

**BEFORE THE COMMISSIONERS
AT QUEENSTOWN**

IN THE MATTER of the Resource Management Act 1991
("the Act")

AND

IN THE MATTER of an application under Part 2 of
Schedule 1 of the Act

AND

IN THE MATTER of proposed Private Plan Change 44 to
the Queenstown Lakes District Plan

BETWEEN **RCL Queenstown PTY Limited**
Requestor

AND **Queenstown Lakes District Council**
Territorial Authority

OPENING LEGAL SUBMISSIONS FOR RCL QUEENSTOWN PTY LIMITED

1 JULY 2015



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INTRODUCTION AND OVERVIEW

Hanley Downs

- 1 The Hanley (formerly "Henley") Downs area is located adjacent to the current Jacks Point development (see **Attachment 1¹**).
- 2 Since 2003, parts of the Hanley Downs area have been zoned for residential development - subject to a Structure Plan which is included in the Jacks Point Zone² and provides for a range of residential neighbourhoods, open space protection and a "village" – including commercial development.
- 3 There is a widely recognised shortage of housing supply in the Wakatipu Basin. While there may be theoretical capacity to help meet this shortage – it is not sufficient that other land in the district is zoned suitably. There has to be a developer ready to start development of housing. This is the case with the RCL land.
- 4 Moreover, it is not sufficient to take the view that the District Plan Review can help to ease this housing shortage. To complete a rezoning process for Hanley Downs would take at least 18 months – 2 years minimum, and possibly much longer.
- 5 The existing zone enables a limited number of urban "pods" to establish in a configuration which bears little relation to the land, and is likely to create inefficient use of the land. The Hanley Downs area however has a number of characteristics which make it particularly suitable to accommodate more consolidated forms and styles of residential development in the future.

Plan Change 44

- 6 In essence, the rationale behind PC44 is to make more efficient use of a scarce natural resource in the Wakatipu Basin – readily developable residential land, not subject to major environmental or other constraints or encumbrances.
- 7 PC44 will enable an overall greater density of residential development on the valley floor part of the Hanley Downs area. It will also extend low density residential developments into some discrete parts of the slopes that surround the valley

¹ A copy of the PC44 Land Ownership – Overlay Plan, which is Appendix 1 to the evidence of Ben Espie for RCL.

² Attached to the Evidence of Daniel Wells for RCL, Annex 2.

floor area. The visual amenity issues arising from this increased residential density are discussed in the evidence of Ben Espie and Dan Wells. Important protections will be provided for open space and landscape values.

- 8 In terms of increased residential density it is noted that the current zoning permits between 850 and 1300 houses – and the proposed PC44 will increase this number to 1316-2228. Notably, unlike the operative provisions, the lower end of this range will be incorporated in the proposed plan as a minimum, guaranteeing a density of development that will ensure efficient use of the land resource.
- 9 The central focus of the housing supply proposed under PC44 is a broader cross section of housing – accessible to a wider range of buyers – than currently provided at the neighbouring Jacks Point.

Amendments

- 10 It is self-evident that PC44 has undergone some amendment and change since notification. Overall these changes have been made for a combination of the following reasons:
 - (a) To accommodate a comprehensive response to the submissions of Henley Downs Farm Holdings Ltd, Henley Downs Farm Ltd, and Henley Downs Land Holdings Ltd (together referred to as **Henley Downs Farms**);
 - (b) To remove the Outline Development Plan from PC44 in response to the Environment Court's decision on PC19;
 - (c) To incorporate PC44 into, and ensure consistency with, the Jacks Point Resort Zone provisions; and
 - (d) To address a number of other discrete issues raised by submitters.
- 11 These changes as they are related to land owned by RCL are summarised in these legal submissions, and are explained in detail in the evidence of Mr Wells.
- 12 The changes as they relate to the Henley Downs Farms owned land – accommodated to settle issues raised in the submission of Henley Downs Farms – will be detailed in Henley Downs Farms' legal submissions and evidence.

- 13 In relation to the land controlled by RCL, the changes made are largely structural. The basic original intent and purpose behind PC44 remains the same.
- 14 As set out briefly here and as will be detailed in the evidence of Mr Wells, there remain only minor areas of disagreement between RCL and QLDC's reporting planner Ms Jones following receipt of Ms Jones' updated s42A report and RCL's consequential changes.

The Requestor (RCL)

- 15 The requestor is RCL Queenstown Pty Limited - owned by RCL Real Estate Pty Limited, and collectively referred to as **RCL**.
- 16 Director of RCL, Mr David Wightman, will present evidence on the purpose of the plan change and RCL's intention for their land.
- 17 RCL understands the importance of local knowledge and expertise. To prepare PC44 the applicant has set up a team of highly qualified and locally experienced expert consultants led by John Edmonds and Associates – a Queenstown planning consultancy.
- 18 Mr Wightman has visited Queenstown, the RCL land, and other similar developments in the Wakatipu Basin on numerous occasions, in the interests of forming an accurate picture of the urban residential housing market.
- 19 RCL is a highly experienced developer of medium density housing in a range of price brackets and is well qualified to use its land to provide much needed mid-range residential properties for the Wakatipu.

SCOPE – LEGAL ISSUES

- 20 The matter of scope is likely to be prominent in the Commissioners' minds given the changes made to PC44 since notification.
- 21 The Commissioners' ability to amend a PC44 is limited by scope in two ways:
- (a) Firstly, a Council may only consider submissions which are "on" the Plan Change; and
 - (b) Secondly, a change to the notified Plan Change may only be made by the Council where the proposed

change is within the purview of a submission³ (with some limited exceptions) or is a "modification"⁴ which is essentially limited to changes pursuant to submissions.

- 22 A submission is "on" a plan change where:⁵
- (a) The submission addresses the status quo sought to be changed by the plan change (and not a 'fair and reasonable extension'; and
 - (b) There is no real risk that persons directly or potentially affected by the additional changes sought in the submission have been denied an effective opportunity to respond to those additional changes.
- 23 The limited exceptions to the requirement that a change is pursuant to a submission include:
- (a) Where the change is to formatting, style or terminology of a plan change request to enhance its clarity, provided the changes are not substantive and do not alter the meaning or effect of the plan change;⁶ and
 - (b) Where a 'practical' response is made to a jurisdictional matter which has arisen post-notification, for example the illegality of Outline Development Plans.⁷

OVERVIEW OF CHANGES (AND SCOPE)

- 24 As noted earlier, changes to PC44 have been the result of four reasons, which are explained below.
- 25 It is acknowledged above that the Commissioners and Council are restricted by scope in the changes which they are able to accept to the notified PC44. RCL submits that the changes made to the notified PC44 in regards to the RCL land are within scope by way of:
- (a) Decisions sought in submissions;
 - (b) Practical reactions to case law; and

³ Clause 10, Schedule 1, RMA.

⁴ Clause 29(4), Schedule 1, RMA.

⁵ *Clearwater Resort Ltd v Christchurch City Council* HC Christchurch AP34/02, 14 March 2003; cited with approval in *Palmerston North City Council v Motor Machinists Ltd* [2013] NZHC 1290.

⁶ *Foodstuffs (Otago Southland) Properties Ltd v Dunedin City Council* (1993) 2 NZRMA 497.

⁷ *Fountainblue Ltd v Mackenzie District Council* [2014] NZEnvC 209 at [13].

- (c) Amendments which strengthen and streamline the operation and readability of the plan change, without changing its effect or intent.

Reason 1: Submissions of Henley Downs Farms

- 26 As the Commissioners will be aware, this plan change has subject to an early adjournment in response to a wide ranging submission from the Henley Downs Farms, the other major landowner of land within PC44. The submission opposed a number of key components of the plan change.
- 27 A process of negotiation to seek to resolve concerns of Henley Downs Farms was commenced, in order to ensure that:
 - (a) The extensive time and resources that had gone into PC44 would not be wasted and further substantial delays avoided; and
 - (b) The important objective of developing much needed residential housing would not be frustrated or delayed.
- 28 The changes to PC44 consequent to the Henley Downs Farms submissions have been included in the agreed set of provisions which was provided on 9 June 2015, and are included in the latest set of provisions which is attached to the evidence of Mr Wells.
- 29 The rationale behind, and the scope for, these changes will be addressed in legal submissions and evidence by Henley Downs Farms.

Reason 2: Outline Development Plans

- 30 The Outline Development Plan has been removed from PC44 in response to the Environment Court's decision on PC19.⁸

Scope

- 31 The Court held that there were serious questions as to the legality of rules requiring compliance with ODPs in District Plans. While the merits of ODPs were not disputed, it was considered that ODPs do not fit with the scheme of the Act.
- 32 In response, Mr Wells has removed the ODP from PC44.

⁸ *Queenstown Airport Corporation Ltd v Queenstown Lakes District Council* [2014] NZEnvC 93.

- 33 As noted by Ms Jones, in light of the PC19 decision, the ODP would be ineffective as a resource management tool, even if approved.⁹
- 34 A similar concern arose in *Cook Adam Trustees Ltd v Queenstown Lakes District Council* [2015] NZEnvC 25, which considered the PC19 decision. The notified PC39 had included controlled activity 'Private Open Space Management Plans' which operated similarly to ODPs. The Environment Court applied the PC19 finding that a rule which does not identify the activity for which consent is required is *ultra vires*.¹⁰
- 35 The parties resolved the issue by making subdivision the activity to be controlled by the rule, conditional upon the Management Plans, which was held to be "both within the Council's powers and appropriate."¹¹
- 36 In *Fountainblue Ltd v Mackenzie District Council* [2014] NZEnvC 209, the parties supplied an amendment to the notified rules package for PC13 to address the PC19 decision, removing the ODP in favour of a discretionary 'Comprehensive Land Management Area Consent'.¹² Environment Court dealt with this as a 'preliminary issue' and held that "[t]he parties appear to have reached a practical solution and we can see no further jurisdictional difficulties with the course proposed."¹³
- 37 The changes made to remove the ODP in PC44 have been carefully crafted and refined in order to avoid substantially altering the operation of PC44 or its effect on neighbouring landowners or other affected parties. In concert with Ms Jones' recommendations, the change is now entirely structural, as set out below.
- 38 As will be set out in the evidence of Mr Wells, at the time of notification, Outline Development Plans were considered the most appropriate method to promote integrated planning while also remaining flexible. The method proposed in Mr Wells' latest provisions is submitted to be the most appropriate method to achieve the objectives of the Plan, and in turn the objectives of the Act.

⁹ Vicki Jones, Updated s42A Report, 23 June 2015, at page 15.

¹⁰ *Cook Adam* at [18].

¹¹ *Cook Adam* at [19].

¹² *Fountainblue* at [11].

¹³ *Fountainblue* at [13].

- 39 Pursuant to an explanation of the changes, set out below and in the evidence of Mr Wells, approval of the changes consequent upon the ODP issue is submitted to be within the jurisdiction of the Commissioners.

Substance of Changes

- 40 The differences between the notified PC44 and the latest provisions which were caused by this change are a result of the matters of discretion in the ODP being merely moved to appropriate alternative planning methods, namely:
- (a) The Structure Plan now includes a greater level of detail;
 - (b) Amendments are proposed to the Subdivision chapter of the District Plan;
 - (c) Consideration fell already under other areas of the planning regime; and
 - (d) Matters which were specific to ODPs have been removed.
- 41 A summary table of these changes was included with the revised agreed provisions provided on 9 June 2015.
- 42 Ms Jones expressed concern in her updated s42A report (dated 23 June 2015) that a controlled subdivision, as first proposed, was a fundamental change from the restricted discretionary Outline Development Plan step.¹⁴ Mr Wells has accepted this concern, and in the latest version of the provisions has reverted to restricted discretionary subdivision.
- 43 Insofar as they relate to the RCL land, the four outstanding matters of concern for Ms Jones have been addressed through the subdivision consent mechanism proposed by Mr Wells.¹⁵

Reason 3: Inclusion in the Jacks Point Resort Zone

- 44 The s42A Report produced by Ms Jones on 25 November 2013 noted the concerns of some submitters that the notified 'Hanley Downs Zone' would not integrate well with the existing Jacks Point Resort Zone (**JPRZ**).¹⁶

¹⁴ Vicki Jones, Updated s42A Report, 23 June 2015, at pages 14-16.

¹⁵ Vicki Jones, Updated s42A Report, 23 June 2015, at page 15-16. The outstanding matters of concern have been marked by Ms Jones with an 'x' on her table.

¹⁶ Vicki Jones, Original s42A Report, 25 November 2013, at page 25.

- 45 In response to this, PC44 has been amended so that it no longer proposes a new Zone, but integrates the changes sought by RCL into the existing JPRZ. This has caused a reduction in the changes incorporated in the revised PC44. In addition, repetition had been avoided where matters are already dealt with by the JPRZ provisions.

Reason 4: Submissions

- 46 The requestor has sought to address the concerns of other submitters particularly with respect to issues such as visual and landscape effects, as well as infrastructure issues raised by Otago Regional Council (ORC) and New Zealand Transport Agency (NZTA).
- 47 These discrete matters, and the changes made in response, are, or will be, set out in Mr Wells' evidence.¹⁷

QLDC PLANNER'S REPORT

- 48 Based on the updated Planner's Report, the issues outstanding as between Ms Jones and Mr Wells are limited, and are summarised briefly below.
- 49 **Need for additional residential zoning:** Ms Jones notes that PC44 need not be judged upon the 'necessity' of its objective, merely on its efficiency and effectiveness, but nonetheless she does not appear to consider that there is a shortage of residential zoning.¹⁸ Mr Wells sets out reasons why he does not agree. Hanley Downs is a scarce and important resource for residential development in the Wakatipu Basin.¹⁹
- 50 **Indicative Open Space:** Open Space remains indicative on the Plans, rather than zoned. It has not been practical or possible to survey the land for the purpose of zoning the open space areas. These areas will be refined in due course, and the assessment matters relating to open space areas have been strengthened.
- 51 **Detailed Site and Zone Standards:** Ms Jones has recommended some very specific site and zone standards which in Mr Wells' opinion are best managed on a case by case basis at the time of subdivision consent or land use consent. The matters of discretion in these processes are sufficient to enable the consideration of the issues Ms Jones

¹⁷ Evidence of Daniel Wells for RCL, at paragraphs 48-100.

¹⁸ Vicki Jones, Updated s 42A Report, 23 July 2015, at Section 3, page 22.

¹⁹ Evidence of Daniel Wells for RCL, at paragraphs 50-55.

raises, and there would appear to be no need to prescribe the considerations in an overly restrictive way.

- 52 **Stormwater:** ORC requested the addition of a stormwater management standard and related assessment matters which RCL have accepted. Arguably it is beyond the jurisdiction of the District Plan to provide the provisions sought, however as a matter of practice, RCL have no objection to the inclusion of these rules.
- 53 Aside from the above issues, any differences are considered to be matters of detail, mainly resulting from differences in drafting style. It is noted however that where any omissions in the latest provisions are identified, RCL are in no way opposed to fixing these if they are considered appropriate.
- 54 There are a number of other matters in the Planners Report relating to the land owned by Henley Downs Farms which will be addressed by Henley Downs Farms representatives and experts.

EVIDENCE

- 55 Evidence has been precirculated by RCL from six expert witnesses. These witnesses are available to answer the Commissioners' questions in the following order:
- (a) **Mr David Wightman**, Director of RCL. Mr Wightman will describe RCL's operation and expertise, and the intention behind PC44.
 - (b) **Mr Robert Potts**, civil engineer, has set out his opinion that wastewater reticulation is feasible and practical on the RCL land. RCL's preferred method is to construct a pipeline to connect to the QLDC system.
 - (c) **Mr Gary Dent**, water supply and stormwater matters;
 - (d) **Mr Glenn Davis**, environmental scientist, who presents a preliminary site investigation in regards to contaminants;
 - (e) **Mr Ben Espie**, landscape architect;
 - (f) **Mr Tim Kelly**, traffic analysis;
 - (g) **Mr Daniel Wells**, planner.

LEGAL TESTS FOR A PRIVATE PLAN CHANGE

- 56 PC44 has been produced in accordance with Part 2, Schedule 1 of the RMA.

- 57 The matters to be considered in relation to Plan Changes (both public and private) are well settled.²⁰ Mr Wells has assessed PC44 against the factors which territorial authorities are required to consider in determining whether a proposed plan change is the most appropriate way to achieve the sustainable management purpose of the RMA,²¹ as set out in *High Country Rosehip Orchards Limited v Mackenzie District Council* [2011] NZEnvC 387, and confirmed in *Waterfront Watch Incorporated v Wellington City Council*.²²
- 58 It is the expert opinion of Mr Wells that PC44 as it relates to the RCL land is the most appropriate way to achieve the sustainable management purpose of the RMA.

Legislative Changes

- 59 The Request was lodged on 7 February 2013, notified on 27 March 2013, and the hearing convened, and adjourned, on 25 November 2013.
- 60 The applicable law to the hearing of this plan change request is that which applied when the request was notified.²³
- 61 Thus, changes which have occurred to the RMA since notification, such as Resource Management Amendment Act 2013, particularly changes to ss32 and 32AA RMA,²⁴ do not apply to the present hearing.

²⁰ See for example: *Eldamos Investments Limited v Gisborne District Council* unreported, EnvC, Wellington, W047/2005, 22 May 2005, Sheppard J, at paragraph [128]; *Long Bay-Okura Great Park Society Incorporated v North Shore City Council* unreported EnvC Auckland, A078/08, 16 July 2008, Jackson J, at paragraph [34]; and *Brooklynne Holdings Limited v Queenstown Lakes District Council* unreported, EnvC Christchurch, C187/10, 1 June 2010, Jackson J, at paragraph [32].

²¹ Evidence of Daniel Wells for RCL, at paragraphs 101-150.

²² [2012] NZEnvC 74 at paragraph [38].

²³ *New Zealand Winegrowers v Marlborough District Council* [2013] NZEnvC 7 at paragraph [17]:

"1.4 The law governing the plan changes

[17] We have recorded that the plan changes were notified on 24 September 2009 which is immediately prior to the 2009 amendments coming into force. Consequently the Resource Management Act 1991 ("the Act" or "the RMA") as it stands before the 2009 amendments applies. And accordingly these appeals will be resolved under the Resource Management Act 1991 in its form prior to the Resource Management Amendment Act 2009."

²⁴ Section 70, Resource Management Amendment Act 2013 replaced sections 32 and 32AA RMA. These came into force for the purposes of the Local Government (Auckland Transitional Provisions) Act 2010 on 3 September 2013, but did not come into force for all other purposes until 3 December 2013.

OVERALL ASSESSMENT OF PLAN CHANGE

- 62 As the Panel will be well aware, the role of the Commissioners is to determine whether:
- (a) The Plan Change is the most appropriate way of achieving the sustainable management purpose of the RMA; and
 - (b) The Plan Change assists the Council in terms of carrying out its functions – being the integrated management of, and control over, effects of the use, development or protection of land – in order to achieve the purpose of the Act.
- 63 RCL submits that the evidence will demonstrate that the Plan Change satisfies all of the above criteria i.e. that it seeks and will in fact achieve an optimal planning solution which gives effect to the sustainable management purpose of the Act.
- 64 The evidence of the expert witnesses shows that PC44 is the most appropriate method by which to use and develop the subject land.

SUMMARY

- 65 There is a housing shortage in the Wakatipu district which in practical terms will not be met by theoretical zoning of suitable land. It requires that, but also a willing developer with the resources and capability to deliver in a timely way.
- 66 PC44 will make a substantial practical contribution to solving the housing shortage issue.
- 67 It will provide more new houses than all of the proposals for special housing areas recently reviewed by QLDC.

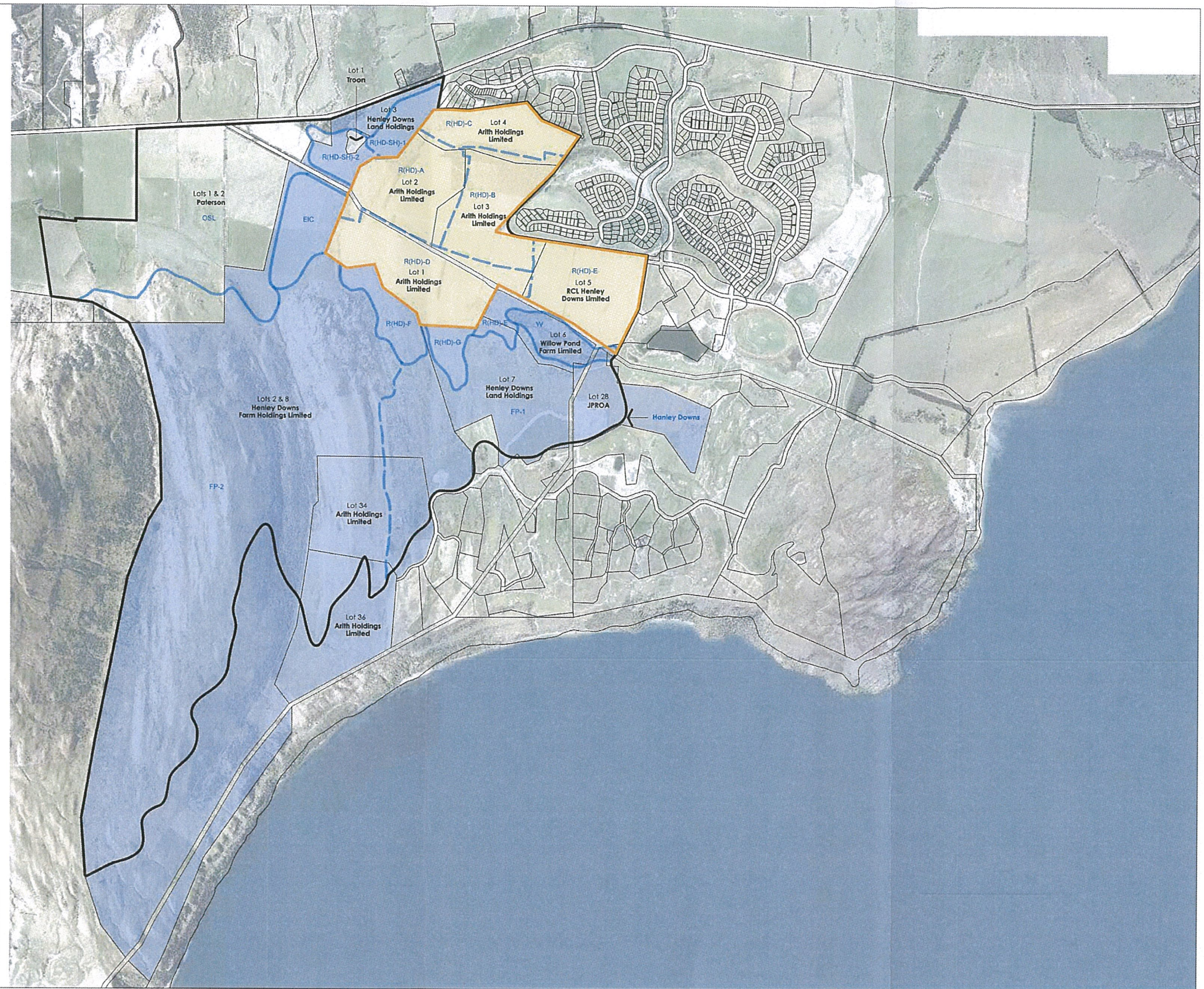
DATE: 1 July 2015

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KEY:

- Property boundaries (Landonline 2015)
- Hanley Downs
- RCL Land
- Jacks Point Land

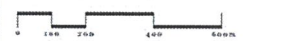


RCL / JPL (Jack's Point Land) Structure Plan

- Activity Area

RCL / JACKS POINT

SCALE: 1:10,000 (A1); 1:20,000 (A3)



PLAN STATUS:
FOR DISCUSSION

PC44 LAND OWNERSHIP - OVERLAY

DRAWN / REVIEWED: HF / RT
APPROVED: DF
DATE: 10.06.15

DRAWING NO:
HD_14_1_MLP-004

APPENDIX 1:

The Plan Change 44 Land Ownership Plan as produced by Darby Partners Ltd. The RCL Land is shown in yellow and it's property boundary is highlighted in orange.

vivian+espie
resource management and landscape planning