

will not be met, particularly with the imposition of the conditions suggested by the CivicCorp personnel, together with those indicated as acceptable in Mr Ferguson's evidence at paragraph 92; and which also reflect those matters which were set out in the assessment of effects on the environment which are summarised at pages 2 and 3 of Mr Ibbotson's submissions to me on behalf of the Applicant.

### ***Offered Encumbrance***

[46] The Applicant at the hearing offered an encumbrance to be registered on the title of the whole 190.83 hectares owned by the applicant (of which the subject site forms part) to protect the activities of the airport, and training relating to aircraft using the airport, from reverse sensitivity issues arising from persons who will live on the leased building platforms on the subject site.

[47] A condition that such encumbrance will be entered into will comprise part of this Resource consent, and the wording of that encumbrance, a draft of which I have seen, should be subject to the approval of the Chief Executive Officer of the Queenstown-Lakes District Council, who will be in a position to ensure that relevant legal advice on the precise wording of that encumbrance can be obtained.

[48] It is my view that while a great deal of the submitters' concerns were significant and with foundation, they were not amenable to a meaningful outcome within this process.

### ***Decision***

[49] Accordingly, resource consent is granted for both consents sought, subject to the conditions of consent proposed by the Applicant, and those recommended by CivicCorp personnel, and referred to herein, together with the covenants offered by the Applicant, and the encumbrance to which I have referred above.

Dated at Queenstown this 18<sup>th</sup> day of January 2005

A handwritten signature in black ink, appearing to read 'M E Parker', written over a horizontal line.

**Michael E Parker**  
**Commissioner**

## Conditions of Consent:

### General Conditions

- 1 That the development be carried out in accordance with the plans (stamped as approved on 9 March 2005) and the application as submitted, with the exception of the amendments required by the following conditions of consent.
- 2 That unless it is otherwise specified in the conditions of this consent, compliance with any monitoring requirement imposed by this consent shall be at the consent holder's own expense.
- 3 The consent holder shall pay to CivicCorp an initial fee of \$240 for the costs associated with the monitoring of this resource consent in accordance with Section 35 of the Act.
- 4 That upon completion of the proposed activity, the consent holder shall contact the Monitoring Section at CivicCorp to arrange a time for an inspection of the proposed work to ensure all conditions have been complied with.

### Engineering Conditions

- 5 All engineering works shall be carried out in accordance with the Queenstown Lakes District Council's policies and standards, being New Zealand Standard 4404:1981 with the amendments to that standard adopted on 1 June 1994, except where specified otherwise.
- 6 The owner of the land shall provide a letter to the Council advising who their representative is for the design and execution of the engineering works required in association with this subdivision and shall confirm that this representative will be responsible for all aspects of the works covered under section 104 of NZS4404:1981 "Code of Practice for Urban Land Subdivision", in relation to this development.
- 7 Prior to the commencement of any works on the land being developed the applicant shall provide to the Queenstown Lakes District Council for approval, copies of specifications, calculations and design plans as is considered by Council to be both necessary and adequate, in accordance with Condition (5), to detail the following engineering works required:
  - a) The provision of a water supply to the boundary of each building platform in terms of Council's standards. Each building platform shall be supplied with a minimum of 1000 litres per day of potable water that complies with the requirements of the Drinking Water Standard for New Zealand 2000.
  - b) The provision of a communal wastewater treatment and disposal system generally in accordance with the report prepared by Hadley Consultants Limited and attached to the application.

- c) The construction of all roads and access ways in accordance with the Council's Rural Roding Corridors: Corridor Management Guideline. All carriageways serving five or more building platforms shall be sealed. Provision is to be made for the disposal of stormwater. Culverts with suitable inlet and outlet structures shall be installed where required. The outlet structure shall include an adequate energy dissipation device to prevent scour of downstream land by stormwater.
  - d) The provision of sealed intersection from the Luggate – Hawea Road to be in terms of Austroads 'Intersection at Grade Manual' and Rule 14.2.4.2 of the Partially Operative District Plan. Provision shall be made to continue any roadside drainage.
  - e) All stormwater channels are to be appropriately sized and suitably armoured to prevent scouring.
  - f) The consent holder shall put in place measures to control silt and sediment runoff during rain events during and after construction. These measures shall be maintained until such time as the earthworked areas are permanently stabilised.
  - g) The consent holder shall put in place procedures to minimise the spread of dust during earthwork construction. These measures shall be maintained until such time as the earthworked areas are permanently stabilised.
- 8 Prior to the occupation of any dwelling constructed on any building platform the applicant shall complete the following:
- a) The submission of 'as-built' plans and information required to detail all engineering works completed in relation to or in association with this subdivision.
  - b) The completion of all works detailed in condition (7) above.
  - c) If the water supply will ultimately serve more than 25 people for more than 60 day per year then the applicant is to notify Public Health South, PO Box 2180, Queenstown, Ph 03 442 2500 of the details of the water supply.

The consent holder shall provide evidence to the Principal: Resource Consents, CivicCorp, of a responsible body (management group) which will undertake responsibility for the maintenance and carry out the on going monitoring of the water supply to ensure that it continues to comply with the Drinking Water Standard for New Zealand 2000.

The consent holder shall obtain any necessary consents from the Otago Regional Council for the water supply. A copy of this consent shall be forwarded to the Principal: Resource Consents, CivicCorp.

- d) The consent holder shall provide evidence to the Principal: Resource Consents, CivicCorp, of a responsible body (management group) which will undertake responsibility for the maintenance and carry out the on going monitoring of the communal wastewater treatment and disposal system to ensure that it continues to comply and operate in accordance with the designers specifications.

The consent holder shall obtain any necessary consents from the Otago Regional Council for the wastewater treatment and disposal system. A copy of this consent shall be forwarded to the Principal: Resource Consents, CivicCorp.

- e) All earthworked areas are to be permanently stabilised by topsoiling and grassing or other suitable means.
- f) The consent holder shall provide a power and telecommunications supply to the net area of each building platform. These connections shall be underground from any existing reticulation.
- 9 Any telecommunications and electricity servicing of the site shall be by way of underground cables, if cabling is to be utilised.
- 10 The Consent holder shall implement, to the satisfaction of CivicCorp's Engineers, suitable measures to prevent deposition of any earth on surrounding streets by trucks moving fill and other materials too and from the site. In the event that any material is deposited on the streets, the consent holder shall take immediate action at their expense, to clean the streets. The loading of earth and other materials shall be confined to the subject site.
- 11 Prior to the commencement of earthworks on the site, the applicant shall supply CivicCorp's Principal: Compliance with a detailed photographic record of the condition of Kane Road within the vicinity of the site, and along the route it is proposed trucks carrying waste will follow. Further photographs are to be supplied on a six weekly basis for the duration of the earthworks, and these photos shall be taken at the same locations and viewpoints as those initially taken. A final set of photographs is required to be provided at the completion of the earthworks phase of the development.
- 12 Should any archaeological material or sites be discovered during the course of work on the site, that work in that area of the site shall stop immediately and the appropriate agencies including the New Zealand Historic Places Trust and the Manawhenua shall be contacted immediately.

### Noise Conditions

- 13 Any and all construction work to be undertaken on the site shall be in accordance with New Zealand Standard NZS6803:1999, relating to Acoustics – Construction Noise.

### Design Controls

- 14 No buildings shall be visible from the surface of the river.
- 15 Any external lighting shall be directed down to avoid any external light spill.
- 16 Proposed mounding shall be formed at an angle no greater than 1:3 and reseeded with grass species endemic to the area within the next available planning season.
- 17 A landscape plan shall be submitted for approval by the Principal: Landscape Architect (CivicCorp) prior to the development of each individual building platform commencing on site. The approved landscape plan shall be implemented within one year of the plan's approval and thereafter shall be maintained and irrigated in accordance with the plan. If any plant or tree shall die it shall be replaced within the next available planting season. In this instance, the approved landscape plan shall be designed to meet the following objectives:
- Break the form of the dwelling form adjoining accessways and neighbouring properties.
  - Establish 15% of the property in indigenous trees endemic to the area with a majority of this vegetation being kanuka. This requires the minimum establishment of 400 kanuka trees within each individual lease boundary.
- 18 A lighting plan for the site shall be prepared in accordance with any draft or operative Lighting Strategy adopted by the Queenstown Lakes District Council, and this plan shall be submitted to CivicCorp's Principal: Resource Consents for approval. Any such plan approved shall be implemented prior to the occupation of the first dwelling on the site.
- 19 The design controls identified in the application shall be registered as a covenant against the certificate of title for the site. Specifically, these design controls include the following matters:
- (a) No roof pitch shall be greater than 35°. Flat roofs shall be permitted as connections between structures but shall not exceed 20% of the total roof area. Roofing materials shall be limited to steel or other metal sheeting (corrugated or tray), Onduline, cedar shingles, slate or turf. Colours shall be natural dark colours with reflectivity value (RV) of 10% or less.

- (b) External wall claddings shall be selected from painted/coloured plaster, concrete or concrete block, timber, natural painted or stained), local stone, mud brick or rammed earth. Colours shall be natural tones (browns, greys, green/blue/red/yellow oxides) and shall have 27% RV or less. Joinery shall be timber, steel or aluminium and shall be coloured similar to the house colour. Accessory buildings shall be the same materials as the dwelling.
- (c) All guttering and spouting and service ducts shall be the same or similarly dark colour to roof and walls so they blend in.
- (d) All external lighting (excluding feature landscape lighting) shall be sensor lighting although porch and veranda lighting may have a manual override. Any external lighting shall be kept to the immediate vicinity of the dwellings and accessory buildings.
- (e) Any water or other storage tanks shall be buried or painted a dark recessive colour and screened by planting ad/or mounding.
- (f) Boundary or internal fencing shall be post and wire, post and rail or post and netting (rabbit proofing).
- (g) Ornamental and garden fencing and entranceways shall be of a simple rural character using timber, wire, plastered finishes of similar colours to building walls and local stone. Large monumental gates are not permitted.
- (h) A maximum height of 6m for all buildings except chimneys may exceed this height by up to 1.2 metres.

#### Encumbrance

- 20 The encumbrance as drafted by the applicant shall be registered on the certificate of title for the subject property. A copy of this encumbrance has been stamped as approved in accordance with condition 1.

#### Review condition

- 21 Within ten working days of each annual anniversary of the date of this decision or upon the receipt of information identifying non-compliance with the conditions of this consent, the Council may, in accordance with Sections 128 & 129 of the Resource Management Act 1991, serve notice on the consent holder of its intention to review the conditions of this resource consent for any of the following purposes:
- (a) there is or is likely to be an adverse environmental effect as a result of the exercise of this consent, which was unforeseen when the consent was granted.

- (b) monitoring of the exercise of the consent has revealed that there is or is likely to be an adverse effect on the environment.
- (c) there has been a change in circumstances such that the conditions of the consent are no longer appropriate in terms of the purpose of the above Act.

#### Duration

- 22 Pursuant to section 125 of the Resource Management Act 1991, the applicant has a duration of five years to give effect to this resource consent.
- 23 Pursuant to section 116 of the Resource Management Act 1991, this consent shall lapse on a date 30 years after the registration of the proposed building platforms and the above covenants on the certificate of title for the property. All building shall be removed from the site, and the identified building platforms on the site shall be removed from the certificate of title, prior to this date.

#### Development Contribution

- 24 Prior to the registration of the encumbrance referred to in condition 20 above upon the certificate of title, the consent holder shall pay to the Council a reserve contribution of \$9,860 (inclusive of GST).

#### Advice Notes:

- This application contains conditions which relate to potentially serious effects to the environment. Because of this, the Monitoring Officer must be advised in writing of the implementation of any imminent site works, including earthworks pursuant to this resource consent before construction commences. The Monitoring Officer may be contacted on 03 450 0300.
- It is the responsibility of the consent holder to ensure that all necessary building consents have been obtained and any geotechnical issues have been addressed to CivicCorp's satisfaction prior to the commencement of earthworks.

## DRAFT MEMORANDUM OF ENCUMBRANCE

### BACKGROUND

- A. Fox Rock Developments Ltd ("The Encumbrancer") is registered as the proprietor of an estate in fee simple in the land described in Schedule A ("the property").
- B. The Encumbrancer has applied to the Queenstown Lakes District Council ("The Encumbrancee") for a land use consent in respect of the property and has been granted the consent by Decision number RM040158 ("Resource Consent") to construct and maintain 52 residential dwellings within identified residential building platforms and associated roading landscaping earthworks and infrastructural services on the land described as Lot 4 on Deposited Plan 20242 and being all the land in Certificate of Title OT 11D/497.
- C. The Encumbrancee, through one of its Committees known as the Wanaka Airport Management Committee was a submitter to such resource consent application RM040158.
- D. The Encumbrancee requires this encumbrance be entered into, in favour of the Queenstown Lakes District Council, in respect of the performance of certain conditions of the consent under Section 108 of the Resource Management Act 1991.
- E. The Encumbrancee requires that notice of the existence of the conditions and agreement be given to any subsequent purchaser of the property or any part thereof and for this purpose requires the covenant be registered against the title to the property and any future titles to the property.
- F. The Encumbrancee requires that the covenant be enforceable by the Encumbrancee against subsequent purchasers of the property and requires the registration of an Encumbrance instrument to ensure enforceability against subsequent purchasers of the property.
- G. The Encumbrancer acknowledges that the property is in proximity to the Wanaka Airport ("the Airport") and that the Airport and its environs is used regularly and extensively for aviation activities by commercial and general aviation and for (but not limited to), special flight operations, including aviation events and the "Warbirds Over Wanaka" air show and is regularly used as a base for, and a place for flying and static displays of historic military aircraft, and a place for flying including flight training, helicopter external load operations.

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APPROVED PLANS: RM 040158

11/4/05  
Date

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Initials

## Covenants

1. The Encumbrancer covenants with the Council as follows:
  - (a) The expression "Aviation Activity" used in this covenant shall include, but not by way of limitation, all that aviation activity (including that comprising Aerodrome Traffic) described in Clause (G) hereof which is carried out to, from or in association with the Airport, and all activities associated with such activity at the Airport including the establishment of structures and facilities at the Airport. The Encumbrancer acknowledges that aviation activity at the Airport may increase in volume, scale and effects in the future.
  - (b) That the Encumbrancer covenants that it will not directly or indirectly (whether by formal or informal means) object to, raise complaint or take legal or other action against, or be in any way involved in any objection, complaint or legal or other action against any existing or future effects of aviation activity at the Airport, including but not limited to:
    - (i) effects or noise or vibration including noise or vibration of aircraft certified in Restricted or Special categories;
    - (ii) visual effects;
    - (iii) safety or concerns regarding safety, where aircraft are operating in accordance with and within a regulatory provision;
    - (iv) effects of visitors, including traffic effects.
  - (c) The Encumbrancer also covenants that it will not directly or indirectly (whether by formal or informal means) object to, raise complaint or take legal or other action against, or be in any way involved in any objection, complaint or legal or other action against any designation or resource consent which provides for the future development, use or administration of Wanaka Airport for Aviation Activities including but not limited to any controls that may be imposed over any neighbouring land adjacent to or in proximity of Wanaka Airport to further facilitate aviation activity, including:
    - (i) The establishment of new buildings on the Airport.
    - (ii) The extension of the Airport runway, apron and taxi ways.
    - (iii) The establishment of infrastructure associated with aviation activities.
    - (iv) Temporary road closures in the vicinity of the Airport in connection with aviation activities.

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- (v) The declaration or establishment by any competent authority of any area or areas within 5 km of the airport as Special Use Airspace (excepting Low Flying Area) or any other area of designated airspace under relevant legislation.
- (vi) The designation of flight paths, outer control zones and air noise boundaries for the Airport.
- (d) Where reference is made herein to any Rule or principal which is subsequently amended or appealed or altered, this covenant shall continue to apply according to the tenure of the former Rule or principal but shall also be interpreted mutates mutandis so as to give effect to any relevant new Rule or principal. Where any expression used in this covenant are defined under such Rules shall bear the same meaning as those defined terms.
- (e) The Encumbrancer covenants that prior to entering into any new lease or tenancy of any area of the land or any improvements situated thereon they shall provide evidence to the Queenstown Lakes District Council, that any proposed Lessee or tenant of any area of property or improvements situated thereon agrees to be bound by the provisions of the covenant.
- (f) The Encumbrancer acknowledges that it has no entitlement to any compensation from the Queenstown Lakes District Council, or any other party arising from this covenant and the Encumbrancer's compliance with its terms.
- (g) The Encumbrancer hereby indemnifies the Queenstown Lakes District Council, against any and all losses arising from and any costs reasonably incurred as a consequence of any intentional breach of the terms of this covenant provided this indemnity shall only extend to the registered proprietor(s) of land who commits such intentional breach of the terms of this covenant.
- (h) The Encumbrancer's obligation to assign the covenant will not commence until such time as the consent referred to in B hereof commences pursuant to Section 116 of the Resource Management Act 1991 but that in the period between the execution of this deed and the obligation to assign commencing the Encumbrancer will not, in relation to that covenant, do anything inconsistent with the parties' expectation that the Queenstown Lakes District Council, will receive an assignment of the benefit of the covenant under this deed.

2. The Encumbrancer acknowledges that restrictions and obligations set out in Clause 1 shall apply to the property for the benefit of the Queenstown Lakes District Council representing the community of the Queenstown Lakes District Council, and shall be enforceable by the Queenstown Lakes District Council in perpetuity against the Encumbrancer and the executors, administrators, assigns and

<p>..... Date</p>	<p>..... Initials</p>
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QUEENSTOWN LAKES DISTRICT COUNCIL

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successors in title of the Encumbrancer, being the successive owners of the property and the tenants, lessees and invitees of the registered proprietor for the time being of the property.

**MEMORANDUM OF ENCUMBRANCE**

3. The Encumbrancer encumbers the property for the benefit of the Encumbrancees in perpetuity with an annual rent charge of \$100.00 to be paid in January each year if demanded provided it is acknowledged that there shall be no demand made if there has not been any breach of the terms of the covenants and in the event of such a breach the demand(s) shall only be made on the registered proprietor(s) of the land who has committed such a breach.
4. The Encumbrancer covenants with the Encumbrancees as detailed in Clause 1 above.
5. This rent charge shall immediately determine and the Encumbrancer shall be entitled to a discharge of the Memorandum of Encumbrance if the covenants detailed in Clause 1 become obsolete or no longer enforceable.
6. The parties shall bear their own costs of negotiation, preparation, execution and registration of this Encumbrance Instrument and the Encumbrancer or any registered proprietor(s) of the land who requires any consents or causes any intentional breach of the covenants shall meet any other costs, incurred by the Queenstown Lakes District Council, during the continuance of and in relation to this Encumbrance instrument.
7. Section 104 of the Property Law Act 1952 applies to this Encumbrance Instrument but otherwise and without prejudice to the Queenstown Lakes District Council's, right of action in common law as a rent charge or Encumbrancee.
  - (a) The Encumbrancees shall be entitled to none of the powers and remedies given to encumbrances by the Land Transfer Act 1952 and the Property Law Act 1952; and
  - (b) No covenants on the part of the Encumbrancer and its successors in title and implied in this Memorandum other than the covenants for further assurance implied by Section 154 of the Land Transfer Act 1952.

**DATED**

2004	
QUEENSTOWN LAKES DISTRICT COUNCIL	
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**SCHEDULE A**

190.8300 ha being Lot 4 of Deposited Plan 20242 and being all Certificate of Title OT 11D/497.

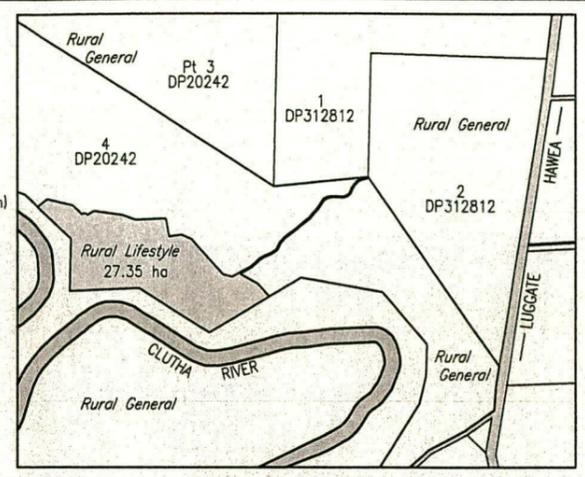
**SIGNED BY** )  
**FOX ROCK DEVELOPMENTS LIMITED** )  
In the presence of: )

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 11/14/05 Date  
 JCF Initials

**PROPOSED PLANT SCHEDULE:**

- Alnus jorullensis (Mexican Alder)
- Nothofagus sp. (NZ Beech species)
- Thuja plicata (Western Red Cedar)
- Alnus cordata (Italian Alder)
- Alnus rubra (Red Alder)
- Betula papyrifera (Paper Birch)
- Carpinus japonica (Japanese Hornbeam)
- Fagus sylvatica sp. (European Beech)
- Olea europaea (Common Olive)
- Pittosporum tenuifolium (Kohuhu)
- Plagianthus regius (Ribbonwood)
- Berberis sp. (Barberry species)
- Coprosma sp.
- Cornus sp.
- Corokia sp.
- Hebe sp.
- Anemthele lessoniana
- Astelia chathamica 'Silver Spear'
- Carex albula (Sedge)
- Chionochloa rubra (Red Tussock)
- Festuca novae zealandae
- Libertia ixioides
- Poa cita (Silver Tussock)

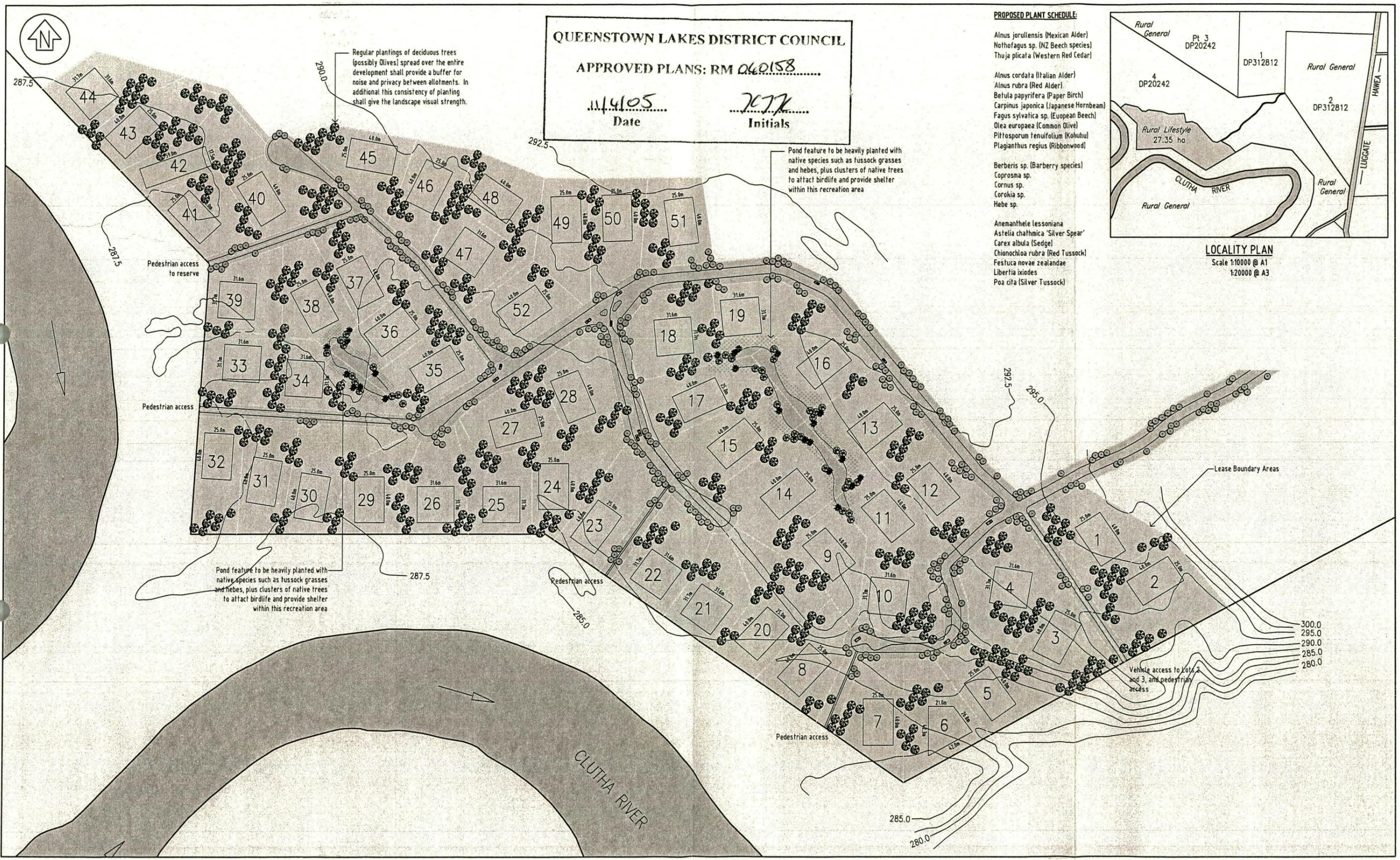


**LOCALITY PLAN**  
 Scale 1:10000 @ A1  
 1:20000 @ A3

Regular plantings of deciduous trees (possibly Olives) spread over the entire development shall provide a buffer for noise and privacy between allotments. In addition this consistency of planting shall give the landscape visual strength.

Pond feature to be heavily planted with native species such as tussock grasses and hebes, plus clusters of native trees to attract birdlife and provide shelter within this recreation area

Pond feature to be heavily planted with native species such as tussock grasses and hebes, plus clusters of native trees to attract birdlife and provide shelter within this recreation area



**CLARK FORTUNE McDONALD & ASSOCIATES**  
 REGISTERED LAND SURVEYORS LAND DEVELOPMENT & RESOURCE MANAGEMENT CONSULTANTS  
 309 Lower Shotover Road, P.O. Box 553 Queenstown  
 Tel. (03)442-0990, Fax (03)442-1066, Email g.laurv@xtra.co.nz

ISSUE	COMMENTS	BY	DATE
1	Civic Corporation	CV	05.03.04

**DEVELOPMENT/LANDSCAPE PLAN**

PROJECT: Clutha Oasis  
 PRINCIPAL: Fox Rock Developments

APPROVED:	DESIGN:
CHECKED:	DRAWN: ED (25.02.04)
REVISION	COMMENTS

SURVEY:	LEVEL:
FB	LB
SCALE 1:1500 @A1 1:3000 @A3	DATUM OTAGO
JOB No. 8635	DRAWING 8635-02