

Appendix 01 – Information

Released under the Official Information Act 1982

From: oio@linz.govt.nz on behalf of [Overseas Investment Office Application submission online form](#)
To: michael.tinkler@burtonpartners.nz
Cc: david.wightman@rclgroup.com.au
Subject: Application received – RCL Henley Downs Limited
Date: Wednesday, 12 October 2022 4:27:34 p.m.



Hi RCL Henley Downs Limited

Thank you for your application to the Overseas Investment Office. Below are the details you have submitted. Your application will now be reviewed to check you have provided all of the information we need to assess your application.

We will get back to you within 12 working days, and provided your application can be accepted, we will include a request for payment of the application fee, an indication of current assessment timeframes, and more information about the consent process.

If more information is required, or we cannot accept your application, we will give our reasons for this.

In the meantime, there is more information on our website www.linz.govt.nz/overseas-investment

Ngā mihi nui
The Overseas Investment Office team

Application submission details

Submitted on Wed, 12/10/2022 - 16:26

Submission ID: 6258

Submitted values are:

Start

status
ready

Application type
Consent

Consent type
Benefit to NZ (sensitive land)

Application detail

Details

Have you attended a pre-application meeting?
No

Are you resubmitting this application?

No

Is this a [retrospective application](#)?

No

Applicant name

RCL Henley Downs Limited

Short description of Assets, or the Investment

Acquisition of 163.4640 hectares more or less at Homestead Bay, State Highway 6, Queenstown and being Lot 8, Deposited Plan 443852 as comprised and described in record of title 555575 (Otago Registry) a copy of which is attached as Appendix 1.

Applicant's address for service in New Zealand

C/- Burton Partners, Lawyers
Level 3, 10 Viaduct Harbour Avenue
Auckland 1010 (Attention: Michael Tinkler)
Email: michael.tinkler@burtonpartners.nz
Ph: +64 21 704 231

Requested decision date

23/03/2023

Reason for requesting this date

Although the condition for OIO consent in the agreement for sale and purchase does not expire until 28 March 2023, we have requested this earlier date to allow time for any consideration and discussions of conditions of consent that may be requested by the OIO.

Has an Agreement for Sale and Purchase been entered into?

Yes

Date of Sale and Purchase Agreement

22/07/2022

Due date of the Overseas Investment Act condition

28/03/2023

Decision maker

Ministers

Does any information in this application need to be kept confidential from other parties to this application?

Yes the details of the ownership of RCL Real Estate Pty Limited and the consideration paid for the Land. Details of the Lenders (defined below) will be sent to the OIO separately and will comprise a separate Appendix (Lender Appendix). The Lender Appendix must be kept confidential from the Applicant and any third party that may request disclosure under the Official Information Act.

Contact details

Applicant contact person's name
David Wightman, Director of the Applicant

Applicant contact person's email
david.wightman@rclgroup.com.au

Applicant contact person's phone number
00613 8320 7880 /+61413339116 (mobile)

Contact person name
Michael Tinkler

Contact email
michael.tinkler@burtonpartners.nz

Best contact phone number
021 704 231

Role in application
Legal representative

What law firm are you from (if applicable)?
Burton Partners

Do you want to add another contact person?
No

Vendor/Lessor name
Lot 8 LP

Vendor/Lessor's email
bcullen@mcveaghfleming.co.nz

Vendor/Lessor's phone number
c/- 09 966 3609

Vendor/Lessor's advisors' name
c/- Brendon Cullen, McVeagh Fleming

Vendor/Lessor's advisors' email
bcullen@mcveaghfleming.co.nz

Vendor/Lessor's advisors' phone number
c/- 09 966 3609

Invoice details

Name and company for invoice
RCL Henley Downs Limited

Postal address for invoice
C/- Burton Partners

Level 3, 10 Viaduct Harbour Avenue
Auckland 1010
Attention: Michael Tinkler

Attention (if applicable)
Michael Tinkler

Defined terms

Defined terms

- **Terms:** Applicant
Meaning: RCL Henley Downs Limited
- **Terms:** Agreement
Meaning: means the agreement for sale and purchase of real estate dated 22 July 2022 whereby the Applicant will acquire the Land
- **Terms:** Head Agreement
Meaning: means the agreement for sale and purchase between Homestead Bay Trustees Limited with the current registered proprietor of the Land, Remarkables Station Limited, dated 3 May 2021 to purchase the Land. The Vendor has been nominated to complete settlement under this head agreement pursuant to a deed of nomination dated 23 April 2022 (a copy of both the Head Agreement and the Deed of Nomination are attached with Appendix 6)
- **Terms:** Jacks Point Resort Zone
Meaning: The Jacks Point Resort Zone under the QLDC District Plan
- **Terms:** Jardines
Meaning: Dickson Stewart Jardine, Jillian Francis Jardine and Gerard Brendon Boock
- **Terms:** JPROA
Meaning: the Jacks Point Residents and Owners Association, Inc.
- **Terms:** Land
Meaning: the land to be acquired by the Applicant, the subject of this application, being approximately 163.4640 hectares more or less at Homestead Bay, State Highway 6, Queenstown and being Lot 8 on Deposited Plan 443835 as comprised and described in record of title 555575 (Otago Registry)
- **Terms:** Lender
Meaning: [REDACTED] s. 9(2)(b)(ii)
- **Terms:** Lender Appendix
Meaning: The appendix containing relevant information about the Tranche 2 Lender for the purposes of this application.
- **Terms:** OIA
Meaning: Overseas Investment Act 2005
- **Terms:** OIO
Meaning: Overseas Investment Office
- **Terms:** PGC
Meaning: Pyne Gould Corporation Limited, Guernsey
- **Terms:** QLDC
Meaning: Queenstown Lakes District Council
- **Terms:** RCLJP
Meaning: RCL Jacks Point Limited, a New Zealand limited liability company
- **Terms:** RCLQ
Meaning: RCL Queenstown Pty Limited, an Australian limited liability company

- Terms:** RCLRE
- Meaning:** RCL Real Estate Pty Limited, an Australian limited liability company.
- **Terms:** SH6
- Meaning:** State Highway 6, Kingston Highway, Queenstown
- **Terms:** Torchlight Fund
- Meaning:** Torchlight Fund LP, a Cayman Islands Limited Partnership
- **Terms:** Torchlight GP
- Meaning:** Torchlight GP Limited, the general partner of Torchlight Fund
- **Terms:** Tranche 2 Lender
- Meaning:** 9(2)(b)(ii) . See Lender Appendix f
- **Terms:** Vendor
- Meaning:** Lot 8 LP, being the vendor under the Agreement

Land

Land table: complete for each property (use + to add details of another property)

- **Property address and name:** Homestead Bay, State Highway 6, Queenstown
- Record of Title(s):** 555575 (Otago Registry)
- Current owner(s):** Remarkables Station Limited
- Legal description(s):** Lot 8 on Deposited Plan 443832
- Total land area (ha):** 163.464
- Type of interest:** Freehold Interest
- Land district:** Otago
- Land/Property category:** Arable

Are you seeking consent to acquire a freehold interest in land that is, or includes, a fresh or seawater interest?

No

Does the relevant land include residential land?

Yes

Does the relevant land include farm land?

Yes

Are you applying for a farm land advertising exemption under section 20(1)(a)?

No

Does the transaction fall within a class that is exempt from the farm land advertising requirement under section 20(1)(b)?

No

Other information

1. Land Covenant 10441473.5 registered on 26 May 2016

This land covenant contains both a;

(a) non-objection covenant to any future development of the dominant tenement which includes adjoining properties. There is also a reciprocal non objection covenant by the adjoining properties in favour of the Land; and

(b) a no build covenant on that part of the Land shown as Area "A" on LT Plan 498959 attached as Appendix 2. You will note this is an area of 5.76 hectares. This does not significantly impact upon the Applicant's development plans for the Land, as it is a relatively small part of the Land given the total area of the Land is 163.4640 hectares.

2. 9222087.1 Notice pursuant to section 195(2) Climate Change Response Act 2002 registered on 26 November 2012

This notice indicates that the Environmental Protection Agency has deemed the Land to be pre 1990 forest land, pre 1990 offsetting forest land, or post 1989 forest land under section 195(2) Climate Change Response Act 2002 in respect of which a person has registered as a participant under section 57 of the Climate Change Response Act 2002, or that the EPA has declared to be exempt land.

Although the record of title notes the existence of this memorial, it is not relevant to the Land as you will note from the Aerial Photograph of the Property attached as Appendix 3 that there is in fact no forestry on the Property.

Does the Applicant own any [associated land](#)?

No

Upload for all land

- [MOT-177335-1343-89-1 555575 Title.pdf](#) (576.46 KB)
- [Drift Bay Cert.pdf](#) (122.09 KB)
- [Drift Bay Aerial Photo.pdf](#) (3.49 MB)
- [QLD pdp-decisions-map-41.pdf](#) (2.17 MB)

Investment

Tell us about the proposed transaction and relevant agreements and steps involved in the transaction

The transaction involves an agreement for sale and purchase dated 22 July 2022 between the Vendor and the Applicant for the sale and purchase by the Applicant of Lot 8, Homestead Bay for a purchase price of \$70,000,000 (plus GST if any).

The Agreement remains conditional on the Applicant obtaining OIO approval by 28 March 2023.

The Vendor's interest in the Land is through the Head Agreement, which is an unconditional agreement to purchase the Land dated 3 May 2021 between Homestead Bay Trustees Limited and the current registered proprietor Remarkables Station Limited. Remarkables Station Limited is a company associated with the Jardines. The Vendor has been nominated to complete the purchase by Homestead Bay Trustees Limited pursuant to a deed of nomination dated 23 April 2022.

Settlement of the Head Agreement will be contemporaneous with settlement of the Agreement.

The Vendor's interest in the Land through the Head Agreement is protected by:

1. caveats registered by the Vendor under caveat number 12440337.1;
 2. Homestead Bay Trustees Limited under caveat numbers 10441473.8 and 10441473.9;
- and
3. the Applicant under a caveat which was lodged for registration on or about 7 September 2022.

The Lenders' interest in the Land is protected by a caveat which was registered on 6 September 2022.

Provide details of any pre-conditions to the completion of the acquisition other than OIO consent

The Agreement only remains conditional on the Applicant obtaining OIA consent under Further Term of Sale 22.1(c) of the Agreement.

Provide details of any pre-consent arrangements such as short-term leases, management agreements, etc

There are no pre-consent arrangements in place, although under the Agreement the Applicant is required to pay two non-refundable deposits of \$7,000,000 each, with the first having been paid on 5 September 2022 and the second due on 1 December 2022.

Describe the target entity/business

The Vendor, is a New Zealand limited partnership. We understand that it is a related entity to Homestead Bay Trustees Limited, being the entity which nominated the Vendor to complete the purchase under the Head Agreement.

As noted, the Vendor does not currently own the Land, but has its interest in the Land through the Head Agreement. The Head Agreement will settle contemporaneously with the Agreement.

Does the Applicant have any existing interest in the sensitive assets and / or an existing relationship with the vendor / lessor?

No

Has the Applicant applied for, or is the transaction the subject of, any other regulatory consent(s)?

No

Tell us why the transaction requires consent under the Overseas Investment Act 2005, and reference the relevant sections of the Act

Consent is required as the Land is sensitive land, as being:

1. non-urban land in excess of 5 hectares; and
2. also containing some residential land being those areas identified on the QLDC District Plan Map for the Land, attached as Appendix 4, as being within the Jacks Point Resort Zone.

Attached as Appendix 5 is a copy of a sensitive land certificate for the Land dated 7 September 2022 issued by Peter Port of Port Glen Limited.

What is the amount being paid, or the value of the asset?

70000000

GST inclusive?

No

Provide details of how the transaction will be funded

The transaction will be funded by borrowings from the Lenders. The borrowings will be secured by:

1. mortgage security over the Land granted by the Applicant to the Lenders;
2. security interests granted by the Applicant pursuant to the Personal Property Securities Act 1999; and
3. security support provided by the RCLRE group of companies, which includes a mix of assets located in both Australia and New Zealand.

The Lenders will be entering into two separate loan agreements with the Applicant. The security for the loans will be a “permitted security arrangement” for the purposes of Regulation 41(a) of the Overseas Investment Act 2005. However, the loan agreement to be entered into by the Applicant with the Tranche 2 Lender will provide the Tranche 2 Lender

9(2)(b)(ii)

However, given this feature, the Tranche 2 Lender has agreed to include information about itself in this application in the event that the OIO determines that the Tranche 2 Lender is a “relevant overseas person”. The Lenders will not have any ownership or control interest in the Applicant itself. The Tranche 2 Lender’s only interest is through the terms of its loan agreement with the Applicant, 9(2)(b)(ii)

Transactions

- **Transaction name:** Purchase of Lot 8, Homestead Bay
Description: Agreement for sale and purchase of Lot 8, Homestead Bay pursuant to the Lot 8 sale and purchase agreement dated 22 July 2022 a copy of which is attached as Appendix 6.
When it is likely to occur: Settlement is scheduled for 28 April 2023, but conditional on OIA consent being obtained by 28 March 2023.

Upload transaction-related documents

- [MOT-177335-1293-153-1 Signed Sale Purchase Agreement Lot 8.pdf](#) (3.7 MB)
- [MOT-177335-1343-133-1 Vendor Head Agreement and Deed of Nomination.pdf](#) (1.3 MB)

Applicant's ownership & structure

Does the Applicant have any current or past business operations in New Zealand?

Yes

Provide information about the Applicant's business operations, past and present, including those in New Zealand

The Applicant is a wholly owned subsidiary of RCLRE. RCLRE is actively developing 10 residential projects across Australia and New Zealand with an approximate residual lot yield of 1,800 lots, (from an original approximately 7,500 lots). RCLRE's annual gross sales turnover exceeds AUD\$100 million.

RCLRE has recently established a modular housing manufacturing facility within suburban Melbourne as part of its longer term strategy to become a more vertically integrated developer and builder of medium and higher density projects.

New Zealand Development – Hanley's Farm

A majority of RCLRE's New Zealand operations are owned by the Applicant which owns and is developing Hanley's Farm in Queenstown. Hanley's Farm comprises approximately 130 hectares of land located within the Jacks Point Resort Zone on SH6, Queenstown within close proximity of the Land. Hanley's Farm was acquired by the Applicant from 2014 to 2017.

The Applicant was successful in securing a private plan change to the QLDC District Plan for the Hanley's Farm development. The private plan change enabled Hanley's Farm to be developed into a staged residential land subdivision comprising up to 1,750 sections.

Hanley's Farm has been actively developed over the past six years and there is now only 300 sections remaining unsold. Approximately 1,000 sections have been developed and titled so far. Hanley's Farm also includes:

1. a state owned primary school;
2. 87 residential dwellings that will be made available for lease as affordable housing (through the Queenstown Lakes Community Housing Trust);
3. child care facilities; and
4. a substantial investment in community infrastructure, such as playgrounds, walking trails and a proposed community garden.

Hanley's Farm has been developed with a strategic focus on increasing the supply of housing into the Queenstown catchment.

Importantly, because of a covenant the Applicant has required registered on the titles to the Hanley's Farm lots, all lots that are sold require the purchasers of the lots to construct a dwelling on the lot prior to any resale of that lot and, in any event within, 4 years of settlement of the lot concerned.

This has reduced the prevalence of speculation that is often a feature of land sales given that a purchaser is required to commit to a larger capital investment than simply the deposit on a lot which is then on-sold prior to settlement. It is envisaged similar covenants will be registered over lots that may be developed from the Land.

Further, this has resulted in a higher proportion of owner occupiers purchasing sections in Hanley's Farm with a rapid conversion of bare section to the purchaser's principal place of residence. Completion of Hanley's Farm is expected by 2025, which is 10 years ahead of the original forecast completion date.

Community Investment

Part of the strategic vision for Hanley's Farm recognises that a project of this scale will have a dynamic and material impact within the Queenstown catchment and more broadly to the New Zealand economy. Accordingly, the Applicant has committed to investing in the community beyond developing Hanley's Farm. In this regard, the Applicant has:-

1. supported the growth and development of the Te Kura Whakatipu o Kawarau Primary School through untied donation of funds and other resources.
2. funded the development of club basketball within the Queenstown community with an initial impact investment.
3. become a key sponsor of the Otago Nuggets and the Southern Hoiho NBL franchises.
4. become the key sponsor of the NZ U15 Girls National team for the FIBA Oceania Championships.

It is the intention of the Applicant to pursue a similar strategy with the Land. However, the scale of the development for the Land is expected to be larger and will include the development of higher density built form within some precincts.

It is anticipated that the Applicant will look to set up a modular manufacturing plant within the Otago region in support of this initiative, replicating the model that it has perfected in Australia. BRANZ approval is held for this construction methodology. Naturally, the Applicant will continue its commitment to impact investing within the community beyond the development of the project itself.

Has the sensitive asset, or Applicant and related entities been subject of an application for consent before?

Yes

Consent number(s)

The Applicant (either directly or through an associate of the Applicant) holds interests in the following real estate in the Jacks Point Resort Zone, Queenstown which contains sensitive land:

1. Jacks Point Infrastructure land comprised in record of title 262752 (Otago Registry) held by RCL Jacks Point Limited ("RCLJP") an associate of the Applicant:

(a) Torchlight Fund obtained OIA consent to the acquisition of several parcels of land which included the Jacks Point Infrastructure land in August 2011 under consent decision 201110032.

(b) At the time the OIA consent was obtained the Jacks Point Infrastructure land was held by Henley Downs Village Investments Limited ("HDVIL"), a wholly owned subsidiary of Torchlight Fund. After this Torchlight Fund transferred the Jacks Point Infrastructure land to RCLJP.

(c) The exemption contained in Regulation 33(1)(a) of the 2005 Regulations applied to the transfer from HDVIL to RCLJP as another wholly owned member of the Torchlight Fund group.

2. Hanley's Farm open space records of title 812927, 812928, 812930, 801971, 801972, 801973 and 801976 (Otago Registry):

(a) The Hanley's Farm open space titles, at the time concerned, contained sensitive land only by virtue of areas of small parts of the land in those titles being designated as "open

space” under the QLDC District Plan.

(b) Torchlight Fund’s investment in Hanley’s Farm first began in 2012 when Torchlight Fund acquired the shares in RCL Group Limited, a Melbourne based large scale residential developer and property financier, the predecessor to RCLRE. RCL Group Limited was part of the remnants of Babcock & Brown Limited, which had invested heavily in property mezzanine funding throughout New Zealand before the Global Financial Crisis in 2008.

(c) A wholly owned subsidiary of Babcock’s called BBRLP Queenstown Pty Limited (now called RCL Queenstown Pty Limited) made several loans to entities developing Jacks Point and Henley Downs in December 2008 (Henley Downs is now called Hanley’s Farm).

(d) These loans were to Jack’s Point Limited, owner of the Jacks Point land, and Arith Holdings Limited (“Arith”), the registered proprietor of the land that comprised Hanley’s Farm at that time. Those initial loans were secured by second and third mortgages which were first advanced on or about December 2008.

(e) On the collapse of Babcock’s, during the GFC, RCL Group Limited was left with Babcock’s residential development and finance business where the most significant assets were a number of large-scale residential developments in Victoria and New South Wales, Australia. RCL Group Limited also assumed control of the Hanley’s Farm loans and securities as the direct parent of RCL Queenstown Pty Limited.

(f) In early 2011 Torchlight Fund had acquired Halifax Bank of Scotland’s debt over RCL Group Limited. In 2012 Torchlight Fund enforced its security over RCL Group, through a credit bid process conducted in Australia, which resulted in RCL Group becoming held by Torchlight Fund. This meant that Torchlight Fund, which itself has undertaken significant lending and investment in land development assets, became the owner of the “security arrangements” (i.e. the loans and securities) that RCL Queenstown Pty Limited had at Jacks Point.

(g) Following Torchlight assuming control of RCL Group, the RCL Queenstown Pty Limited loans and securities were transferred to RCL Group Limited subsidiaries including the Applicant and RCLJP. This was undertaken as part of an internal group restructure following completion of the RCL Group credit bid process.

(h) RCLJP and the Applicant then acquired further loans and securities at Jack’s Point and Henley Downs throughout 2014 to 2017 which included:

i. the acquisition of Westpac’s loans and securities over Arith in 2014;

ii. Baycorp’s second ranking loan and securities over Arith in 2016. Baycorp had acquired those loans and securities from Crown Asset Management Limited (which in turn had acquired them from South Canterbury Finance Limited before it was liquidated).

(i) In July 2016 RCLJP enforced its security rights in relation to the portfolio of Arith loans and securities that it had acquired. One of the securities in the bundle held by RCLJP was a specific security over the shares in Arith.

(j) RCLJP enforced the specific security agreement over the shares in Arith by taking the shares in Arith in satisfaction of what it was owed. Immediately following its enforcement over the shares in Arith, which resulted in Arith becoming a wholly owned subsidiary of RCLJP, Arith transferred the underlying land that it had owned to the Applicant in accordance with the exemptions contained in Regulation 33 of the OIA (being the

Regulations that were in force at that time). In particular pursuant to the exemptions contained in Regulation 33(1)(h), (i) and (j).

Attached as Appendix 7 is a copy of Burton Partners letter of 11 February 2019 to the OIO setting this information out in response to enquiries made by the OIO.

Applicant's financial position

A copy of the most recent audited financial accounts for RCLRE and its controlled entities (including the Applicant) is attached as Appendix 11.

Although the financial reports disclose an operating loss for the financial year of AUD\$13 million, this is substantially the result of a timing difference which is not unusual for a land developer. It is worth noting that the prior year audited accounts show an operating profit of AUD\$9 million and the current year to 30 June 2022 is recording an unaudited profit of AUD\$15 million.

RCLRE's gross turnover ranges between AUD\$50 million to AUD\$120 million per annum. RCLRE's net equity is negative AUD\$32 million as at 30 June 2021, however assets are recorded at the lower of cost and net realisable value and therefore the market value of the assets is not recorded in the balance sheet, rather the value is brought to account over time through trading profits.

Tell us about ownership and control

Structure diagram for Applicant's ownership is attached as Appendix 8. The structure diagram for the Tranche 2 Lender's ownership is included in the Lender Appendix.

Provide incorporation, shareholder and director information for the Applicant and persons who have a more than 25% beneficial or legal interest in the Applicant (or equivalent information if the Applicant is not a company)

Applicant Structure

1. The Applicant itself is the main New Zealand holding and operating company for RCLRE's investments and developments in New Zealand.
2. The directors of the Applicant are:
 - (a) Warwick David Wightman
 - (b) Russell James Naylor
 - (c) Noel John Kirkwood
3. David Wightman is also the CEO of RCLRE, which as noted earlier in this Application, undertakes larger scale residential developments here in New Zealand and in Australia, principally Victoria and New South Wales.
4. The Applicant is wholly owned by RCLRE, which itself is wholly owned by:
 - (a) RCL Real Estate Holdings (a Cayman Islands company)
 - (b) Torchlight Real Estate Group (a Cayman Islands company)
 - (c) Torchlight Fund LP (a Cayman Islands Limited Partnership)

A copy of the certificates of incorporation / establishment for each of these entities is attached as Appendix 9.

5. The general partner of Torchlight Fund LP is Torchlight GP Limited.

6. Torchlight GP Limited, as the general partner, is the entity which manages the Torchlight Fund limited partnership.

7. The directors of Torchlight GP are:

- (a) Russell James Naylor; and
- (b) George Charles Desmond Kerr

8. Torchlight Fund also has an investment committee, the members of which are:

- (a) Russell James Naylor; and
- (b) George Charles Desmond Kerr.

9. The investment committee has the power to approve investments and divestments. Importantly, 83.04% of Torchlight Fund's limited partnership interests are held by Torchlight Group which is a 100% subsidiary of PGC.

10. 53.81% of the shares in PGC are held by Chase Nominees Limited for interests associated with George Kerr.

11. Another George Kerr related entity, being Pyne Holdings Limited holds 14.73% of the shares in PGC. Pyne Holdings Limited, is a New Zealand company currently in receivership. Receivers have been appointed by the Bank of New Zealand under facilities granted by the BNZ to Pyne Holdings Limited.

12. The directors of PGC are:

- (a) George Kerr, managing director
- (b) Russell Naylor, executive director
- (c) Noel Kirkwood
- (d) Michelle Smith, independent director
- (e) Paul Dudley, independent director

Lender Structure

13. Refer to the Lender Appendix.

Are there decision making delegations in place (formal or informal)?

Yes

What are the delegations, who controls the delegations, and how do they relate to the investment?

1. Acquisition recommendation is put forward by David Wightman, the CEO of RCLRE and approved by Torchlight Fund's Investment Committee.

2. The strategic plan for the development of the project is determined by RCLRE's CEO and approved by Torchlight Fund's Investment Committee and then implemented by Torchlight GP. Execution of the strategic plan and day to day decision making is made by David Wightman as RCLRE's CEO.

3. The Lenders have no input into the above matters otherwise than through the usual covenants and undertakings that a lender would typically include in a loan agreement.

Tell us who could approve the acquisition of the investment and whether they consulted others (e.g. parent entities) before making the decision

Approval of the acquisition is given by Torchlight Fund's Investment Committee after the recommendation given by David Wightman as CEO of RCLRE.

See the Lender Appendix, which confirms who approved the Lenders' funding of the acquisition by the Land by the Applicant.

Who can approve the divestment of the investment?

The recommendation for the divestment strategy would come from David Wightman as CEO of RCLRE, but approval would ultimately come from the Torchlight Fund Investment Committee.

The Lenders have no control over any decision by the Applicant to divest the investment (other than a requirement that its loan be repaid in order for the security to be discharged).

Who is responsible for the day to day management of the investment?

David Wightman as CEO of RCLRE.

Who can approve significant capital and operating expenditure?

David Wightman as CEO of RCLRE so long as the capital expenditure is consistent with the strategic plan for the project approved by the Torchlight Fund Investment Committee. The strategic plan will have been put together by David Wightman with a recommendation for approval by the Torchlight Fund Investment Committee.

The Lenders have no control over approvals of significant capital and operating expenditure by the Applicant (other than ordinary course monthly drawdowns under the loan agreements (including the Lenders being satisfied that funds are applied for the approved loan purposes) and usual lender covenants relating to the approval of project budgets and similar).

Beneficial ownership table

- **Owner:** Torchlight Group
Percentage (must total 100%): 83.04
Description: Torchlight Group as 83.04% holder of limited partnership interests in Torchlight Fund.
Torchlight Group is in turn owned 100% by PGC which in turn is:
(a) 53.81% owned by Chase Nominees Limited (custodian for interests associated with

9(2)(b)(ii)

- **Owner:** 9(2)(b)(ii)
Percentage (

9(2)(b)(ii)

- **Owner:** percentage
Percentage (must total 100%): 9(2)(b)(ii)
Description: None of the remain Torchlight Investors held anywhere near 5%

Ownership by country table

- **Country:** New Zealand
Percentage (must total 100%): 71.18
- **Country:** United States of America
Percentage (must total 100%): 13.20
- **Country:** United Kingdom
Percentage (must total 100%): 8.65
- **Country:** Cayman Islands
Percentage (must total 100%): 5.31
- **Country:** Australia
Percentage (must total 100%): 1.66

Does the Applicant have any ROP individuals?

No

ROP entities

- **Full legal name of entity in English:** RCL Henley Downs Limited
Type of entity: A New Zealand Company
Jurisdiction: New Zealand
Unique identifier: Company Number 4588159
NZ Inland Revenue number, if held: 120-387-125
- **Full legal name of entity in English:** RCL Real Estate Pty Limited
Type of entity: An Australian proprietary company
Jurisdiction: Australia
Unique identifier: Australian Company Number 164 331 560
NZ Inland Revenue number, if held: N/A
- **Full legal name of entity in English:** Torchlight Fund LP
Type of entity: Cayman Island limited partnership
Jurisdiction: Cayman Islands
Unique identifier: N/A
NZ Inland Revenue number, if held: N/A

Explain the rationale for your selection

Applicant

We have identified the ROP entities to be:

1. the Applicant;
2. RCL Real Estate Pty Limited;
3. the Torchlight Fund LP; and
4. the Lender.

We consider the first three entities to be ROPs as Torchlight Fund is ultimately the entity which controls the Applicant through its 100% ownership of the Applicant and its subsidiaries which in turn own the Applicant downstream.

Torchlight Fund through its Investment Committee ultimately approves the investments and divestments of Torchlight Fund, on recommendation by David Wightman of RCLRE, which on approval are then implemented by RCLRE, and in this instance the Applicant, through direction by Torchlight Fund's general partner.

Torchlight GP Limited as the general partner manages the structure for Torchlight Fund,

but ultimately the approval is given by the Torchlight Fund Investment Committee.

We do not consider any of the limited partners and therefore the upstream owners and beneficial owners of the limited partnership interests to have any control necessary for them to be ROPs, as under the limited partnership structure the limited partners are excluded from the day to day management and investment making decisions.

The ultimate power that the limited partners have is the ability to remove and replace the general partner and seek a dissolution of the limited partnership on a 75% vote of limited partners resolving for this to occur. Although this does give power to the limited partners by way of a special vote to wind up the limited partnership or remove the general partner, it does not provide the limited partners with any decision making power for approval of investments or for that matter allow limited partners to be included in the day to day management of the Torchlight Fund limited partnership.

If any of the limited partners were considered to be an ROP, which we do not consider applies for the reasons above, it could only be Torchlight Group, a wholly owned subsidiary of PGC which itself is majority owned by interests associated with George Kerr a New Zealand citizen.

As noted, Torchlight Fund limited partners are not permitted to be involved in the day to day management of the limited partnership, and as such there is limited ability to control the limited partnership.

Ultimately, George Kerr could be said to have controlling interests through his associated shareholding in PGC and directorship positions in the Applicant structure, however he is a New Zealand citizen is not a ROP.

Lender

We also consider the Tranche 2 Lender may be an ROP for the reasons set out above. Further detail is set out in the Lender Appendix.

ROP individuals upload

- [CV George Charles Desmond Kerr.pdf](#) (106.19 KB)
- [MOT-177335-1343-66-2 CV Warwick David Wightman.pdf](#) (140.83 KB)
- [MOT-177335-1343-74-1 CV Noel John Kirkwood.pdf](#) (129.17 KB)
- [MOT-177335-1343-75-1 CV Russell Naylor.pdf](#) (252.66 KB)
- [JGBL-161014-0-39-1 Certified passport Noel Kirkwood.pdf](#) (504.17 KB)
- [MOT-162322-0-40-1 Russell James Naylor Passport Drivers Licence certified 2018.pdf](#) (1.09 MB)
- [MOT-172320-0-3-1 George Charles Desmond Kerr passport verified.pdf](#) (286.15 KB)
- [MOT-177335-0-135-1 David Wightman passport certified as at 29052019.pdf](#) (428.65 KB)

Individuals with control

Individuals with control (IWC)

- **First name (in English):** George
Middle names (in English): Charles Desmond
Last names (in English): Kerr
Country of birth: New Zealand
Residing country: Kingdom
Date of birth: [s 9(2)(a)]
Identification document type: Pass
Identification document number: [s 9(2)(a)]
Identification document expiry date: 15/03/2026
Role: Managing Director of PGC and through his related interests an 68.54% shareholder in PGC
Date became IWC: Date of acquisition of RCL Group through Torchlight Fund undertaking the RCL Group credit bid process in 2012 under the debt securities held by Torchlight Fund.
Is this individual also an ROP?: No
New Zealand Inland Revenue number, if held: n/a
Has this individual ever applied for a visa to travel to New Zealand?: No
Has this individual ever held an interest in a non-New Zealand government entity?: No
Has this individual ever held a position within a non-New Zealand government?: No
Has this individual ever held a position within an intelligence agency or served in the military?: No
- **First name (in English):** Warwick
Middle names (in English): David
Last names (in English): Wightman
Country of birth: Australia
Residing country: Australia
Date of birth: [s 9(2)(a)]
Identification document type: Passport
Identification document number: [s 9(2)(a)]
Identification document expiry date: 2025
Role: Director and Chief Executive Officer of the Applicant
Date became IWC: Date of appointment as a director of the Applicant on 14 August 2013
Is this individual also an ROP?: No
New Zealand Inland Revenue number, if held: n/a
Has this individual ever applied for a visa to travel to New Zealand?: No
Is this individual ordinarily resident in New Zealand?: No
Has this individual ever held an interest in a non-New Zealand government entity?: No
Has this individual ever held a position within a non-New Zealand government?: No
Has this individual ever held a position within an intelligence agency or served in the military?: No
- **First name (in English):** Russell
Middle names (in English): James
Last names (in English): Naylor
Country of birth: Australia
Residing country: Australia
Date of birth: [s 9(2)(a)]
Identification document type: Passport
Identification document number: [s 9(2)(a)]

Identification document expiry date: 12/06/2024

Role: Director of Applicant, Torchlight GP and PGC

Date became IWC: 14 February 2012

Is this individual also an ROP?: No

New Zealand Inland Revenue number, if held: n/a

Has this individual ever applied for a visa to travel to New Zealand?: No

Is this individual ordinarily resident in New Zealand?: No

Has this individual ever held an interest in a non-New Zealand government entity?: No

Has this individual ever held a position within a non-New Zealand government?:
No

Has this individual ever held a position within an intelligence agency or served in the military?: No

- **First name (in English):** Noel

Middle names (in English): John

Last names (in English): Kirkwood

Country of birth: New Zealand

Residing country: Zealand

Date of birth: [s 9(2)(a)]

Identification document type: Pass

Identification document number: [s 9(2)(a)]

Identification document expiry date: 23/05/2027

Role: Director **Date became IWC:** 29 August 2014

Is this individual also an ROP?: No

New Zealand Inland Revenue number, if held: n/a

Has this individual ever applied for a visa to travel to New Zealand?: No

Has this individual ever held an interest in a non-New Zealand government entity?: No

Has this individual ever held a position within a non-New Zealand government?:
No

Has this individual ever held a position within an intelligence agency or served in the military?: No

IWC documents upload

- [JGBL-161014-0-39-1 Certified passport Noel Kirkwood 0.pdf](#) (504.17 KB)
- [MOT-162322-0-40-1 Russell James Naylor Passport Drivers Licence certified 2018 0.pdf](#) (1.09 MB)
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- [MOT-177335-1343-74-1 CV Noel John Kirkwood 0.pdf](#) (129.17 KB)
- [MOT-177335-1343-75-1 CV Russell Naylor 0.pdf](#) (252.66 KB)

Investor test

Repeat investor information

Have any individuals or entities relevant to this application met the investor test for a previous application decided under section 18A (post-22 March 2021)?

No

Investor Test - 12 Factors under [section 18A](#) of the Overseas Investment Act 2005

18A(4)(a)(i)

No

18A(4)(a)(ii)

No

18A(4)(a)(iii)

No

18A(4)(a)(iv)

No

18A(4)(a)(v)

No

18A(4)(a)(vi)

No

18A(4)(a)(vii)

No

18A(4)(b)

No

18A(4)(c)

No

18A(4)(d)

No

18A(4)(e)(i)

No

18A(4)(e)(ii)

No

18A(4)(f)

No

National Interest

Does the transaction fall under [Section 20A](#) of the Act?

No, the transaction is neither of the above.

Explain why the Applicant does or does not consider that the transaction involves a strategically important business.

The asset being purchased is not a strategically important business asset. The Land is currently farm land, including several areas of undeveloped residential land (being those areas as identified as being in the Jacks Point Resort Zone that is located on the immediate southern boundary of the Jacks Point Zone in the QLDC area.

The Applicant will be seeking a plan change to the QLDC District Plan to change the zoning Land to residential.

Explain why the Applicant does or does not consider that the transaction involves a non-NZ government investor under section 20A(1)(a)-(b) of the Act.

There are no non-NZ government shareholders or limited partners in either Torchlight Fund or PGC.

See the Lender Appendix for a description of why the Tranche 2 Lender is not a non-NZ government investor.

Does the Applicant consider the transaction to be a transaction of national interest under [section 20B](#) of the Act?

No

If the Applicant considers the transaction is not a transaction of national interest under section 20B of the Act, provide submissions on why the transaction does not engage one of the scenarios outlined in the Annex of the 2021 directive letter from the Minister of Finance. Specifically, whether the transaction:

This transaction does not engage any of the scenarios outlined above, it is the sale of 163.434 hectares of rural land (including some residential land) immediately adjacent to the southern boundary of the Jacks Point Resort Zone, being a parcel of land that the Applicant intends to pursue a plan change to undertake significant residential and commercial development.

Upload documents

Supporting Information upload

- [Appendix 01.pdf](#) (303.61 KB)
- [Appendix 02.pdf](#) (116.36 KB)
- [Appendix 03.pdf](#) (407.44 KB)
- [Appendix 04.pdf](#) (1.16 MB)
- [Appendix 05.pdf](#) (2.34 MB)
- [Appendix 06.pdf](#) (1.69 MB)
- [Appendix 07.pdf](#) (2.33 MB)
- [Appendix 08.pdf](#) (213.91 KB)
- [Appendix 09.pdf](#) (2.2 MB)
- [Appendix 10.pdf](#) (1.52 MB)
- [Appendix 11.pdf](#) (15.03 MB)
- [Appendix 12.pdf](#) (2.94 MB)
- [Appendix 13.pdf](#) (17.29 MB)

- [Appendix 14.pdf](#) (1.18 MB)
- [Appendix 15.pdf](#) (479.63 KB)
- [Appendix 16.pdf](#) (1.18 MB)
- [Appendix 17.pdf](#) (480.95 KB)
- [Appendix 18.pdf](#) (338.77 KB)
- [Appendix 19.pdf](#) (167.2 KB)

Appendices

- Appendix reference: 01
Name of document: Record of Title for the Land 555575 (Otago Land Registry)
- Appendix reference: 02
Name of document: LT Plan 498959 showing Area "A" being the no-build area on the Land
- Appendix reference: 03
Name of document: Cadastral Aerial Photograph of Land
- Appendix reference: 04
Name of document: QLDC District Plan Map for Land
- Appendix reference: 05
Name of document: Sensitive Land Certificate
- Appendix reference: 06
Name of document: Agreement for Sale and Purchase of the Land dated 22 July 2022 (along with the Head Agreement and the Deed of Nomination relating to the Head Agreement)
- Appendix reference: 07
Name of document: Burton Partners letter to OIO of 11 February 2019
- Appendix reference: 08
Name of document: RCL Henley Downs Limited Structure Diagram
- Appendix reference: 09
Name of document: Certificates of Incorporation for structure entities
- Appendix reference: 10
Name of document: CVs of Individuals with Control along with copies of Passports for each person: George Kerr (NZ citizen) Noel Kirkwood (NZ citizen) Warwick David Wightman (Australian citizen) Russell Naylor (Australian citizen)
- Appendix reference: 11
Name of document: RCL Real Estate Pty Limited Financial Accounts
- Appendix reference: 12
Name of document: QLDC Spatial Plan identifying future urban development land
- Appendix reference: 13
Name of document: Bayleys Marketing Campaign proposal for the Land along with copies of newspaper advertising
- Appendix reference: 14
Name of document: Vendor's proposed development plans for the Land
- Appendix reference: 15
Name of document: Applicant's proposed annual expenditure spreadsheet
- Appendix reference: 16
Name of document: Applicant's draft development plan for the Land
- Appendix reference: 17
Name of document: Investment Plan
- Appendix reference: 18
Name of document: Signed Applicant Signature Form

Declaration

Who is submitting the application?

I am the Applicant's advisor/external representative (lawyer acting on behalf of a client, other external advisors)

Name of person submitting application and declaring below

Michael Owen Tinkler

I have uploaded the Investment Plan (if applicable).

Yes

I have read, understood, and agreed to the privacy notice.

Yes

I have uploaded all documentation relevant to the claims made in this application and in support of the application.

Yes

I have uploaded proof of payment of the [lodgement fee](#) for this application.

No

I solemnly declare to the best of my knowledge, that all the information in this application form is true and correct.

Yes

True and correct

Yes

Investor test

No

Repeat investor test

No

I have uploaded the signed applicant declaration.

Yes

Print to PDF instructions

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