

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

IN THE MATTER of the Resource
Management Act 1991

AND

IN THE MATTER of Hearing Stream 13 –
Queenstown Mapping
Annotations and
Rezoning Requests

**MEMORANDUM OF COUNSEL ON BEHALF OF THE QUEENSTOWN LAKES
DISTRICT COUNCIL RELATING TO PANEL'S MINUTE OF 12 MAY 2017 AND
UPDATED COUNCIL RECOMMENDATION IN RELATION TO AIR NOISE
BOUNDARY**

6 June 2017

 **Simpson Grierson**
Barristers & Solicitors

S J Scott
Telephone: +64-3-968 4018
Facsimile: +64-3-379 5023
Email: sarah.scott@simpsongrierson.com
PO Box 874
SOLICITORS
CHRISTCHURCH 8140

MAY IT PLEASE THE PANEL

1. This memorandum is filed on behalf of Queenstown Lakes District Council (**Council**) and relates to paragraphs 13 and 14 of the Panel's Minute dated 12 May 2017.¹ In those paragraphs, the Chair of the Panel sets out his understanding of future withdrawals from the PDP and what that means for the purposes of the Panel's recommendations. This includes a statement that "*the Air Noise and Outer Control Boundary lines shown on the QAC submission, where they are located within the area zoned Remarkables Park Zone in the Operative District Plan, are not relevant to our consideration and we have no jurisdiction to consider the location of those lines within that area*".
2. This memorandum sets out the Council's position, and is filed to ensure those affected parties are aware of the approach that the Council intends to take into the Queenstown Hearing Stream, and that it will be advancing in legal submissions, if necessary.
3. In addition, this memorandum addresses an incorrect legal assumption identified in Ms Kimberley Banks' Strategic Evidence in Section 26 relating to Plan Change 35 and the Air Noise Boundary (**ANB**), and as a consequence a Supplementary Strategic Statement, on behalf of Ms Kimberley Banks, is provided with this memorandum.
4. The Council seeks leave to file this Supplementary Strategic Statement out of time. Council submits that it is prudent to bring this revised recommendation to the attention of affected submitters as soon as possible, and that it is more appropriate to file this now rather than waiting until rebuttal evidence, when submitters will not have an opportunity to respond through written evidence.

Summary

5. It is respectfully submitted that the Panel has jurisdiction to consider planning map annotations submissions that relate to any Outstanding Natural Landscape (**ONL**), Outstanding Natural Feature (**ONF**), Urban Growth Boundary (**UGB**), Air Noise Boundary (**ANB**) or Outer Control Boundary (**ONB**) lines that are located over 'Volume B' district plan land.

¹ <http://www.qldc.govt.nz/assets/Uploads/Planning/District-Plan/Hearings-Page/Memorandums/Stream-13/General-M13-RPL-and-QPL-Enquiries-12-5-17.pdf>

Explanation

6. A memorandum of counsel filed on 23 November 2016 confirmed the Council's position that PDP chapters 1, 3, 4, 5 and 6 will apply across both Volumes A and B of the district plan. This means that the Council considers that those 'strategic chapters' will apply to the Remarkables Park Zone (located in Volume B).
7. On 25 May 2017, Council approved the withdrawal of a number of specific district-wide chapters of the PDP² from the geographic areas that will be located within Volume B of the district plan.³ Paragraph 6 of the report to Council (attached in **Appendix 1**) reaffirms that Chapters 1 and 3-6 of the PDP are not being withdrawn from the Volume B land, and that the withdrawal does not remove the ONL, ONF, UGB, ANB or ONB annotations from the PDP planning maps.
8. The ONL, ONF, UGB, ANB and ONB lines were all notified on the planning maps, in Stage 1. They were notified 'district wide' (including across Volume B land), and the policy genesis for all of these annotations is within the 'strategic chapters' of the district plan, which continue to apply district wide.
9. The genesis of the ONL and UGB annotations on the planning maps is the Strategic framework, through Policy 3.2.5.1.1 and Policy 3.2.2.1.1, and Objective 4.2.2 (and associated policies) in particular.
10. The genesis of the ANB/OCB lines on the planning maps is Objective 4.2.5 and policies underneath.
11. The Panel's Minute is understood to be based on Council's November 2016 memorandum of counsel, where the Panel was advised that the Council had resolved not to notify six ODP zone chapters through this district plan review process (one of these six zones being the Remarkables Park Zone). This resolution relates to the zone chapter. Our memorandum of counsel dated 23 November 2016, at paragraph 12 and 13, confirms that a further withdrawal,

2 26 Historic Heritage, 27 Subdivision and Development, 28 Natural Hazards, 30 Energy and Utilities, 32 Protected Trees, 33 Indigenous Vegetation and Biodiversity, 34 Wilding Exotic Trees, 35 Temporary Activities and Relocated Buildings, and 36 Noise.

3 The land covered by PC19 Frankton Flats B Zone, PC34 Remarkables Park Zone, PC41 Shotover Country Estate, PC45 Northlake Special Zone, PC46 Ballantyne Road Industrial and Residential extension, PC50 Queenstown Town Centre, PC51 Peninsula Bay North and PC52 Mount Cardrona Station.

under clause 8D of the First Schedule, will be required for all Stage 1 provisions (except for those in PDP Chapters 1, and 3-6) as far as they apply to excluded ODP land.

12. In the circumstances therefore, it is respectfully submitted that an assumption that the geographic area of land covered by Remarkables Park Zone in its entirety will be withdrawn from the PDP, would be incorrect. In particular, because it is part of the strategic chapters of the PDP, it is respectfully submitted that the Panel does have jurisdiction to consider the Air Noise and Outer Control Boundary lines shown on the QAC submission, where they are located within the area zoned Remarkables Park Zone in the ODP.

13. In relation to the Panel's Minute, Council's position is that:

13.1 **Air Noise Boundary and Outer Control Boundary:** any submission that relates to the location of the ANB and OCB, where located within the Remarkables Park Zone in the ODP (or any other Volume B land), is relevant to the Panel's consideration, the Panel has jurisdiction to consider it, and the Council has filed evidence and recommendations on these submission points.

13.2 **Outstanding Natural Landscape line:** any submission that relates to the location of the ONL line, where located within the Remarkables Park Zone in the ODP (or any other Volume B land), is relevant to the Panel's consideration, the Panel has jurisdiction to consider it, and the Council has filed evidence and recommendations on these submission points; and

13.3 **Designation over Remarkables Park Zone:** any submission that relates to the location of any designation over the Remarkables Park Zone in the ODP (or any other Volume B land), is relevant to the Panel's consideration, the Panel has jurisdiction to consider it, and the Council as territorial authority has filed evidence and recommendations on these submission points. All designations in the District that have been rolled over under clause 4 of the First Schedule of the RMA, have been considered in the Designations Hearing Stream. There will only be one 'designations chapter' in the district plan, and therefore any designation that relates to Volume B

land, is within the jurisdiction of this hearings panel (jurisdiction depends on whether the designation has been submitted on, and/or rolled over with modification).

ANB and Lot 6

14. After filing the Council's Evidence in Chief and associated section 42A reports, it has come to counsel's attention that a recommendation made by Ms Kimberley Banks in her Strategic Evidence, was made on a misunderstanding of PC35 and Designation 2, and the manner in which they change either the ODP or PDP, once operative and/ or beyond appeal.

15. Ms Banks' recommendation on QAC's submission relating to the location of the ANB within the Remarkables Park Zone, and QPL's further submission, failed to take into account that PC35, which includes the ANB and OCB, will only amend the ODP once operative, and will not of itself change the PDP. Ms Banks has therefore reflected on and amended her recommendation. Rather than waiting until rebuttal evidence to advise interested submitters, it is submitted to be appropriate to provide this revised recommendation to submitters now.

DATED this 6th day of June 2017



S J Scott
Counsel for Queenstown Lakes District
Council

Appendix 1

QLDC Council 25 May 2017

**QLDC Council
25 May 2017****Report for Agenda Item: 2****Department: Planning & Development****Withdrawal of land subject to recent plan changes to the Operative District Plan from part of the Proposed District Plan****Purpose**

- 1 The purpose of this report is to:

Formally withdraw in accordance with Clause 8D of Schedule 1 of the RMA specific district-wide chapters of the Proposed District Plan as they apply to the geographic areas of land covered by the following plan changes to the Operative District Plan:

- a. Operative District Plan, Plan Change 19: Frankton Flats B Zone.
- b. Operative District Plan, Plan Change 34: Remarkables Park Zone.
- c. Operative District Plan, Plan Change 41: Shotover Country Estate
- d. Plan Change 45: Northlake Special Zone.
- e. Plan Change 46: Ballantyne Road Industrial and Residential extension.
- f. Plan Change 50: Queenstown Town Centre Extension.
- g. Plan Change 51: Peninsula Bay North.
- h. Operative District Plan, Plan Change 52: Mount Cardrona Station.

Executive Summary

- 2 A number of areas of land have been excluded from the review of the Proposed District Plan (the PDP) and partly to avoid any doubt about their exclusion, Council have made several resolutions to “withdraw” specific areas of land from Volume A of the PDP. These previous decisions did not address the fact that district wide chapters of the PDP would continue to apply to these areas. This could lead to confusion about how the PDP is to be applied when decisions on it are released. This report seeks to address this by seeking a decision to remove certain district wide chapters of the PDP from applying to the areas of land that have been the subject of these recent plan changes.
- 3 Plan Changes for Frankton Flats B, Remarkables Park Zone and Shotover Country have recently been through an RMA process to modify the Operative District Plan. This land has not been notified in Stage 1 of the review, and the Mount Cardrona Station private plan change has been accepted for processing and submissions and further submissions have been received. Although the land areas are shown on the Proposed District Plan Planning Maps for information

purposes only, submissions have been made on this land relating to the underlying zoning and a hearing of submissions and evidence on the mapping and annotations for the Queenstown ward is about to begin.

- 4 The Operative District Plan (ODP) zone provisions, including the ODP district wide chapters, should continue to apply to these land areas. To remove any uncertainty as to the status of this land and what specific rules apply, it is recommended that specific district wide chapters 26, 27, 28, 30, 32-36 be withdrawn from the Proposed District Plan, in so far as they apply to these land areas excluded from the PDP review. As a result the district wide rules (except for the high level strategic chapters 1, 3-6 of the PDP) and zoning provisions are all to be located within Volume B (Operative District Plan).
- 5 Legal advice obtained by the Council recommends that previous decisions to “exclude” areas from the Proposed District Plan review (except for chapters 1, 3-6) may not suffice and that the Council should record a decision under the relevant legislation to formally “withdraw” specific Stage 1 district wide chapters, as they apply to the land being excluded from the PDP review, these being:
 - Chapter 26 Historic Heritage
 - 27 Subdivision and Development
 - 28 Natural Hazards
 - 30 Energy and Utilities
 - 32 Protected Trees
 - 33 Indigenous Vegetation and Biodiversity
 - 34 Wilding Exotic Trees
 - 35 Temporary Activities and Relocated Buildings
 - 36 Noise.
- 6 This withdrawal does not remove the Outstanding Natural Landscapes and Features (ONL’s and ONF’s), Urban Growth Boundaries (UGB’s) or the Air Noise and Outer Noise Boundaries (ANB’s and ONB’s). Chapters 1, 3, 4, 5 and 6 of the PDP are not being withdrawn from the geographic areas covered by Plan Changes 19, 34 41, 45, 46, 50, 51, and 52 to the Operative District Plan. Those chapters of the PDP continue to apply District-wide and to both Volumes of the district plan.

7 Recommendations

That Council:

1. **Note** the contents of this report:
2. **Approve** pursuant to Clause 8 (D) of Schedule 1 of the Resource Management Act 1991 (RMA) the withdrawal of the following specific district-wide chapters of the Proposed District Plan from the geographic areas of land identified in recommendation 3 below:
 - a. 26 Historic Heritage
 - b. 27 Subdivision and Development

- c. 28 Natural Hazards
 - d. 30 Energy and Utilities
 - e. 32 Protected Trees
 - f. 33 Indigenous Vegetation and Biodiversity
 - g. 34 Wilding Exotic Trees
 - h. 35 Temporary Activities and Relocated Buildings
 - i. 36 Noise.
3. **Approve** the withdrawal from areas of land covered by the following plan changes to the Operative District Plan:
- a. Operative District Plan, Plan Change 19: Frankton Flats B Zone.
 - b. Operative District Plan, Plan Change 34: Remarkables Park Zone.
 - c. Operative District Plan, Plan Change 41: Shotover Country Estate
 - d. Plan Change 45: Northlake Special Zone.
 - e. Plan Change 46: Ballantyne Road Industrial and Residential extension.
 - f. Plan Change 50: Queenstown Town Centre Extension.
 - g. Plan Change 51: Peninsula Bay North.
 - h. Operative District Plan, Plan Change 52: Mount Cardrona Station.

Prepared by:



Ian Bayliss
Planning Policy Manager

17/05/2017

Reviewed and Authorised by:



Tony Avery
General Manager Planning
and Development

18/05/2017

Background

- 8 At its 29 September 2016 meeting the Council resolved to separate the District Plan into two volumes by way of geographic area, and to exclude the following geographic areas from the planning maps of Volume A of the District Plan (Proposed District Plan Stage 1):
 - a. Plan Change 19: Frankton Flats B Zone.
 - b. Plan Change 34: Remarkables Park Zone.
 - c. Plan Change 45: Northlake Special Zone.
 - d. Plan Change 46: Ballantyne Road Industrial and Residential extension.
 - e. Plan Change 50: Queenstown Town Centre Extension.
 - f. Plan Change 51: Peninsula Bay North.
- 9 Plan Change 19 Frankton Flats B is a relatively recently settled plan change and Remarkables Park was excluded because there is an agreement with the landowner of Remarkables Park that the zone text would not be reviewed for 10 years from 2014. Plan Change 34 Remarkables Park Zone was made operative in 2012 and was excluded because there is an agreement with the landowner of Remarkables Park that the zone would not be reviewed for 5 years from 2012. Plan Change 41 Shotover Country Estate has been made operative and is substantially developed.
- 10 Plan Changes 45, 46 and 50 were excluded because they had recently been approved as plan changes to the Operative District Plan (ODP). With the exception of Plan Change 46, all of these plan changes were appealed to the Environment Court.
- 11 Plan Change 50 was formally withdrawn following a resolution of Council at the 29 October 2015 Council meeting.
- 12 In December 2016, the Council accepted the commissioner's recommendation to decline private plan change 51: Peninsula Bay North. The decision has been appealed by the applicants, Peninsula Bay Joint Venture Limited.

Issues with Developing Two Plans

- 13 Making changes to the ODP after notification of the PDP creates complexities in terms of the relationship between these two documents and the rules and policies (including district-wide rules) that affect land that has been subject to a plan change. The normal process of developing a district plan is that a proposed plan will wholly eclipse the operative plan when it is made operative. Ideally, there would be no changes made to the ODP once the PDP is notified because the aim of the PDP is to replace the ODP and this is frustrated when changes are made to the ODP during this process, which their proponents will naturally want to 'keep in play'.

- 14 To integrate new components of the ODP into the PDP, it is possible to notify these components as part of the notification of a future stage of the PDP review, however this is not recommended in most instances because it would 'reopen' the substance of these plan changes for submissions and appeals.
- 15 An important point to note is that the strategic provisions of the PDP (chapters 1-6 including the strategic direction, urban development, Queenstown Airport and landscape provisions) will continue to apply. All other district wide chapters that could apply to these areas are subject to the recommended withdrawal.

Submissions On Areas Excluded from the PDP

- 16 The land affected by Plan Changes 19 (Frankton Flats), 34 (Remarkables Park) and 52 (Mt Cardrona Station) are located within the Queenstown Wakatipu Ward - refer to Appendix A, which includes a copy of the applicable planning maps. To provide certainty leading into the Proposed District Plan hearings on rezoning and Mapping Annotations in the Queenstown Mapping Stream, commencing in July 2017, a formal resolution is sought to withdraw this land and zones from Volume A: Proposed District Plan, withdraw specific district wide chapters from applying to these areas, and to thereby remove any doubt as to whether this land is part of the hearings on rezoning and mapping.
- 17 Withdrawing the land from the PDP will also be consistent with legal advice the Council has received that recommends this should be undertaken. A key reason for this is that submissions have been made to rezone these areas even though the Proposed District Plan Planning Maps for these areas show these areas as operative or subject to a plan change and not part of Stage 1 of the Proposed District Plan. It is considered best practice to withdraw this land so there is no opportunity for the Hearings Panel to consider these zones, or for submitters to make a case that the zoning could be something different to that recently established through the respective plan changes.
- 18 Legal advice obtained by the Council recommends that previous decisions to "exclude" these areas from the Proposed District Plan review may not suffice. To avoid any doubt, they recommend Council make a decision to formally "withdraw" the respective district-wide chapters, as they apply to the land in accordance with Clause 8 (D) of Schedule 1 of the RMA, these chapters being:
- 26 Historic Heritage
 - 27 Subdivision and Development
 - 28 Natural Hazards
 - 30 Energy and Utilities
 - 32 Protected Trees
 - 33 Indigenous Vegetation and Biodiversity
 - 34 Wilding Exotic Trees
 - 35 Temporary Activities and Relocated Buildings
 - 36 Noise.
- 19 It should be noted that there are some area specific rules located within the above chapters that apply to excluded 'Volume B' land which have not been withdrawn from these chapters. They will continue to exist, but following this

withdrawal they will have no effect on these excluded plan change areas. This withdrawal does not remove the Designations or the Outstanding Natural Landscapes and Features (ONL's and ONF's) Urban Growth Boundaries (UGB's) or the Air Noise and Outer Noise Boundaries (ANB's and ONB's). Chapters 1, 3, 4, 5 and 6 of the PDP are not being withdrawn from the geographic areas covered by Plan Changes 19, 34, 45, 46, 50, 51 and 52 to the Operative District Plan. Those chapters of the PDP continue to apply district wide and to both volumes of the district plan.

Significance and Engagement

- 20 This matter is of high significance as determined by reference to the Council's Significance and Engagement Policy because the matter relates to the confirmation of a substantial area of land affected by zoning and planning rules. Both the ODP and PDP are significant statutory documents in terms of the social, economic and environmental wellbeing of the District.

Risk

- 21 This matter relates to the strategic risk SR1 'Current and future development needs of the community (including environmental protection)' as documented in the Council's risk register. The risk is classed as high. This matter relates to this risk because it is considered to be of significant importance in terms of the managed growth and regulation of development for the district.
- 22 The recommended options considered above mitigate the risk by: 'treating the risk - putting measures in place which directly impact the risk.'
- 23 Council resolving to withdraw specified district-wide chapters as they apply to specific geographic land areas from the Stage 1 Proposed District Plan and removing the ability for the land to be reconsidered and re-litigated at this time addresses the risk by providing certainty of the relationship of the PDP with land that is subject to a recently completed, or in-train plan change.

Financial Implications

- 24 The recommended option provides certainty and will assist with increasing the efficiency of the PDP process, which has already been budgeted for. More certainty moving forward will reduce the potential for matters of scope arising. There are no direct financial implications.

Council Policies, Strategies and Bylaws

- 25 There are no Council policies, strategies or bylaws relating to this matter because it is primarily associated with process.
- 26 This matter is included in the 10-Year Plan/Annual Plan as part of the District Plan commitment.

Local Government Act 2002 Purpose Provisions

- 27 The recommended option:

- Will help meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses;
- Can be implemented through current funding under the 10-Year Plan and Annual Plan;
- Is consistent with the Council's plans and policies; and
- Would not alter significantly the intended level of service provision for any significant activity undertaken by or on behalf of the Council, or transfer the ownership or control of a strategic asset to or from the Council.

Consultation: Community Views and Preferences

28 The persons who are affected by or interested in this matter are parties who have submitted on the Proposed District Plan or a Plan Change.

Legal Considerations and Statutory Responsibilities

29 Section 79 of the Resource Management Act states that it is not necessary to review district plan provisions that have been the subject of a plan change process within the last 10 years. Development of the PDP has occurred in accordance with the requirements of the RMA. Particular clauses of relevance include Sections 5-11, 31 -32 and Schedule 1. The recommendations accord with the provisions of the RMA. In particular Clause 8 (d) of Schedule 1 of the RMA that allows a district plan to be prepared in territorial sections.

Attachments

Appendix A: Planning maps of the Frankton Flats, Remarkables Park, Shotover Country Estate and Mt Cardrona Area illustrating the Plan Change 19: Frankton Falts, Plan Change 34: Remarkables Park Zone, Plan Change 41: Shotover Country Estate and Plan Change 52: Mt Cardrona Station land areas.

Appendix A Figure 1:

Plan Change 19 Frankton Flats and Plan Change 34: Remarkables Park area.

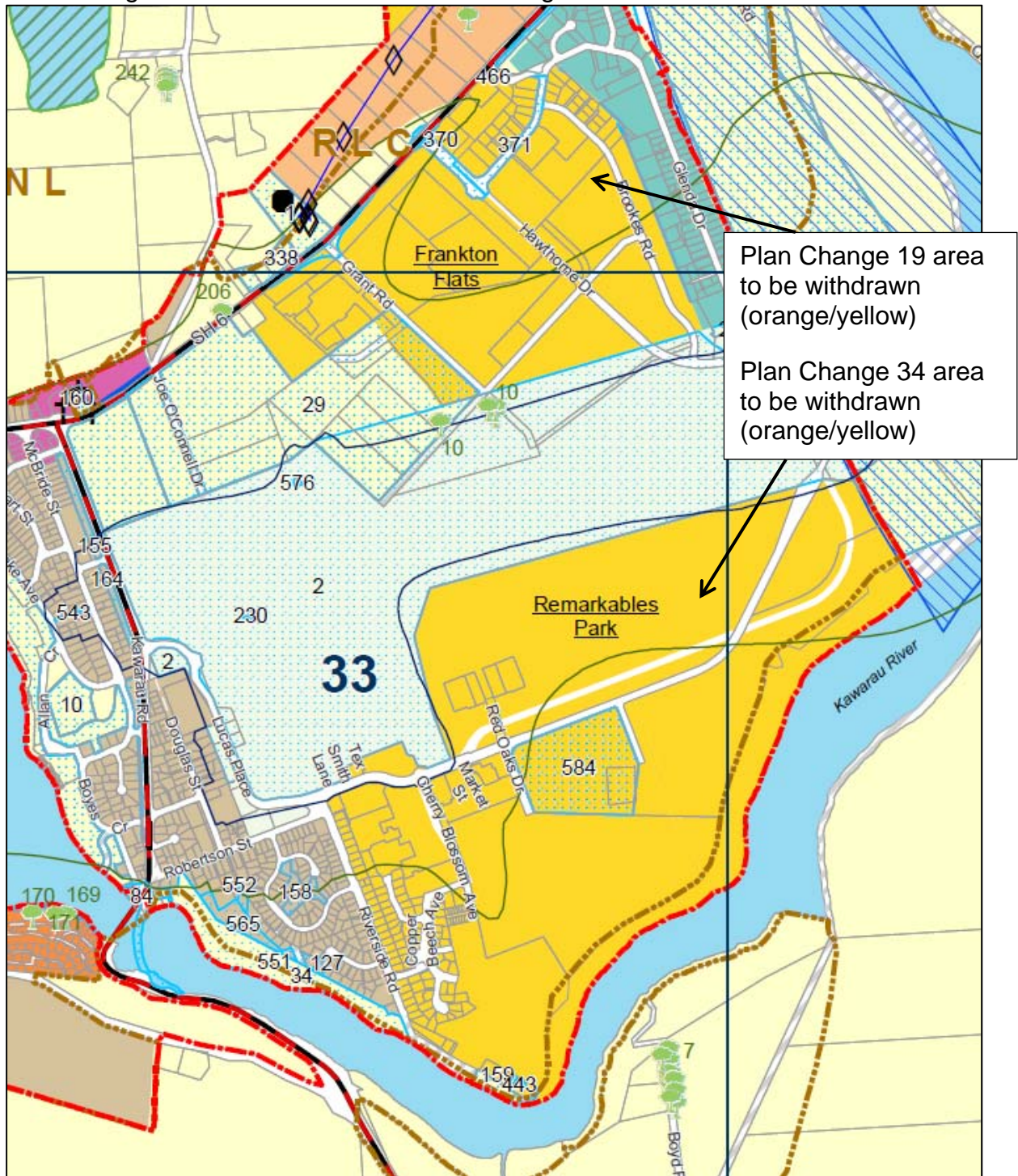


Figure 1. The yellow/orange areas above are the Plan Change 19 and 34 Area ,the light blue dotted areas denote designations. The red dotted Urban Growth Boundary and the brown dotted Outstanding Natural Landscape lines will continue to apply. It is the yellow/orange area that is recommended to be withdrawn.

Appendix A Figure 2:

Plan Change 41: Shotover Country Estate



Figure 2. The yellow/orange areas within the red dotted UGB line above are the Plan Change 41 Area, the blue diagonal hatched denotes a Building Restriction Area, the light blue dotted areas denote designations. The red dotted UGB and the brown dotted Outstanding Natural Landscapes lines are to be retained. It is the yellow/orange area within the UGB that is recommended to be withdrawn.

Appendix A Figure 3:
Plan Change 52 Mt Cardrona Station area.

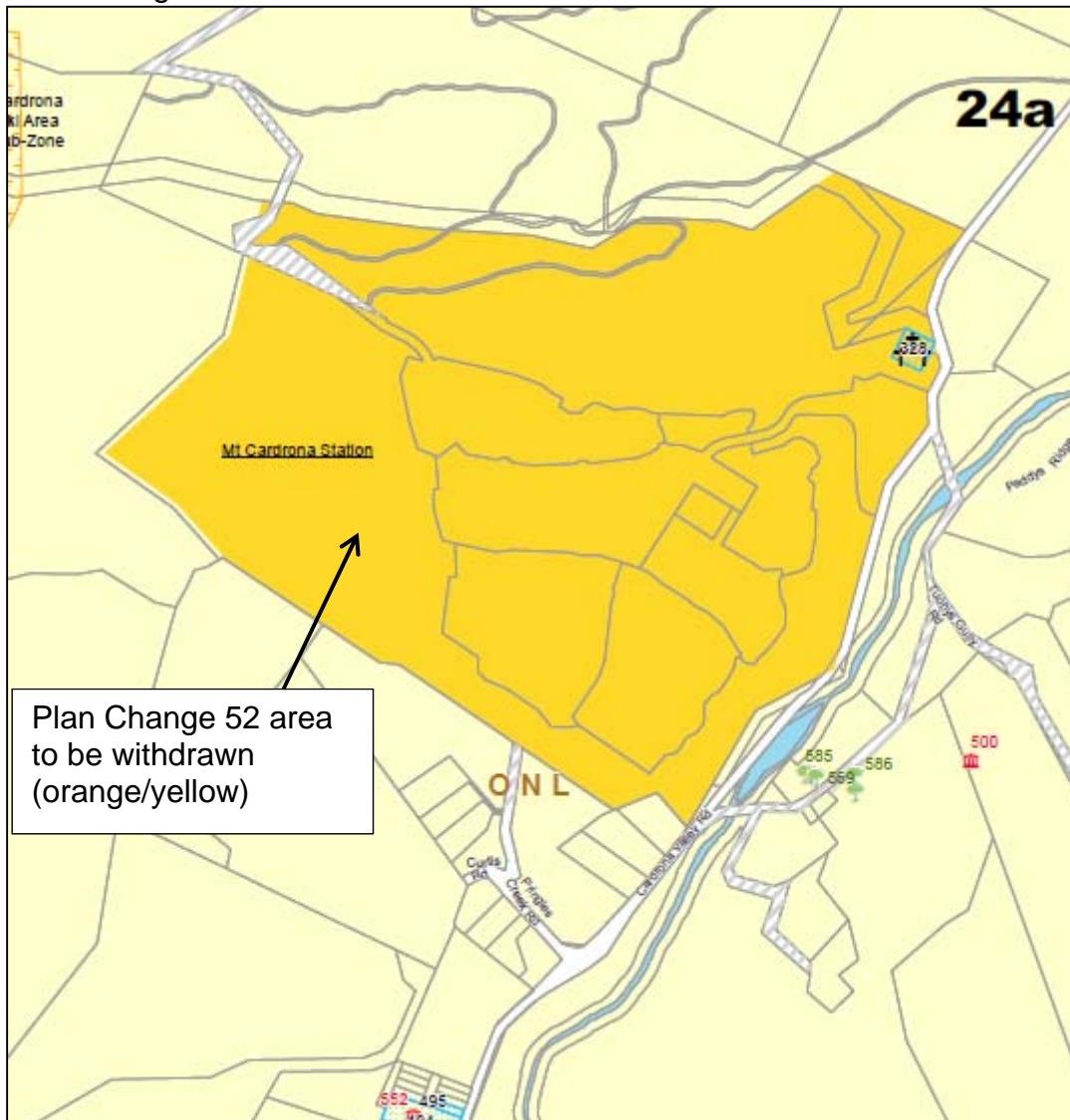


Figure 3. The yellow/orange areas above are the Plan Change 52 Area

Appendix A Figure 4:

Plan Change 45: Northlake Special Zone and 46 Ballantine Road Industrial and Residential Extension

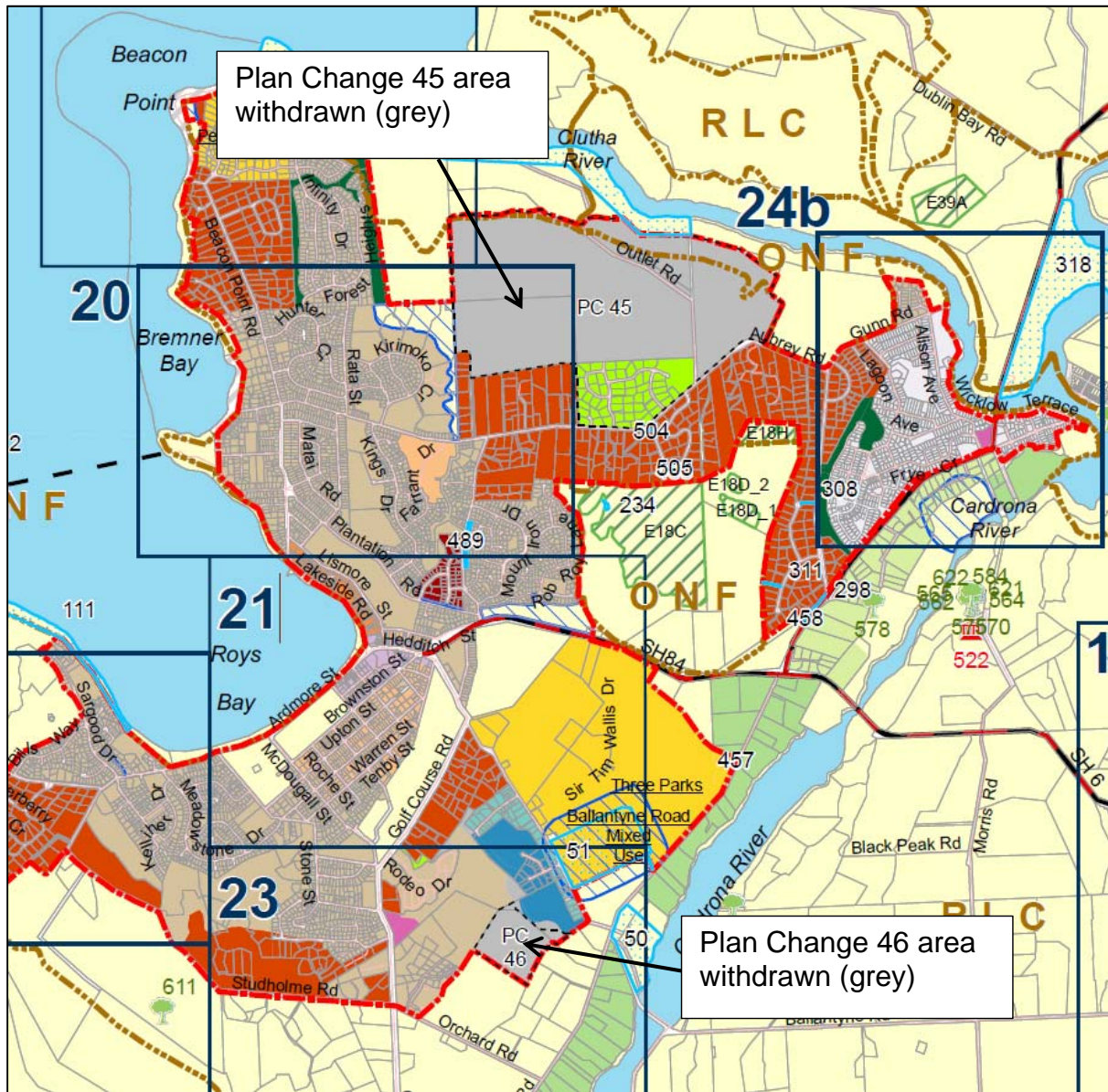


Figure 4. The grey areas above are the Plan Change 45 and 46 Areas

Appendix A Figure 5:
Plan Change 50 Queenstown Town Centre Extension.

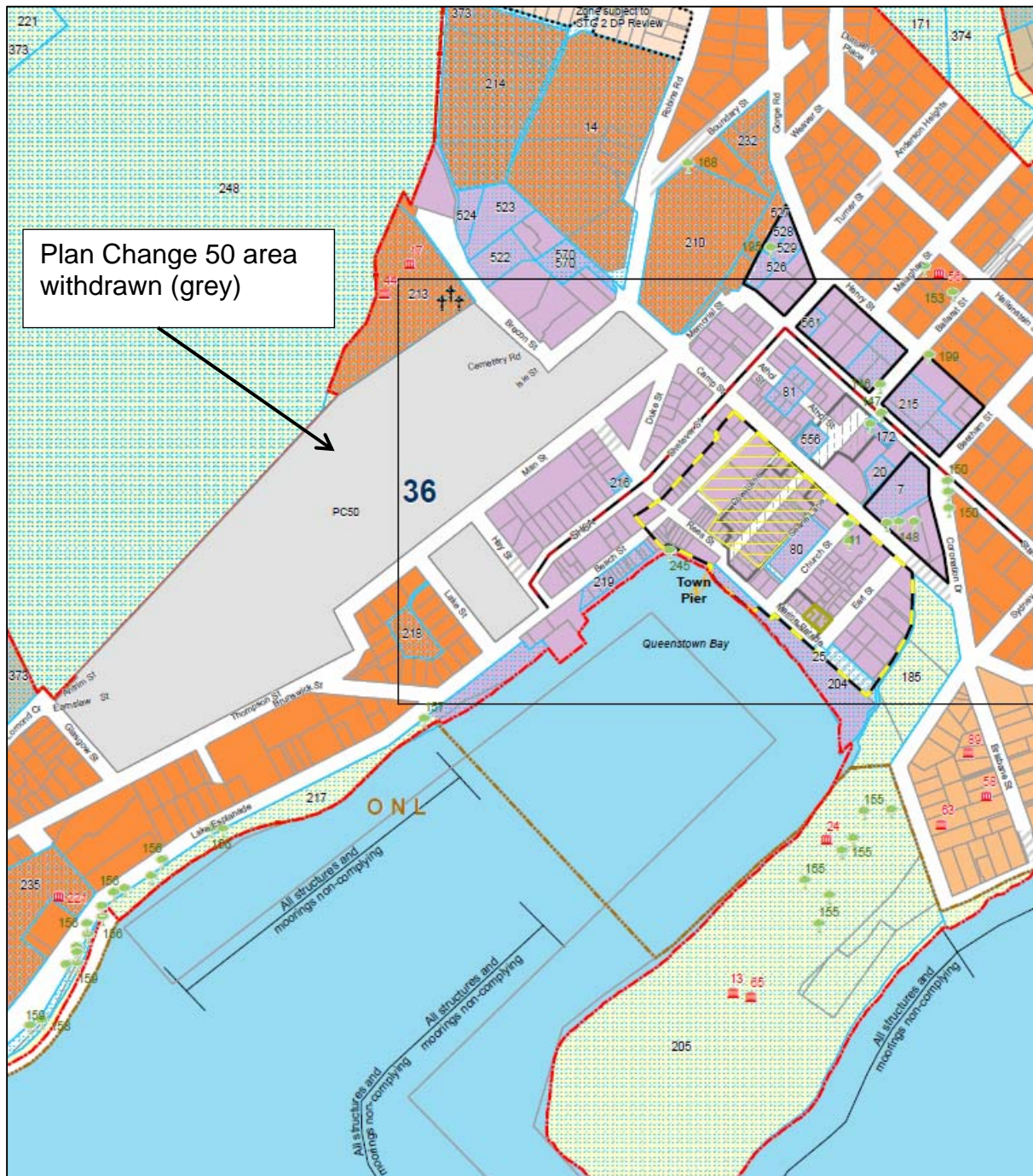


Figure 5. The grey areas above are the Plan Change 50 Area. The light blue dotted areas denote designations. The red dotted Urban Growth Boundary and the brown dotted Outstanding Natural Landscape lines will continue to apply.

Appendix A Figure 6:
Plan Change 51 Peninsula Bay North.

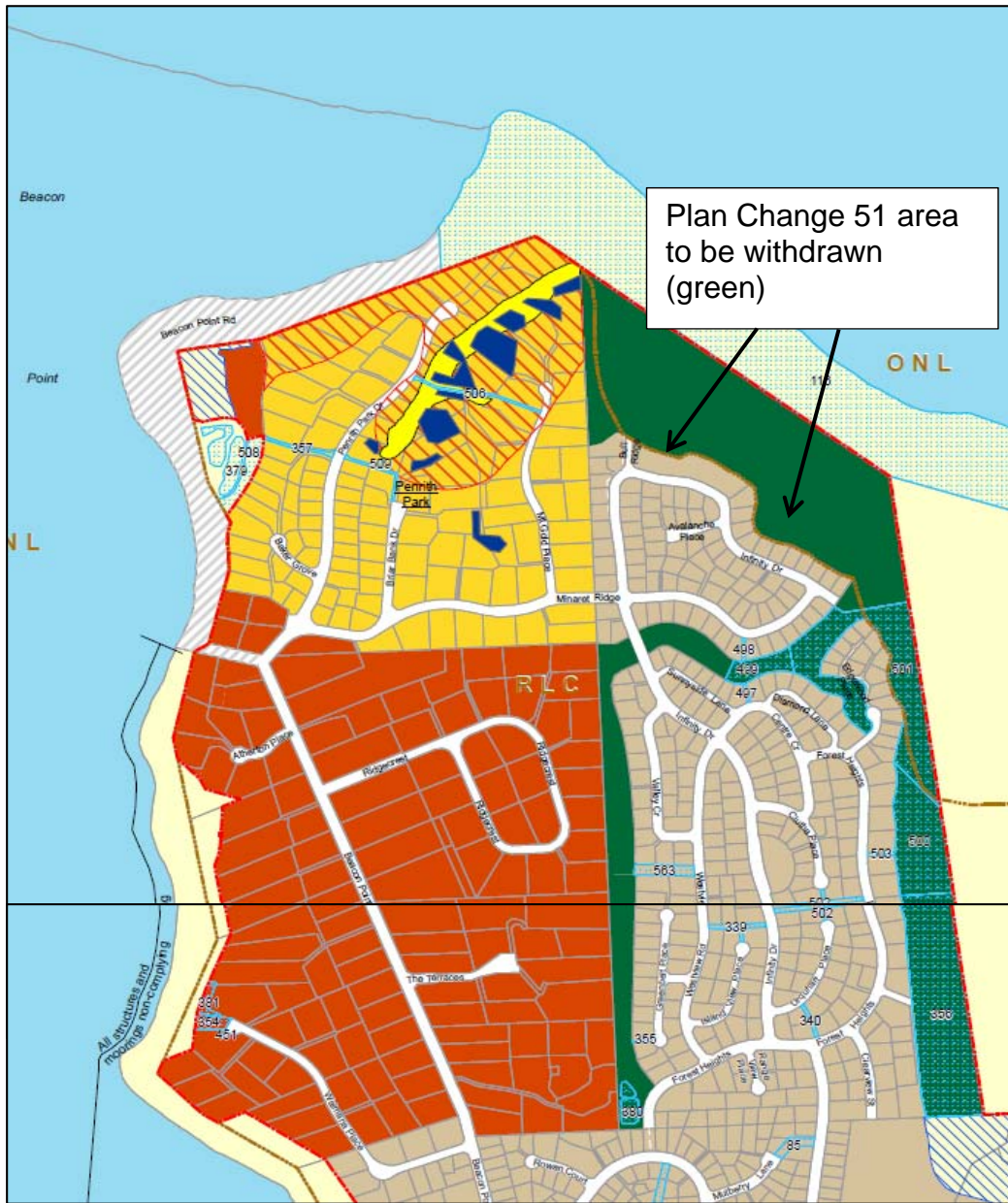


Figure 6. The green areas above contain the Plan Change 51 Area. The Green area is the Open Space Zone: Landscape Protection. The yellow/grey area is the Low Density Residential Zone of Peninsula Bay.