

**BEFORE THE QUEENSTOWN LAKES
DISTRICT COUNCIL**

UNDER

the Reserves Act 1977

IN THE MATTER

of a submission on the notice of intention to grant a right of way easement over an area of the Greater Widgeon Place Recreation Reserve, for the benefit of farm access and gardening lots associated with the Bridesdale Development

**SYNOPSIS OF LEGAL SUBMISSIONS ON BEHALF OF
BRIDESDALE FARM DEVELOPMENTS LIMITED
26 APRIL 2022**

MAY IT PLEASE THE PANEL:**1. OVERVIEW**

- 1.1 Bridesdale Farm Developments Limited ("**BFDL**") is pleased to support the Queenstown Lakes District Council's ("**QLDC**") intention to grant a right of way easement ("**Proposed Easement**") over an area of the Greater Widgeon Place Recreation Reserve as publicly notified by notice dated 13 January 2022 ("**Notice**").
- 1.2 BFDL is the applicant for the Proposed Easement. It is also a submitter on the Proposed Easement, having made written submissions dated 14 February 2022 seeking certain amendments to three of the proposed conditions of the Proposed Easement as notified. This synopsis of submissions adopts and supplements those earlier written submissions (copy **attached** for reference).
- 1.3 In summary, and as expanded on further below:
- (a) BFDL supports the granting of the Proposed Easement. It is the current registered owner of the proposed benefited land, being Lot 404 DP 505513 ("**Lot 404**") and Lot 405 DP 505513 ("**Lot 405**"). Lots 404 and 405 (and, in the case of Lot 405, the adjacent garden allotment lots associated with the nearby Bridesdale Farm development) currently have no suitable legal access over adjoining land to and from the surrounding public roading network. An easement is required to provide for such legal access.
 - (b) The proposed burdened land, being Lot 205 DP 505513 ("**Lot 205**") and Lot 308 DP 505513 ("**Lot 308**"), are vested in QLDC as recreation reserve under the Reserves Act 1977 ("**Act**"). Section 48 of the Act gives QLDC, with the consent of the Minister of Conservation, the power to grant the Proposed Easement.
 - (c) The majority of the proposed conditions of the Proposed Easement are fair and reasonable and are supported by BFDL.
 - (d) BFDL seeks, however, that amendments are made to three of the proposed conditions of the Proposed Easement, being:
 - (i) an amendment to proposed condition (a) to allow access for any potential future uses of Lot 404 that may be permitted by relevant zoning or consents;
 - (ii) an amendment to proposed condition (d)(iii) to remove the requirement that BFDL meet the costs of any relocation of the access that may be required by QLDC in future; and
 - (iii) an amendment to proposed condition (d)(v) to provide for the costs of maintenance of the easement to be split equally between the parties to the Proposed Easement rather than being borne wholly by BFDL.
- 1.4 BFDL understands it is the only submitter on the Proposed Easement and, in particular, that there is no objection by any other party to the Proposed Easement.

2. POWER TO GRANT EASEMENTS UNDER SECTION 48 OF THE ACT

2.1 Section 48 of the Act confers on QLDC (as the "administering body" under the Act) the power to grant rights of way and easements over Lots 205 and 308, with the consent of the Minister of Conservation. Relevantly for current purposes, subsections (1) and (2) provide:

(1) Subject to subsection (2) and to the Resource Management Act 1991, in the case of reserves vested in an administering body, the administering body, with the consent of the Minister and on such conditions as the Minister thinks fit, may grant rights of way and other easements over any part of the reserve for—

...

(f) providing or facilitating access ... to ... any other land not forming part of the reserve or for any other purpose connected with any such land.

(2) Before granting a right of way or an easement under subsection (1) over any part of a reserve vested in it, the administering body shall give public notice in accordance with section 119 specifying the right of way or other easement intended to be granted, and shall give full consideration, in accordance with section 120, to all objections and submissions received in respect of the proposal under that section.

2.2 In *Schmuck v Opuia Coastal Preservation Inc* [2019] NZSC 118, the Supreme Court confirmed the following principles:

(a) The power to grant easements under s 48 of the Act is not confined in the same manner as the powers under the Act for the administering body to enter into leases and licences for certain specified purposes.¹

(b) There is no justification for reading down the meaning of the phrase, "for any other purpose connected with any such land" in s 48(1)(f) of the Act (in that case, to exclude easements for commercial activities).²

2.3 QLDC's powers to grant an easement under s 48 are accordingly broad. Subject to obtaining Ministerial consent and observing the procedural requirements imposed by ss 119 and 120 (discussed further below), the grant of the Proposed Easement and the conditions upon which it is granted is within the discretion of QLDC under the Act.

2.4 As with all statutory decision-makers, QLDC is subject to public and administrative law principles. These require decision-makers to act lawfully, fairly and reasonably.³ This means that the process of considering the application needs to be undertaken fairly and the decision reached by the decision-maker (including the conditions imposed) needs to be reasonable and lawfully within the decision-maker's powers. It also means that a decision-maker must take a consistent approach to similar applications.

¹ *Schmuck v Opuia Coastal Preservation Inc* [2019] NZSC 118 at [109].

² Above, at [113].

³ *New Zealand Association for Migration and Investments Inc v A-G* [2006] NZAR 45 at [141].

- 2.5 We understand that the Minister of Conservation has delegated his consent function under s 48 of the Act to each of the administering bodies, and that such delegation has not been revoked.⁴ This means that QLDC has to decide in its capacity as administering body whether to grant the Proposed Easement, and then has to decide in its capacity as the delegate of the Minister whether to consent to the grant of the Proposed Easement. The Department of Conservation letter accompanying the delegation clarifies that:

The Minister is not the decision maker, but has, instead, a supervisory role in ensuring that the necessary statutory processes have been followed; that the administering body has taken the functions and purposes of the [Act] into account in respect of the particular classification and purposes of the reserve; that it has considered any objections or submissions from affected parties; and that, on the basis of the evidence, the decision is a reasonable one.

Proposed Easement is within the scope of s 48, consistent with Act

- 2.6 The Proposed Easement is sought for a purpose specifically contemplated by s 48(1)(f) of the Act; that is, the provision of access to land (i.e. Lots 404 and 405) that do not form part of the reserve.

- 2.7 BFDL submits that the granting of the Proposed Easement (on conditions as proposed by BFDL) is also appropriate having regard to the functions and purposes of the Act. These purposes include:

- (a) generally:
 - (i) providing for the preservation and management for the benefit and enjoyment of the public, areas of New Zealand possessing recreational use or potential or environmental and landscape amenity of interest;⁵ and
 - (ii) ensuring, as far as possible, the preservation of access for the public to and along riverbanks, and fostering and promoting the preservation of the natural character of the margins of rivers and the protection of them from unnecessary subdivision and development;⁶ and
- (b) in relation to recreation reserves specifically, providing areas for the recreation and sporting activities and the physical welfare and enjoyment of the public, and for the protection of the natural environment and beauty of the countryside, with emphasis on the retention of open spaces and on outdoor recreational activities.⁷

- 2.8 BFDL submits that:

- (a) the Proposed Easement is over a very small part of Lots 205 and 308 and will not interfere with the public's use and enjoyment of the remainder of the recreation reserve;
- (b) the area of the Proposed Easement already contains a formed gravel road, including part of the gravel roadway used by the public to

⁴ Instrument of Delegation for Territorial Authorities dated 12 June 2013.

⁵ Section 3(1)(a) of the Act.

⁶ Section 3(1)(c) of the Act.

⁷ Section 17(1) of the Act.

access the Kawarau River and Queenstown Trail.⁸ The granting of the Proposed Easement will therefore not change the existing situation on the ground within the recreation reserve or the public's current ability to use and enjoy the recreation reserve land;

- (c) the granting of the Proposed Easement will complement the public's use and enjoyment of the recreation reserve land, by:
 - (i) facilitating legal access to the consented and existing Bridesdale Farm garden allotments; and
 - (ii) ensuring there is appropriate legal access to each of Lots 404, 405 and the garden allotments to enable appropriate use and thus upkeep and maintenance of those Lots to preserve the visual amenity and landscape; and
- (d) the Proposed Easement will not interfere with the public's ability to continue to traverse Lot 205 in order to access, use and enjoy the Kawarau River and surrounds.

2.9 We are aware that there have been several similar easements granted over other recreation reserves in the Queenstown-Lakes district in recent years. For example, those easements granted to Skyline Enterprises Limited for the upgrade of the Skyline gondola and associated facilities (easements for right of way, right of support and right to convey electricity). In our view, granting the Proposed Easement over Lots 205 and 308 would be consistent with the types of easements previously granted by QLDC.

Procedural requirements

- 2.10 Section 119 of the Act requires, in respect of public notification relating to any recreation reserve, that the notification is published:
- (a) once in a newspaper circulating in the area in which the reserve is situated; and
 - (b) in such other newspapers (if any) as the administering body decides.
- 2.11 The Notice was published in the Mountain Scene on 13 January 2022⁹ and accordingly complies with the requirements of s 119.
- 2.12 Section 120 then provides that:
- (a) any person or organisation may make submissions with respect to the proposal;
 - (b) where the person or organisation making the submission so requests, the administering body shall give the person or organisation a reasonable opportunity of appearing before the administering body or a committee thereof in support of his or her or its submission; and
 - (c) the administering body shall give full consideration to every submission received before deciding to proceed with the proposal.

⁸ Brief of evidence of Lauren Hilary Christie dated on or about the date of these submissions ("**Christie Brief**") at [3.2].

⁹ Christie Brief at [2.7(d)].

- 2.13 It is in reliance on these provisions that BFDL seeks to be heard in relation to the amendments it seeks to the proposed conditions of the Proposed Easement.

3. AMENDMENTS SOUGHT TO PROPOSED CONDITIONS

- 3.1 The majority of the proposed conditions of the Proposed Easement are fair and reasonable and are supported by BFDL.¹⁰ Specifically, BFDL submits that:

- (a) It is appropriate that the final alignment of the Proposed Easement is agreed with QLDC and that QLDC Parks and Reserves and Infrastructure departments are consulted prior to any works commencing (proposed conditions (b) and (c)). These conditions ensure that QLDC is appropriately consulted on implementation.
- (b) A critical feature of the Proposed Easement will be a mechanism to ensure ongoing legal access for the garden allotment owners (proposed condition (d)(i)). The garden allotments sit adjacent to Lot 405 (geographically, Lot 405 surrounds the garden allotments). As it is proposed that Lot 405 (rather than the individual garden allotments) is the benefited land, it will be important to ensure that there is a mechanism to preserve ongoing access for the residents of the Bridesdale Farm development to their garden allotments.
- (c) It is appropriate that the Proposed Easement contain conditions:
 - (i) preserving the public's access to the balance of the reserve land (proposed condition (d)(ii)); and
 - (ii) ensuring BFDL could not object to future uses of the reserve land which do not interfere with the use of the Proposed Easement (proposed condition (d)(iv)).
- (d) A three-year time-limit for registration of the Proposed Easement is sufficient (proposed condition (e)).
- (e) BFDL is prepared to meet QLDC's reasonable costs of the Proposed Easement (proposed condition (f)).

- 3.2 BFDL seeks amendments to proposed conditions (a), (d)(iii) and (d)(v) as set out in further detail below. The amendments sought were all raised with QLDC prior to public notification of the Proposed Easement¹¹ and are canvassed in BFDL's written submission of 14 February 2022. In BFDL's submission, all requested amendments are reasonable and appropriate.

Proposed condition (a)

- 3.3 BFDL seeks the following amendments to proposed condition (a):

Use to be restricted to light vehicle and pedestrian access for the current farming use and to enable access to the garden allotments, and/or any other use of [Lot 404] that may be permitted by relevant zoning or consents from time to time.

¹⁰ Christie Brief at [4.1].

¹¹ Christie Brief at [3.18] and Appendix H.

- 3.4 The notified wording of proposed condition (a) reflects the *current* uses of Lot 404 (farming) and Lot 405 (access to the garden allotments); however it does not allow for any different future uses.
- 3.5 It is not expected that the use of Lot 405 will change in future (as it is simply the balance lot that provides for the garden allotments).¹² However, it is possible that, at some point in the future, BFDL might either wish to seek further use of Lot 404 or sell the land to a purchaser who wishes to realise further potential on the land.¹³ For example, BFDL has been in mediation with QLDC on seeking a recreation zoning over the land.
- 3.6 BFDL submits that it is appropriate that proposed condition (a) specifically contemplate and allow for future uses of Lot 404, because:
- (a) Any different future use of Lot 404 will only be permissible if Lot 404 is rezoned and / or consent is granted for such use. Either process will necessarily consider the impact of matters such as traffic and other effects on the surrounding land. There are therefore suitable protections already in place that mean that the Proposed Easement cannot be utilised for unlawful or inappropriate uses of Lot 404.
 - (b) "Future-proofing" the Proposed Easement in the manner proposed will ensure that BFDL or any future registered owner of Lot 404 is not disadvantaged in terms of any rezoning proposal or consent application by the lack of legal access to Lot 404 for such use. For example, the provision of adequate access to the subject land is relevant in planning and resource consent decisions under the Resource Management Act 1991 when the provision of inadequate access will undermine a particular outcome.
 - (c) The proposed amendment will avoid inefficiency and unnecessary cost, both to QDLC and the registered owner of Lot 404, by removing any suggestion that there would need to be any:
 - (i) further negotiation between QLDC and the registered owner of Lot 404; and / or
 - (ii) protracted (and possibly publicly notified) process for consent under s 48 of the Act;

in order to ensure continuity of access to Lot 404 for permitted / consented activities on Lot 404.
- 3.7 If this Panel were not minded to recommend amendments to proposed condition (a) in the form proposed by BFDL, there may be other approaches that would address BFDL's concerns to avoid an uncertain, protracted and costly process for effecting any amendments – for example, providing an express mechanism for future uses to be recognised by the Proposed Easement. Counsel would be happy to expand further on such options in the hearing, if helpful.

Proposed condition (d)(iii)

- 3.8 BFDL seeks the following amendments to proposed condition (d)(iii):

Enable Council to relocate the access in the event that Council develops an alternative access to the reserve land through

¹² Christie Brief at [5.4].

¹³ Christie Brief at [5.4].

~~Widgeon Place at the cost of the Council, at Bridesdale Farm Development Limited's cost.~~

- 3.9 BFDL acknowledges it is possible that QLDC may wish to utilise the recreation reserve land in future for different uses that could necessitate a relocation of the Proposed Easement. BFDL is therefore not necessarily opposed in principle to a proposed condition enabling QLDC to effect such relocation, although an alternative route via Widgeon Place would:¹⁴
- (a) lengthen the route over recreation reserve from the currently proposed 187m to at least 252m (assuming the most direct route between Widgeon Place and Lot 404);
 - (b) require residents of the Bridesdale Farm development to take a much more circuitous route between their dwelling and their garden allotment, reducing the convenience and therefore potentially the amenity of the garden allotments and the associated value; and
 - (c) seem somewhat illogical and inefficient when the garden allotments will still require access (which would still need to be from Lots 205 and 308 to access the 'fingers' and existing easements over Lot 405) and so such relocation would only preserve the approximately 10m of reserve land at the top of Lot 205 adjacent to Hayes Creek Road.
- 3.10 For the following reasons, however, BFDL objects to the proposed imposition of the cost of effecting such relocation on BFDL and seeks that this part of proposed condition (d)(iii) is struck out:
- (a) As an initial point, it is not clear why the proposed condition specifically names BFDL, when it is Lots 404 and 405 (and, indirectly, the garden allotments) – and, therefore, the registered owners and / or occupiers of those Lots from time to time – that will have the benefit of the Proposed Easement.
 - (b) BFDL has already incurred the cost of developing the access along the length of Lot 205 and the carpark adjoining the Kawerau River. It did so in the expectation and belief that this accessway would provide the necessary legal access to Lots 404, 405 and the garden allotments.¹⁵
 - (c) As QLDC declined to grant BFDL its expected legal rights of access over Lot 205, BFDL has now proposed the alternative accessway contemplated by the Proposed Easement. It has also already incurred the costs of establishing this current accessway.
 - (d) Proposed condition (d)(iii), in its current form, would require BFDL to incur the additional costs of moving the accessway to a third location. As Ms Christie says:
 - (i) this third route would be at least 252m long;¹⁶ and
 - (ii) establishing access over this route could cost in the region of some \$0.5 million plus GST (on current costings).¹⁷

¹⁴ Christie Brief at [5.9] and Appendix I.

¹⁵ Christie Brief at [3.8].

¹⁶ Christie Brief at [5.9(a)].

¹⁷ Christie Brief at [5.11] and Appendix J.

- (e) Relocation could occur at any time, and for any reason, as determined solely by QLDC. BFDL does not expect to have any say in whether or when such relocation might occur.
- (f) The imposition of proposed condition (d)(iii), in its current form, is expected to negatively impact the saleability and value of Lot 404.¹⁸ This would be particularly so in respect of any purchaser that wished to continue to use Lot 404 for its current farming use.¹⁹
- 3.11 BFDL submits that proposed condition (d)(iii) should be amended in the manner proposed so that it expressly recognises that the cost of any future relocation of the Proposed Easement / access to Lots 404 and 405, as determined by QLDC, is properly to the account of QLDC.

Proposed condition (d)(v)

- 3.12 BFDL seeks the following amendments to proposed condition (d)(v):

~~Bridesdale Farm Development Limited will pay for~~ All ongoing maintenance costs associated with the easement shall be split equally between the parties to the easement in accordance with Schedule 5 of the Land Transfer Regulations 2018.

- 3.13 Again, as an initial point, it is not clear why the proposed condition specifically names BFDL, when it is Lots 404 and 405 (and, therefore, the registered owner and / or occupier of those Lots from time to time) that will have the benefit of the Proposed Easement.
- 3.14 As Ms Christie says, in her experience it is usual that when road reserve land is vested in Council as part of a subdivision of the benefit of the public and the purchasers of the developed lots, it is Council that has the responsibility (and cost burden) of maintaining that road.²⁰ Of course, had Lot 205 vested in QLDC as road reserve (as originally intended and proposed by BFDL), there would have been no question of QLDC bearing the cost burden of maintaining that road.
- 3.15 BFDL acknowledges that Lot 205 was not vested as road reserve. QLDC has also informed BFDL that imposing the cost of maintenance on BFDL is justified as the sole purpose of the Proposed Easement is to access BFDL's land.²¹
- 3.16 BFDL submits, however, that the imposition of the entirety of the cost burden on BFDL (or the registered owner of Lots 404 and / or 405 from time to time), is not justified for the following reasons:
- (a) It is not accurate to characterise the Proposed Easement as being solely for the benefit of BFDL. Critically, the Proposed Easement will provide legal access to the residents of the 138 lots within the Bridesdale Farm development to access their associated garden allotments, which are located adjacent to Lot 405. The residents of those 138 lots are, self-evidently, much greater in number than the registered owner(s) of Lots 404 and 405.
- (b) The usual approach pursuant to the default easement terms in Schedule 5 of the Land Transfer Regulations 2018 is an equal split

¹⁸ Christie Brief at [5.12].

¹⁹ Christie Brief at [5.12].

²⁰ Christie Brief at [5.14].

²¹ Christie Brief at Appendix H.

of the costs between the parties to the relevant easement.²² There is no discernible reason why a departure from that default position is justified here.

- (c) QLDC already currently bears the maintenance cost of (informal) access to Lot 405 and the garden allotment lots as the registered owner of Lots 205 and 308, over which the access exists. Again, there is no discernible reason why a wholesale departure from that position (i.e. by shifting the entirety of the cost burden to BFDL) is justified.

4. CONCLUSION

- 4.1 BFDL supports QLDC's intention to grant the Proposed Easement. For all of the reasons set out in this synopsis of submissions, its earlier submissions of 14 February 2022 and Ms Christie's brief of evidence, BFDL submits that it is appropriate that modest amendments are made to proposed conditions (a), (d)(iii) and (d)(iv) to ensure that the Proposed Easement fulfils its intended purpose and is granted on fair and equitable terms that do not unduly burden BFDL, the owners of the garden allotment lots, or future owners of Lots 404 and / or 405.



M Eastwick-Field / K L Gunnell
Counsel for Bridesdale Farm Developments Limited

²² As Lots 404 and 405 are within the same record of title the repair and maintenance costs will be split between BFDL as the grantee and QLDC as the grantor.

**SUBMISSION ON NOTICE OF INTENTION TO GRANT A RIGHT OF WAY EASEMENT UNDER
SECTION 48 OF THE RESERVES ACT 1977**

TO: Queenstown Lakes District Council ("**QLDC**")

SUBMITTER: Bridesdale Farm Developments Limited ("**BFDL**")

SUBMISSION ON: Notice of intention to grant a right of way easement over an area of the Greater Widgeon Place Recreation Reserve, for the benefit of farm access and gardening lots associated with the Bridesdale Development, pursuant to section 48 of the Reserves Act 1977 ("**Notice**")

Introduction and background

1. BFDL is the developer of the 138-lot Special Housing Area ("**SHA**") subdivision in Lake Hayes Estate known as Bridesdale Farm. At the Southern end of Bridesdale Farm are two lots legally described as Lot 404 and 405 DP 505513 ("**Lot 404**" and "**Lot 405**" respectively). Lot 404 is currently a vacant balance lot, zoned and used (currently) for farming. Lot 405 surrounds a number of individual "garden allotments" which are linked to each of the 138 principal lots within the Bridesdale Farm subdivision.
2. Neither Lot 404 nor Lot 405 have legal access to the road network, but both adjoin a road located within Lot 205 DP 505513 ("**Lot 205**"), which since the subdivision of Bridesdale Farm in 2017 has been used to access Lot 404 and Lot 405. Lot 205 is a recreation reserve administered by QLDC. Adjoining near the top of Lot 205 is another lot which is a Council recreation reserve, Lot 308 DP 505513 ("**Lot 308**").
3. BFDL owned Lot 205 until completion of the Bridesdale Farm subdivision in 2017. Prior to the subdivision of Bridesdale Farm, there was no road on this land. BFDL proposed a road on Lot 205 as part of its SHA application, intending that the road would provide access to the Kawarau River, as well as to the adjoining land at Lot 404, Lot 405 and the garden allotments.
4. As part of the implementation of the Bridesdale Farm subdivision, BFDL vested Lot 205 in QLDC. As is typical in these sorts of arrangements, QLDC was not asked to provide any consideration for the vesting (i.e. it was vested at no cost to QLDC). BFDL also paid for and constructed the road and public carpark within Lot 205.
5. Initially, BFDL intended that Lot 205 would be vested in QLDC as a road reserve, as shown on the subdivision planning documents lodged with QLDC. As noted above, the intent was that the road to be constructed on Lot 205 would provide public access to the Kawarau River, as well as providing access to Lot 405 (for the owner of that Lot and for the residents of the Bridesdale Farm subdivision to access their garden allotments) and to Lot 404. However, at QLDC's request, Lot 205 was ultimately vested in QLDC as a recreation reserve. From BFDL's perspective, this change in status was not intended to reflect any modification of the planned routes for public access to the Kawarau River and to Lot 405, and access to Lot 404. However, the change to recreation reserve status unfortunately had the unintended (and, at that time, unanticipated and unforeseen) result of restricting legal access to, and infrastructure service provision for, Lot 404 and Lot 405. As Lot 405 provides

access to the garden allotments, the change to recreation reserve status for Lot 205 also means that the 138 owners of these allotments do not have legal access to their land.

6. When this issue was discovered (after the subdivision was implemented), BFDL requested that QLDC grant a right-of-way easement to use the road on Lot 205 as the legal means of vehicle and pedestrian access to Lot 404 and Lot 405. This was consistent with the original intention, and indeed would simply have formalised the established position on the ground with respect to Lot 205. After some protracted discussions with QLDC, however, BFDL ultimately agreed to seek approval of a compromise position, and amended its request for a right-of-way easement to a revised proposal to use a small portion of Lot 205 and Lot 308 to provide access to Lot 404 and Lot 405. This proposal is the subject of the Notice and this submission.

Nature of submission

7. BFDL supports the intention of the Notice to grant a right of way easement over Lot 205 and Lot 308 in favour of Lot 404 and Lot 405. With the exception of the matters outlined below, BFDL considers the conditions proposed by QLDC as set out in the Notice are appropriate and it supports the granting of the right of way easement on such terms. BFDL wishes to be heard in this regard if there is any opposition to the granting of the right of way easement, or proposed conditions (other than those outlined below, which are discussed separately), from any other submitter on the Notice.
8. BFDL objects to three of the conditions proposed by QLDC as detailed in paragraph 9 and seeks the amendments set out in paragraph 10.
9. BFDL objects to the following conditions proposed by QLDC as set out in the Notice:
 - (a) Condition (a) states "Use to be restricted to light vehicle and pedestrian access for the current farming use and to enable access to the garden allotments". BFDL is comfortable that the proposed wording reflects the current use of Lot 404 and Lot 405. However, Lot 404 may be the subject of future rezoning and / or planning applications for a change in use. BFDL is concerned to ensure that the easement is adequately "future-proofed" by having the terms of the easement expressly contemplate possible future changes in use of the land so as to avoid the need for a further process under the Reserves Act (or further negotiation and/or debate between QLDC and the landowner), which would unnecessarily take up valuable time and resources. Future-proofing the easement in this manner would also avoid the possible "catch-22" of any rezoning of or granting of resource consent in respect of Lot 404 being impacted by the lack of legal access to those Lots for such use.

Any change in use of Lot 404 (and, therefore, the uses to which the right of way easement could be put) would, of course, be subject to normal planning processes (i.e. approval of rezoning or granting of resource consent) so in BFDL's submission there can be no prejudice to QLDC or the public in crafting the permitted use description in the easement to encompass such approved future uses.
 - (b) Condition (d)(iii) requires that the final terms of the easement contain conditions enabling "Council to relocate the access in the event that Council develops an alternative access to the reserve land through Widgeon Place at Bridesdale Farm Development Limited's cost". BFDL has significant concerns with this requirement:

- (i) Firstly, while (subject to the below) BFDL is open to the necessity of changing the access to accommodate QLDC's future plans for the reserve land, the justification for requiring BFDL (or the registered owner of Lot 404 and Lot 405) to bear the costs of relocation is not at all clear, fair or reasonable. The distance between Widgeon Place and Lot 404 and Lot 405 is substantial, and the cost of forming a road over that distance would be significant. Had Lot 205 vested as road reserve as part of the subdivision (as was originally intended), there could be no suggestion of QLDC having the ability to impose the cost of relocating the QLDC road on BFDL. It is not appropriate, equitable or reasonable that, due simply to accident of circumstance, BFDL has been put in the position of having to seek the grant of this new right of way easement and is proposed to be saddled with the cost of decisions that QLDC might make at its discretion at any time in the future.

It is particularly unreasonable given that the compromise position proposed by BFDL that is the subject of this Notice is for an easement only over a very small portion of Lot 205 and Lot 308. This proposed easement area is directly adjacent to a legal road and flows in a direct line to the garden allotments via Lot 405, and then down to Lot 404. In practical terms, while QLDC may seek to remove the formed road from the bulk of Lot 205, it is not clear to BFDL why the access over the very small portion of Lot 205 and the even smaller portion of Lot 308 would need to be removed. Constructing a much longer road from Widgeon Place would take up much more space of QLDC's recreation reserve (the plan attached as an Appendix shows the small size of the proposed easement for ease of reference). Not only does this seem illogical in replacing a small access route with a much lengthier one, it also would be entirely impractical for the access of the owners of the garden allotments who instead of having a direct route from the Bridesdale Farm subdivision, where they live, to their respective allotments (which are intended to be easily accessed), each garden allotment owner would be forced to travel a circuitous route around the subdivision to access their respective garden.

- (ii) Secondly, the condition would pose an unreasonable financial burden on any future owners of the land for the reasons set out above. The condition as drafted is expressed as falling on "Bridesdale Farm Developments Limited"; however the easement needs to contemplate that Lot 404 and 405 may be owned by other parties in the future. The costs of relocation could be significant and it is unreasonable for this financial burden to be placed on either BFDL (which may in the future not own Lot 404 and 405) or on a future owner of Lot 404 and 405 who may be a single rural landowner.

- (c) Finally, condition d(v) states that "Bridesdale Farm Development Limited will pay for all ongoing maintenance costs associated with the easement". We make the same point as above about the condition expressly referring to "Bridesdale Farm Development Limited". The reference should be to the registered owner of Lot 404 and Lot 405. QLDC has communicated to BFDL that this condition has been imposed as the sole purpose of the easement will be to access BFDL's land. That is incorrect, as the easement will also allow access by the above referred garden allotment owners. As already noted, such users are far greater in number and will likely use the right of way more frequently than BFDL. In other words, the

proposed right of way easement is intended to provide benefit to a number of parties. QLDC also currently bears the maintenance costs of access to the garden allotments and Lot 405 in its capacity as owner of Lots 205 and 308. Given these factors, and the historical circumstances that require this easement to now be put in place, it would be inequitable and unreasonable to require BFDL to bear 100% of the costs to maintain the easement. Going forward, a split between the parties as set out in the easement terms in Schedule 5 of the Land Transfer Regulations 2018 is appropriate.

Relief sought

10. BFDL seeks the following amendments to the proposed terms of the right of way easement (amendments shown in underline and deletions shown in strike-through):
 - (a) Condition (a): "Use to be restricted to light vehicle and pedestrian access for the current farming use and to enable access to the garden allotments, and/or any other use of [Lot 404] that may be permitted by relevant zoning or consents from time to time".
 - (b) Condition (d)(iii): "Enable Council to relocate the access in the event that Council develops an alternative access to the reserve land through Widgeon Place at the cost of the Council.", ~~at Bridesdale Farm Development Limited's cost~~
 - (c) Condition d(v): "~~Bridesdale Farm Development Limited will pay for~~ All ongoing maintenance costs associated with the easement shall be split equally between the parties to the easement in accordance with Schedule 5 of the Land Transfer Regulations 2018".
11. BFDL wishes to be heard and have the opportunity to call evidence in support of its submission.

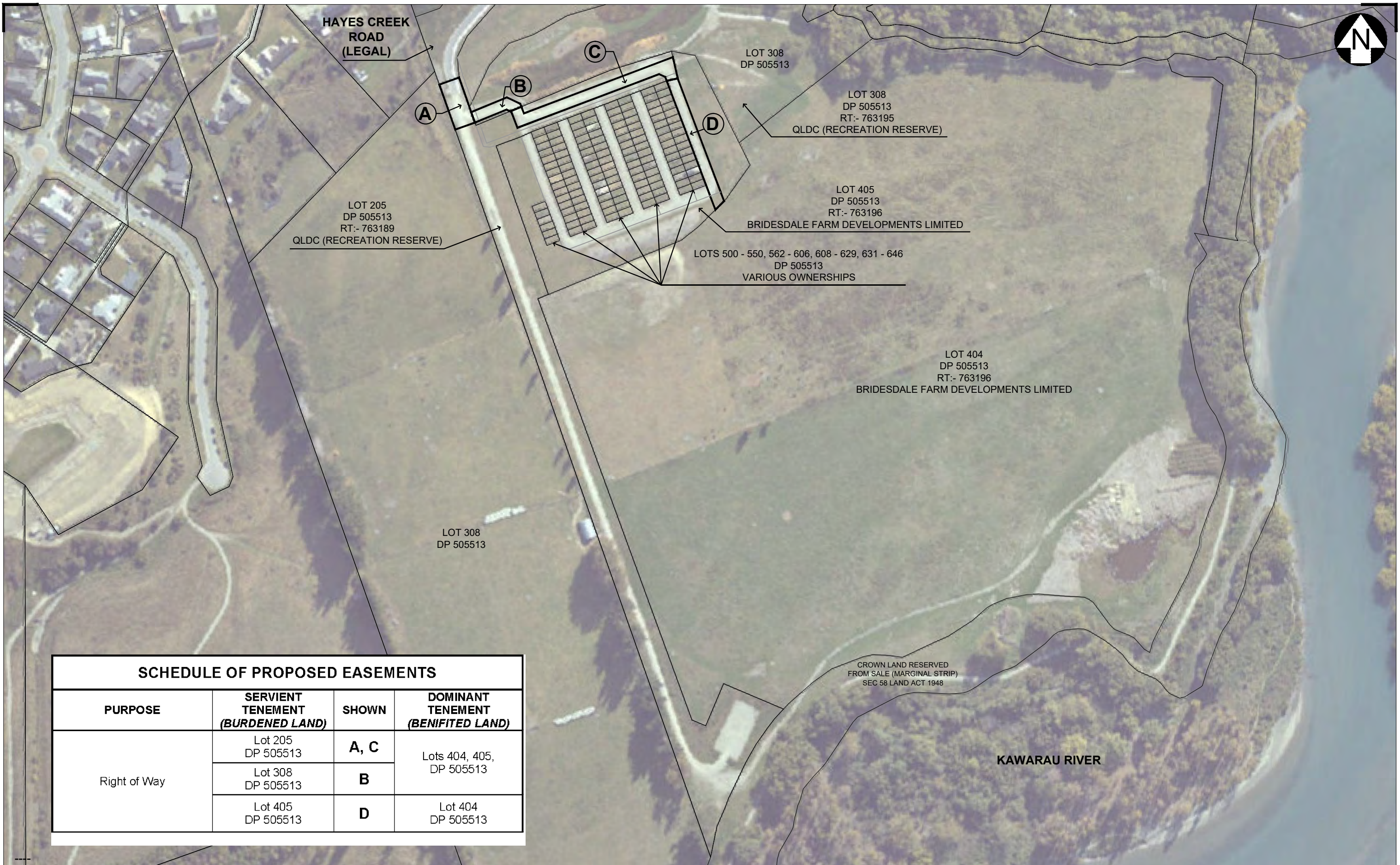
BRIDESDALE FARM DEVELOPMENTS LIMITED



Signature:

Date: 14.02.22

Address for Service: lauren.christie@winton.nz, PO Box 2962, Wakatipu, Queenstown, 9300



SCHEDULE OF PROPOSED EASEMENTS

PURPOSE	SERVIENT TENEMENT (BURDENED LAND)	SHOWN	DOMINANT TENEMENT (BENEFITED LAND)
Right of Way	Lot 205 DP 505513	A, C	Lots 404, 405, DP 505513
	Lot 308 DP 505513	B	
	Lot 405 DP 505513	D	Lot 404 DP 505513


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
A	15.05.20	RsOW AMENDED	HK

**PROPOSED EASEMENTS OVER LOTS 205, 308 AND 405
DP 205513**

Client	BFDL	Surveyed	Date	Checked	HK	Job No.	11670	Drawing No.	18
		Drawn	Date	Checked	HK	Scale	1:1250 @ A1 1:2500 @ A3		
		Designed	Date	Checked	HK	Datum & Level	NZGD2000 / MSL	Rev.	A

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