

Before Queenstown Lakes District Council

In the matter of The Resource Management Act 1991

And The Queenstown Lakes District proposed District Plan –
Rezoning Hearing Topic 12 – Upper Clutha mapping

LEGAL SUBMISSIONS ("Part One") FOR

Glendhu Bay Trustees Limited (#583)

Dated 31 May 2017

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MAY IT PLEASE THE COMMISSIONERS

Introduction

- 1 These ("**Part One**") legal submissions are presented on behalf the submitters identified on the front cover page, Glendhu Bay Trustees Ltd ("**GBT**") or ("**Submitter**") in respect of Hearing Stream 12, Upper Clutha Mapping of the Queenstown Lakes District Council Proposed District Plan ("**PDP**").
- 2 The relationship between GBT and other landowners within the proposed Glendhu Station Zone ("**GSZ**") is explained further in the evidence of both Mr John Darby and Mr John McRae. Both landowners have provided evidence outlining their respective account of the history of the GSZ land, the background of the Parkins Bay Environment Court consent decision (Parkins Consent) and their philosophies as to the most efficient and effective use of this land moving forward in the PDP.

Overview

- 3 The legal submissions for GBT have been split in two parts, given that two of its experts (Mr McRae and Dr Judith Roper-Lindsay) are presenting their evidence a week early to the Commission. The remaining experts for GBT are, at the time of writing these submissions, considering potential refinements to the GSZ provisions as filed in evidence in chief, and in light of the Council's rebuttal evidence concerns raised.
- 4 Therefore **Part One** of the legal submissions address the following matters;
 - (a) Context to the background and development of the GSZ and the reasons for the Submitter's relief sought in this Hearing;
 - (b) An overview of the development aspirations relating in particular to the Glendhu Station (Farm Homestead ("**GS(FH)**") and (Campground ("**GS(C)**") Activity Areas, being those areas principally discussed in the evidence of John McRae.
 - (c) An overview of the proposed ecological outcomes and associated benefits associated with the GSZ, including the Farm and Vegetation Management Area Overlay ("**FVMA**") and Golf activity area as discussed in the evidence of Dr Judith Roper-Lindsay.
- 5 **Part Two** of the legal submissions will address the following matters:
 - (a) Legal issues in relation to:

- The relevance of part 2 in the PDP process and as related to the GSZ relief sought;
 - The relevance of the 'existing environment' in the PDP process;
 - The relevance of environmental compensation in the PDP process.
- (b) Key issues in relation to the activity areas proposed in the GSZ as follows:
- Open Space / Farm Activity Area ("**GS(OS/F)**")
 - Lakeshore Activity Area ("**L/S**")
 - Residential Activity Area ("**R**")
 - Location of public access trails, covenant protection area overlay.
- (c) Key issues for consideration arising from the Council's expert evidence and the GSZ expert evidence (not addressed in Part One).

Context and Background

- 6 The GSZ land extends around the western shores of Lake Wanaka from Glendhu Bay, south along either side of Motatapu Road to the Motatapu River, following its eastern bank to the confluence with the Matukituki River.
- 7 The original Parkins Bay consent, prepared by Darby Partners and the McRae Family as owners of Glendhu Station, was a joint vision to create a diversified and sustainable use of the unique Glendhu station land. As covered in the evidence of Mr McRae, the Glendhu Station land had been managed according to traditional high country farming practices for generations, however in more recent time this evolved into initiatives to farm in a more environmentally sustainable manner and alternative and complementary land uses, such as eco-tourism, weddings, recreation, tourism and residential activity that enables / promotes the move away from traditional and unsustainable site-wide farming activities and promotes the retirement of areas of unsustainable pastureland.
- 8 The consenting process was protracted, which, as discussed by Mr McRae, involved a significant amount of community involvement and input throughout its evolution. The process eventually culminated in the Environment Court's interim and final decisions, granting consent for a refined version of the original development concept.

- 9 The foundation of the Parkins Bay development was and still is the large scale holistic management regime over the entire Glendhu Station Zone landholding. The case before the Environment Court was clearly not just a landscape case (although it was an important factor the proposal had to align with the protective Operative District Plan ("ODP") chapter 4 and 5 provisions relating to ONLs). The proposal is of regional tourism and recreational significance and provides a comprehensive framework for increasing the indigenous biodiversity values of Glendhu Station.
- 10 The development concept initially evolved from the outcomes of the tenure review for Glendhu Station and the Glendhu/Cattle Flat Corridor Study. It responded to public submissions on the tenure review which sought greater public access to Parkins Bay, enhanced walkway connections through the site, and the potential for enhancement of ecological connections and corridors.
- 11 The Environment Court, in its interim decision ultimately found favour with those positive benefits that are part of the development:

In relation to section 5(2) of the RMA one of the attractive features of PBPL's proposal is that it aspires to contribute to the physical and social wellbeing of the Wanaka community, and visitors by providing a high quality golf course and several walking and cycling tracks, as well as improved access to and along the Fern Burn and the shores of Lake Wanaka. Those aims of course are part of the purpose of the RMA.¹

- 12 Following further refinements in the overall compensation package offered by the Applicant, the Court ultimately granted consent, finding that:

When the environmental compensation, as amended by this decision, is added to the scales, we consider it brings them down on the side of the proposal. We judge that the proposal as now put forward, subject to the minor changes suggested by this decision, will be sustainable management of resources under the RMA. The appellants need not fear that a Millbrook is coming to west Wanaka. That is not this proposal. We hold that the proposal when amended as approved in this decision will achieve the purpose of the Act, and will make orders accordingly.²

- 13 It is submitted that those core findings, related to the overall positive benefits of the Parkins Bay development are now of equal importance in this District Plan Review process. Importantly, GBT has ensured that there are specific

¹ *Upper Clutha Tracks trust v Queenstown Lakes District Council* [2010] NZEnvC 432 at [217].

² *Upper Clutha Tracks trust v Queenstown Lakes District Council* [2012] NZEnvC 43 at [78].

references in the Zone purpose to ensuring a wide range of recreational opportunities and indigenous vegetation benefits, which underlines the importance to the district of recreation and tourism activities and its nature conservation values. In all other respects, the intent of the GSZ is to replicate the covenanted ecological benefits achieved through the Parkins Bay development into a zoning framework in the PDP.

- 14 Tourism and recreation activities are important aspects of what makes the Queenstown Lakes District what it is. Like the ski industry, the golf industry plays an important part in the district. Tourism and recreation are central to the prosperity of the district (while noting that such activities place potential demands on the landscape). Parkins Bay was a unique proposal in that it is primarily a tourism and recreational development founded on wider ecological benefits over a large farming operation. I submit that this integrated approach is in accordance with the objectives of the Strategic Direction and Landscape chapters of the PDP as notified, as well as in accordance with the Part 2 purpose of the Act. In this respect I note that the Opening Legal Submissions of Counsel for the Council, at paragraphs 2.19-2.21 on page 8, advise the Panel that '*...It is both permissible and appropriate that the Panel has regard to Part 2 in its evaluation of relief.*' I agree with, and adopt those Submissions, with particular reference to the discussion about the Proposed Otago Regional Policy Statement which remains under appeal.
- 15 Beyond the wider economic benefits of the development, it provides for the social and cultural wellbeing of the community through allowing access to recreational facilities and walking tracks while retaining a high country station as a working entity; it sustains the potential of the area's natural and physical resources to meet the reasonably foreseeable needs of future generations through:
- (a) extensive ecological restoration of the high country;
 - (b) continuing farming activities;
 - (c) providing additional walking tracks to Wanaka's growing list of such tracks.
- 16 And it safeguards the life supporting function of the ecosystems in the region through:
- (a) requiring enhancement of indigenous biodiversity values through native species planting;
 - (b) fostering a substantive ecological restoration system where the ecology has been seriously downgraded.

- 17 The ability for the development therefore to be enabled in this plan review in a way that provides greater community visibility within a District Plan framework should not be lost, particularly where that rezoning can offer efficiencies in plan and consent administration to both the Council and landowners.

Positive Ecological Benefits

- 18 When considering the statutory requirements for determining the contents of a district plan, a territorial authority must employ its functions under section 31 and the provisions of Part 2 of the Act, and must accord with evaluation obligations of section 32 of the Act.³ In doing so, the reference to 'effects' must be considered in light of that definition which extends to 'positive effects'.⁴ Section 5 of the Act also includes positive elements of sustainable management, such that resources are managed in a way or at a rate which enables people and communities to provide for their social, economic, and cultural wellbeing⁵. Section 32 also requires the benefits and costs of the environmental, economic, social, and cultural effects anticipated from implementation of the provisions be assessed and weighed.⁶
- 19 Further to the above, I bring the Commissions' attention to the case of *Infinity Group v Queenstown Lakes District Council* which was a case in which positive environmental effects in a plan change context were taken into account. In this case, the private plan change proponent offered significant public amenity benefits, and the Court noted its preferred method to provide for those as follows:

Where a private promoter of a variation or plan change wishes that intended public facilities be taken into account as positive environmental outcomes, the better practice is for the obligation to provide them be imposed by rules or other implementation methods in the plan.⁷

- 20 I submit that the GSZ proposal is consistent with the above commentary from the Court, namely that positive environmental benefits are relevant in the plan change context, and where possible those have been provided for through the

³ Section 74(1) RMA

⁴ Section 3(a)

⁵ Section 5(2) RMA

⁶ Section 32(2)(a) RMA

⁷ *Infinity Group v Queenstown Lakes District, Environment Court, Christchurch, 26/01/2005, C010/2005 at [104].*

plan provisions as opposed to private contractual arrangements (including covenants).

- 21 As considered in Dr Roper-Lindsay's evidence, it is necessary that the GSZ proposal requires extensive re-vegetation and restoration of ecological values that will not otherwise be promoted by existing historical agricultural activities on the land, particularly if it is necessary for these to be intensified to retain economic viability. Dr Roper-Lindsay supports GSZ provisions that ensure particular outcomes, and beyond that enable and provide incentive for a wider approach to ecological management that would go above and beyond the consent requirements. I submit that the ecological experts are not far apart in terms of their views on the appropriate provisions of the GSZ. I defer to Ms Roper Lindsay's summary evidence to explain those remaining areas where clarification is required.
- 22 Council evidence has explored whether explicit requirements for an extension of the Revegetation Strategy over additional land is justified. In response Dr Roper-Lindsay notes that the areas GS(C) (Camping) and GS(FH) (Farm Homestead) have low ecological values. Therefore the limited development anticipated for these areas has no corresponding adverse effect that would justify a requirement for the extension of the revegetation strategy. However, the combination of the policy support in Policies 44.3.1.6, 44.3.1.8 and rules 44.5.5 and 44.5.6 giving explicit discretion for enhancement of biodiversity values through additional planting in these two areas, means there is already a framework in place that will enable enhancement of indigenous biodiversity values in these two areas specifically. The anticipated results are ecological benefits over and above what are required by the current consent or contemplated in the Rural General zone.

Farm and Vegetation Management Areas

- 23 In the Submission lodged, the Structure Plan identified the "Southern Tributary and Moraine Slope Landscape Protection Areas" and "Glendhu Hill Wetland Landscape Protection Areas" which all sit within Covenant Areas G and F in the conditions of consent in the Environment Court decision.⁸ (Plan **attached** for ease of reference as "A"). These hatched areas are identified on the Environment Court "Parkins Plan B dated 12 April 2012" (**attached** as "B") forming part of the consent. Conditions require preparation and implementation of the Revegetation Strategy, controlling stock access, fencing, pest management and revegetation for these areas. The purpose of the consent conditions is primarily to control farm management and protect ecological

⁸ Covenant area G is labelled as CJ on the Survey Plan. Covenant Area F is labelled as CI and CH on the Survey Plan

values (not landscape qualities). Therefore the name is now proposed as "Farm and Vegetation Management Areas". Dr Roper-Lindsay's evidence addresses the rules relating to the revegetation management plan and fencing. Rule 44.5.4 is intended to reflect the requirements of the conditions for the hatched areas.

- 24 The boundary of the hatched area on Plan B as it relates to the Moraine Slope specifically has been amended after ground trothing the lines previously applied by the Environment Court. Once the Environment Court lines were translated onto the ground it was found they extended beyond the moraine slope itself and onto the flat grazed area adjoining the Fern Burn that is not sloped, is grazed and does not express the biodiversity values sought to be protected. This matter is addressed briefly by Dr Roper-Lindsay, and will be covered in more detail by Mr Thomson.
- 25 In response to comments from Council witnesses querying the extent of the GS (OS/F) activity area over the full station, the Submitter is considering its options. However, it is intended that whatever the form of zoning put forward, there be no change to the application of the proposed provisions to the Farm and Vegetation Management Areas.

Changes to Golf Activity Area

- 26 The version of the Structure Plan appended to Mr Ferguson's evidence in chief extended the Golf activity area to the east, over an area which in the Submission version was proposed as OS/F. This extension includes a portion of the Fern Burn. The extension will be explained by Mr Thomson, as it relates to the golf course design.
- 27 As far as the effect of this extension of the Golf activity area goes with respect to vegetation and biodiversity values, Dr Roper-Lindsay confirms the provisions for use of the land as a golf course would be more protective, in that grazing will no longer be allowed for, and stock will not be able to access the water way. The requirement to allow for natural revegetation of the golf course rough areas will apply, creating an additional benefit in terms of indigenous biodiversity that would not otherwise accrue. There is no indigenous vegetation identified of note in the Golf area identified that could otherwise be adversely affected.

Diversification of Farm Management Practices

- 28 All subsections of section 7 of the Act need not be repeated here, however in particular I bring the Panel's attention to s7(aa) ethic of stewardship. Mr McRae has produced extensive evidence relating to the history of the McRae family farming of Glendhu Station. The GSZ proposal is essentially a means of

ensuring that ongoing stewardship may be continued and diversified in the future. Section 7(aa) is directly relevant to this case.

- 29 The GSZ proposal represents an efficient use of natural and physical resources by providing for a high quality residential and visitor environment with high residential, recreational, and visitor amenity while protecting the openness, naturalness and rural amenity of the surrounding landscape.
- 30 In terms of the ultimate test under section 5 of the Act, this rezoning proposal is not just about a rural development in either a Visual Amenity Landscape or an Outstanding Natural Landscape. It is about the holistic sustainable management of an iconic high country station in a beautiful mountainous setting overlooking Lake Wanaka, through the development of regionally important tourism and recreation facilities.

Camp Ground and Farm Homestead Activity Area

- 31 In terms of the difference in effects from the consented Parkins Bay proposal compared the current GSZ rezoning proposal, I submit that the inclusion of the GS(C) and GS(FH) areas into the Zone represents a logical and efficient rezoning of those areas to complement the land already considered appropriate for development through resource consent and diversification of the wider Station farming activities. It would be a real opportunity missed for the community and the GSZ landowners that the provisions of the GSZ enabling those positive activities to occur could not be implemented, and a restrictive Rural Zone applied across the land which does not account for those unique consented activities already being developed and undertaken on the Site and the extensive restrictive covenanting of the land that has been established as part of that development.
- 32 Council evidence made points with respect to control and certainty over the nature and scale of the activities anticipated for the GS(C) and GS(FH) activity areas, however it is noted there were no concerns raised in respect of key effects such as landscape or ecological values. The anticipated activities are described clearly in the Structure Plan:⁹

The Campground Activity Area (GS(C)) provides for the expansion of the campground activities across the Wanaka - Mount Aspiring Road, together with provision for a new road access alignment, public access trails and providing for farming, farm structures and limited mining and visitor accommodation.

⁹ Note the Definition's chapter defines "Camping Ground" as camping ground as defined in the "Camping Ground Regulations 1985."

The Farm Homestead Activity Area (GS(FH)) provides for a mixture of small scale commercial activities that are designed to complement and support the campground and visitor accommodation; including farm stays, conferences, events and functions (e.g. weddings), farm tours, and a small scale abattoir, butcher, packing shed, craft brewing and tannery within existing buildings, together with outdoor recreation activities, farming, farm structures, limited mining, public access trails and provision for a new road access alignment.

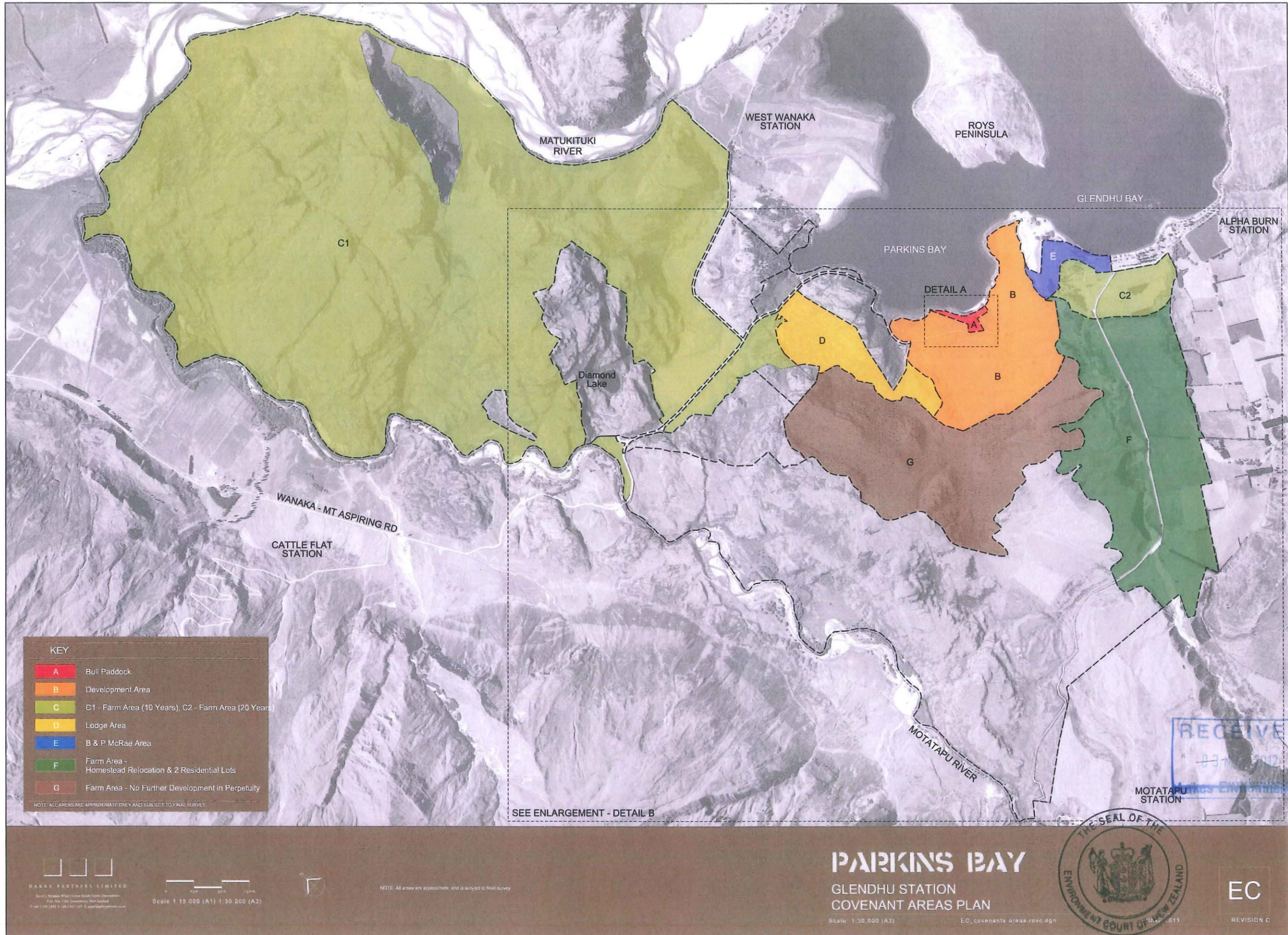
- 33 To ensure appropriate control is maintained over the scale of such activities, the subsequent rules still require Restricted Discretionary consent (44.5.5, 44.5.6) alongside additional rules restriction the scale of the activity (eg 44.6.9, 44.6.13). These controls, combined with confirmation as to acceptability of effects on landscape and ecological grounds provide a very good justification for the proposed plan provisions over these areas, enabling appropriate diversification of use that will integrate well with the wider Station.
- 34 In conclusion, the proposed zone will allow for integrated development in a way that will maintain and enhance ecological, conservation, biodiversity and recreational values. It will enable development at a scale appropriate for the land and its values that will complement the ongoing diversification of the Station, and ultimately achieve sustainable management.

Dated this 31st day of May 2017

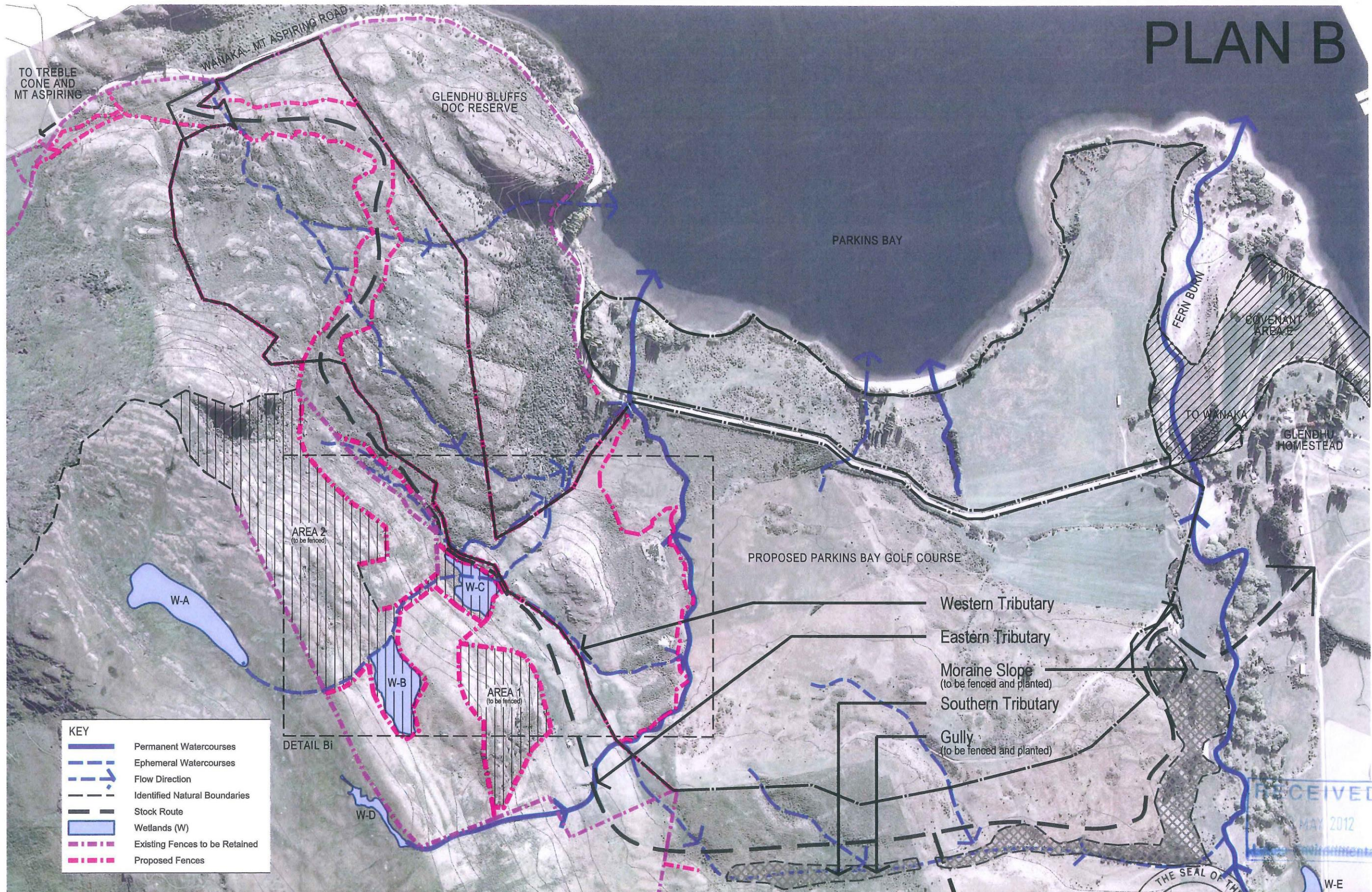


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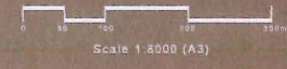


PLAN B



KEY	
	Permanent Watercourses
	Ephemeral Watercourses
	Flow Direction
	Identified Natural Boundaries
	Stock Route
	Wetlands (W)
	Existing Fences to be Retained
	Proposed Fences

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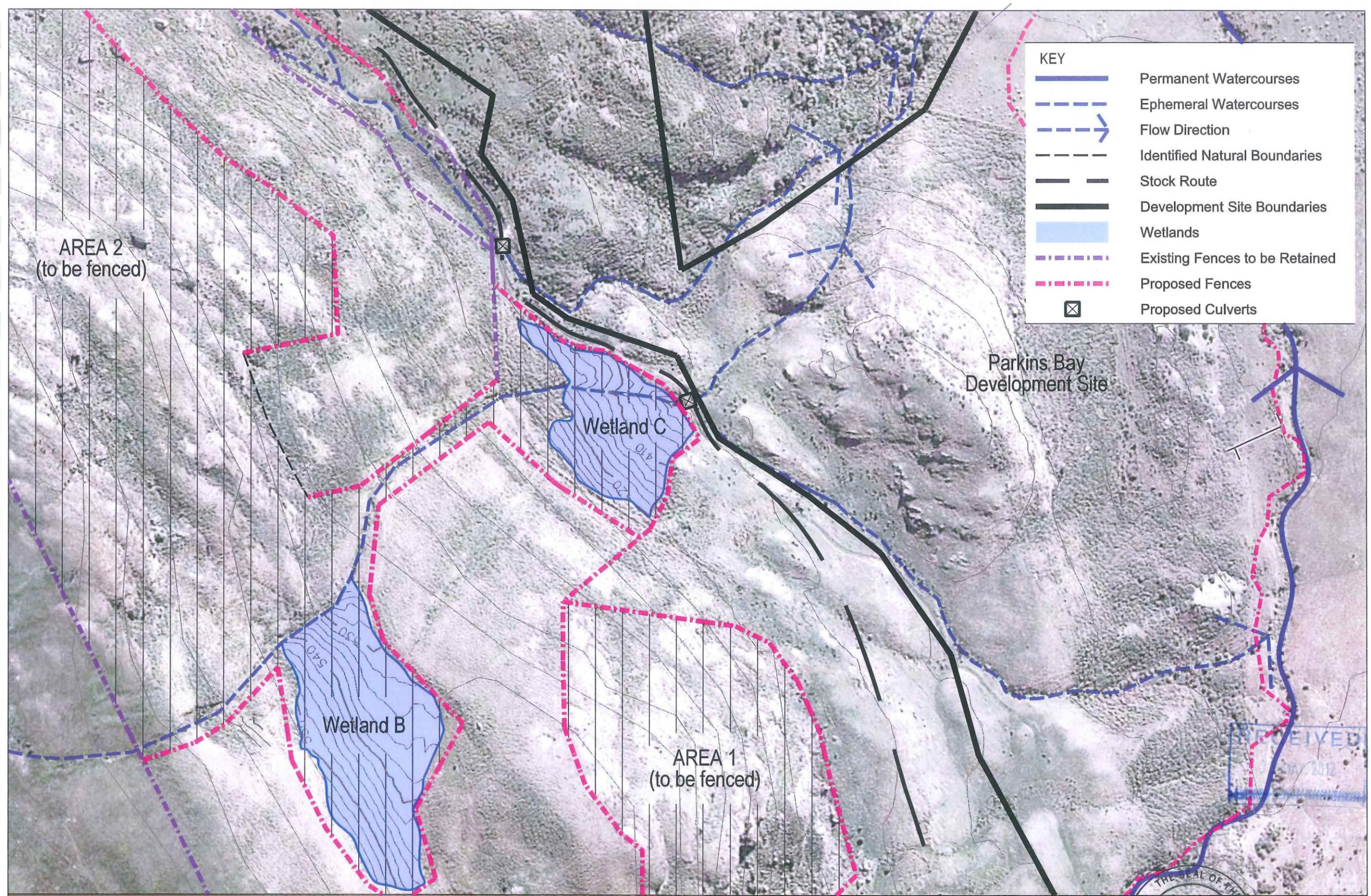


NOTES: Location of waterways and wetlands A and E are indicative only, and are subject to site survey. Wetlands B, C and D and surrounding overland flow paths are surveyed (April 2012).

PARKINS BAY
 PLAN B
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EC
 REVISION C



KEY	
	Permanent Watercourses
	Ephemeral Watercourses
	Flow Direction
	Identified Natural Boundaries
	Stock Route
	Development Site Boundaries
	Wetlands
	Existing Fences to be Retained
	Proposed Fences
	Proposed Culverts

AREA 2
(to be fenced)

Parkins Bay
Development Site

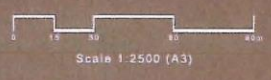
Wetland C

Wetland B

AREA 1
(to be fenced)

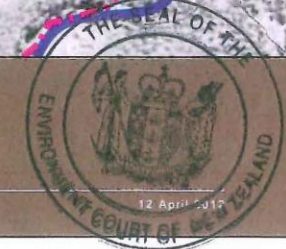
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NOTES: Location of waterways and Wetlands A and E are indicative only, and are subject to site survey. Wetlands B, C and D and surrounding overland flow paths are surveyed (April 2012).

PARKINS BAY
 PLAN B1
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