

**BEFORE THE ENVIRONMENT COURT  
AT CHRISTCHURCH**

**ENV-2018-CHC-102**

**I MUA I TE KOOTI TAIAO  
I ŌTAUTAHI ROHE**

**UNDER** the Resource Management Act 1991  
(the Act)

**AND**

**IN THE MATTER** of appeals under clause 14 of Schedule 1  
of the Act against decisions of the  
Queenstown Lakes District Council on  
Stage 1 of the Proposed Queenstown  
Lakes District Plan

**BETWEEN** **RCL QUEENSTOWN PTY LTD, RCL HENLEY  
DOWNS LTD & RCL JACKS POINT LTD**

Appellants

**AND** **QUEENSTOWN LAKES DISTRICT COUNCIL**

Respondent

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**MEMORANDUM OF COUNSEL ON BEHALF OF APPELLANTS SEEKING  
LEAVE TO AMEND RELIEF SOUGHT IN NOTICE OF APPEAL**

**25 OCTOBER 2018**

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**ATKINS | HOLM | MAJUREY**

Mike Holm/Vicki Morrison-Shaw  
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Shortland Street  
AUCKLAND 1140

Solicitor on the record  
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(09) 304 0428  
(09) 304 0422

**MAY IT PLEASE THE COURT:**

1. The purpose of this memorandum is to seek leave to amend one aspect of the relief sought by RCL Queenstown Pty Ltd, RCL Henley Downs Ltd, and RCL Jacks Point Ltd (**RCL**) in its appeal to align with the relief sought in its submission.
2. In its (amended) appeal dated 10 July 2018, RCL sought that side yard building setbacks be reduced to 1m with appropriate exemptions for accessory buildings. The areas to which RCL sought that this relief apply were however inadvertently excluded, meaning that the relief would apply across the entire zone. To ensure that the relief aligns with what RCL sought in its submission and does not apply more broadly, RCL seeks leave to amend its appeal to include reference to these setback changes only applying in the Residential (Hanley Downs) Activity Area, the Hanley Downs State Highway Activity Area and the Village Activity Area.
3. The specific changes to the notice of appeal are shown in a track change version attached as **Appendix 1**. A clean version of the revised notice of appeal is attached as **Appendix 2**.
4. It is considered that no party would be adversely affected by this change since:
  - (a) the change confines rather than enlarges the relief sought;
  - (b) the only s 274 parties with an interest in this appeal point are the Jacks Point group and counsel for this group have advised they have no issues with the amendments; and

- (c) the change addresses the Council's concern that the existing relief goes beyond the scope of RCL's submission and avoids the need for any strike out application.
5. Accordingly, RCL respectfully seeks leave from the Court to amend its appeal as shown in the Appendices.

**DATE:** 25 October 2018



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**Mike Holm / Vicki Morrison-Shaw**

Legal Counsel for RCL Queenstown Pty Ltd, RCL Henley Downs Ltd and  
RCL Jacks Point Ltd

BEFORE THE ENVIRONMENT COURT  
AT CHRISTCHURCH

ENV-2018-CHC-000102

I MUA I TE KOOTI TAIAO  
I ŌTAUTAHI ROHE

IN THE MATTER

of the Resource Management Act 1991  
(the Act)

AND

IN THE MATTER

of an appeal under clause 14 of Schedule  
1 of the Act

BETWEEN

RCL Queenstown Pty Ltd  
RCL Henley Downs Ltd  
RCL Jacks Point Ltd

Appellants

AND

Queenstown Lakes District Council

Respondent

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(AMENDED) NOTICE OF APPEAL

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**TO:** The Registrar  
Environment Court  
**CHRISTCHURCH**

1. RCL Queenstown Pty Ltd, RCL Henley Downs Ltd, and RCL Jacks Point Ltd (together "**RCL**") appeal a decision of the Queenstown Lakes District Council ("**QLDC**") on stage 1 of the Proposed Queenstown Lakes District Plan ("**Proposed Plan**").
2. RCL owns:
  - (a) All of the undeveloped Hanley's Farm Residential (R(HD) and R(HD-SH)) land in the Hanley Downs part of the Jacks Point Zone (save for the portion of R(HD)-E that is located on Lot 6 DP 398514);
  - (b) The majority of the areas labelled OSA and Rural Living (RL) in the Hanley Downs part of the Jacks Point Zone;
  - (c) Other significant landholdings throughout the Jacks Point Zone.
3. The zoning in the Operative District Plan for the Hanley's Farm Zone was recently the subject of Plan Change 44. Queenstown Lakes District Council notified its decision on Plan Change 44 in March 2016. Subdivision and development in Hanley Downs (commonly referred to as "Hanley's Farm") has proceeded since in accordance with that decision.
4. RCL made a submission on the Proposed Plan which emphasised its broad support for incorporation of the decision in Plan Change 44 to the Operative District Plan which QLDC had recently issued.
5. RCL is not a trade competitor for the purposes of section 308D of the Act.

6. RCL received notice of the decision on 7 May 2018.
7. The decision was made by the QLDC.
8. The parts of the decision that RCL is appealing relate to the Jacks Point Zone, in particular:
  - (a) The reduction of the allowable residential density in the area labelled in R(HD)-F on the Structure Plan (in respect to rule 41.5.1.1);
  - (b) The reconfiguration of the OSA areas (as shown on the Structure Plan at Annexure D of this notice);
  - (c) The introduction of an advice note stating "min setback 35m" along the eastern boundary of the R(HD)-E area;
  - (d) The declining of RCL's request in its submission to amend proposed rule 41.5.5.4 to require 1m side yard building setback rules on all sites (and as set out in rules 41.5.1.6 and 41.5.1.7 in the Decision);
  - (e) The ~~increase in~~ side yard building setback requirements applying to Residential (Hanley Down) Activity Area, the Hanley Downs State Highway Activity Area and the Village Activity Area as set out in rules 41.5.1.6 and 41.5.1.7 in the Decision;
  - (f) The introduction of a requirement for houses on individual lot sizes smaller than 380m<sup>2</sup> to obtain a resource consent (in respect to rule 41.4.1.5);
  - (g) The declining of RCL's request to remove or liberalise the recession plane (height-to-boundary) rules as they apply to Hanley's Farm (proposed rule 41.5.12.4 and rule 41.5.1.4 in the Decision);
  - (h) The introduction of recession planes for sites between 380m<sup>2</sup> and 550m<sup>2</sup> (rule 41.5.1.4 in the Decision); and

- (i) The declining of RCL's request to create an Activity referred to as "Open Space Community and Recreation Activity Area" on Lot 12 DP 364700 with associated controls as set out in RCL's submission.

## **REASONS FOR APPEAL**

- 9. The reasons for this appeal are that the parts of the decision appealed:
  - (a) Do not promote the purpose of the Act being the sustainable management of resources (section 5);
  - (b) Are contrary to Part 2 and other provisions of the Act;
  - (c) Are contrary to other relevant planning documents and the findings of the recent decision on Plan Change 44;
  - (d) Will not meet the reasonable foreseeable needs of future generations;
  - (e) Do not meet the requirements of s 32 of the Act.
- 10. In particular, and without limiting the generality of paragraph 9 above:
  - (a) The reduced allowable residential density in the area labelled in R(HD)-F is not justified by landscape or other amenity concerns, with the effect that land appropriate for residential development will not be efficiently utilised;
  - (b) The reconfiguration of the OSA within R(HD)-E will provide inferior shapes and locations for parks inhibit the efficient development of surrounding residential land and will not will not appropriately protect landscape values;

- (c) The reconfiguration of the OSA area (as shown on the Structure Plan) between the R(HD)-A, R(HD)-C, and R(HD-SH)-1 areas is unnecessary and is an inefficient use of land that is appropriate for development. Through R(HD)-D the exact alignment of future floodway works is unknown and should not be precisely shown as an OSA area;
- (d) The introduction of an advice note stating “min setback 35m” along the eastern boundary of the R(HD)-E area is unnecessary and creates uncertainty in the application of rules. It is unclear what submissions were relied on to make this change;
- (e) The declining of RCL's request to reduce side yard setbacks [in the Residential \(Hanley Downs\) Activity Area, the Hanley Downs State Highway Activity Area and the Village Activity Area](#) fails to provide for the efficient development of residential sites in Hanley Downs. The rules are not consistent with Policy 41.2.1.12 of the Jacks Point Zone. Such setbacks are not required to achieve a high standard of amenity, as demonstrated by the emerging character of the Hanley's Farm urban area;
- (f) The increase in side yard building setbacks will restrict the ability of houses to fit on sites and may lead to the development of larger sites. This would be an inefficient use of land and would not be consistent with Policy 41.2.1.12 of the Jacks Point Zone. There is no compelling urban design or other amenity case supporting the decision. Further, it appears that no exemption for accessory buildings such as garages has been provided for, which is a conventional rule important for the reasonable development and use



of residential sites. It is unclear what submissions were relied on to make these changes;

- (g) The introduction of a requirement for houses on individual lot sizes smaller than 380m<sup>2</sup> to obtain a resource consent failed to properly account for the inefficiencies and costs of introducing such a requirement on those seeking affordable housing. This has the potential to discourage the development of sections of this size which would reduce the numbers of homes built in Hanley's Farm, and result in the inefficient use of land. It is unclear what submissions were relied on to make this change;
- (h) The declining of RCL's request to remove or liberalise the recession plane (height-to-boundary) rules as they apply to Hanley Downs and the introduction of recession planes for sites between 380m<sup>2</sup> and 550m<sup>2</sup> failed to properly account for the characteristics of development in Hanley's Farm. Such rules will prevent or restrict reasonable development of sites. These rules are not consistent with Policy 41.2.1.12 of the Jacks Point Zone. Of particular concern is that the rules as proposed have no exemption for sloping sites, meaning some sites may be impossible to build on without significant excavation or infringing the height limit. It is unclear what submissions were relied on for the introduction of recession planes for sites between 380m<sup>2</sup> and 550m<sup>2</sup>;
- (i) The declining of RCL's request to create an Activity referred to as "Open Space Community and Recreation Activity Area" on Lot 12 DP 364700 was in error. The outcome sought by RCL provides an appropriate use of land inside the Urban Growth Boundary, with appropriate regard to constraints such

as landscape sensitivities. A range of appropriate standards were proposed in RCL's submission and subsequent additions and modifications in the evidence presented at the Council hearing by RCL's witnesses.

#### **RELIEF SOUGHT**

11. The Appellant seeks the following relief:
  - (a) Restoration of the density rules as notified in the Proposed District Plan in the area labelled in R(HD)-F on the Structure Plan;
  - (b) The OSA configuration within R(HD)-E as shown Structure Plan in the notified in the Proposed District Plan;
  - (c) The configuration of the OSA areas (as shown on the Structure Plan) between the R(HD)-A, R(HD)-C, and R(HD)-SH-1 to align with the extent of completed drainage works and reserve areas: or the Open Space Areas be shown indicatively as per the notified version;
  - (d) The OSA area through R(HD)-D to be shown indicatively as Open Space, as per the notified version;
  - (e) Delete the advice note on the Structure Plan stating "min setback 35m" along the eastern boundary of the R(HD)-E area;
  - (f) That 1m side yard building setbacks be applied on all sites within the Residential (Hanley Downs) Activity Area, the Hanley Downs State Highway Activity Area and the Village Activity Area with appropriate exemptions for accessory buildings (as detailed in

RCL's submission). Alternatively, that the plan be amended to make side yard setbacks within the Residential (Hanley Downs) Activity Area, the Hanley Downs State Highway Activity Area and the Village Activity Area a matter to be established during the subdivision process;

- (g) The removal of resource consent requirements for individual lots smaller than 380m<sup>2</sup> and reversion to the rules of the notified Proposed District Plan. These rules enabled the development of such smaller sites without the need for a resource consents by ensuring specific design controls are established at the subdivision stage;
- (h) Delete recession plane rules, or apply those recession planes that have been approved through various subdivisions to date in Hanley's Farm;
- (i) Create an Activity referred to as "Open Space Community and Recreation Activity Area" on Lot 12 DP 364700 as described in RCL's submission to the Proposed District Plan;
- (j) Such further orders, relief, consequential amendments or other amendments (including to objectives, policies, rules, other methods, definitions, and other provisions) as are considered appropriate and necessary to address the concerns set out above; and
- (k) Costs of and incidental to this appeal.

## **ATTACHMENTS**

- 12. The following documents are attached to this notice:
  - (a) A copy of RCL's submission (Annexure A);

- (b) A copy of the relevant decision (Annexure B);
- (c) A list of relevant names and addresses of persons to be served with a copy of this notice (Annexure C).

**DATE:** 25 October 2018



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**Mike Holm / Vicki Morrison-Shaw**

Legal Counsel for RCL Queenstown  
Pty Ltd, RCL Henley Downs Ltd, and  
RCL Jacks Point Ltd

Address for Service: C/- Mike Holm / Vicki Morrison-Shaw  
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Auckland 1140

Telephone: (09) 304 0294

Facsimile: (09) 309 1821

Email: vicki.morrison-shaw@ahmlaw.nz

Contact Person: Mike Holm / Vicki Morrison-Shaw

**ADVICE TO RECIPIENTS OF COPY OF NOTICE***How to become party to proceedings*

You may be a party to the appeal if,—

- (a) within 15 working days after the period for lodging a notice of appeal ends, you lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- (b) within 20 working days after the period for lodging a notice of appeal ends, you serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing requirements (see form 38).

*Advice*

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington or Christchurch.

## **ANNEXURE A - RCL'S SUBMISSION**

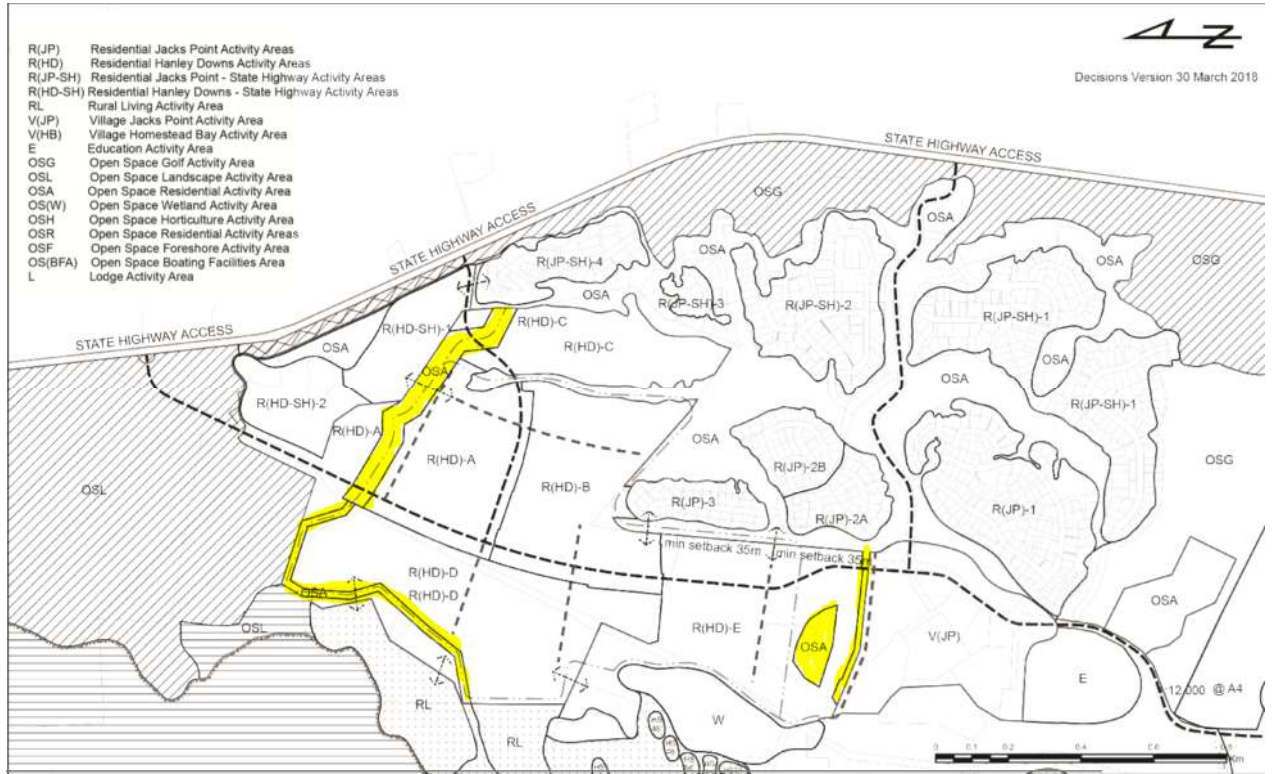
**ANNEXURE B - RELEVANT DECISION**

**ANNEXURE C - PERSONS TO BE SERVED WITH A COPY OF THIS NOTICE**

<b>Submitter</b>	<b>Address for Service</b>
Tim Williams for JH Dowell Trust on behalf of JH Dowell Trust	tim@southernplanning.co.nz
Scott Freeman for Bravo Trustee Company on behalf of Bravo Trustee Company	scott@southernplanning.co.nz
Tim Williams for HL Dowell and MJM Brown Home Trust on behalf of HL Dowell and MJM Brown Home Trust	tim@southernplanning.co.nz
Tim & Paula Williams	31 Avalon Crescent, Queenstown, New Zealand, 9300
Chris Ferguson for "Jacks Point" (Submitter number 762 and 856) on behalf of "Jacks Point" (Submitter number 762 and 85	Chris.Ferguson@boffamiskell.co.nz
Michael Coburn for Jacks Point Residents and Owners Association on behalf of Jacks Point Residents and Owners Association	mike@jackspoint.com
Grant & Anne Harris for Harris-Wingrove Trust on behalf of Harris-Wingrove Trust	PO Box 2813, Wakatipu, Queenstown, New Zealand, 9349
MJ and RB Williams and Brabant	richard@brabant.co.nz
Kristi and Jonathan Howley	kiwistin@yahoo.co.nz
Greig Garthwaite	18 Gray Street, Frankton, New Zealand, 9300
Ben and Catherine Hudson	ben.hudson@wam.co.nz
Lingasen and Janet Moodley	linksm004@gmail.com
Stephen and Karen Pearson	stephen.pearson88@gmail.com
Murray and Jennifer Butler	murrayb@outlook.co.nz
Grant and Cathy Boyd	cathyboyd123@yahoo.com
David Martin and Margaret Poppleton	david@profqueenstown.co.nz
James and Elisabeth Ford	lis_1962@hotmail.com
Mark and Katherine Davies	Katherineegg@hotmail.com
Sonia and Grant Voldseth and McDonald	sonia.voldseth@yahoo.com
Joanna and Simon Taverner	Jo_dey@hotmail.com
Thomas Ibbotson	thom.ibbotson@gmail.com
Murray and Jennifer Butler	murrayb@outlook.co.nz
John and Mary Catherine Holland	kate.holland@optusnet.com.au
Christine and Neville Cunningham	Chris.s.cunningham@gmail.com
Rebecca Wolt for BSTGT Limited on behalf of BSTGT Limited	rebecca.wolt@laneneave.co.nz
Peter & Carol Haythornthwaite	464 Te Ahu Ahu Rd, Waimate North RD2, Kaikohe, New Zealand, 0472



# ANNEXURE D – STRUCTURE PLAN MAP SHOWING OSA AREAS SUBJECT TO APPEAL



# APPENDIX 2

BEFORE THE ENVIRONMENT COURT  
AT CHRISTCHURCH

ENV-2018-CHC-000102

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  - (b) The reconfiguration of the OSA areas (as shown on the Structure Plan at Annexure D of this notice);
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  - (e) The side yard building setback requirements applying to Residential (Hanley Downs) Activity Area, the Hanley Downs State Highway Activity Area and the Village Activity Area as set out in rules 41.5.1.6 and 41.5.1.7 in the Decision;
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## **REASONS FOR APPEAL**

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as landscape sensitivities. A range of appropriate standards were proposed in RCL's submission and subsequent additions and modifications in the evidence presented at the Council hearing by RCL's witnesses.

#### **RELIEF SOUGHT**

11. The Appellant seeks the following relief:
  - (a) Restoration of the density rules as notified in the Proposed District Plan in the area labelled in R(HD)-F on the Structure Plan;
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RCL's submission). Alternatively, that the plan be amended to make side yard setbacks within the Residential (Hanley Downs) Activity Area, the Hanley Downs State Highway Activity Area and the Village Activity Area a matter to be established during the subdivision process;

- (g) The removal of resource consent requirements for individual lots smaller than 380m<sup>2</sup> and reversion to the rules of the notified Proposed District Plan. These rules enabled the development of such smaller sites without the need for a resource consents by ensuring specific design controls are established at the subdivision stage;
- (h) Delete recession plane rules, or apply those recession planes that have been approved through various subdivisions to date in Hanley's Farm;
- (i) Create an Activity referred to as "Open Space Community and Recreation Activity Area" on Lot 12 DP 364700 as described in RCL's submission to the Proposed District Plan;
- (j) Such further orders, relief, consequential amendments or other amendments (including to objectives, policies, rules, other methods, definitions, and other provisions) as are considered appropriate and necessary to address the concerns set out above; and
- (k) Costs of and incidental to this appeal.

## **ATTACHMENTS**

- 12. The following documents are attached to this notice:
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- (b) A copy of the relevant decision (Annexure B);
- (c) A list of relevant names and addresses of persons to be served with a copy of this notice (Annexure C).

**DATE:** 25 October 2018



---

**Mike Holm / Vicki Morrison-Shaw**

Legal Counsel for RCL Queenstown  
Pty Ltd, RCL Henley Downs Ltd, and  
RCL Jacks Point Ltd

Address for Service: C/- Mike Holm / Vicki Morrison-Shaw  
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PO Box 1585, Shortland Street  
Auckland 1140

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Email: vicki.morrison-shaw@ahmlaw.nz

Contact Person: Mike Holm / Vicki Morrison-Shaw

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Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing requirements (see form 38).

*Advice*

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington or Christchurch.

## **ANNEXURE A - RCL'S SUBMISSION**

## **ANNEXURE B - RELEVANT DECISION**

**ANNEXURE C - PERSONS TO BE SERVED WITH A COPY OF THIS NOTICE**

<b>Submitter</b>	<b>Address for Service</b>
Tim Williams for JH Dowell Trust on behalf of JH Dowell Trust	tim@southernplanning.co.nz
Scott Freeman for Bravo Trustee Company on behalf of Bravo Trustee Company	scott@southernplanning.co.nz
Tim Williams for HL Dowell and MJM Brown Home Trust on behalf of HL Dowell and MJM Brown Home Trust	tim@southernplanning.co.nz
Tim & Paula Williams	31 Avalon Crescent, Queenstown, New Zealand, 9300
Chris Ferguson for "Jacks Point" (Submitter number 762 and 856) on behalf of "Jacks Point" (Submitter number 762 and 85	Chris.Ferguson@boffamiskell.co.nz
Michael Coburn for Jacks Point Residents and Owners Association on behalf of Jacks Point Residents and Owners Association	mike@jackspoint.com
Grant & Anne Harris for Harris-Wingrove Trust on behalf of Harris-Wingrove Trust	PO Box 2813, Wakatipu, Queenstown, New Zealand, 9349
MJ and RB Williams and Brabant	richard@brabant.co.nz
Kristi and Jonathan Howley	kiwistin@yahoo.co.nz
Greig Garthwaite	18 Gray Street, Frankton, New Zealand, 9300
Ben and Catherine Hudson	ben.hudson@wam.co.nz
Lingasen and Janet Moodley	linksm004@gmail.com
Stephen and Karen Pearson	stephen.pearson88@gmail.com
Murray and Jennifer Butler	murrayb@outlook.co.nz
Grant and Cathy Boyd	cathyboyd123@yahoo.com
David Martin and Margaret Poppleton	david@profqueenstown.co.nz
James and Elisabeth Ford	lis_1962@hotmail.com
Mark and Katherine Davies	Katherineegg@hotmail.com
Sonia and Grant Voldseth and McDonald	sonia.voldseth@yahoo.com
Joanna and Simon Taverner	Jo_dey@hotmail.com
Thomas Ibbotson	thom.ibbotson@gmail.com
Murray and Jennifer Butler	murrayb@outlook.co.nz
John and Mary Catherine Holland	kate.holland@optusnet.com.au
Christine and Neville Cunningham	Chris.s.cunningham@gmail.com
Rebecca Wolt for BSTGT Limited on behalf of BSTGT Limited	rebecca.wolt@laneneave.co.nz
Peter & Carol Haythornthwaite	464 Te Ahu Ahu Rd, Waimate North RD2, Kaikohe, New Zealand, 0472

# ANNEXURE D – STRUCTURE PLAN MAP SHOWING OSA AREAS SUBJECT TO APPEAL

