are viable and affordable solutions available to supply water and wastewater infrastructure to the PC 44 area. While a number of options exist, the Commission does not agree that there is a need to identify or require any particular one of them to be committed to at the plan making stage. It is appropriate and efficient that the various options be further tested and, as the actual subdivision design occurs, be confirmed at that time.

The Commission accepts the evidence presented by RCL, the Henley Downs entities, and the s.42A report authors. The issues raised in the submission of The Southern District Health Board can, in the Commission's view, be appropriately addressed, as evidenced by its tabled letter of support dated 1 July 2015.

No further changes to the plan change text are required.

The Commission accepts that the PC 44 land is subject to hazard risk relating to flooding related to alluvial fans. This risk must be mitigated to the point that the land can be developed safely. Mr Dent for RCL identified the need for mitigation works to be put in place, notably by way of flood banks/bunds along the State Highway 6 boundary.

The Commission finds that appropriate regard has been had to the flooding hazard and that as a result of the mitigation works proposed the health and safety of future residents will be appropriately provided for.

The key features of the mitigation strategy with respect to the flood hazard and stormwater management outlined by Mr Dent and agreed to by the s.42A report, include:

- ▶ 400m of 'high' flood bank. This would be approximately 2m high and reinforced with rock at least 1m thick.
- ▶ 400m of 'low' flood bank. This would be approximately 1.5m high and be reinforced with rock as required.
- ▶ Any new development in Activity Area R(HD-SH)-2 would need site-specific approvals (the flood banks would protect the existing two dwellings in that activity area).
- ▶ General compliance with the indicative stormwater management plan presented by Mr Dent at the Hearing which included a 'northern' stormwater pond and a larger 'southern' stormwater pond.

The Commission has considered the effects of the mitigation flood banks and, in particular, the related landscaping buffering proposed by Mr Espie on behalf of RCL. The effects of these works will be appropriate and consistent with the bunding and landscaping that exists elsewhere along State Highway 6 adjacent to the existing Jacks Point development. Of interest to the Commission is that these works be coordinated. The Commission is satisfied that the provisions are sufficient to ensure that this will occur.

No further changes to the PC44 text are required with respect to flooding and stormwater management.

### **Commission's Recommendations**

1. That the submission by The Southern District Health Board (44/22/4) be **accepted**.
2. That the submissions by Delta Investments Ltd (44/2/5) partly supported by *Jacks Point Management Ltd (44/2/5)*, Peter Knox and Julie Horwood (44/9/1) supported by *The Southern District Health Board (44/9/1)*, Otago Regional Council (44/12/1, 44/12/2, 44/12/3 & 44/12/5), Queenstown Lakes District Council (44/16/17) supported by *Remarkables Park Limited and Shotover Park Limited (44/16/17)* and partly supported by *Scope Resources Ltd (44/16/17)*, Queenstown Lakes District Council (44/16/35) partly supported *Scope Resources Ltd (44/16/35)* and by The Southern District Health Board (44/22/1, 44/22/3 and 44/22/5), be **accepted in part**.

## **8.4 Activity Areas R(HD)-A to R(HD)-E (proposed by RCL)**

### **Discussion & Reasons**

The Commission accepts that the majority of development enabled by PC 44 would be located in these activity areas.

The evidence presented at the hearing was in support of or otherwise silent on this aspect of the plan change. The Commission agrees with Mr Wells for RCL that the "pod" approach of the Operative District Plan can be criticised as being comparatively inefficient. It is not, on the basis of the evidence, the only or even clearly superior way of accommodating housing in this landscape. Mr Wightman for RCL described the Requestor's intention to bring on line a large volume of modestly priced housing



product and to that end it is appropriate that PC 44 provide for an efficient, readily deliverable housing solution that contributes to the Wakatipu Basin's housing supply. The Commission agrees that the PC 44 land is suited to such an outcome.

The Commission finds that the approach proposed by RCL will be the most appropriate, effective and efficient, including the use of Woolshed Road as a central "spine" road to serve the main suburban area that will link through to Maori Jack Road and back to State Highway 6. This is a logical structure and the indicative subdivision/master plan for the land included as Annex 3 to Mr Wells's evidence was helpful in this respect.

Activity Areas R(HD)-A to R(HD)-E will be largely hidden from view and will not occupy a prominent or sensitive part of the landscape. The Commission broadly accepts the Coneburn Resource Study 2015 update presented by Mr Tyler (for the Henley Downs entities) and its findings as to the sensibility of concentrating development in the central valley of the site.

The Commission finds that the interface with the existing Jacks Point development is one that should be addressed carefully through the detailed design of subdivisions within the RCL land. This was agreed by Mr Espie and Mr Wells, and Dr Read. To that end an additional assessment matter has been recommended that will make this a more explicit expectation (see Rule 15.2.7.3(xiii)(r)).

Mr Wightman explained to the Commission that there was an intention for local convenience shops and possibly a primary school to locate within these activity areas. The Commission finds that such non-residential activities would be appropriate and would help to make life in this locality more convenient for residents. The Commission also finds that the relevant policy framework for these activity areas is not as clear as it should be in respect of the expectation for local shops and possibly a primary school to become established. To that end additional text is recommended for Policy 3.23 which follows Objective 12.1.4.3.

### **Commission's Recommendations**

1. That the submissions by Delta Investments Ltd (44/2/3), Queenstown Lakes District Council (44/16/15) partly supported by *Scope Resources Ltd (44/16/15)* and by Queenstown Lakes District Council (44/16/25) partly supported by *Scope Resources Ltd (44/16/25)* be **accepted**.
2. That the submissions by Delta Investments Ltd (44/2/1 & 44/2/2), Jacks Point Residents and Owners Association Incorporated (44/8/1) supported by *Remarkables Park Limited and Shotover Park Limited (44/8/1)*, Queenstown Lakes District Council (44/16/2) partly supported by *Jacks Point Management Limited (44/16/2)* and *Scope Resources Ltd (44/16/2)*, Queenstown Lakes District Council (44/16/4) partly supported by *Scope Resources Ltd (44/16/4)*, Queenstown Lakes District Council (44/16/4) supported by *Remarkables Park Limited and Shotover Park Limited (44/16/5)* and partly supported by *Jacks Point Management Limited (44/16/5)* and *Scope Resources Limited (44/16/5)*, Queenstown Lakes District Council (44/16/7) partly supported by *Scope Resources Ltd (44/16/7)*, Queenstown Lakes District Council (44/16/13) partly supported by *Scope Resources Ltd (44/16/13)*, Queenstown Lakes District Council (44/16/14) supported by *Remarkables Park Limited and Shotover Park Limited (44/16/14)* and partly supported by *Scope Resources Ltd (44/16/14)*, Queenstown Lakes District Council (44/16/16) partly supported by *Scope Resources Ltd (44/16/16)*, Queenstown Lakes District Council

(44/16/19) supported by *Otago Regional Council (44/16/19)* and partly supported by *Scope Resources Ltd (44/16/19)*, Queenstown Lakes District Council (44/16/23) partly supported by *Jacks Point Management Limited (44/16/23)* and *Scope Resources Ltd (44/16/23)*, Queenstown Lakes District Council (44/16/24) supported by *Remarkables Park Limited and Shotover Park Limited (44/16/24)* and partly supported by *Jacks Point Management Limited (44/16/24)* and *Scope Resources Ltd (44/16/24)*, Queenstown Lakes District Council (44/16/26) partly supported by *Scope Resources Ltd (44/16/26)*, Queenstown Lakes District Council (44/16/27) partly supported by *Scope Resources Ltd (44/16/27)*, Queenstown Lakes District Council (44/16/29) partly supported by *Scope Resources Ltd (44/16/29)*, Queenstown Lakes District Council (44/16/31) partly supported by *Scope Resources Ltd (44/16/31)*, Queenstown Lakes District Council (44/16/32) partly supported by *Scope Resources Ltd (44/16/32)*, Queenstown Lakes District Council (44/16/36) supported by *Remarkables Park Limited and Shotover Park Limited (44/16/36)* and partly supported by *Scope Resources Ltd (44/16/36)*, RCL Queenstown Pty Ltd (44/17/4) partly supported by *Scope Resources Ltd (44/17/4)*, RCL Queenstown Pty Ltd (44/17/6) partly supported by *Scope Resources Ltd (44/17/6)*, RCL Queenstown Pty Ltd (44/17/7) partly supported by *Scope Resources Ltd (44/17/7)*, RCL Queenstown Pty Ltd (44/17/8) partly supported by *Scope Resources Ltd (44/17/8)*, RCL Queenstown Pty Ltd (44/17/9) partly supported by *Scope Resources Ltd (44/17/9)*, RCL Queenstown Pty Ltd (44/17/10) partly supported by *Scope Resources Ltd (44/17/10)*, RCL Queenstown Pty Ltd (44/17/11) partly supported by *Scope Resources Ltd (44/17/11)*, RCL Queenstown Pty Ltd (44/17/12) partly supported by *Scope Resources Ltd (44/17/12)*, RCL Queenstown Pty Ltd (44/17/13) partly supported by *Scope Resources Ltd (44/17/13)*, Remarkables Park Limited and Shotover Park Limited (44/18/1) partly supported by *Jacks Point Management Limited (44/18/1)* and by the Wakatipu Wilding Conifer Control Group (44/24/1) be **accepted in part**.

3. That the submissions by Queenstown Lakes District Council (44/16/9) supported by *Remarkables Park Limited and Shotover Park Limited (44/16/9)* and partly supported by *Scope Resources Limited (44/16/9)*, Queenstown Lakes District Council (44/16/10) partly supported by *Scope Resources Ltd (44/16/10)*, Queenstown Lakes District Council (44/16/28) partly supported by *Scope Resources Ltd (44/16/28)*, Queenstown Lakes District Council (44/16/33) partly supported by *Scope Resources Ltd (44/16/33)* and by Wakatipu Wilding Conifer Control Group (44/24/2 and 44/24/3) be **rejected**.

## **8.5 Activity Areas R(HD-SH)-1 and R(HD-SH)-2 (proposed by Henley Downs entities)**

### **Discussions & Reasons**

These two activity areas form transitional areas defining the north-eastern extent of PC 44 (including Woolshed Road). As such they, especially R(HD-SH)-2, will form a part of the entry experience to Hanley Downs.

The Commission accepts and agrees with the logic of providing for a development opportunity between State Highway 6 and the RCL activity areas. The R(HD-SH)-1 and R(HD-SH)-2 areas have the potential to form a logical transition between the more intensively developed parts of PC 44 and the State Highway. In so doing, these areas will also contribute to a wider housing choice being available in the PC 44 area.

To be successful in this role the density of development enabled is a critical consideration. The Commission finds that R(HD-SH)-1 is appropriate and accepts the evidence presented by the Henley Downs entities and the s.42A report authors. This area will be thoroughly screened from view and will not be obvious to zone visitors.

As proposed by the Henley Downs entities (through its reply), R(HD-SH)-2 would be limited to a maximum of seven units (five in addition to two existing units). This would be enforced through Rule (zone standard) 12.2.5.2(xviii)(a) and in particular (b). The Commission understood Dr Read's analysis to be that no more than two additional dwellings would be appropriate (i.e. four in total). In Dr Read's view the additional dwellings sought would tip the balance of the land's fundamental landscape character from mostly rural to mostly urban; and she considered that the development proposed would effectively "borrow" amenity from the surrounding context.

The Commission accepts the analysis of Mr Tyler for the Henley Downs entities that the principle of a land use transition from low (at the edge) to high (in the core) is an important characteristic of the JPRZ in the planning undertaken to date, including that of PC 44. Applying this principle to R(HD-SH)-2 and taking into account its edge along Woolshed Road, visual prominence, and role as part of the PC 44 gateway, the Commission finds that the additional effects of the five additional dwellings are unlikely to be significant or fundamentally out of place. The Commission accepts the analysis of Dr Read that the effects on the amenity values of residents of the two existing dwellings in that area would be negatively affected to an extent.

### **Commission's Recommendations**

1. That the submission by Henley Downs Farm Holdings Limited (44/4/1) opposed by *Delta Investments Ltd (44/4/1)* and *Scope Resources Ltd (44/4/1)* and partly supported by *Remarkables Park Limited and Shotover Park Limited (44/4/1)* be **accepted in part**.

## **8.6 Activity Areas R(HD)-F and R(HD)-G (proposed by Henley Downs entities)**

### **Discussion & Reasons**

In his paragraph 24(c), Mr Ferguson described the outcome of the density provisions in R(HD)-F as delivering "... *low density rural residential allotments between 1,000m<sup>2</sup> to 5,000m<sup>2</sup> in area...*" However proposed Rule 12.2.5.2(xviii) requires a net average density in that activity area of between 4 – 22 dwellings per hectare. That equates to an allotment area range of 455m<sup>2</sup> to 2,500m<sup>2</sup> maximum per hectare. In the Commission's view what Mr Ferguson described and what his proposed rules required were two very different, and not at all interchangeable, outcomes. The Commission finds it must assess the outcomes that the proposed PC 44 text would enable, not the intended outcome as described by Mr Ferguson.

The Commission supports the principle of softening and integrating the linear edges of Activity Area R(HD)-D into the landscape. R(HD)-F and R(HD)-G are intended to achieve this. The Commission is also mindful, however, that the landform south and south-west of R(HD)-D is a transition from the flat valley floor into the base of Peninsula Hill and the Tablelands. Through its reply, Henley Downs entities sought to change the shape of Activity Area R(HD)-F slightly in response to concerns identified

by the s.42A report authors. The balance of that area is proposed to be transferred to the lower density area FP-1.

Ms Baker-Galloway's reply for the Henley Downs entities confirmed (at paragraph 42) that Activity Area R(HD)-G was proposed to be limited to between 2-10 units. There is a degree of ambiguity between this statement and Rule 12.2.5.2(xviii)(a) which would provide a density of 2-10 units per hectare. The Commission accepts that the words "per hectare" appear to have been omitted from Ms Baker-Galloway's paragraph 42.

Dr Read was of the opinion that only 8 dwellings could be absorbed in Activity Area R(HD)-G. She maintained this position when providing her concluding comments following the hearing of evidence. The Commission concurs with Dr Read and accordingly Rule 12.2.5.2(xviii)(b) is to be amended to restrict Activity Area R(HD)-G to a maximum of 8 residential units.

### **Commission's Recommendations**

1. That the submissions by Henley Downs Farm Holdings Limited (44/4/1) opposed by *Delta Investments Ltd (44/4/1)* and *Scope Resources Ltd (44/4/1)* and partly supported by *Remarkables Park Limited and Shotover Park Limited (44/4/1)* and by RCL Queenstown Pty Ltd (44/17/3) partly supported by *Remarkables Park Limited and Shotover Park Limited (44/17/3)* and *Scope Resources Ltd (44/17/3)* be **accepted in part**.
2. That the submission by Queenstown Lakes District Council (44/16/11) partly supported by *Scope Resources Ltd (44/16/11)* be **rejected**.

## **8.7 The EIC (proposed by Henley Downs entities)**

### **Discussion & Reasons**

The EIC has been an evolving proposition. Through the reply, the Henley Downs entities proposed further changes to it, including to its purpose and the activities to be enabled within it. No evidence was provided to explain or support these changes and this was not helpful to the Henley Downs entities' cause.

The EIC has the potential to become a commercial node of district significance. The level of analysis in support of it was well below what was required and was ultimately limited to visual and landscape opinions on building form transitioning from a rural to an urban environment.

The Commission identified that a 13ha area at 20% site coverage and 10m building height enabled in the range of 26,000m<sup>2</sup> – 52,000m<sup>2</sup> GFA of commercial floor area. If restricted discretionary opportunities to increase this to 30% were taken, this would increase to a range of 39,000m<sup>2</sup> – 78,000m<sup>2</sup>. Mr Tyler referred in his evidence to various tertiary campuses elsewhere, including the Unitec campus in Auckland. This is a major facility for Auckland accommodating several thousand persons. The PC 44 provisions also provide for entertainment, commercial, retail, visitor accommodation and other activities within the EIC.

This inescapably raises questions regarding impacts on other existing nodes planned to accommodate commercial growth in the District in a way that contributes to stated urban form, energy efficiency and social wellbeing aims within the District Plan.

Related to that are significant questions raised in terms of the District Plan's policy framework for the Wakatipu Basin itself. The Commission does not agree with Mr Ferguson's conclusion that the EIC is consistent with the Operative District Plan's policy framework. To the contrary, the Commission sees serious problems that needed to be addressed with comprehensive analysis, but that was lacking from the Henley Downs entities' case in terms of:

- ▶ Policies 4.5.3.1.1 and 4.5.3.1.2 – reducing the length of and need for vehicle trips cannot be answered by the evidence presented as it did not elaborate how many persons may be travelling, and from where. It is clear from the Henley Downs entities' own evidence that the majority of EIC users would be arriving each day from outside of the JPRZ.
- ▶ Objective 4.9.3.4 and Policies 4.9.3.4.1, and 4.9.3.4.2 – the size and scale of the EIC will make it a potential new business centre. This has not been acknowledged or assessed, and as such its appropriateness in terms of these provisions cannot be ascertained.

The Commission also agrees with the concerns set out by Mr Devlin and shared by Ms Jones in terms of the relationship between the EIC and the remainder of Henley Downs and the JPRZ. In support of its location at the edge of the zone rather than towards its centre (where the Operative District Plan provides for a commercial village – V(JP)), Mr Tyler explained that this would help to keep the traffic and activity occurring within the EIC away from the residential area. This reinforced the Commission's impression that the EIC has little intended relationship with the development to be enabled elsewhere at Hanley Downs via PC 44; or with development provided for elsewhere at Jacks Point in terms of the existing JPRZ provisions.

The Commission is concerned at the visual effects associated with parking at the EIC on the outlook from Woolshed Road which is to be the northern gateway to the JPRZ.

The Commission has also concluded that the EIC does not appear to be consistent with the purpose of the JPRZ as set out in Clause 12.2.1 of the Operative District Plan. The EIC falls outside the central thrust of PC 44 which is to more efficiently provide for housing and associated activities in this locality.

The Commission acknowledges that subsequent to the Hearing the District Plan Review has been notified. The Commission anticipates that the EIC proposal may well be advanced in the context of the District Plan Review; and it is further anticipated that more substantial analysis will be advanced at that time to support the EIC proposal. The Commission also observes that giving further consideration to this matter in the context of the District Plan Review would enable effects on existing nodes to be assessed on a holistic basis.

Overall, the Commission shares the concerns of Mr Devlin and Ms Jones. The uncertainty surrounding the effects of the EIC in conjunction with its potential scale are insurmountable defects. The EIC should be rejected, with the land remaining free of urban development.

### **Commission's Recommendations**

1. That the submissions by Henley Downs Farm Holdings Limited (44/4/1) opposed by *Delta Investments Ltd (44/4/1)* and *Scope Resources Ltd (44/4/1)* and partly supported by *Remarkables Park Limited and Shotover Park*

*Limited (44/4/1) and by Pure 1 Limited (44/14/1) partly supported by Remarkables Park Limited and Shotover Park Limited (44/14/1) be **accepted in part.***

## **8.8 Activity Area FP-1 (proposed by Henley Downs entities)**

### **Discussion & Reason**

The Commission accepts at the outset that the Coneburn Resource Study is a comprehensive assessment, even taking into account the methodological limitations identified by Dr Read. The Commission also notes that the Coneburn Resource Study update was presented very late in the PC 44 process; and that Mr Tyler's work appeared to be devoid of any peer review.

The evidence before the Commission details the history of the Jacks Point Resort Zone including the amount and extent of development found to be appropriate on the Tablelands when the JPRZ was originally assessed during the statutory variation process. The QLDC decision on Variation 16 confirmed that the Tablelands at Jacks Point had been categorised by the Environment Court as forming part of the Outstanding Natural Landscape – Wakatipu Basin (ONL-WB) and Visual Amenity Landscape (VAL). The thrust of the Council's decision on Variation 16 is that further development on the Tablelands should be avoided.

The Activity Area FP-1 provisions provide for a maximum of 34 residential and/or visitor accommodation units in Activity Area FP-1. The rules proposed, including provision for a Spatial Layout Plan, are not as restrictive as the regime which currently applies to the properties in The Preserve as provided for in the existing JPRZ provisions.

The Commission is concerned that the outcome of the FP-1 provisions will be a form of rural residential subdivision and development. The Commission notes in this context that Mr Tyler at paragraph 35(d) envisaged that small scale grazing or cropping may occur on this land. Such development would necessitate the provision of farm buildings in addition to dwellings/visitor accommodation.

The Tablelands provide an important element in the landscape that is visible from the roading system at Jacks Point to which the public has access (and which is therefore a public place), and provides a backdrop to existing and future development at Jacks Point and Hanley Downs. In all the circumstances, and again noting the planning history of this land including the conclusions reached in the Council's decision on Variation 16, the Commission considers that the status quo should be maintained with respect to the planning status of the area proposed to be Activity Area FP-1 on the Tablelands.

The Commission acknowledges for completeness that Dr Read considered that no more than 14 additional units could be provided for in the FP-1 Activity Area; albeit that some 34 units were proposed by the Henley Downs entities.

Again the Commission notes that the District Plan Review was notified subsequent to the Hearing of PC 44. It may be that some development could be accommodated in future on the Tablelands; but considerable care would be required to identify where such development should be provided for at the plan making stage. The Commission considers that the existing provisions of the JPRZ which relate to The

Preserve may well provide a model for such site specific consideration. The more generic approach advanced in the PC 44 provisions relating to Activity Area FP-1 are not considered to be suitable in the context of this sensitive land.

### **Commission's Recommendations**

1. That the submission by Alexander and Jayne Schrantz (44/19/1) be **accepted**.
2. That the submissions by Hannah and Joshua Clowes (44/1/1), Delta Investments Ltd (44/2/4) and John and Susan Pritchard (44/13/1) be **accepted in part**.

## **8.9 Activity Area FP-2 (proposed by Henley Downs entities)**

### **Discussion & Reasons**

Having considered the evidence, the Commission remains unclear about development outcomes envisaged in Activity Area FP-2.

The “homesites” proposed are clearly much larger and different to the “homesites” previously enabled in The Preserve in the Jacks Point Tablelands. They are closer in function to a sub-activity area within which a number of buildings and dwellings could occur, possibly including visitor accommodation resorts and larger accessory buildings. Accordingly, “homesite” may be somewhat of a misnomer. The Commission finds that, inevitably, the demand for development in such an elevated area to maximise potential views will come into conflict with the Henley Downs entities’ intention that development remain well hidden from any view. The proposed plan provisions and the analysis underpinning them are therefore significant.

Mr Ferguson, in his paragraph 24(h), stated that the FP-2 provisions “... enable subdivision within these areas at a very low average density of 40ha. The focus of the land use provisions are to manage effects of potential development on the landscape and amenity values...” The provisions attached to Mr Ferguson’s evidence struck out the 40ha rule (Rule 15.2.6.2(iv)(a)) as it relates to FP-2 and accordingly he may have been referring to Rule 15.2.6.2(iv)(c) [sic (d)] to govern the matter.

The latter rule refers to Rule (zone standard) 12.2.5.2(xviii), which does not provide any guidance for Activity Area FP-2. This means that subdivision in FP-2 is in fact a restricted discretionary activity with no minimum, maximum or average lot sizes, and with discretion restricted, pursuant to Mr Ferguson’s Rule 15.2.3.3(xii)(a), to five matters – none of which explicitly includes landscape or visual effects, or effects on amenity values. This undermines the land use framework proposed for Part 12 of the Plan as it may lead to a substantially greater number of allotments than has been described to the Commission or anticipated in the evidence that supports area FP-2. A situation whereby the Council may approve subdivision for residential lots in FP-2 and then seek to refuse consent for development on those resulting lots under Part 12 of the plan is not a logical framework.

The Commission finds that Peninsula Hill in its entirety is a spectacular landform that dominates views looking west along State Highway 6 and north from within the Hanley Downs and Jacks Point areas. This includes its natural fold on the southern flank and its other glacial scars. The Commission is very concerned at the proposal to bisect the feature with a development area which will, in the Commission’s view,

open the door for further development to be promoted, utilising the long access route identified by Ms Pfluger and Dr Read.

The Commission finds that effects of likely development have not been adequately demonstrated as being appropriate. Reliance on a “sort it out later” approach via the consent process is not appropriate in the context of a sensitive natural feature that could be substantially degraded by even modest development changes.

Peninsula Hill in its entirety is identified as an Outstanding Natural Landscape (Wakatipu Basin) at Appendix 8A – Map 1 of the Operative District Plan. As such it is subject to District Wide Objective 4.2.5 and the associated Policy 4.2.5.3. This policy places emphasis on avoidance of subdivision and development on the ONL(WB). The Commission considers that the Activity Area FP-2 element of PC 44 is contrary to this important District Wide policy.

The proposed division of Peninsula Hill to demarcate its internal fold as being able to accommodate development without having any effect on the outstanding natural landscape qualities of Peninsula Hill on either side of that fold is artificial.

Visual and landscape effects relating to what could be a very prominent vehicular access way rising up the landform’s flank (seen from the east), and the various effects of lighting (from buildings and from vehicles, including those traversing the long access way) were poorly acknowledged and poorly assessed in evidence. Because there is uncertainty regarding the extent and intensity of development that could occur in Activity Area FP-2, it is unknown what traffic requirements may be created for the access way. It could ultimately become something more akin to a road than a narrow single-user driveway, and a presumption that satisfactory avoidance, remediation or mitigation works will always be possible without knowing these basic characteristics is bold. Enabling a plan framework that may not result in a consentable outcome being achievable will not promote sustainable management.

Section 6(b) of the RMA is relevant given the status of Peninsula Hill as a ONL(WB). Section 6(b) directs that the following be recognised and provided for as a matter of national importance:

*“(b) The protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development.”*

The Commission finds that the Activity Area FP-2 element of PC 44 conflicts with this matter of national importance. The Commission is concerned that FP-2 would serve to enable subdivision, use and development which would be inappropriate on Peninsula Hill; and this aspect of PC 44 is inconsistent with protecting this ONL.

Overall, the Commission has not been persuaded that development on Peninsula Hill is appropriate. The Commission finds that Activity Area FP-2 should be rejected, and that instead the status quo should be maintained with respect to this land. Such an outcome best achieves the District Wide Objective 4.2.5 and those policies which are relevant to the ONL(WB). For completeness the Commission records that it is not persuaded that the Activity Area FP-2 provides a better mechanism for managing effects than the O/S provisions of the JPRZ. The latter better achieves the outcome sought in Section 4 of the Operative District Plan and section 6(b) of the Act.

### **Commission’s Recommendations**

1. That the submissions by Fong Tablelands Limited (44/3/1) and Alexander and Jayne Schrantz (44/19/2) be **accepted**.



2. That the submissions by Queenstown Lakes District Council (44/16/3) partly supported by *Scope Resources Ltd (44/16/3)*, Queenstown Lakes District Council (44/16/6) supported by *Remarkables Park Limited and Shotover Park Limited (44/16/6)* and partly supported by *Jacks Point Management Limited (44/16/6)* and *Scope Resources Ltd (44/16/6)*, Queenstown Lakes District Council (44/16/12) supported by *Remarkables Park Limited and Shotover Park Limited (44/16/12)* and partly supported by *Scope Resources Ltd (44/16/12)* and Queenstown Lakes District Council (44/16/34) partly supported by *Scope Resources Ltd (44/16/34)* be **accepted in part**.
3. That the submission by Henley Downs Farm Holdings Ltd (44/4/2), RCL Queenstown Pty Ltd (44/17/2) partly supported by *Scope Resources Ltd (44/17/2)* and by RCL Queenstown Pty Ltd (44/17/5) partly supported by *Scope Resources Ltd (44/17/5)* and opposed by *Remarkables Park Limited and Shotover Park Limited (44/17/5)* be **rejected**.

## 8.10 Overall PC 44 and Structure Plan

### Discussion & Reasons

Turning to the overall composition of the PC44 Structure Plan, a number of matters have been determined.

The Commission finds that it is appropriate (and correct) to re-name the area from “Henley Downs” to “Hanley Downs” as was suggested in the submission by the **Queenstown and District Historical Society Inc** and accepted to by Mr Holm in his opening submission.

The Commission finds that integrating PC44 into the JPRZ rather than seeking to establish a separate Resort Zone for the area is the most appropriate means of including the plan change into the District Plan. The Commission accepts the evidence of Mr Devlin on behalf of the QLDC that there is already a substantial volume of “Special Zone” material in the Operative District Plan and where there is no good reason to expand this it should not be. Related to this, the Commission finds that there is no scope issue with this administrative approach as although the request explicitly sought a new Special Zone, the submission of the QLDC explicitly sought otherwise.

Having considered the overall effects and general “big picture” formed by the various activity areas discussed previously in this report, the Commission finds that the different outcomes promoted by RCL and the Henley Downs entities respectively will be appropriately integrated with one another. The Hanley Downs area will develop and function as a coherent and logically planned urban area. Following on from this and as identified previously, the Commission finds that the methods proposed by Ms Jones will ensure that the development also integrates appropriately with the adjoining and developed parts of the Jacks Point area. In reaching this conclusion the Commission has accepted the analysis offered by Ms Baker-Galloway on behalf of the Henley Downs entities as to the effect of underlying Jacks Point covenants, and has made it’s findings in terms of:

- ▶ Effects on the physical and natural environment (including landscape effects);

- ▶ Effects on visitors to the Jacks Point area in publicly accessible places and who are not subject to the various land covenants; and
- ▶ Effects on users and visitors to the Henley Downs (PC 44) area, whom on the evidence before the Commission may not be subject to similar covenants (or are not at this time).

Turning lastly to the overall Structure Plan itself, the Commission finds that with the activity area changes discussed earlier, the PC 44 Structure Plan will be both effective and efficient at implementing the JPRZ objectives and policies. It provides for a development pattern that successfully balances land development efficiencies with landscape and landform constraints.

The overall outcome, although enabling an increase in the total number of dwellings, will remain very comparable to the operative zone. As such PC 44 will not give rise to problematic or inappropriate adverse effects beyond those already identified as suitable for this environment.

As such, the Commission finds that those submissions opposed to PC 44 should be rejected or accepted in part. Those that support PC 44 or support PC 44 in part should be accepted or accepted in part, to the extent that this is compatible with the recommendations made in this report.

### **Commission's Recommendations**

1. That the submissions by Queenstown and District Historical Society Inc (44/15/1), Queenstown Lakes District Council (44/16/1) partly supported by *Scope Resources Ltd (44/16/1)* and by Queenstown Lakes District Council (44/16/22) partly supported by *Scope Resources Ltd (44/16/22)* be **accepted**.
2. That the submissions by Henley Downs Farm Limited (44/5/1), Henley Downs Land Holdings Limited (44/6/1), Queenstown Lakes District Council (44/16/8) supported by *Otago Regional Council (44/16/8)* and partly supported by *Scope Resources Ltd (44/16/8)*, Queenstown Lakes District Council (44/16/18) partly supported by *Scope Resources Ltd (44/16/18)*, Queenstown Lakes District Council (44/16/30) partly supported by *Scope Resources Ltd (44/16/30)* and by RCL Queenstown Pty Ltd (44/17/1) partly supported by *Scope Resources Ltd (44/17/1)* and opposed by *Delta Investments Ltd (44/17/1)* be **accepted in part**.
3. That the submissions by Grant Hensman (44/7/1), Scope Resources Ltd (44/20/1) supported by *Remarkables Park Limited and Shotover Park Limited (44/20/1)*, Skydive Queenstown Limited (44/21/1, 44/21/2 and 44/21/3), John William Troon as Trustee of the Triumph Trust (44/23/1) supported by *Scope Resources Ltd (44/23/1)* and by Zante Holdings Limited (44/25/1) opposed by *Tom and Justine Bamber (44/25/1)* be **rejected**.

## **9.0 STATUTORY DOCUMENTS**

On the basis of the submissions and evidence received the Commission finds that PC 44 (as modified by the recommendations made in this report) raises no issues of concern regarding the Otago Regional Policy Statement or the Proposed Otago Regional Policy Statement. The matters raised in the submission of the ORC can be readily addressed through the subdivision and consenting regime.

In terms of the Operative Queenstown Lakes District Plan, the Commission finds that subject to the changes identified in this report PC 44 will implement the District Wide objectives and policies of Section 4. The Commission accepts that plan changes should be carefully assessed against these District Wide objectives and policies as well as those stated in any subsequent or more specific Sections of the Operative District Plan.

The provisions of PC 44, subject to the changes identified in this report, will also be consistent with the provisions of the Operative District Plan Sections 12 (Special Zones), 14 (Transport) and 15 (Subdivision).

There are no other statutory documents that are relevant to the making of a decision on PC 44. The historical use of the site for agricultural use will mean that the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health is likely to be relevant (and analysis provided to us on this matter by Mr Davis for RCL confirmed this). The Commission is satisfied that this matter should not be fatal to PC 44, and can be most appropriately managed through the Detailed Site Investigation and resource consenting processes.

## **10 SECTION 32 RMA**

The Commission acknowledges that the version of section 32 that must apply is the version presented in the Resource Management Act 1991 at the time that PC 44 was notified on 27 March 2013. That version of section 32 precedes the current version of section 32 which came into force (in the Queenstown Lakes District) on 3 December 2013.

The Commission acknowledges that an evaluation has previously been undertaken under section 32 of the Resource Management Act 1991 with respect to PC 44, as required by section 32(1)(d) of the Act (prior to the 2013 Amendment Act) and as presented in the Section 32 Assessment as contained in Section 9 of the Request document dated March 2013.

The Commission also acknowledges that a further evaluation must be undertaken by a local authority before making a decision under clause 29(4) of Schedule 1 of the Act (see section 32(2)(a)). The Commission has undertaken such an evaluation when considering PC 44. The Commission has evaluated whether, having regard to their efficiency and effectiveness, the objectives, policies, rules, assessment matters and other provisions provided for in PC 44 are the most appropriate for achieving the objectives stated in the Operative District Plan. Section 32(4) of the Act requires that such evaluation must take into account –

- (a) The benefits and costs of policies, rules or other methods; and
- (b) The risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules or other methods.

The Commission has assessed each provision to be changed having regard to the contents of submissions and further submissions and to all of the evidence before us.

The Commission has determined which submissions and further submissions should be accepted, accepted in part or rejected. The Commission's overall finding is that, following evaluation under section 32, PC 44 as amended in terms of the

Commission's recommendations makes the most appropriate provision for achieving the District Plan's objectives including the District Wide objectives specified in Part 4 of the Operative District Plan. In addition PC 44, as amended, will be more appropriate than the existing JPRZ provisions that apply to the PC 44 land.

The Commission considers that PC 44, as amended in terms of our recommendations and as presented at **Appendix 1** to this report, most appropriately achieves the purpose of the Act.

## **11 PART 2 RMA**

Part 2 of the Resource Management Act 1991 contains sections 5-8. We refer to them in reverse order.

Section 8 requires us, in exercising our functions on this plan change, to take into account the principles of the Treaty of Waitangi. No issues were raised with us in submissions, reports or evidence in relation to section 8 and we find that PC44 raises no issues relevant to it.

Section 7 directs that in achieving the purpose of the Act we are to have particular regard to certain matters which include, of relevance here, the efficient use and development of natural and physical resources; the maintenance and enhancement of amenity values; the maintenance and enhancement of the quality of the environment; and any finite characteristics of natural and physical resources. The Commission is satisfied that PC 44, as amended in terms of the Commission's recommendations, will promote efficient use and development of the resources comprising the land subject to PC 44; will serve to maintain and enhance amenity values; and will serve to maintain and enhance the quality of the environment. The Commission is satisfied that PC 44, as amended, is appropriate to enable the better use and development of this finite land resource. There are no other matters stated in section 7 which are of any particular relevance to PC 44.

Section 6 sets out a number of matters which are declared to be of national importance and directs us to recognise and provide for them. Amendments to the Structure Plan that are to be made consistent with the Commission's recommendations have had the effect of avoiding inappropriate development in the FP-2 Activity Area which was proposed to apply to the ONL that exists at Peninsula Hill. As a consequence the Commission is satisfied that PC 44 as so amended will not result in inappropriate subdivision, use and development in terms of section 6(b). There are no other matters of national importance listed in section 6 that are of any particular relevance in this instance.

Section 5 sets out the purpose of the Act – to promote the sustainable management of natural and physical resources. Taking into account the definition of sustainable management contained in section 5(2) the Commission has reached the view that on balance PC 44, as amended in terms of the Commission's recommendations, will achieve the purpose of the Act. Development of the PC 44 land will enable the wellbeing of the growing community of Queenstown and the wider Wakatipu Basin. Residential growth is to be concentrated within the centre of the underlying valley form, as identified in the evidence of Mr Espie on behalf of RCL; and is to be limited on the Tablelands (in terms of the existing JPRZ provisions) and avoided on Peninsula Hill consistent with the Commission's findings. Failing to adhere to this pattern would lead to adverse effects that would no longer promote sustainable management.

## 12 OUTCOME

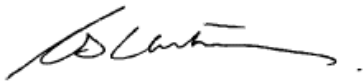
Following our consideration of Plan Change 44 and the submissions and further submissions received thereto we have concluded that submissions and further submissions should be accepted, accepted in part or rejected as detailed in Sections 8.2 – 8.10 of this report.

The Commission has formulated these recommendations having regard to the matters to be considered in terms of section 74, the provisions of section 32, to Part 2 and in particular to the purpose of the Act as set out in section 5 of the RMA.

The outcome of our consideration is that we **recommend** that Plan Change 44, as amended in terms of our recommendations, should be incorporated into the Queenstown Lakes District Plan.

The Commission has presented recommendations with respect to the acceptance, acceptance in part or rejection of submissions and further submissions that relate to issues relevant to PC 44. The Commission has also provided the provisions of PC 44 as amended by our recommendations in **Appendix 1** to this report.

This report incorporating our recommendations on Plan Change 44 is dated 28 January 2016.



**DAVID WHITNEY**  
**CHAIR**

**For the Commission being Commissioners David Whitney, Lyal Cocks  
and Ian Munro**