



IN THE MATTER of the Resource Management Act
1991

AND

IN THE MATTER of references under clause 14 of the
First Schedule to the Act

BETWEEN

WAKATIPU ENVIRONMENTAL
SOCIETY INC

RMA 1043/98, 1394A/98, 1165/98

AND

TELECOM NEW ZEALAND
LIMITED

RMA 1030/98

AND

CENTRAL ELECTRIC LTD (now
DELTA ELECTRIC LTD)

RMA 1290/98

AND

CLARK FORTUNE McDONALD

RMA 1405/98

AND

TRANSPower NEW ZEALAND
LIMITED

RMA 1260/98

AND

CONTACT ENERGY LIMITED

RMA 1401/98

AND

MINISTER FOR THE
ENVIRONMENT

RMA 1194/98

Referrers

AND

THE QUEENSTOWN-LAKES
DISTRICT COUNCIL



BEFORE THE ENVIRONMENT COURT

Environment Judge J R Jackson
 Environment Commissioner R Grigg
 Environment Commissioner R S Tasker

HEARING at QUEENSTOWN on 20-23 and 26-29 July and 6-7 September
 1999
 (Final submissions received 23 September 1999)

APPEARANCES

Mr B Lawrence for the Wakatipu Environmental Society Inc
 Mr J Haworth for the Upper Clutha Environment Society Inc in respect of
 RMA 1394/98
 Mr P J Page and Mr G M Todd for Telecom NZ Ltd and Mr and Mrs R S
 Mills
 Mr W J Fletcher for Central Electric Ltd (now Delta Electric Ltd)
 Mr M Parker for Clark Fortune McDonald and J F Investments Ltd, Mount
 Field Ltd, Quail Point Ltd
 Mr K G Smith for Contact Energy Ltd
 Mr A F J Gallen and Ms S Ongley for the Minister for the Environment in
 relation to RMA 1043/98 (WESI) and RMA 1194/98
 Mr N S Marquet for the Queenstown-Lakes District Council
 Mr W J Goldsmith and Mr A More for Terrace Towers (NZ) Pty Ltd
 Mr G M Todd for the persons listed in Appendix 1
 Mr J K Guthrie, Mr W J Goldsmith and Mrs J Simpson for Crosshill Farm
 Ltd, Pisidia Holdings Ltd, Queenstown Safari Co Ltd, Carolina
 Developments Ltd, Mr D and Mrs J Jardine and Mr A S Farry
 Mr D Masterton for Lake Hayes Holdings Ltd
 Mr M V Smith for Federated Farmers NZ Inc
 Mr M M Hasselman on behalf of the Community Association, Glenorchy,
 (on Thursday 29 July 1999)
 Mr A More for Terrace Towers Proprietary Ltd (in relation to RMA 1043/98
 and 1194/98)
 Mr J Reid for Gibbston Valley Estate Ltd



(2) In section 6(e) the word ‘ancestral’ qualifies each of ‘lands, water, sites, waahi tapu, and other taonga’: *Haddon v Auckland Regional Council*⁷⁸.

(3) In section 6(c) where the phrase ‘significant indigenous vegetation’ occurs, Parliament has made it clear that ‘indigenous’ does not qualify the following ‘habitat’ whereas ‘significant’ does, by repeating the word ‘significant’. So 6(c) refers to:

(c) *The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.*

The meaning of ‘outstanding’

82. The word ‘outstanding’ means:

- “conspicuous, eminent, especially because of excellence”
- “remarkable in”⁷⁹.

As Mr Marquet pointed out, the Remarkables (mountains) are, by definition, outstanding. The Court observed in *Munro v Waitaki District Council*⁸⁰ that a landscape may be magnificent without being outstanding. New Zealand is full of beautiful or picturesque landscapes which are not necessarily outstanding natural landscapes.

83. A subsidiary issue is whether an outstanding natural landscape has to be assessed on a district, regional or national basis. Mr Goldsmith referred



⁷⁸

[1994] 2 NZRMA 49.

⁷⁹

Concise Oxford Dictionary (1990) p.485.

⁸⁰

C98/97.

to a number of inquiries the Court has held into various Draft National Water Conservation Orders. These inquiries related to section 199(1) of the Act which involves the word “outstanding”. In *Re an inquiry into the draft National Water Conservation (Buller River) Order*⁸¹ the Court accepted that the test as to what is outstanding is a reasonably rigorous one. The Court also referred to the Mohaka River case⁸² in which a differently composed Tribunal agreed that the test is reasonably rigorous and went on to accept the submission that before a characteristic or feature could qualify as outstanding it would need to be quite out of the ordinary on a national basis. This test was upheld by the Planning Tribunal in the *Inquiry into the Water Conservation Order for the Kawarau River*⁸³.

84. However, as we understand Mr Goldsmith’s argument, the use of the word ‘outstanding’ in section 6(b) depends on what authority is considering it. Thus if section 6(b) is being considered by a regional council then that authority has to consider section 6(b) on a regional basis. Similarly a district council must consider what is outstanding within its district. By contrast a water conservation order is made under Part IX of the Act which is really a self-contained code within the RMA: it contains its own purpose and procedures including public notification on a national basis.
85. We agree: what is outstanding can in our view only be assessed – in relation to a district plan – on a district-wide basis because the sum of the district’s landscapes are the only immediate comparison that the territorial authority has. In the end of course, this is an ill-defined

81

C32/96.

82

Re Draft Water Conservation (Mohaka River) Order W20/92.

83

C33/96.



restriction, since our 'mental' view of landscapes is conditioned by our memories of other real and imaginary landscapes in the district and elsewhere, and by pictures and photographs and verbal descriptions of them and other landscapes.

86. The local approach is consistent with an identification of particular places: the unique landscapes of the given district. There are districts without the vertical dimensions of the Queenstown-Lakes district, but that does not lead to the result they do not have outstanding (natural) landscapes. Flatter landscapes may qualify, even though the test is still a rigorous one. A district may have no outstanding natural landscapes or features.

The meaning of 'natural'

87. To qualify under section 6(b) a landscape must not only be outstanding, it must also be 'natural'. The dictionary definition of 'natural' is:

- (a) *existing in or caused by nature; not artificial (natural landscape)*
- (b) *uncultivated; wild (existing in its natural state)⁸⁴*

That definition is a little simplistic in our view: much more landscape has been affected by human activity than is commonly understood. The revised plan itself recognises that:

...[T]he downland lake basins have undergone more extensive modification. Maori settlement did occur around the inland lake



⁸⁴ Concise Oxford Dictionary (1990) p. 906

(normally) require experts⁹². Usually an outstanding natural landscape should be so obvious (in general terms) that there is no need for expert analysis. The question of what is appropriate development is another issue, and one which might require an expert's opinion. Just because an area is or contains an outstanding natural landscape does not mean that development is automatically inappropriate⁹³.

100. The simplest evidence on this issue came from Mr J H Aspinall who was a witness for Federated Farmers (NZ) Inc. He did not qualify himself as an expert; he is a farmer in the district (at Mt Aspiring station). On the other hand we do not consider that we should be precluded from considering his view since we do not consider that the question of whether there are outstanding natural landscapes in the district should be left solely to experts. In Mr Aspinall's view the district's truly outstanding landscapes are in the Upper Rees, Upper Dart, Upper Matukituki and Wilkin Valleys and thus are managed under the National Parks Act 1980.

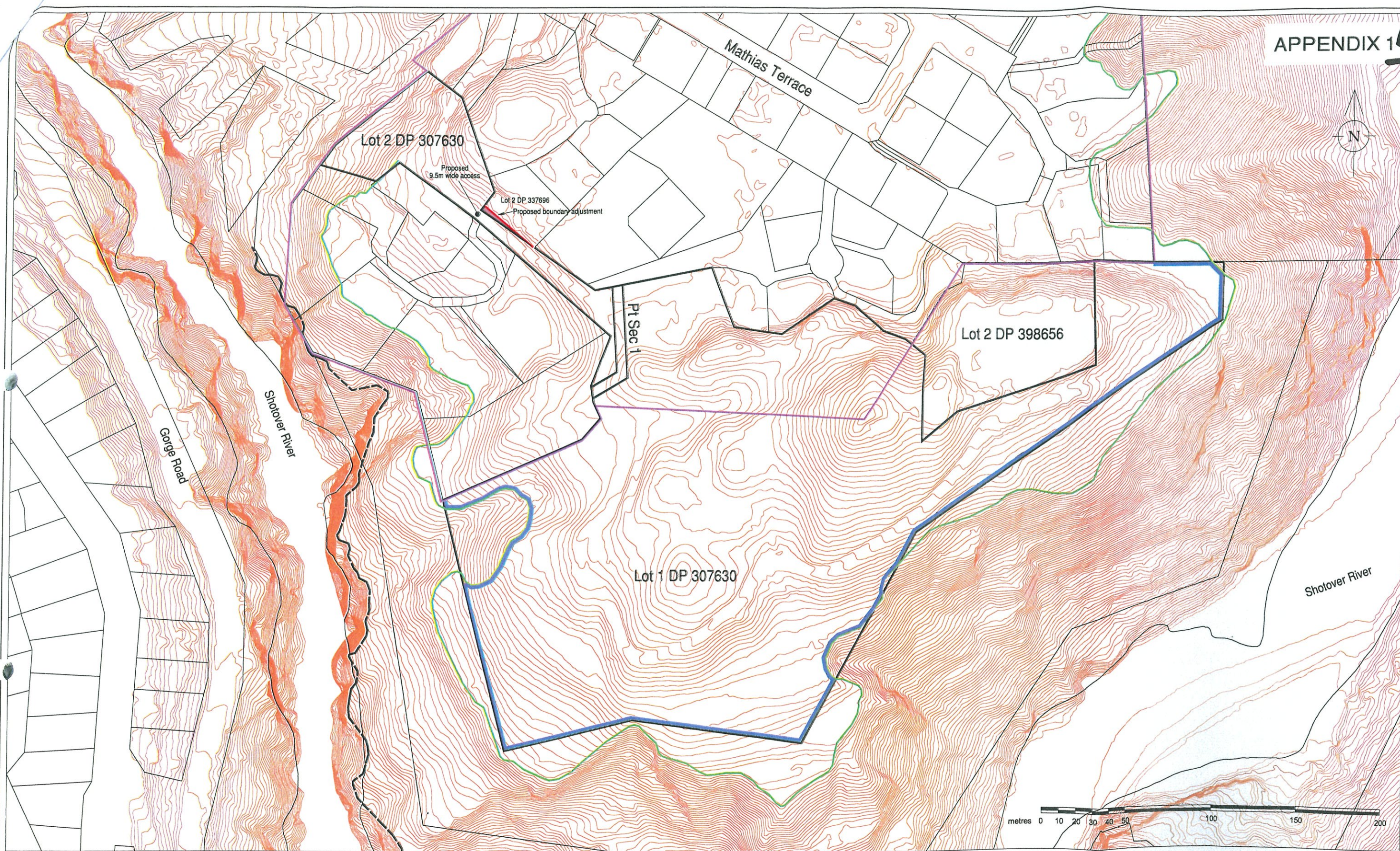
101. In coming to our conclusions below, we generally prefer the evidence of Mr Kruger over those of the other landscape witnesses. That is not because we accept all of Mr Kruger's evidence – we do not – but because he at least was prepared to state where, in his opinion, some of the district's landscapes begin and end. His evidence related more to the general Wakatipu area, and the Wakatipu basin in particular. Even there he had some difficulties – he did not know, as Mr Marquet's cross-examination of him revealed, where the southern boundary of the district was.



⁹² There may be exceptions where a landscape is flatter or such a large geological unit that an uninformed observer may have difficulty conceiving of it as outstanding, in the first case, or as a single landscape in the second.

⁹³ Section 6(b).

A



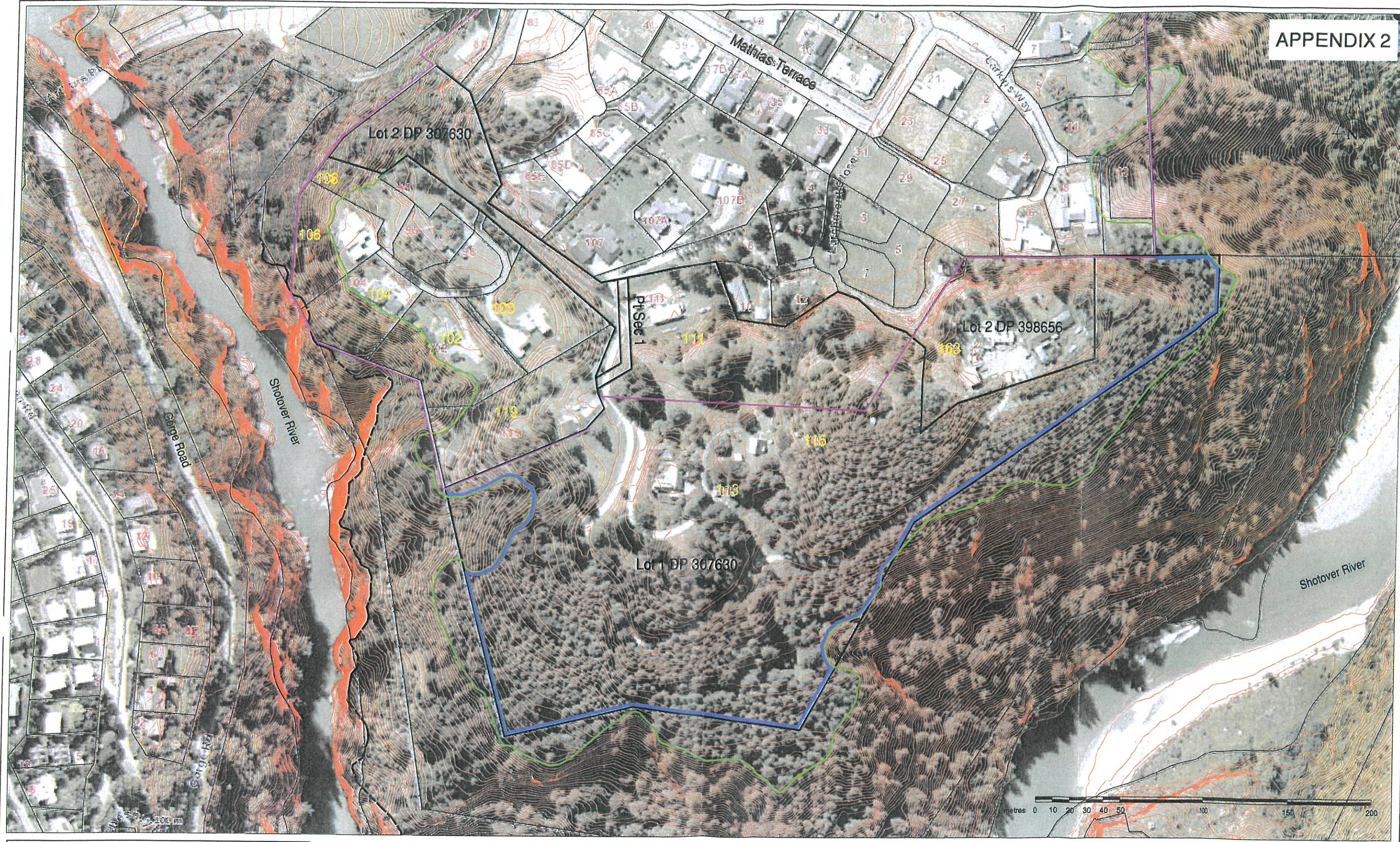
Legend	
	Requested Low Density Residential Zone Boundary
	Operative/PDP Low Density Residential Zone Boundary
	Top of River Cliff
	Edge of the Shotover Gorge

Note: All areas and dimensions are subject to survey
 Note: Aerial image & contours from QLDC information
 Note: Not all easements are shown
 Note: Contour interval is 1.0m

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PROPOSED ZONE CHANGE
 Lots 1 & 2 DP 307630 & Pt Sec 1 SO 24074
 ARTHURS POINT
 FOR GERTRUDE'S SADDLERY LTD

DATE: 27 July 2017	Scale 1:2000	DRAWING & ISSUE No.
BY: B McLeod	Original Plan A3	4462-3R-1B
		PO Box 2493 Wakatipu 9349 Ph 03 442 3466 Fax 03 442 3469 Email admin@ascl.co.nz



- Legend**
- Requested Low Density Residential Zone Boundary
 - Operative/PDP Low Density Residential Zone Boundary
 - Top of River Cliff
 - Edge of the Shotover Gorge

Note: All areas and dimensions are subject to survey
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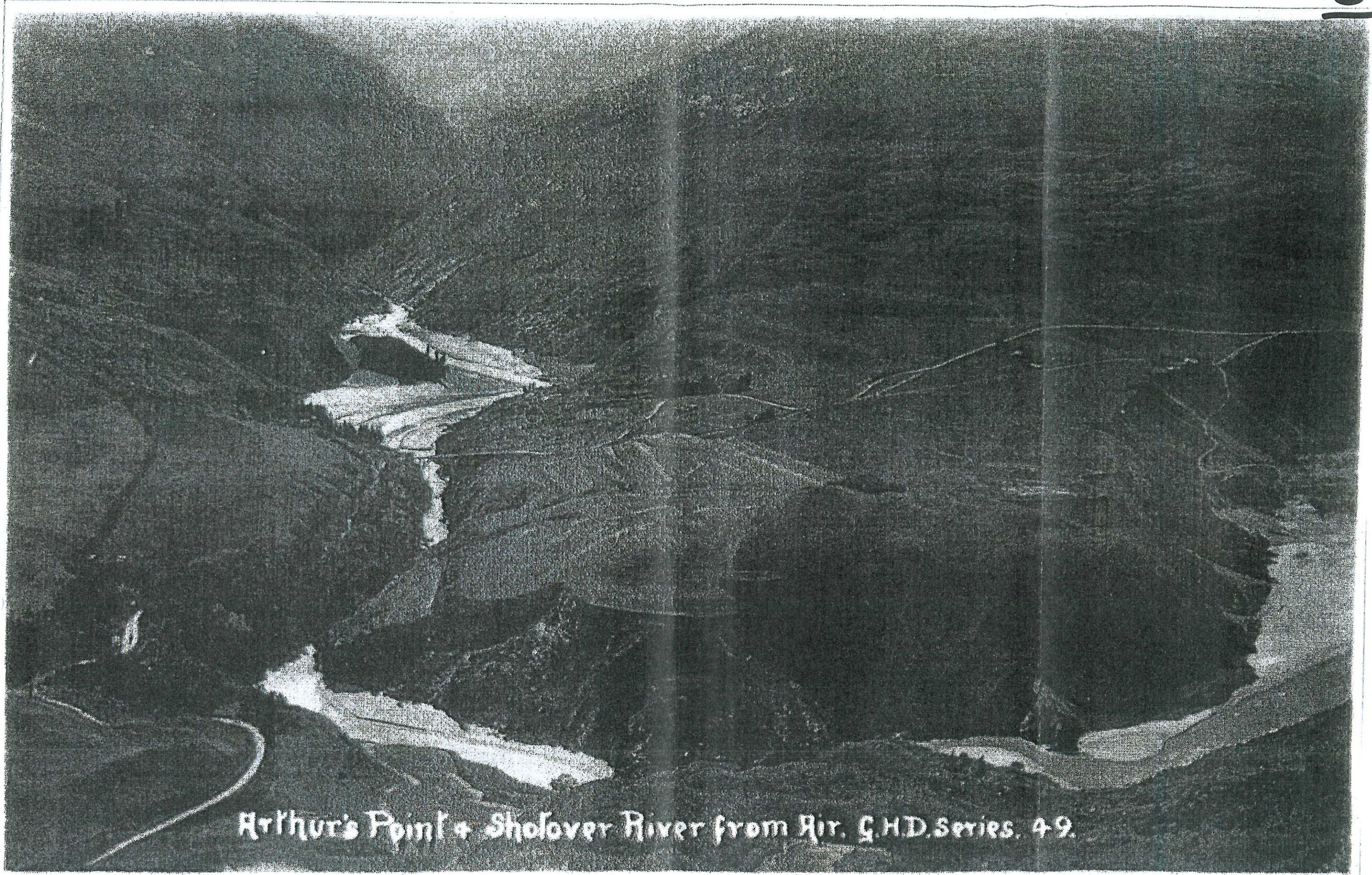
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PROPOSED ZONE CHANGE
 Lots 1 & 2 DP 307630 & Pt Sec 1 SO 24074
 ARTHURS POINT
 FOR GERTRUDE'S SADDLERY LTD

DATE: 8 June 2017	Scale 1:2000	DRAWING & ISSUE No.
BY: B McLeod	Original Plan A3	4462-3R-2A

AURUM SURVEY

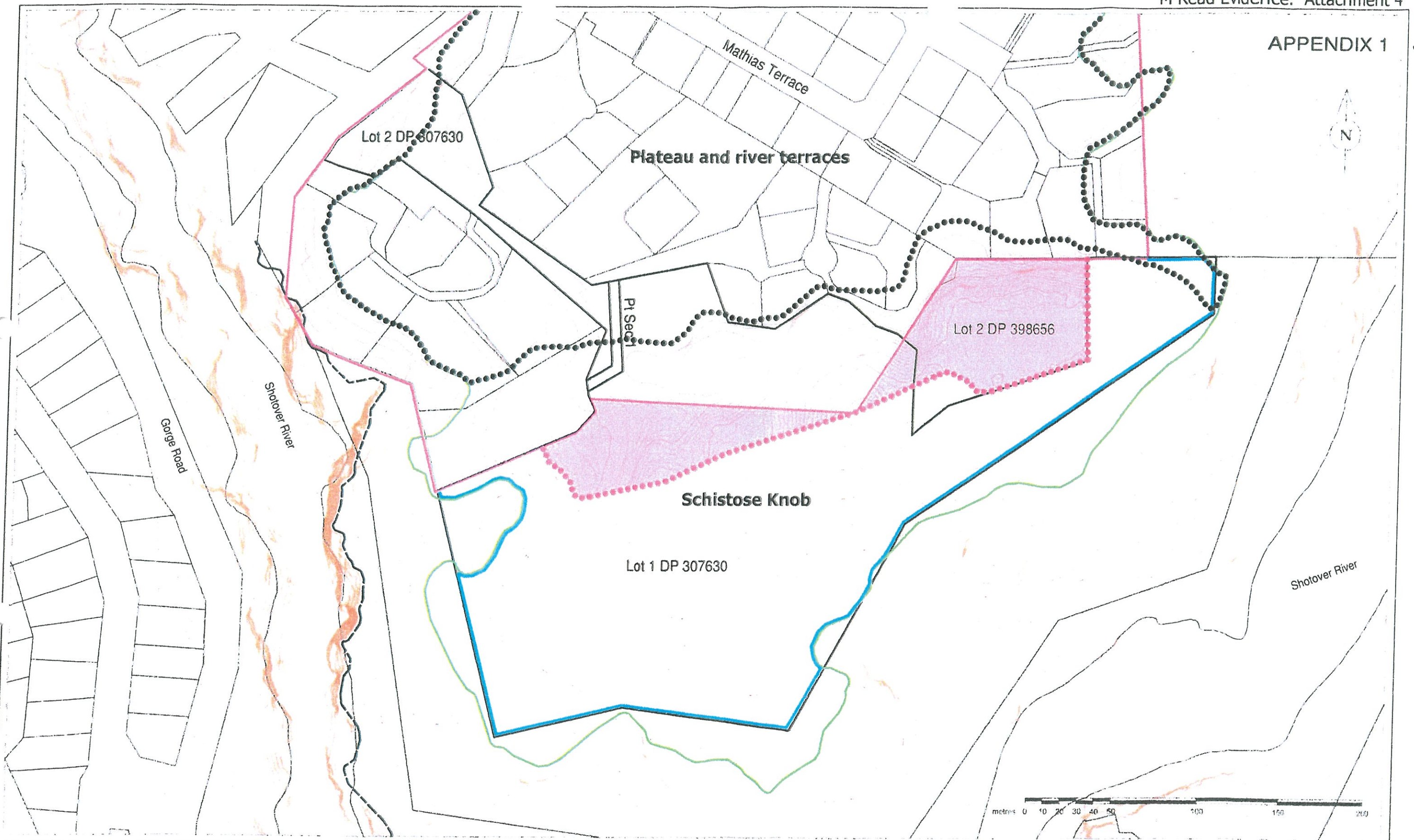
PO Box 2493
 Wakatipu 9349
 Ph 03 442 3466
 Fax 03 442 3469
 Email admin@ascl.co.nz



Arthur's Point + Sholover River from Riv. G.H.D. Series. 49.

D

APPENDIX 1



- Legend**
- Requested Low Density Residential Zone Boundary
 - Operative/PDP Low Density Residential Zone Boundary
 - - - Top of River Cliff
 - Edge of the Shotover Gorge

Note: All areas and dimensions are subject to survey
 Note: Aerial image & contours from QLDC information
 Note: Not all easements are shown
 Note: Contour interval is 1.0m

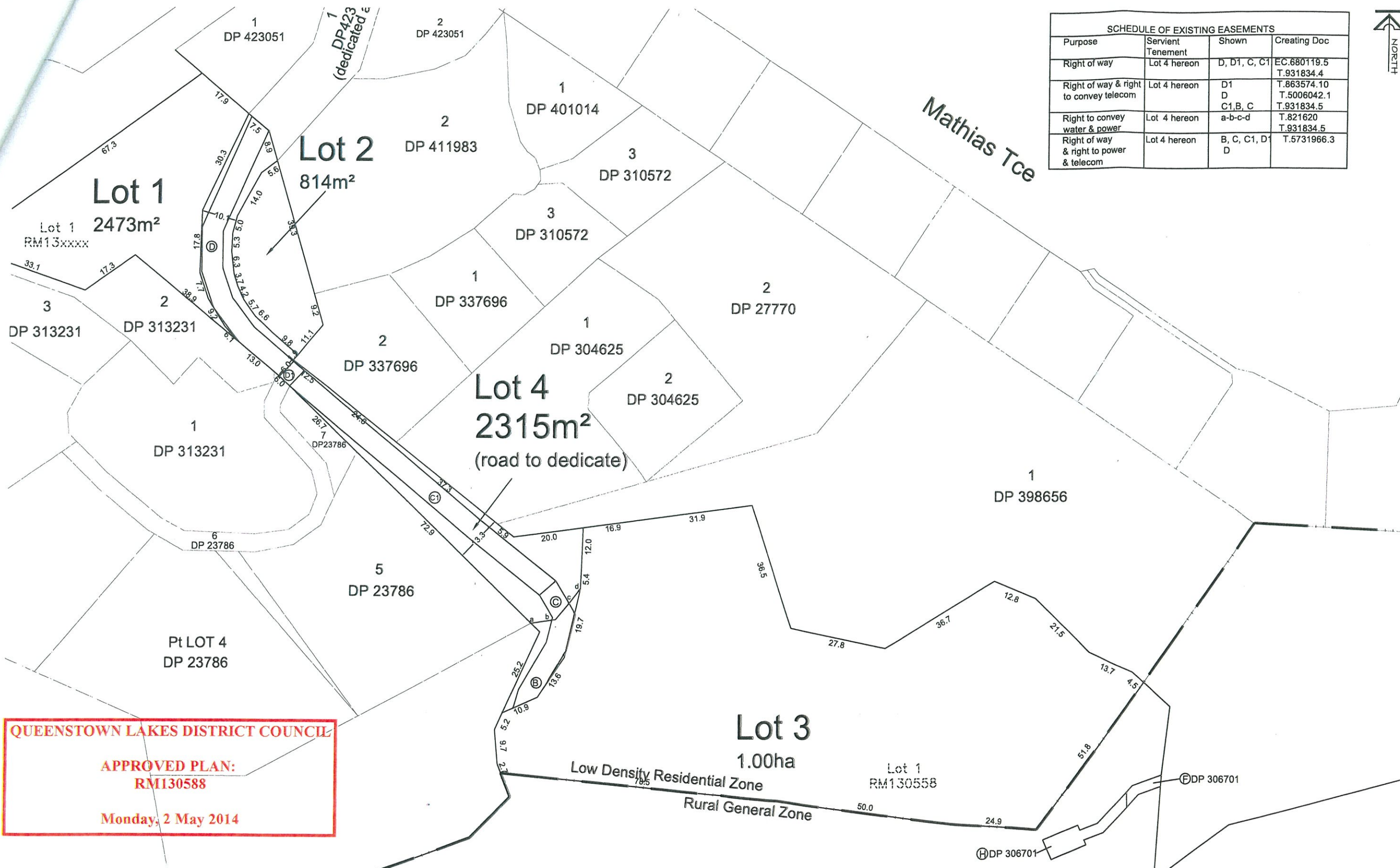
PROPOSED ZONE CHANGE
 Lots 1 & 2 DP 307630 & Pt Sec 1 SO 24074
 ARTHURS POINT
 FOR GERTRUDE'S SADDLERY LTD

DATE: 6 June 2017	Scale: 1:2000	DRAWING & ISSUE No: 4462-3R-1A
BY: B McLeod	Original Plan A1	
AURUM		
SURVEY		

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 Auckland 9114
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 Fax 01 442 3469
 Email info@aurum.co.nz



SCHEDULE OF EXISTING EASEMENTS			
Purpose	Servient Tenement	Shown	Creating Doc
Right of way	Lot 4 hereon	D, D1, C, C1	EC.680119.5 T.931834.4
Right of way & right to convey telecom	Lot 4 hereon	D1 D C1, B, C	T.863574.10 T.5006042.1 T.931834.5
Right to convey water & power	Lot 4 hereon	a-b-c-d	T.821620 T.931834.5
Right of way & right to power & telecom	Lot 4 hereon	B, C, C1, D D	T.5731966.3



QUEENSTOWN LAKES DISTRICT COUNCIL
APPROVED PLAN:
RM130588
Monday, 2 May 2014

Clark Fortune McDonald & Associates
 Licensed Cadastral Surveyors - Land Development - Planning Consultants
 309 Lower Shotover Road, P.O. Box 553 Queenstown
 Tel. (03)441-6044, Fax (03)442-1066, 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

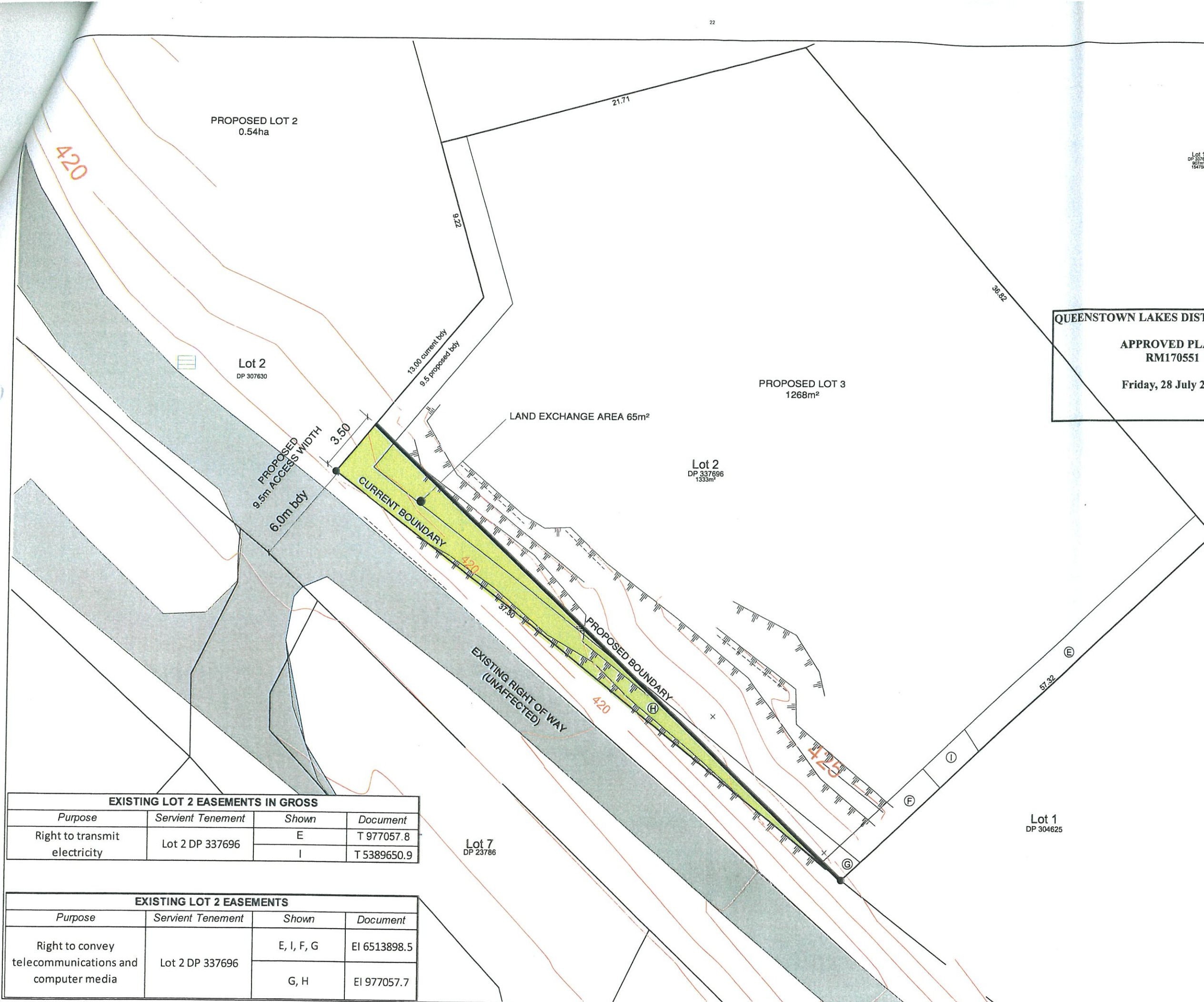
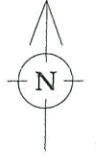
Rev.	Date	Revision Details	By
			CCH

**LOTS 1- 4 BEING A PROPOSED SUBDIVISION OF
 LOT 1 RM130558**

Client	Surveyed	Signed	Date	Job No.	Drawing No.
G F SWAN				9362	37A
	Drawn	Signed	Date	Scale	
	ED		16.04.14	1:1500 @ A3	
	Designed	Signed	Date	Datum & Level	Rev.
				Mt Nic 2000	
				MSL	

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E



QUEENSTOWN LAKES DISTRICT COUNCIL
APPROVED PLAN:
RM170551
Friday, 28 July 2017

LEGEND:

- OLD BOUNDARY PEG FOUND
- SUMP
- TOP OF BANK
- - - BOTTOM OF BANK
- GRAVEL AREAS

DATA QUALITY STATEMENTS

PROPERTY DATA
 The property data has been sourced from land Information New Zealand (LINZ) and is current as at November 2016. The boundary data has been compiled from various existing surveys of different ages. Boundary lengths shown as calculated may vary from those shown on the Certificate of Title, and are subject to a legal redefinition survey. The accuracy of the boundary data is estimated to be within 30mm.

SURVEY DATA
 Surveyed data has been captured using survey equipment, to a relative accuracy within approximately 30mm (horizontal and vertical). Survey Data outside of Lot 2 DP 337696 supplied by others.

SERVICES DATA
 The locations of underground services have been compiled from records supplied by the local Council and Utility Authorities. Where those services have features visible on the surface, their positions have been verified by field survey. The accuracy of unverified services is unknown. Also there may be services for which no records were provided and which are not shown on this plan. In all cases, if the location of a service is considered important, the relevant service provided should be consulted.

SURVEY DATUMS
 Horizontal coordinates are in terms of NZ Geodetic Datum 2000, Mount Nicholas 2000 Circuit.
 Vertical elevations are in terms of Dunedin Vertical Datum (MSL).
 Contour interval is 1.0m

EXISTING LOT 2 EASEMENTS IN GROSS

Purpose	Servient Tenement	Shown	Document
Right to transmit electricity	Lot 2 DP 337696	E	T 977057.8
		I	T 5389650.9

EXISTING LOT 2 EASEMENTS

Purpose	Servient Tenement	Shown	Document
Right to convey telecommunications and computer media	Lot 2 DP 337696	E, I, F, G	EI 6513898.5
		G, H	EI 977057.7

BOUNDARY ADJUSTMENT DETAIL

Project: **111 ATLEY ROAD ARTHURS POINT for GERTRUDE'S SADDLERY LTD**

ISSUE DATE: 3.5.17 ISSUE: A - Original Issue PREPARED BY: Bruce McLeod

Scale: 1:100 @ A1
 1:200 @ A3
 DRAWING & ISSUE NO: 4462.1T.2A

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