

Before the Queenstown Lakes District
Council

In the matter of The Resource Management Act 1991

And The Queenstown Lakes District proposed District Plan Topic 13
Queenstown Mapping (Group 1D – Jacks Point Zone
Extension)

LEGAL SUBMISSIONS FOR

Jacks Point Residents and Owners Association (#1277) in respect of:

Jardine Family Trust and Remarkables Station Limited (#715)
Hensman, Scope Resources and others (#361)
FS Mee Developments Co Limited (#425)

Jacks Point (#1275) in respect of:

Hensman, Scope Resources and others (#361)

Henley Downs Land Holdings Limited (#1269) in respect of:

FS Mee Developments Co Limited (#425)

Dated 24 August 2017

Solicitors

Anderson Lloyd
M A Baker-Galloway| R E Hill
Level 2, 13 Camp Street, Queenstown 9300
PO Box 201, Queenstown 9348
DX Box ZP95010 Queenstown
p + 64 3 450 0700| f + 64 3 450 0799
maree.baker-galloway@al.nz | rosie.hill@al.nz

**anderson
lloyd.**

MAY IT PLEASE THE PANEL

Introduction

- 1 These legal submissions are presented on behalf of the Jacks Point Residents and Owners Association (**JPROA**) in respect of 3 rezoning proposals in the vicinity of the Jacks Point zone:
 - (a) the rezoning proposal sought by submitter 715 Jardine Family Trust (**Jardines**) seeking to extend the notified Jacks Point Zone (**JPZ**) over adjacent Rural Zone land, broadly described as Homestead Bay;
 - (b) The rezoning proposal by Hensesman, Scope Resources and others submitter 361 to rezone the land north east of the Jacks Point Zone, on the other side of SH6, from Rural to Industrial;
 - (c) The rezoning proposal by FS Mee Development to expand the LDR zone at the western end of Kelvin Heights (in the vicinity of the JPZ).
- 2 Expert evidence is being called in respect of the Jardine rezoning proposal only.

Jacks Point Residents and Owners Association (#1277) in respect of Jardine Family Trust and Remarkables Station Limited (#715)

- 3 In summary, based on the evidence to date JPROA can still not support the proposed rezoning, as it has no confidence that there is capacity for the associated scale of development in terms of:
 - (a) Traffic effects, both internal to Jacks Point Zone and on SH6
 - (b) Infrastructure, particularly in terms of effects of stormwater and waste water discharges on receiving water quality of the lake that supplies the Coneburn Water Supply
 - (c) The landscape and visual amenity effects
 - (d) The potential adverse amenity effects of bringing the airstrip into the Jacks Point Zone
- 4 The JPROA have called four briefs of rebuttal evidence from experts in respect of this Hearing. Each of those experts also presented significant evidence and supplementary evidence in respect of the previous Hearing Topic 09 relating to the JPZ. Counsel also presented extensive legal submissions and supplementary submissions in that same hearing. For the avoidance of repetition and in the interests of efficiency, matters already presented in Topic 09 are not repeated again in these Submissions save for where they are of

direct relevance. The Panel for this Hearing are however invited to review that material lodged in Topic 09 by way of useful context and background to this proposal.

- 5 Counsel notes the Panel's Minute issued 15 August 2017 requesting substantive further information from the Jardines to be provided. The JPROA will respond to any further information provided by the Jardines on the requested date.
- 6 To this end, it is relevant, and likely obvious to the Panel, that the evidentiary onus of justifying a change in zoning for this land rests with the submitter. As already traversed at length by the Council and other submitters, that most appropriate threshold is a combination of legislative and other relevant principles for rezoning.¹ Counsel does not repeat those factors here, save to note the position taken by counsel for the Jardines in opening submissions, rejecting that approach and preferring that in the context of a district plan review, a rezoning can be assessed against just the higher order provisions of the PDP itself. Even if that submission were to find favour with the Panel, it is my submission that the Jardines have not discharged the requisite evidentiary burden in this instance, in particular through an obvious lack of any substantive section 32 analysis determining appropriateness.

The JPROA role and concerns in this hearing

- 7 The role of JPROA is explained in the evidence of Mike Coburn for Topic 09. In summary, the JPROA is the body set up to operate and maintain the communal infrastructure, community facilities and open space in the JPZ, regulate house and landscape design and represent the interests of the members and the development of the community in contexts such as this.
- 8 Extracts of the JPROA Further Submission on the Jardine Submission are provided in Mr Coburn's rebuttal evidence. The tenor of the Further Submission is conditional support for the Homestead Bay rezoning proposal, subject to refinements of the JPZ structure plan and provisions to provide for protection of landscape and amenity values...additional water transport connections, complementary residential activities, and overall integration of the Homestead Bay Activity Area with the JPZ. A number of specific provisions are also submitted on, including provision 41.5.6.1 relating to access to the State Highway.
- 9 As set out in Mr Coburn's rebuttal evidence, the JPROA stands by its further submission however notes that the Jardine proposal in its current form

¹ Referring to Ms Banks S42a report 'strategic overview' statutory considerations for a plan review at section 9 and the Assessment Principles for determining the most appropriate rezoning at section 15.

(including amendments sought through this Hearing) is currently not acceptable to the JPROA relating to matters raised in its Further Submission.

10 Furthermore, I refer to and emphasise paragraph 9 of Mr Coburn's rebuttal, which touches on the general oversight role of the JPROA as fundamental in this Hearing. As noted, the JPROA has a constitutional 'watchdog' purpose for the Jacks Point residents. In this hearing, concerns of such residents have been raised and tabled. The JPROA therefore has a broad role to adapt, respond, and support if appropriate those positions taken, in addition to matters raised within its own Further Submission. To this end, the allegation from Counsel for the Jardines, at para 25 of his legal submissions is inappropriate and has no evidentiary basis.

11 The key issues of concern for JPROA in respect of this Hearing stem from the core features, rights, and obligations of the JPROA, as outlined in Mr Coburn's rebuttal. This includes:

- (a) The JPROA constitution (publically available) (**Constitution**);
- (b) Bylaws (attached to the Constitution);
- (c) Design Guidelines (provided on the Jack's Point website);
- (d) Development Controls (dated July 2003 as approved by the Council pursuant to the Outline Development Plan for Jack's Point dated 15 August 2005);
- (e) A series of documents relating to the golf structure (as attached to the Constitution); and
- (f) The Deed Pertaining to Jack's Point Water Supply (as attached to the Constitution)

12 Broadly, those key concerns in respect of this hearing relate to the following matters:

- (a) Adverse effects on JPROA "Communal Facilities", being:
 - (i) The roading network;
 - (ii) Water permits enabling the supply of potable water;
 - (iii) Wastewater systems; and
 - (iv) Communal amenities, including reserves, open space, walkways and trails.

- (b) Adverse amenity effects; and
- (c) The Airstrip

Effects on JPROA communal facilities and relief sought

Roading

- 13 Counsel for the Jardines has proffered in legal submissions that, aside from Maori Jack Road, the Jardines do not seek to share any other communal facilities with Jacks Point, and that the rezoning will be 'self-sufficient'. Those submissions do not however entail how such self-sufficiency will occur and be appropriate in terms of this rezoning.
- 14 Maori Jack Road acts as a core spinal road servicing the broader JPZ. Its purpose was to be developed to a suitable standard for a private road and provide the amenity of a private road for those JPZ residents in perpetuity. There has been no substantive evidence provided by the Jardines that an increase in development serviced by this Road could be appropriately accommodated in terms of amenity and safety, nor how an upgrade would occur or be funded if the need eventuated as a result of further development.
- 15 Regardless of whether the proposed rezoned development constructs its own access to SH 6 south of the JPZ access at Maori Jack Road, or accesses SH 6 through the JPZ to the north via either the existing Maori Jack Road, or even Woolshed Road, NZTA's permission will be required. It is therefore difficult to assess the potential impact of internal traffic movements. However, at the very least the worst case scenario has been modelled by Mr Bartlett in his Supplementary evidence on 8 August. This scenario models the additional 541 dwellings, in addition to allowable 244 dwellings under the Operative Plan, using Maori Jack Road and the intersection of Maori Jack Road with SH6. To manage this scenario 3 substantive upgrades would be required, including a left turn lane from Maori Jack Road, the extension of the existing right turn bay, and the widening of Maori Jack Road itself along with an increase of footpaths. In terms of effects on Jacks Point residents and amenity values arising from that scenario, the road widening and the increase in traffic movements generally, Mr Coburn's response on behalf of the JPROA is that such an effect would be significant, adverse and totally inconsistent with the vision of the JPZ community.
- 16 Even Mr Geddes for the Submitter acknowledges that "*it would be extremely difficult to mitigate the adverse effects upon the residential amenity of Jacks*

*Point residents if Maori Jack Road was intended to service the proposed rezoning*²

- 17 In terms of how to address JPROA's concerns with respect to traffic effects, it was initially suggested that any increase above the 244 dwelling equivalents contemplated in the Operative Plan trigger a requirement for consent as at least a discretionary activity, and that it be mandatory such an application be notified to the owner of Maori Jack Road (ie JPROA).
- 18 Should it be determined that requiring notification of a particular party is unlawful as has been assessed by the Council, the alternative that achieves a similar outcome would be the simple acknowledgement in the plan that such an application be publicly notified to ensure JPROA has standing to submit, should there be effects on the roading network of the Zone..
- 19 However, in the face of JPROA's very clear position that it would oppose/not consent to the required upgrading of Maori Jack Road that seems inevitable to cater for the additional 541 dwellings' traffic, until there is certainty of an alternative access to SH6 that does not have adverse effects on the rest of the zone, there is no support in the evidence that the expansion to the zone and associated expansion of number of dwellings can be accommodated without adverse effects.

Servicing infrastructure

- 20 The Jardines proposal before the Panel is essentially that the rezoning will be self-serviced from an infrastructure perspective. It has to be considered therefore whether new and significant on site servicing is an appropriate use of land, and that effects can be managed. In my submission based on the evidence currently before you, the proposal does not meet the current form of the relevant policies in the proposed Zone:

41.2.1.30 Ensure provision of integrated servicing infrastructure, roading and vehicle access.

*41.2.1.31 Ensure an adequate level of sewage disposal, water supply and refuse disposal services are provided which do not adversely affect water or other environmental values.*³

- 21 While it has been suggested by the Jardines that new water supply reservoirs might be located on Jack's Point Hill there has been no detailed design,

² Summary Statement of Nick Geddes dated 7 August 2017

³ Version appended to Chris Ferguson's Supplementary Evidence for hearing stream 9, dated 20 February 2017

visibility, or landscape analysis to support that proposal, in terms of policy 41.2.1.31's requirement that environmental values not be affected.

- 22 As noted by Mr Ferguson,⁴ the JPZ provisions do not set out to explicitly address the effects of new large, scale infrastructure, because the original intention was that servicing would be integrated with the existing system. A specific rule is therefore required to ensure that any new infrastructure such as a water tank in the ONL, is explicitly provided for. As explained by Mr Ferguson in his summary, he does not consider that such a water tank would be classified as a "building" and therefore there is not a relevant rule in the Utilities chapter that applies.
- 23 In terms of effects on water quality from stormwater runoff and treated waste water discharge, there is no evidence to provide any confidence that the site is capable of supporting self-sufficient infrastructure to the scale proposed, without flow on adverse effects.

Amenity effects

- 24 Counsel for the Jardines submits that residents of JPZ have no legitimate expectation to a rural view from their houses given proposed development is not in the rural zone, and that the only relevant amenity policies within the JPZ Chapter 41 are 'externally focussed';
- 25 With respect, the effect of changing the existing operative zoning from Rural to Jacks Point Zone, and associated enablement of development, is a relevant effect for your consideration. Section 32 in particular requires that detail be provided that corresponds to the scale and significance of the environment, economic, social and cultural effects anticipated from the implementation of the proposal. One of those effects will be changes to the landscape to the south of the Jacks Point residents, which as noted by Marion Read, will be visible both to residents of the zone, as well as from the highway. As noted by Mr Ferguson, the assessment provided to date by the Submitter on the visibility of development in the proposed new residential activity areas is not sufficient to make a finding that the effects on the landscape are appropriate.⁵
- 26 Given the Submitters' intention to provide its own drinking water supply, JPROA also has concerns with the current proposed system, which it understands will be a storage tank that is potentially not buried, on Jacks Hill. The Coneburn Water Supply tank managed by JPROA for its members, and it is important than any additional infrastructure be similarly designed and treated so as to avoid adverse landscape and amenity effects.

⁴ Rebuttal evidence of Mr Ferguson dated 7 July 2017, page 6

⁵ Rebuttal evidence of Mr Ferguson dated 7 July 2017, page 8

The Air Strip

- 27 As outlined in the rebuttal evidence of Mr Ferguson, the key concern of including the Airstrip within the JPZ is that controls on adverse effects to residents are not as protective as would otherwise be provided in the Rural Zone, due to there being no mapped noise contours around the Airstrip.
- 28 These concerns were previously aired during the 2014 hearing of Skydive Queenstown Ltd's application⁶ to operate more flights from the current site. In the closing submissions for Jacks Point, counsel Ms Ritchie submitted:

62. Mr Darby was concerned that the increase in the number of flights (potentially double) would adversely impact the vision for the Jacks Point zone, including its economic viability and the quality of the experience of the zone.⁷ Mr Darby acknowledged that the presence of the Skydive operation was known at the time of the Jacks Point plan change, however, he gave evidence that it was never anticipated that the operators would seek to increase the number of flights,⁸ to the contrary, under cross examination Mr Darby confirmed his understanding that the operation would be terminated upon development of the Jacks Point zone⁹ and the lease would not be renewed.¹⁰ Mr Darby also confirmed his understanding in cross-examination that at the very least the runway would be realigned so that planes would have a different take-off and landing flight path, so that they would not fly over the Lodge and golf course sites.¹¹ Mr Tataurangi gave evidence that an increase in the frequency of flights from 35 per day to a potential of 50 per day (up to a maximum of 75 in any one day) would in his opinion result in a major disturbance to the world-class golfing experience that is Jacks Point.¹²

- 29 The submitter's current proposal is now a set of plan provisions that seems to be completely silent on how the airstrip activities would be managed within the zone (were a varied or new consent to be applied for, or were the existing consent to be reviewed) or even within the specific activity area now proposed for that site (being OSG). The submitter has proposed no specific rule for

⁶ Skydive Queenstown Limited [2014] NZEnvC 108

⁷ Evidence of Mr Darby, dated March 2013 at paras 7.3-7.11

⁸ Evidence of Mr Darby, dated March 2013 at para 7.2

⁹ T343 and T351/L24-T352/L6

¹⁰ T345/L15

¹¹ T362/L24-32 and T345/L15 and evidence of Mr Darby, dated March 2013 at para 7.2

¹² Evidence of Mr Tataurangi, dated 14 March 2013 at paras 19, 23, 25 and 27

commercial activities or outdoor recreation in the OSG and no specific policies that might guide the assessment of any change to the existing consented operation. As a result there can be no confidence that any review of the existing consents, or any application to change or replace the existing consents, would be considered within an appropriate planning framework, and that the amenity values enjoyed by the zones' residents and visitors maintained (or indeed enhanced, noting JPROA's ongoing concerns with the safety risk and adverse noise effects of the existing operation).

30 In the context of the evaluation required by section 32, the Submitters have sought no change to the Objective of the Jacks Point Zone, yet there is no analysis of the appropriateness of the OSG zoning and the contemplation of an airport being included within the zone, against that Objective. No provisions either in the form of policies or rules are proposed in respect of the airport and its use that make such an activity appropriately managed to give effect to the zone objective. Furthermore, no conclusions of effects, costs and benefits in a section 32 context be reached as there is no evidence assessing the effect of including the airstrip and its use within the zone.

31 Council have noted the inappropriateness of proposing residential areas in the absence of any corresponding understanding of where the 55dBA noise contours are. In response, Mr Geddes for the Jardines considers that:

Mounding around residential activity areas A-C coupled with the accentuated depression these residential areas will be located within may influence noise contours by comparison to any assessment undertaken across the existing topography.¹³

32 With respect, such an assessment from the Submitter's planner should be treated with caution, given that this appears to be an assumption not based upon expert opinion. The Jardines have provided no acoustic expert evidence in respect of this proposition and therefore the amended policy proposed by Mr Geddes cannot be relied on.

33 Development of the Jacks Point land in accordance with its special zoning has achieved maintenance and enhancement of the environment¹⁴ and has facilitated access by a range of recreational users. The definition of **amenity values** in s2 of the Act is particularly apposite. If the land is rezoned to a classification that effectively enshrines the use of the land and surrounding airspace as an airport and associated flight paths and facilitates addition commercial outdoor recreation using the airport, it seems inevitable that effects of the use of the land by planes will be more likely than not to increase. The

¹³ Summary Statement Nick Geddes, at [18].

¹⁴ Described by Mr Darby in terms of development of the site

effects of increasing flight activities, over land of high environmental quality and high amenity value, will “adversely affect those natural or physical qualities and characteristics that contribute to people’s appreciation of its pleasantness, aesthetic coherence, and its recreational attributes” – to quote directly from the definition and will erode those future amenity values that are promoted by the JPZ provisions.

- 34 JPROA will be prepared to respond to the 1 September submission of the 55dBA noise contour and associated changes (presumably) to objectives, policies and rules that the Submitter will propose to manage the effects of the airstrip within that 55dBA contour wherever it may be. It is fair to put all on notice now that should the 55dBA contour extend into the Jacks Point Zone, it will be submitted that there is no jurisdiction to do so at this late stage particularly if any development opportunities at Jacks Point (not the Homestead Bay part) provided for in the JPZ provisions are affected in any way or, worse still, diminished as a result of identification of that noise contour and associated provisions.

Jacks Point Residents and Owners Association (#1277) and Jacks Point (#1275) in respect of Hensman, Scope Resources and others (#361)

- 35 JPROA (1277) and Jacks Point et al (1275) lodged further submissions on the Submission from Hensman et al (Submitter 361) in respect of the proposal to rezone land Rural General to Industrial Zone.
- 36 The rezoning of Rural General to industrial as requested was opposed on the basis that it will have cumulative adverse effects on landscape and visual values, including light spill, and the character of the area. Furthermore now based on the evidence as lodged by Hensman et al, the rezoning is also opposed on the basis of adverse effects on the functioning of the State Highway, in particular the future integration of the primary access road of Woolshed Road with SH6.
- 37 In the Hensman original submission Annexure M 'Access Assessment' (**attached** as Appendix A) provides an indicative primary road layout and access points onto the State Highway. Without prejudice to the other concerns in respect of the rezoning, the proposed access point opposite to Woolshed Road at least retained the possibility for an integrated, efficient solution in respect of access to the SH from both Jacks Point Zone and the Hensman rezoning.
- 38 Counsel notes however that the evidence in chief from Mr Bartlett dated 9 June 2017 indicates this access and road layout as has been amended since the original submission, including by removal of the proposed roundabout at the Woolshed Road intersection (at para 15). To further confuse matters, Counsel

for Submitter 361 lodged a Memorandum dated 22 June 2017 appending late evidence in the form of visibility maps, which detailed the indicative original roading layout **including** the Woolshed Road roundabout alignment.

- 39 What final form the relief from Submitter 361 will take in respect of road layout and access options is now unclear. However it is clear that the position proposed in evidence in chief is fundamentally different from that proposed in the initial submission in respect of connection to the State Highway and integration with other main connections to the State Highway.
- 40 The Jacks Point Zone Structure Plan identifies Woolshed Road as a primary access road, and as "State Highway Access". It is now unclear what the effect of the Submission and the proposed altered access points to the State Highway has on the viability of Woolshed Road being upgraded to provide access to the Jacks Point Zone. It is likely that in the rules for the Jacks Point Zone, there will be specific requirements for the upgrade of the Woolshed Road intersection to the SH6, once particular developments trigger that requirement.¹⁵
- 41 JPROA and Jacks Point seek to ensure that the ability to upgrade the Woolshed Road intersection is preserved in accordance with the intentions reflected in the Jacks Point zone provisions.
- 42 It is therefore sought that if the Hensman rezoning is approved of in any form, that the Structure Plan and accesses to the SH6 include the indicative location opposite Woolshed Road.
- 43 In terms of the other concerns raised in the further submissions on effects (landscape, visual effects, light spill and character), the recommendation of the section 42A report to reject the rezoning proposal is supported. The Submitter's landscape witness Ms Snodgrass expresses the opinion that the cumulative effect of the proposed rezoning with the JPZ will "diminish the rural character in the area" when considered in conjunction with the Jacks Point Zone.¹⁶ On this basis, JPROA and Jacks Point remain opposed to the rezoning.

Jacks Point Residents and Owners Association (#1277) and Henley Downs Land Holdings Limited (#1269) in respect of FS Mee Developments Co Limited (#425)

- 44 JPROA conditionally supported the proposed rezoning closest to the Jacks Point Zone, at the western end of Kelvin Heights as long as light spill could be addressed. Henley Downs supported the extension.

¹⁵ See for example Table 1 rule 41.4.7 appended to Chris Ferguson's Supplementary Statement of Evidence dated 20 February 2017.

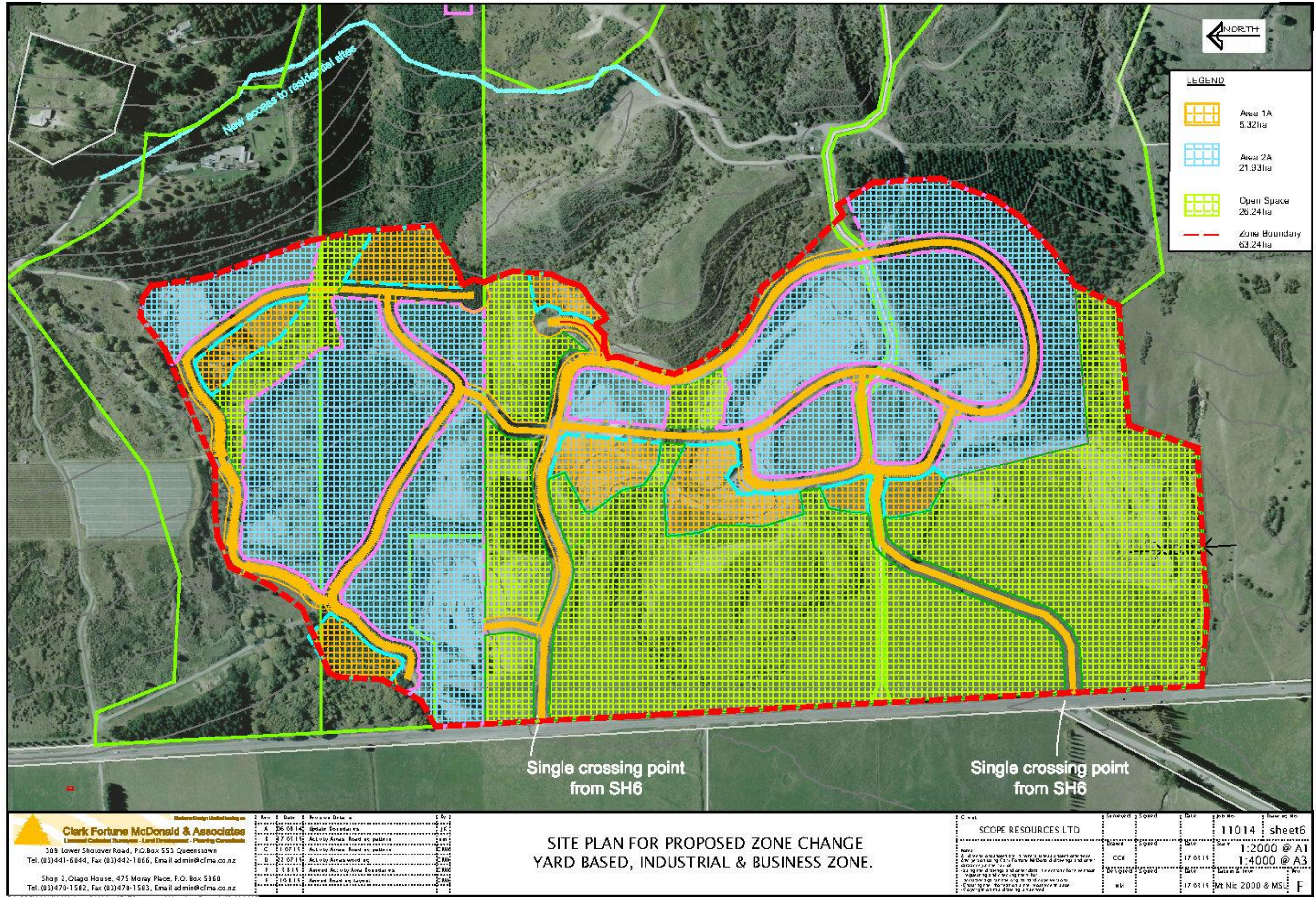
¹⁶ Statement of Evidence of Michelle Snodgrass dated 9 June 2017

45 The revised proposal as tabled on Monday 21 August is contained within valleys/semi enclosed plateaus and therefore will minimise light spill (as per JPROA submission). On the understanding that it is located within areas that are capable of absorbing development in terms of light spill and landscape effects, the JPROA and Henley Downs support the rezoning as an efficient and appropriate use of land. It is more appropriate that such zoning follow appropriate contour lines and topographical features than cadastral boundaries.

Dated this 24th day of August 2017



Maree Baker-Galloway
Counsel for the Jacks Point Further Submitters



Clark Fortune McDonald & Associates
 Limited Civilian Surveyors - Land Development - Planning Consultants
 309 Lower Shotover Road, P.O. Box 553 Queenstown
 Tel. (03)441-6044, Fax (03)442-1066, Email admin@cfma.co.nz
 Shop 2, Otago House, 475 Moray Place, P.O. Box 5960
 Tel. (03)470-1582, Fax (03)470-1583, Email admin@cfma.co.nz

Rev	Date	Revised Details	By
A	26.08.14	Initial Proposed vs	JF
B	27.03.15	Activity Areas Road eq pattern	EM
C	31.07.15	Activity Areas Road eq pattern	EM
D	22.07.15	Activity Areas road eq	EM
E	3.8.15	Amend Activity Areas Proposed vs	EM
F	10.8.15	Amend Road eq layout	EM

**SITE PLAN FOR PROPOSED ZONE CHANGE
 YARD BASED, INDUSTRIAL & BUSINESS ZONE.**

Client	Drawn	Checked	Date	Job No	Drawn No
SCOPE RESOURCES LTD				11014	sheet6
					1:2000 @ A1
					1:4000 @ A3
			17.08.15		
			17.08.15	Mt Nic 2000 & MSL	F