

QLDC Council  
15 December 2016

**Report for Agenda Item: 5**

**Department: Property & Infrastructure**

**New Right of Way Easement to replace an existing easement on a Malaghans Road Esplanade Reserve**

**Purpose**

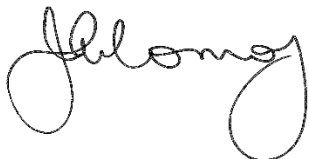
The purpose of this report is to consider whether to grant a new right of way easement and to consider whether to waive the easement fee, given the circumstances.

**Recommendation**

That Council:

1. **Note** the contents of this report;
2. **Approve** a new right of way easement over Lot 4 DP 460171 in favour of proposed Lot 1 DP 502810;
3. **Agree** that notification of the intention to grant the easement is not required as the statutory test in section 48(3) of Reserves Act 1977 is met for the reasons set out in this report;
4. **Delegate** authority to approve final terms and conditions, and execution authority to the General Manager – Property and Infrastructure;
5. **Agree** to the exercise of the Minister's consent (under delegation from the Minister of Conservation) to the granting of an easement over Lot 4 DP 46071 in favour of proposed Lot 1 DP 502810; and
6. **Approve** waiving the easement fee in this instance.

Prepared by:



Joanne Conroy  
Property Advisor - APL

17/11/2016

Reviewed and Authorised by:



Aaron Burt  
Planner: Parks & Reserves

21/11/2016

## Background

- 1 The applicant, Mr Fletcher, is agent for the owner R & H Trust Co (NZ) Ltd. The R & H Trust owns a rural lot on Malaghans Road. Several years ago, the lot was subdivided and triggered the requirement for the owner to vest an esplanade reserve in Council over a stream. The reserve is known as Lot 4 DP 460171 and is shown on the attached title plan shaded in orange. The driveway servicing the house passed over the new reserve and therefore a right of way easement was registered on the reserve title. The drive is shown (approximately) as a blue line.
- 2 Mr Fletcher is purchasing the land shown as lot 2. The parties have been working on a boundary adjustment so that lot 1 will increase from the area shaded green, to the area outlined in pink.
- 3 If the lot that benefits from an easement is subdivided, the easements automatically transfer to the new title(s). However, as the lot is being extended, the additional area is not subject to those rights (only the area shaded in green that was granted the original rights). The parties must now apply for a new right of way easement.
- 4 An easement over a reserve is granted pursuant to the Reserves Act 1977, however, such an easement must be publicly notified in accordance with Section 48(2) unless it can be shown that people's ability to enjoy the reserve is not affected and that there is no long-term effect on the land. These matters are considered below.
- 5 Note that the land to be granted an easement is the proposed Lot 1 DP 502810, which does not currently exist, but is the anticipated result of subdivision consent RM160328.

### Does the easement affect the ability of people to use and enjoy the reserve?

- 6 The driveway was in place prior to the reserve being vested in Council and although the existing easement remains, there are no additional users and there is no additional impact on the reserve by granting a new easement.

### Does the easement create any long term permanent effect on the reserve?

- 7 The right of way easement is existing and does not have any additional permanent effects on the reserve.
- 8 Taking into account the above factors, it is not considered that the easement will permanently affect the reserve or affect the ability of people to use and enjoy the reserve any more than the existing situation. Consequently, public notification is not required.

## Comment

- 9 Use of the right of way will not change. Lot 2 has access from Mooney Road and will not use the right of way. There are no physical works proposed. Resource Consent, 224C and 223 have been granted.

10 Council has an easement policy that enables Council to charge an easement fee to compensate for the loss in land value that would result from registering an easement on the title. In accordance with the policy, a right of way easement value is generally assessed by a Valuer. In this, by way of an example, the rateable land value is used below:

Land value of property	= \$55,000
Size of property	= 28,069 m <sup>2</sup>
Value per m <sup>2</sup>	= \$1.96/m <sup>2</sup>
Easement area (approx.)	= 315 m <sup>2</sup>

Calculation:  
 $\$1.96/\text{m}^2 \times 315 \text{ m}^2 = \$588 \text{ plus GST}$

11 The rateable value is very low because the land is reserve. A Valuer would likely assess the value much higher, but still have to take the reserve status into account. The assessed easement fee would likely be several thousand dollars.

12 While Council could seek the fee pursuant to the easement policy, it is not only likely to be of low value, but seems unreasonable given that the right of way is already in place and the requirement to seek a new one is merely a technicality. There is no additional use proposed because Lot 2 will be accessed from Mooney Road.

13 Under the Reserves Act 1977, Ministerial consent is required before an easement can be granted over a reserve. This consent is now delegated to Council and must be granted prior to the Easement being lodged with LINZ.

14 If the easement is declined, then the applicant would either have to find an alternative access to his dwelling, or to cancel the proposed boundary adjustment. If he was to subdivide the land to create a new title for the extended part of lot 1, then the easement would automatically transfer to the two new titles.

## Options

15 This report identifies and assesses the following reasonably practicable options for assessing the matter as required by section 77 of the Local Government Act 2002.

16 Option 1 Approve a new right of way easement through Lot 4 DP 460171 in favour of proposed Lot 1 DP 502810, including delegated approval of the Minister of Conservation, and agree to waive the easement fee.

### *Advantages:*

17 Will enable to applicant to retain access to his dwelling following the boundary adjustment, without incurring any additional cost.

### *Disadvantages:*

18 Council would forego an easement fee, albeit reasonably low.

20 Option 2 Approve a new right of way easement through Lot 4 DP 460171 in favour of proposed Lot 1 DP 502810, including delegated approval of the Minister of Conservation, and to charge the easement fee (to be assessed by valuation).

*Advantages:*

20 Will enable the applicant to retain access to his dwelling following the boundary adjustment.

21 Will result in a fee paid to Council.

*Disadvantages:*

22 Charging a fee to the applicant could be seen as unfair given the circumstances.

23 Option 3 Decline the new right of way easement.

*Advantages:*

24 The driveway through the reserve might be removed or more likely the boundary adjustment will be cancelled, in which case there is no advantage.

*Disadvantages:*

25 The applicant will either have to find an alternative drive way or more likely will cancel the boundary adjustment as proposed.

26 This report recommends **Option 1** for addressing the matter because it ensures the applicant can carry on with the boundary adjustment without incurring additional costs and it will not have any impact on Council's reserve.

***Significance and Engagement***

27 This matter is of medium significance, as determined by reference to the Council's Significance and Engagement Policy because although it involves a reserve, the impact of this decision is minor.

***Risk***

28 This matter relates to operation risk OR011A Decision making. The risk is classed as low. While a perpetual property right contained in the recreational reserve does carry risk to Council for any future development, the right of way easement already exists.

**Financial Implications**

29 Any costs incurred in granting this easement will be met by the applicant.

**Council Policies, Strategies and Bylaws**

30 The following Council policies, strategies and bylaws were considered:

- Significance & Engagement Policy 2014 – the proposal is a matter with low significance in terms of this policy as it does not impact Council's strategic assets, affect a large number of residents, ratepayers and the environment and is not expected to create a community interest in the matter.
- Easement Policy 2008 – the application is consistent with the policy.

31 The recommended option is consistent with the principles set out in the named policy/policies.

32 This matter does not have any impact on the 10-Year Plan/Annual Plan

### **Local Government Act 2002 Purpose Provisions**

33 The recommended option:

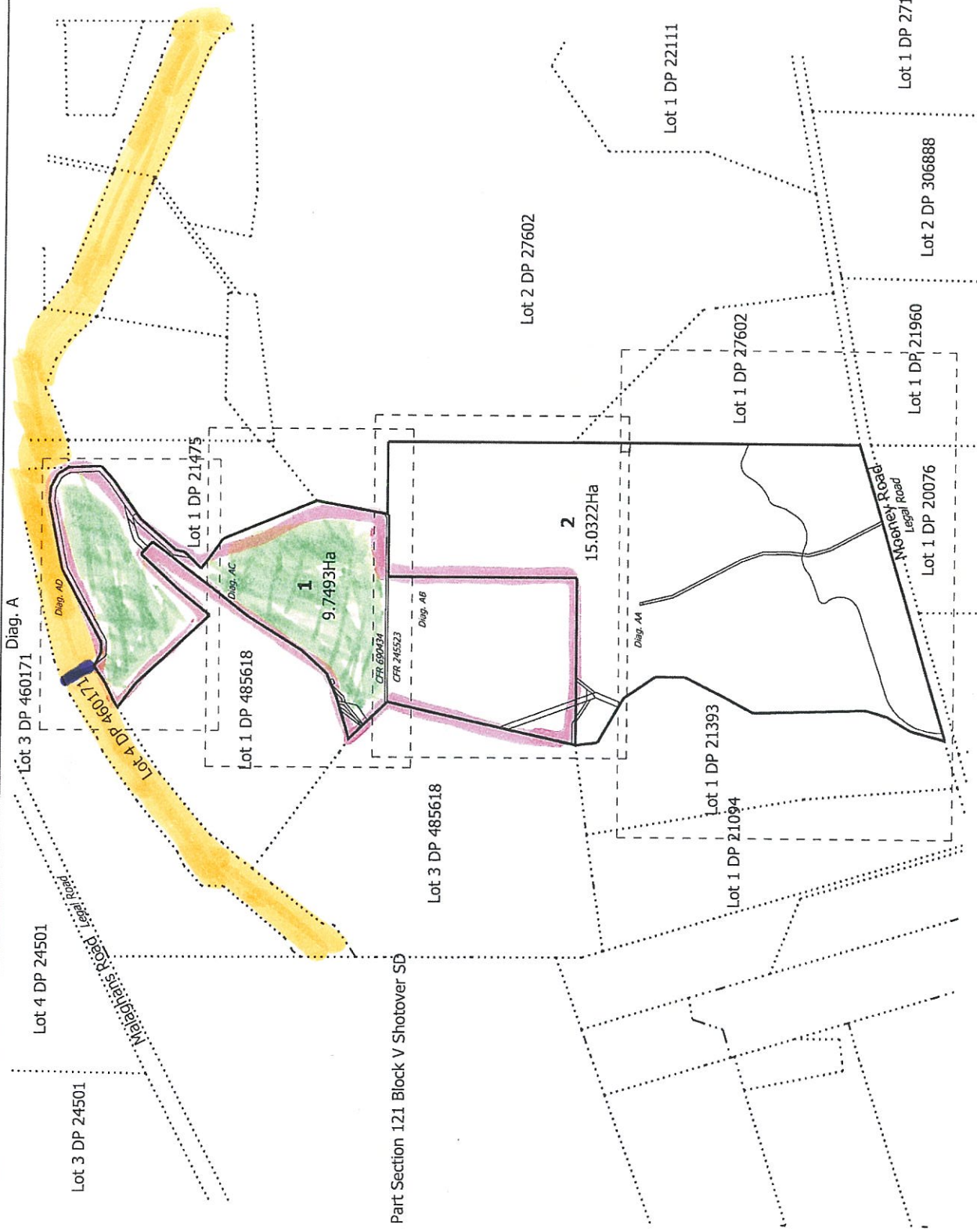
- Will help meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses by allowing a resident to complete a boundary adjustment and correct an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

### **Consultation: Community Views and Preferences**

34 No consultation is anticipated because the proposal does not change the existing situation on the reserve.

### **Attachments**

- A Marked up Title Plan
- B Aerial photograph



T 1/7

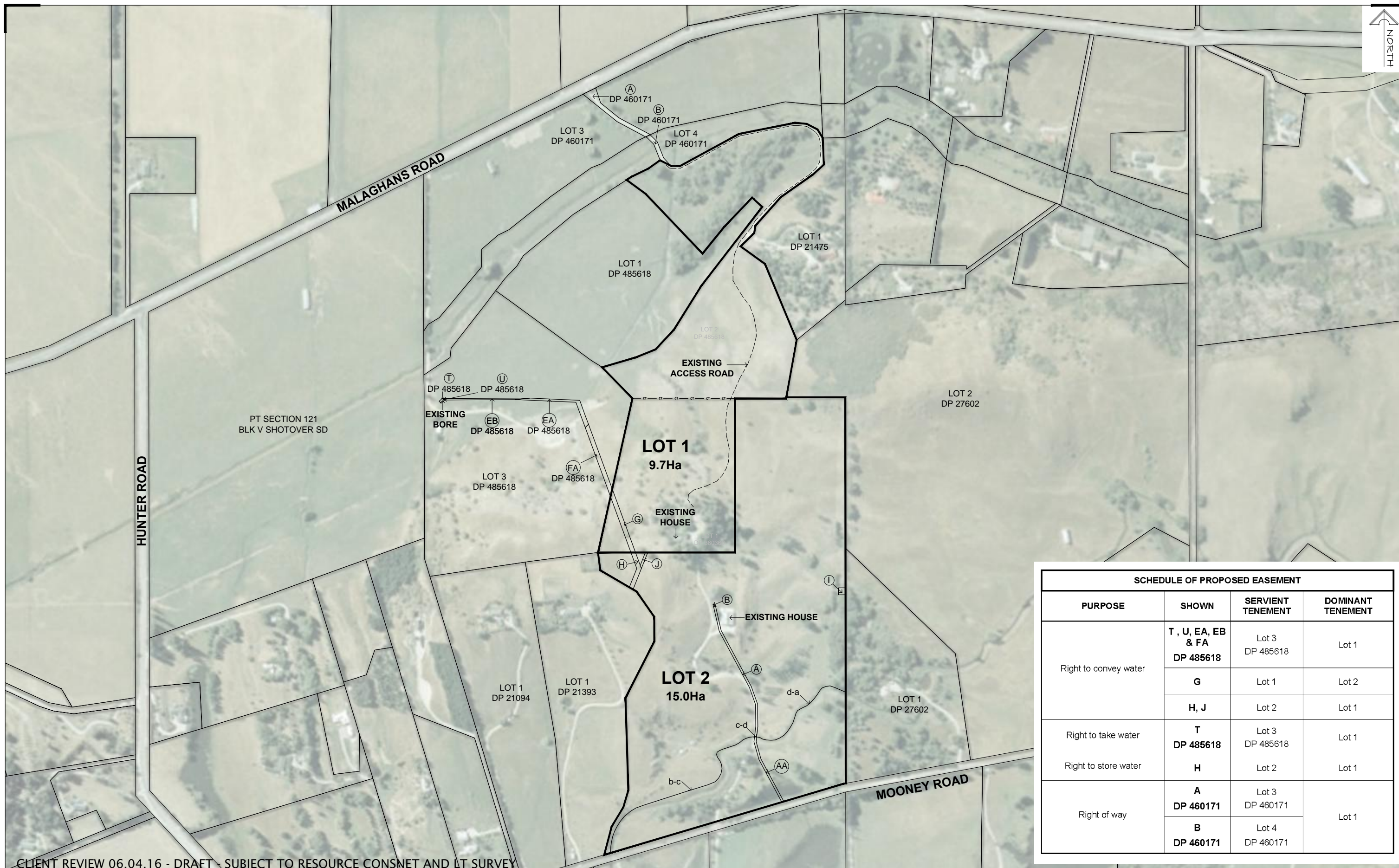
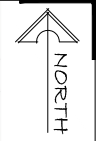
Title Plan  
LT 502810  
DRAFT

Surveyor: Edward John McGregor Murray  
Firm: Clark Fortune McDonald & Associate

Lots 1 & 2 being a subdivision of Lot 3 DP 360366 and Lot 2 DP 485618

Land District: Otago

Digitally Generated Plan  
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SCHEDULE OF PROPOSED EASEMENT			
PURPOSE	SHOWN	SERVIENT TENEMENT	DOMINANT TENEMENT
Right to convey water	T, U, EA, EB & FA DP 485618	Lot 3 DP 485618	Lot 1
	G	Lot 1	Lot 2
	H, J	Lot 2	Lot 1
Right to take water	T DP 485618	Lot 3 DP 485618	Lot 1
Right to store water	H	Lot 2	Lot 1
Right of way	A DP 460171	Lot 3 DP 460171	Lot 1
	B DP 460171	Lot 4 DP 460171	

CLIENT REVIEW 06.04.16 - DRAFT - SUBJECT TO RESOURCE CONSNET AND LT SURVEY

LOTS 1 AND 2 BEING A PROPOSED SUBDIVISION OF LOT 2 DP 360366 AND LOT 2 DP 485618

**Clark Fortune McDonald & Associates**  
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 21 Reece Crescent, P.O.Box 550, Wanaka  
 Tel. (03)443-4448, Fax (03)443-4445, Email admin@cfma.co.nz  
 Shop 2, Otago House, 475 Moray Place, P.O. Box 5960  
 Tel. (03)470-1582, Fax (03)470-1583, Email admin@cfma.co.nz

**QUEENSTOWN LAKES DISTRICT COUNCIL**

**APPROVED PLAN:**  
**RM160325**

**Tuesday, 26 July 2016**

Client	Surveyed	Signed	Date	Job No.	Drawing No.
DON FLETCHER				10390	05
Notes: All dimensions shown are in meters unless shown otherwise. Any person using Clark Fortune McDonald drawings and other data accepts the risk of: - Using the drawings and other data in electronic form without requesting and checking them for accuracy against the original hard copy versions. - Ensuring the information is the most recent issue. - Copyright on this drawing is reserved.	Drawn	Signed	Date	Scale	
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	Designed	Signed	Date	Datum & Level	Rev.
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