

Before Queenstown Lakes District Council

In the matter of the Resource Management Act 1991

And **The Queenstown Lakes District Proposed District Plan –
Stage 14 Wakatipu Basin**

Legal Submissions for Ladies Mile Consortium

Submitters #2489, #535 (GW Stalker Family Trust, Mark Tylden, Sam Strain),
#532 (Bill and Jan Walker Family Trust), #229 (Felzar Properties Limited)

Dated 15 July 2018

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**anderson
lloyd.**

May it please the Panel

Introduction

- 1 These legal submissions are presented on behalf of the named submitters on the front cover page, referred to as the Ladies Mile Consortium. The Ladies Mile Consortium are landowners who seek to rezone the land identified on Appendix 1 through stages 1 and 2 of the PDP (map of Ladies Mile rezoning).
- 2 These submissions address the following matters:
 - (a) Context and explanation of relief sought;
 - (b) Summary of previous rural living submissions lodged in Stage 1;
 - (c) Legal context of the staged plan review
 - (i) The effect of Stage 1 decisions;
 - (ii) Proposed stage 1 objectives and policies and Part 2 of the Act;
 - (iii) Proposed Regional Policy Statement.
 - (d) The case for rezoning Ladies Mile Rural Residential
 - (i) Landscape and the Wakatipu Basin Land Use Study (**WBLUS**)
 - (ii) Existing environment
 - (iii) Traffic issues
 - (iv) Planning evidence
 - (e) The Council's case for sterilisation
 - (i) Efficient use of land
 - (ii) HASHAA
 - (iii) Future planning options
- 3 The Ladies Mile land currently faces a complex zoning / consenting situation which arises due to a combination of Council's staged DPR process, from the recommendations of the WBLUS, and from separate legislative processes under the Housing Accords and Special Housing Area Act 2013 (**HASHAA**).
- 4 The Ladies Mile landowners are currently facing a situation where the Council is attempting to direct the development of their land through HASHAA legislation

under the RMA, or otherwise face its effective sterilisation through a combined Rural Zone or Wakatipu Basin Rural Amenity Zone (**WBRAZ**) as proposed by Council under the RMA.

- 5 In its submissions to the PDP nearly 3 years ago, the Ladies Mile Consortium sought a Rural Lifestyle Zoning of 1ha average density development. That submission was lodged well before there was any anticipation of the Queenstown Country Club SHA proceeding, which since its commencement has significantly changed the existing environment of Ladies Mile. Since then, leave has been granted to amend the rezoning request to Rural Residential (4000m² density).
- 6 The Ladies Mile land was then put on hold, pending the conclusion of the WBLUS. Despite the study recommending that this land be developed into an urban gateway precinct, the Council has elected to not include all of the land in any Stage 2 Wakatipu Basin rezoning, effectively promoting its sterilisation through the Stage 1 Rural Zone/ Stage 2 WBRAZ until special housing area options are pursued.
 - (a) Note that as is explained further in these submissions part of the Ladies Mile land is in not in the variation and part is. This split is a result of the Council retaining that area of Ladies Mile identified in its HASHAA lead policy as in Stage 1, and the remainder as in Stage 2.
- 7 The above 'evolving' situation of the Plan Review has left the Ladies Mile landowners out of pocket and in limbo as to the usability of their land in the future. It was not possible for landowners to predict the significant changes which would occur to the Ladies Mile planning environment over the past two years. They are now disadvantaged, and face significant uncertainty.
- 8 Ironically, the Council favours that the land not be rezoned as requested by the submitters given a preference for its use as urban land in the future, yet the Submitter's requests to be include in Stage 2 as an urban zone were declined for want of jurisdiction.¹
- 9 In summary it is submitted that:
 - (a) The Council's approach to the staged review and the zoning of Ladies Mile has been unplanned, ad-hoc, or in the Council's own words 'evolving' which has resulted in an inefficient, unfair and uncertain process for these landowners;

¹ Commissioner decision and Council recommendation on Glenpanel developments Limited.

- (b) The Council's proposed zoning of Ladies Mile as Rural in Stag1 / WBRAZ in Stage 2 through the Plan Review is not effects-based planning but rather is political and not founded on any relevant matter under sections 74 and 75'
 - (c) Any adverse effects of the proposed rezoning can be adequately addressed through the planning framework.
- 10 From all of the above, there is no justification to lock up the Ladies Mile land pending a hypothetical future scenario, in respect of which Council's plan is not apparent. This plan review must provide for an effects-based decision making process to rezoning requests and give landowners assurance and certainty as to their status for the next 10 – 20 years.

Context and explanation of relief sought

- 11 The Ladies Mile land identified in Appendix 1 is sought by the Submitters to be rezoned to a density of 4000m² (Rural Residential) over the majority of the Site, with larger blocks to the east end of the Site as a 1ha Rural Lifestyle density.
- 12 Under the PDP (proposed Map 13d) the eastern portion of the Site is identified as WBRAZ and the remainder as Rural Zone. The basis for this demarcation appears to stem from the Council's proposed Ladies Mile master plan (Appendix 3) which has no statutory weight or relevance in this process, and has not even been tabled as evidence, rather than any landscape or effects based boundaries. By way of contrast, the WBLUS recommended the entirety of the Ladies Mile Land be included in the Ladies Mile Gateway precinct rather than dividing the land otherwise as the Council has proposed.
- 13 Through submissions to both stage 1 and 2, the Submitters have jurisdiction to seek in this hearing either:
- (a) Rural Residential zoning (4000m²) stage 1, with site-specific provisions; and
 - (b) Wakatipu Lifestyle Precinct (stage 2) with amended provisions including a 4000m² density.
- 14 Whichever ultimate zoning is decided appropriate for the Site, it is submitted that it does not make planning sense to split zone the Site into two separate planning chapters / stages, where this is not effects or landscape based.

Summary of previous rural living submissions

- 15 Counsel refers to and relies on submissions presented in hearing topics 1B (strategic direction and landscapes), 2 (rural), 4 (subdivision) on Stage 1 of the Plan Review².
- 16 Rather than reiterate the position set out in those submission, Counsel urges those Commissioners not present in those hearings to read the submissions and evidence lodged as this is relevant to this rezoning proposal.
- 17 This evidence and submissions presented are still relevant, despite Stage 1 decisions so far released, given the Submitters, among a substantial group of other submitters have appealed stage 1 decisions relevant to the rural living provisions and subdivision and development rights across chapters 3, 6, 21, and 27 of the PDP.
- 18 In particular, the relevance of the existing environment is important in this case, as was discussed in Topic 02. Particularly given the Council's WBRAZ zoning proposed does not reflect the nature of the existing built and consented environment in a number of places in the Basin, including Ladies Mile.
- 19 The approach in *Hawthorn* has been applied by the Environment Court to a proposed plan change in *Milford Centre v Auckland Council*³ and by the High Court in *Shotover Park v Queenstown District Council*.⁴ In *Shotover Park*, Justice Fogarty confirmed that where some of the land the subject of a plan change is already the subject of resource consents likely to be implemented, the planning authority has to write a plan which accommodates the presence of that activity.

"The purpose of a territorial authority's plan is to "establish and implement objectives, policies and methods to achieve integrated management... of the land and associated natural and physical resources of the district. Where some of that land is already the subject of resource consents likely to be implemented, and the plan has not yet been made for that locality, **it is natural enough that the territorial authority has to write a plan which accommodates the presence of that activity.**"⁵

(underlining added)

² Topic 01B Goldsmith submissions (#535); Topic 02 Goldsmith submissions (#535 and others); topic 04 Goldsmith submissions (#535 and others).

³ *Milford Centre v Auckland Council* [2014] NZEnvC 23 at para 120

⁴ *Shotover Park Limited v Queenstown Lakes District Council* [2013] NZHC 1712

⁵ *Ibid* at para [112]

- 20 His Honour also considered that in deciding a plan for the future, there is nothing in the RMA intended to constrain forward-looking thinking and that the "likely to be implemented" test is intended to be a real-world analysis.⁶

"[117] In any event, if I am wrong on that point, the likely to be implemented test in [84] was intended to be a real world analysis as is confirmed by [42] of the Hawthorn decision which ends with the word "artificial":

[42] Although there is no express reference in the definition to the future, in a sense that is not surprising. Most of the words used would, in their ordinary usage, connote the future. It would be strange, for example, to construe "ecosystems" in a way which focused on the state of an ecosystem at any one point in time. Apart from any other consideration, it would be difficult to attempt such a definition. In the natural course of events ecosystems and their constituent parts are in a constant state of change. Equally, it is unlikely that the legislature intended that the inquiry should be limited to a fixed point in time when considering the economic conditions which affect people and communities, a matter referred to in para (d) of the definition. The nature of the concepts involved would make that approach artificial"

Legal context of the staged plan review

- 21 Without wanting to reiterate matters discussed in Stage 1 legal submissions, a few matters are worth briefly addressing as follows.
- 22 Throughout hearings on stage 1 on rezoning requests, submitters and Council had largely agreed to the list of relevant factors for determinations on rezoning as stated in Mr Barr's statement of evidence (strategic overview and common themes)⁷. Although a preference to rely on section 32 as written instead has come through the Stage 1 decisions.

⁶ Ibid at para 117 referring to Hawthorn at para 42

⁷ a) whether the change is consistent with the objectives and policies of the proposed zone. This applies to both the type of zone in addition to the location of the zone boundary; (b) whether the zone proposed / sought is more appropriate than the notified zone; (c) whether the change is consistent with and does not compromise PDP Strategic chapters and in particular the Strategic Direction, Urban Development and Landscape Chapters;(d) the overall impact of the rezoning gives effect to the ORPS; (e) economic costs and benefits are considered; (f) zone changes should take into account the issues debated in recent plan changes; (g) changes to zone boundaries are consistent with the maps in the PDP that indicate additional overlays or constraints (e.g. Airport Obstacle Limitation Surfaces, SNAs, Building Restriction Areas, ONF/ONL); (h) changes should take into account the location and environmental features of the site (e.g. the existing and consented environment, existing buildings, significant features and infrastructure); (i) zone changes recognise the availability or lack of major infrastructure (e.g. water, wastewater, roads); (j) zone changes take into account effects on water, wastewater and roading network capacity, and are not just limited to the site specific effects of extending infrastructure; (k) there is adequate separation between incompatible

- 23 Hearing Decision Report 16 (UC mapping) for Stage 1 refers to the relevance of higher order provisions to the inquiry on rezoning requests. While it appears to agree that higher order provisions of the PDP are not settled and therefore Part 2 is of relevance, the weighting of that consideration is confused in the following extract.

(emphasis added):

56. As counsel notes, if we have alternative zoning proposals before us, it can be anticipated that each proposal will likely be consistent with the intermediate level objectives for the respective zones and so assessing the appropriateness of the proposed zone against those objectives is likely to be of little or no assistance in determining which zone is the most appropriate provision for the PDP as a whole. To determine that, one must look to higher-level guidance, initially in Chapters 3-6 and, **as appropriate**, to the higher level planning documents and Part 2 of the Act

- 24 While the PDP must “give effect to” an operative Regional Policy Statement, it must also be prepared “in accordance with Part 2” of the RMA.
- 25 There is an interrelationship between these requirements to the extent that in “giving effect” it is not necessary for a subsequent decision-maker to revisit Part 2 and perform a further judgment exercise, where a higher order document has also been prepared in accordance with Part 2 of the Act.
- 26 In *King Salmon* the Supreme Court also identified contextual reasons supporting their conclusions on the effect of Part 2 being subsumed, specifically:
- (a) The reasonably elaborate process to be gone through before the Minister can issue the NZCPS, including a section 32 evaluation, and a board of enquiry or similar process with opportunity for public input; and
 - (b) There is a measure of control provided to the Minister by the NZCPS that make it difficult to see why the RMA would require regional councils “as a matter of course” to go back to Part 2.
- 27 These matters featured in the rejection of the use of a broad judgment approach in *King Salmon* and supported the idea that the NZCPS sets environmental bottom lines.

land uses; (l) rezoning in lieu of resource consent approvals, where a portion of a site has capacity to absorb development does not necessarily mean another zone is more appropriate; and (m) zoning is not determined by existing resource consents and existing use rights, but these will be taken into account

- 28 However, the Supreme Court also identified several caveats that might warrant further recourse to Part 2, specifically:
- (a) An allegation going to the lawfulness of the provision;
 - (b) Instances where a matter is not covered and Part 2 of the Act may assist in dealing with a matter; and
 - (c) Uncertainty as to the meaning of particular policies.
- 29 In the instance of the District Plan Review, the third caveat is particularly applicable given the higher order provisions are still proposed and subject to challenge and further change. Although all appeals are yet to be collated by the Council, it would appear from Counsel's review of some 100 appeals lodged that there are very few provisions of the higher order chapters 3, 4, 6, and 21 which are not beyond challenge.
- 30 It is uncertain where the weighting that rezonings should be assessed firstly against higher order provisions and then against Part 2 'as appropriate' has come from.
- 31 Part 2 is an equally relevant and important consideration for rezoning requests given the complexity and unsettled nature of any higher order provisions of this PDP.

The case for rezoning Ladies Mile Rural Residential

Landscape and the WBLUS

- 32 The Submitters have not produced their own landscape evidence in this hearing, given they rely on the publicly available findings of the Council- Commissioned WBLUS, which recommends rural residential and urban development over Ladies Mile, and also the Council's own landscape classification of Ladies Mile in the PDP Ladies Mile Landscape Classification Unit 10 (**LCU 10**) which identifies the landuse as "predominantly Rural Residential" and capability to absorb development potential as "high".⁸ There is an obvious fundamental inconsistency in the Council's case in terms of its LCU description in chapter 24, its zoning recommendation which does not reflect that description, and its landscape evidence which does not reflect that description. These inconsistencies are further addressed in the section on the 'Council's case' below.
- 33 The attached maps in Appendix 2 provide context of the LCU 10 as provided in the WBLUS. The delineation of LCU 10 in the WBLUS runs the entire length of

⁸ Pages 24-37 to 24-40

Ladies Mile, on both sides of the Highway from the Lake Hayes edge / Threepwood, to the Shotover Bridge. LCU 10 covers the entirety of the Consortium Submission area.

- 34 As discussed in Appendix C of the WBLUS, the delineation of those LCUs is based upon landscape character division of the Basin into separate units of rural landscape.
- 35 As indicated in Appendix 2, the findings from the WBLUS are that the entirety of the Ladies Mile strip is an area with 'High' absorption capacity and within this is a recommended Ladies Mile Gateway Precinct. The Gateway Precinct envisages an additional 3,626 – 6,610 dwellings based upon low and medium density dwelling allotment sizes of 450m² – 250m².⁹
- 36 The Consortium submission at a mixed Rural Residential / Rural Lifestyle density envisages a maximum 150-156 additional dwellings to be created depending on the scope of future subdivision applications.
- 37 The location and extent of each of the LCUs from the WBLUS has been directly copied into Schedule 24.8 of proposed chapter 24 Wakatipu Basin. This again indicates that the extent of LCU 10 is the entirety of the Ladies Mile landscape and does not match the Council's proposed split zoning of WBRAZ and Rural Zone, based upon the an "indicative master plan" from a separate non-RMA council policy document, that otherwise has no reference or corresponding objectives or policies in the PDP Stage 1 or Stage 2¹⁰
- 38 The Landscape Character Unit worksheets (Appendix H of the WBLUS) which describe each LCU has been picked up word for word and been placed into Chapter 24. The obvious discrepancy with this approach however is that the WBLUS recommendations are on the entire Ladies Mile strip, whereas Council's omission of the majority of Ladies Mile from Chapter 24 leaves only that eastern part of the Site, proposed as WBRAZ, remaining as part of LCU 10.
- 39 It is entirely illogical and without any basis in evidence, that a detailed landscape description from the Study of the whole Ladies Mile strip could be put into the proposed plan only in relation to a confined part of that strip. What is more illogical is that notified part of Ladies Mile included in the Variation maps is recommended to be zoned the most restrictive zoning in the plan, yet the LCU 10 descriptor is that Ladies Mile has 'high' capability to absorb additional

⁹ Appendix L: GIS analysis of capacity for additional dwellings development in proposed zones, Wakatipu Basin Land use Study 2017.

¹⁰ Housing Accords and Special Housing Areas Act 2013 Implementation Policy, QLDC, 26 October 2017

development and that 'urbanising effects of the approved Queenstown Country Club SHA suggest a tolerance for (sensitive) urban development'.

40 The following parts of the WBLUS findings are of particular relevance:

The Queenstown Country Club SHA at 10 Ladies Mile also significantly influences the character of this landscape unit. The unit functions as an important 'green' entrance to Queenstown and as a buffer or transition between the Frankton Flats and rural residential development nodes within the Basin. The large scale and distinctly urban character of the recently approved (but as yet unbuilt) SHA development will significantly compromise the ability of this landscape unit to function in these ways.¹¹

The distinctly urban Special Housing Area (SHA) development that has been approved within the Ladies Mile Highway and Arrowtown South landscape character units under QLDC's SHA First Lead Policy (together with the unbuilt and consented platforms), suggests a considerably reduced sensitivity to additional development and the potential to accommodate urban residential land uses in these areas (assuming the SHAs are developed). We consider an 'urban parkland' development character is likely to be appropriate in each of these locations drawing from the character of Millbrook, rather than the more 'traditional' urban form characterised by Lakes Hayes Estate or Shotover Country. An urban parkland development character would enable higher density in places, with lower densities and landscape buffers as the site-specific circumstances dictate. If the SHAs lapse, it is our recommendation that each of these areas should revert to their underlying zoning i.e. the Wakatipu Basin Rural Amenity Zone.¹²

Two areas (Ladies Mile and Arrowtown Precincts) are identified as potentially suited to low or medium density development (at 1: 450m² and 1: 250m² respectively, and assuming an 'urban parkland' development patterning rather than a traditional urban development pattern), while the WBRAZ and WLPZ will have comparatively limited capacity to accommodate additional dwellings given their comparatively large minimum lot sizes (80ha and 4,000m² respectively).¹³

A precinct overlay should be applied to Arrowtown and Ladies Mile to give certainty as to their suitability for future urban development. The application of urban zoning (and the applicability or not of Urban Growth Limits) will require a more fine-grained consideration of matters which can only be progressed through a structure plan

¹¹ Para 1.84, Appendix J, Wakatipu Basin Landscape Study 2017.

¹² Para 1.20, Wakatipu Basin Land Use Study Final Report, 2017.

¹³ Ibid, at 1.35

process (only if the SHAs at Ladies Mile Highway and south of Arrowtown are developed).¹⁴

The existing environment

- 41 It is submitted that any zoning decision under the District Plan Review should be effects-based rather than politically based, or for an ulterior purpose. This was discussed in the case of *Cerebras* where the Court considered:

[19] In terms of section 32 of the Resource Management Act 1991 (lithe Act") the ***Boon v Marlborough District Council*** case posed the following questions:

(1) Does the proposed zoning achieve integrated management of the effects of the use, development or protection of the land?

(2) Does it control the potential effects of the use, development or protection of the land?

- 42 In that case, the proposed rezoning of Campus site over what was effectively an industrial existing environment was declined as it was considered to be for an ulterior purpose, rather than effects-based.

[21] Accordingly in our view the zoning as Campus must fail at the first hurdle, namely that there is no established desirability or expediency (as the word necessary is used in section 32) for the zoning. Moreover we retain a concern that the zoning mechanism used in this case is not based around adverse effects but around a directive planning approach adopted by the Council in respect of future development within the city.

- 43 It is clear that the eastern portion of the site zoned WBRAZ is not of a nature which reflects an 80ha subdivision regime, being much smaller and developed land parcels, including Threepwood. It is also a zoning entirely contradictory to LCU 10, identifying the land as having high development capacity.
- 44 It follows that any existing development envisaged in this area, for example in consented but unbuilt building platforms, and would largely become inconsistent with the objectives and policies of the WBRAZ Zone. It is hard to see how this is a most efficient and effective way to achieve objectives under section 32.

¹⁴ Ibid, at 8.39

Traffic Issues

- 45 Mr Smith's position for the Council is to refuse all Wakatipu Basin rezoning requests on the basis of a concern of cumulative adverse traffic effects on the road network. At [9.5] of his rebuttal evidence he states:

My concerns relate to the traffic that would be generated through the rezoning occurring outside of an integrated planning process that would adequately address the cumulative traffic effects of development in the vicinity of Ladies Mile and wider Wakatipu Basin...

- 46 It is uncertain how Mr Smith does not consider the DPR process to be an 'integrated planning process' when this is the specific 1 in 10 – 20 year opportunity for the Council and the public to have input into the District Plan. It leaves the question of what alternatives would be an 'integrated planning process' if it is not the entire District Plan Review? The Queenstown Country Club SHA process was a recent example of the inability to consider wider traffic network and infrastructure effects.

- 47 Furthermore, Mr Smith's evidence in chief considers that the Shotover Bridge will be operating at capacity at around year 2035 with the notified zoning under Stage 1 and Stage 2 of the PDP. It therefore follows that:

(a) There is evidence to show that within 17 years the Shotover Bridge will be required to be upgraded based on the status quo. It is submitted that the Ladies Mile rezoning, whether considered cumulatively with other rezoning proposals or not, should not be singled out as inappropriate as otherwise development throughout the Wakatipu Basin and Arrowtown would need to be halted, even to maintain the status quo. This is clearly a wider and inevitable issue that the Council need to address, and which will be assisted by knowing clearly what zonings are in place sooner rather than later for funding/business case purposes.

(b) There is no justification to rely on a 17 year panning period for capacity of the Bridge to be reached and decline rezoning proposals in this District Plan Review, where the Plan should technically only be in place for ten years.

- 48 Finally the Submitters rely on the statement in Ms Vanstone's rebuttal evidence which confirms the Ladies Mile indicative masterplan (which has no legislative status) recognises there is a limit on the capacity of the Shotover Bridge. This is believed to be 1100 residential dwellings; a threshold agreed between QLDC and NZTA.

- 49 The Submitters' proposed Rural Residential and Rural Lifestyle rezoning would not therefore have adverse traffic effects which are not otherwise anticipated over the long term, or which have already been accepted by council in relation to development of the land under SHA legislation.

Planning evidence

- 50 As stated in the evidence of Mr Geddes, the purposes of a comparative section 32 analysis is to compare zoning options which are feasible and within the scope of the hearing. This does not include an urban rezoning akin to that envisaged under the Lead Policy.
- 51 Mr Geddes finds that on a comparative section 32 analysis, the rezoning to a Rural Residential / Rural Lifestyle density is more appropriate than retaining the current Rural / WBRAZ zoning.
- 52 For the reasons set out in the following section, this comparative assessment and conclusion is preferred to Ms Vanstone's for the Council, given that Ms Vanstone has made a comparative assessment of options which are beyond the scope of this Panel's jurisdiction, are based on a document that has no statutory weight or relevance, and are not feasible but purely hypothetical. I rely on Mr Geddes' planning assessment which is effects-based, evidence based and supported by the legislative context of sections 32, 74 and 75.

The Council's case for sterilisation

Landscape

- 53 Ms Vanstone summarises the Council position on landscape as follows:

From a landscape perspective, Ms Mellsop in her EIC does not oppose the rezoning of the site to the Decision version of the RLZ. However, Ms Mellsop considers the change of density to 4,000m² and a 25m setback will result in a loss of the remaining rural character and rural amenity, and would be inappropriate from a landscape perspective. I agree with Ms Mellsop that this would not retain any element of spaciousness or rural amenity along SH6, and would not maintain views towards the surrounding mountains and Slope Hill. This would also be inconsistent with the setback required as part of the Ladies Mile Masterplan and the setback approved as part of the Queenstown Country Club developments (SH160140).

- 54 As stated above, this position is entirely contradictory to the description of LCU 10 in Council's own plan, which is based upon a study recommending urban development in this location. The inconsistency in the Council's case is troubling, given that its planner seeks to set aside the land for future urban development, its LCU in the Plan identifies the land as capable of absorbing development (now,

and its landscape architect recommends RLZ. The Submitters rely on the WBLUS landscape findings and LCU 10 description, which are based upon significant and detailed desktop and on the ground analysis from first principles landscape assessments as to absorption capacity.

- 55 Practically speaking, it is also hard to understand a logical reasoning that a Rural Lifestyle Density of 1ha is appropriate, but 4000m² is not appropriate, in an area which has been chosen for future urban development by the Council, and which is opposite to the clearly urban and very visible Queenstown Country Club development. As described in the LCU 10, which is part of the PDP itself, the horse has well and truly bolted at Ladies Mile¹⁵ :

Sense of place

Generally, Ladies Mile reads as a critical part of the 'green' entrance to Queenstown. The care that has been taken to ensure that both rural residential and urban development in the vicinity is not visible from the road reinforces the role of this unit as a spacious green entrance. This has however been significantly compromised by the Queenstown Country Club SHA retirement village development which confers a distinctly urban character in a prominent, central and sizeable part of the LCU. The LCU also functions as an important 'breathing space' between the urban development of Frankton Flats to the west (and Queenstown proper beyond) and the ribbon development and rural residential 'node' associated with Lake Hayes to the east. Again it is acknowledged that the character of development associated with the Queenstown Country Club SHA significantly compromises this impression

Efficient use of land

- 56 The Council's principle planning reason for decline of the Submission rezoning is that it is considered an inefficient use of the land, as compared to what could be achieved under Special Housing Area legislation:

I do not consider the rezoning of the area to RLZ or RRZ would be an efficient use of this area compared to that which Council is trying to achieve through the Lead Policy and Indicative Masterplan for Ladies Mile, as well as the work that is being undertaken as part of the HIF. However, it is acknowledged that if development occurs in accordance with the Lead Policy, it has the potential to urbanise the area to a much greater degree than already exists at present, or is approved under SH160140 and would be incongruous with a Rural Zone.¹⁶

¹⁵ Page 24-39, notified version of Chapter 24

¹⁶ Ms Vanstone EIC, at 13.14

...

Consequently, in my opinion, a review of the entirety of the Ladies Mile landscape unit, including the promotion of a structure plan that considers the efficient future development of the whole area would be beneficial to ensure the area can be developed holistically, maximising density and which allows all environmental effects (including transportation) to be carefully considered. I also consider it important that the community is involved in the development of this area being one of the key gateway entrances to Queenstown. While I note that there is an opportunity for the Community to be involved in the PDP review this is limited through the submission process¹⁷.

- 57 As stated in Mr Geddes's evidence, it is not appropriate to rely on an alternative consenting outcome which could hypothetically be achieved under a separate legislative process due to expire very soon (September 2019).
- 58 It is also unclear how Ms Vanstone considers this not to be a process through which the public can be involved to develop the area holistically, given the wide reaching and public consultative nature of the Review.
- 59 It is submitted that in accordance with section 32 consideration of 'other reasonably practicable options' for achieving objectives is limited to options which are open for consideration to the Panel in the context of this plan review under the RMA. It defeats the purpose of seeking submissions, and limiting submitters to the scope of those submissions, if Council can consider an extraneous completely hypothetical "indicative masterplan" in a council document that has no statutory weight (even under the HASHA) as a reason for declining a Submitter's proposal.
- 60 This interpretation of section 32 is consistent with the recent case of *Royal Forest & Bird Protection Society of NZ v Whakatane District*¹⁸ where the Court held:

[46] Neither the word "practicable" nor the phrase "reasonably practicable" is defined in the Act.

...

"Practicable" has been held to mean "possible to be accomplished with known means or resources" and synonymous with "feasible," being more than merely a possibility and including consideration of the context of the proceeding, the costs involved and other matters of practical convenience. Conversely, "not

¹⁷ Ibid, at 13.19

¹⁸ *Royal Forest & Bird Protection Society of NZ v Whakatane District* [2017] EnvC 51

reasonably practicable" should not be equated with "virtually impossible" as the obligation to do something which is "reasonably practicable" is not absolute, but is an objective test which must be considered in relation to the purpose of the requirement and the problems involved in complying with it, such that a weighing exercise is involved with the weight of the considerations varying according to the circumstances; where human safety is involved, factors impinging on that must be given appropriate weight.¹⁹

Future planning options

- 61 Had the Council a plan for a future Variation or a plan change, a future urban zone, or an upcoming process, the consideration of those as a reasonably practicable and preferred alternative option might be a tenable reason to decline relief.
- 62 It is not however justified to 'lock up' or sterilise private land in the meantime where there is no such plan and leave the landowners in an uncertain limbo for no effects based reason.
- 63 For these reasons I submit a conventional RMA effects-based approach to the most appropriate zoning and assessment under section 32, as undertaken by Mr Geddes is appropriate. This analysis finds that the rezoning proposal better achieves the higher order provisions of the PDP, the RPS, and part 2 of the Act than Council's position.

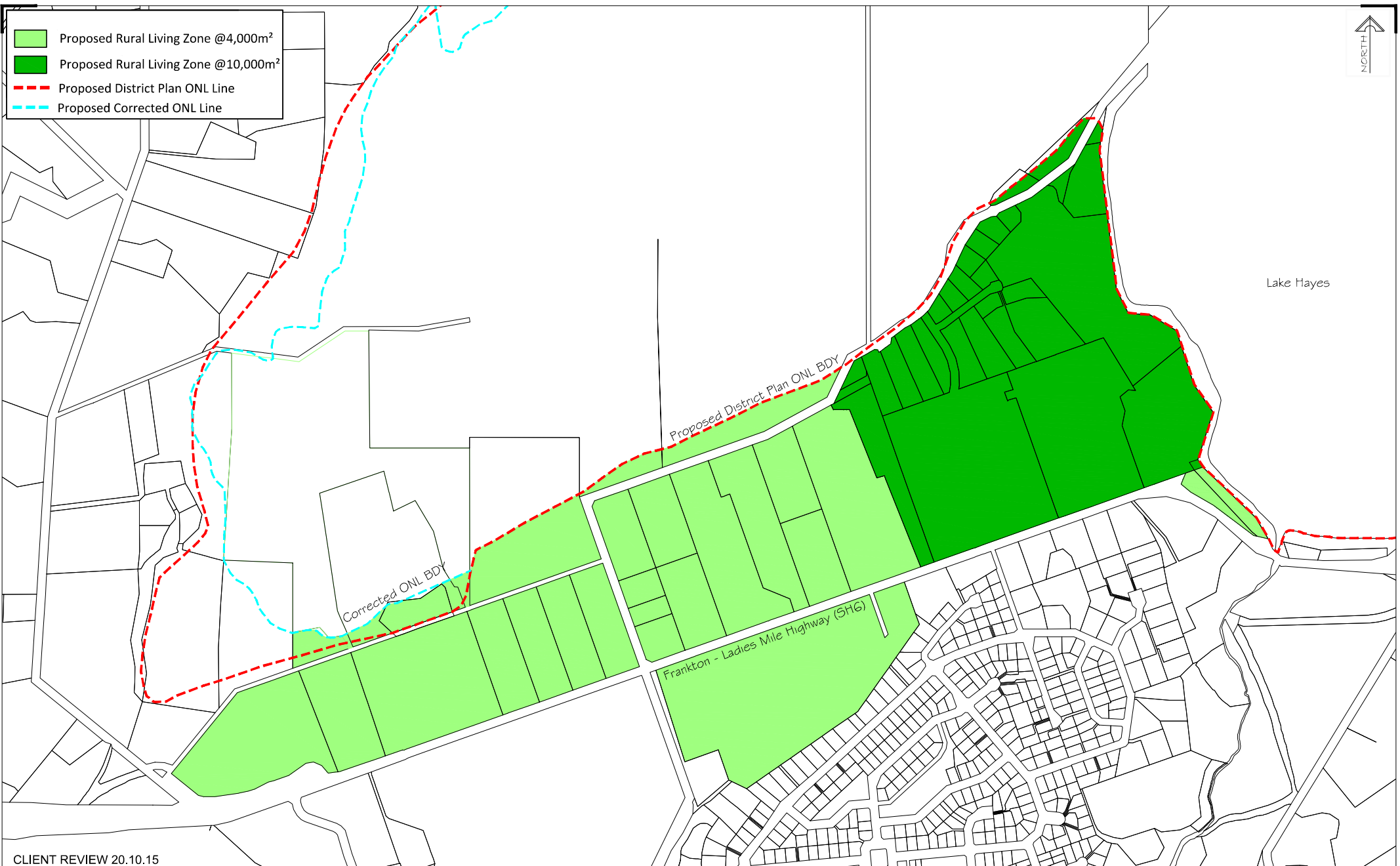
Dated this 15th day of July 2018



Maree Baker-Galloway/Rosie Hill
Counsel for the Ladies Mile consortium

¹⁹ Ibid, at [51].

Appendix 1 – Map of Ladies Mile rezoning



CLIENT REVIEW 20.10.15

Shotover Design Limited trading as
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

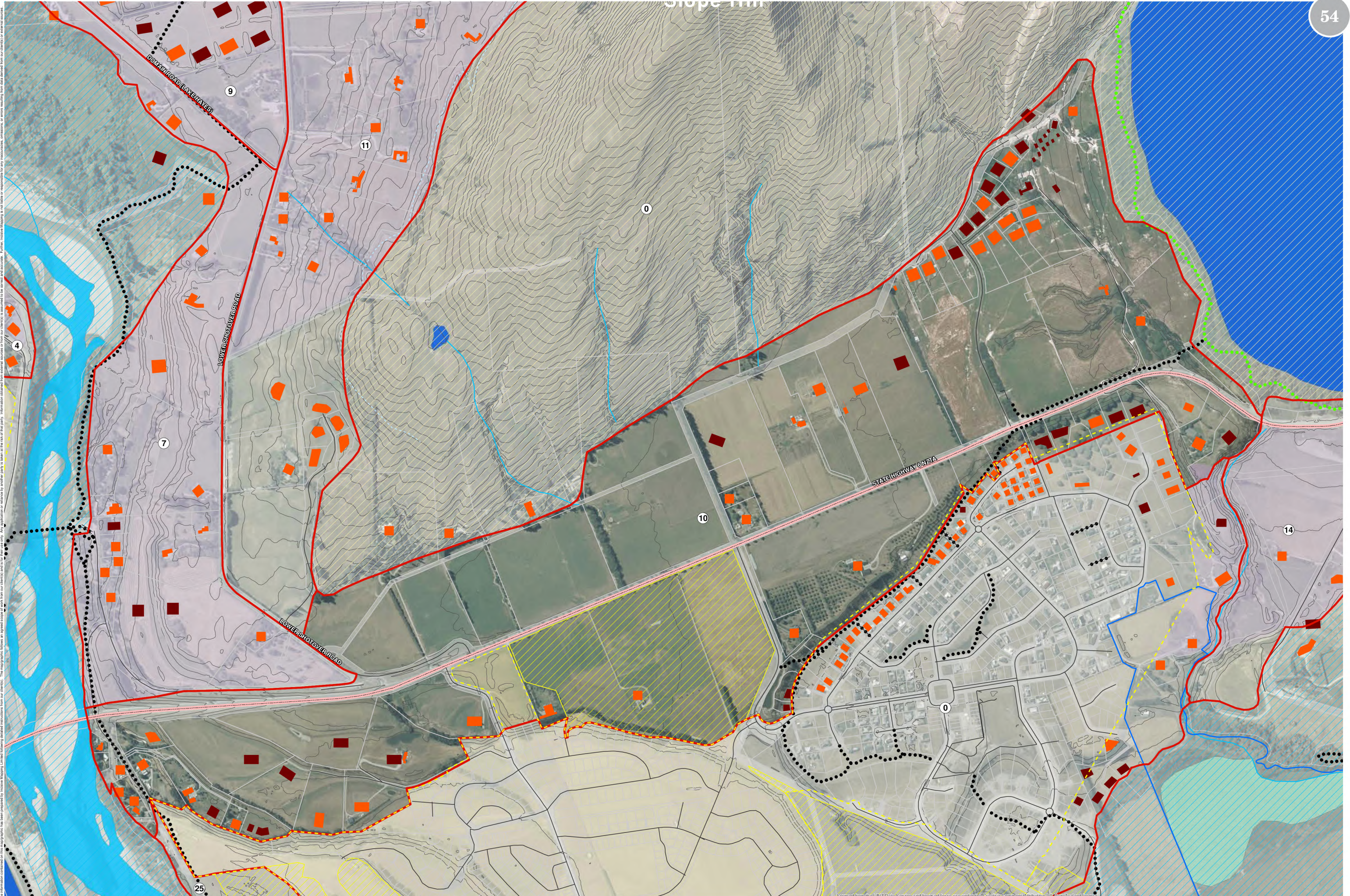
Rev.	Date	Revision Details	By
A	07.06.18	Amend hatch areas	JHU

PROPOSED ZONING LADIES MILE QUEENSTOWN

Client	Surveyed	Signed	Date	Job No.	Drawing No.
	-	-	-	12224	05
	Drawn	Signed	Date	Scale	Sheet
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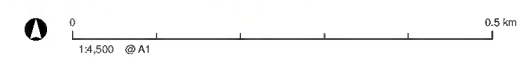
Notes:
 All dimensions shown are in meters unless shown otherwise.
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Appendix 2 – Ladies Mile context from WBLUS



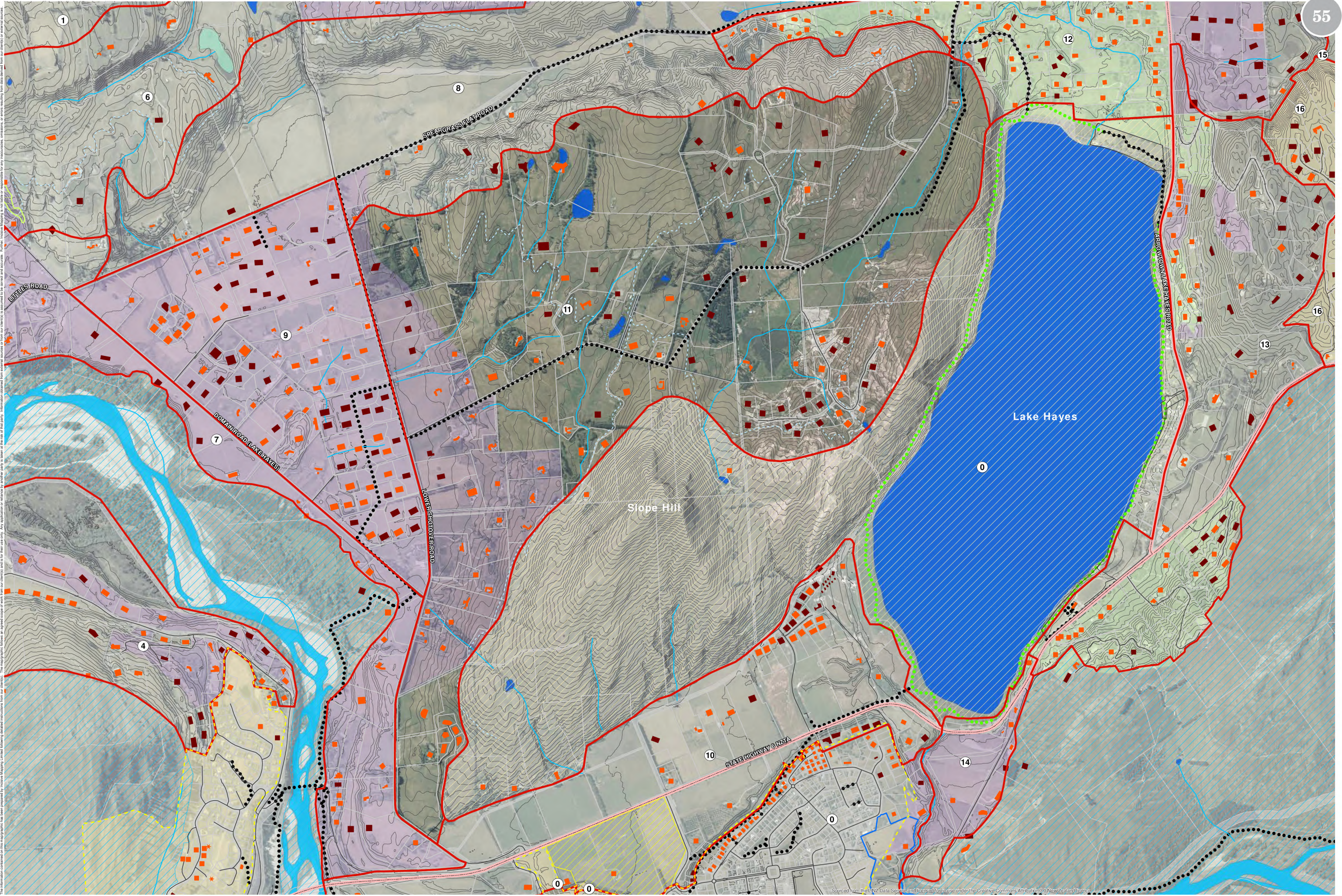
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 Author: Matt Daniels (matt.daniels@incisivemapping.co.nz) | Reviewed: Bridget Gilbert
 Data Sources: LINZ/Eagle (Aerial), LINZ (NZTopo) Database, Crown Copyright (Reservoir),
 Landscape Research (LCDB4), Queenstown Lakes District Council (Buildings, SHAs, Landscape
 Units, Zones, ONE/ONF, Contours, Recreation, Lots, Roads), Bridget Gilbert, Incisive Mapping
 File Ref: 2016-12_Wakaipū_Basin_Landscape_Character_Units_2016_Map_Series_A1_RevB.mxd



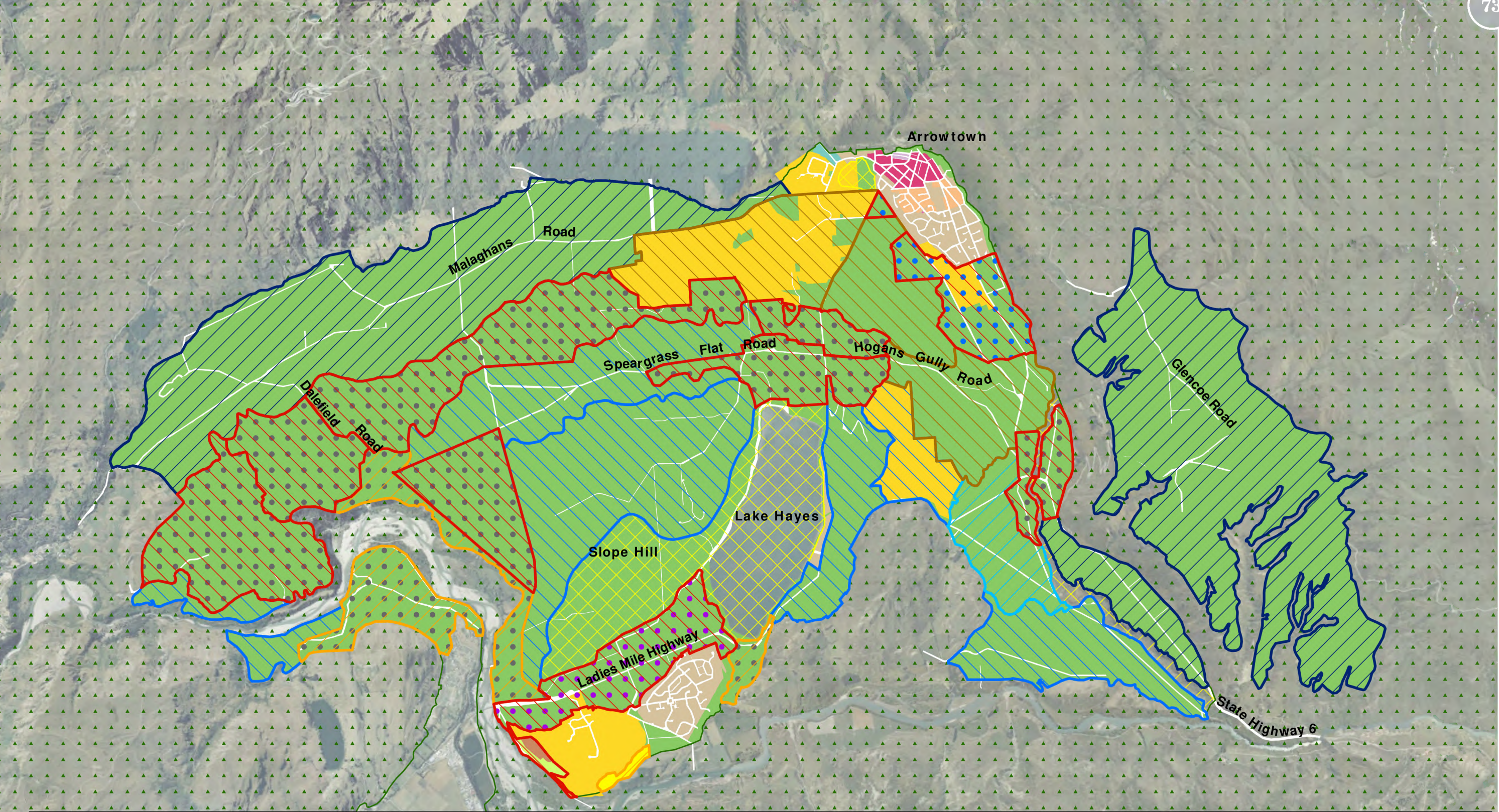
- | | | | | | |
|----------------------------------|---------------------------------|-------------------|---|-------------------------------|-------------------|
| Landscape Character Units (2016) | Council Walkways and MTB Trails | Lot Boundaries | Approved SHAs | Urban Growth Boundary | Lake / Pond |
| Contours (5m) | Other Walkways and MTB Trails | Special Zones | Approved SHAs & Resource Consent Issued | Waterfall | Swamp |
| RAMM Carriageway Centralines | DOC Walkways | Rural Lifestyle | Water Race | River | Indigenous Forest |
| Rural Scenic Roads | | Rural Residential | River (Wide Channel) | Outstanding Natural Landscape | |
| | | Road Zones | Existing Dwellings | | |
| | | | Consented Platforms | | |

Wakaipū Basin Landscape Study
 Landscape Character Unit (2016)
 10 Ladies Mile
 Date: 09 February 2017



- | | | | | | |
|----------------------------------|---------------------------------|-------------------|---|-----------------------|-------------------------------|
| Landscape Character Units (2016) | Council Walkways and MTB Trails | Lot Boundaries | Approved SHAs | Urban Growth Boundary | Lake / Pond |
| Contours (5m) | Other Walkways and MTB Trails | Special Zones | Approved SHAs & Resource Consent Issued | Waterfall | Swamp |
| RAMM Carriageway Centrelines | DOC Walkways | Rural Lifestyle | Rural Building Status | Water Race | Indigenous Forest |
| Rural Scenic Roads | | Rural Residential | Existing Dwellings | River | Outstanding Natural Feature |
| | | Road Zones | Consented Platforms | River (Wide Channel) | Outstanding Natural Landscape |

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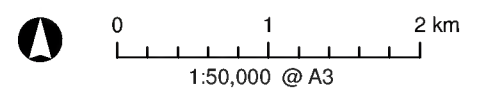


Recommended Zoning*	Recommended Wakatipu Basin Rural Amenity	Recommended Open Space Reserve	Recommended Large Lot Residential	Recommended Low Density Residential	Medium Density Residential	Arrowtown Town Centre	Local Shopping Centre	Low Density Residential	Residential Arrowtown Historic	Industrial A Road	Special Zones	Recommended Wakatipu Basin Lifestyle Precinct	Recommended Ladies Mile Gateway Precinct	Recommended South Arrowtown Precinct	Outstanding Natural Landscape	Outstanding Natural Features	Landscape Capability	High	Moderate-High	Moderate	Moderate-Low	Low	Very Low
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Author: Matt Daniels (matt.daniels@incisivemapping.co.nz) | Reviewed: Bridget Gilbert
 Data Sources: LINZ/Eagle (Aerial), Queenstown Lakes District Council (Zones, Roads),
 Bridget Gilbert (Recommended Zones, Landscape Capability), Incisive Mapping
 File Ref: 2016-13_Wakatipu_Basin_LC_Recommended_Zoning_SHAs_Developed_RevB.mxd

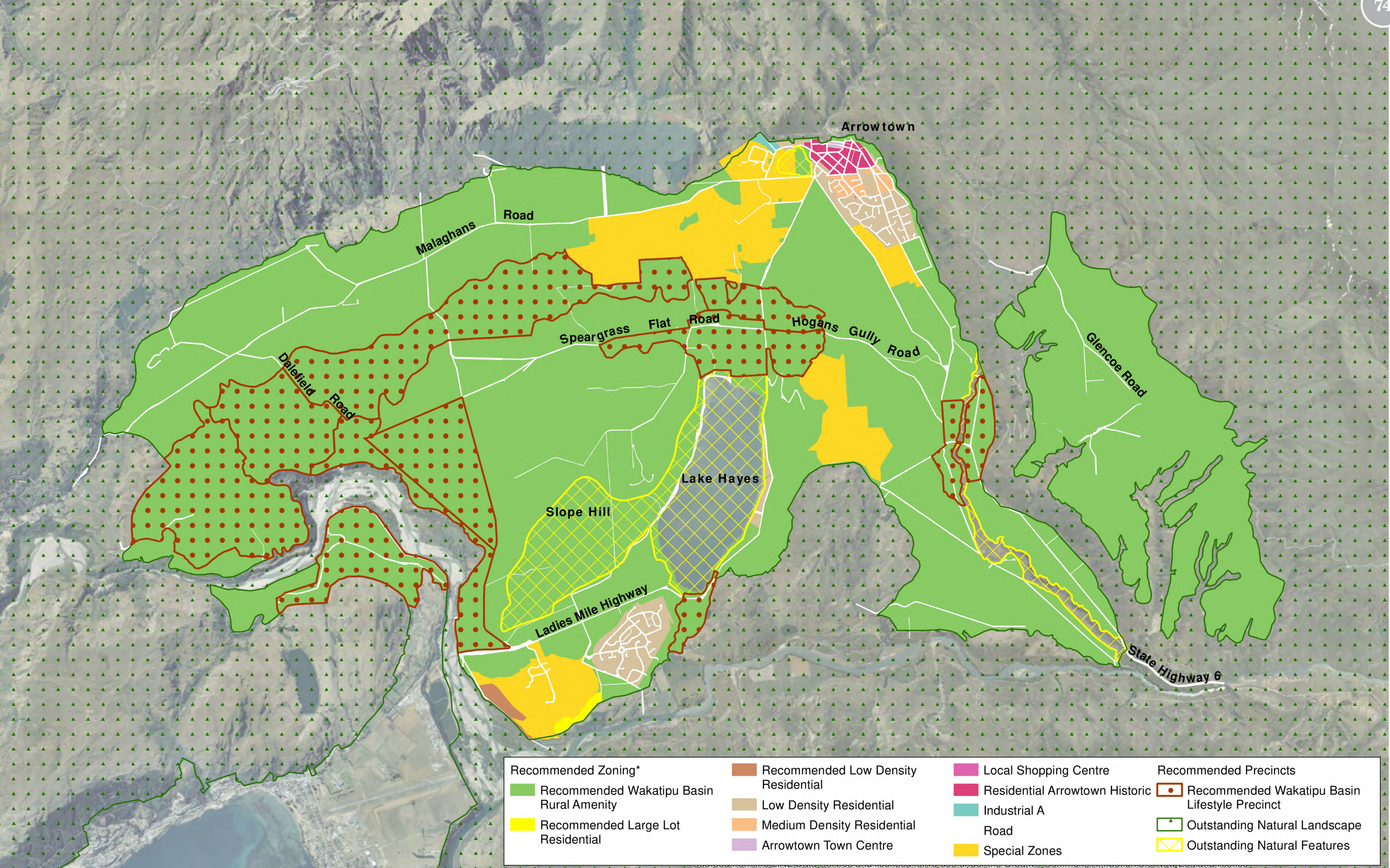
*All zoning and overlays other than the 'Recommended' zones and precincts are derived from the QLDC Proposed District Plan.



Wakatipu Basin Landscape Study Landscape Capability and Recommended Precincts/Zoning (SHAs Developed)

Date: 16 February 2017

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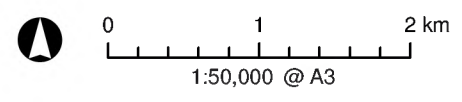


Recommended Zoning*		Recommended Precincts	
 Recommended Wakatipu Basin Rural Amenity	 Recommended Low Density Residential	 Local Shopping Centre	 Recommended Wakatipu Basin Lifestyle Precinct
 Recommended Large Lot Residential	 Low Density Residential	 Industrial A	 Outstanding Natural Landscape
	 Medium Density Residential	 Special Zones	 Outstanding Natural Features
	 Arrowtown Town Centre	 Road	



Author: Matt Daniels (matt.daniels@incisivemapping.co.nz) | Reviewed: Bridget Gilbert
 Data Sources: LINZ/Eagle (Aerial), Queenstown Lakes District Council (Zones, Roads), Bridget Gilbert (Recommended Zones), Incisive Mapping
 File Ref: 2016-13_Wakatipu_Basin_Recommended_Zoning_No_SHAs_RevA.mxd

*All zoning and overlays other than the 'Recommended' zones and precincts are derived from the QLDC Proposed District Plan.



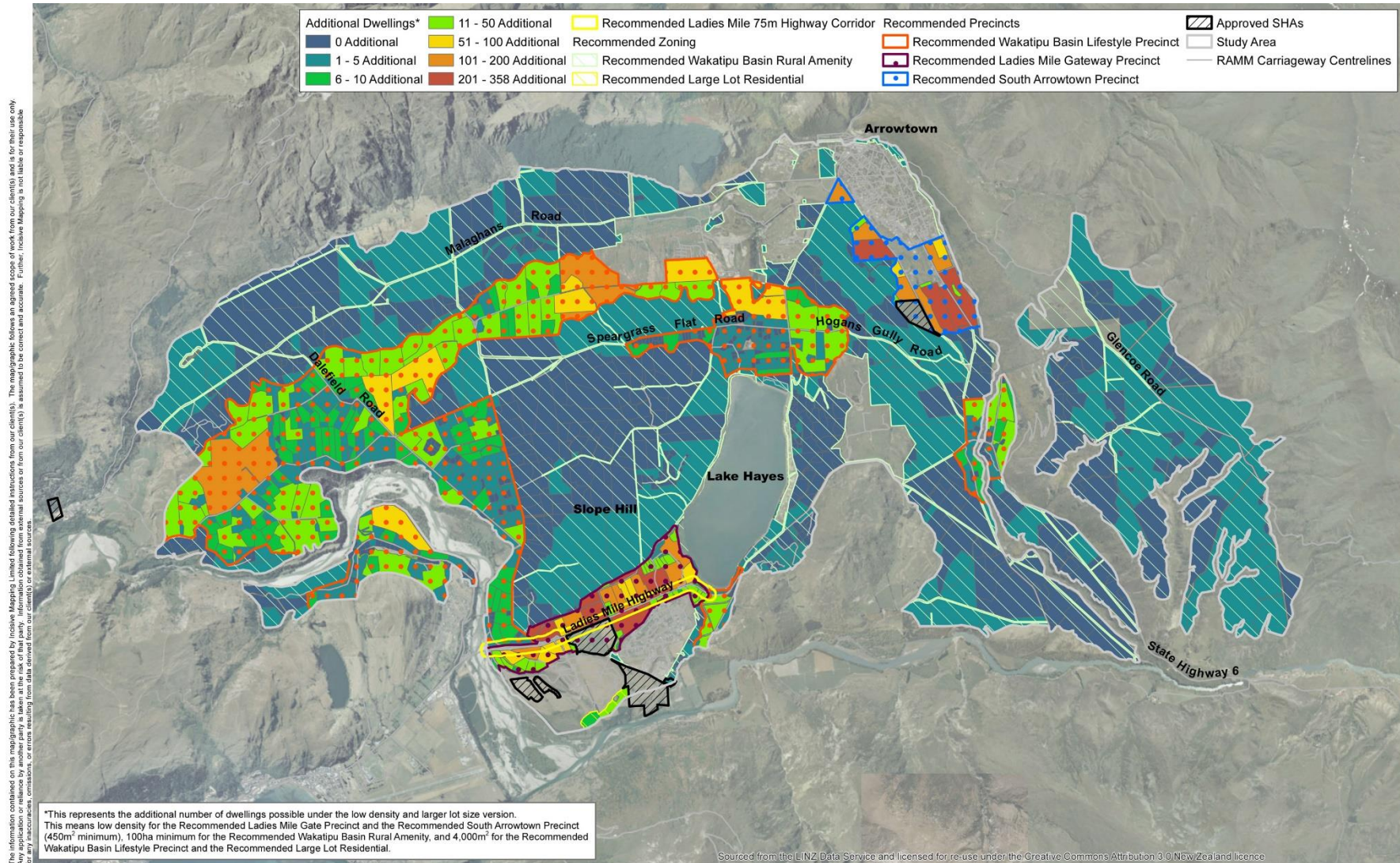
Wakatipu Basin Landscape Study Recommended Precincts and Zoning (SHAs Not Developed)

Date: 12 February 2017

Appendix L: GIS analysis of capacity for additional dwellings development in proposed zones

	Recommended Wakatipu Basin Rural Amenity	Recommended Ladies Mile Gateway Precinct	Recommended South Arrowtown Precinct	Recommended Wakatipu Basin Lifestyle Precinct	Recommended Large Lot Residential	TOTAL
Landscape Character Units	1, 3, Part 4, Part 8, 11, 13, 15, 17, 18, 19, 20, 22, Part 23	10	Part 23, 24	2, Part 4, 5, 6, 7, Part 8, 9, 12, 14, 21	Part 25	
Area (m²)	44,214,474	1,679,236	1,036,180	15,895,854	108,183	
Area (ha)	4,421.45	167.92	103.62	1,589.59	10.82	
Current Number of Lots	700	86	17	603	4	
Potential Number of Lots	Min Lot Size No. Lots	Min Lot Size No. Lots	Min Lot Size No. Lots	Min Lot Size No. Lots	Min Lot Size No. Lots	
	100 ha 700	450 m ² <i>low density</i> 3,690	450 m ² <i>low density</i> 2,296	4,000 m ² 3,763	4,000 m ² 27	
	80 ha 700	250 m ² <i>medium density</i> 6,674	250 m ² <i>medium density</i> 4,137			
Existing Dwellings	328	40	6	387	2	763
Consented Dwellings	164	24	2	149	1	340
Total Existing & Consented	492	64	8	536	3	1,103
Additional Dwellings	Min Lot Size Dwellings	Min Lot Size Dwellings	Min Lot Size Dwellings	Min Lot Size Dwellings	Min Lot Size Dwellings	
	100 ha 265	450 m ² <i>low density</i> 3,626	450 m ² <i>low density</i> 2,288	4,000 m ² 3,231	4,000 m ² 24	9,434 <i>low density</i>
	80 ha 265	250 m ² <i>medium density</i> 6,610	250 m ² <i>medium density</i> 4,129			14,259 <i>medium density</i>

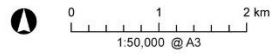
Refer maps of proposed zones overleaf (for low density and medium density scenarios)



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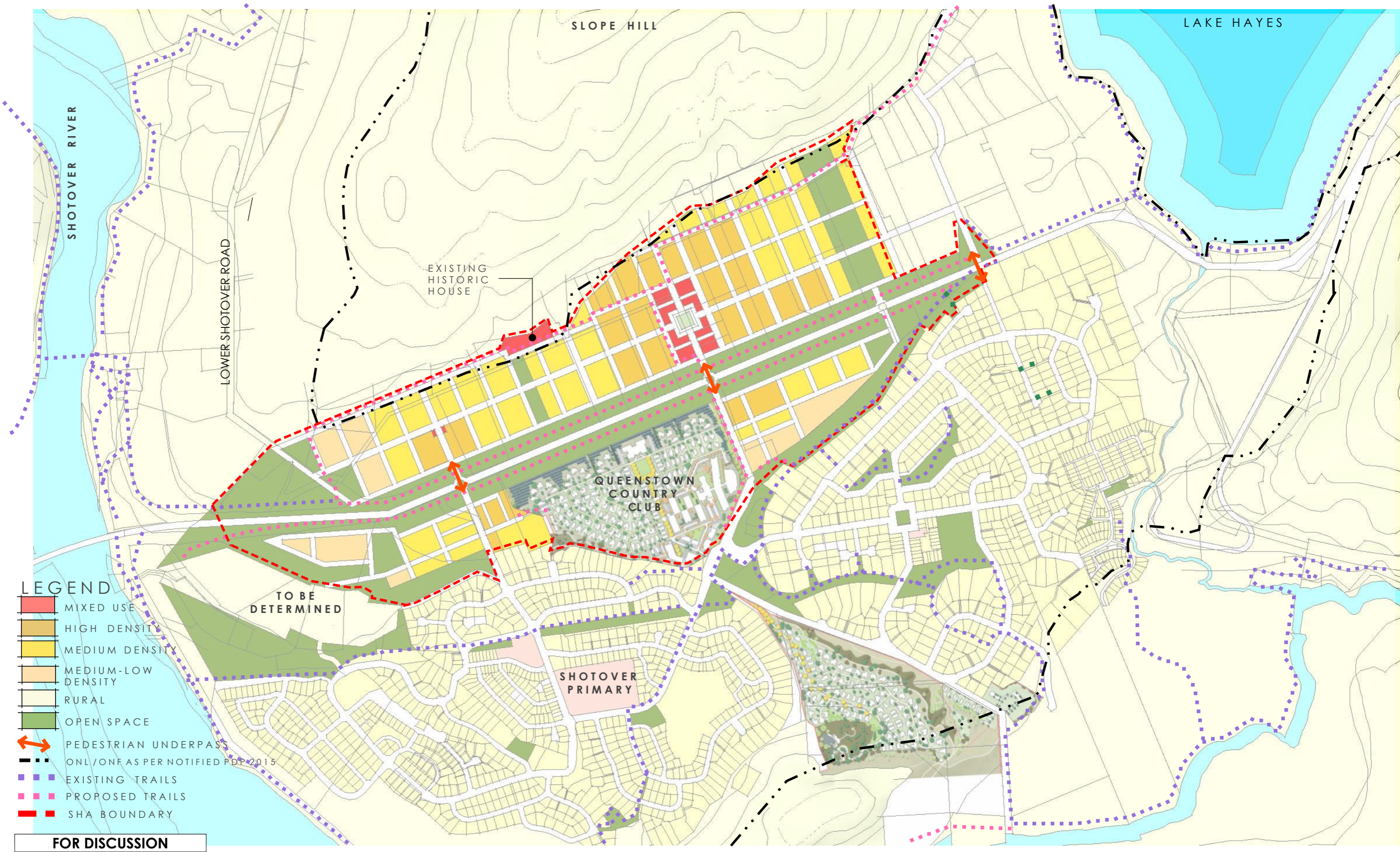
Author: Matt Daniels (matt.daniels@incisivemapping.co.nz) | Reviewed: Bridget Gilbert
 Data Sources: LINZ/Eagle (Aerial), Queenstown Lakes District Council (Property, SHAs, Zoning, Roads), Bridget Gilbert / Incisive Mapping (Recommended Zoning, Additional Dwellings)
 File Ref: 2016-13_Wakatipu_Basin_Additional_Dwellings_Low_Density_RevA.mxd



Wakatipu Basin Landscape Study
 Additional Dwellings
 Low Density / Larger Lots

Date: 16 February 2017

Appendix 3 – Indicative Ladies Mile SHA Masterplan



2. INDICATIVE MASTER PLAN