

**Before the Queenstown Lakes District Council Hearings Panel**

**Under** of the Resource Management Act 1991 (**Act**)

**In the Matter** of the Hearing Stream 13 – Queenstown Mapping

**By** Jardine Family Trust and Remarkables Station Limited

**Submitter No. 715**

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**Submissions of Richard Brabant in Respect of Jardine Family Trust  
and Remarkables Station Limited**

**Hearing Stream 13 – Queenstown Mapping**

**Dated 15 August 2017**

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## Introduction

1. The further submission (FS 1283) by Joan Williams and myself opposed all parts of submission 715 by the Jardine Family Trust and Remarkables Station Ltd (**Jardine**). Four key points were made, and I submit they are all relevant reasons for declining the submission, having regard to all the evidence and submissions that have been provided to the Panel.<sup>1</sup>
2. I refer to my statement of evidence presented as part of the hearing of Topic 13 and dated 8 February 2017. I ask that relevant sections of that evidence (and the attachments) form part of the material to be considered by the Panel in respect of the relief requested in submission 715 by Jardine. In that evidence, I refer to paragraphs 1 – 21, 28 – 29, 33, 35 (the Jardine evidence provides no information as to whether the roading network within the property would be public or private), and 36, 42 – 45, and 53 – 55. I also refer to Appendix E to that evidence which is the decision on submissions to Variation 16 – Jack’s Point Resort Zone, which I will refer to shortly.
3. A focus of these submissions will relate to the presence on the Jardine property of a farm airstrip and the current use of that by the Skydive operation, in accordance with a resource consent granted in 1997. The Panel has been provided with a copy of the Environment Court decision on a direct referral under s 87G RMA<sup>2</sup>, and these submissions will refer in some detail to the Court’s decision. I was counsel during that hearing representing the Jack’s Point residents through the JPROA and the Jack’s Point Commercial Interest Group (collectively **JP**). Two of the attachments to these submissions are statements of evidence given on behalf of JP to the Environment Court – by Dr Trevathan the JP noise expert, and Mr Fogden, the JP air safety expert. I note that the Council’s planning witness Ms Jones has suggested that submitters should bring forward

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<sup>1</sup> I note that the Further Submission omitted the obvious statement "Reject submission", which was an error on my part. Nonetheless the intent or purport of the submission is clear.

<sup>2</sup> *An application for resource consent by Skydive Queenstown Ltd* Decision No [2014] NZEnvC 108

evidence on aircraft noise to assist the Panel. I note that despite the evidence of Mr Chiles presented as part of the Council's evidence no evidence has been provided by Jardine on aircraft noise issues. Given that the proposition is the farm airstrip remains operational including for the existing Skydive operation but is brought inside the JPZ zone boundary, the failure of Jardine to present expert evidence from acoustic and aircraft safety expert witnesses is a notable shortcoming. In my submission it is the submitter (Jardine) as proponent of the change in the zone provisions in relation to the airstrip<sup>3</sup> that carries the evidential burden of placing sufficient evidence before the Court to establish that a change in the zone provisions as notified is appropriate, not submitters such as myself.

4. In addition, I made submissions to the Panel in respect of the same topic dated 17 February 2017, and wish to rely on without repeating paragraphs 1 – 8 9 – 14 and 34 – 46, the latter paragraphs referencing my and Mr Tim Williams' revision on behalf of the Jack's Point "Residents Group" of the proposed JPZ. Having considered as far as I have been able in the time available the multiple revisions of the JPZ presented by the Jardine planner Nick Geddes, and given the time I have available at this hearing, I submit the revisions he proposes should all be disallowed. I will refer to some of the more important provisions that I oppose, without detracting from my opposition to all the proposed alterations (to the extent that they are inconsistent with the revised zone provisions previously presented.)
5. I have been involved on behalf of myself and Joan Williams in the Plan Change 44 proceedings.<sup>4</sup> I am a signatory to the recent memorandum to the Court requesting a consent order. That has now been issued and I presume the effect of this will be explained to the Panel by the Council or by counsel for one of the Appellants.
6. I support and rely on the evidence of Ms Jo Dey and Mr Tim Williams, also residents of Jack's Point in relation to the relief requested by Jardine

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<sup>3</sup> By definition, an Informal Airport, refer Chapter 2, page 14

<sup>4</sup> For the sole purpose of ensuring that the appeals were not heard and determined prior to the District Plan Review hearings and decision-making, for the obvious reason. The Court agreed that the preparation of evidence and arrangements for hearing should not proceed after other parties did not seek to oppose my request.

through submission 715. In this instance, I also rely on the evidence that has been provided by JPROA.

7. As stated in my previous evidence and submissions, my starting point is that there must be good reason to depart from the Operative Plan provisions for the Jack's Point zone established through the Variation 16 process. Like the Millbrook Special Zone<sup>5</sup>, the Jack's Point Special Zone was developed as a "stand-alone" master-planned residential and visitor resort community within a rural environment and landscape exhibiting special qualities. Both zones are intended to contribute to visitor employment and economic development – hence the reference to them being resort zones.
8. In relation to the proposed addition of new provisions enabling residential development of the Hanley Downs land holding to the north of the existing Jack's Point residential community, our submission urged the establishment of a separate Hanley Downs zone, as originally proposed by PC 44. My submissions and evidence also recognised that by the time the matter came before the Panel, resource consents had been issued to enable development to proceed, and the evidence was that the District Council had agreed to extend Council services reticulation to the property. In my submission, these are crucial differences between that area to the north and the proposed expansion to the south of Jack's Point of what has been referred to as Homestead Bay- but in reality, is not. In fact, the area where the significant residential development is proposed through the Jardine submission 715 is part of the Remarkables Station farm, and what is proposed through submission 715 is quite distinct and different from the discrete and development enabled at Homestead Bay by the Operative Plan provisions.
9. The Hanley Downs residential development is inside the UGB whether or not the existing Jack's Point residential and commercial areas are included, and while I oppose the inclusion of the Jack's Point zone within the UGB I acknowledge that with services reticulation now being a given through to the consented Hanley Downs residential development, the land

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<sup>5</sup> I am not familiar with the Waterfall Park special zone

west of SH6 and north of that location through to the Kawerau River is going to be a significant new area of residential development. By contrast, the area of residential expansion proposed through the Jardine submission is outside the proposed UGB<sup>6</sup>, and the extension of the urban boundary requested by evidence and legal submissions for Jardine ought to be rejected, not the least because it is contrary to objectives and policies in the Proposed Plan<sup>7</sup>. As I said in my previous submission, the request is opportunistic and if accepted would enable urban sprawl.

### **Relevant Proposed Plan provisions**

10. In my submission, there are several objectives and policies which the proposed expansion of residential development on the Remarkables Station farm cannot meet or comply with. There are other relevant provisions I wish to refer to that relate to provision for Informal Airports and the noise controls that apply to Informal Airports and will apply once the Proposed Plan is Operative to the Skydive operation. In this timeslot, it is unlikely there will be time for reference to those unless through questions from the Panel. I have referenced plan provisions through footnotes or for particular important issues such as the noise standards but otherwise have produced copies of relevant Chapters on which I have highlighted text as a shorthand way of covering these provisions.

### **Variation 16**

11. While of course a District Plan review is the appropriate and expected opportunity to do just that, and an outcome of a plan review will be changed provisions in the plan enabling the use and development of natural and physical resources and having regard to the need to provide for the future needs of people and communities, I submit care should be taken when reviewing the District's Special zones that have been master-planned to the extent and for the purposes covered in previous evidence and submissions concerning the JPZ. The required s32 analysis<sup>8</sup> should include consideration of the risk of acting or not acting if there is uncertain

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<sup>6</sup> if the Jack's Point residential is to remain within the UGB, the Homestead Bay extension should not be included (as presently) and the boundary should be amended accordingly.

<sup>7</sup> Chapters 3 and 4

<sup>8</sup> A key question for the Panel must be the adequacy of the Jardine s 37 assessment – or even is there one?.

or insufficient information about the subject matter of the provisions – here the changes sought by Jardine.

12. The decision report on Variation 16 is Appendix A to my earlier evidence. I refer to page 11, where what was proposed through a submission by the Jardine interests seeking an addition to the proposal for the Jack's Point master-planned development designed by John Darby is described. Reference to the decision report<sup>9</sup> reveals that the case then put on behalf of Jardine was supported by expert Urban Design and Planning evidence by Mr James Lunday, a noted and experienced urban design expert in the field of master planning village or small rural settlements in environments such as this locality. The succinct description of the elements of the proposed village development set out on that page provides a graphic contrast to what has been put forward through submission 715.
13. On page 22 the report refers to ensuring desired outcomes are realised through adopting an "other method", namely the Stakeholders Deed, to ensure that the enumerated issues were addressed prior to any development occurring.<sup>10</sup> As with the proponents of changes enabling development of Hanley Downs, Jardine now proposes extensive development that would change completely the master planned Homestead Bay Village, and add some 500 residential units on the farm property. Both property owners to the north and south of the Jack's Point development itself are acting in breach of the Stakeholders Deed.
14. I refer next to section 6.10.1 of the Decision report which deals with the submission by Jardine and Boock to extend the zone boundary to include Homestead Bay. I ask that the Panel please read this section through because it contains a careful examination of development potential in this location including reference to the extensive landscape visibility and absorption capability analysis work that was available through the Coneburn Area Resource Study (CARS). In summary, I refer in particular to the identified positive outcomes if the master planned Homestead Bay Village was included within the zone opportunities, the detailed

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<sup>9</sup> at page 6

<sup>10</sup> Development Controls, Design guidelines, Infrastructure, Open space management, Golf course development and management.

assessment of landscape effects, consideration of infrastructure needs, and that if development was contained at Homestead Bay the District Plans Objectives and Policies would be achieved, with other areas retained as open space, suitable for recreation and other outdoor pursuits. This section concluded by referring to the outcomes advocated by the submitter being ensured by the landowners agreeing to develop in accordance with the development controls for the JPZ and the design guidelines for Homestead Bay, that obligation to be achieved by the use of covenants on land titles and entrenched in the Stakeholders Deed and the JPZ provisions.

15. Under section 6.10.4 reference is made to submissions regarding public access to Lake Wakatipu, Open Space and Recreation Facilities. Jardine and his co-submitter requested an amendment to the zone provisions by adding reference to Homestead Bay providing particular opportunities for public access to, and enjoyment of the Lake. As Tim Williams has pointed out, a notable shortcoming of the proposal advanced through submission 715 is the lack of public access with cycleway/walkway trails, including access to the Lakeside.
16. In relation to roading infrastructure, the decision records that the proposed addition of Homestead Bay to the JPZ includes a proposal to realign and form an existing paper road which I understand to be an extension of Wool shed Road, that formation having been extended during the development of Jack's Point to the boundary of the Jardine property (and since extended into that property). This road was developed to a standard as to design and construction in keeping with the other private roads within the Jack's Point development and to accommodate only the expected traffic flows from Homestead Bay Village. It was not developed and is not suitable for the additional development now proposed. The suggestion that it could be upgraded to accommodate additional traffic if the Homestead Bay Village development as approved through Variation 16 is abandoned and the other proposed development now presented proceeds, is not acceptable to me as a resident of Jack's Point and nor I believe would it be to many other residents. Aside from unresolved issues of funding, upgrades and future maintenance if the proposed development on the Jardine property proceeds but none of the new

residents on the Jardine land are members of the JPROA, the master-planning of Jack's Point included the layout and design of the private roads to accommodate traffic volumes that would result from the decision on Variation 16.

17. I refer to section 6.10.7 – 6.10.10 which records that the Jardine and Boock submissions resulted in the amended Zone Purpose wording in the Operative Plan and the provisions for new Activity Areas within Homestead Bay. I also note by reference to sections 6.10.19 – 6.10.23 that the same submitters sought and the Council adopted into the proposed plan provisions limitations on residential units and zone standards including planting requirements and coverage controls and note the proposal by Jardine and Boock that site coverage be restricted to 2.5%.

18. Finally, I refer to the section 6.2.16 that addressed the economic viability of the land resource the subject of the variation, and includes reference to reports on economic viability including one prepared in respect of the Remarkables Station Property. The report summarises the report of Mr Moore on the economic viability of that Station as an ongoing farming entity having regard to the reduced land area resulting from the requested addition of the Homestead Bay area as master planned Village. The decision report concludes that the proposed zone including the requested addition of the Homestead Bay Village would not compromise the Remarkables Station as viable rural land appropriate for farming activities. I accept that circumstances including viability of farming operations can change, but note the Panel has nothing other than bald statements that the land the subject of the expansion proposal is no longer viable for farming.

### **Infrastructure**

19. I acknowledge that on a plan review, seeking through submission an expansion of a zone to enable further development, it is not necessary to produce evidence showing infrastructure facilities (stormwater, wastewater, water supply) have been subject to detailed design and/or consented in order for the Council to be satisfied that in this respect the

requested zone expansion meets the requirements of the Act in particular the evaluation requirements under s 32. In my submission it is fanciful to suggest as the Jardine evidence does that you could rely on the prospect of Council reticulation within the life of this plan. It is also clear that for whatever reason Jardine does not propose to rely on any aspect of the existing Jack's Point infrastructure, even though the Stakeholders Deed provisions and the way in which the water supply infrastructure has been developed was intended to accommodate the needs of both Homestead Bay and the Henley Downs residential areas as shown in the Operative Plan Structure Plan. In my submission at least in respect of water supply there is an issue with the evidence presented which relates to the suggestion that the required reservoir could be located on Jack's Hill. Given the landscape values and visual significance of that feature I submit a proper landscape analysis of a potential site or sites was essential to support this zone extension proposal.

### **Transportation infrastructure**

20. First, in my submission it is now recognised that provision for transportation in an integrated way required attention to not just roading for vehicles, but also cycling and walking. The Jardine evidence does not address this appropriately.
21. In my submission, the weight which you might otherwise give to the evidence of Mr Bartlett is affected by his (proper) disclosure that he is a landowner at Jack's Point and presently a committee member of the JPROA. His evidence includes reference to the acceptability of increased vehicle usage of Maori Jack Road which he acknowledges is a private road owned and maintained by JPROA.<sup>11</sup> In paragraph 19 of that primary evidence he suggests that what he describes as development at Homestead Bay (in fact on the Remarkables Station property) could use the access through Maori Jack Road to SH 6, and therefore through the existing Jack's Point residential development with the prior agreement of JPROA. As a committee member of the Association he must be well aware that at present the affairs of the Association are under the control

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<sup>11</sup> evidence dated 9 June 2017, paragraph 11.

of the Jack's Point Commercial Interests, that the Chairman of the Association is a director of these companies who will and have in relation to a range of contentious changes to development and use of commercial or even Association land exercised their pre-emptive voting rights. With or without the approval or even input of the JPROA Committee.

22. While Mr Bartlett may have modified his position in subsequent evidence, the provision of access directly from SH6 into the proposed new residential development is not proposed on the basis that access from the property on to Maori Jack Road would be discontinued. As the bulk of residential and commercial traffic (including construction traffic which is significant during the development phases) will be travelling on departure to the north and on arrival will come from the north, the existing access into Jack's Point to and from SH6 will remain an attractive option, by contrast to an access off SH6 further south. In my submission, the transport infrastructure proposals are inadequately developed to provide confidence they are viable and suitable, and fail to provide for appropriate integrated transport options. They assume the continued right of access onto the private roadway of Maori Jack Road when that connection was agreed then built by others on the basis of the current Plan provision for Homestead Bay.

### **Landscape character and visual effects**

23. In relation to the requested expansion of urban development and changes to the Homestead Bay Village area the Jardine submission is supported by evidence of Mr Espie dated 9 June 2017. While the evidence does make reference to the operative Homestead Bay structure plan, there is no recognition of the proposal as presented by Mr Lundy and described in the Decision report on Variation 16, in particular as to its acceptability in respect of landscape character, landscape visibility and absorption capability as discussed in that report.
24. Notable is the omission from this evidence of any reference to the CARS. This is surprising and must surely reflect in a lesser weight being given to the assessment done by Mr Espie given that the CARS is the only comprehensive Landscape Study of the area.

25. In relation to what Mr Espie describes as "*land use/development patterns*" that will appear on the ground, and the effect on existing landscape character, he acknowledges that the proposed suburban development would total approximately 50 ha or approximately half the size of the already-built residential development within Jack's Point. What he calls the "suburban area" requested through submission 715 he describes as totalling 14.4 ha in area with considerable earthworks proposed to hide the development from SH 6. The "*large sweeping hummock of high topography that accommodates stands of native vegetation*" needs to be understood as an artificially created landform utilising large volumes of material excavated to form depressions or bowls within which the new housing would be established. In my submission his suggestion the treatment will "*echo that of the Jack's Point Highway frontage further north*" is to minimise the adverse effects on landscape character that would arise. Not only because the mounding created to achieve the mitigation along SH6 that the Operative Plan's zone provisions require extends only along a portion of the Highway frontage north of the Jack's Point/SH 6 intersection, but that mounding is more modest and discreet than what would be essential here. As referred to in the evidence of Ms Dey, the proposed earthworks would be significant and completely alter the existing landform and therefore landscape character of the open rural farmland in this location. The last 2 sentences of his paragraph 5.14 as to adverse effects on landscape character and the ability of this area to absorb additional suburban development without degrading landscape character are, I submit, not only unconvincing, but contrary to the CARS assessment of landscape character and absorption capacity and fail to provide the Panel with an adequate assessment on the usual scale of adverse effects that you would expect.

26. The assessment as to adverse visual effects is also deficient. Because of the proposed major earth worked changes to the existing landform the Jardine submission proposes, the result is extensive high mounding for the express purpose of hiding the substantial residential development from views from SH6, and to a lesser extent from adjoining residential development in Jack's Point. The adverse visual effects viewing the resulting residential development from the Lake cannot be avoided and I

submit would be significant. However, in the process of developing and then assessing this crude method of hiding a large housing development, the result creates its own adverse visual effects. It prevents views across the land towards the Lake which are currently extensive, and the artificially created “hummocks” (as Mr Espie describes them) will be detrimental as they will be a discordant element in the landform and therefore the present appearance as described in the CARS. In my submission, Mr Espie’s proposition that the adverse visual effects of this artificially created hummocked feature, used to screen hundreds of residential houses and their associated infrastructure and development should be viewed in the context of what can be presently seen by users of SH6 as they travel south past Jack’s Point avoids the issue which is the requirement to assess the degree of adverse effect.

27. There is no assessment of the visual outcomes for those who would be placed into these depressions or bowls created by extensive earthworks even though the screening effect works both ways.
28. In my submission the methodology ought to be rejected including because of significant adverse effects on landscape character and visual amenity. The proposal conflicts with assessments in the CARS. The assessment of the proposed man-made changes through extensive earthworking is inadequate, and the information provided is insufficient to accurately assess outcomes. As I read the changes to the plan provisions proposed in Mr Geddes latest iteration of the JPZ these major earthworks would be provided for within the zone provisions in a way that exempted them from the type of examination that earthworks of this nature would normally require including opportunity for public input through submission.

### **The airstrip and the Skydive operation**

29. As I understand the various amendments proposed by Mr Nick Geddes, the land area where the farm airstrip is located (and where the Skydive operation is carried out) is now proposed to have the notation OSG (Open Space Golf)<sup>12</sup>, which he refers to in paragraphs 15 and 16 of his summary statement dated 7 August 2017. Somewhat disingenuously, he supports

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<sup>12</sup> MrGeddes – Council Right of Reply Structure Plan

that by reference to paragraph 3.11 of Ms Jones' evidence, where in a section headed Scenario B such a proposition is suggested as a fall back alternative to declining the requested residential expansion. This proposition was asserted by her to be "*effective and efficient at enabling the continuation of the existing skydive operation as it enables outdoor recreation and ancillary recreational buildings*".<sup>13</sup>

30. This proposition is not the only, but it is certainly one of the worst suggested "manipulations" of the Jack's Point zone provisions, whereby an activity area provision intended for a specific purpose is misused by its proposed application to a completely different form of use with quite different effects and therefore ramifications. In the proposed JPZ provisions, Rule 41.5, in Table 2 sets out the *activity status* within the Structure Plan, and describes the various activity areas and their purpose. Rule 41.2.7.7<sup>14</sup> reads:

**Open Space Golf (OSG)** – the use of this area is restricted to indigenous revegetation and outdoor recreation activities, including the development and operation of golf courses, including associated earthworks, green keeping, driving range, administrative offices associated with golf, mining of rock, aggregate and gravel, golf equipment and clothing sales, and commercial golf instruction.

31. Applying this specific activity provision, used within the Jack's Point Structure Plan to apply across the existing 18-hole championship golf course, and an area immediately south of the residential neighbourhoods closest to the property boundary with the Jardine interests which has always been proposed in the development concept as a future 9 hole golf course is to seriously miss-use the activity provisions. It cherry-picks certain words in the definition and even then, wrongly applies them to the operation which is a farm airstrip (and still utilised for commercial aerial top dressing operations), and the Skydive operation which is a *Commercial Recreational Activity*. The commercial recreational activities provided for under the OSG description are all golf-related and expanding

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<sup>13</sup> paragraph 3.62

<sup>14</sup> QLDC PDP 2015 Rewording

those to a skydive operation is inappropriate.

32. Mr Geddes changes<sup>15</sup> purport to shift the rule provisions prescribing *activity status* to Table 41.5 (previously rule 41.3), which is a table setting out *standards* applicable to various activities, so in the first place the shift is unlawful. Previous iterations by Mr Geddes also included an addition "*The activity shall also include the airport within Lot 8 DP 443832 and associated aviation and commercial recreation activities*". As far as I can ascertain this purported provision (which would have created permitted activity status through removing the Structure Plan – Activities provisions out of the activity table) is now removed, although I am uncertain about that. Such a provision is opposed.
33. The appropriate zoning for the land outside the proposed (as notified) JPZ zone boundary is the rural zoning as notified. Even if new residential development were to be enabled by changes to the zone provisions in respect of the Remarkables Station property, the zoning should not be JPZ. If the existing farm airstrip is to be retained in operation, it should not be in a residential zone, or a Special zone – in this case the Jack's Point zone.
34. In the PDP, the Definitions section includes a definition of "Informal Airport".<sup>16</sup> The definition makes it plain that designated aerodromes are excluded. To my knowledge, the existing Jack's Point development makes provision for a number of helicopter landing sites in specific and identified locations. There is no provision for fixed wing aircraft. Table 1 – Activities located within the JPZ provides at Rule 41.2.12 for Informal Airports. They are provided for limited to helicopter use as a discretionary activity. The establishment or operation of all other airport activity or an Aerodrome, including Informal Airports used by fixed wing aircraft is non-complying.
35. In the Rural zone, Rule 21.4.25 provides that Informal Airports that comply with Table 6 are permitted. Table 6 (rule 21.5.26) restricts use to a frequency of 3 per week, allows for emergency landings, rescues and the

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<sup>15</sup> my references are to the Right of Reply version provided with his Summary Statement dated 7 August 2017

<sup>16</sup> Chapter 2, page 14

like, and with respect to the permitted use, imposes a locational restriction of no less than 500 m from any formed legal road or the notional boundary of any residential unit of (sic) building platform not located on the same site.

36. The continuation of a rural zoning on the Remarkables Station farm property would enabled continued lawful use (without resource consent) of the existing farm airstrip. The locational restriction would prevent the proposed residential development sought through the Jardine submission.
37. The use of this farm airstrip by the skydive commercial operation could continue in reliance (as is currently the case) on a resource consent issued in February 1997. The context in which this consent was assessed, and granted, is relevant to the current attempts by the same landowner to seek zoning and activity changes through submission 715. I have included with this submission a copy of the decision dated 7 February 1997, and the application for resource consent dated 19 August 1996. The environment that existed at that time was quite different from what it is now in terms of residential occupation of even rural dwellings. By reference to page 6 of the application document there were no residents within 2 km of the take-off and landing approaches.
38. The Environment Court decision refused an application that sought to increase the number of flights from the airstrip and to set special noise standards that would apply to the activity.<sup>17</sup> The Jardine submission seeks a change of zoning enabling a substantial area of new residential development, coming by reference to Mr Chiles evidence to within 200 m from the main arrivals/landing flight path.<sup>18</sup>
39. The legal submissions on behalf of the submitter in relation to the airstrip and the Skydive operation<sup>19</sup> make a number of unsupported assertions about the operation. Consideration of the Environment Court decision will enable you to understand why the proposition of developing a substantial number of residential buildings and residential activities just to the south

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<sup>17</sup> Decision, paragraph [7]. The noise levels would be higher than the Plan standards.

<sup>18</sup> Stephen Chiles, Summary of Evidence, paragraph 5

<sup>19</sup> Phil Page, legal submissions dated July 2017, paragraphs 26 – 32

of the airstrip and the skydive operation is completely inappropriate. In my submission, the only basis upon which any future residential development on the Remarkables Station farm property (that is, the rural land to the east of Homestead Bay and outside the JPZ 's zone boundary as notified) could be enabled is if the use of the farm airstrip by any aircraft was discontinued and the airstrip was removed. The Rural zone provisions otherwise do not permit the use of the farm airstrip by reference to rule 21.5.26.

40. Nor is the operation of a significant skydiving business now operating with 2 large fixed wing aircraft capable of achieving the permitted maximum of 35 flights (each flight is a landing and takeoff activity), and the landing of the skydivers by parachute. All commercial skydiving is done in tandem, with the aircraft capacity being 9 tandem skydivers. From personal experience, the operations can commence as early as 8 AM and in the summer, which provides the best weather and longest flying hours, can continue until 8:30 PM. The highest frequency of Skydive aircraft operations over the longest period daily occurs during summer fine weather, when the outdoor residential amenity is also most appreciated. This conflict between the aircraft operations and residential amenity is referred to in the Environment Court decision, and is the reason why a suggested requirement for acoustic protection of internal residential rooms, the approach that is now commonly taken to deal with the adverse effects of airport operations, is not appropriate as a response.
41. This is not just a matter of the noise created by the aircraft activity. It is also a question of safe aircraft operations, and safe landings by the skydivers. There is a designated landing zone, but wind conditions or problems in achieving a landing on the designated area right by the operations building could mean resort to what is presently open farmland.
42. The airstrip was developed and traditionally used for intermittent aerial top dressing, carried out in suitable weather conditions. I have observed top dressing aircraft using the strip, taking off with a full load and inevitably making a turn directly after takeoff to the south over the land proposed to be developed for residential and towards Homestead Bay. As the Court decision refers to, the usual approach by the Skydive aircraft for landing

is from the south over Homestead Bay, making a low level right hand turn onto the runway.<sup>20</sup> The airstrip runs has a East-West alignment and is grassed. Take-off and landing is one-way only and always to the west. Because of the current alignment and skydive aircraft operation practices, the flight path involves a climb westward over the rising ground of the golf course until clear of the tableland and the aircraft is over Lake Wakatipu.<sup>21</sup> There are no opportunities for an emergency landing on this flight path if there are engine or other difficulties; a re-aligned runway to the south-west and extending east closer to the highway, as suggested during the hearing would provide safer takeoff and landings but was resisted by Jardine and Skydive during the hearing and is not an option if the requested residential development of the Remarkables Station farm were to proceed.

43. None of this has been addressed in the evidence in support of submission 715. No evidence addressing continued operation of the top dressing strip and the Skydive operation has been presented by Jardine.
44. I have provided copies of the JP evidence given to the Environment Court during the hearing by aircraft safety and noise experts.
45. Dr Trevathen carried out noise readings of the Supervan aircraft that are now exclusively used by Skydive for its commercial operations, and were by the time of the hearing. While they create less noise in the air than the aircraft earlier used previously, they are significantly noisier on the ground, and their particular engine type requires the engine to remain running during the day's operations as explained in the evidence of Mr Fogden. In addition, the engine used creates an idling noise effect which extends in a "cone" from the front of the engine. After the noise readings had been produced by Dr Trevathen, the Skydive noise expert suggested this could be mitigated while the aircraft were on the ground with engines idling by rotating the aircraft towards the south and therefore away from the Jack's Point residential areas nearest to the airstrip.<sup>22</sup> This would direct the highest noise effect directly towards the proposed Jardine

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<sup>20</sup> Decision, paragraph [33]

<sup>21</sup> Decision, paragraph [31]

<sup>22</sup> Decision paragraphs [49], [50], [paragraph 90]

residential areas.

46. The evidence in relation to noise effects from the Council witness Mr Chiles assumes use of a 55dBLdn sound level contour around the Jack's Point airstrip. In my submission, this approach is wrong. First, because a sound level noise contour to control aircraft noise is not an approach used in the PDP for Informal Airports, and nor was this approach to dealing with the adverse effects of noise relating to the Skydive operation utilising the Jardine airstrip approved or accepted as addressing the adverse effects of even the existing Skydive operation by reference to the Environment Court decision. While the Court recorded that the acoustic experts had agreed that 55dB Ldn was an appropriate criterion for aircraft noise from this skydiving operation to control noise effects on residential and visitor accommodation activities<sup>23</sup> this agreement was reached on the basis of a number of factors itemised in the following paragraph [112] which includes use wherever practicable of a flight track to the south and achieving reduced aircraft idling noise by noise mitigation. Also, the Court expressed a number of misgivings about the use of this 55 number or noise criterion on its own in particular because it was reliant on averaging<sup>24</sup> and because of evidence the Court preferred from Dr Trevathan relating to averaging and the frequency and type of aircraft activities.
47. Consideration of whether accepting the Jardine submission seeking District plan changes to enable considerable residential development close to the southern side of this airstrip and the consented Skydive operation is appropriate requires an understanding of the effects of the current Skydive operation which have simply not been dealt with by either Jardine or Council witnesses. By way of summary, I refer you to paragraphs [167] and [174]. Mr Chiles evidence should also have made it clear that the 55dBA Ldn number should be regarded as a *maximum*, meaning not to be exceeded.
48. Also, while faced with agreement among the experts on that maximum noise level (with all its difficulties in assessment and application), the

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<sup>23</sup> Decision, [111]

<sup>24</sup> Decision [115]

Court expressed the view that “given the nature of the operation, that is generous to Skydive especially since the experts were not unanimous about the appropriate averaging period for noise”.

49. This is relevant in relation to the provisions for assessment of noise in relation to aircraft operations in the PDP. Referring to Chapter 36, 36.3.2.6 states that notwithstanding compliance with 36.5.14 (Fixed Wing Aircraft) in Table 3, informal airports shall be subject to the rules in the applicable zones.
50. Rule 36.5.1 specifies at any point within the notional boundary of a residential unit in a Rural Zone A 50dB LAeq (15min) 0800h to 2000h. Rule 36.5.3 specifies the same maximum noise level at any point within the Residential Activity Areas in the Jack’s Point Resort zone.
51. Rule 36.5.14 Fixed Wing Aircraft specifies 55dBLdn at all times at any point within the notional boundary of any residential unit with the sound from airport/landing strips being measured and assessed in accordance with NZS 6805:1992 Airport Noise Management and Land Use Planning. This appears to be the approach adopted by DrChiles, contrary to rule 36.3.2.6. Additionally, and as was pointed out by the Environment Court, the difficulty with using this approach is that it assumes the application of the airport noise management procedure in the Standard which involves the identification and designation of a noise contour or contours, which has not been proposed for this farm airstrip in the PDP nor through a submission to the PDP.
52. As acknowledged by residents who gave evidence at the Environment Court hearing, and in legal submissions on behalf of JPROA, the Skydive operation using this farm airstrip is entitled to rely upon the 1997 resource consent, properly interpreted and applied. As things currently stand, as the maximum noise level the basis of the noise assessment done by DrTrevathan, the operation cannot presently comply with the requisite noise standards and will not under the PDP once operative.<sup>25</sup> As the

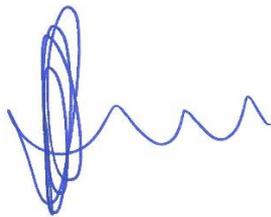
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<sup>25</sup> The existing consent does not include a specific noise standard (as the application by Skydive sought to introduce), so must comply with the noise controls in the ODP. The Environment Court decision discusses the noise standards that were applicable under the ODP.

Court made clear, the minimum standard of 55dBALdn was inadequate for reasons given in the decision.<sup>26</sup> Further, the Court made it clear that in the operation of aircraft from this airstrip compliance was required as a matter of law not just with the 1997 consent but also with s 16 of the RMA.<sup>27</sup>

53. There is no evidence in support of the Jardine submission by the property owner or another party able to speak on its behalf to indicate that the use of the airstrip for aerial top dressing or by Skydive would be discontinued if the submission was accepted and residential development as requested provided for. Neither the Jardine evidence nor legal submissions provide any information about the current lease obligation with Skydive, but the Council reports and evidence indicates that a lease obligation with Skydive extends to 2031. That is a further and important reason why making provision for land use activities which are incompatible with the continued operation of a farm airstrip and a commercial skydiving operation is inappropriate in this District Plan review, and submission 715 ought to be rejected.

Dated this 15<sup>th</sup> day of August 2017

A handwritten signature in blue ink, consisting of a series of loops and a wavy line extending to the right.

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**Richard Brabant**

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<sup>26</sup> at [189]

<sup>27</sup> at [89], [90]