

Before Queenstown Lakes District Council

In the matter of The Resource Management Act 1991

And The Queenstown Lakes District Proposed District Plan
Topic 13 Queenstown Mapping – Group 1C (Queenstown
Urban, Central, West, and Arthurs Point))

LEGAL SUBMISSIONS FOR

Gertrude's Saddlery Limited (494)

Larchmont Developments Limited (527) and (1281)

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MAY IT PLEASE THE PANEL

Introduction

- 1 These legal submissions are presented jointly on behalf of Gertrude's Saddlery Limited (submission 494) and Larchmont Developments Limited (submission 527 and further submission 1281) (**Submitters**) in respect of Topic 13 (Group 1c) of the Queenstown Lakes Proposed District Plan (**PDP**).
- 2 For ease of reference the following Attachments, which have already been lodged as part of the evidence for the Submitters, are attached and are marked in the top right hand corner by capital letters as follows:
 - A** Appendix 1 to Mr Espie's evidence – title plan of the area including topographical contours.

Note: There is one amendment to Mr Espie's Appendix 1, to identify the widening of the 'pinch point', which is referred to later on in these submissions.
 - B** Appendix 2 to Mr Espie's evidence - Appendix 1 superimposed on an aerial photograph.
 - C** Appendix 4 to Mr Espie's evidence, - photograph taken in the 1960s.
 - D** Attachment 4 to Dr Marion Read's rebuttal evidence for the Council.
- 3 Further attachments included in these Submissions, which are not already lodged in evidence are as follows:
 - E** Article from the Mountain Scene dated 1 August 2017.
 - F** Extract from QLDC Subdivision Code of Practice.
 - G** Heads of Agreement.
 - H** Resource consent decision RM170551.
- 4 Attachment A identifies:
 - (a) Lots 1 and 2 DP307630 owned by Gertrude's Saddlery Limited, the majority of which is currently zoned Rural and the smaller part of which (north of the purple line) is currently zoned Low Density Residential (**LDR**). That property contains one dwelling located in the LDR zone and two dwellings located in the Rural zone as shown on Attachment B.

- (b) Lot 2 DP398656 owned by Larchmont Developments Limited, which is currently zoned Rural General and contains a single established house and a partially completed second house as shown on Attachment B.
- 5 Submission 527 subsumes all of submission 494 in terms of its rezoning request, seeking originally that the entire land within the cadastral boundaries of both properties be rezoned to LDR. That position is refined in the evidence in chief for the Submitters, such that the proposed LDR boundary of the requested rezoning (**Site**) now follows the ONF boundary determined by Mr Espie.
- 6 I submit that LDR rezoning of the Site will:
 - (a) enable up to about 89 new residential dwellings on land which adjoins an existing LDR zone, can be easily developed, is fully serviced by Council infrastructure, and is located close to the centre of Queenstown on an existing public transport route;
 - (b) be the most efficient use of this land;
 - (c) have no inappropriate adverse environmental effects;
 - (d) give effect to the higher order provisions of the PDP; and
 - (e) implement Part 2 of the Act.
- 7 There appears to be no dispute between the Submitters' experts and the Council experts that some LDR rezoning is appropriate. Attachment D identifies (coloured dark pink) an area for LDR rezoning proposed by Dr Read on the basis that that extent of rezoning is appropriate in landscape terms. That extent of rezoning is considered acceptable by Ms Banks in terms of traffic effects. Mr Glasner for Council has accepted that there are no infrastructural impediments to the full LDR rezoning sought by the Submitters, so clearly the lesser extent of LDR zoning proposed by the Council witnesses must also be acceptable in terms of infrastructure considerations.
- 8 I submit that:
 - (a) All the evidence supports LDR rezoning at least to the extent acceptable to Dr Read;
 - (b) The debate is therefore about the disputed area of proposed LDR rezoning outside the dark pink area on Attachment D and inside the blue boundary line on Attachment D.
- 9 From the Council's point of view there are two impediments to the disputed extent of LDR rezoning, being firstly landscape considerations raised by Dr

Read and secondly traffic considerations raised by Ms Banks. I address those two issues separately below.

- 10 Paragraph 1.6 of the Opening Legal Submissions of Counsel for the Council refers to other Counsel undertaking a detailed critique of the Council's evidence, comments that the Council does not have the capacity to respond in kind, and suggests that "...*the Panel needs to approach with caution any cherry picking or selective criticism of Council's evidence*". It is not clear whether that is intended to be a criticism of the approach of other Counsel. If so, any such criticism is rejected.
- 11 This rezoning case is very important to the Submitters (as is certainly the case with all other rezoning requests). Considerable care and attention to detail has been put into presentation of the case for the Submitters. The Submitters can reasonably expect that the Council will apply a similar degree of care and attention to detail when responding. When that response results in differences of opinion, it is appropriate to assess and critique the basis of the conflicting opinions.
- 12 The reality is that most such opinions are based upon facts. It is important that the factual basis for the Commission's ultimate decisions is properly established. To the extent that a detailed critique of Council's evidence is necessary to explore and establish the correct factual foundation of the matters in dispute, such critique is entirely appropriate.

Landscape considerations

- 13 One point of difference between the case for the Submitters and the case for the Council is the appropriate landscape categorisation of the area of land subject to the rezoning debate. There is no disagreement about the boundary of the Shotover River Gorge ONF which is shown by a green line on (Mr Espie's) Attachment A and is accepted by the same green line on (Dr Read's) Attachment D. The point of disagreement is the extent, or boundary, of the wider ONL which contains the Shotover River Gorge ONF.
- 14 Although she does not explicitly say so, it must reasonably be assumed that Dr Read accepts that the land coloured dark pink on her Attachment D is not part of the existing ONL. Dr Read's northern ONL boundary appears to be the pink dotted line on Attachment D which marks the southern and eastern extent of the dark pink area which she recommends be rezoned LDR. The dispute is therefore over the correct landscape categorisation of the land located between the ONF (green) boundary and Dr Read's pink dotted ONL boundary.

- 15 In case there is any query about the assumption detailed in the previous paragraph, I comment on the other two possible interpretations of Dr Read's evidence, referring to Attachment D:
- (a) One possible interpretation is that Dr Read's northern ONL boundary is the black dotted line. However that black dotted line runs through existing land which is zoned and developed for LDR purposes. It would be illogical, and contrary to the way both the ODP and the PDP approach the issue of landscape boundaries, for that interpretation to be correct.
 - (b) The other possible interpretation is that the land coloured dark pink is considered by Dr Read to be within the ONL but suitable for LDR zoning. That would require an assessment of that LDR zoning against the objectives and policies of the PDP relevant to ONLs. The evidence for the Council contains no such assessment.
- 16 Mr Espie's opinion is that the ONF boundary is also the ONL boundary and that the ONL does not extend into the area under debate. Mr Espie's reasoning for that opinion is clearly set out in his evidence. I will not repeat it. I submit that his reasoning provides a logical and appropriate basis for his opinion. I note in passing that Dr Read does not specifically critique any particular aspect of Mr Espie's reasoning, a fact which I submit must count in favour of Mr Espie's opinion over Dr Read's opinion.
- 17 To assist the Commission to reach the appropriate conclusion on this matter I will comment on aspects of Dr Read's evidence which, I submit, cast doubt on the robustness of Dr Read's opinion. I reject any suggestion that such critique amounts to selective cherry picking. This is exactly the approach which would normally be taken in cross examination when specific aspects of an expert's opinion are put under the spotlight.
- 18 At the end of paragraph 6.7 of her Rebuttal Evidence, Dr Read records that Mr Espie is of the view that the land within the subject site which is zoned LDR does not differ in character and quality from the adjacent land which is zoned Rural, and that this is a reason to consider the Rural land to not be ONL. At the beginning of her paragraph 6.8 Dr Read agrees with Mr Espie's opinion about the lack of difference in landscape character, but expresses the view that this is primarily because the existing zoned LDR portion of the area in question has not yet been developed. At the end of that paragraph she then says that development of that portion would ensure that the landscape and character of the LDR would be quite distinct from that of the adjacent Rural land.
- 19 With respect to Dr Read, it is difficult to see how that supports her overall opinion. The point Mr Espie is making (and which Dr Read agrees with) is that the undeveloped LDR land is similar in character to the adjoining undeveloped

Rural land. On that basis they are either both of an ONL character or they are both not of an ONL character. The fact that part is zoned, but not yet developed, is irrelevant.

- 20 Dr Read then focuses on the "*schistose knoll*" which she identifies on Attachment D as the "*Schistose Knob*". In her paragraph 6.9 Dr Read identifies the schistose knoll, in her paragraph 6.10 she states that the topography slopes up moderately from the northwest and drops steeply to the south, and in her paragraph 6.11 she states that the knoll "*...has moderately high natural character*" which is highly expressive of its formative processes and is readily legible.
- 21 However Dr Read then recommends that the northern half of that knoll be rezoned LDR. Although she contends that the existence and form of the entire knoll is a fundamental aspect of the surrounding ONL, she seeks to protect only the southern half of the knoll which she contends exhibits ONL characteristics such that its Rural zoning should be retained. This is a fundamental inconsistency in her argument.
- 22 I also record a factual error. In her paragraph 6.10, as stated above, Dr Read maintains that the knoll slopes up moderately from the northwest and drops steeply to the south. If you look at the contours on Attachment A, the northern slopes are in fact considerably steeper than the southern slopes. If you actually walk on the site, the southern slopes contain distinct terrace areas that are ideal for housing and which are certainly not steeply sloping.
- 23 In her paragraph 6.11 Dr Read claims that the knoll is highly expressive of its formative processes and is highly legible. With respect to Dr Read, the knoll is completely covered with mature wildling larches and firs. It is difficult to imagine how it could be less expressive of its formative processes and less legible.
- 24 In her paragraph 6.11 Dr Read cites, as an important transient quality of high value, the stunning autumn colours of the larches. Larches are a relatively recent addition to this part of the landscape consequential upon wilding spread. Removal of wilding trees is a local community imperative. Those wilding trees could be felled tomorrow, resulting in the kind of landscape devastation (in terms of visual appearance) which often results from the felling of a forest. Under those circumstances it is difficult to see how the larches can be claimed to be a significant and important element in the correct categorisation of this part of the landscape.
- 25 In her paragraph 6.12 Dr Read expresses the view that the entire vicinity is an ONL which contains the Arthur's Point development zones. She states that: "*...there is no area of land in the vicinity which could be deemed to be of a*

sufficiently different character, quality or size to be considered to be another landscape...". This contention raises two issues, one specific and one general.

- 26 The specific issue arises from Attachment D. If the northern boundary of Dr Read's ONL is the pink dotted line, thereby enabling the dark pink land to be rezoned LDR, that dark pink land comprises (currently) an area of Rural zoned land which is not ONL and which is even smaller than the area of land which the Submitters seek to rezone. This negates Dr Read's contention above.
- 27 The more general issue relates to the approach to landscape categorisation inherent in the PDP. The consequence of Chapter 6 Policies 6.3.1.1 and 6.3.1.2 (as originally notified) is that firstly the ONLs and ONFs must be identified and secondly that all other land zoned rural is then classified as "Rural Landscape Classification". Effectively all rural zoned land which is not part of an ONL or an ONF is, by default, the third category, regardless of size, area or location. It is questionable whether the Environment Court case law established under the ODP regime which, in part, addresses how big an area of land must be to qualify as a separate landscape, is of any relevance to this new regime.

Note: This issue could be the subject of more extensive legal consideration. I do not embark on that as I submit this is not a significant or critical element in this debate.

- 28 In her paragraph 6.14 Dr Read records that much of the amenity value of views of the land subject to debate accrues from the existing trees and then contends that, even if the trees were to be removed, the natural landform would continue to have a high aesthetic quality. That expression of opinion defies the reality of the visual appearance of a felled forest.
- 29 In her paragraph 6.14 Dr Read refers to Consent RM980348. While it is unclear how that consent is relevant to this debate, I comment:
- (a) RM980348 was granted by Environment Court Consent Order dated 26th February 2001 and has since lapsed. It therefore cannot be relevant.
 - (b) RM980348, when granted, consented a second house on Lot 2 DP398656. A site visit will demonstrate that it was partially implemented. The partially built house now cannot be completed without further consent because the existing consent has lapsed.¹ Should consent ever be sought to complete that house, and should any replacement consent require retention of such trees (or not as the case may be) that will not have any relevance to the wider debate about the correct landscape categorisation of the land.

¹ For completeness, Counsel does not consider that this consent would be considered to have been 'given effect to' under section 125 of the Act thereby it not having lapsed under that section.

- (c) If anything the original house on Lot 2 DP398656, and the partially completed second house beside the original house, and the related curtilage, can only support the contention that this land is not part of an ONL landscape.
- 30 Taking into account all of the points raised in the above critique, I submit that Mr Espie's evidence should be preferred over Dr Read's landscape evidence.
- 31 I add one further factor into the mix. While the determination of landscape category is generally based upon the facts on the ground at the time of determination, one relevant factor is the changeability of vegetation and another potentially relevant factor is relevant historical context or association.² I refer to the historic photograph in Attachment C. In the 1960s much of the land now under debate was pastoral land being actively farmed. Attachment C shows that pastoral land going right to the edge of the gorge which is the ONF boundary agreed between Mr Espie and Dr Read.
- 32 Visible in Attachment D is a small patch of darker green mature trees which, it is understood, is probably the source of the evergreen wilding trees on the Site.
- 33 We are therefore debating an area of land which was largely pastoral at one point in time and which is now covered in wilding trees generally considered by the community to be candidates for immediate removal to avoid further wilding spread. That combination of factors specific to the Site helps tilt the balance away from ONL categorisation.
- 34 I have addressed the above issues in some detail as they comprise the majority opinion evidence provided by Dr Read. However the outcome of this rezoning debate does not depend upon the outcome of the ONL debate. The Environment Court has frequently commented that proposals such as this do not necessarily stand or fall on landscape categorisation. What is important is the effects of the proposal, assessed against the relevant matters required in the context of this District Plan Review.³
- 35 The case for the Submitters is that, even if the land subject to debate is found to be located within the surrounding ONL, the effects of development will be such that the requested rezoning should be approved.
- 36 The Submitter's case on this point is based upon the vast expanse, and high quality, of the ONL which surrounds the Arthur's Point areas zoned for development. Residential development of the land under debate will have

² *Man O' War Station Limited v Auckland Council* [2014] NZEnvC 167 at [14] referring to *Wakatipu Environmental Society Inc v The Queenstown-Lakes District Council* [2000] NZRMA 59 at [76] – [77]. As well as the Proposed Otago Regional Council Policy Statement (Decisions Version) Schedule 3 including 'associative attributes'.

³ Referring to Ms Banks S42a report 'strategic overview' statutory considerations for a plan review at section 9 and the Assessment Principles for determining the most appropriate rezoning at section 15.

minimal impact on the surrounding ONL and therefore will not be contrary to objectives and policies relevant to the surrounding ONL.

37 At the end of her concluding paragraph 6.15 Dr Read contends that the requested rezoning "...*would allow urban development to impinge significantly on the ONL*". In relation to that statement I submit:

(a) I record there is no contention that there will be any adverse effects on the Shotover River Gorge ONF, which was suggested in Dr Read's original evidence but which has not been carried forward in her rebuttal evidence prepared following consideration of the primary evidence for the Submitters.

(b) In case the Council contends, in its final Reply, that Dr Read's original evidence on this point is still the Council's position, I note that Dr Read provides no detailed explanation of how the proposed LDR zoning will allegedly adversely affect the Shotover Gorge ONF.

(c) This is a small knoll, the northern flanks of which have already been developed. We are therefore debating the southern half of a small knoll, which is covered in wilding trees which could be clear felled tomorrow. The ONL which surrounds the Arthur's Point development areas is expansive and magnificent. It defies credibility to suggest that this small proposed rezoning would "...*impinge significantly...*" on that surrounding ONL.

38 The only other landscape issue of significance is the visual amenity effects of the proposed rezoning as far as existing Arthur's Point residents are concerned. Mr Espie and Dr Read differ in opinion as to the extent and degree of those effects. That is a matter of conflicting evidence for the Panel to determine. I remind the Commission that this is just one factor in a range of factors to be considered when determining the appropriateness of this proposed rezoning.

Potential Development Yield

39 A review by Counsel of all of the evidence lodged has disclosed a degree of confusion around potential development yield. I now address and clarify this issue because it has particular relevance to one aspect of traffic consideration.

40 The submissions lodged by the Submitters did not include any calculation pertaining to potential development yield.

41 The original evidence of Mr Glasner for the Council⁴ recorded that the Larchmont Submission requested rezoning of 5.9 ha from Rural to LDR. Mr

⁴ Mr Glasner's evidence dated 24 May 2017, at paragraph 7.119 on page 72.

Glasner estimated that that could yield 89 additional residential lots. That figure results from use of Council's formula detailed in the Strategic Overview evidence of Ms Kim Banks.⁵ Under that formula you take the total gross area of land, deduct 32% for roads and reserves, and then divide the balance by an assumed LDR density of average 450m² per lot. As a matter of interest, this achieves the same result as applying a formula of 15 dwelling residential units per gross hectare (5.9ha x 15 = 88.5). Ms Banks' original traffic evidence for the Council applies the same formula and reaches the same conclusion.

- 42 The Submitters agree that that is an appropriate calculation. While the LDR zone theoretically provides for subdivision down to 300m² lot size, this land has topographical constraints which would prevent achievement of that kind of density. For completeness, the Submitters are not seeking an alternative density to that provided in the LDR PDP zone, however this case is predicated on a more realistic and feasible development capacity than that permitted maximum density. In addition it is noted that the Larchmont Lot 2 DP 398656 contains 0.7312ha, almost half of which is too steep for any development. The remaining flatter land already has one existing dwelling and one partially completed dwelling and is unlikely to be developed any more intensively. That very low density area of development will offset potential denser development of the Gertrude's Saddlery Limited land.
- 43 The expert infrastructure evidence of Mr McCartney for the Submitters agrees that the likely lot yield would be similar to the yield of 89 additional residential units estimated by Mr Glasner.⁶ The original traffic evidence for the Submitters by Mr Bartlett relies on that figure of 89 residential lots when addressing the traffic effects of the requested rezoning.
- 44 To that point therefore, the approach of the witnesses appears to be appropriate and correct, for the purpose of assessing the effects of the potential rezoning. However the rebuttal evidence lodged by the Council witnesses introduces an element of confusion which arises from a misinterpretation of part of the evidence. That confusion relates to the current recommendation of the Council team to approve partial LDR rezoning (of the land coloured dark pink on Attachment D) to enable up to about 22 additional residential units.
- 45 This figure of 22 residential units appears to originate in paragraph 6.8 of Dr Read's Rebuttal Evidence. However a careful reading of that paragraph shows that Dr Read's calculation of 22 residential units (at 300m² per unit) or 8 residential units (at 800 m² per unit) relates to that part of Lot 1 DP307630 owned by Gertrude's Saddlery Limited which is currently zoned LDR. Dr Read recommends extending the LDR zoning to include the land coloured dark pink

⁵ Strategic Overview Evidence of Kim Banks dated 17 May 2017, at paragraphs 17.1 and 17.2 on page 59.

⁶ Mr McCartney's evidence for the Submitter dated 8 June 2017 at paragraph 12 on page 3.

on Attachment D. There does not appear to be any separate identification of the development potential of that land coloured dark pink. It is therefore not clear exactly, or even approximately, what extent of additional residential development is actually being recommended by Council's witnesses.

- 46 There is also a question about the figure of potential 22 residential units relating to the existing LDR zoned land (not the proposed LDR zoned land). Dr Read's calculation of 22 residential units arises from one formula and her calculation of 8 residential units arises from another formula. Neither of those formulae is the same as Mr Glasner's formula. Dr Read has calculated the area of existing LDR zoning at 9,746 m². Mr Glasner's formula of 15 units per gross hectare would result in a figure of 14-15 residential units at an average lot area of 450 m² each. Given that Dr Read's calculations are effectively a range between 8 and 22, and that Mr Glasner's formula results in about 15, that figure of 15 is probably about right.
- 47 The net outcome of all of the above is a rezoning request which would result in about 89 units, added to existing undeveloped LDR zoned land which would result in about 15 units, creating a total of 104 units. The 4 existing houses on the land are not included in that calculation because retention of any or all of them would be offset against potential development yield not realised because of that retention. This clarification and recalculation has two consequences.
- 48 The first consequence is that the limited rezoning supported by Dr Read and recommended by Ms Devlin will not result in additional development of up to potential 22 residential units as indicated by the Council witnesses. If you compare Attachment B with Attachment D, it is clear that Dr Read's recommended rezoning merely accommodates existing houses on that land. The majority of the dark pink land on Attachment D comprises Larchmont's Lot 2 DP 398656 which, in reality, does not have any additional development potential. If the significant house on the smaller (western) area of dark pink land is retained (the original Swan residence) then the Council recommended rezoning will in reality achieve almost no additional development.
- 49 The second consequence relates to traffic effects which I now address, both in relation to this issue and more broadly.

Traffic and Transport effects

- 50 The primary traffic evidence for Council lodged by Ms Banks only raised concerns about effects on the external roading network arising from the rezoning. That appears to result from a misunderstanding by Ms Banks that access would be via Matthias Terrace (which was never the intention because there is no legally available access off Matthias Terrace). Ms Banks did not raise any concerns about access internal to the Site. In his evidence Mr Bartlett

responded to the concerns expressed by Ms Banks relating to effects on the external traffic network. Mr Bartlett made only a passing reference to the internal roading access because no concerns had been raised.

51 In her Rebuttal Evidence, Ms Banks has now realised that internal access is all off Atley Road. She has raised a number of concerns about the internal access. Those concerns will be responded to at the hearing by Mr Andy Carr who has been instructed to peer review the evidence of Ms Banks and Mr Bartlett respectively, and to provide the Summary at the hearing relating to traffic effects.

52 When it comes to internal traffic effects it will obviously be necessary to account for the existing LDR zoning development yield potential as well as the proposed LDR zoning development yield potential. Therefore Mr Carr has been instructed to carry out a peer review on the following basis:

(a) As far as the external traffic network is concerned, 89 new residential units arising from the rezoning;

(b) As far as the internal roading access off Atley Road is concerned, 104 residential units arising from a combination of existing undeveloped and proposed LDR zonings.

53 At the time of finalising these submissions, Mr Carr's peer review had not yet been received. Therefore Counsel will address Mr Carr's findings, and seek leave to present those, in the hearing of this rezoning.

54 I also refer to Ms Banks' Evidence in Chief which states that submission 494 alone (generating approximately 47 vehicle movements in the peak hour) is not opposed based upon those 'low volumes of traffic generated'.⁷ however, submission 527's larger request, generating an estimated 116 vehicle movements in the peak hour, is considered to be inappropriate because:

The knock-on effect of traffic generated from the development enabled will impact on the intersections Atley Road / Mathias Terrace, and Atley Road / Arthurs Point Road] and also because the increased traffic on the one-way bridge over the Shotover River contributing to existing delays.

55 No specific modelling is provided by Council to identify what the actual adverse impact of the 'knock on effect' and increased delays are in respect of the above conclusions. In her rebuttal evidence Ms Banks maintains her original recommendation, although for different reasons, being the capacity of the Atley Road access. Ms Banks does not otherwise revisit her conclusions on the

⁷ Wendy Banks Evidence in Chief at paragraph 8.120.

'knock on' intersection effects, or effects on the Edith Cavell Bridge, other than to acknowledge that an upgrade of the bridge would accommodate the additional traffic demand.

- 56 With respect, Ms Banks' statement that Mr Bartlett's June traffic observations may be underrepresented somewhat misses the point. Even if this is not the peak month of traffic flows, Mr Bartlett's conclusions are clearly that the one way bridge has been operating beyond its capacity for some time. The result of a modest rezoning of the Atley Road Site on that over-capacity (particularly when the potential outcomes of further zoning in the Wakatipu Basin Study are taken into account) is inconsequential. Increases in predicted underlying traffic growth will require an upgrade to the Bridge within the lifetime of this PDP.
- 57 I refer the Commission to Attachment E of these Submissions, a recent article from the Mountain Scene, which provides an opinion from Mayor Boulton on traffic infrastructure upgrades required in the District, including the need for an alternative to the one-way Edith Cavell Bridge in the not too distant future.
- 58 As a matter of interest I also refer the Commission to the Special Housing Area located at 153 Arthurs Point Road recently consented under Decision SH160143 dated 23 December 2016. That SHA is located within the Operative Arthurs Point Rural Visitor zone, between the Arthurs Point Road/Atley Road intersection and the Malaghans Road/Coronet Peak Road intersection, on the northern side of Arthurs Point Road opposite the Nugget Point Hotel (and is currently a construction site with various items of earth-moving machinery carrying out subdivision works to implement the consent). SH160143 enables 88 additional residential units.
- 59 The Commission may be aware that, under the Special Housing Area legislation, consideration of the adequacy of infrastructure is of elevated importance compared to the RMA. Establishing that sufficient and appropriate infrastructure is, or will be, in place is a mandatory requirement for approval of a qualifying development within an SHA.⁸
- 60 Decision SH160143 concludes that effects (of the proposed SHA) on traffic generation and roading capacity and vehicle movements would be no more than minor.⁹ The Commission may be interested to learn that neither the Council's engineering report for SH160143, nor decision on SH160143, makes any reference at all to the capacity of the Edith Cavell Bridge. That fact might be considered interesting in the context of Mr Bartlett's evidence for the Submitters that the Edith Cavell Bridge is currently operating beyond capacity (before the completion of any residential units in this recently approved SHA).

⁸ See section 34(2) and (3) of the Housing Accords and Special Housing Areas Act 2013.

⁹ SH160143 Decision at page 10.

- 61 If the existing capacity of the Edith Cavell Bridge is a determinative factor in relation to rezoning proposals which might affect traffic flows across that bridge, the question would have to be asked as to whether any rezoning proposals in the Wakatipu Basin could be approved. The reality is that the Edith Cavell Bridge is overdue for an upgrade, and that upgrade is inevitable. I submit that the Commission can rely on that reality.
- 62 With respect to the Atley Road/Mathias Terrace and Atley Road/Arthur's Point Road intersections, the Submitters rely on the evidence of Mr Bartlett as peer reviewed by Mr Carr. As stated above, I note that the Council has not provided any evidence which establishes that unacceptable adverse effects would arise at either of those two intersections if this rezoning is approved.
- 63 The only remaining traffic related issue which has to be addressed is the issue of the Atley Road access. Ms Banks' particular concerns in respect of the Atley Road 'pinch point' are as follows:
- (a) The length of Atley Road which contains the pinch point is not in accordance with the QLDC Subdivision Code of Practice, section 3.3;¹⁰
 - (b) The pinch point will be insufficient from a safety perspective in terms of sight visibility;¹¹
 - (c) The pinch point will have reduced pedestrian / cyclist provision;¹²
 - (d) Vehicular parking on the road (presumably in the pinch point) will have an adverse effect on access for emergency vehicles.¹³
- 64 Counsel anticipates that Mr Carr's peer review evidence will address the above issues and will allay the concerns raised by Ms Banks. The following submissions are provided by way of background to evidence Mr Carr will present.
- 65 I refer the Commission to:
- (a) Attachment A which shows the "Proposed Boundary Adjustment" of the 'pinch point';
 - (b) Attachment G, which is a copy Heads of Agreement whereby Gertrude's Saddlery Limited (through a nominee) is acquiring the land within the proposed boundary adjustment (**PBA Land**) necessary to widen the 'pinch point';

¹⁰ Rebuttal Evidence Wendy Banks, at [5.13]

¹¹ Ibid, at [5.15]

¹² Ibid

¹³ Ibid

(c) Attachment H contains the recently granted Consent RM170551 which grants consent for the boundary adjustment necessary to amalgamate the PBA Land with Gertrude's Saddlery Limited's existing Lot 2 DP 307630.

66 The documentation detailed above establishes that Gertrude's Saddlery Limited has the legal ability to acquire the PBA Land and is in the process of doing so. The subdivision plan required to implement that transaction is currently being prepared. At the time that plan deposits, the land transfer will take place. The consequence will be a consistent legal width of 9.5m through the narrow part of the access shown on Attachment A, beyond each end of that narrow stretch. The case for the Submitters is presented upon the basis of that available 9.5m legal width for road access purposes.

QLDC Subdivision Code of Practice

67 QLDC Code of Practice , section 3.3 ("Road Design") provides, for a road serving between 1-200 residential units:

(a) A width in the range 5.5 m – 5.7 m providing for ability to park on one side of the road and one through lane, or alternatively two through lanes. This is often not defined at the engineering stage and is instead left to road users to choose. This type of road is provided for in the standard and is typically appropriate for shorter streets of up to approximately 250 m, to assist with achieving a slower operating speed.¹⁴

68 The introductory explanation to table 3.2 is also of assistance:

Table 3.2 should be used as the basis for road design. Road widths shall be selected to ensure that adequate movement lanes, footpaths, berms, and batters can be provided to retain amenity values (including landscaping) and enable utility services to be provided safely and in economically accessible locations. Road widths shall be planned to cope with estimated long-term community needs even though construction may be carried out only to shorter-term requirements. Alternative carriageway widths may be adopted to suit particular design considerations. These shall be subject to specific design consideration and approval by the TA. Such cross sections may include landscaped features, painted median facilities, or variations to parking provision.

69 The suggested 5.5-5.7m width being 'typically appropriate' for shorter streets of approximately 250m is clearly an indicative measure applied to the length of the road which is of the narrowed width. It would be illogical if this guideline were

¹⁴ C3.3.1 (page 72)

interpreted such that a very small length of narrowed road width was considered to be inappropriate if it were situated within a much longer road over 250m. The mischief which this guideline is aimed at is explained in the introductory statement above, relating to the safe provision of utility services, and adequate movement lanes. Clearly those adverse effects would be of more concern depending upon for how great a distance the narrowed road width were to occur, rather than the length of the total road width.

70 In this respect, Ms Banks' statements at para 5.13 of her rebuttal evidence appear misstated in focussing on the total length of Atley Road to Amber Place, being approximately 300m. The entire length of the proposed 'pinch point' section is actually only approximately 80m. This shorter length of narrowed road is more in accordance with the intent of section 3.3 so as to assist in achieving lower operating speeds.

71 The requirements for a Figure E12 road (referring to the Code of Practice), as recommended by Mr Bartlett, are included in Appendix F to these Submissions. Figure E12 requires, in respect of pedestrians:

1.5m one side or 1.5m each side where more than 20du or more than 100m in length

72 Again, I submit that pinch point which will not breach this standard as the requirement for a 1.5m footpath on both sides is clearly only intended to apply to that portion of the road which is narrowed to the E12 standard.

73 In reality this means that, for a length of 80m within a 300m stretch the road will narrow to a two lane carriageway, with provision for one foot path instead of two. Even if it is considered this proposed design is not in accordance with the Code of Practice, it should be remembered that this is a guidance document only. The introductory section of 3.3 event states that Alternative carriageway widths may be adopted to suit particular design considerations.

Site visibility

74 Ms Banks also comments that she does not accept the width of the road in this area would be sufficient from a safety perspective because of the limited sight visibility.¹⁵ The matter of sight visibility in this particular location was addressed within resource consent RM130588 which consented a four lot residential subdivision within the current LDR zoned land now owned by Gertrude's Saddlery Limited. Vehicle access to that subdivision off Atley Road, through the pinch point, included a road design which narrowed to 3.1m for some 12m in length and relied upon a single 1.4m footpath. RM130588 concluded (based upon the agreed evidence of both Council and Applicant experts) that the

¹⁵ Rebuttal Evidence Wendy Banks, at [5.15].

proposed access road would be safe for pedestrians and cyclists.¹⁶ A copy of RM130588 can be found in Attachment I.

- 75 The current rezoning proposal is based upon a two lane road enabled by 9.5m legal width. Sight distances, by consequence, are improved since consideration under RM130588, and an increase in dwelling units to be serviced does not otherwise change sight visibility considerations. In this respect I refer to and rely on Mr Bartlett's evidence that the sight distances and visibility for this proposal are safe and adequate.

Cyclist and pedestrian safety

- 76 Cyclists are provided for by reduced operating speed over the pinch point, pedestrian safety can also be addressed by including crossing points at each end of the pinch point to ensure safe crossing before and after the narrowed section of one foot path. I submit this is not otherwise addressed in any detail in Ms Banks' evidence to provide the Commission with an understanding of safety concerns.

Access for Emergency Vehicles and Parking

- 77 Over the approximate 80m of the pinch point, there are no houses with direct access to this section of the road. It is therefore unlikely that there would be any vehicles parking on the side of the road thereby creating additional traffic hazards or user conflict. Furthermore, if considered necessary, this portion could also be required as a no parking area by painting no parking lines.
- 78 Out of all emergency services, I submit that a fire engine is likely the most difficult vehicle to navigate narrow sections of roads. The New Zealand Fire Services Fire Fighting Water Supplies Code of Practice SNZ PAS 4509:2008 (Code of Practice) is the New Zealand Standard and provides the requirements for firefighting water based on building risk and ensures consistency and good practice throughout New Zealand. The Code of Practice provides that a fire fighting appliance requires access which is 4 metres in width and 4 metres in height, with a gradient that does not exceed 16%.
- 79 The proposed pinch point is therefore entirely consistent with emergency services required access, being well in excess of a 4m carriageway.

Further Evidence Not In Contention

- 80 This section of submissions briefly addresses the remaining areas of expert evidence before the Commission, and which are not of contention in the overall

¹⁶ RM130588 decision, at [63]

rezoning proposal, being geotechnical evidence, infrastructure servicing, and ecology.

Geotechnical Evidence

81 Council has not provided any evidence in respect of this rezoning raising geotechnical constraints or concerns. I therefore rely on and adopt Mr Nicolson's evidence and appended report as being unopposed on this subject matter. Mr Nicolson concludes that, based upon various site visits, onsite investigations, and preliminary geomorphological mapping, the Site overall is considered suitable for LDR use, subject to standard site-specific engineering solutions applicable at the detailed design phase of future development and construction.

Infrastructure Servicing

82 Mr Glasner's Rebuttal Evidence agrees with the Evidence in Chief lodged for the submitters on behalf of Mr McCartney, such that all previous potential concerns relating to infrastructure servicing are now addressed. Both the Council and Submitter experts are in agreement as to the feasibility and suitability of water supply, wastewater treatment, and stormwater disposal in respect of an approximate 89 residential unit yield rezoning. I submit the Commission can rely on that agreement as sufficient evidence on this matter.

Ecology

83 Mr Davis observes that Site is dominated by grass and planted areas with the remainder of the Site to the south and east covered in mature introduced trees. Based on the lack of indigenous vegetation communities on the Site, Mr Davis does not oppose the proposed rezoning from an ecological perspective.

84 I submit that, although wilding trees on the Site could be removed as of right at any moment, it is a consequence of rezoning (and therefore future development) that this outcome becomes much more likely to eventuate. That results in a positive ecological gain for the community.

Other Matters

85 For completeness, I now briefly refer to some other matters relevant to this rezoning proposal:

- (a) There are no submitters opposing this rezoning which is relevant to the Commission's considerations in respect of residential or neighbourhood adverse effects.

- (b) An increase in housing supply close to the town centre and which is an extension to existing LDR land is consistent with the NPS on Urban Development Capacity (**NPSUDC**). Mr Vivian addresses the applicability of the NPSUDC to this rezoning in his Evidence in Chief at Section 5. I do not repeat that evidence here for the Commission, save as to rely on Mr Vivian's findings that this rezoning will contribute to the District's dwelling capacity in a positive way.
- (c) The NPSUDC is not relied upon by the Submitters as supporting this rezoning. Rather the rezoning is submitted to be the 'most appropriate' in light of each of the 13 factors listed in Council's section 42a overview report, and as addressed in these submissions and the supporting evidence.

86 Overall, and referring back to paragraph 6 of these submissions, I submit that this requested rezoning is entirely consistent with, and gives effect to, the Council's strategic approach to rezoning such that the Commission should find this to be the most appropriate use of this land resource.

Dated this 3rd day of August 2017

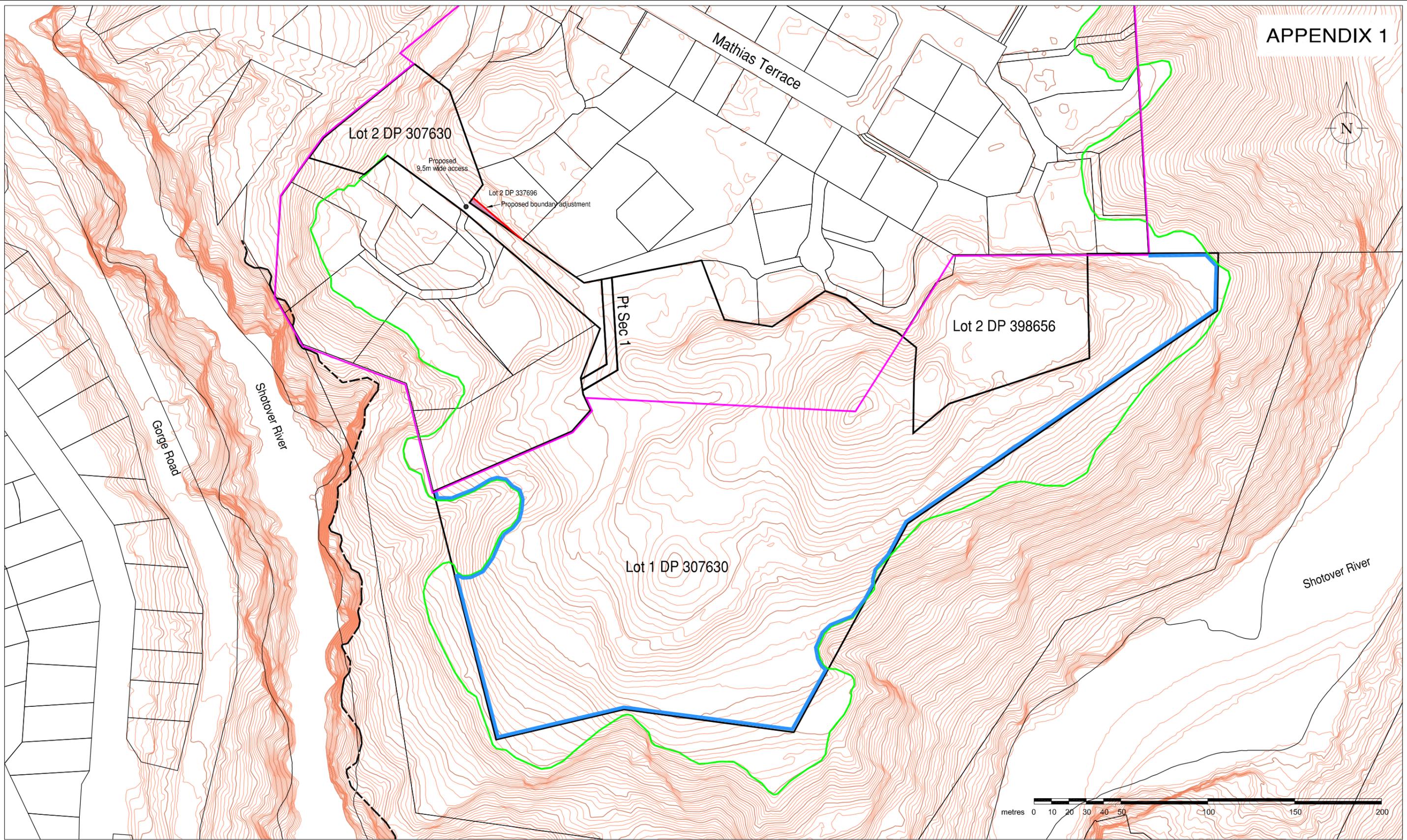
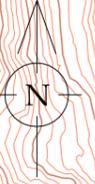


Warwick Goldsmith/Rosie Hill

Counsel for Gertrude's Saddlery Limited and Larchmont Developments

Attachment A

Appendix 1 to Mr Espie's evidence – title plan of the area including topographical contours (amended to identify the widening of the pinch point)



Legend

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

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

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

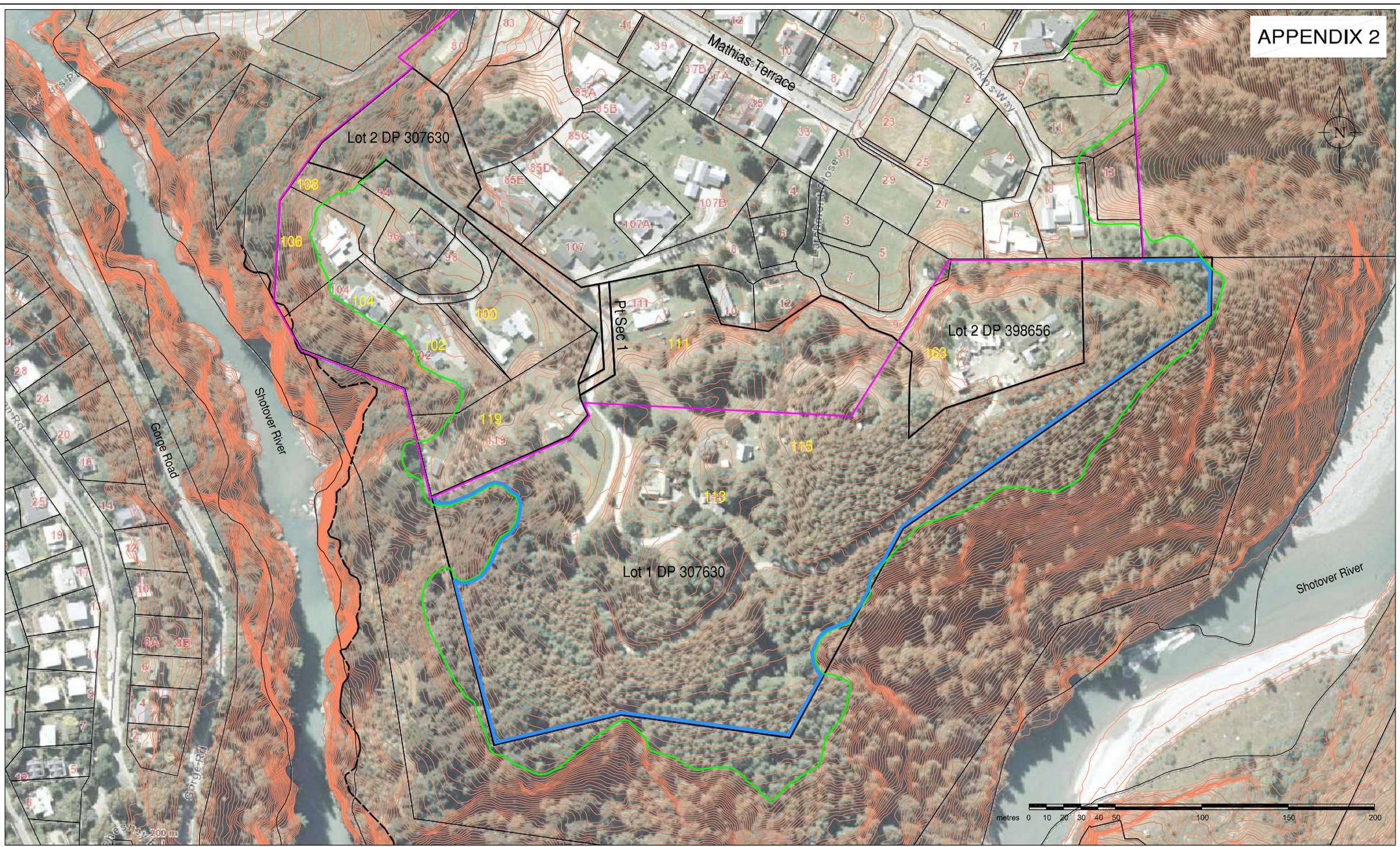
DATE: 27 July 2017	Scale 1:2000	DRAWING & ISSUE No.
BY: B McLeod	Original Plan A3	4462-3R-1B



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

Attachment B

Appendix 2 to Mr Espie's evidence – Attachment A overlaid on aerial photograph



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

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

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

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

AURUM SURVEY

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Attachment C

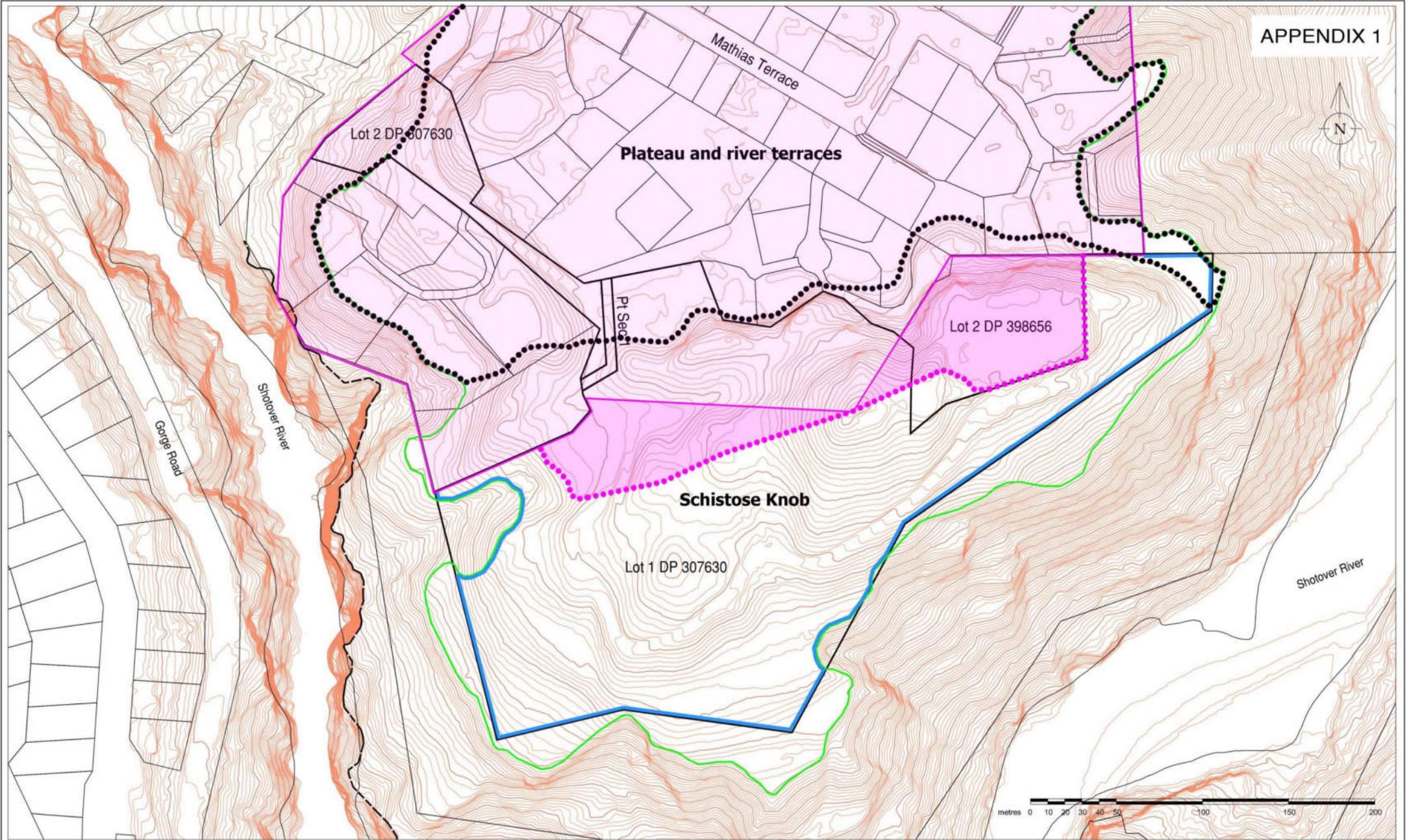
Appendix 4 to Mr Espie's evidence, - photograph taken in the 1960s.



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

Attachment D

Attachment 4 to Dr Marion Read's Rebuttal Evidence for the Council



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

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

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

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



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Attachment E

Article from the Mountain Scene dated 1 August 2017.

Jim Boulton: We're de-clogging our streets, but there's more to do

August 1, 2017



OPINION: I don't know about you but I'm delighted!

The reason that I'm delighted is that I had the great pleasure to fly back into Queenstown after a trip north recently, arriving here at peak rush hour, facing the prospect of traffic congestion making me late for a meeting at the council.

To the contrary it took me maybe two to three minutes to get from the airport round-about to the BP roundabout, with no congestion at all at the BP roundabout, and off into town with time to spare.

To say that the opening of Hawthorne Drive (aka the eastern access road) has been a success in reducing traffic congestion is an understatement.

The NZ Transport Agency tells us that the peak-hour average travelling time between the roundabouts is now three minutes, significantly reduced from the previous 10 to 20 minutes.

I think you'd all agree, one of the great frustrations of living in our district is, at least at this time, behind us.

I'm also delighted with the take-up of the use of the airport park and ride and the removal of the unsightly and unsafe lines of cars parked on the side of State Highway 6 (Kawarau Road).

Residents of McBride Street also tell me life is now much easier for them now that traffic using their street as a "rat run" has also markedly decreased.

These are pleasing achievements, yet we've still got a long way to go on traffic.

NZTA has committed to the double-laning of State Highway 6 between Five Mile and the airport roundabout.

Personally I would like the timing of this improved and it's something I am seeking further commitment on.

It's a work in progress.

For the good folk of Quail Rise and Tucker Beach there's good news in the shape of a planned underpass under the Shotover Bridge to join the Queenstown-bound lane on the southern side of the highway.

This will greatly improve safety and stress levels relating to the current intersection.

I understand that work on this is to commence later this calendar year and we continue to push for a confirmation date.

The new Kawarau Bridge is proceeding at pace and there is a commitment to have two lanes operating over the Christmas and New Year period – although there might be some reversion to a single lane for a period early in the New Year for final completion works.

Thankfully it does appear, however, that the current ski season is the last one where we will see the level of congestion caused by an inadequate one-way bridge.

On the subject of bridges, the council is focused on looking at our needs over the coming years.

In particular, we note the likely need for a second Kawarau crossing in the not too distant future, an alternative to the one-way Edith Cavell Bridge and possibly even an upgrade or addition to the current State Highway 6 Shotover Bridge.

I'm very conscious of the time it took to get commitment to the new Kawarau Bridge and if we don't start pushing for this work now we risk similar congestion at some time in the future.

The good news is there is a higher degree of willingness by NZTA at management level, at board level and with the Minister of Transport to recognise the problems that we have.

The challenge will be to turn this enthusiasm into action.

Jim Boulton is the Queenstown Lakes mayor

Attachment F

Extract from QLDC Subdivision Code of Practice.

PLACE CONTEXT			DESIGN ENVIRONMENT				LINK CONTEXT					TYPICAL PLAN AND CROSS SECTION SEE APPENDIX E FOR LARGER VERSION OF FIGURES	FIGURE NUMBER
Area	Land use	Local attributes	Locality served	Target operating speed (km/h)	Min. road width (m)	Max. grade	Pedestrians	Passing, parking, loading, and shoulder	Cyclists	Movement lane (excluding shoulder)	Classification		
Notes	See 3.2.4, table 3.1 & 3.3.1.6	See table 3.1	See table 3.1	See 3.3.5	See 1.2.2, 3.3.1.9, & 3.4.16		See 3.3.11	See 3.3.6 & 3.3.1.4	See 3.3.1.5, 3.3.7, & 3.3.11.2	See 1.2.2, 3.3.1.1, 3.3.1.2, 3.3.1.3, 3.3.1.10, 3.3.11.3	See 3.2.4.2 & 3.3.16 (Typical max. volumes)		
	Live and play	Access to houses/ townhouses	1 to 20 du	20	9	16%	Shared (in movement lane)	Shared (in movement lane)	Shared (in movement lane)	5.5 - 5.7	Lane (~ 200 vpd)	E11	
	Live and play	Primary access to housing	1 to 200 du	40	15	12.5%	1.5 m one side or 1.5 m each side where more than 20 du or more than 100 m in length	Shared parking in the movement lane up to 100 du, separate parking required over 100 du	Shared (in movement lane)	5.5 - 5.7	Local road (~ 2,000 vpd)	E12	

Attachment G

Heads of Agreement relating to Proposed Boundary Adjustment

Heads of Agreement between

Park avenue limited and/or nominee and Trish McDougall of Lot 2 DP337696 Atley Road Arthurs Point.

It is Hereby Agreed between the parties that the boundary adjustment as shown (in Red approx. 60 sqm) on the Clarke Fortune McDonald Plan of Atley Road extension attached, will be granted by Trish McDougall (registered owner of Lot 2 DP337696) for the sum of \$ [REDACTED] To be paid on the issue of the boundary adjusted titles subject to Park Avenue Limited or nominee obtaining resource consent for such.

All cost associated with this adjustment will be the responsibility of Park Avenue Limited or Nominee

It is agreed that a formal agreement for such will be prepared by Park Avenue Limited or Nominee's Solicitors to the satisfaction of Trish McDougall

Signed by Trish McDougall P. M. McDougall

Signed By Park Avenue Limited or nominee [Signature]

Date 24/2/17

Signed by Carolyn Denny [Signature]

Attachment H

Resource Consent Decision RM170551



DECISIONS OF THE QUEENSTOWN LAKES DISTRICT COUNCIL

NOTIFICATION UNDER s95 AND DETERMINATION UNDER s104

RESOURCE MANAGEMENT ACT 1991

Applicant:	Gertrudes Saddlery Limited
RM reference:	RM170551
Application:	Application under Section 88 of the Resource Management Act 1991 (RMA) for subdivision to enable widening of an existing right of way
Location:	85E and 111 Atley Road, Arthur's Point
Legal Description:	Lots 1 and 2 Deposited Plan 307630 held in Computer Freehold Register 29585; Lot 2 Deposited Plan 337696 held in Computer Freehold Register 154760
Zoning:	Low Density Residential
Activity Status:	Controlled activity
Date:	31 July 2017

SUMMARY OF DECISIONS

1. Pursuant to sections 95A-95F of the RMA the application will be processed on a **non-notified** basis given the findings of Section 6.0 of this report. This decision is made by Sarah Gathercole, Senior Planner, on **31 July 2017** under delegated authority pursuant to Section 34A of the RMA.
2. Pursuant to Section 104 of the RMA, consent is **GRANTED SUBJECT TO CONDITIONS** outlined in **Appendix 1** of this decision imposed pursuant to Section 108 of the RMA. The consent only applies if the conditions outlined are met. To reach the decision to grant consent the application was considered (including the full and complete records available in Council's electronic file and responses to any queries) by Sarah Gathercole, Senior Planner as delegate for the Council.

1. PROPOSAL AND SITE DESCRIPTION

Consent is sought to adjust the boundary between Lot 1 and 2 DP 307630 (which are amalgamated) and Lot 2 DP 337696 to enable widening of an existing right of way. The subdivision will result in three lots of which two lots will be re-amalgamated. No additional lots will be created. The only change will be in the increased legal width of the lot containing the right of way over Lot 2 DP 307630.

The applicant has provided a detailed description of the proposal, the site and locality and the relevant site history in Section 1 of the report entitled '*Resource Consent Application, Gertrude's Saddlery Limited, 85E and 111 Atley Road, Queenstown*' prepared by Carey Vivian of Vivian+Espie, and submitted as part of the application (hereon referred to as the applicant's AEE and attached as Appendix 2). This description is considered accurate and is adopted for the purpose of this report.

2. ACTIVITY STATUS

2.1 THE DISTRICT PLAN

Operative District Plan

The subject site is zoned Low Density Residential and the proposed activity requires resource consent for the following reasons:

- A **controlled** activity resource consent pursuant to Rule 15.2.3.2(b) as it complies with the relevant site and zone standards for subdivision. Council's control is with respect to:
 - *Rule 15.2.6.1 (Lot Sizes and Dimensions),*
 - *Rule 15.2.7.1 (Subdivision Design),*
 - *Rule 15.2.8.1 (Property Access),*
 - *Rule 15.2.9.1 (Esplanade provision),*
 - *Rule 15.2.10.1 (Natural and other Hazards),*
 - *Rule 15.2.11.1 (Water Supply),*
 - *Rule 15.2.12.1 (Stormwater Disposal),*
 - *Rule 15.2.13.1 (Sewage Treatment and Disposal),*
 - *Rule 15.2.15.1 (Energy Supply and Telecommunications),*
 - *Rule 15.2.16.1 (Open Space and Recreation),*
 - *Rule 15.2.17.1 (Protection of vegetation and Landscape),*
 - *Rule 15.2.18.1 (Easements),*
 - *Rule 15.2.21.1 (Earthworks).*

Overall, the application is considered to be a **controlled** activity.

Proposed District Plan

- Council notified the Proposed District Plan (PDP) on 26 August 2015. However, the PDP does not contain any rules with immediate legal effect for which this proposal requires consent.

3. SECTION 95A NOTIFICATION

The applicant has not requested public notification of the application (s95A(2)(b)).

No rule or national environmental standard requires or precludes public notification of the application (s95A(2)(c)).

The consent authority is not deciding to publicly notify the application using its discretion under s95A(1) and there are no special circumstances that exist in relation to the application that would require public notification (s95A(4)).

A consent authority must publicly notify an application if it decides under s95D that the activity will have or is likely to have adverse effects on the environment that are more than minor (s95A(2)(a)).

An assessment in this respect follows.

4. ASSESSMENT OF EFFECTS ON THE ENVIRONMENT (s95D)

4.1 MANDATORY EXCLUSIONS FROM ASSESSMENT (s95D)

- A: *Effects on the owners or occupiers of land on which the activity will occur and on adjacent land (s95D(a)).*
- B: *The activity is a **controlled** activity, so that adverse effects which do not relate to a matter of **control** have been disregarded (s95D(c)).*
- C: *Trade competition and the effects of trade competition (s95D(d)).*
- D: *The following persons have provided their **written approval** and as such adverse effects on these parties have been disregarded (s95D(e)).*

Person (owner/occupier)	Address (location in respect of subject site)
Patricia Margaret McDougall and Carolyn Denny	85E Atley Road, Arthurs Point, Queenstown 9371 (Lot 2 DP 337696)



Figure 1: The subject site and surrounding land.

4.2 PERMITTED BASELINE (s95D(b))

The consent authority **may** disregard an adverse effect of the activity if a rule or national environmental standard permits an activity with that effect. In this case there is no relevant permitted baseline as all subdivisions, including boundary adjustments, require resource consent.

4.3 ASSESSMENT: EFFECTS ON THE ENVIRONMENT

Taking into account sections 4.1 and 4.2 above, the following assessment determines whether the activity will have, or is likely to have, adverse effects on the environment that are more than minor.

The relevant assessment matters are found in Section 15 of the District Plan and have been taken into consideration in the assessment below.

The Assessment of Effects provided in the applicant's AEE, is comprehensive and is considered accurate. It is therefore adopted for the purposes of this report.

The proposal will not result in any physical changes to the subject sites.

The proposal is considered to result in less than minor adverse effects on the environment.

4.4 DECISION: EFFECTS ON THE ENVIRONMENT (s95A(2))

Overall the proposed activity is not likely to have adverse effects on the environment that are more than minor.

5.0 EFFECTS ON PERSONS

Section 95B(1) requires a decision whether there are any affected persons (under s95E) in relation to the activity. Section 95E requires that a person is an affected person if the adverse effects of the activity on the person are minor or more than minor (but not less than minor).

5.1 MANDATORY EXCLUSIONS FROM ASSESSMENT (s95E)

*A: The activity is a **controlled** activity, so that adverse effects which do not relate to a matter of **control** have been disregarded (s95E(2)(b)).*

*B: The persons outlined in section 4.1 above have provided their **written approval** and as such these persons are not affected parties (s95E(3)(a)).*

5.2 ASSESSMENT: EFFECTS ON PERSONS

Taking into account section 5.1 above, the following outlines an assessment as to whether the activity will have or is likely to have adverse effects on persons that are minor or more than minor:

The subject site extends towards the northwest and southeast past 85E Atley Road (Lot 2 DP 337696). Effectively the only change resulting from the proposal is the ownership of the strip of land along the southwest boundary of 85E Atley Road becoming part of the right of way over proposed lot 1 (currently known as Lot 1 DP307630). The proposal does not result in any physical changes. The area where the actual shift in boundary will take place is directly adjacent to 85E Atley Road. The owners of 85E Atley Road have provided affected party approval and hence any adverse effects on them have been disregarded. The effects on other adjacent properties, particularly 107 Atley Road are considered to be less than minor due to the nature of the proposal.

No other persons are considered to be adversely affected by the proposal.

5.3 DECISION: EFFECTS ON PERSONS (s95B(1))

In terms of Section 95E of the RMA, no person is considered to be adversely affected.

6.0 OVERALL NOTIFICATION DETERMINATION

Given the decisions made above in sections 4.4 and 5.3 the application is to be processed on a non-notified basis.

7.0 S104 ASSESSMENT

7.1 EFFECTS (s104(1)(a))

Actual and potential effects on the environment have been outlined in section 4 of this report. Conditions of consent can be imposed under s108 of the RMA as required to avoid, remedy or mitigate adverse effects.

7.2 RELEVANT DISTRICT PLAN PROVISIONS (s104(1)(b)(vi))

The relevant objectives and policies are contained within Part 15 of the District Plan.

The assessment of relevant objectives and policies provided in the applicant's AEE, is comprehensive and is considered accurate. It is therefore adopted for the purposes of this report.

The proposal is considered to be consistent with the objectives and policies of the Operative and Proposed District Plans.

7.3 PART 2 OF THE RMA

For the reasons outlined in the above assessment the application as proposed is considered to be consistent with the purpose and principles set out in Part 2 of the RMA. The development will result in sustainable management of natural and physical resources, whilst also not affecting the life supporting capacity of ecosystems, and avoiding, remedying or mitigating adverse effects on the environment.

7.4 DECISION ON RESOURCE CONSENT PURSUANT TO SECTION 104 OF THE RMA

Consent is **granted** subject to the conditions outlined in *Appendix 1* of this decision report imposed pursuant to Section 108 of the RMA.

8.0 OTHER MATTERS

Local Government Act 2002: Development Contributions

This proposal is not considered a "Development" in terms of the Local Government Act 2002 as it will not generate a demand for network infrastructure and reserves and community facilities.

Administrative Matters

The costs of processing the application are currently being assessed and you will be advised under separate cover whether further costs have been incurred.

The Council will contact you in due course to arrange the required monitoring. It is suggested that you contact the Council if you intend to delay implementation of this consent or if all conditions have been met.

This resource consent is not a consent to build under the Building Act 2004. A consent under this Act must be obtained before construction can begin.

This resource consent must be exercised within five years from the date of this decision subject to the provisions of Section 125 of the Resource Management Act 1991.

If you have any enquiries please contact the Planning Department at email enquiries@qldc.govt.nz.

Report prepared by

Decision made by



Loek Driesen
CONSULTANT PLANNER

Sarah Gathercole
SENIOR PLANNER

APPENDIX 1 - Consent Conditions

APPENDIX 2 - Applicant's Assessment of Environmental Effects

APPENDIX 1 - CONSENT CONDITIONS

General Conditions

1. That the development must be undertaken/carried out in accordance with the plans:
 - 'Proposed Boundary Adjustment Lots 1 & 2 DP 307630, LOT 2 DP 337696 ARTHURS POINT FOR GERTRUDE'S SADDLERY LTD', Drawing & Issue No. 4462.1R.1A, Date 3 May 2017
 - 'Boundary Adjustment Detail', project: 111 Atley Road Arthurs Point for Gertrude's Saddlery Ltd', Drawing & Issue No. 4462.1T.2A, Issue A, Issue Date 3.5.17

stamped as approved on 28 July 2017

and the application as submitted, with the exception of the amendments required by the following conditions of consent.

2. This consent shall not be exercised and no work or activity associated with it may be commenced or continued until the following charges have been paid in full: all charges fixed in accordance with section 36(1) of the Resource Management Act 1991 and any finalised, additional charges under section 36(3) of the Act.

To be completed before Council approval of the Survey Plan

3. Prior to the Council signing the Survey Plan pursuant to Section 223 of the Resource Management Act 1991, the consent holder shall complete the following:
 - a) All necessary easements shall be shown in the Memorandum of Easements attached to the Survey Plan and shall be duly granted or reserved.

Amalgamation Condition

4. The following shall be registered with Land Information New Zealand (CRM 0328153):
 - *"That Lots 1 and 2 hereon be held in the same Computer Freehold Register".*

APPENDIX 2 - APPLICANT'S ASSESSMENT OF ENVIRONMENTAL EFFECTS

RESOURCE CONSENT APPLICATION

GERTRUDE'S SADDLERY LIMITED

85E AND 111 ATLEY ROAD

QUEENSTOWN

SUBDIVISION APPLICATION

+ BOUNDARY ADJUSTMENT BETWEEN LOTS 1 AND 2 DP 307630
(AMALGAMATED) AND LOT 2 DP 337696

14 JUNE 2017



GERTRUDES SADDLERY LIMITED BOUNDARY ADJUSTMENT BETWEEN LOTS 1 AND 2 DP 307630 AND LOT 2 DP 337696

This resource consent application has been prepared in accordance with the Fourth Schedule of the Resource Management Act 1991 in such detail as corresponds with the scale and significance of the effects that the activity may have on the environment.

- (1) An application for resource consent for an activity (the activity) must include the following:
(a) A description of the activity

This is an application under Section 104 of the Resource Management Act 1991 (RMA) to undertake a 65m² boundary adjustment subdivision at Atley Road, Arthurs Point.

The following table describes the proposal:

Lot description (existing)	Lot description (proposed)	Existing lot size	Proposed lot size	Buildings (existing)	Buildings (proposed)
Lot's 1 and 2 DP 307630. Held in CFR OT17C/967.	Lot 2 and Lot 1 amalgamated.	0.5335ha and 6.06ha respectively.	0.54ha and 6.06ha respectively.	Nil on Lot 2. Several on Lot 1.	Nil on Lot 2. Several on Lot 1.
Lot 2 DP 337696. Held in OT 154760.	Lot 3.	0.1333ha	0.1268ha	Existing residential dwelling and accessory buildings.	No change.

In summary, it is proposed to undertake a boundary adjustment subdivision to enable the widening of the existing Right of Way (ROW) to accommodate further development on the property. Proposed Lot 2 is to remain amalgamated with proposed Lot 1 DP 304625 which is in the same ownership.

Existing site aerial plans are contained within Attachment [C] and the proposed boundary adjustment plan can referred to within Attachment [D]).

(b) A description of the site at which the activity is to occur

Both sites are contained within the Low Density Residential Zone. Proposed Lot 3 contains an existing dwelling and accessory buildings. Proposed Lot 2 does not contain any buildings, but includes a ROW which services several properties. The existing ROW is unaffected by the boundary adjustment.

(c) The full name and address of each owner or occupier of the site

Subject site: Lot's 1 and 2 DP 307630
 Owner: Gertrude's Saddlery Limited and Sandelwood Holdings Limited
 Address: 111 Atley Road, Arthurs Point, Queenstown.

A copy of the relevant Computer Freehold Registers have been provided as Attachment [A].

Subject site: Lot 2 DP 337696
 Owner: Carolyn Denny and Patricia McDougall
 Address: 85E Atley Road, Arthurs Point, Queenstown.

A copy of the relevant Computer Freehold Registers has been provided as Attachment [A]. Their Affected Persons approval is attached as Attachment [D].

(d) A description of any other activities that are part of the proposal to which the application relates

Not applicable.

(e) A description of any other resource consents required for the proposal to which the application relates

No other resource consents are required for the proposal to which this application relates at this stage.

(f) An assessment of the activity against the matters set out in Part 2:

Purpose

*(1) The purpose of this Act is to promote the sustainable management of natural and physical resources.
 (2) In this Act, sustainable management means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while—*

- (a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
- (b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*
- (c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.*

The proposed boundary adjustment subdivision is a minor boundary change to facilitate the widening of an access way. It therefore represents sustainable management. The proposal, with appropriate consent conditions imposed by the Council (if any), will not incur any physical adverse effects on the environment.

Matters of national importance

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:

- (a) the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:*
- (b) the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:*
- (c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:*
- (d) the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:*
- (e) the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga:*
- (f) the protection of historic heritage from inappropriate subdivision, use, and development:*
- (g) the protection of protected customary rights.*

The proposed boundary adjustment will not involve any physical change and will not affect matters of national importance as described above.

Overall, the proposal is consistent with the above listed matters of national importance.

Other matters

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to—

- (a) kaitiakitanga:*
- (aa) the ethic of stewardship:*
- (b) the efficient use and development of natural and physical resources:*
- (ba) the efficiency of the end use of energy:*
- (c) the maintenance and enhancement of amenity values:*
- (d) intrinsic values of ecosystems:*
- (e) [Repealed]*
- (f) maintenance and enhancement of the quality of the environment:*
- (g) any finite characteristics of natural and physical resources:*

- (h) the protection of the habitat of trout and salmon:*
- (i) the effects of climate change:*
- (j) the benefits to be derived from the use and development of renewable energy.*

The proposed boundary adjustment is **effectively 'on-paper' only with no physical activity proposed**. This activity is not considered to affect matters of kaitiakitanga or the ethic of stewardship, and will not detrimentally affect the intrinsic values of ecosystems or climate change matters. Overall, the subject activity is consistent with the other matters listed above and is an efficient use of the land without any adverse effects on the wider surrounds.

(g) An assessment of the activity against any relevant provisions of a document referred to in section 104(1)(b).

- (i) a national environmental standard:
- (ii) other regulations:
- (iii) a national policy statement:
- (iv) a New Zealand coastal policy statement:
- (v) a regional policy statement or proposed regional policy statement
- (vi) a plan or proposed plan

The Otago Regional Policy Statement is applicable and relevant as a statutory document but is not necessary to include within evidence as the Operative District Plan deals with all the relevant matters in more detail. The proposed application does not further trigger any of the above stated standards, regulations, or national policy statements and therefore complies with the above.

The proposed development will not trigger items (i)-(v) of the items listed above.

The proposed activity is subject to Section 15 – Subdivision, Development and Financial Contributions chapter of the Operative District Plan. The Proposed District Plan was publicly notified on the 27 August 2015 and the subject sites proposed zoning is LDRZ which includes new provisions. The new Subdivision and Development sections have also been publicly notified as part of the District Plan Review proceedings. The proposed provisions as they relate to the subject site are assessed later in this report.

- (2) The assessment under subclause (1)(g) must include an assessment of the activity against –
 (a) Any relevant objectives policies or rules in a document; and

As stated previously in this report, the site is located in the Low Density Residential Zone. This zone has the following purpose:

“The purpose of the zone is to provide for low density permanent living accommodation, maintaining a dominance of open space and low building coverage. The zone seeks to maintain and enhance the low density residential areas with ample open space, low rise development and minimal adverse effects experienced by residents. Special amenity provisions remain in respect of the form, style and appearance of development on the terrace face along McDonnell Road at Arrowtown, being the Arrowtown Scenic Protection Area identified as part of the Zone.”

The proposed boundary adjustment complies with all of the size and zone subdivision standards and is therefore a Controlled Subdivision Activity pursuant to Rule 15.2.3.2 of the Operative District Plan. The relevant Operative and Proposed District Plan objectives and policies are assessed below.

Operative District Plan

Section 15 – Subdivision, Development and Financial Contributions

The relevant objectives and policies within Section 15 are assessed accordingly below:

Objective 1 – Servicing

The provision of necessary services to subdivided lots and developments in anticipation of the likely effects of land use activities on those lots and within the developments.

Policies:

1.1 To integrate subdivision roading with the existing road network in an efficient manner, which reflects expected traffic levels and the safe and convenient management of vehicles, cyclists and pedestrians.

1.2 To ensure safe and efficient vehicular access is provided to all lots created by subdivision and to all developments.

1.4 To avoid or mitigate any adverse visual and physical effects of subdivision and development roading on the environment.

1.5 To ensure water supplies are of a sufficient capacity, including fire fighting requirements, and of a potable standard, for the anticipated landuses on each lot or development.

1.6 To ensure that the provision of any necessary additional infrastructure for water supply, stormwater disposal and/or sewage treatment and disposal and the upgrading of existing infrastructure is undertaken and paid for by subdividers and developers in accordance with **Council's Long Term Community Plan Development Contributions Policy**.

1.7 To ensure that the design and provision of any necessary infrastructure at the time of subdivision takes into account the requirements of future development on land in the vicinity, with Council being responsible for meeting any additional capacity of infrastructure above that required for **the subdivision then being consented to in accordance with Council's Long Term Community Plan Development Contributions Policy**.

1.8 To encourage the retention of natural open lakes and rivers for stormwater disposal, where safe and practical, and to ensure disposal of stormwater in a manner which maintains or enhances the quality of surface and ground water, and avoids inundation of land within the subdivision or adjoining land.

1.9 To ensure, upon subdivision or development, that anticipated land uses are provided with means of treating and disposing of sewage in a manner which is consistent with maintaining public health and avoids or mitigates adverse effects on the environment.

1.10 To ensure, upon subdivision or development, that all new lots or buildings are provided with connections to a reticulated water supply, stormwater disposal and/or sewage treatment and disposal system, where such systems are available.

1.11 To ensure adequate provision is made for the supply of reticulated energy, including street lighting, and communication facilities for the anticipated land uses, and the method of reticulation is appropriate to the visual amenity values of the area.

1.12 To ensure the requirements of other relevant agencies are fully integrated into the subdivision/development process

The subject subdivision by boundary adjustment will not incur any adverse physical effects and is proposed to be in accordance with the objectives and policies above relative to servicing. The proposed boundary adjustment is to be undertaken to enable road widening only. This will most likely require an earthworks resource consent once the boundary adjustment is complete.

Objective 2 - Cost of Services to be Met by Subdividers

The costs of the provision of services to and within subdivisions and developments, or the upgrading of services made necessary by that subdivision and development, to the extent

that any of those things are necessitated by the subdivision or development to be met by subdividers.

Policies:

2.1 To require subdividers and developers to meet the costs of the provision of new services or the extension or upgrading of existing services (including head works), whether provided before or after the subdivision and/or development, and which are attributable to the effects of the subdivision or development, including where applicable:

- *roading and access;*
- *water supply;*
- *sewage collection, treatment and disposal;*
- *stormwater collection, treatment and disposal;*
- *trade waste disposal;*
- *provision of energy;*
- *provision of telecommunications.*

2.2 Contributions will be in accordance with Council's Long Term Community Plan Development Contributions Policy.

No services will be affected by this boundary adjustment.

Proposed District Plan

Part 27 – Subdivision

27.2.1 Objective - Subdivision will create quality environments that ensure the District is a desirable place to live, visit, work and play.

Policies 27.2.1.1 Require subdivision to be consistent with the QLDC Land Development and Subdivision Code of Practice, while recognising opportunities for innovative design.

27.2.1.2 Support subdivision that is consistent with the QLDC Subdivision Design Guidelines, recognising that good subdivision design responds to the neighbourhood context and the opportunities and constraints of the application site.

27.2.1.3 Require that allotments are a suitable size and shape, and are able to be serviced and developed to the anticipated land use of the applicable zone.

27.2.1.5 The Council recognises that there is an expectation by future landowners that the effects and resources required of anticipated land uses will have been resolved through the subdivision approval process.

27.2.1.6 Ensure the requirements of other relevant agencies are fully integrated into the subdivision development process.

27.2.1.7 Recognise there will be certain subdivision activities, such as boundary adjustments, that are undertaken only for ownership purposes and will not require the provision of services.

The proposed subdivision is consistent with the QLDC Land Development and Subdivision Code of Practice, however does not propose any physical change to the environment. The proposed boundary adjustment is to be undertaken for access widening purposes only.

27.2.5 Objective - Require infrastructure and services are provided to lots and developments in anticipation of the likely effects of land use activities on those lots and within overall developments.

Relevant policies include 27.2.5.1-27.2.5.16 which address servicing requirements and have been previously addressed earlier in this report. No services will be affected by this boundary adjustment.

27.2.6 Objective - Cost of services to be met by subdividers.

Policies 27.2.6.1 Require subdividers and developers to meet the costs of the provision of new services or the extension or upgrading of existing services (including head works), that are attributable to the effects of the subdivision or development, including where applicable:

- *roading, walkways and cycling trails;*
- *water supply;*
- *sewage collection, treatment and disposal;*
- *stormwater collection, treatment and disposal;*
- *trade waste disposal;*
- *provision of energy;*
- *provision of telecommunications and computer media;*
- *provision of reserves and reserve improvements.*

No services will be affected by this boundary adjustment.

Overall, it is considered that the proposed boundary adjustment will not impose any risk on the anticipated outcomes of the proposed Part 27 objectives and policies of the proposed district plan.

- (b) Any relevant requirements, conditions, or permissions in any rules in a document; and
- (3) An application must also include an **assessment of the activity's** effects on the environment that
 -
- (a) Includes the information required by clause 6; and

6 Information required in assessment of environmental effects

(1) An assessment of the activity's effects on the environment must include the following information:

(A) if it is likely that the activity will result in any significant adverse effect on the environment, a description of any possible alternative locations or methods for undertaking the activity:

(b) an assessment of the actual or potential effect on the environment of the activity:

(c) if the activity includes the use of hazardous substances and installations, an assessment of any risks to the environment that are likely to arise from such use:

(d) if the activity includes the discharge of any contaminant, a description of—

(i) the nature of the discharge and the sensitivity of the receiving environment to adverse effects; and

(ii) any possible alternative methods of discharge, including discharge into any other receiving environment:

(e) a description of the mitigation measures (including safeguards and contingency plans where relevant) to be undertaken to help prevent or reduce the actual or potential effect:

(f) identification of the persons affected by the activity, any consultation undertaken, and any response to the views of any person consulted:

(g) if the scale and significance of the activity's effects are such that monitoring is required, a description of how and by whom the effects will be monitored if the activity is approved:

(h) if the activity will, or is likely to, have adverse effects that are more than minor on the exercise of a protected customary right, a description of possible alternative locations or methods for the exercise of the activity (unless written approval for the activity is given by the protected customary rights group).

(2) A requirement to include information in the assessment of environmental effects is subject to the provisions of any policy statement or plan.

(3) To avoid doubt, subclause (1)(f) obliges an applicant to report as to the persons identified as being affected by the proposal, but does not—

(a) oblige the applicant to consult any person; or

(b) create any ground for expecting that the applicant will consult any person.

The proposal is not considered to result in adverse environmental effects. The boundary adjustment is minor as its purpose is to facilitate the future widening of the existing ROW.

The proposal does not include the use of installation of hazardous substances, or contaminant discharge to the receiving environment. As mentioned earlier in this report the application is for a boundary adjustment only and does not propose any physical change to the environment.

The proposal does not affect protected customary rights. No persons have been consulted as part of this application process.

Overall, the proposed activity is compliant with the matters outlined in Clause 6.

(b) Addresses the matters specified in clause 7; and

7 Matters that must be addressed by assessment of environmental effects

(1) An assessment of the activity's effects on the environment must address the following matters:

(a) any effect on those in the neighbourhood and, where relevant, the wider community, including any social, economic, or cultural effects:

(b) any physical effect on the locality, including any landscape and visual effects:

(c) any effect on ecosystems, including effects on plants or animals and any physical disturbance of habitats in the vicinity:

(d) any effect on natural and physical resources having aesthetic, recreational, scientific, historical, spiritual, or cultural value, or other special value, for present or future generations:

(e) any discharge of contaminants into the environment, including any unreasonable emission of noise, and options for the treatment and disposal of contaminants:

(f) any risk to the neighbourhood, the wider community, or the environment through natural hazards or the use of hazardous substances or hazardous installations.

The proposed boundary adjustment subdivision is for the purposes of altering the areas within each of the respective land titles only and will incur less than minor adverse environmental effects.

The subdivision activity will not adversely affect natural or physical resources, nor will cultural values be adversely effected. The proposal will not leach contaminant into the environment nor will the development exacerbate risk to natural hazards. No use of hazardous substances or installations are proposed.

Overall, the proposed subdivision will incur less than minor effects on the matters listed within Clause 7.

- (c) Includes such detail as corresponds with the scale and significance of the effects that the activity may have on the environment

All adverse effects of the proposed subdivision can be effectively avoided, remedied and mitigated as proposed, or by means of consent condition.

3 Additional information required in some applications

An application must also include any of the following that apply:

- (a) if any permitted activity is part of the proposal to which the application relates, a description of the permitted activity that demonstrates that it complies with the requirements, conditions, and permissions for the permitted activity (so that a resource consent is not required for that activity under section 87A(1)):
- (b) if the application is affected by section 124 or 165ZH(1)(c) (which relate to existing resource consents), an assessment of the value of the investment of the existing consent holder (for the purposes of section 104(2A)):
- (c) if the activity is to occur in an area within the scope of a planning document prepared by a customary marine title group under section 85 of the Marine and Coastal Area (Takutai Moana) Act 2011, an assessment of the activity against any resource management matters set out in that planning document (for the purposes of section 104(2B)).

The application does not trigger the provision of additional information as outlined above.

REPORT COMPLETED BY:

CAREY VIVIAN

PLANNER/DIRECTOR



REPORT REVIEWED BY:

ERIN QUIN

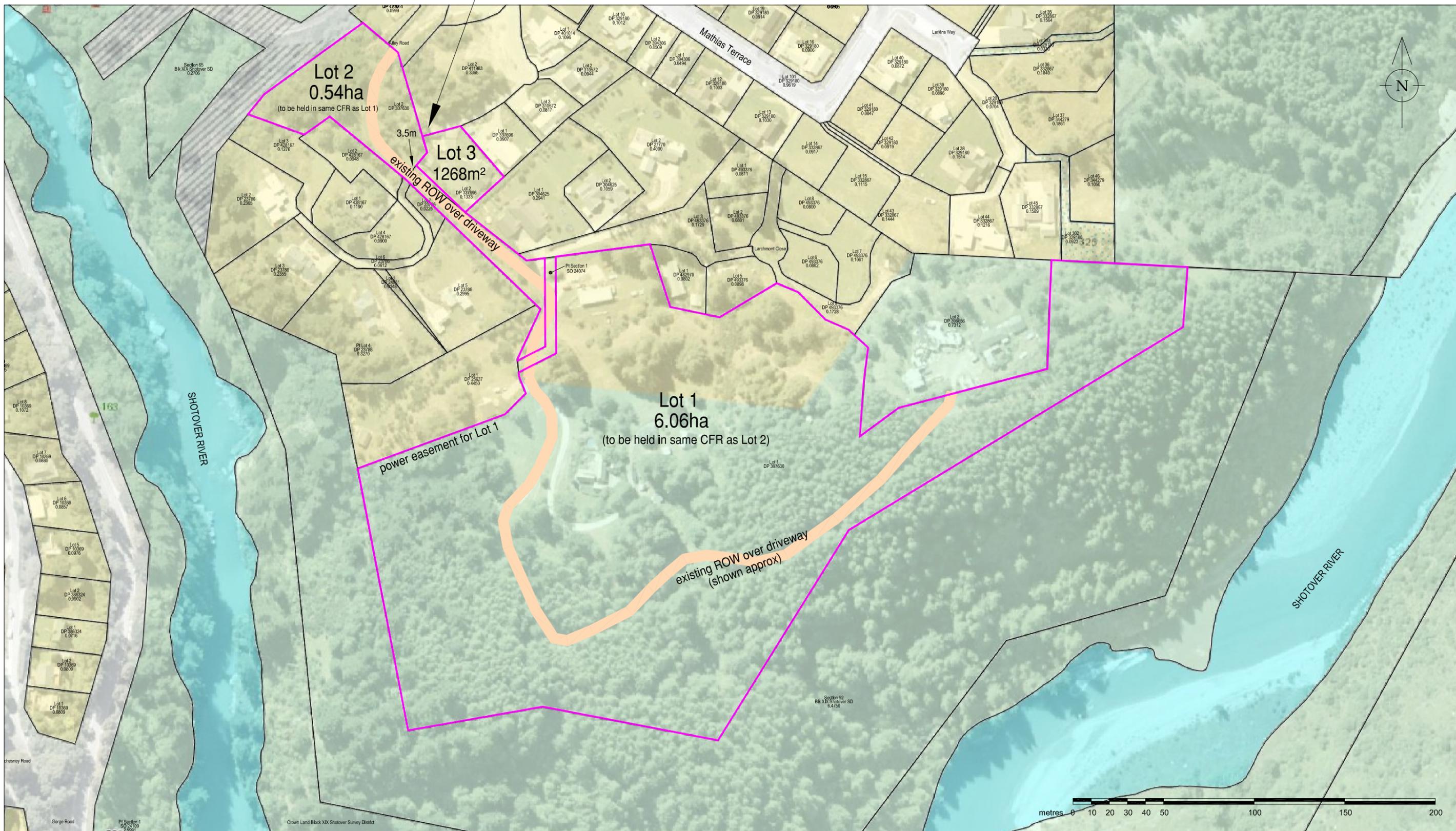
PLANNER/URBAN DESIGNER



LIST OF ATTACHMENTS

- [A] COPY OF CERTIFICATES OF TITLE, CONSENT NOTICES, COVENANTS AND ENCUMBRANCES
- [B] SITE PLAN
- [C] SURVEY PLAN
- [D] AFFECTED PERSONS APPROVAL

See sheet 2 for boundary adjustment detail



Note: All areas and dimensions are subject to survey
 Note: Aerial image from QLDC Mapping Website
 Note: Not all easements are shown
 Note: An amalgamation condition is required to hold Lot 1 in the same CFR as Lot 2

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QUEENSTOWN LAKES DISTRICT COUNCIL

**APPROVED PLAN:
RM170551**

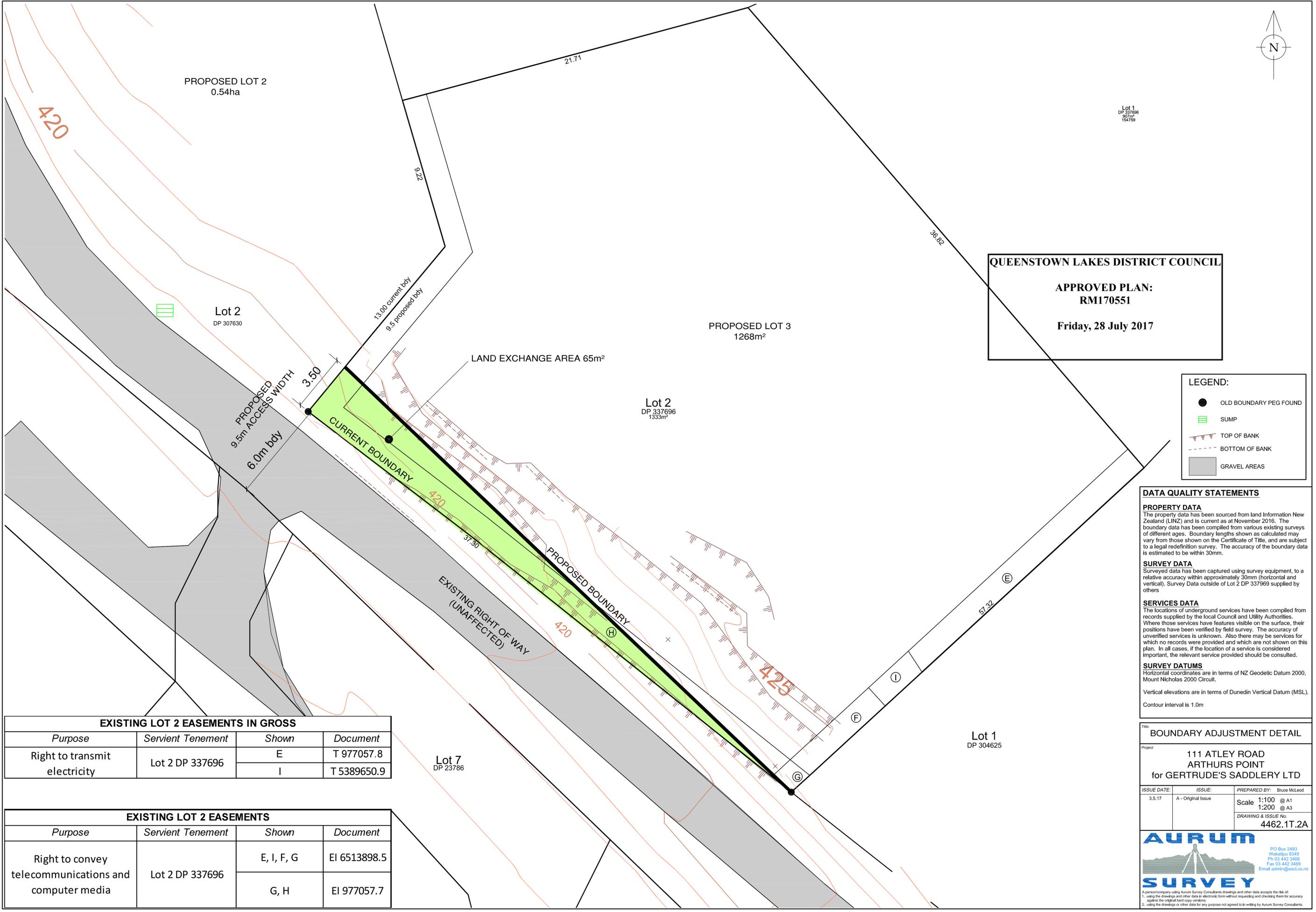
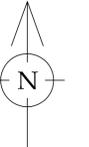
Friday, 28 July 2017

-- OVERVIEW --
**PROPOSED BOUNDARY ADJUSTMENT
 LOTS 1 & 2 DP 307630, LOT 2 DP 337696
 ARTHURS POINT
 FOR GERTRUDE'S SADDLERY LTD**

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

AURUM SURVEY

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



QUEENSTOWN LAKES DISTRICT COUNCIL

APPROVED PLAN:
RM170551

Friday, 28 July 2017

LEGEND:

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

DATA QUALITY STATEMENTS

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

SURVEY DATA
Surveyed data has been captured using survey equipment, to a relative accuracy within approximately 30mm (horizontal and vertical). Survey Data outside of Lot 2 DP 337969 supplied by others.

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

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

EXISTING LOT 2 EASEMENTS IN GROSS

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

EXISTING LOT 2 EASEMENTS

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

BOUNDARY ADJUSTMENT DETAIL

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

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

ISSUE DATE: 3.5.17	ISSUE: A - Original Issue	PREPARED BY: Bruce McLeod
		Scale 1:100 @ A1 1:200 @ A3
		DRAWING & ISSUE No. 4462.1T.2A

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Attachment I

Resource Consent Decision RM130588



DECISION OF THE QUEENSTOWN LAKES DISTRICT COUNCIL

RESOURCE MANAGEMENT ACT 1991

Applicant:	Michael George Swan and Barbara Mary Roney as Executors (formerly G F Swan)
RM reference:	RM130588
Location:	111 Atley Road, Arthurs Point
Proposal:	Subdivision consent to create four lots and land use consent for earthworks to form a road
Type of Consent:	Subdivision; Land Use
Legal Description:	Lot 1, being a lot created by subdivision consent RM 130558 which was a subdivision of Lots 1 and 2 DP 307630 contained within Computer Freehold Register 29585, and Part Section 1 Survey Office Plan 24074 contained in Computer Freehold Register OT17C/968
Valuation Number:	2910721100
Zoning:	Low Density Residential
Activity Status:	Non-Complying
Notification:	Limited notification
Commissioner:	Commissioner T D Nugent
Date Issued:	5 May 2014
Decision:	Granted subject to conditions

IN THE MATTER of the Resource
Management Act 1991

AND

IN THE MATTER Applications under s.88 for
Subdivision and Earthworks
by M G Swan and B M
Roney as Executors
(formerly G F Swan) in
respect of 111 Atley Road,
Arthurs Point – RM130588

DECISION OF HEARING COMMISSIONER DENIS NUGENT

The Decision

1. Pursuant to s.104B of the Resource Management Act 1991 consent is hereby granted to M G Swan and B M Roney as Executors to:
 - A. Subdivide Lot 1, being a lot created by subdivision consent RM 130558 which was a subdivision of Lots 1 and 2 DP 307630 contained within Computer Freehold Register 29585, and Part Section 1 Survey Office Plan 24074 contained in Computer Freehold Register OT17C/968, to create four lots as shown on Clark Fortune McDonald & Associates drawing entitled “Lots 1-4 being a Proposed Subdivision of Lot 1 RM130558” Job No. 9362 Drawing 37A Dated 16.04.14 for the reasons set out above, subject to the conditions in Appendix 1 Part A;
 - B. Undertake earthworks on Lot 4, as shown on Clark Fortune McDonald & Associates drawing entitled “Lots 1-4 being a Proposed Subdivision of Lot 1 RM130558” Job No. 9362 Drawing 37A Dated 16.04.14, in accordance with the Clark Fortune McDonald & Associates drawings entitled “Atley Road Extension” Job No. 9362 Drawing No. 36 Sheets 1 to 4 Rev C dated 08.04.14 for the reasons given above and subject to the conditions in Appendix 1 Part B.

The Application

2. The proposal, as originally lodged, was for a subdivision so as to create a lot intended to be dedicated as road. This road would replace right of way access presently provided over the applicant’s land to some 15 dwellings.

3. The site is currently described as Lots 1 and 2 DP 307630, being 6.5923 hectares in area and contained within Computer Freehold Register 29585, and Part Section 1 Survey Office Plan 24074, being 430m² in area and contained in Computer Freehold Register OT17C/968. A subdivision consent has been granted for these sites (RM130558), and on implementation of that consent the land subject to this application will be Lot 1 RM130558, being 1.67 hectares in area. Lot 1 RM130558 is entirely zoned Low Density Residential. This application is to subdivide Lot 1 RM130558.
4. The proposed subdivision would result in the creation of the following lots:
 - Lot 1 being 2,473m² in area;
 - Lot 2 being 814m² in area;
 - Lot 3 being 1.00 hectares in area; and
 - Lot 4 being 2,315m² in area to be dedicated as legal road.
5. Lots 1, 2 and 3 would be held together in the same certificate of title. The applicant proposed the registration of a consent notice on the title of Lots 1, 2 and 3 prohibiting further subdivision or development until infrastructure services were provided.
6. In March 2014 the applicant added an application for earthworks required to form the road on Lot 4 to a standard required by the Council.
7. The application was originally lodged by Mr G F Swan. He is now deceased and Mr M G Swan and Ms M Roney as executors have been substituted as successors under s.2A of the Act.

Relevant Plan Rules

8. The following District Plan rules are relevant:
 - Rules 15.2.6.1, 15.2.6.3(i)(a) and 15.2.6.3(i)(d) – Lots sizes – controlled activity;
 - Rule 15.2.7.1 – Subdivision design – controlled activity;

- Rule 15.2.8.1 – Property access – controlled activity;
- Rule 15.2.10.1 – Natural and other hazards – controlled activity;
- Rule 15.2.11.3 – Water supply – non-complying activity;
- Rule 15.2.12.1 – Stormwater disposal – controlled activity;
- Rule 15.2.13.1 – Sewage treatment and disposal – controlled activity;
- Rule 15.2.15.1 – Energy supply and telecommunications – controlled activity;
- Rule 15.2.16.1 – Open space and recreation – controlled activity;
- Rule 15.2.17.1 – Vegetation and landscape – controlled activity;
- Rule 15.2.18.1 – Easements – controlled activity;
- Rule 15.2.3.4 – Non-complying subdivision activities – non-complying activity as a result of breaching Zone Standard 15.2.11.3;
- Rule 7.5.5.2(xvi) combined with Rule 7.5.3.4(vi) – Earthworks – restricted discretionary activity with discretion restricted to the volume, area and scale of earthworks, the height of cut and fill slopes, environmental protection measures and the protection of archaeological sites and sites of cultural heritage.

9. Overall the application is to be considered as a non-complying activity.

Relevant Statutory Provisions

10. As a non-complying activity it is necessary for the application to pass one of the threshold tests of s.104D before I can consider the application under s.104. If I reach the conclusion consent can be granted, I can impose conditions under s.108 and s.220.
11. The s.42A report raised the possibility of s.106 being relevant. I will refer to that in due course.

12. There are no matters of national importance under s.6 of the Act that are relevant, nor was any matter under s.8 brought to my attention. I will discuss the provisions of s.5 and s.7 when considering the application under s.104.
13. No provision in the Regional Policy Statement was brought to my attention.

Notification

14. The application was subject to limited notification. The registered owners of 12 adjacent properties were notified on 21 November 2013. Six submissions were received in time, five opposing the application and one in support.
15. I have reviewed all the submissions received, and had the benefit of hearing from most of the submitters at the hearing.

Background

16. This application (or alternatively “the Swan application”) and application RM130844 by Larchmont Developments Ltd (“the Larchmont application”) relate to adjoining sites zoned Low Density Residential at the end of Atley Road, Arthurs Point. The two applications are closely related. The Larchmont land gains legal road access via a right of way over part of the Swan land. However, that right of way also provides access for another 14 properties, the roadway on it is formed to basic standards, and topography and site boundaries create limitations on the ability of the right of way to carry more traffic. In particular, at one point the legal width of the site narrows to 6m, and that is also the location that a second accessway serving the properties to the south of the Swan land joins the right of way easement. This was referred to as “the pinch point” by all parties.
17. Following discussions with the Council as roading authority, the solution proposed to enable subdivision of the Larchmont property was to turn the right of way into a legal road thereby providing direct road frontage to the Larchmont property and easing the ability to subdivide it.
18. The Swan application is the vehicle for creating the legal road by creating a lot encompassing the right of way and dedicating that as road. A recently granted consent (RM130558) had subdivided the Swan land so as to separate the land zoned Low Density Residential from that zoned Rural General. This subdivision

proposal only involved the Low Density Residential land. Therefore it is a subdivision of Lot 1 created by consent RM130558 and can only proceed with the completion of that subdivision.

Hearings

Hearing on 25 February 2014 – Appearances

For Applicant

- Mr W Goldsmith, solicitor

Submitters

- Mr R Taylor for himself and Ms L Taylor and for Mr & Ms Gousmett
- Ms S Kooy and Mr J Gavin
- Mr G Barker for himself and Ms M Jowett
- Ms K Ramsay for herself and her husband

Council officers

- Ms A Giborees, Senior Planner
- Mr B Devlin, Manager, Resource Consents
- Ms L Overton, Engineer
- Mr D Mander, Transport Policy and Stakeholder Manager
- Mr T Ray, Council Solicitor
- Ms L Ryan, Committee Secretary

Hearing on 16 April 2014 – Appearances

For Applicant

- Mr W Goldsmith, Solicitor
- Mr N Geddes, Planning Consultant
- Mr J Bartlett, Traffic Engineer

Submitters

- Ms S Kooy and Mr J Gavin
- Mr K Gousmett for himself and Ms R Gousmett
- Mr R Taylor for himself and Ms L Taylor
- Ms K Ramsay for herself and her husband

- Ms M Jowett
- Mr G Barker

Council officers

- Ms A Giborees, Senior Planner
- Ms L Overton, Engineer
- Mr D Mander, Transport Policy and Stakeholder Manager
- Ms J Macdonald, Council Solicitor
- Ms R Beer, Committee Secretary

19. Site visits were undertaken on 20 February 2014 (accompanied by Ms Giborees) and 16 April 2014 (alone).
20. The hearing of this application commenced on 25 February 2014. At that hearing the applicant expressed the view that, as the proposal involved no increase in demand on roading, no upgrading was required and, therefore, no consent had been sought for earthworks. In particular, it was suggested that proposed conditions requiring the construction of the road to a certain standard should not be imposed on this application.
21. I was advised that the subdivision application lodged in respect of the Larchmont land (RM130844) would lead to increased traffic movements on the road to be dedicated and that application would cover the required earthworks on proposed Lot 4 on the Swan land.
22. After hearing Mr Goldsmith's submissions on behalf of the applicant I sought legal advice from Mr Ray. As a result of that advice I deferred consideration of this application until an application had been received for the earthworks required to construct the road. I also requested the provision of a traffic safety report on the proposed road, and stated that I when I reconvened the hearing of this application I would hear the Larchmont application at the same hearing. I set out my reasons in a Memorandum issued on 26 February 2014, which is attached as Appendix 2.
23. On 18 March 2014 Mr Goldsmith lodged an application for earthworks, a traffic safety report and comments on my earlier Memorandum. I reviewed the material provided and in a Memorandum dated 20 March 2014 (attached as Appendix 3) concluded that the additional material did not require public notification, but that it

should be provided to all submitters. I also provided the Council officers the opportunity to provide a supplementary s.42A report subject to a copy of it being provided to the applicant and each submitter not less than 5 working days prior to the reconvened hearing.

24. At the reconvened hearing on 16 April 2014 Mr Goldsmith made some additional submissions and adopted the s.42A reports subject to comments made in his submissions. He called no evidence, but I took the opportunity to question Mr Bartlett about the basis of his reports.
25. I heard detailed submissions from each of the submitters such that I was able to fully understand their concerns.
26. Before hearing from the Council officers I asked them to specifically address a number of matters that had been raised in the submissions. The officers did not alter their recommendation that consent be granted but suggested that some alterations to conditions would be required.
27. In his reply on behalf of the applicant, Mr Goldsmith also noted a number of matters that could be addressed through amended conditions. I adjourned the hearing to enable him to consult with the Council officers as to an agreed set of recommended conditions.

The Evidence

28. It is important to note at this point that, subject to some changes to the recommended conditions, Mr Goldsmith adopted the s.42A reports, including the recommended conditions, as the applicants' evidence at the commencement of the hearing.
29. The only expert evidence received comprised the two reports prepared by Mr Bartlett, one on the roadway design and one on traffic safety, and the s.42A report and associated documentation provided by the Council officers.
30. Mr Bartlett prepared two reports. The first was in the form of a letter to Mr Goldsmith, dated 2 December 2013, providing a design recommendation for the road proposed on Lot 4. Mr Bartlett referred in this to various urban road design requirements used by the Council and the cadastral and topographical constraints of the site before concluding that generally a 6.0m wide carriageway

was appropriate with a 1.4m wide footpath. At the pinch point he concluded the carriageway could narrow to 3.1m to provide a single lane that would operate similarly to a one-lane bridge. East of the pinch point Mr Bartlett considered a 5m wide carriageway adequate. This report was not included with the application as lodged and was only provided after I sought the additional information at the February hearing.

31. Mr Bartlett's second report, also in the form of a letter to Mr Goldsmith, was dated 18 March 2014. It is described as providing "*a safety comment for the proposed design recommendations for*" the proposed road on Lot 4. The main conclusions he reached in this report were:

- At the pinch point, priority be given to eastbound traffic (that is travelling from the existing Atley Road) – westbound traffic would give way and queue in the area east of the pinch point;
- The vehicle access for the southern properties at the pinch point be clearly demarcated so as to show a lower priority to vehicles leaving that accessway;
- The footpath and kerb be located on the southern side of the carriageway to reduce the need for a guardrail.

32. In response to my questions, Mr Bartlett stated that he had not calculated potential traffic flows in preparing either report. He advised that he had worked on the potential development, but did not explain what level of development that entailed.

33. Mr Bartlett considered that the only area of potential traffic conflict was at the pinch point, and the give way recommendation should minimise any conflict. He considered that vehicles leaving the adjoining accessway would need to pull over the footpath to have sufficient visibility to the right when turning.

34. Mr O Brown of MWH provided the Council officers with traffic engineering advice. The advice dated 3 April 2014 responded to Mr Bartlett's two reports and contained the following recommendations:

- The eastern approach road width be increased to 5.8m ...;

- Safety barriers are provided along the proposed road consistent with Paragraph 3.3.4 of Councils [sic] amendments to the NSZ [sic] 4404:2004;
- Priority at the one lane section is for westbound vehicles (travelling towards Atley Road) with eastbound vehicles (into the subdivision) required to give way.

35. Mr Brown responded to the revised road design plans on 15 April 2014. He noted that:

- the eastern approach had been widened to 5.8m;
- a safety barrier would be required on the eastern approach, but probably not on the curve;
- no further detail was provided on one-way operation; and
- footpaths were shown as 1.2m wide when they should be 1.4m minimum.

36. Ms Jowett lives at 100 Atley Road, which is immediately south of proposed Lot 4, east of the pinch point. Her concerns can be summarised as follows:

- There had been no consultation with her by the applicant;
- The retaining wall and barrier on the eastern approach would cause freezing of part of her property and would harm existing planting;
- There had been no traffic modelling;
- The experts cannot agree which is the safe option for the road;
- The proposed road on Lot 4 would not be safer than the present access as it would be faster with more traffic;
- The proposal would alter the character of the community.

37. Ms Kooy and Mr Gavin reside at 107B Atley Road. This property obtains access over the Swan land right of way and also over the Larchmont land. The concerns they raised relevant to this application were:

- The one-way pinch point on the proposed road would not be adequate for future development of the area;

- The proposed one-way solution is not a safe option;
- The right of way should be upgraded to a safe standard.

38. Mr Barker, from 100 Atley Road, raised the following concerns:

- The cross-sections on the road design plans do not show the steep slope to the west of the road on proposed Lot 1;
- The limited sight-lines approaching the pinch point make it dangerous;
- Where the footpath is shown ending at the northern extent of the proposed road there is nothing for it to connect to.

39. Mr Gousmett and his wife reside at 96 Atley Road. This is within the group of properties that obtains access via the right of way over Lot 6 DP 23786 which joins proposed Lot 4 at the pinch point (“the southern accessway”). Mr Gousmett provided two written sets of evidence as well as 5 photographs he had taken along the right of way to demonstrate the existing width and topographical constraints. He raised a number of concerns with the design of the proposed road, as well as expressing his concern that inadequate work on a traffic assessment had been undertaken. The design concerns raised included:

- An independent road safety audit should be undertaken post design rather than post construction;
- The plan of subdivision does not adequately provide for the required road width where proposed Lot 4 adjoins proposed Lot 1;
- No serious attempt has been made to obtain the additional land required to ease the pinch point;
- The design of the new road should not set the west side of the footpath at a height that increases the gradient on the southern accessway.

40. Mr Gousmett also provided suggestions as to how water supply could be improved to the new areas of development, and suggested that Chorus be encouraged to lay fibre optic cable in the roadway while it is being constructed.

41. Ms Ramsay resides at 107 Atley Road. This adjoins the north boundary of proposed Lot 4 and the Larchmont land. Her concerns in respect of this

application were primarily in respect of the proposed retaining wall along the boundary with Lot 4.

42. Mr Taylor resides at 108 Atley Road, one of the sites which obtain access via the southern accessway. While he would welcome an improvement to the current road access, he was concerned that the proposal was too narrow, did not make adequate provision for cyclists, and that to grant consent would merely continue the shortfall in adequacy of the existing access.
43. Prior to giving the Council officers the opportunity to comment, I asked them to deal with the following matters in their response:
- The issue of a post-design safety audit versus post-construction;
 - The adequacy of the analysis undertaken of traffic volumes;
 - The adequacy of the design given expected traffic volumes;
 - The adequacy of the number of cross-sections on the road adjoining proposed Lot 1 to determine whether guardrails are required;
 - The footpath link to the existing Atley Road; and
 - Whether Lot 4 should be aligned with the actual designed road.
44. Mr Mander advised that the Council proposed to part-fund the proposed road on Lot 4. As a consequence, it would be appropriate for there to be a safety audit of the design prior to construction as well as a post-construction safety audit. He also advised that the existing portion of Atley Road that the proposed road would connect to is yet to be finally designed and constructed. The final design would take account of the footpath on the west side of the proposed road and incorporate some provision to carry that on alongside the existing road.
45. While Ms Overton advised that more information was needed on future traffic volumes, that did not appear to change her recommendation that consent be granted subject to conditions.
46. She agreed that the cross-sections did not provide adequate information to determine whether guardrails would be required and considered the conditions should be amended to ensure the provision of guardrails reflected what was

required. She also agreed that the road boundary should align with the constructed alignment and considered that could be dealt with by a condition.

47. In terms of sightlines, Ms Overton considered the provision of signage and its location, plus the location of barriers should be controlled to maximise sight lines.

48. Ms Giborees maintained her recommendation that consent be granted subject to conditions.

49. In his reply, Mr Goldsmith made the following points:

- It was not necessary to require more information on future subdivision potential;
- While more cross-sections were not needed, it would be appropriate to erect barriers where steep slopes required it;
- It would be appropriate for the boundary of Lot 4 to be determined post-construction;
- It was accepted that a post-design safety audit was required;
- The link to the existing road was wide enough for there to be flexibility in alignment of the road and footpath;
- The shading concern of Ms Jowett would require a higher structure than is being proposed;
- The speed of traffic on the new road can be controlled by Council's normal measures such as speed humps;
- While Mr Bartlett and Mr Gousmett referred to NZS4404:2004, NZS4404:2010 suggested that the appropriate dimensions of a carriageway serving up to 200 houses would be 5.5-5.7m wide with a 1.2m footpath;
- While a condition can require a wider corridor to provide for future development beyond that proposed, a condition cannot require construction of a road suitable for development beyond that proposed;

- The minutes of a Council meeting held on 26 September 2013 agreeing to a certain standard of road were a relevant consideration for me, but did not carry much weight;
- An advice note regarding the laying of fibre optic cable by Chorus would be acceptable.

50. The hearing was adjourned so that I could receive an up-to-date certificate of title and a revised subdivision plan correcting an inaccurate dimension included on the plan lodged with the application. These were received on 22 April 2014.

Issues in Contention

51. The major issue, raised by all submitters in opposition, was the safety of the proposed road at the pinch point. Related to this was the concern that inadequate consideration to the potential of future development that could occur if the accessway became a legal road and the consequent increase in traffic flows.

52. A secondary issue was the fact that this subdivision was designed to provide direct legal frontage to the Larchmont land and that land already has a subdivision consent, albeit under appeal, which would provide access to Mathias Terrace. Therefore, an alternative existed for the Larchmont land and this subdivision was therefore unnecessary.

53. I will deal with the last issue first. At the hearing I explained that a resource consent is permissive, in that it allows the holder to undertake an activity, but does not require them to. There is nothing in the scheme of the Resource Management Act that stops a landowner applying for more than one consent. Thus, the fact that Larchmont had obtained a subdivision consent with access to Mathias Terrace did not in itself preclude that company from applying for an alternative subdivision consent with access to an extended Atley Road.

54. What I did not mention, but now include for completeness, is that the consent granted by the Council to Larchmont (RM110238) has been appealed to the Environment Court. Section 116 of the Act provides that a consent that has been appealed cannot commence until the appeal has been dealt with by the Environment Court or withdrawn. Thus, while Larchmont may have another subdivision consent, it is in no position to use that consent until the Environment

Court determines the appeal in Larchmont's favour, or the appellant withdraws the appeal. Even if I considered Larchmont's consent RM110238 relevant to consideration of this application, I can give it no more weight than application RM130844 heard at the same time as this application.

55. While it could be argued that the only relevance the Larchmont application RM130844 has to this application is that it also seeks consent for the earthworks to construct the road on proposed Lot 4, I remain of the view expressed in my Memorandum of 26 February 2014 that there is a commonality of purpose of the Swan and Larchmont applications that links their consideration. In my view, at a minimum, the development potential of the Larchmont land enabled by the creation of a legal road on Lot 4 will lead to a level of traffic generation that must be considered when assessing the adequacy of the proposed road.

Traffic Safety

56. The proposed road proposes a two lane carriageway 6m wide from the existing Atley Road to a point some 7m west of the pinch point. The road narrows from there to the pinch point where it will be 3.1m wide. This narrow section extends for almost 12m before widening gradually over some 26m to 5.8m wide, which width it retains to the cul-de-sac head. In addition, a 1.4m wide footpath is proposed the full length of the new road. The recommended conditions require formation and sealing of the carriageway to Council's urban standards. This compares with the existing accessway which has an unsealed formation with a width for most of its length of some 4m, with no footpath.
57. Two traffic engineers, Mr Bartlett for the applicant, and Mr Brown from MWH for the Council, have examined the road design and concluded, taking into account the additional traffic from the Larchmont subdivision, that the road will be safe provided various conditions are imposed. While there may have been some disagreement between the traffic engineers about the most suitable conditions, they both agreed it can be made safe.
58. I accept that evidence and agree with Mr Goldsmith that the proposed road would be an improvement over the existing access.
59. With respect to the potential for other properties to develop or subdivide such as to increase traffic flows on the road, I consider Council control of the road will put it in a better position to acquire additional land for widening than could be

achieved by a private individual. I also note that Rule 15.2.8.1 enables the imposition of conditions on subdivision consents requiring the widening or upgrading of existing roads.

60. I accept that the District Plan provisions provide the potential for dwellings to be erected on sites at a density of 1 per 450m² as a permitted activity. Using the information as to lot sizes provided on the subdivision plan and Mr Goldsmith's Plan A I have calculated that theoretically 68 additional dwellings could be built as a permitted activity on all the sites obtaining access from the proposed road, excluding the Larchmont land. Based on the subdivision plan lodged for the Larchmont application, a further 11 dwellings could locate on that land. Of the 68 theoretical dwellings, 22 could be developed on the submitters' properties and 21 on Lot 3 proposed in this subdivision. This calculation takes no account of any restrictive covenants on any of the sites that may limit future subdivision, nor the reality that it is unlikely that every site would be developed to the maximum potential and then subdivided.
61. While it is theoretically possible for there to be significant increase in the number of dwellings and consequent increase in traffic generation, I consider it fanciful that any significant number of additional dwellings would be built without separate lots being created for such dwellings. Thus, while the Larchmont proposal would increase the amount of traffic, I consider it unlikely that much additional traffic will be generated by further development without the Council having the ability to require a contribution to further road upgrading.
62. Finally, Mr Goldsmith referred me to NZS4404:2010 and suggested that standard provided for up to 200 dwellings off a road with a carriageway of 5.5-5.7m. I have had the opportunity to review the relevant parts of that standard. I think the best that can be said in this situation is that the new standard identifies that lower speed environments may be appropriate for a larger number of dwellings than the former standard. However, the context of this road is rather different from the typical suburban street in that other than at the cul-de-sac head, no dwellings will get direct access onto the road, reducing the points of vehicle conflict considerably.
63. Overall, I accept that with the imposition of conditions and the application of post-design and post-construction safety audits, the proposed road will provide a safe traffic environment, including for pedestrians and cyclists.

Effects on the Environment

Permitted Baseline

64. As all subdivision is at minimum a controlled activity, there is no permitted baseline in respect of the subdivision.
65. As a permitted activity the maximum quantity of earthworks is 100m³, with a maximum area of bare soil from any earthworks where the average depth exceeds 0.5m is 200m². The maximum height of a cut shall not exceed 2.4m and the maximum height of fill is not to exceed 2m. In addition, the height of any cut or fill is not to be greater than the distance to the site boundary. In practice, the amount of earthworks that can be undertaken as a permitted activity is barely sufficient to establish the footing and driveways for a new dwelling.
66. The dimensions of the proposed road are such that in terms of the quantities of earth moved and the area exposed, the permitted baseline is of little relevance. However, permitted depths of fill and cut do provide a useful baseline to consider the effects of the earthworks on adjoining properties.

Existing Environment

67. The land served by the existing rights of way comprises in large part a small enclave of large-lot residential development sitting on a terrace bounded on three sides by the Shotover River. The land slopes from north to south. To the north the terrace has been developed as an urban residential suburb.
68. Within the site itself, proposed Lot 3 is the most amenable to future urban development. Proposed Lot 1 drops steeply away from the accessway, while proposed Lot 2 rises above it.
69. I was not made aware of any existing consents which should be considered part of the existing environment, other than RM130558 referred to above.

Positive Effects

70. As I noted above, the reconstruction of the existing right of way to a road with the standards as required by the conditions will improve the standard of access for all those presently using the right of way.

71. The change in status from private accessway to legal road will also enhance the development opportunities of all residentially-zoned properties presently gaining access from the right of way. The change from private access to Council-owned road will also remove the direct maintenance responsibilities of the right of way users.

Traffic Safety

72. Effects under this heading were the ones that received the most attention in both the submissions and at the hearing. I have discussed this in detail above and am satisfied that with the imposition of conditions such effects will be minor.

Construction Effects

73. The suite of conditions recommended in respect of the earthworks serves to limit the potential for adverse effects on neighbouring properties by –
- Restricting the hours of operation;
 - Requiring the implementation of an approved traffic management plan;
 - Restricting earthworks to within the boundaries of the site;
 - Requiring all work to cease and independent investigations if any justifiable complaints of vibration are received by the Council;
 - The management of silt and sedimentation;
 - Measures to prevent deposition of debris on surrounding roads.
74. It must also be recognised that any construction effects will be temporary. Taking all of those matters into account I am satisfied that the construction effects will be minor.
75. Ms Ramsay raised concerns regarding the cut along the north side of the proposed road adjoining her boundary. A timber retaining wall is proposed along this cut. The Council engineer's advice is that such a wall would be satisfactory given the nature of the ground and the size of the cut. I accept that advice and also note that only part of the cut along the southern boundary of her site

exceeds the permitted baseline. I conclude that any effects of that cut on the Ramsay property would be minor.

Shading Effects

76. This was a concern of Ms Jowett. As I noted above, the terrace on which these properties are located falls in a roughly north to south direction. Ms Jowett's property sits lower than the existing accessway, which, where it adjoins Ms Jowett's property, is lower than the land immediately to the north.
77. An examination of sections F-F', G-G', H-H' and I-I' on Clarke Fortune McDonald & Associates Drawing 9362-35 Sheet 4 Revision C dated 8 April 2014 shows that it is not proposed to particularly alter the elevation of the carriageway. The section that shows the greatest effect on the Jowett property, H-H', shows that the roughly 2m difference in elevation between the property boundary and the roadway will be moved some 2m closer. It also shows that the bank on the other side of the roadway will remain some 2-3m higher than the carriageway.
78. The other cross-sections adjacent to the Jowett property show a similar movement of the height differential closer to the boundary, but of a much smaller amount. I-I' has the greatest height differential between the Jowett property and the carriageway, some 3m, but at that point the small amount of fill required for the footpath is some 4m from the boundary.
79. Taking those changes into account, along with the hedge planted along the northern boundary of the Jowett property, and allowing for the potential erection of a guardrail or other barrier along part of the roadway, I conclude that if there is any additional shading in winter as a result of the proposed construction, it would be minor.

Effects on Character of Community

80. This matter was also raised by Ms Jowett and Mr Barker. Their submission expressed the view that the existing large-lot subdivision character of the area is desirable and should not be altered.
81. The District Plan has zoned the land, including that of the submitters, Low Density Residential. That is an urban zone, not rural one, and accordingly provides for subdivision into 800m² lots or development followed by subdivision

down to 450m² lots. Thus the character of the area as expected by the District Plan is more intense than the residents presently enjoy. In my view, that more intense level of development is akin to a permitted baseline and the effects that may arise from such a level of development are to be expected. Thus, I conclude that if there is any change in the character either as a direct or indirect result of this subdivision which is within the level of development provided for by the zone provisions, such an effect must be considered negligible.

Effects on Property Development Potential

82. One of the direct effects on adjoining properties of changing the existing accessway to a legal road will be that the road setback requirement (Rule 7.6.5.1(i)) is more onerous than the internal setback rule (Rule 7.6.5.1(ii)) which applies on boundaries adjoining private accessways. Although this was raised in submissions, no issue was made of it at the hearing.
83. I note that Rule 7.6.5.1(i) provides that where there is an existing building on a site, then the road setback is the shortest distance between that building and the road. As it appears that all of the potentially affected sites, other than Lots 1 and 2 created by this subdivision, have existing buildings, this change in land status is unlikely to have any adverse effect on the development potential of those lots. Nor will it leave property owners reliant on existing use rights.

Lighting

84. Concerns were raised about the effects street lighting would have on the character of the area. In some respects this is the same as the issue of the potential change to the character of the area discussed above. However, I accept that the nature of street lighting installed can have effects that go beyond what could be appropriate for a low density residential area. I consider that the inclusion of a condition that any street lighting be designed to provide adequate safety for pedestrians at night while minimising light spill onto adjoining land and into the night sky above the road would ensure that any adverse effects from street lighting were minor.

Other Effects

85. Ms Giborees presented a comprehensive analysis of the potential effects of the proposal in terms of:

- Lot sizes and dimensions;
- Subdivision design;
- Property access;
- Natural and other hazards;
- Infrastructure; and
- Stormwater.

86. I accept her conclusions that, subject to the imposition of appropriate recommended conditions, potential effects in respect of those matters would be minor.

Overall Conclusion in Respect of Effects on the Environment

87. I am satisfied that the effects of this proposal on the environment, subject to the conditions that would be imposed, would be minor or less than minor.

Objectives and Policies of the District Plan

88. I have reviewed the relevant objectives and policies in the District Plan. I note that those in the Residential Chapter aim for urban residential areas that are distinct from rural development, consistent with the view I expressed above regarding the concerns over the potential for there to be a change of character.

89. Having reviewed all the relevant objectives and policies I am satisfied that this proposal is overall consistent with them. I am also satisfied the proposal is not contrary to the objectives and policies of the Plan.

Other Matters

Consultation

90. The lack of consultation by the applicant was raised as an issue in several submissions. The Resource Management Act imposes no requirement for an applicant to consult with neighbours or any other person (see s.36A). While it

may be good practice to undertake consultation, and in my experience consultation often assists the applicant by reducing adverse submissions, the choice of whether to consult or not is entirely that of the applicant.

Cost

91. Several submitters were concerned that no costing details were provided. In the same way that the Resource Management Act does not require an applicant to show that a proposed activity will be profitable, the Act does not require an applicant to explain the likely costs and how those can be met.
92. It is apparent from the written submissions that the concerns related to the potential expenditure of the Council as a funding contributor to the road formation on Lot 4. That is not a matter I can address.

Section 104D

93. I have concluded that the adverse effects of the proposal on the environment will be minor and that the proposal is not contrary to the objectives and policies of the District Plan. I am therefore able to consider the proposal under s.104 and determine whether to grant or decline consent.

Section 106

94. There are no natural hazard or access issues which are a bar to granting consent.

Part 2 and Assessment Under S.104

95. I must have particular regard to the matters listed ins.7 of the Act. The following matters are relevant:
- (b) *The efficient use and development of natural and physical resources:*
 - (c) *The maintenance and enhancement of amenity values:*
 - (g) *Any finite characteristics of natural and physical resources:*

96. The subject land is zoned for residential purposes. The provisions of the Low Density Residential Zone, through various requirements of the District Plan, set a level of amenity values that is considered appropriate in this zone. In terms of subdivision, these relate to lot size, access provisions, and the provision of services to the new lots. The lot sizes comply with the provisions of the District Plan. While the three residential lots are not provided with services, the applicant has proposed a condition to be imposed as a consent notice allowing no further subdivision or development of these sites until such services are provided. Thus, no diminution of amenity values will occur as a result of this subdivision.
97. The formation and legalisation of the road on Lot 4 will improve the amenity values of those persons using the present accessway.
98. It is also relevant that the availability of residentially-zoned land is a limited, and ultimately finite, resource in the Wakatipu Basin. The creation of legal and formed road to replace an existing metalled private accessway will enable the better utilisation of residentially-zoned land, both on the applicants' land and on neighbouring land also served by the accessway. That represents an efficient use of natural and physical resources.
99. While the earthworks could have the potential to adversely affect amenity values, I am satisfied that the suite of conditions attached to the earthworks consents would minimise any such effects.
100. When considered in the broad way that it is necessary to approach s.5 of the Act, this proposal represents sustainable management of natural and physical resources. It enables the community to make use of residentially-zoned land for residential purposes and any effects beyond those that can be expected given the zoning, can be mitigated, remedied or avoided through the imposition of conditions.
101. I am satisfied that consent can be granted subject to adequate conditions.

Conditions

102. I have been provided with a set of recommended conditions which differ from those attached to the s.42A report. The differences arose as a result of matters discussed during the hearing and discussion held post-hearing between the applicant's advisors and Council officers. I am generally satisfied that those

recommended conditions are appropriate in ensuring this application achieves the purpose of the Act.

103. However, there are three amendments that I am making to the conditions to ensure the purpose of the Act is achieved. All of these amendments are to the subdivision consent.

104. The first is an amendment to Condition 11 relating to the approved survey plan. Section 2.1 of the Assessment of Effects on the Environment stated that Lots 1, 2 and 3 would be held together in one certificate of title. This amendment requires that be shown on the survey plan.

105. The second amendment relates to the formation of the road on Lot 4 and the provisions of Condition 7(b). The applicants agreed at the hearing that the formation of the roadway on Lot 4 should not increase the gradient on the right of way contained in Lot 6 DP 23786. The following condition to be inserted in the list of bullet points addresses this:

The horizontal and vertical alignment of the formed roadway shall not increase the gradient of the right of way within Lot 6 DP 23786.

106. The third amendment is to insert provisions in Condition 7(d) to limit the light spill effects of street lighting as discussed above. The condition will therefore read:

The provision of road lighting in accordance with Council's road lighting policies and standards, including the Southern Light lighting strategy. All lights shall be located and designed so as to minimise light spill on adjacent properties and into the night sky. Any road lighting installed on private roads/rights of way/access lots shall be privately maintained and all operating costs shall be the responsibility of the lots serviced by such access roads. Any lights installed on private roads/rights of way/access lots shall be isolated from the Council's lighting network circuits.

Decision

107. Pursuant to s.104B of the Resource Management Act 1991 consent is hereby granted to M G Swan and B M Roney as Executors to:

A. Subdivide Lot 1, being a lot created by subdivision consent RM 130558 which was a subdivision of Lots 1 and 2 DP 307630 contained within Computer Freehold Register 29585, and Part Section 1 Survey Office Plan 24074 contained in Computer Freehold Register OT17C/968, to create four

lots as shown on Clark Fortune McDonald & Associates drawing entitled "Lots 1-4 being a Proposed Subdivision of Lot 1 RM130558" Job No. 9362 Drawing 37A Dated 16.04.14 for the reasons set out above, subject to the conditions in Appendix 1 Section A;

- B. Undertake earthworks on Lot 4, as shown on Clark Fortune McDonald & Associates drawing entitled "Lots 1-4 being a Proposed Subdivision of Lot 1 RM130558" Job No. 9362 Drawing 37A Dated 16.04.14, in accordance with the Clark Fortune McDonald & Associates drawings entitled "Atley Road Extension" Job No. 9362 Drawing No. 36 Sheets 1 to 4 Rev C dated 08.04.14 for the reasons given above and subject to the conditions in Appendix 1 Part B.



Denis Nugent
Hearing Commissioner
2 May 2014

APPENDIX 1: CONDITIONS

Section A: Subdivision Consent Conditions

General Conditions

1. That the development must be undertaken/carried out in accordance with the plans:

a) Clark Fortune McDonald & Associates Limited:

- 'Lots 1 – 4 Being a Proposed Subdivision of Lot 1 RM130558' – Job No. 9362, Drawing No. 37A, dated 16.04.14

stamped as approved on 2 May 2014

and the application as submitted, with the exception of the amendments required by the following conditions of consent.

2. This consent shall not be exercised and no work or activity associated with it may be commenced or continued until the following charges have been paid in full: all charges fixed in accordance with section 36(1) of the Resource Management Act 1991 and any finalised, additional charges under section 36(3) of the Act.

Engineering

General

3. All engineering works shall be carried out in accordance with the Queenstown Lakes District Council's policies and standards, being New Zealand Standard 4404:2004 with the amendments to that standard adopted on 5 October 2005, except where specified otherwise.

To be completed prior to the commencement of any works on-site

4. Prior to the commencement of any works on site, the consent holder shall provide a letter to the Principal Resource Management Engineer at Council advising who their representative is for the design and execution of the engineering works and construction works required in association with this subdivision and shall confirm that these representatives will be responsible for all aspects of the works covered under Sections 1.4 & 1.5 of NZS4404:2004 "Land Development and Subdivision Engineering", in relation to this development.
5. At least 5 working days prior to commencing work on site the consent holder shall advise the Principal Resource Management Engineer at Council of the scheduled start date of physical works.
6. Prior to commencing works on site, the consent holder shall submit a traffic management plan to the Road Corridor Engineer at Council for approval. The Traffic Management Plan shall be prepared by a Site Traffic Management Supervisor. All contractors obligated to implement temporary traffic management plans shall employ a qualified STMS on site. The STMS shall implement the Traffic Management Plan. A copy of the approved plan shall be submitted to the Principal Resource Management Engineer at Council prior to works commencing.
7. Prior to the commencement of any works on the site the consent holder shall provide to the Principal Resource Management Engineer at Council for review and certification, copies of specifications, calculations and design plans as are considered by Council to be both necessary and adequate, in accordance with Condition (3), to detail the following engineering works required:
 - a) The consent holder shall engage an independent and suitably qualified and experienced traffic engineer to carry out a detailed design safety audit in general accordance with the NZTA Manual "Road Safety Audit Procedures For Projects". This shall include

confirmation that appropriate traffic signs and road marking have been installed in accordance with the New Zealand Transport Agency's Manual of Traffic Signs and Markings (MOTSAM). The consent holder shall comply with any recommendations at their own cost. A copy of this report shall be submitted to Council for review and approval.

- b) The formation and sealing of Atley Road within Lot 4, in accordance with Council's standards as agreed by Council's Transport Policy and Stakeholder Manager, Denis Mander at Council's meeting on the 26 September 2013 and the recommendations made in the MWH report received 3 April 2014. This shall include:
- The general carriageway width for the two lane section is to be formed to a width of 5.8m on the straights and 6.0m on the horizontal curve.
 - Safety barriers shall be provided for vehicular and pedestrian safety where the internal accessways and footpath run parallel with land which drops away to a height of greater than 1m at an angle of greater than 45° within 2m of the edge of the accessway and footpath, in accordance with Clause 3.3.4 of QLDC's Development and Subdivision Engineering Standards (amendments to NZS 4404:2004).
 - The eastern approach road width is increased to 5.8m to be consistent with the general road width in Bullet Point 1 and provide safe operation with respect to the footpath width and users.
 - Priority at the one lane section is for westbound vehicles (travelling towards Atley Road) with eastbound vehicles (into the subdivision) required to give way.
 - The provision of a 1.4m wide footpath.
 - The one lane section of road is to be formed to 3.1m in width.
 - No structures shall be placed within the pinch point area of the accessway that may obstruct existing sight lines from the right of way within Lot 6 DP 23786.
 - The horizontal and vertical alignment of the formed roadway shall not increase the gradient of the right of way within Lot 6 DP 23786.
 - Signage and road markings. No stopping on one side shall be clearly defined. Location of limit lines and extent of one lane section must be clearly defined.
 - Details of the earthworks required for the provision of the Atley Road upgrade. This shall include details on the reinforced earth fill system proposed for the fill batter slopes.
 - Sealing of existing unsealed vehicle crossings to the boundary.
- c) A stormwater disposal system to cater for the stormwater from the carriageway shall be designed in accordance with Council's standards.
- d) The provision of road lighting in accordance with Council's road lighting policies and standards, including the Southern Light lighting strategy. All lights shall be located and designed so as to minimise light spill on adjacent properties and into the night sky. Any road lighting installed on private roads/rights of way/access lots shall be privately maintained and all operating costs shall be the responsibility of the lots serviced by such access roads. Any lights installed on private roads/rights of way/access lots shall be isolated from the Council's lighting network circuits.
- e) The provision of Design Certificates for all engineering works associated with this subdivision submitted by a suitably qualified design professional (for clarification this shall include all Roads). The certificates shall be in the format of the NZS4404 Schedule 1A Certificate.
- f) A site management plan that details silt and sedimentation mitigation for the Atley Road works and the site works. These measures shall be implemented prior to the commencement of any earthworks on site and shall remain in place for the duration of the project, until all exposed areas of earth are permanently stabilised.

To be monitored throughout earthworks

8. If at any time Council, or its elected representatives, receive justifiable complaints about or proof of effects from vibration sourced from the earthworks activities approved by this resource consent, the consent holder at the request of the Council shall cease all earthworks activities and shall engage a suitably qualified professional who shall prepare a report which

assesses vibration caused by earthworks associated with this consent and what adverse effect (if any) these works are having on any other land and/or buildings beyond this site. Depending on the outcome of this report, a peer review may be required to be undertaken by another suitably qualified professional at the consent holder's expense. This report must take into consideration the standard BS 5228:1992 or a similar internationally accepted standard. Both the report and peer review (if required) shall be submitted to Council for review and certification. The Consent holder shall implement any measures proposed in the report that will mitigate any negative effects of the vibration.

9. The consent holder shall implement suitable measures to prevent deposition of any debris on surrounding roads by vehicles moving to and from the site. In the event that any material is deposited on any roads, the consent holder shall take immediate action, at his/her expense, to clean the roads. The loading and stockpiling of earth and other materials shall be confined to the subject site.
10. No earthworks, temporary or permanent, are to breach the boundaries of the site.

To be completed before Council approval of the Survey Plan

11. Prior to the Council signing the Survey Plan pursuant to Section 223 of the Resource Management Act 1991, the consent holder shall complete the following:
 - a) All necessary easements shall be shown in the Memorandum of Easements attached to the Survey Plan and shall be duly granted or reserved. This may include a right to drain stormwater in Gross over Lot 1.
 - b) Lots 1, 2 and 3 shall be shown as being held together in one certificate of title.
 - c) The formed road shall be contained within Lot 4.
 - d) Lot 4 may be shown as a road to be dedicated on the Survey Plan so that the following eight interests may remain EC.680119.5, T.931834.4, T.863574.10, T.5006042.1, T.931834.5, T.821620, T.931834.5, T.5731966.3, EC.863574.9, EC.884991.6, T.5389650.12, T.5548727.2, EC.8107012.5, Court Order 5812091.1, Part IV(a) Conservation Act 1987 and Section II Crown Minerals Act 1991.

To be completed before issue of the s224(c) certificate

12. Prior to certification pursuant to section 224(c) of the Resource Management Act 1991, the consent holder shall complete the following:
 - a) The submission of 'as-built' plans and information required to detail all engineering works completed in relation to or in association with this subdivision/development at the consent holder's cost. This information shall be formatted in accordance with Council's 'as-built' standards and shall include all Roads (including right of ways and access lots), Water, Wastewater and Stormwater reticulation (including private laterals and toby positions).
 - b) The completion and implementation of all works detailed in Condition (7) above.
 - c) The submission of Completion Certificates from the Contractor and the Engineer advised in Condition (4) for all engineering works completed in relation to or in association with this subdivision (for clarification this shall include all Roads). The certificates shall be in the format of a Producer Statement, or the NZS4404 Schedule 1B and 1C Certificate.
 - d) All signage shall be installed in accordance with Council's signage specifications and all necessary road markings completed.
 - e) On completion of the earthworks the consent holder shall submit to the Principal Resource Management Engineer at Council for review and certification an engineer's

PS4 Producer Statement for the permanent retaining walls within Atley Road which exceed 1.5m in height or are subject to additional surcharge loads.

- f) All earthworked/exposed areas shall be top-soiled and grassed/re-vegetated or otherwise permanently stabilised.
- g) All newly constructed stormwater mains shall be subject to a closed circuit television (CCTV) inspection carried out in accordance with the New Zealand Pipe Inspection Manual. A pan tilt camera shall be used and lateral connections shall be inspected from inside the main. The CCTV shall be completed and reviewed by Council before any surface sealing.
- h) The consent holder shall engage an independent and suitably qualified and experienced traffic engineer to carry out a post construction safety audit in general accordance with the NZTA Manual "Road Safety Audit Procedures For Projects". This shall include confirmation that appropriate traffic signs and road marking have been installed in accordance with the New Zealand Transport Agency's Manual of Traffic Signs and Markings (MOTSAM). The consent holder shall comply with any recommendations at their own cost. A copy of this report shall be submitted to Council for review and approval.
- i) The submission of Completion Certificates from the Contractor and the Engineer advised in Condition (4) for all engineering works completed in relation to or in association with this subdivision/development (for clarification this shall include all Roads). The certificates shall be in the format of a Producer Statement, or the NZS4404 Schedule 1B and 1C Certificate.
- j) The consent holder shall remedy any damage to all existing road surfaces and berms that result from work carried out for this consent.

Ongoing Conditions/Consent Notices

13. The following conditions of the consent shall be complied with in perpetuity and shall be registered on the relevant Titles by way of Consent Notice pursuant to s.221 of the Act.
- a) Lots 1, 2 and 3 may not be further subdivided or developed until appropriate services are to be installed. For the avoidance of doubt these services include water supply and wastewater disposal. At the time the site is further developed all necessary Development Contributions will apply.
 - i) Development contributions will be payable for these Lots at this time, noting that no historic dwelling equivalent credits as set out in the Council's Policy on Development Contributions are available for these lots.
 - ii) In the event that access & services are provided to these lots and development contributions are paid as per (i) above, this consent notice condition shall be deemed to have expired and may be removed from the Computer Freehold Register for Lots 1, 2 and 3.

Advice Note:

1. This consent does not trigger the requirement for Development Contributions.

Section B: Land Use Consent Conditions

General Conditions

1. That the development must be undertaken/carried out in accordance with the application as submitted, including additional information provided in the correspondence entitled

“RM130588 G F Swan – Memorandum Following Adjournment of Hearing” (dated 18 March 2014), with the exception of the amendments required by the following conditions of consent.

- 2a. This consent shall not be exercised and no work or activity associated with it may be commenced or continued until the following charges have been paid in full: all charges fixed in accordance with section 36(1) of the Resource Management Act 1991 and any finalised, additional charges under section 36(3) of the Act.
- 2b. The consent holder is liable for costs associated with the monitoring of this resource consent under Section 35 of the Resource Management Act 1991 and shall pay to Council an initial fee of \$100. This initial fee has been set under section 36(1) of the Act.

Engineering and Earthworks Conditions

General

3. All engineering works shall be carried out in accordance with the Queenstown Lakes District Council's policies and standards, being New Zealand Standard 4404:2004 with the amendments to that standard adopted on 5 October 2005, except where specified otherwise.

To be completed prior to the commencement of any works on-site

4. Prior to the commencement of any works on site, the consent holder shall provide a letter to the Principal Resource Management Engineer at Council advising who their representative is for the design and execution of the engineering works and construction works required in association with this subdivision and shall confirm that these representatives will be responsible for all aspects of the works covered under Sections 1.4 & 1.5 of NZS4404:2004 “Land Development and Subdivision Engineering”, in relation to this development.
5. At least 7 days prior to commencing excavations, the consent holder shall provide the Principal Resource Management Engineer at Council with the name of a suitably qualified professional as defined in Section 1.4 of NZS 4404:2004 who shall supervise the excavation and filling procedure. Should the site conditions be found unsuitable for the proposed excavation/construction methods, then a suitably qualified and experienced engineer shall submit to the Principal Resource Management Engineer at Council new designs/work methodologies for the works prior to further work being undertaken, with the exception of any necessary works required to stabilise the site in the interim.
6. At least 5 working days prior to commencing work on site the consent holder shall advise the Principal Resource Management Engineer at Council of the scheduled start date of physical works.
7. Prior to commencing works on site, the consent holder shall submit a traffic management plan to the Road Corridor Engineer at Council for approval. The Traffic Management Plan shall be prepared by a Site Traffic Management Supervisor. All contractors obligated to implement temporary traffic management plans shall employ a qualified STMS on site. The STMS shall implement the Traffic Management Plan. A copy of the approved plan shall be submitted to the Principal Resource Management Engineer at Council prior to works commencing.
8. Prior to the commencement of any works on the site the consent holder shall provide to the Principal Resource Management Engineer at Council for review and certification, copies of specifications, calculations and design plans as are considered by Council to be both necessary and adequate, in accordance with Condition (3), to detail the following engineering works required:
 - a) The provision of Design Certificates for all engineering works associated with this subdivision submitted by a suitably qualified design professional (for clarification this shall include all Roads). The certificates shall be in the format of the NZS4404 Schedule 1A Certificate.
 - b) A site management plan that details silt and sedimentation mitigation for the Atley Road works and the site works. These measures shall be implemented prior to the

commencement of any earthworks on site and shall remain in place for the duration of the project, until all exposed areas of earth are permanently stabilised.

To be monitored throughout earthworks

9. If at any time Council, or its elected representatives, receive justifiable complaints about or proof of effects from vibration sourced from the earthworks activities approved by this resource consent, the consent holder at the request of the Council shall cease all earthworks activities and shall engage a suitably qualified professional who shall prepare a report which assesses vibration caused by earthworks associated with this consent and what adverse effect (if any) these works are having on any other land and/or buildings beyond this site. Depending on the outcome of this report, a peer review may be required to be undertaken by another suitably qualified professional at the consent holder's expense. This report must take into consideration the standard BS 5228:1992 or a similar internationally accepted standard. Both the report and peer review (if required) shall be submitted to Council for review and certification. The Consent holder shall implement any measures proposed in the report that will mitigate any negative effects of the vibration.
10. The consent holder shall implement suitable measures to prevent deposition of any debris on surrounding roads by vehicles moving to and from the site. In the event that any material is deposited on any roads, the consent holder shall take immediate action, at his/her expense, to clean the roads. The loading and stockpiling of earth and other materials shall be confined to the subject site.
11. No earthworks, temporary or permanent, are to breach the boundaries of the site.

On completion of earthworks

12. On completion of the earthworks the consent holder shall submit to the Principal Resource Management Engineer at Council for review and certification an engineer's PS4 Producer Statement for the permanent retaining walls within Atley Road which exceed 1.5m in height or are subject to additional surcharge loads.
13. On completion of the earthworks the consent holder shall submit to the Principal Resource Management Engineer at Council for review and certification Completion Certificates from the Contractor and the Engineer advised in Condition (4) for all engineering works completed in relation to or in association with this development. The certificates shall be in the format of a Producer Statement, or the NZS4404 Schedule 1B and 1C Certificate.
14. All earthworked/exposed areas shall be top-soiled and grassed/re-vegetated or otherwise permanently stabilised.
15. The consent holder shall remedy any damage to all existing road surfaces and berms that result from work carried out for this consent.

Hours of Operation – Earthworks

16. Hours of operation for earthworks, shall be Monday to Saturday (inclusive): 8.00am to 6.00pm. Sundays and Public Holidays: No Activity

In addition, no heavy vehicles are to enter or exit the site, and no machinery shall start up or operate earlier than 8.00am. All activity on the site is to cease by 6.00pm.

Accidental Discovery Protocol

17. If the consent holder:
 - a) discovers koiwi tangata (human skeletal remains), waahi taoka (resources of importance), waahi tapu (places or features of special significance) or other Maori artefact material, the consent holder shall without delay:
 - (i) notify Council, Tangata whenua and New Zealand Historic Places Trust and in the case of skeletal remains, the New Zealand Police.

- (ii) stop work within the immediate vicinity of the discovery to allow a site inspection by the New Zealand Historic Places Trust and the appropriate runanga and their advisors, who shall determine whether the discovery is likely to be extensive, if a thorough site investigation is required, and whether an Archaeological Authority is required.

Any koiwi tangata discovered shall be handled and removed by tribal elders responsible for the tikanga (custom) appropriate to its removal or preservation. Site work shall recommence following consultation with Council, the New Zealand Historic Places Trust, Tangata whenua, and in the case of skeletal remains, the New Zealand Police, provided that any relevant statutory permissions have been obtained.

- b) discovers any feature or archaeological material that predates 1900, or heritage material, or disturbs a previously unidentified archaeological or heritage site, the consent holder shall without delay:
 - (i) stop work within the immediate vicinity of the discovery or disturbance and;
 - (ii) advise Council, the New Zealand Historic Places Trust and in the case of Maori features or materials, the Tangata whenua and if required, shall make an application for an Archaeological Authority pursuant to the Historic Places Act 1993 and;
 - (iii) arrange for a suitably qualified archaeologist to undertake a survey of the site.

Site work may only recommence following consultation with Council.

**APPENDIX 2: MEMORANDUM AND DETERMINATION CONCERNING ADDITIONAL MATERIAL
AND ADJOURNMENT**

IN THE MATTER

of the Resource
Management Act 1991

AND

Application RM130588 for
Subdivision Consent under
the Queenstown Lakes
District Plan by G F Swan

MEMORANDUM AND DETERMINATION CONCERNING
ADDITIONAL MATERIAL AND ADJOURNMENT

Introduction

108. On 25 February 2014 I commenced hearing this application by G F Swan to subdivide Lot 1 created by Subdivision Consent RM130558 at 111 Atley Road, Arthurs Point. Consent is sought to create four lots (three additional lots) of which one, proposed Lot 4, would be dedicated as road.
109. Mr Goldsmith appeared for the applicant. The s42A Report by Ms Giborees had been circulated prior to the hearing, and at the commencement she provided an Addendum to that report. I provided Mr Goldsmith with an opportunity to consider that Addendum before he opened his case.
110. After hearing Mr Goldsmith's opening submissions and questioning him on a number of points, I retired to obtain legal advice on a number of matters arising. I had the benefit of the legal advice of Mr Ray, the Council's solicitor.
111. On reconvening the hearing I stated that:
- (a) I would not proceed with further hearing of this application in accordance with s.91 of the Act until an application was received for the earthworks required for the upgrading of the road to be dedicated to standards acceptable to the Council; and
 - (b) I requested the applicant to provide a traffic safety report in respect of the proposed road under s.41C(3); and
 - (c) I would adjourn the hearing so that it could be heard in conjunction with the subdivision consent application RM130844 by J A Murphy & K A Strain.

112. I stated that I would provide my reasons in writing. This Memorandum sets out that reasoning.

Background

113. At the southern end of Atley Road there is an existing private road serving 17 lots (taking into account Consent RM130558) by way of easement over Lot 1 of Consent RM130558. Under the application before me, proposed Lot 4 would contain the bulk of this private road, although easements would remain in place over proposed Lot 3 to provide access to Lot 2 RM130558 and Lot 2 DP 398656.
114. The existing private road constrains development of the sites having legal access over it due to the provisions of Rule 14.2.4.1 iv, which requires *inter alia*:
- (a) Where the number of dwellings served by the private road is between 7 and 12, the formed width of the private road is to be 5m, and the legal width 6m. There is an existing pinch point adjoining Lot 2 DP 337696 where the legal width is only 4.5m.
 - (b) “No private way or private vehicle access or shared access shall serve sites with a potential to accommodate more than 12 units on the site and adjoining sites.”
115. Rule 14.2.2.3 ii provides that a breach of Rule 14.2.4.1 iv is a discretionary activity with discretion restricted to the matters specified in the rule. No matters are specified in the rule. I therefore take it that a full discretionary consent would be required for a subdivision which sought to add additional lots and/or a land use consent that sought to add additional dwellings on the sites served by the private road.
116. I note also that Rule 14.2.4.1 iv also requires all vehicular access to be in accordance with the standards contained in NZS4404:2004.
117. Mr Goldsmith explained that the reason for this application was to correct what he described as errors in previous subdivision consents that have left the owner of the land (Lot 1 DP 398656) immediately to the north of the Swan land unable to develop his land. I heard, along with a co-commissioner, an application for subdivision consent by the owner of that land in August 2011 (RM110238). The

Assessment of Environmental Effects prepared and lodged for that application, stated:

The applicant has investigated the option of upgrading the existing right of way off Atley Road which provides access to the subject site. However this right of way is located on land owned by a number of other parties and its legal width is 6 metres along its length. The legal width is sufficient under current Council standards to service the 12 properties currently accessed off that right of way but is not wide enough to service additional development.

Taking into account that current number of users, plus potential development of the remaining Low Density Residential zoned land serviced by that right of way, the right of way would need to be upgraded to a legal road with a width of 18 metres, a formed width of 6 metres and a 1.4 metre wide footpath. That is beyond the legal control of the applicant. There are also significant practical difficulties in achieving the required formed width, in addition to the legal difficulties in achieving the required legal width.¹

118. Mr Goldsmith advised that following the grant of that consent by the Council and its subsequent appeal to the Environment Court, Larchmont Developments Ltd had come to a three-way agreement with Mr Swan and the Council, which involves the creation of a legal road over the private road and thereby providing frontage to legal road for Lot 1 DP 398656 ('the Larchmont property'). I was advised that an application for subdivision application had been lodged by J A Murphy & K A Strain (RM130844) to subdivide the Larchmont property based on having frontage to the new road to be created by the Swan subdivision.

Discussion and Reasoning

119. In his submissions Mr Goldsmith quoted paragraphs from the Conclusion of Ms Giborees' s.42A Report which suggested the primary effect of the subdivision proposal was the change in legal status of proposed Lot 4 from private way to legal road; that upgrading of the road would be required before it could be accepted by the Council; and that the applicant has not provided sufficient information to enable an assessment of the effects of such upgrading work.
120. It was Mr Goldsmith's submission that:

¹ E Dixon, *Assessment of Effects on the Environment: Larchmont Developments Limited Subdivision Consent*, Clark Fortune McDonald & Associates, April 2011

- (c) The determination of whether the road should be upgraded before dedication was not an RMA matter but rather would be decided by the Council in its corporate capacity;
- (d) There will be no environmental effects at all arising from this application;
- (e) Affected persons would not lose the right to be consulted as an affected party in relation to upgrade works, and noted that Application RM130844 anticipates and proposes an upgrade of this vehicle carriageway and that all the submitters in opposition to the Swan application have submitted on RM130844;
- (f) A volunteered condition which reads -

This consent may not be implemented until and unless the Council (acting in its corporate capacity, and at its entire discretion) resolves to accept Lot 4 as legal road

diverts the matter of whether upgrading is required to the Council in a different capacity from its RMA capacity.

121. I understood the essence of Mr Goldsmith's submission to be that this subdivision application created no development potential on the applicant's land, therefore no costs of upgrading the road could be visited upon the applicant. He noted that Application RM130844 anticipates and proposes an upgrade of the vehicle carriageway, although as I do not have that application before me I am unable to come to any conclusions as to what is proposed in that application.
122. From all of the above, including the contents of the application documentation and Ms Giborees' reports, I draw the following conclusions:
- (g) The District Plan, through Rule 14.2.4.1 iv, provides a clear intention of requiring adequate roading standards when more than 12 dwellings are to have access from a road, with a preference in those circumstances for private ways to become legal roads;
 - (h) There is some form of agreement between the applicant, the Council and the applicants in RM130844, the nature and details of which I am not privy to, and this agreement is directed toward providing legal road frontage to the Larchmont property;

- (i) Notwithstanding that they relate to different parcels of land, albeit adjoining, and the applicants in each case are different, applications RM130588 and RM130844 are clearly related one to the other such that a full understanding of one is necessary for a full understanding of the other;
- (j) There is an intention by the applicants in RM130844 to provide some form of upgrading of the vehicular access, although that has not yet been finalised;
- (k) Any earthworks required for road upgrading, no matter who is to undertake that work, are likely to require a consent under the provisions of the Low Density Residential Zone;
- (l) Both the change in legal status of the private road and the physical works of upgrading it are likely to have adverse effects on other persons owning and or occupying land gaining access over this road;
- (m) If the legal status of the road were not to be altered, that is it was to remain a private way, the effects of upgrading the road, both beneficial and adverse, on the other users of the road would need to be considered in any discretionary activity application;
- (n) Changing the legal status of the private road road would create development potential on many of the sites presently gaining access over this road, such development being a permitted activity;
- (o) There are physical constraints on the road such that dual carriageway cannot be achieved in parts and the topography limits sight distances.

123. I consider the proposition being put to me by the applicant, that this subdivision does no more than create a site that can be dedicated as legal road, is analogous to the proposition put to the High Court by the appellant in *Mawhinney v Auckland Council* [2013] NZHC 3566. Without repeating the details of Justice Cooper's reasoning, it is clear that a subdivision proposal needs to be considered in the round and it is both artificial and contrary to sound resource management practice to treat subdivision as a purely paper exercise and leave the effects of servicing the created lots to some future time or future owner. Thus, while on the face of it, the consent notice conditions proposed by the applicant avoid the immediate occurrence of effects arising from the subdivision, the proposed

consent notice appears inconsistent with the approach mandated by Justice Cooper.

124. For all of the above reasons, I consider I am unable to understand the nature of the proposal in the round without also considering the application for earthworks consent that will be required for bringing the road up to a standard appropriate for the level of service expected of it. Thus I have deferred hearing this application under s.91 of the Act until such an application has been lodged and reached the same stage in processing as the subdivision application.
125. The difficult configuration of the road does raise questions of traffic safety given the expected service levels required. A professionally prepared traffic safety report that can provide input into the carriageway design is needed to address these questions. Hence my request that such a report be provided under s.41C.
126. I recognise that there is a clear relationship between this subdivision application and Application RM130844 and that the same applications for earthworks and need for traffic engineering input apply to both applications. For that reason I consider both applications should be heard together and I have requested the Council to make arrangements for that to occur.
127. I have not made any directions in respect of the conditions volunteered by the applicant, but suggest that his advisors consider the *vires* of such conditions given the judgment of the High Court I have referred to above.

Determination under s.91(1)

128. For the above reasons I hereby determine not to proceed with the hearing of this application at this time. The hearing is accordingly adjourned for the matter to be heard in conjunction with RM130844 once the earthworks application has been lodged and processed to hearing stage.



Denis Nugent
Hearing Commissioner
26 February 2014

APPENDIX 3: MEMORANDUM CONCERNING ADDITIONAL MATERIAL PROVIDED BY THE APPLICANT

IN THE MATTER

of the Resource
Management Act 1991

AND

Application RM130588 for
Subdivision Consent under
the Queenstown Lakes
District Plan by G F Swan

MEMORANDUM CONCERNING
ADDITIONAL MATERIAL PROVIDED BY THE APPLICANT

Introduction

129. In a memorandum dated 26 February last I determined that I would not proceed with the hearing of this application until an application was received for the earthworks required for the upgrading of the road to be dedicated, and I requested the provision of a traffic safety report.
130. The applicant lodged details of the design of the roadway and earthworks associated with that and a traffic safety report with the Council on 19 March 2014. While it is not expressly stated whether, in respect of the earthworks, this constitutes a separate application or a variation of application RM130588 I conclude that it is more logical for it to be considered additional material in respect of application RM130588 which varies that application.

Notification

131. I have considered whether this additional material raises any issues which could suggest that any person, other than those that have already lodged a submission, would be affected by the proposal to any degree more than they would have been when the notification determination was made by Ms Millton in 2013. I have concluded there would be no additional persons affected by this new information as the new information serves to answer questions that were raised by the original application. Consequently I conclude there is no requirement for the Council to either publicly notify or undertake limited notification of this additional material.
132. There may be some direct effects from the works proposed on one or more of the submitters. They are entitled to receive copies of this material and may respond to this at the reconvened hearing when they have the opportunity to put their respective cases at the conclusion of the applicant's case.

Supplementary s.42A Reports

133. The Council officers may wish to provide a supplementary report in respect of this additional material. Any such report is to be provided to the applicant and the submitters a least 5 working days prior to the reconvened hearing.

Procedure at Reconvened Hearing

134. I note that I adjourned the hearing before Mr Goldsmith had closed the case for the applicant. When the hearing is resumed Mr Goldsmith will be able to provide additional submissions and evidence on behalf of the applicant as he considers appropriate.
135. In my memorandum of 26 February I directed that the reconvened hearing be held in conjunction with subdivision consent application RM130844. At this stage I consider that the two matters could be heard together, rather than one after the other. That is, Mr Goldsmith could present one case with the submissions and evidence clearly distinguishing between the two applicants where appropriate, and equally the submitters could each present one case separating comments on the two applications to the extent necessary. If counsel or submitters disagree with this proposed procedure I will hear submissions at the commencement of the hearing.

Clarification of Dimension

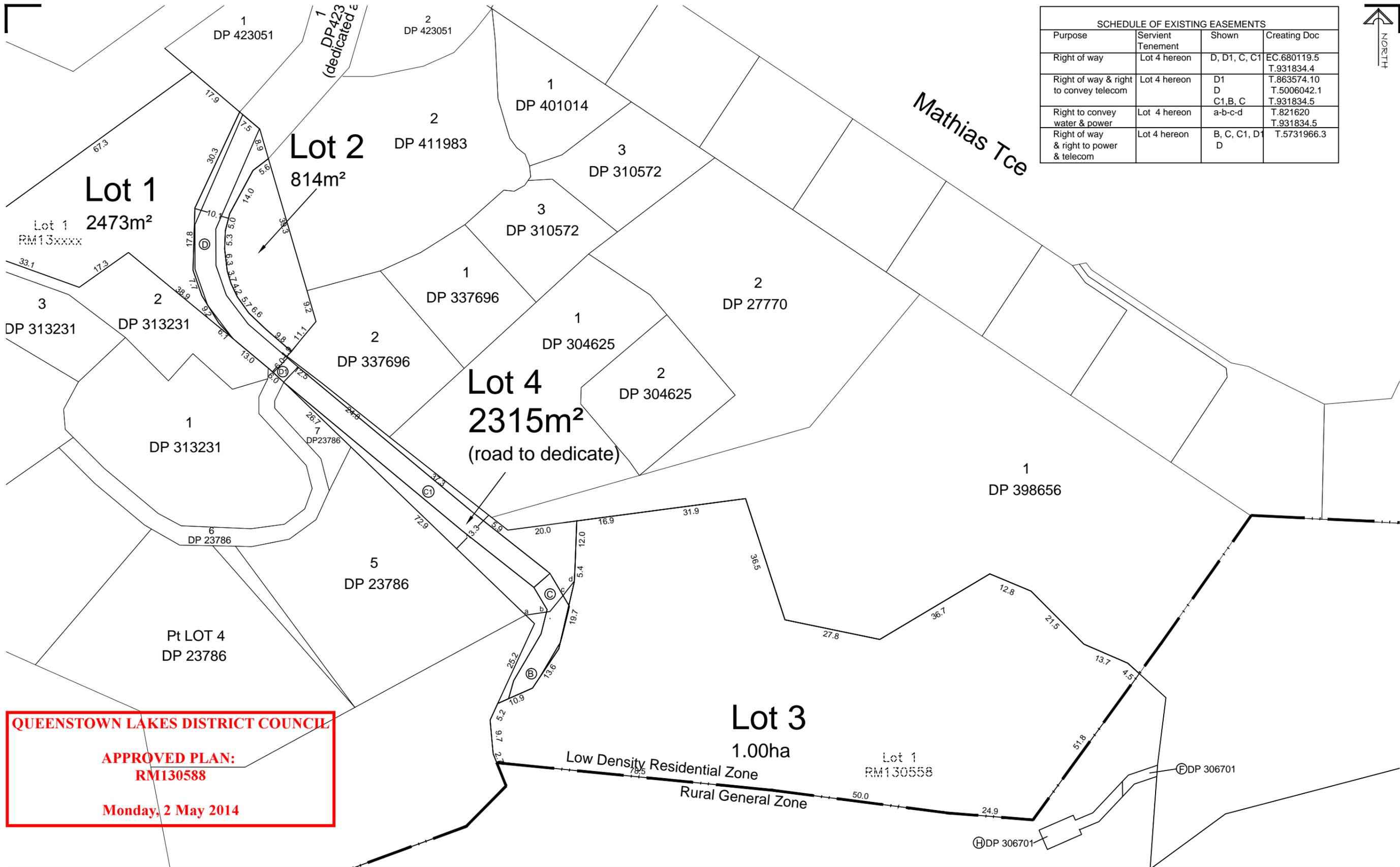
136. Mr Goldsmith made a number of comments on my memorandum of 26 February. There is only one matter I will raise now in respect of those as it may require further clarification from the applicant prior to the hearing.
137. In paragraph 2 Mr Goldsmith suggests that my reference to the 'pinch point' being 4.5m is incorrect. In making this comment I relied on the information contained in the subdivision plan included as Appendix D to the application (p. 72 of the Agenda Papers). This plan shows a dimension of 4.5m between the southwestern corner of Lot 2 DP 337696 and the southwestern boundary of proposed Lot 4 at the point the 6.0m wide access strip on Lot 6 DP 23786 adjoins proposed Lot 4. If my reading of this plan is incorrect, I would be grateful for clarification of the dimensions shown on the subdivision plan.

Directions

138. The further material lodged by the applicant along with this memorandum is to be served immediately on each of the submitters on application RM130588. The covering letter is to explain that they will have the opportunity to comment on this material at the reconvened hearing in the course of presenting their case in support of their submission and there is no need for them to file any further submission or other material with the Council prior to the hearing.
139. The Council officers may provide a supplementary s.42A report provided it is provided to the applicant and each submitter no later than 5 working days prior to the reconvened hearing.
140. The Council administrative staff are to set the hearing down to be completed in conjunction with the hearing of application RM130844 subject to the requirements of the previous direction being complied with.

A handwritten signature in blue ink, appearing to read 'Nugent', is centered on the page. The signature is fluid and cursive.

Denis Nugent
Hearing Commissioner
20 March 2014



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



QUEENSTOWN LAKES DISTRICT COUNCIL

**APPROVED PLAN:
RM130588**

Monday, 2 May 2014

Shotover Design Limited trading as
Clark Fortune McDonald & Associates
 Licensed Cadastral Surveyors - Land Development - Planning Consultants

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Shop 2, Otago House, 475 Moray Place, P.O. Box 5960
 Tel. (03)470-1582, Fax (03)470-1583, Email admin@cfma.co.nz

Rev.	Date	Revision Details	By
			CCH

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

Client	Surveyed	Signed	Date	Job No.	Drawing No.
G F SWAN				9362	37A
Notes: All dimensions shown are in meters unless shown otherwise. Any person using Clark Fortune McDonald drawings and other data accepts the risk of: - Using the drawings and other data in electronic form without requesting and checking them for accuracy against the original hard copy versions. - Ensuring the information is the most recent issue. - Copyright on this drawing is reserved.	Drawn	Signed	Date	Scale	
	ED		16.04.14	1:1500 @ A3	
	Designed	Signed	Date	Datum & Level	Rev.
				Mt Nic 2000 MSL	



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APPROVED PLAN:
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Monday, 2 May 2014

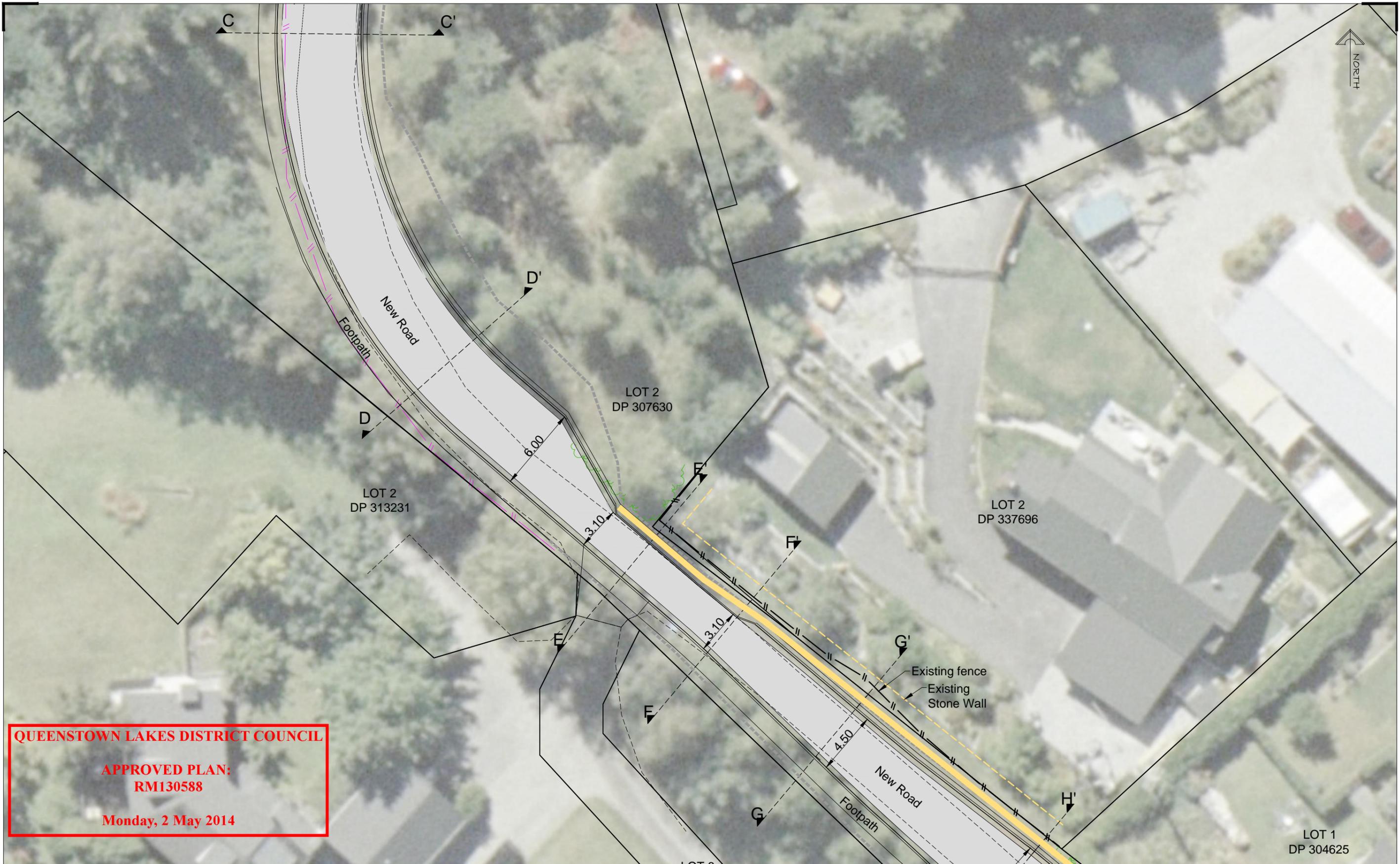

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Rev.	Date	Revision Details	By
A	15.05.13	Amend road design	RB
B	25.02.14	Add Sheet 2	RB
C	8.04.14	Add additional X-sections	CW

ATLEY ROAD EXTENSION

Client	Surveyed	Signed	Date	Job No.	Drawing No.
Larchmont Developments Ltd	SM		2009	9362	36 SHEET 1 of 4
	Drawn	Signed	Date <td>Scale</td> <td></td>	Scale	
	RB		08.08.12	1:125 @ A1 1:250 @ A3	
	Designed	Signed	Date <td>Datum & Level <td>Rev. </td></td>	Datum & Level <td>Rev. </td>	Rev.
				MT NIC 2000 MSL	C

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	Drawn	Signed	Date	Scale	
	RB		08.08.12	1:125 @ A1 1:250 @ A3	SHEET 2 of 4
	Designed	Signed	Date	Datum & Level	Rev.
				MT NIC 2000 MSL	C

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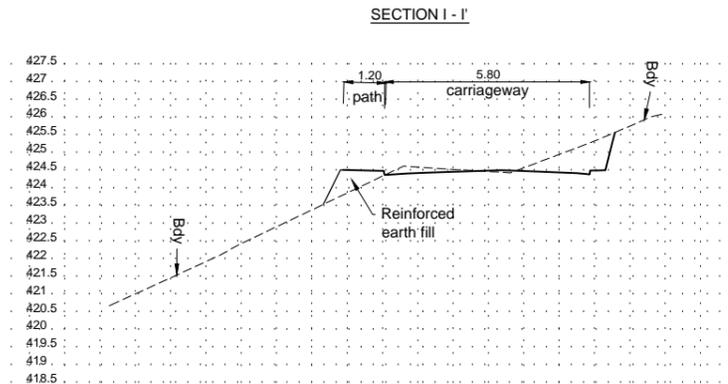
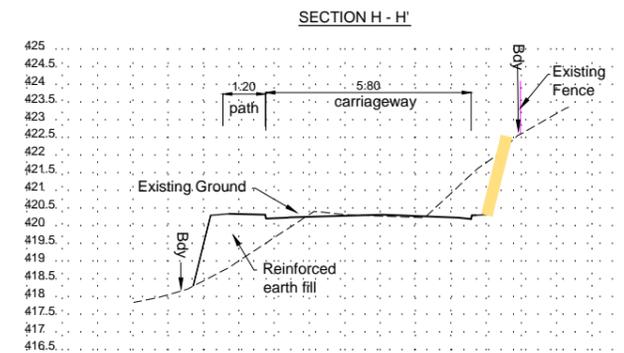
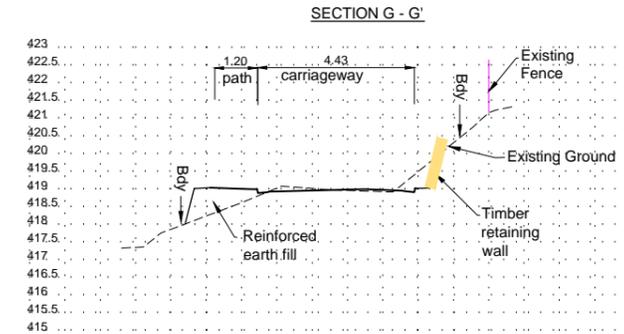
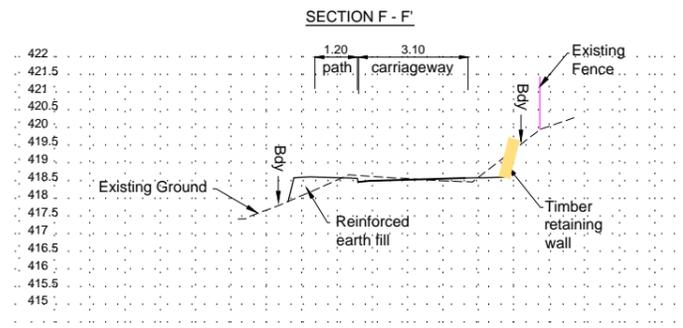
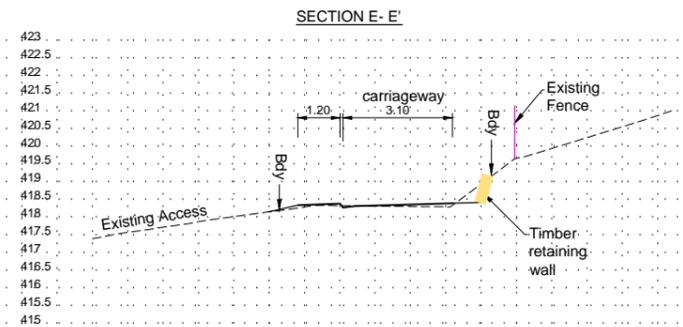
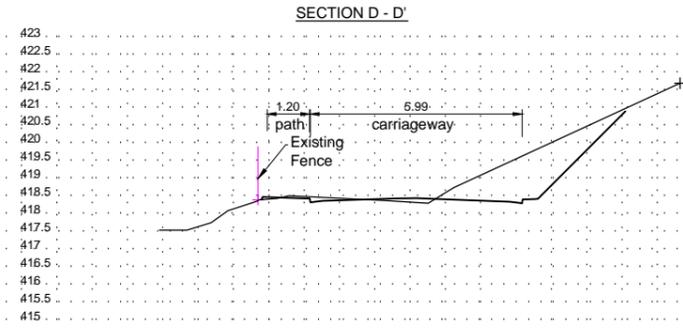
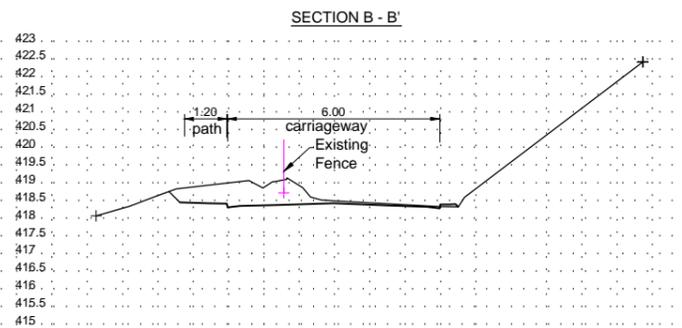
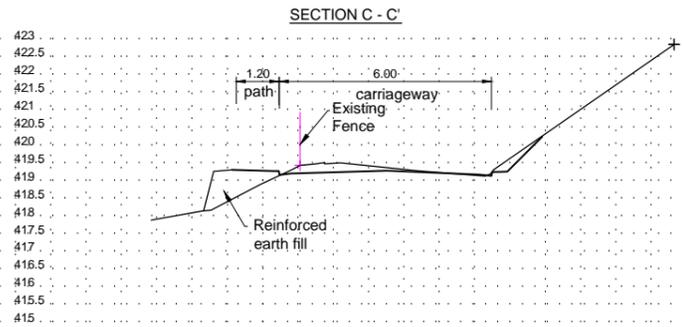

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	Drawn	Signed	Date	Scale	
	RB		08.08.12	1:125 @ A1 1:250 @ A3	SHEET 3 of 4
	Designed	Signed	Date	Datum & Level	Rev.
				MT NIC 2000 MSL	C

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ATLEY ROAD EXTENSION SECTION VIEWS

Client	Surveyed	Signed	Date	Job No.	Drawing No.
Larchmont Developments Ltd	SM		2009	9362	35 SHEET 4 of 4
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	Designed	Signed	Date	Datum & Level	Rev.
				MT NIC 2000 MSL	C