

BEFORE THE ENVIRONMENT COURT  
AT CHRISTCHURCH

ENV-2018-CHC-137

I MUA I TE KŌTI TAIAO  
I ŌTAUTAHI ROHE

**IN THE MATTER** of the Resource Management Act 1991  
(the RMA)

**AND**

**IN THE MATTER** of an appeal under clause 14(1) of  
Schedule 1 of the RMA in relation to the  
proposed Queenstown Lakes District Plan  
(PDP)

**BETWEEN** **Coneburn Preserve Holdings Limited &  
Others (Jacks Point)**

Appellant

**AND** **Queenstown Lakes District Council**

Respondent

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**MEMORANDUM ON BEHALF OF RCL IN RELATION TO A SECTION 293  
APPLICATION**

**15 NOVEMBER 2021**

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**ATKINS | HOLM | MAJUREY**

Mike Holm/Nicole Buxeda  
PO Box 1585  
Shortland Street  
AUCKLAND 1140

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Solicitor on the record  
**Contact solicitor**

Mike Holm  
Nicole Buxeda

Mike.Holm@ahmlaw.nz  
Nicole.Buxeda@ahmlaw.nz

(09) 304 0428  
(09) 304 0424

**MAY IT PLEASE THE COURT:**

1. As part of settling an appeal, Queenstown Lakes District Council (**QLDC**) and Jacks Point have unlawfully presumed to extend zoning provisions as part of 'a Comprehensive Development Plan (**CDP**) to change the Land Use zoning of an area of land belonging to RCL Hanley Downs Limited (**RCL**).
2. This RCL land has nothing to do with the Jack's Point appeal.
3. Relying on assurances by Jacks Point that adding the land to the CDP would not affect its zoning or permissions RCL have now been taken by surprise with respect to a change of Land Use Area over the RCL owned land.
4. This change in land use has substantial impacts on RCL, both in planning and in financial valuation terms.
5. The RCL land in question comprises the entirety of the Northern Village Precinct (**NVP**) in the Jacks Point Zone. RCL's landholdings in the area are shown in the attached plan at **Appendix A**.
6. To remedy this unlawful alteration sought to be imposed on RCL's land, we seek an order from the Court that the Land Use Area zoning of RCL's land shall remain the same as what was included in the Draft CDP documents during consultation – i.e., Mixed Use.
7. We note that RCL has provided planning evidence as context in this matter. The provision of evidence is in no way intended to endorse the Land Use Area change incorporated in the CDP process.
8. RCL owns the two properties highlighted in red in **Appendix A** (lots 3 and 11) within the Village Activity Area.
9. The Jacks Point Residents & Owners Association Incorporated (**JPROA**) constitution governs the Jacks Point Village area, including the land owned by RCL. This constitution makes it

clear that the JPROA has no power or jurisdiction over the RCL land in the NVP. Under the relevant constitutional provisions RCL has exclusive ownership and control.

## **BACKGROUND**

10. In a hearing in 2020 on appeals by Jacks Point's to the QLDC PDP, the decision was made to include a more detailed CDP into Chapter 41 through the s293 process. This CDP would effectively provide a more refined zoning plan for the village. In a minute dated 15 October 2020 the Environment Court directed Jacks Point to provide an updated CDP for consultation by 13 November 2020.
11. Initially RCL's land was not included in the area to be covered by the CDP in this November 2020 version of the draft CDP.
12. In March 2021 an updated CDP draft was provided which included RCL's land.
13. RCL was assured by Kent Potter of Darby Partners (developers of Jack's Point) by email on 2 March 2021 that:<sup>1</sup>

Under the CDP there are no proposed changes to the existing land use, site coverage, height limits, nor will it impact your servicing arrangements for the lots.
14. RCL provided feedback on the draft CDP in May 2021, largely on the Mixed-Use Land Use Area provisions. In June 2021 RCL made clear that the Land Use Area and controls on its land should remain unchanged as Mixed-Use.<sup>2</sup>
15. At all stages RCL has emphasised that its principal concern is to ensure that RCL land continued to have the same or similar controls to what was in the Draft CDP documents during consultation – i.e., the Mixed-Use Land Use Area.

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<sup>1</sup> Email from Kent Potter to Russel Naylor, director of RCL, (2 March 2021) - **Appendix C**.

<sup>2</sup> Application to Environment Court – Appendix 5 Consultation and Options Report 30 June 2021 Page 29 notes feedback from RCL stating that "RCL wishes to retain as much flexibility to undertake activities on their land and therefore support the identification of its land within the Mixed-Use Precinct."

## CHANGE OF USE OF RCL LAND

16. The version of the Proposed CDP submitted to the Environment Court by QLDC and Jacks Point seeks to change RCL's land from Mixed-Use to Residential Land Use Area.
17. Given the assurances made to RCL that the CDP would not change the existing Land Use, it is understandable that RCL was very surprised to see that the submitted CDP shows RCL's land as Residential Use.<sup>3</sup>
18. There was no notice or explanation provided to RCL as to why it was thought appropriate to change the Land Use Area of RCL's land in the CDP. Further, there was no notification, nor any consultation regarding this change. It has become clear that this change was sought by the residents of the Southern Precinct:<sup>4</sup>

Residents raised concerns that the initial version of the CDP didn't include the RCL owned land within the Village, located east of Homestead Bay Road. The updated (March 2021) incorporated this land as part of the Mixed-Use Precinct, which has, in turn generated concerns from the Council with respect to the wider mixed of activities that result in mixed use activities. Council and some residents have expressed a preference for the RCL land to be identified within a residential precinct.

19. In the notified documents this change in Land Use Area from Mixed Use to Residential is noted as being:

Provisional only as sought by JPROA Residential Precinct Committee and QLDC following consultation in accordance with the Environment Court directions dated 30<sup>th</sup> July 2021.

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<sup>3</sup> Publicly Notified Documents for s293 Process – Appendix 7 Village Design Guidelines, pg 12 (replicated in **Appendix A**).

<sup>4</sup> Publicly Notified Documents for s293 Process – Appendix 5 Consultation and Options Report 30 June 2021 at internal page 38, Issue 5.

20. An extract of this document showing the proposed change in precinct as sought by JPROA Residential Precinct Committee<sup>5</sup> is attached as **Appendix B**.
21. It is not clear on what legal basis QLDC have presumed to adopt the land use change sought by a residents group with no legal jurisdiction or power over the land in question.<sup>6</sup>

### **S293 PROCESS**

22. Case law is clear that the Court must exercise the power contained in s293 'cautiously and sparingly'<sup>7</sup>, because 'it deprives potential parties of the right to be heard by the local authority and ... the Court has to be careful not to step unnecessarily into the planning arena'.<sup>8</sup>
23. The High Court enunciated the following principle applicable to s293:<sup>9</sup>

(b) Where the use of s 293 would have substantial consequences on persons who would have a "vital interest", resort ought not to be had to the section lightly. This issue is particularly acute where the **invocation of s 293 would have impacts on geographical regions outside the original contemplation of the plan change or on subject matters not within its original contemplation.**

...

(d) In the case of s 293 relief sought by a party to an appeal, that relief must relate to the subject matter of the appeal and the original relief sought "as a matter of discretion". Though the jurisdiction "is not limited to the express words of the reference", the **relief sought must be a foreseeable consequence of the changes proposed in the reference. The overarching consideration is one of procedural fairness.**

*[emphasis added, footnotes omitted]*

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<sup>5</sup> In this context the required reading of 'JORPA Residential Precinct Committee' as per the definition of 'Precinct' in the Constitution is the 'Southern Precinct Committee'. The Northern Precinct Committee, comprised entirely of RCL land, would never seek this change.

<sup>6</sup> See notified documents and Public Notice from QLDC.

<sup>7</sup> *Vivid Holdings Ltd (Re an application)* (1999) 5 ELRNZ 264, [1999] NZRMA 467

<sup>8</sup> *Federated Farmers of New Zealand (Inc) Mackenzie Branch v Mackenzie DC* (2014) 18 ELRNZ 712 at [121].

<sup>9</sup> *Ibid* at [145(b)], [145(c)].

24. On 20 September 2021 the Environment Court issued the second interim decision of the Environment Court on Topic 22 – Jacks Point Zone granting the request for a s293 process.<sup>10</sup>

### **LEGALITY OF LAND USE CHANGE**

25. The 'JPROA Residential Precinct Committee' has no legal authority or scope under the JPROA constitution to unilaterally change the QLDC DP as it relates to density and permitted activities for the three lots owned by RCL in the NVP.
26. Any such change sought by residents of the Southern Village Precinct clearly runs directly against the contractual and constitutional rights that the NVP, and RCL, has to manage and determine its own planning and development outcomes.
27. It is very difficult to understand how QLDC considered it had any legal basis or justification for changing the Land Use Area from that consulted on in the way it has.

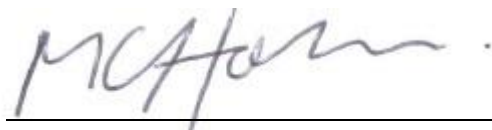
### **REQUEST FOR DIRECTION FROM THE COURT**

28. RCL respectfully requests that the Court exercise its discretion under s293(1) to direct QLDC, as the local authority, to maintain the relevant planning controls over the RCL land as Mixed-Use.
29. This request is respectfully made in advance of the Court dealing with the s293 matters relevant to the appeal so as to ensure the Court is able to focus on the relevant legal aspects of the appeal rather than extraneous issues arising from the unlawful changes made to RCL's land in the process.

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<sup>10</sup> *Coneburn Preserve Holdings Limited v Queenstown Lakes District Council* [2021] NZEnvC 144 at [4].

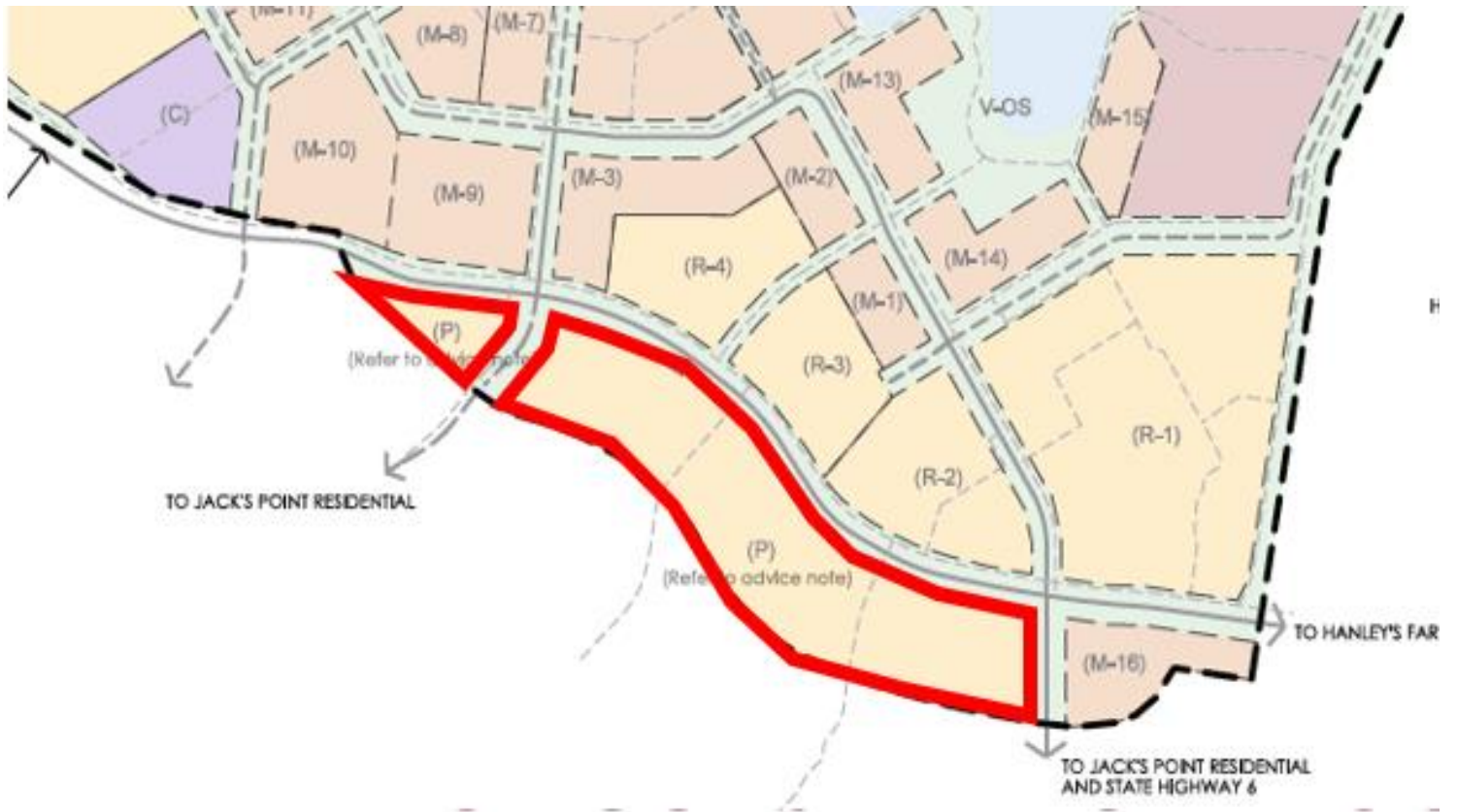
**DATE:** 15 November 2021

A handwritten signature in black ink, appearing to read "MHolm" or "NBuxeda", written over a horizontal line.

**Mike Holm / Nicole Buxeda**

Legal Counsel for RCL

**APPENDIX A - RCL LAND HIGHLIGHTED IN RED**



**APPENDIX B – APPLICATION TO ENVIRONMENT COURT – APPENDIX 7 VILLAGE DESIGN GUIDELINES, PAGE 12**





**APPENDIX C – EMAIL FROM KENT POTTER (2 MARCH 2021)**

**From:** Kent Potter  
**Sent:** Tuesday, 2 March 2021 5:52 PM  
**To:** russell@naylorpartners.com.au  
**Cc:** Dan.Wells <Dan.Wells@jea.co.nz>; Todd Graham <todd@darbypartners.co.nz>; Maree Baker-Galloway <maree.baker-galloway@al.nz>; Mike Coburn <mike@jackspoint.com>  
**Subject:** RE: Jack's Point Village CDP (3 & 11)

Dear Russell,

You may already be aware of the Environment Court process underway in relation to the detailed zoning for the Village in the Jacks Point Zone.

Your Lots (3 & 11) at Jack's Point fall within the boundaries of the Comprehensive Development Plan (CDP) that is under development as part of this process. Under the CDP there are no proposed changes to the existing land use, site coverage, height limits, nor will it impact your servicing arrangements for the lots.

We would welcome the opportunity to discuss the CDP further with you, or a member of your team.

Please get in contact to set up a time or should you have any queries.

Thanks,

Kent

**Kent Potter** · Darby Partners

email: [kent@darbypartners.co.nz](mailto:kent@darbypartners.co.nz) · T: +64 3 450 2200 · Mb: +64 21 676 186  
PO Box 2518 · Wakatipu · Queenstown · 9349 · New Zealand  
Darby Partners · C/- Jack's Point Clubhouse · McAdam Drive · Jack's Point 9348 · Queenstown · New Zealand  
[www.darbypartners.com](http://www.darbypartners.com)

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