

Form 5

Submission on Proposed Queenstown Lakes District Plan - Stage 3B

Clause 6 of Schedule 1, Resource Management Act 1991

To: Queenstown Lakes District Council

Submitter: Corbridge Estates Limited Partnership

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Executive Summary

Corbridge Estates Limited Partnership request that Council re-zone 322ha of land (500m west of the Operative Windermere Rural Visitor Zone) located at 707 Wanaka Luggate Highway (the site) from Rural to Rural Visitor Zone.

A combination of legal advice and direction circulated by Council supports the view that there is an obligation on the Council to properly consider alternative locations and methods to achieve the Council's objective to accommodate Rural Visitor demand, provided that end-outcomes are aligned to the higher order chapters of the Proposed District Plan (informed by National Policy), and will achieve sustainable

management (as defined by the Resource Management Act 1991) of the District's land resource.

Corbridge's submission is that the notified version of PC3B did not adequately consider alternative locations and methods for accommodating demand and replacing lost supply (especially nearby at Windermere) and, if the Council did consider alternatives, it would have that Corbridge land is an ideal resource to accommodate rural visitor demand. For the avoidance of doubt this is both a section 32 (process) and substantive issue raised in this submission.

Specific to Wanaka's rural visitor demand, the Council have recommended to remove Rural Visitor Zone (Operative District Plan) from that land identified as Windermere (located 500m east of the site), preferring to only address Rural Visitor Zone demand at locations that could be described as more remote, set amongst Outstanding Natural Landscapes.

In doing so, it is the opinion of the Submitter, that Council has not identified an adequate area of land to accommodate rural visitor demand in less remote locations, outside of Outstanding Natural Landscapes, and specifically in geographic proximity to Wanaka, which is one of the Queenstown Lakes District's major visitor hubs.

It is submitted that the demand for visitors to be accommodated within rural areas of the Queenstown Lakes District is not limited to remote locations only, nor locations that have been identified to contain particular landscape classifications only.

At Paragraph 2.2 of Council's Section 32 evaluation, the stated purpose of the Rural Visitor Zone review is not tied to remote landscapes set amongst Outstanding Natural Landscapes:

"The purpose of this proposal is to introduce to the PDP a suite of objectives, policies and rules that provide for visitor accommodation and

related activities in specific locations within the rural areas of the district, where the landscape can accommodate the change from visitor industry related development, primarily visitor accommodation.”

The Submitter agrees with Council that there is demand for rural visitor accommodation and associated activities within rural areas of the District. However, it is the Submitter’s opinion that there is no logical reason that rural visitor land use outcomes (considered appropriate to be established within the Outstanding Natural Landscapes of remote locations) could not be established within less sensitive rural landscapes in less remote locations where demand exists.

While the Section 32 evaluation prepared by Council has focused on locations of Rural Visitor Zone as generally contained within the Operative District Plan, on the basis of there being demand for visitors to be accommodated within rural areas more generally (a sub-set of visitors who demand an alternative experience from that of being accommodated within urban zones), the locations as notified inadequately cater to rural visitor demand in proximity to the major tourist hub of Wanaka.

The Submitter has evaluated options of developing the land (including those outcomes approved by resource consent RM120572), and considers a re-zoning of the site from Rural to Rural Visitor Zone (distinct from a Special Zone) will be the most efficient and effective option to address key resource management issues that Wanaka (and the District) faces now in December 2019 and in future.

Background & Submission:

Corbridge Estates Limited Partnership own 322.025ha of land located at 707 Wanaka Luggate Highway (the site), which is legally identified as Sec 65 BLK IV Lower Wanaka SD - 43.469000 Ha CT- OT17A/336~Pt Sec 64 BLK IV Lower Wanaka SD - 33.296800 Ha CT- OT17A/336~Sec 67 BLK IV Lower Wanaka SD - 160.000000 Ha CT- OT14C/457~Sec 66 BLK IV Lower Wanaka SD - 13.253000 Ha

CT- OT14C/457~Sec 1 BLK II Lower Wanaka SD - 72.006200 Ha CT- OT14C/457 held in Certificate(s) of Title OT14C/457 & OT17A/336.

FIGURE 1 – Location of The Site



As part of Stage 1 of Council's District Plan Review, the site has been zoned Rural, as identified on Proposed District Planning Maps 18 & 18a.

While the Submitter was in ownership of the land during Stage 1 of Council's District Plan Review, at that time (August 2015), a zoning alternative to Rural was not sought because Council documented their intent to address Rural Visitor demand and zone allocation (including associated provisions) during later stages of the District Plan Review. Accordingly, there was no Section 32 analysis that examined whether Rural or Rural Visitor zoning was the most appropriate zoning for the site. Of importance, at this time, there was no information provided to the public, that the future Rural Visitor Zone (as now proposed) would not consider District wide rural visitor demand, and somewhat narrowly, only focus on remote locations set amongst Outstanding Natural Landscapes.

Subsequent to the District's position in August 2015, a combination of visitor demand, regional growth, realized short-falls in visitor accommodation and industry related services point toward the site as a strategic location to effectively and efficiently offer planned relief to ongoing rural visitor demand, while maintaining to achieve sustainable management of the site as defined by the Resource Management Act 1991.

It is requested that Council zone the Submitter's land Rural Visitor Zone as part of Stage 3b of the District Plan Review.

Council's notified Rural Visitor Zone Chapter

The Council have notified the Rural Visitor Zone Chapter, which describes the zone's purpose as being:

The Rural Visitor Zone provides for visitor industry activities in remote locations within the Outstanding Natural Landscapes at a limited scale and intensity where each particular Zone can accommodate the adverse effects of land use and development. By providing for visitor industry activities, the Zone recognises the contribution visitor industry places, services and facilities make to the economic and recreational values of the District.

The primary method of managing land use and development will be directing sensitive and sympathetic development to where the landscape can accommodate change, and the adverse effects on landscape values from land use and development will be cumulatively minor. The design and mitigation of buildings and development are secondary factors in the role of landscape management that will contribute toward ensuring buildings are not visually dominant and are integrated into the landscape.

The principal activities in the Zone are visitor accommodation and related ancillary commercial activities, commercial recreation and recreation activities. Residential activity is not anticipated in the Zone with the exception being for onsite staff accommodation ancillary to commercial recreation and visitor accommodation activities.

It is submitted that the zone purpose as proposed by Council appropriately recognizes the contribution that visitor industry places, services and facilities make to the economic and recreational values of the District, however in recognizing this value, the evaluation fails to address the demand for such industry within rural areas that are less remote, and less sensitive (in respect of landscape classification) than those locations proposed to be zoned.

In this way, the basis of Council's Section 32 evaluation would suggest that the demand for visitors to be accommodated, and related industry activities to be established within the Rural zones of the District is somewhat tied only to remote locations set within Outstanding Natural Landscapes.

Rather than this being the case, it is submitted that there is demand for visitor accommodation and industry related activities in many parts of the Rural zone, some of which are not remote, and some of which are not set among Outstanding Natural Landscapes.

Given rural visitor demand does exist in other landscapes, especially in proximity to Wanaka, identifying Rural areas that are more able to absorb development through zoning is a better way of giving effect to the Strategic Directions in Chapter 3, in particular 3.2.1.1:

The significant socioeconomic benefits of well-designed and appropriately located visitor industry facilities and services are realized across the District;

3.2.5.1:

The landscape and visual amenity values and the natural character of Outstanding Natural Landscapes and Outstanding Natural Features are protected from adverse effects of subdivision, use and development that are more than minor and/or not temporary in duration;

And 3.2.5.2:

The rural character and visual amenity values in identified Rural Character Landscapes are maintained or enhanced by directing new subdivision, use or development to occur in those areas that have the potential to absorb change without materially detracting from those values;

And 3.3.1:

Make provision for the visitor industry to maintain and enhance attractions, facilities and services within the Queenstown and Wanaka town centre areas and elsewhere within the District's urban areas and settlements at locations where this is consistent with objectives and policies for the relevant zone. (relevant to S.O. 3.2.1.1 and 3.2.1.2);

And 3.3.21:

Recognise that commercial recreation and tourism related activities seeking to locate within the Rural Zone may be appropriate where these activities enhance the appreciation of landscapes, and on the basis they would protect, maintain or enhance landscape quality, character and visual amenity values;

And 3.3.30:

Avoid adverse effects on the landscape and visual amenity values and natural character of the District's Outstanding Natural Landscapes and Outstanding Natural Features that are more than minor and or not temporary in duration (relevant to S.O 3.2.5.1).

And 3.3.32:

Only allow further land use change in areas of the Rural Character Landscapes able to absorb that change and limit the extent of any change so that landscape character and visual amenity values are not materially degraded. (Relevant to S.O 3.2.19 and 3.2.5.2).

Taken as a package, the strategic directions (decisions version) indicate that the parts of the rural areas capable of absorbing development should be identified, and the visitor industry should be in locations appropriately zoned for that purpose. If anything, the Strategic Direction provides additional protection against development within Outstanding Natural Landscapes.

Similarly, the Chapter 6 provisions seek to generally discourage ad-hoc development in the rural zones (for example policy 6.3.20, relating to Rural Lifestyle and Rural Residential zones). The Submitter agrees with respect to the short-comings of an ad-hoc approach to future development, and through this submission indicates a clear preference for its land to be zoned for Rural Visitor purposes rather than (as an alternative) placing a reliance on a resource consent process that must be decided in the context of the Rural Zone and Chapter 6 objectives and policies.

In the case of the Submitter's land, the site, being neither remote, nor identified as Outstanding Natural of landscape, offers a highly strategic location, adjacent the Wanaka-Luggate State Highway, between Wanaka town and Wanaka Airport which

is able to cater to rural visitor demand, stemming from Wanaka – which is recognized by Chapter 3 of the Proposed District Plan as being one of two major visitor hubs.

In terms of effects, logic would follow that rural visitor activity upon a less remote and less sensitive landscape would give rise to less adverse effects than the same type of activity in a more remote and more sensitive landscape such as those locations identified by Council.

It is submitted that the Section 32 evaluation undertaken by Council fails to appropriately identify what parts of the rural land resource are able to cater to the rural visitor industry, limiting it only to remote locations within Outstanding Natural Landscapes, due to those locations (as notified to retain a rural visitor zoning) being set amongst Outstanding Natural Landscapes. It is submitted that the section 32 analysis therefore does not properly give effect to the Strategic Objectives (chapter 3) and policies (chapter 6) that require identification of locations capable of absorbing development.

Furthermore, in the case of Wanaka, rather than identifying an adequate area of rural land resource to cater for Wanaka's immediate and long-term rural visitor industry, Council have recommended to reduce zoned provision for rural visitor activities by removing approximately 43 ha of Rural Visitor Zone land (Operative District Plan) approximately 500m east of the Submitter's land with no proposal to replace and/or increase the provision for rural visitor activities in proximity to Wanaka and surrounds.

In sum, it is submitted that:

- Council has correctly identified a demand for rural visitor accommodation and related commercial ancillary activities in the District, and the need to zone

land that is appropriate to meet that demand, but ties that demand exclusively to remote locations within Outstanding Natural Landscapes;

- While the Submitter agrees that demand does exist in the locations notified to accommodate Rural Visitor zoning, it is submitted that demand also exists within other parts of the Districts rural lands, including land in proximity to Wanaka – and therefore location selection should not be restricted to locations zoned Rural Visitor under the Operative District Plan set amongst Outstanding Natural Landscapes;
- It is submitted that in the case of Wanaka, rather than identifying adequate land area to accommodate rural visitor activity, Council are proposing to reduce land supply for such activity, leaving a short fall in Rural Visitor Zone land in geographic proximity to Wanaka, which is recognized by Chapter 3 of the Proposed District Plan as being one of the District's major visitor hubs;
- The Submitter's land will provide adequate area to accommodate rural visitor industry in proximity to Wanaka within a rural environment that is less sensitive to land use development than those other, more remote and sensitive locations identified by Council (as notified);
- Rather than sterilizing the Submitter's land as part of an implementation of RM120572, a re-zoning of the site to Rural Visitor Zone will enable its development and future use to be highly strategic and complimentary to QLDC/QAC's future development of Wanaka Airport in the form of rural visitor accommodation, related commercial and recreational activities and staff accommodation, all in close proximity to one of the District's major visitor and strategic transport hubs;
- If zoned and developed consistent with Rural Visitor Zone provisions, benefits available from the site will be experienced on a District and National level

rather than at a subdivision level, set to benefit 35 private residences only, which may in future conflict with wider strategic planning and growth.

Requested Amendment to Zone Purpose

The following amended wording of the zone purpose is requested:

The Rural Visitor Zone provides for visitor industry activities to occur in locations that can absorb the effects of development without compromising landscape values within the District's rural land resource. By providing for visitor industry activities, the Zone recognises the contribution that the visitor industry places, associated services and facilities make to the economic and recreational values of the District.

The primary method of managing land use and development will be directing sensitive and sympathetic development to where the landscape can accommodate change, and the adverse effects on landscape values from land use and development will be cumulatively minor. The design and mitigation of buildings and development are secondary factors in the role of landscape management that will contribute toward ensuring buildings are not visually dominant over rural open-space and are integrated into the landscape.

The principal activities in the Zone are visitor accommodation and related ancillary commercial activities, commercial recreation and recreation activities. Residential activity is not anticipated in the more sensitive Outstanding Natural Landscapes within the Zone with the exception being for onsite staff accommodation (including staff related to construction of the facilities within the zone) ancillary to commercial recreation and visitor accommodation activities.

The amended zone purpose as requested will provide for the Rural Visitor Zone to be identified within rural locations more generally, including over land which could be described as remote, or not, and which are set amongst landscapes that are Outstanding Natural or other in classification.

The inclusion of words 'rural open-space' provide context to effects associated with building dominance (describing what value buildings shall not be dominant over).

Lastly, the amended wording of the third paragraph will identify residential activity as not being anticipated more specifically within Outstanding Natural Landscapes within the zone, and provides recognition for 'construction' staff accommodation..

Requested Amendments to Objectives and Policies

The following amended wording of Objectives and Policies is requested:

46.2.1 Objective – Visitor accommodation, commercial recreation and ancillary commercial activities within appropriate locations to a scale that maintain or enhances the District's landscape values. ~~of Outstanding Natural Landscapes.~~

Policies

46.2.1.1 Provide for innovative and appropriately located and designed visitor accommodation, including ancillary commercial activities and onsite staff accommodation, recreation and commercial recreation activities where landscape values ~~the District's Outstanding Natural Landscapes~~ will be maintained or enhanced.

46.2.1.2 Provide for tourism related activities within appropriate locations in the Zone where they enable people to access and appreciate the District's ~~landscapes~~ attractions, provided that landscape quality, character, visual amenity values and nature conservation values are maintained or enhanced.

46.2.1.3 Encourage the enhancement of nature conservation values as part of the use and development of the Zone.

46.2.1.4 Recognise the remote location of some of the District's Rural Visitor Zones and the need for visitor industry activities to be self-reliant by providing for services or facilities that are directly associated with, and ancillary to visitor accommodation activities, including construction of facilities themselves and onsite staff accommodation.

46.2.1.5 Ensure that the group size, nature and scale of commercial recreation activities do not degrade the level of amenity in the surrounding environment.

46.2.1.6 Ensure that any land use or development not otherwise anticipated in the Zone, protects or enhances landscape values and nature conservation values relative to the landscape classification of each Rural Visitor Zone.

46.2.1.7 Avoid residential activity within ~~the Rural Visitor Zone~~ Outstanding Natural Landscapes with the exception of enabling onsite staff accommodation ancillary to commercial recreation and visitor accommodation activities and the construction of facilities.

46.2.X Objective - Within the Corbridge Rural Visitor Zone, provide for rural visitor activity to be established in locations that do not conflict with Wanaka Airport Activities.

Policies

46.2.X.1 Provide for rural visitor activity while:

a. providing for and consolidating buildings within the Corbridge Rural Visitor Zone in locations that will not conflict with Wanaka Airport Activity, including suitably locating activities that may otherwise conflict with Wanaka Airport's Outer Control Boundary;

b. encouraging activity types that will compliment activities or demands generated by Wanaka Airport activities.

c. Ensuring that adequate residential activities and staff accommodation is provided so that growth associated with the development of the zone does not exacerbate the shortage of housing supply in Wanaka.

46.2.2 Objective – Buildings and development that have a visitor industry related use are enabled where landscape character and visual amenity values are appropriately maintained or enhanced relative to the landscape classification of each Rural Visitor Zone.

Policies

46.2.2.1 Protect the landscape values of the Zone and the surrounding Rural Zone **Outstanding Natural** landscapes by:

a. providing for and consolidating buildings within the Rural Visitor Zone in areas that are not identified on the District Plan maps as a Building Restriction Area, nor within an area of Moderate – High Landscape Sensitivity;

b. ensuring that buildings within areas identified on the District Plan maps as Moderate – High Landscape Sensitivity are located and designed, and adverse effects are mitigated to ensure landscape values are maintained or enhanced; and

c. avoiding buildings within areas identified on the District Plan maps as Building Restriction Areas.

46.2.2.2 Land use and development, in particular buildings, shall maintain or enhance the landscape character and visual amenity values of the Rural Visitor Zone and surrounding **Outstanding Natural** landscapes by:

a. controlling the colour, scale, design, and height of buildings and associated infrastructure, vegetation and landscape elements; and

b. in the immediate vicinity of the Homestead Area at Walter Peak, and the Homestead Area at Arcadia provide for a range of external building colours that are not as recessive as required generally for rural environments, but are sympathetic to existing development.

Requested Amendments to Zone Rules

The following amendments to Zone Rules is requested:

- Insert Rule 46.4.X to make any activity not in accordance with the Corbridge Structure Plan a Non Complying activity (the Corbridge Structure Plan shall form part of Chapter 46);
- Amend Rule 46.4.5 to make Informal Airports within the Corbridge Rural Visitor Zone a Non Complying activity;
- Insert Rule 46.4.X into Table 46.4 which makes Residential Activity not provided for by Rules 46.4.2 & 46.4.3 but located in accordance with the Corbridge Structure Plan a Restricted-Discretionary activity, with discretion being restricted to the relationship of the proposed residential activity with surrounding rural visitor activities;
- Amend Rule 46.4.13 to also provide exception to the above new rule proposed;
- Insert Rule 46.5.1.X to provide for a maximum building height within the Hotel area of the Corbridge Structure Plan to be 16m (Non Complying Status if breached);
- Insert Rule 46.5.1.X to provide for a maximum building height within the Visitor Accommodation area of the Corbridge Structure Plan to be 12m (Non Complying status if breached);
- Amend Rule 46.5.3 to provide for a maximum ground floor area within the Hotel area of the Corbridge Structure Plan to be 1000m² (Restricted Discretionary status if breached with same matters of discretion as currently listed by Rule 46.5.3);
- Amend Rule 46.5.4 to insert word 'natural' in front of word 'waterbodies'. To read 'setback of buildings from natural waterbodies';

- Insert a final Corbridge Structure Plan into Chapter 46 of the Proposed District Plan.

Summary of Submission

Overall, the submitter agrees with Council's Section 32 evaluation that demand exists for rural visitor accommodation and related commercial ancillary activities in the District, however considers that inadequate provision has been made for this demand in proximity to Wanaka.

The section 32 evaluation is deficient in that it does not:

1. adequately examine rural visitor demand and alternative locations for the zone.
2. make adequate provision for supply of zoned land.
3. give effect to the strategic objectives and polices to identify land capable of absorbing the effects of rural visitor development.

It is requested that the zone purpose as notified be amended to recognize that rural visitor demand is not exclusively tied to remote locations set amongst Outstanding Natural Landscapes.

It is submitted that if zoned Rural Visitor Zone, future outcomes of land use (taking into account proposed amendments to the Chapter as requested herein) will give rise to less adverse effects than outcomes anticipated by development undertaken under the same provisions in more remote and more sensitive landscapes as notified.

It is requested that a site-specific Structure Plan, Objectives, Policies and Rules be incorporated into Chapter 46 of the Proposed District Plan as contained here-in.

It is submitted that the site will be capable of being serviced with key infrastructure (access, foul sewer, water supply, electricity and telecommunications), and its development (consistent with the proposed Corbridge Structure Plan) will have no more than minor adverse effects on the environment.

It is submitted that the proposed re-zoning will be strongly aligned to the relevant parts of National Policy (NPS), will give effect to the higher orders of the Proposed District Plan (particularly Chapters 3 & 6), and will achieve the purpose of the Resource Management Act – being the sustainable management of natural and physical resources.

Corbridge Estates Partnership Limited sees the following decision from the Queenstown Lakes District Council:

1. Rezoning of the site from Rural to Rural Visitor Zone, including all and any necessary consequential changes to proposed Chapters 46 and 27 of the Proposed District Plan;
2. Identification of this area on Maps 18 & 18a of the Proposed District Plan;
3. Amend the Rural Visitor Zone purpose as proposed herein;
4. Amend Objective and Policies (including insertion of new Objectives and Policies) as proposed herein;
5. Amend and include Chapter 46 Zone Rules as proposed herein;
6. Insert a final Corbridge Structure Plan into Chapter 46 of the District Plan;
7. All and any other necessary changes as a consequence of the outcomes requested.

The submitter could not gain an advantage in trade competition through this submission.

The submitter wishes to be heard in support of their submission.

If others make a similar submission the submitter would consider presenting a joint case at a hearing.



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Dan Curley (on behalf of Corbridge Estates Partnership Limited)

2 December 2019

Attachments:

Attachment 1. Landscape Assessment – Vivian+Espie Ltd

Attachment 2. Draft Corbridge Structure Plan

Attachment 3. RM120572 – Approved Subdivision

Attachment 4. Corbridge Legal Advice

Attachment 1 - Landscape

PROPOSED CORBRIDGE RURAL VISITOR ZONE

COMMENTARY ON LANDSCAPE CHARACTER AND VISUAL AMENITY ISSUES

Ben Espie (Landscape Planner)

vivian+espie

25th November 2019

INTRODUCTION

1 Stage 3b of the notified Proposed District Plan (**PDP**) includes Chapter 46, being a suite of provisions that comprise a revised Rural Visitor Zone (**RVZ**). Associated amendments are made to the relevant Planning Maps. The purpose of the RVZ is given as follows:

“The Rural Visitor Zone provides for visitor industry activities in remote locations within Outstanding Natural Landscapes at a limited scale and intensity, where each particular Zone can accommodate the adverse effects of land use and development. By providing for visitor industry activities, the Zone recognises the contribution visitor industry places, services and facilities make to the economic and recreational values of the District”¹.

2 Corbridge Estates Partnership Limited (**Corbridge**) own a 322ha landholding adjoining State Highway 6 (**SH6**) near Wanaka Airport. Pursuant to the Operative District Plan (**ODP**), the Corbridge land (**the site**) is zoned Rural General Zone (**RGZ**) and is not within an identified Outstanding Natural Landscape (**ONL**). Pursuant to Stage 1 of the PDP, the Corbridge land is zoned Rural Zone (**RZ**) and is within a Rural Character Landscape (**RCL**).

3 Resource consent RM120572 provides for subdivision of the site to create a 35-lot rural living development.

4 Corbridge have prepared a submission to Stage 3b of the PDP to the effect that:

- i. the purpose of the RVZ be amended such that areas of RVZ should be enabled within RCLs and well as ONLs.
- ii. The RVZ should be applied to the Corbridge land, subject to a specific Structure Plan and some specific provisions. I attach a draft of the proposed Structure Plan to this report. It has been configured to provide for a large area of commercial recreation in the form of a golf

¹ Queenstown Lakes Proposed District Plan (Stage 3b notified version), Section 46.1.

course with residential dwelling land use (also enabling visitor accommodation) adjacent to the fairways, a hotel and other visitor accommodation development, areas of residential development (or visitor accommodation in detached dwellings or villas), and a village of denser residential land use that is envisaged for on-site staff accommodation, potentially including staff involved in construction of the zone's activities or other employment in close proximity to the zone.

THE SITE AND CONTEXT

- 5 The site extends between SH6 at its southern end to the corridor of the Clutha River at northern end and sits on undulating, rolling terrace land between Wanaka Airport (close to the site to the southeast) and Albert Town / Wanaka (approximately 3km to the northwest). The part of SH6 that adjoins the site provides the primary vehicle link between Wanaka and the airport, and also onwards to Luggate and Cromwell.
- 6 The Wanaka Airport is provided for by a designation in the ODP and by an area of Airport Zone in the PDP. The ODP includes the Windemere RVZ immediately adjacent to the Wanaka Airport and this is proposed to be rezoned to RZ in the PDP.
- 7 In relation to landscape character, the site itself is comprised of rolling landform, generally rising in elevation from SH6 towards the north, before dropping precipitously to the Clutha River. There is a significant area of lower elevation in the centre of the site where a lake is proposed (as per the attached Draft Structure Plan). A number of tall mature shelterbelts break up the site and a network of farm tracks and fences cross it. While the land use is dominated by cultivated improved pasture, there are areas of remnant native vegetation. A collection of farm / utilitarian buildings (including a dwelling) are located close to SH6 in the southern part of the property. Overall, the site has a verdant, improved rural character associated with open space and agricultural management.
- 8 In relation to views and visual amenity, much of the site is considerably hidden from outside views due to topography. Views into the main central part of the site are very difficult to gain. The outer parts of the site (particularly a sweep of land adjacent to SH6 and a steep escarpment that faces the Clutha River) provide visually displayed open space.

THE PRUPOSE OF THE RURAL VISITOR ZONE

9 Under the ODP, areas of RVZ were identified at Cecil Peak, Walter Peak, Cardrona, Blanket Bay, Arthurs Point, Arcadia Station and Windermere. Six of those eight locations were within landscapes that came to be identified as ONLs. The RVZs that were not within ONLs were Arthurs Point and Cardrona. The ODP RVZ provided for buildings, commercial recreation and visitor accommodation as controlled activities. Residential activity was permitted (although buildings were controlled), hence the ODP RVS envisaged residential activity sitting alongside visitor activities.

10 Sections 12.3.1 to 12.3.3 of the ODP describe the purpose of the RVZ. In summary it is to provide for areas of commercial visitor activities set within rural landscapes. The areas of RVS:

“... provide employment opportunities, retention of local heritage values and resources, as well as operate as a significant part of the visitor industry.

...

The visitor areas are effectively part of the wider rural environment and as such their relationship with the rural area, its resources and amenities is important. It is appropriate they receive recognition in the District Plan where this will provide a mechanism to ensure an acceptable level of amenity, within the rural visitor area and in the surrounding rural areas”².

11 The notified Stage 3b PDP has changed the RVZ at Cardrona and Arthurs Point to Settlement or Residential zoning and has deleted the zoning at Windemere, such that there are now four areas of RVZ and they are all within ONLs. Residential activity is now non-complying and the purpose of the zone has been changed so that it expressly provides for visitor activities within ONLs.

12 In very broad terms, tourism and visitor activities provide a large measure of the District’s economic well-being. I understand that a sector of the tourists that come to the district seek a non-urban visitor experience; i.e. accommodation and/or tourism activities in a rural location. Essentially, I understand that the RVZ exists to appropriately cater for this part of the tourism market.

13 In relation to the Part 2 of the PDP (Strategy), Chapters 3 and 6 make it clear that the ONLs are the most highly valued landscapes of the district, while the non-ONL rural landscapes (RCLs), are

² Queenstown Lakes Operative District Plan, Section 12.3.2 and 12.3.3.

less valued (although still have some important character and amenity associated with them). This is logical and it reflects the relevant parts of the RMA. I can therefore see no logical landscape planning reason why the PDP should be formulated so as to provide for rural visitor activity only within ONLs and not in other rural landscapes, particularly less sensitive rural landscapes. I consider that there is currently a tension between the notified purpose of the RVZ and Chapters 3 and 6. Logically, areas of RVZ should sit in locations within the district's rural landscapes where they can be located and configured so as to uphold the Objectives and Policies of Chapters 3 and 6, regardless of whether they are within an ONL or a non-ONL. In fact, in terms of usefulness, efficiency and appropriately managing the district's landscape character, it seems that areas of RVZ in rural locations that are not within ONLs and are less remote, are likely to be very advantageous.

- 14 For the reasons above, I support the Corbridge submission regarding the purpose of the RVZ.

OUTCOMES OF THE RELIEF SOUGHT IN RELATION TO THE SITE

- 15 Pursuant to the ODP and the notified PDP (including Stage 3b), the site is zoned RGZ and RZ respectively. RM120572 provides for a 35-lot rural living development over the site. The RM120572 development concentrates rural living activity around the more hidden, central part of the site and also on the top of the north-facing escarpment at the northern end of the site. Considerable native planting and ecological management form part of the consented development.
- 16 The relief sought is described briefly above. Development would be enabled by way of a Structure Plan. Denser development would be enabled in the central, hidden part of the site. Golf fairways would take up much of the site, including the northernmost escarpment-top area. In summary, the development enabled by the relief would consist of:

Road buffer / landscaped open space: An area of the zone to be retained as open space with specific requirements for landscape treatment to provide buffering in relation to the highway and to provide an open, rural character corridor in relation to highway users.

Open Space: Parts of the zone to remain as undeveloped open space.

Visitor Accommodation: Provisions for detached and terrace-style visitor accommodation and associated facilities.

Residential/dwelling-style visitor accommodation: Provisions for individual dwellings/villas to be used for visitor accommodation and/or residential purposes.

Hotel/Golf Clubhouse: Provisions for hotel development with associated facilities and a golf clubhouse. Car parking and all accessory activities also to be provided for.

Golf Activity Area: Provisions for an 18-hole, international standard golf course and Par 3, nine-hole golf course.

Golf Fairways Residential: Provisions for fairway-side dwellings, able to be used for visitor accommodation to be integrated into the design of the golf course.

Worker Village: Provisions for an integrated village of dense accommodation including community facilities. Able to be used for development workers (staff of the visitor accommodation facilities and also workers engaged in the construction and maintenance of the site overall), airport-associated workers and, in time, more general occupation.

- 17 Under the proposed relief, I understand that development that accords with the Structure Plan is discretionary in relation to subdivision and controlled in relation to buildings. Visitor accommodation is permitted and residential activity is discretionary in certain Activity Areas. Discretionary consent will also be required in relation to earthworks to form the lake and golf course. Overall, a development resource consent application that accords with the Structure Plan would be discretionary at least.
- 18 Comparing the proposed relief to the existing situation (i.e. development provided for by the RZ and RM120572), the proposed relief will provide for denser development. The interior of the site will become a visitor accommodation vicinity with a hotel, golf club house, and visitor accommodation villas centred around a lake and associated open space areas. Detached dwellings/villas would follow parts of the golf fairways. Two areas towards the northern and southern parts of the site would provide for detached dwellings in a high-amenity setting that could be used for visitor accommodation and/or residential use. The Worker Village area would develop as a more compact built environment with its own amenities.

THE EFFECTS OF THE CORBRIDGE RELIEF IN RELATION TO LANDSCAPE CHARACTER AND VISUAL AMENITY

Landscape character

- 19 In terms of landscape character, the relief sought would change the site from a farming site or a rural living site (taking account of RM120572) to a node of visitor activity surrounded by rural landscape. This node of visitor activity would feature considerable open space in relation to internal amenity and also in relation to greenspace beside the highway and river corridor.
- 20 Low density rural living activity coupled with farmed pasture currently extends between Wanaka Airport and Albert Town / Wanaka. The visitor activity node would sit somewhat centrally in this area of the Upper Clutha Basin and immediately to the north of fourteen 40ha blocks that are centred around the Ballantyne Rd / SH6 intersection.
- 21 The landscape character of the area between the airport and Albert Town / Wanaka would remain dominated by rural character, albeit that a relatively intense node of visitor activity would sit within it. I consider that, subject to consideration of visual effects, the proposed relief would not significantly endanger rural character in a setting of this sort. Nodes of visitor activity can sit comfortably within rural landscapes. This, after all, is why a RVZ is included in the ODP and PDP. In relation to landscape character, this particular rural landscape setting is more able to absorb a node of visitor activity than most settings within the rural landscapes of the district in my opinion. This is primarily because:
- The site is not within an ONL; it is in a less sensitive location in relation to the district's rural landscapes, in a vicinity that accommodates a reasonable degree of human modification and occupation;
 - The site is adjacent to a State Highway and between Wanaka Airport and Albert Town / Wanaka. In terms of the patterns of activities that make up landscape character, there is considerable logic and expectation of some non-rural / semi-rural activities in a location of this sort.
 - A Structure Plan would spatially manage activities within the area of RVZ such that more intensive activities are contained in the central, topographically contained area of the site while the peripheral parts of the site are kept in an open and unbuilt state.

Views and visual amenity

- 22 In relation to views and visual amenity, the rolling and undulating topography of the site means that much of it is well contained in a visual sense. The various mature shelterbelts also assist with visual screening of much of the site and the intention is to maintain these shelterbelts into the future.
- 23 SH6 passes the southern end of the site and views are available over the southern part of the site that sits at approximately the same elevation as the highway. This part of the site will remain as open space pursuant to the proposed draft Structure Plan and the landscape treatment of this area is envisaged as maintaining a rural, open form of visual amenity for highway users. Existing shelterbelts and topography visually separate the proposed development Activity Areas from the highway corridor. These Activity Areas face north, away from the highway and it is envisaged that careful treatment of the southern edges of these development Activity Areas at the time of subdivision design will mean that highway users do not experience prominence of any built development and that a rural experience is maintained between the airport and Albert Town / Wanaka.
- 24 The proposed relief keeps any built development further back from the northern escarpment edge than the RM120572 situation. This northern escarpment top is visible to some degree from the Clutha River corridor and the Structure Plan proposes to locate golf fairways in this part of the site.
- 25 The eastern and western edges of the site are considerably lined by mature shelterbelts that restrict views from neighbouring land into the site. Topography also restricts views. As with the consented RM120572 development, the proposed relief generally locates development towards the centre of the site such that views from the neighbouring properties to the east and west are largely maintained in their current state.
- 26 In relation to views and visual amenity, I again find that the site has good capacity to absorb the proposed relief without inappropriately degrading the visual experience of the landscape that is currently had by observers.

CONCLUSIONS

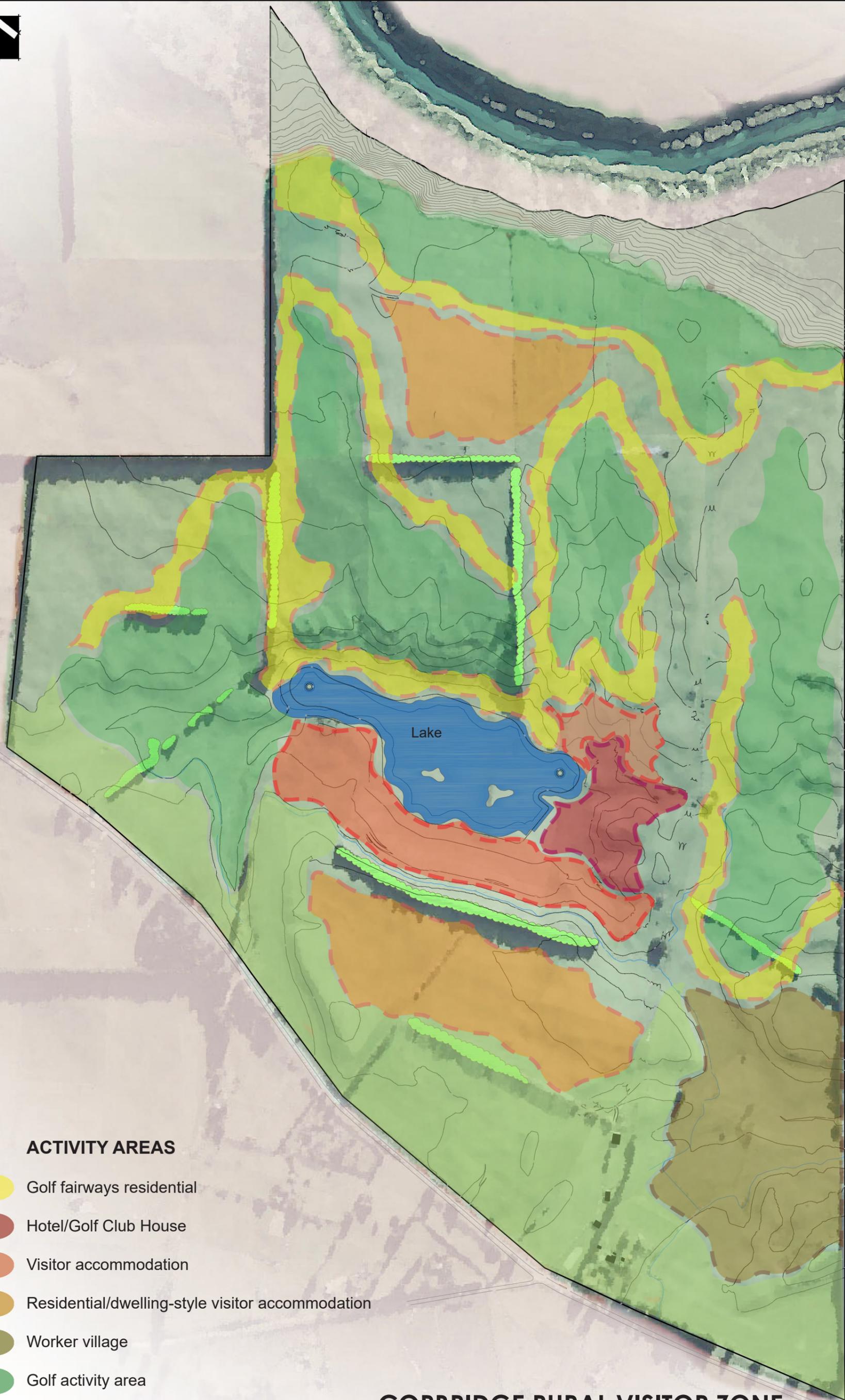
- 27 From a landscape planning perspective, I agree with the Corbridge submission in that it is logical to provide for nodes of rural visitor activities not just within ONLs but also within other, less sensitive, rural landscapes of the district.
- 28 The relief proposed by the Corbridge submission involves an area of RVZ over their landholding subject to a specific Structure Plan and some specific provisions. It will enable an area of visitor activity in a rural location between Wanaka Airport and Albert Town / Wanaka, configured such that considerable open space is maintained and development is concentrated in the central, significantly hidden, part of the site.
- 29 In relation to both landscape character and visual amenity, I consider that development that results from the proposed relief will be absorbed into the rural landscape within which it sits, without inappropriate degradation or adverse effects.

Ben Espie

vivian+espie

25th November 2019

Attachment 2 - Draft Corbridge Structure Plan



ACTIVITY AREAS

-  Golf fairways residential
-  Hotel/Golf Club House
-  Visitor accommodation
-  Residential/dwelling-style visitor accommodation
-  Worker village
-  Golf activity area
-  Road buffer/landscaped open space
-  Open space

CORBRIDGE RURAL VISITOR ZONE

DRAFT STRUCTURE PLAN

25/7/2019

Scale 1:8,000 @ A3

Attachment 3 RM120572

Client/Location:

Corbridge Estates Limited
707 Wanaka - Luggate
State Highway

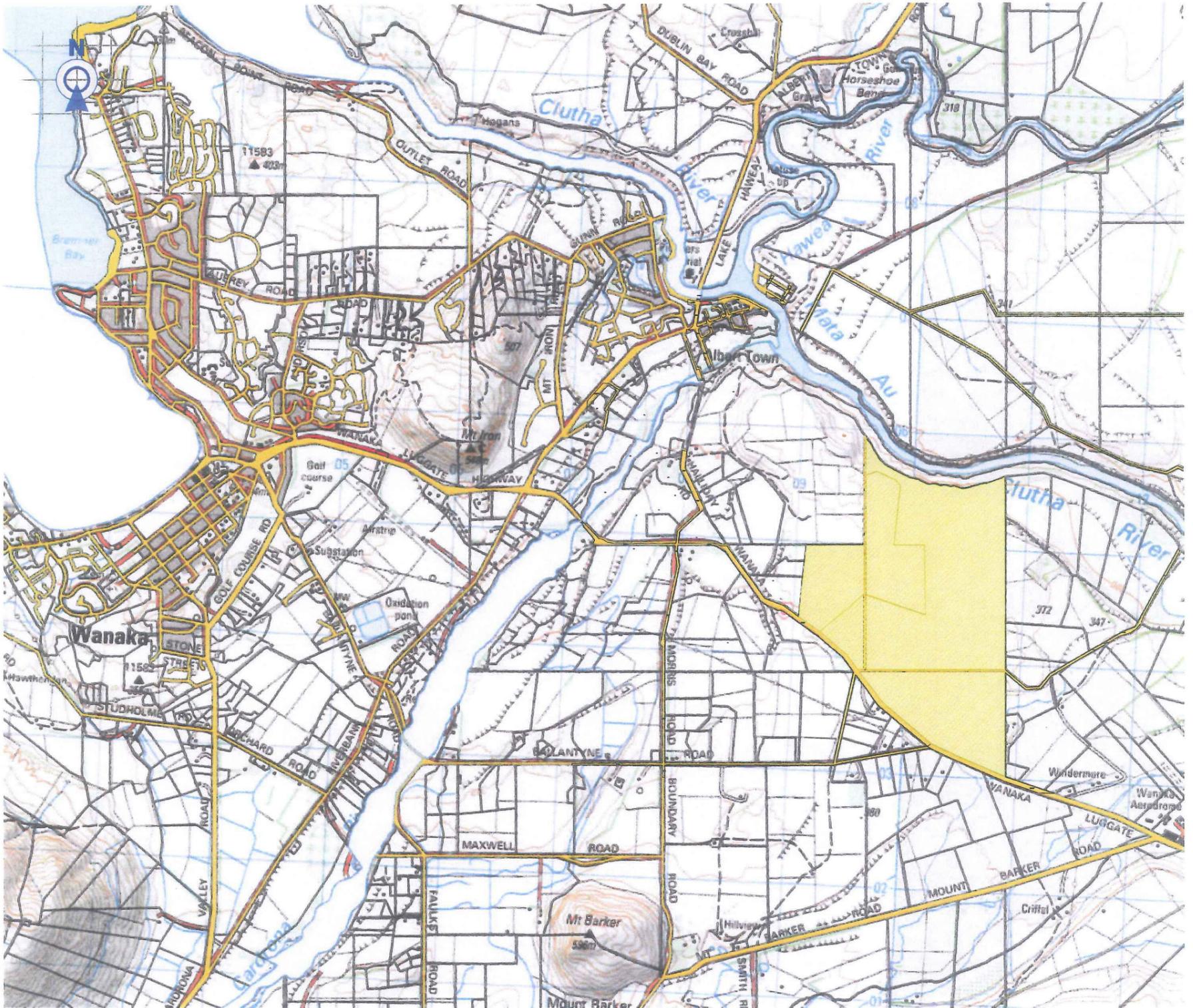
Purpose/Drawing Title:

Scheme Plan
Corbridge Estates Subdivision

QUEENSTOWN LAKES DISTRICT COUNCIL

APPROVED PLAN:
RM120572

23 July 2013



Location Plan

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19 Reece Crescent
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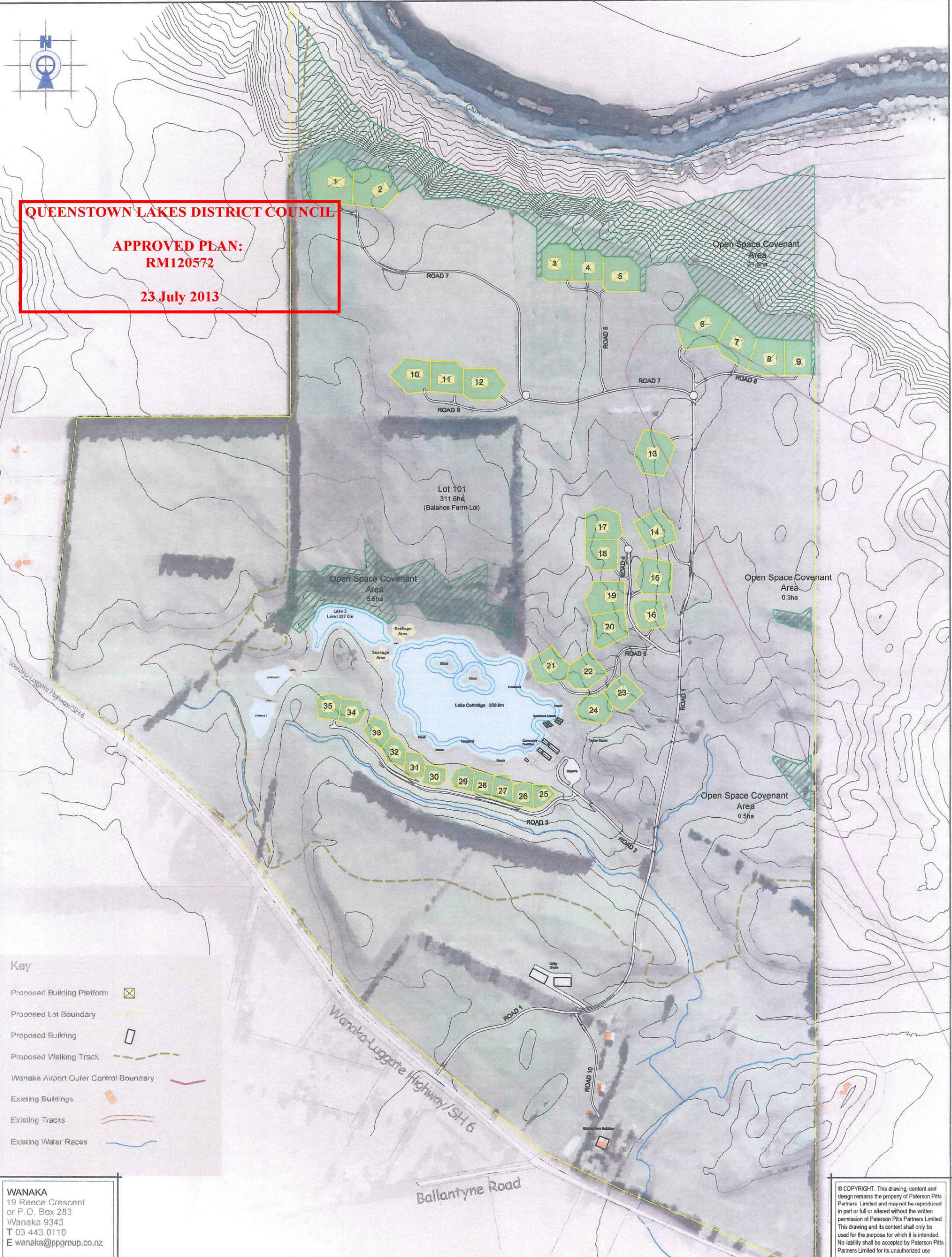
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			Date Created:
			15/05/2013



QUEENSTOWN LAKES DISTRICT COUNCIL
APPROVED PLAN:
RM120572
23 July 2013

Key

Proposed Building Platform	
Proposed Lot Boundary	
Proposed Building	
Proposed Walking Track	
Wanaka Airport Outer Control Boundary	
Existing Buildings	
Existing Tracks	
Existing Water Races	

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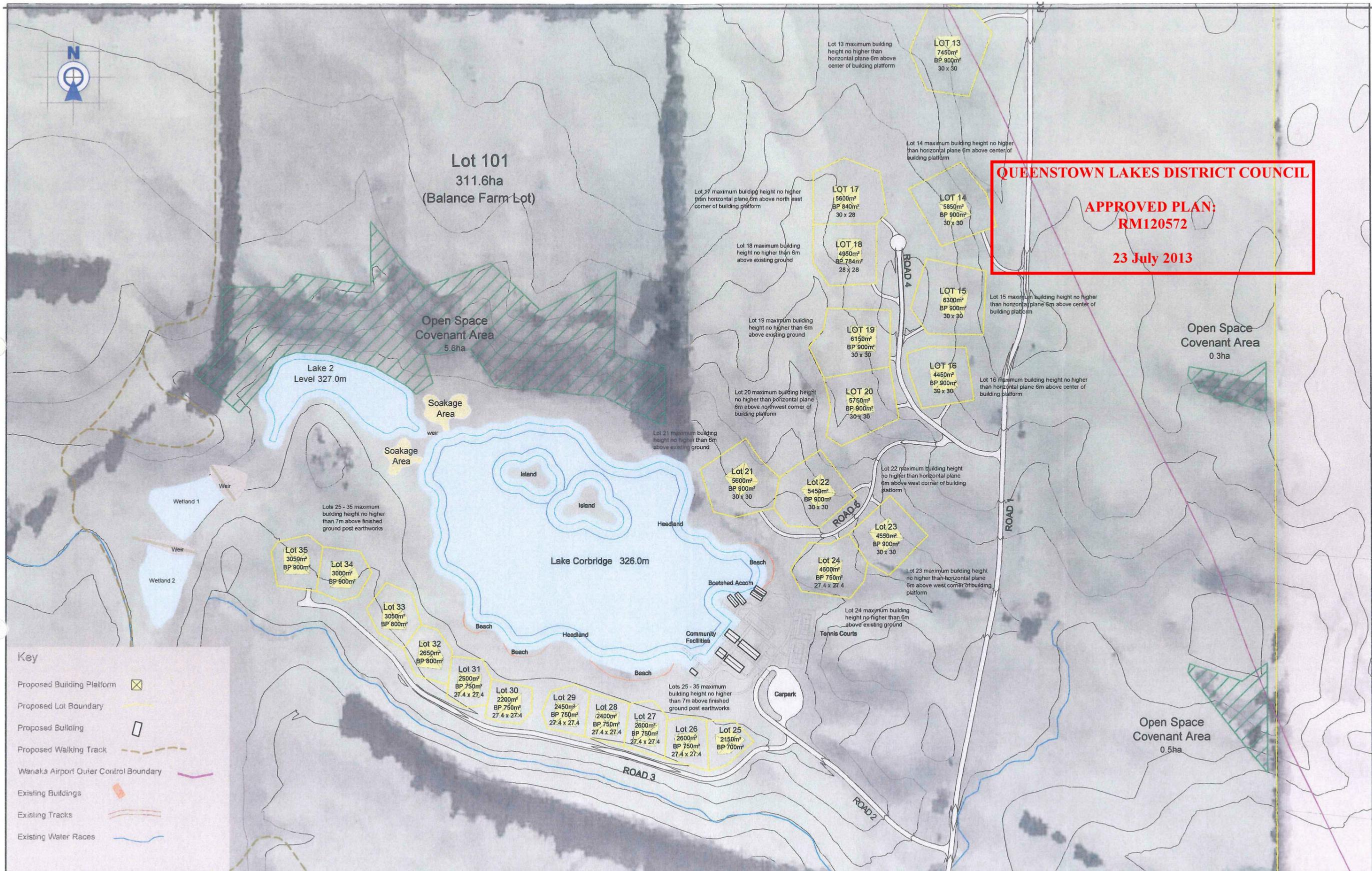
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State Highway

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Corbridge Estates Subdivision

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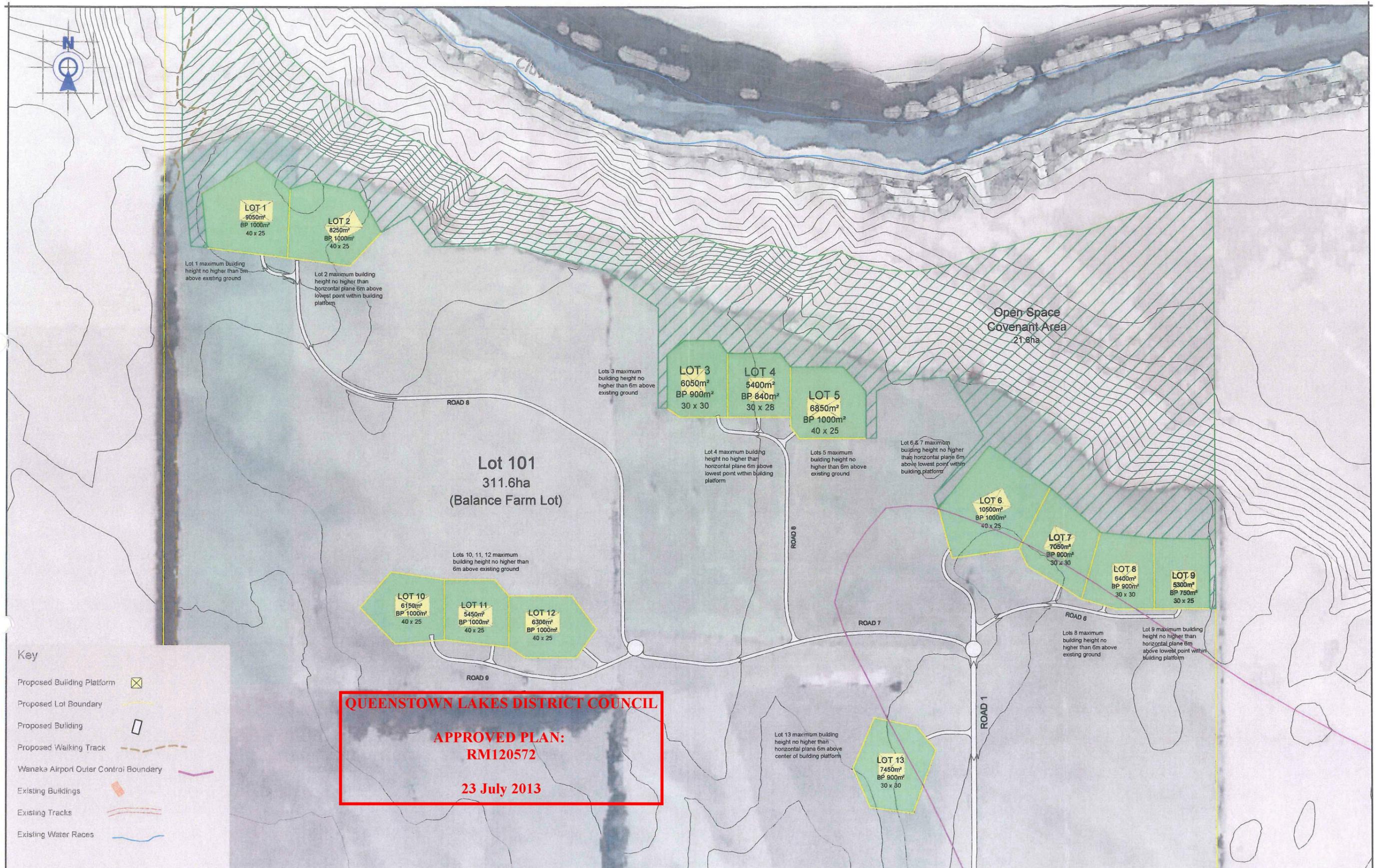
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Purpose/Drawing Title:
Scheme Plan - Option 1
Corbridge Estates Subdivision
Lake Sites

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			15/05/2013



Key

Proposed Building Platform	
Proposed Lot Boundary	
Proposed Building	
Proposed Walking Track	
Wanaka Airport Outer Control Boundary	
Existing Buildings	
Existing Tracks	
Existing Water Races	

QUEENSTOWN LAKES DISTRICT COUNCIL
APPROVED PLAN:
RM120572
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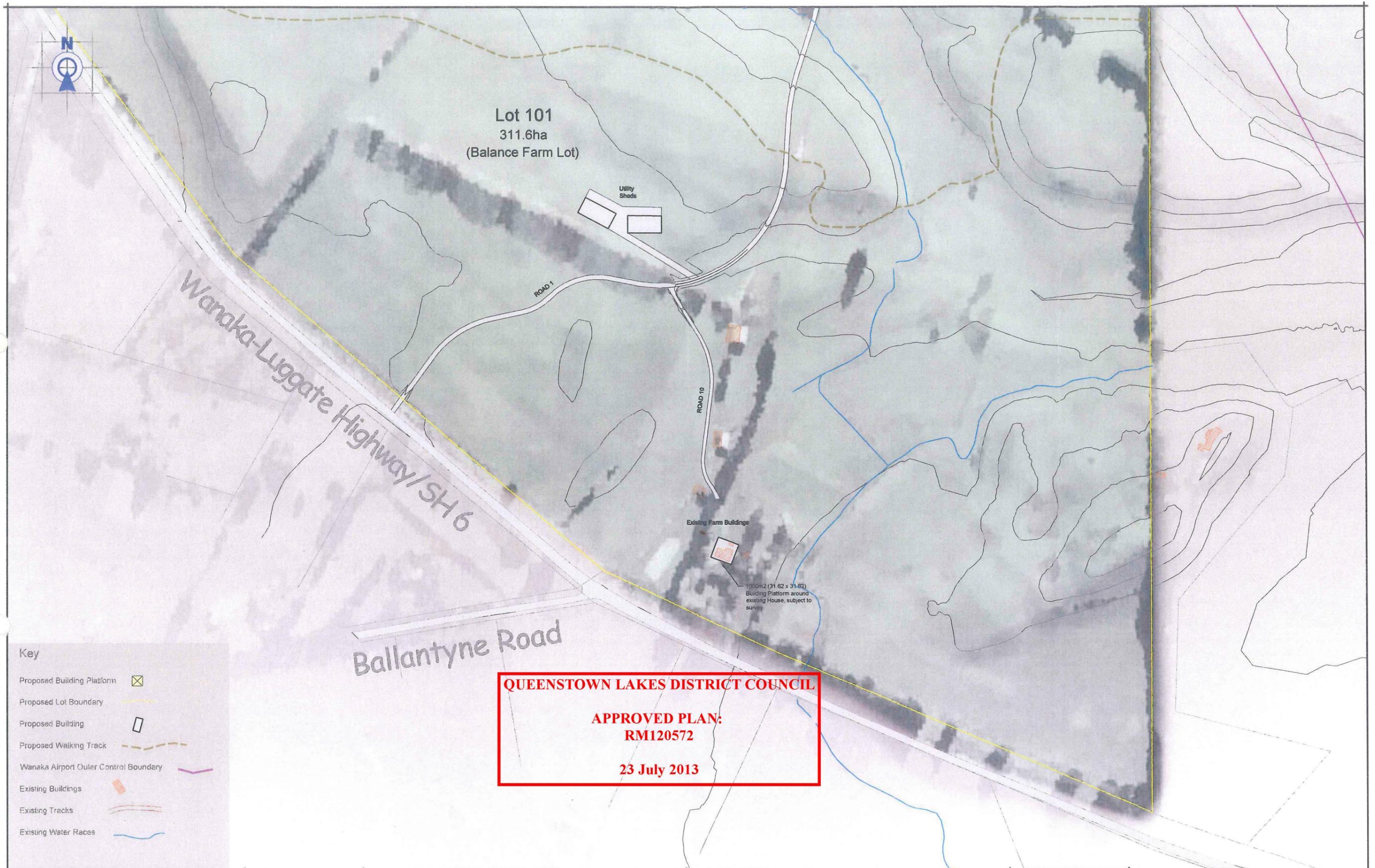
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Purpose/Drawing Title:
Scheme Plan - Option 1
Corbridge Estates Subdivision
Northern Sites

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Key

Proposed Building Platform	
Proposed Lot Boundary	
Proposed Building	
Proposed Walking Track	
Wanaka Airport Outer Control Boundary	
Existing Buildings	
Existing Tracks	
Existing Water Races	

QUEENSTOWN LAKES DISTRICT COUNCIL
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Purpose/Drawing Title:
Scheme Plan
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Farm Buildings

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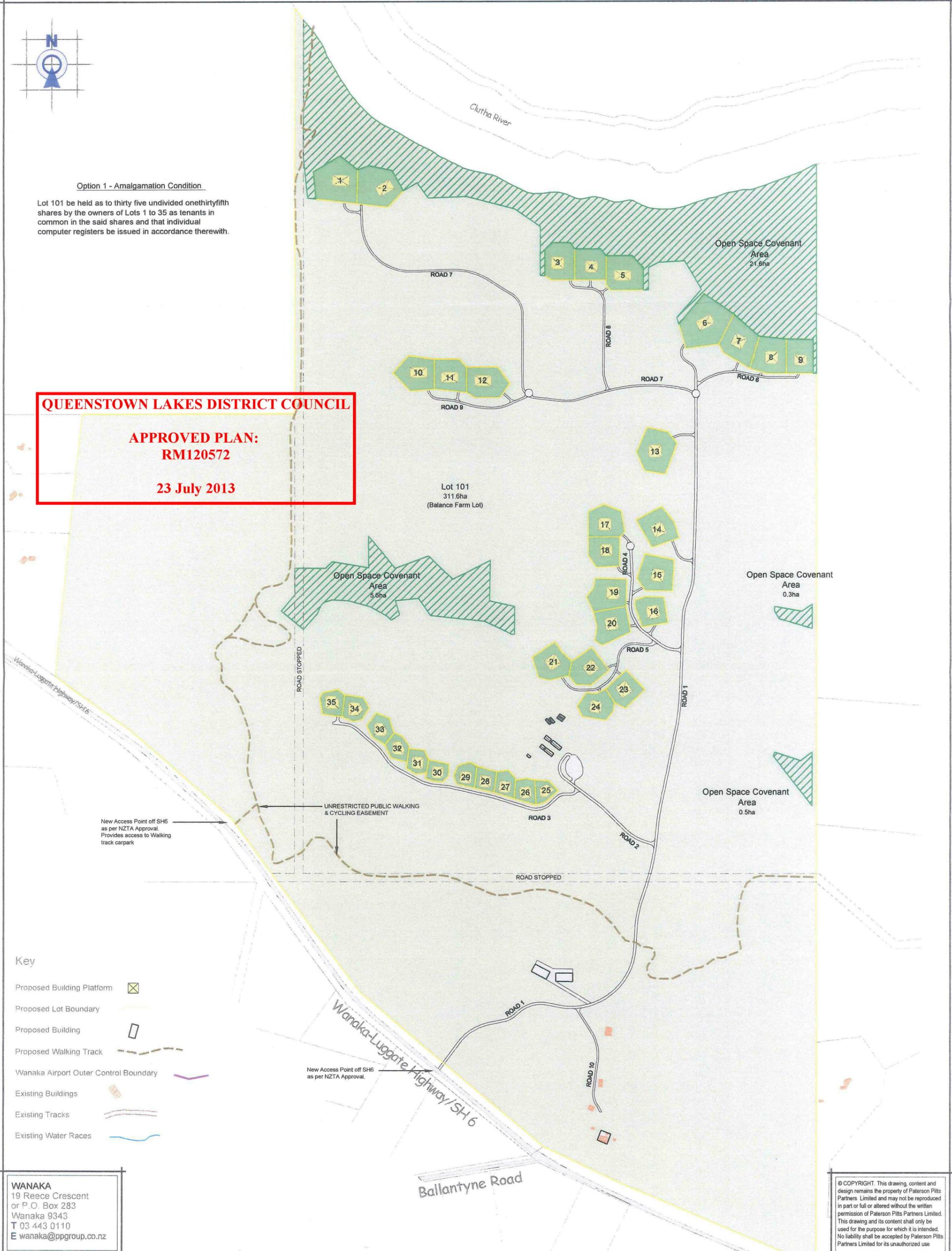
Option 1 - Amalgamation Condition

Lot 101 be held as to thirty five undivided onethirtyfifth shares by the owners of Lots 1 to 35 as tenants in common in the said shares and that individual computer registers be issued in accordance therewith.

QUEENSTOWN LAKES DISTRICT COUNCIL

**APPROVED PLAN:
RM120572**

23 July 2013



New Access Point off SH6 as per NZTA Approval. Provides access to Walking track carpark

UNRESTRICTED PUBLIC WALKING & CYCLING EASEMENT

New Access Point off SH6 as per NZTA Approval.

Key

- Proposed Building Platform
- Proposed Lot Boundary
- Proposed Building
- Proposed Walking Track
- Wanaka Airport Outer Control Boundary
- Existing Buildings
- Existing Tracks
- Existing Water Races

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707 Wanaka - Luggate
State Highway

Purpose/Drawing Title:
Scheme Plan - Option 1
Corbridge Estates Subdivision
Balance Lot Extent

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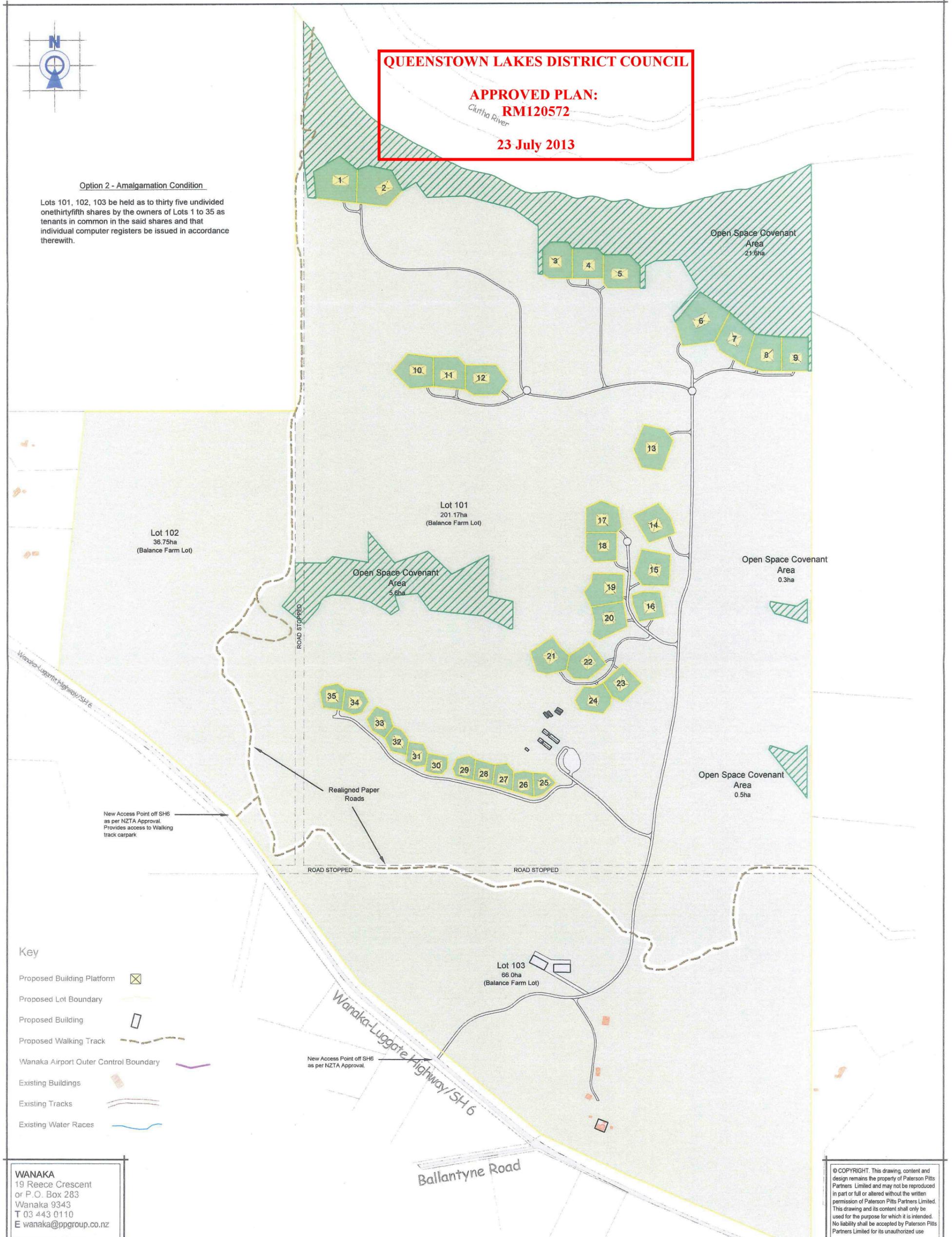
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QUEENSTOWN LAKES DISTRICT COUNCIL
APPROVED PLAN:
RM120572
23 July 2013

Option 2 - Amalgamation Condition

Lots 101, 102, 103 be held as to thirty five undivided onethirtieth shares by the owners of Lots 1 to 35 as tenants in common in the said shares and that individual computer registers be issued in accordance therewith.



- Key**
- Proposed Building Platform
 - Proposed Lot Boundary
 - Proposed Building
 - Proposed Walking Track
 - Wanaka Airport Outer Control Boundary
 - Existing Buildings
 - Existing Tracks
 - Existing Water Races

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State Highway

Purpose/Drawing Title:
Scheme Plan - Option 2
Corbridge Estates Subdivision
Balance Lot Extent

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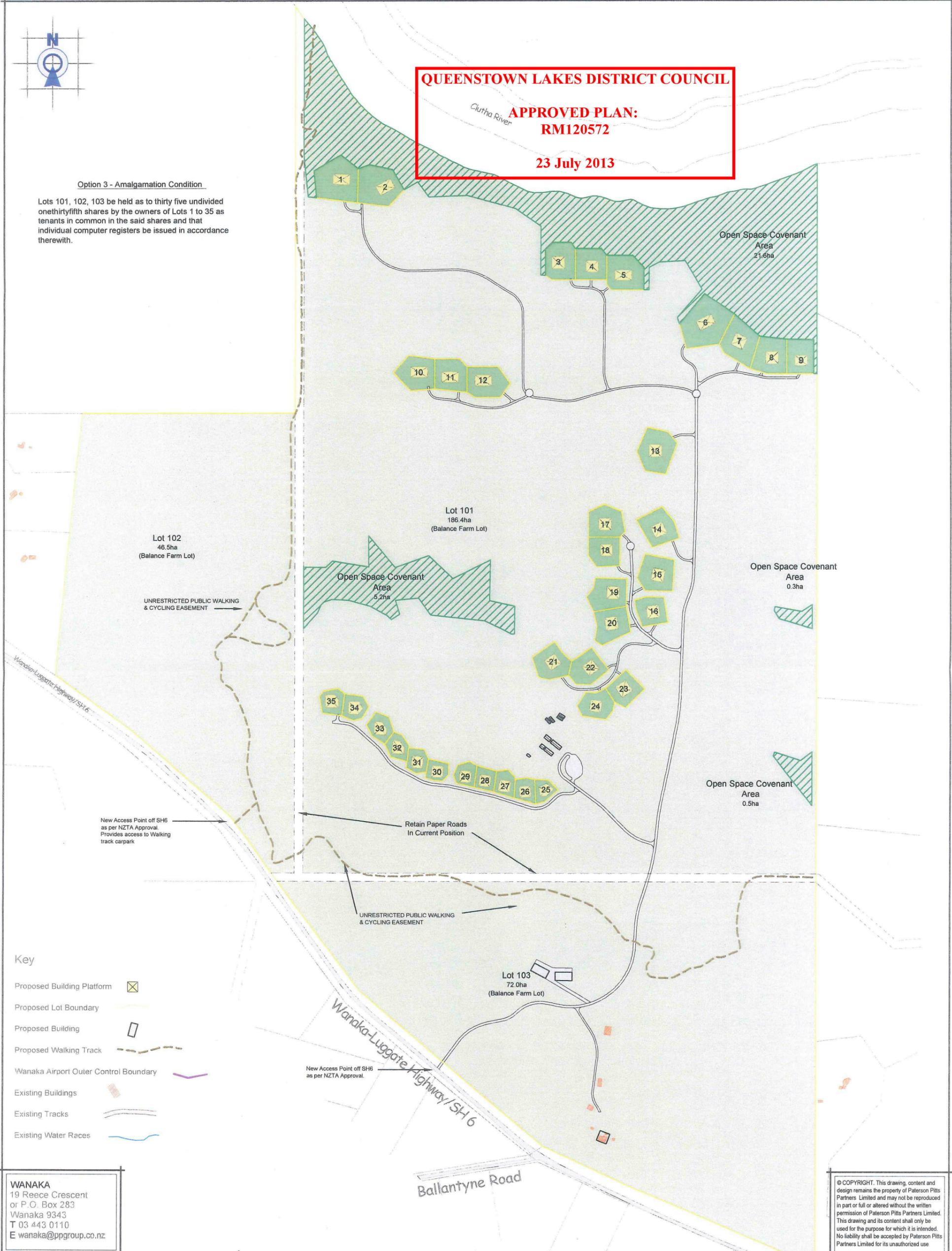
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QUEENSTOWN LAKES DISTRICT COUNCIL
APPROVED PLAN:
RM120572
23 July 2013

Option 3 - Amalgamation Condition

Lots 101, 102, 103 be held as to thirty five undivided onethirtieth shares by the owners of Lots 1 to 35 as tenants in common in the said shares and that individual computer registers be issued in accordance therewith.



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Purpose/Drawing Title:
Scheme Plan - Option 3
Corbridge Estates Subdivision
Balance Lot Extent

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			15/05/2013

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QUEENSTOWN LAKES DISTRICT COUNCIL

**APPROVED PLAN:
RM120572**

23 July 2013

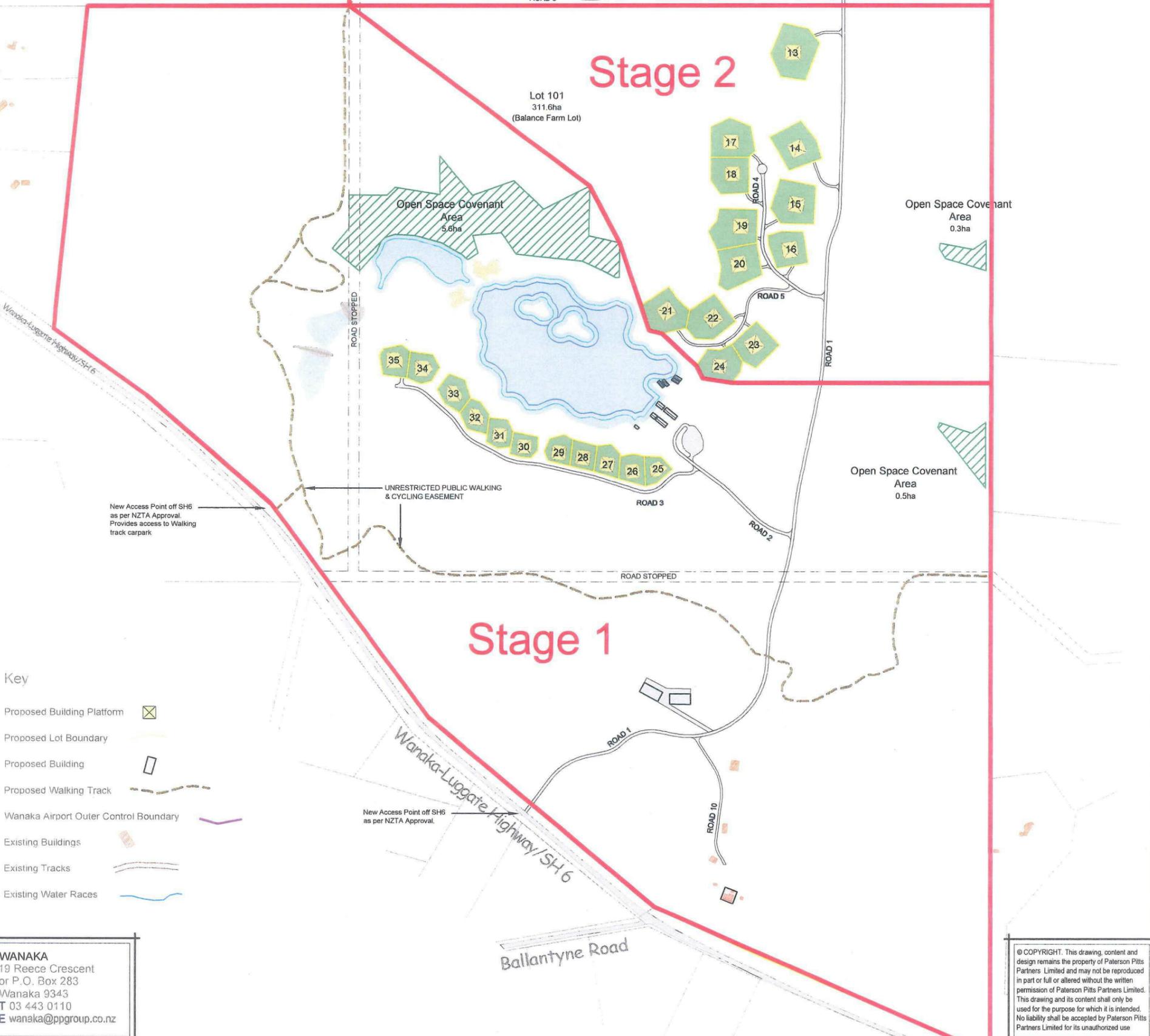
Staging Notes

- 1. Stage 1 of the subdivision will include the formation and creation of the public walkway and any necessary easements.
- 2. Staging is for subdivision only and does not include timing for the construction of any communal facilities.

Stage 3

Stage 2

Stage 1



- Key**
- Proposed Building Platform
 - Proposed Lot Boundary
 - Proposed Building
 - Proposed Walking Track
 - Wanaka Airport Outer Control Boundary
 - Existing Buildings
 - Existing Tracks
 - Existing Water Races

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 707 Wanaka - Luggate
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Purpose/Drawing Title:
Scheme Plan
Corbridge Estates Subdivision
Proposed Staging

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Job No:	W3098	Date Created:	15/05/2013

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Attachment 4 - Letter

2 December 2019



Corbridge Estates Limited Partnership
PO Box 718
Wanaka 9343

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By Email and Post: jason@corbridge.co.nz

Gallaway Cook Allan Lawyers Wanaka
24 Dunganon Street
PO Box 450
Wanaka 9343, New Zealand
Phone 03 443 0044
Fax 03 443 6651

Dear Directors

RURAL VISITOR ZONE

1. You seek advice on whether Corbridge has scope to seek Rural Visitor Zone (**RVZ**) through Stage 3 (**PC3B**) of the Proposed Queenstown Lakes District Plan (**PDP**). Corbridge are in the position that there has not been an opportunity to have their sites assessed against PDP RVZ Objectives and Policies.
2. Stage 1 provided an opportunity to have RVZ assessed against the operative District Plan RVZ only. We understand that RVZ was not pursued through appeals on Stage 1 as Council has advised that RVZ would be proposed as part of Stage 3. The recent Notification of Variation 3B is accompanied by a Public Notice that only areas identified within specific Outstanding Natural Landscapes are to be considered within scope of the Variation.
3. We understand that the central issues are as follows:
 - (a) Whether a submission to seek RVZ at your site is a submission “on” Stage 3 of the PDP?
 - (b) Have Council undertaken an adequate section 32 analysis? Can this be addressed through submission?
 - (c) Is the procedure fair to third parties (potentially cross-submitters), and if not, then what are the potential remedies?

Background

4. The Public Notice on PC3B identifies that Council consider that there unlikely to be scope to propose RVZ to any area not notified is likely to be outside the scope of Stage 3:

“It is important to be aware that the Council’s decisions on the provisions and plan maps notified as part of Stages 1 and 2 of the Proposed District Plan have been issued. Any submissions relating to provisions, zones and mapping annotations not notified as part of Stage 3 of the Proposed District Plan are likely to be considered “out of scope”, and will not be able to be considered. The Stage 3 district wide chapters and some variations apply to all land, or specific land, included in the Proposed District Plan. The Stage 3 zones only apply to the land shown as notified on the Stage 3 Web Mapping Application viewer.”

[Emphasis added]

5. We understand that this approach is inconsistent with previous communication with Council and discussion during Stage 1. As background to the issue, we attach the Minutes issued by the Hearing Panel during Stage 1, dated 29 May 2017 and 8 June 2017 (attached as **Appendix A and B**).
- (a) Minute 29 May 2017 – The Council responds to the Lake Wakitipu’s submission to rezone Rural land to RVZ. In absence of any comprehensive strategic directions within the Proposed Plan, the Panel assess RVZ against the operative Plan provisions. While it was not beyond scope for submitters to seek RVZ as part of Stage 1, the Panel foreshadowed difficulties in giving effect to and implementing the PDP higher order objectives and policies.
- (b) Minute 8 June 2017 – The Council confirms that the provisions noted as “operative” could not be subject to submissions at the time. If the submitter seeks a type of zoning that has not been notified as part of stage 1, then they will need to prepare a policy package that is suitable and appropriate to be included within the PDP.
6. The issue was also discussed in the Legal Submission of Sarah Scott dated 10 July 2017 (Stream 12).¹

10.1 *“The Panel has queried through the Reply Minute:*

Projecting forward to Stage 2 of the PDP process, how does Council see submissions seeking rezoning of current ODP Zones, where the relief sought is a Stage 1 PDP Zone e.g. land currently zoned Township where a submitter seeks a Low Density Residential Zone. Will that be possible, or is it the Council's view that such a submission would be out of scope? Would it make a difference if the future rezoning application seeks some local variation to the zone provisions the outcome of the PDP Stage 1 process (e.g. with additional standards)?

10.2 *In later stages of the PDP process, submitters would be entitled to request a Stage 1 PDP zone (e.g. notified Township zone to LDRZ) or any other zone, that would be clearly be within scope, and becomes an evidential test. In fact, depending on timing, there could be significantly more certainty than what exists in Stage 1, if Stage 1 decisions have been released.*

10.3 *A submitter would be entitled to seek any zone type for its land, whether included in the PDP at any stage or not (ie, as the Glendhu Bay Trustees are seeking in this hearing). If they seek a Stage 1 zone, they are entitled to seek variations to those Stage 1 zone provisions, but it submitted that such variations would need to be specific to the land in question. This may be by way of site specific standards, or possibly a site specific objective and policies, if justified under the statutory tests.”*

7. The legal submission suggests that submitters can seek any zoning as part of latter stages of the District Plan review. This interpretation is consistent with communication between Carey Vivian and Ian Bayliss in May 2018 (attached as **Appendix C**). This communication was a foundational reason why submitter did not pursue appeals as part of Stage 1.

Is a Submission “On” a Plan Change

8. When determining whether a submission is “on” a Plan Change, the leading case *Clearwater Resort Limited v CCC*² which applies a two-step test:

¹ Legal Submissions of Ms Scott, Hearing Stream 12, Dated 10 July 2017 at [10.1]-[10.3]

² *Clearwater Resort Limited v CCC* (HC) Christchurch AP 34/02

1. *Is the relief sought in the challenged submission incidental to, consequential upon or (perhaps) directly connected to the plan change (or variation)?*
2. *have potential submitters been given fair and adequate notice of what is proposed in the submission or has their right to participate been removed?*

Neither of the higher authorities suggests other than that each case must be determined on its own facts, and there is no clear line: whether there is jurisdiction is a matter of fact and degree.

9. *PNCC v Motor Machinists Limited* elaborated and provided an exemption as follows: ³

“One way of analysing that is to ask whether the submission raises matters that should have been addressed in the s 32 evaluation and report. If so, the submission is unlikely to fall within the ambit of the plan change. Another is to ask whether the management regime in a district plan for a particular resource (such as a particular lot) is altered by the plan change. If it is not then a submission seeking a new management regime for that resource is unlikely to be “on” the plan change. That is one of the lessons from the Halswater decision. Yet the Clearwater approach does not exclude altogether zoning extension by submission. Incidental or consequential extensions of zoning changes proposed in a plan change are permissible, provided that no substantial further s 32 analysis is required to inform affected persons of the comparative merits of that change. Such consequential modifications are permitted to be made by decision makers under schedule 1, clause 10(2). Logically they may also be the subject of submission.”

10. These principles have recently been applied in the context of QLDC through *Tussock Rise Limited v QLDC* and *Well Smart Investments Limited (NZQN) v QLDC*.⁴

11. In *Well Smart*, the Court assessed whether submitters outside of the PC50 area could submit to be included within PC50. A significant aspect of the factual context was that earlier documents identified a broader area for potential zoning, while the section 32 restricted the assessment of alternative uses assessment to the sites with proposed PC50 only. The Court held the following:

- (a) The Court rejected the proposition that because the land was outside the area identified within PC50 that it was automatically beyond scope. The Court applied the exception within *Motor Machinist* that incidental or consequential extensions are appropriate provided no substantial section 32 assessments are required to inform potentially affected persons.⁵
- (b) Applying the second limb of the *Clearwater* test above, the Court was concerned with whether allowing the submission would result in a ‘sidewind’ where potentially affected parties were not given fair opportunity to assess the proposal.⁶

I find (if barely) that the potential submitters on the appellants' submissions were not given sufficient notice by the combination of the Section 32 Evaluation, and the Council's summary of submissions.

- (c) However ultimately, the Court found that the appellant’s submission to extend PC50 did not fit within the limited exemption of *Motor Machinists* above. In short, the fact

³ *PNCC v Motor Machinists Limited* [2013] NZHC1290; [2014] NZRMA 519

⁴ *Clearwater Resort Limited v CCC* [2015] NZEnvC 214

⁵ *PNCC v Motor Machinists Limited* [2013] NZHC1290; [2014] NZRMA 519 at [81]

⁶ *Well Smart Investments Limited (NZQN) v QLDC* [2015] NZEnvC 214 at [39]

that potential third parties were not given fair notice of the extension of PC50 was determinative for the Court.

12. The Court in *Tussock Rise* applied the same principles to reach a different outcome. The significant factor for the Court was that the site was adjoining a proposed residential zone subject to appeal. The risk of prejudice to other submitters could be remedied in this circumstance.⁷

I hold that TRL can bring itself within the exception to some extent because its land is immediately adjacent to the proposed Low Density Residential zone. On the other hand, the Industrial B zone is not discussed in the section 32 analysis....

For present purposes I consider that the site, because it is adjacent to the proposed zone, comes within the consequential exemption contemplated by Kos J.

13. The Court held that in this case, that the Note appended to the Council's legend is subject to an implicit proviso that a submission may seek to amend boundaries of the proposed zone in the PDP (being consistent with the exemption provided by *Motor Machinists*). The Court also identified solutions to remedy any prejudice suffered by third parties. We do note that these remedies were not required in this case but open to the Council to consider:⁸
- (a) Promote a variation under clause 16A Schedule 1 RMA (to including the site) so both neighbours and public are notified of the submission.
 - (b) If the matter proceeds to Environment Court and the Court finds that third parties would have been prejudiced, then the court can adjourn the final decision about the site until the plan addresses the specific zoning of this site.
 - (c) The Court can direct consultation (and/or notification) under section 293 RMA.
14. The Court in *Tussock Rise* considered the possibility of the Court issuing a declaration that section 32 has not been complied with.⁹ Such course of action may be precluded by Section 32A which states that any challenge to a section 32 report may only be made in a submission. Therefore we recommended addressing the inadequacy of the section 32 analysis through Corebridge's submission, and outlining the fact that there are appropriate alternative locations available that have not been assessed. It is then open to the Panel to accept that submission, and if so, adopt the options above to cure any prejudice to third parties through either limited or public notification.
15. *Bluehaven Management Limited v WBOPDC* takes a much broader interpretation of the *Motor Machinist exemption* and adopts an additional criterion of whether the s 32 evaluation report should have covered the issue raised in the submission. Otherwise, the Court reasoned, a Council would be able to ignore potential options for addressing the matter that is the subject of the plan change, and prevent submitters from validly raising those options in their submissions.¹⁰

Our understanding of the assessment to be made under the first limb of the test is that it is an inquiry as to what matters should have been included in the s 32 evaluation report and whether the issue raised in the submission addresses one of those matters. The inquiry cannot simply be whether the s 32 evaluation report did or did not address the issue raised in the submission. Such an approach would enable a planning authority to ignore a relevant

⁷ *Tussock Rise Limited v QLDC* [2019] NZEnvC 111 at [67]-[69]

⁸ *Ibid* at [83]-[87]

⁹ *Ibid* at [61]

¹⁰ *Bluehaven Management Limited v WBOPDC* [2016] NZEnvC 191 at [39]

matter and thus avoid the fundamentals of an appropriately thorough analysis of the effects of a proposal with robust, notified and informed public participation.

16. *Tussock Rise* criticised the approach in *Bluehaven* on the basis that the approach still has the potential to undermine fairness to persons who might have wished to lodge submissions.¹¹
17. We do note that *Bluehaven* was followed in *Calcutta Farms Limited v Matamata-Piako District Council* which adopted their reasoning:¹²

Much will depend on the nature of the plan change which can assist to determine its scope, (whether it is a review or a variation for example) and what the purpose of it is. In this case, the purpose of the plan change is to review the future need for residential areas in Matamata, and to identify areas next to urban areas where future residential activity is proposed to occur. The method by which the latter is proposed to occur in PC47 is by the application of the Future Residential Policy Area notation. Underpinning the need for the size and scale of both new Residential Zones and the Future Residential Policy Area are the population predictions, which Calcutta Farms' submission directly sought to challenge. I agree with Mr Lang that the District Plan review process should be such that differing views on the appropriate scale of such policy areas can be considered, rather than assuming that the Council's nominated scale of policy areas represents the uppermost limit for future planning. I therefore agree with Mr Lang that the difference and scale and degree of what is proposed by Calcutta Farms is a matter going to the merits of the submission rather than to its validity.

For the above reasons, I consider that Calcutta Farms' submission does address the extent to which PC47 changes the existing status quo.¹³

Summary of Principles

18. In applying the High Court Principles, there are two distinct lines of reasoning:
 - (a) Judge Jackson (*Tussock Rise & Well Smart*) applied the *Motors Machinist* exemption strictly to alleviate prejudice to potential third parties. Predominant consideration is given to those who are not before the Court. Judge Jackson then introduced remedies to ensure that Council does not benefit from inadequate section 32 assessments and to cure any prejudice in relation to notification of potentially interested parties.
 - (b) Judge Smith, Judge Kirkpatrick (*Bluehaven*) and Judge Harland (*Calcutta*) preferred a broader interpretation and assessed the submission against the purpose of the Plan Change or Variation. Considerations include the appropriate scale and location of policy areas (i.e. *should* an area be included within Council's assessment).

SUMMARY

19. The case law discussed above demonstrates that the question of whether a submission is 'on' a plan change can be attributed directly back to the section 32 assessment. This includes questioning whether all appropriate locations for RVZ have been assessed. There is a line of case law that suggests the question is whether a location 'should' have been assessed as part of the plan change.

¹¹ *Tussock Rise Limited v QLDC* [2019] NZEnvC 111 at [60]

¹² *Calcutta* at [87]-[88]

¹³ Status quo is referring to first limb of Clearwater.

20. The Courts have also cautioned Council against utilising a deficient section 32 analysis to benefit themselves. That is exactly the situation that has occurred through PC3B. The Court has recently outlined methods of remedying such inadequacies through *Tussock Rise*. The rationale being that Council should not benefit from inadequate section 32 analyses, nor should potential third parties prejudiced through introduction of additional areas within a Plan Change.
21. An adequate section 32 analysis has not been undertaken. The approach proposed through PC3B is inconsistent with both Council's good faith discussion with your consultants Vivian & Espie and their obligation to assess all reasonably practical options pursuant to section 32(1)(b). We agree with the analysis at pages 6 -8 of Corbridge's submission that by limiting the RVZ to specific locations within Outstanding Natural Landscapes, and not considering potential zone locations beyond existing operative zoned areas, the Council has not properly given effect to the Strategic Directions of the PDP that require identification of locations capable of absorbing development. Additionally, the policy framework suggests that the Outstanding Natural Landscapes are the least appropriate locations for such activity, and strategic locations within Rural Character Landscapes should also be considered.
22. For all these reasons we advise that a submission by Corbridge on PC3B is entitled to raise the scope and location of the RVZ on as a section 32 matter and to seek as relief that the Corbridge's land be rezoned.

Yours faithfully

GALLAWAY COOK ALLAN



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