

Before the Queenstown Lakes District
Council

In the matter of The Resource Management Act 1991

And

In the matter of Proposed District Plan – Stage 2 – Wakatipu Basin – Hearing
Stream 14

Submissions 430 and 2388 by Waterfall Park Developments
Limited

LEGAL SUBMISSIONS for

Waterfall Park Developments Limited

Dated 12 July 2018

S2388 – Waterfall – T14 – Goldsmith W – Legal Submissions

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Introduction

- 1 Submission #2388 by Waterfall Park Developments Limited (WPDL) is likely to be one of the more complex submissions to be considered by the Panel in Stage 2 of the District Plan Review (DPR). The combination of the factual background, the planning background and the proposed Ayrburn Zone is complex and needs to be fully understood. Because of those factors, the evidence lodged is extensive. Counsel respectfully recommends that, if these Submissions are read before the evidence is read, that will assist members of the Panel to understand both the nature and the detail of the evidence.
- 2 Technically these Submissions relate to both Submission #430 lodged in respect of Stage 1 by the former owner of Ayrburn Farm (Ayrburn Farm Estate Limited) and Submission #2388 lodged in respect of Stage 2 by WPDL. However Submission #2388 largely overtakes, and refines, Submission 430. While both submissions remain valid for jurisdictional purposes, these Submissions refer only to Submission #2388.
- 3 Counsel does not intend to address the principles relevant to the determination of an appropriate zoning of land through the DPR. Counsel anticipates that those issues will be well traversed during the hearing. Accordingly these Submissions focus on matters relevant to Submission #2388 and the relief requested through Submission #2388.
- 4 WPDL owns two adjoining areas of land in the Wakatipu Basin, one which adjoins the Lake Hayes-Arrowtown Road and the other which has access off the Lake Hayes-Arrowtown Road.
- 5 The first is the property known as 'Ayrburn Farm' which is identified on **Attachment A**¹ to these Submissions as the larger area bounded by a thick dot/dash black line. Ayrburn Farm is bordered on its western boundary by an unformed legal road, on its southern boundary by the northern end of the Lake Hayes Operative District Plan (ODP) Rural Residential (RR) Zone, on its eastern boundary by the Lake Hayes-Arrowtown Road, and on its northern boundary by an area of ODP Rural zoned land, the Waterfall Park Zone (WPZ) and the Millbrook Zone.
- 6 The second is the property known as 'Waterfall Park', which comprises all of the land within the WPZ plus an unusual triangular shaped 'wedge' of land zoned Rural under the ODP ("Wedge"). Waterfall Park adjoins Ayrburn Farm in the middle section of the northern boundary of Ayrburn Farm. The Wedge is

¹ Attachment A is the amended version Ayrburn Zone Structure Plan dated 27/06/2018 lodged with the Rebuttal Evidence of George Watts dated 27 June 2018. It replaces the earlier version lodged with the primary evidence for WPDL.

identified on Attachment A as the smaller area bounded by a thick dot/dash black line.

- 7 The Wedge is an historical zoning anomaly, with no apparent rhyme or reason. WPDL seeks to have the Wedge incorporated within the WPZ. The Wedge is shown on Attachment A as a matter of convenience (rather than producing a separate plan) and is not intended to be part of the proposed Ayrburn Zone. I address the Wedge separately and briefly below. Subject to those brief comments, the remainder of these Submissions relate to Ayrburn Farm.
- 8 WPDL faces a complex consenting/zoning situation which arises partly from the Council's staged DPR process, partly from historical zoning issues, and partly from the timing of WPDL's land acquisition. Those three factors will be further explained later in these Submissions. In summary, as a result of those factors, WPDL is currently involved in the following separate but contemporaneous planning processes:
 - a. The WPZ is 'landlocked' to the extent that it does not have legal and practical vehicle access. WPDL is seeking to consent road access from the Lake Hayes-Arrowtown Road to the WPZ under consent RM171280.
 - b. WPDL is seeking to consent a large visitor accommodation development, primarily within the WPZ but extending a small distance into Ayrburn Farm, under RM180584. RM180584 will be publicly notified shortly. A Council decision is expected before the end of this year.
 - c. WPDL is seeking to rezone Ayrburn Farm through this DPR process, preferably for urban purposes, but as a fallback option for rural living purposes.
- 9 The primary relief sought by WPDL in these proceedings is a proposed new Ayrburn Zone as detailed on Attachment A. The primary elements shown on Attachment A are:
 - a. Mill Creek runs down from the north out of the WPZ, through Ayrburn Farm in a generally north-south direction, and exits Ayrburn Farm across Ayrburn Farm's southern boundary into the Lake Hayes RR Zone.
 - b. The road subject to consent RM171280 is the "Access Road" identified by a thick, dashed black line, connecting the Lake Hayes-Arrowtown Road with the WPZ southern boundary by a proposed road running through Ayrburn Farm, including one bridge crossing over Mill Creek.
 - c. The northern small Residential (R) Activity Area in the centre right of Ayrburn Farm, east of Mill Creek, is the existing heritage-protected Ayrburn

Homestead title which connects to the Lake Hayes-Arrowtown Road through an existing legal access strip shown on Attachment A.

- d. The Open Space/Building Restriction (O/BR) Activity Areas are intended to protect:
 - i. the visual amenity values of Christine's Hill which includes the sloping land on Ayrburn Farm located between the Millbrook Zone boundary to the north and the valley floor in the centre of Ayrburn Farm;
 - ii. a 15m setback from the unformed legal road which contains the Queenstown Trail where it runs across the valley floor along Ayrburn Farm's western boundary;
 - iii. the residential amenities of adjoining RR neighbours to the south, by means of varying 50m/25m/50m/100m building setbacks along the southern boundary plus specific Tree Protection Areas to retain existing screening trees;
 - iv. the visual amenity values of the flat paddocks in the eastern part of Ayrburn Farm which adjoin the Lake Hayes-Arrowtown Road.
- e. The Village/Residential (V/R) Activity Area in the northern, central part of Ayrburn Farm is intended to accommodate that part of the RM180584 hotel development which extends from the WPZ into Ayrburn Farm to include the existing heritage farm buildings located just north of the Ayrburn Homestead.
- f. The large R Activity Area west of Mill Creek and the southern small R Activity Area east of Mill Creek are intended to enable residential development on the valley floor.

10 **Attachment B** to these submissions is an aerial photograph of Ayrburn Farm and its surrounds, overlaid by the Attachment A Structure Plan.

11 Ayrburn Farm is zoned Rural under the ODP and a mixture of Wakatipu Basin Lifestyle Precinct (WBLP) and Wakatipu Basin Rural Amenity Zone (WBRAZ) under the DPR Stage 2 Wakatipu Basin variation. WPDL is seeking a rezoning of all of Ayrburn Farm to either:

- a. As WPDL's first preference, the proposed Ayrburn Zone as detailed on Attachment A;
- b. As WPDL's second preference, WBLP as publicly notified in Stage 2 (subject to a small, anomalous central area being rezoned from WBRAZ to WBLP).

- 12 In its Submission 2388 WPDL sought, as an alternative relief, an extension of the WPZ to include Ayrburn Farm. The detail of WPDL's proposed Ayrburn Zone has developed since Submission 2388 was lodged, to the extent that it now includes 'bespoke' provisions not found within the WPZ. While the WPZ could still be extended to include Ayrburn Farm, and could be amended by inclusion of those bespoke provisions applicable to Ayrburn Farm, that is now probably a less desirable outcome than a new Ayrburn Zone. Accordingly, while that alternative relief remains available to the Panel, these Submissions do not address it any further.
- 13 Another alternative relief sought by WPDL is the rezoning of Ayrburn Farm as the legacy RR Zone enabling 4,000m² controlled activity rural living subdivision. In reality that is simply another version of the WBLP, or alternatively a subset of the WBLP with a smaller minimum lot size than the 6,000m²/1ha average publicly notified in Stage 2. Should the notified WBLP zoning be retained over Ayrburn Farm, WPDL still pursues that smaller minimum 4,000m² lot size as being appropriate under the circumstances, particularly taking into account the adjoining RR development to the south. That outcome remains available to the Panel as a subset of the relief sought by WPDL. I do not address it any further in these Submissions.
- 14 Should the Panel recommend the retention of WBLP zoning applicable to Ayrburn Farm, the question may arise as to whether any of the 'bespoke' Ayrburn Zone provisions should be carried across into that WBLP zoning. The Panel might consider that to be desirable. Alternatively the Panel could rely on the likelihood that similar outcomes would be achieved under the WBLP zoning, given the WBLP's proposed Restricted Discretionary activity consent status and the virtually unlimited discretion reserved to Council under that RD status.
- 15 I submit for WPDL that there are three zoning options (for Ayrburn Farm) open to the Panel:
- a. The Ayrburn Zone requested by WPDL (or an extension of the WPZ to achieve a similar outcome);
 - b. A rural living zoning option, which would presumably be WBLP (with a possible variation in minimum lot size);
 - c. Retention of a 'status quo' rural type zoning, which presumably would be WBRAZ².

² Counsel appreciates that the WBLP is actually a subset of the WBRAZ. However, to simplify matters, they are referenced as two different zones in these Submissions.

- 16 Before addressing those three options on a comparative basis, I address some of the primary factors relevant to that zoning decision. Those factors are:
- a. Public access to and along Mill Creek;
 - b. Ecological considerations;
 - c. WPZ road access, including alternatives;
 - d. Queenstown Trail – ‘Public Place’;
 - e. Defensible zone boundaries;
 - f. The s42A Report and the Council’s Rebuttal Evidence;
 - g. Other submitters’ evidence;
 - h. Urban Growth Boundary.
- 17 Before addressing the factors identified above relevant to the zoning of Ayrburn Farm, I now comment briefly on the Wedge and the WBRAZ anomalies.

The Wedge

- 18 The Wedge is clearly a zoning anomaly, which is even more anomalous if one appreciates that the sharp western point of the Wedge does not in fact touch the eastern boundary of the Millbrook Zone which runs in a north-south direction slightly further west. There is a small gap there which results in a single lot located north and south of the Wedge joined by a very thin strip of land at the point of the Wedge. The reasons for the existence of the Wedge are unknown, although the most likely reason probably relates to land ownership when the WPZ was created over 25 years ago.
- 19 Regardless of the background to the zoning creation of the Wedge, it simply makes no sense. The Wedge bisects the Waterfall Park valley. There are no topographical, vegetative or other reasons for the Wedge. The existence of the Wedge merely complicates any logical and sensible development of the two separated parts of the WPZ.
- 20 WPDL requests that the Wedge be rezoned to become part of the WPZ.
- 21 The Council s42A Report records Ms Gilbert’s opinion that the Wedge forms an artificial cut out in the existing WPZ pattern and that, from a landscape perspective, there is no apparent reason why the Wedge should be excluded from the WPZ³. However, the Council s42A Report recommends against rezoning the

³ Evidence of Marcus Langman dated 30 May 2018, at paragraphs 1.3 and 1.4 on page 196.

Wedge for specific identified reasons⁴. Those reasons, and WPDL's responses, are as follows:

- a. Mr Langman states that there is insufficient information relating to infrastructure capacity. Ms Jayne Richards responds to that statement⁵.
- b. Mr Langman states that insufficient information has been provided in relation to potential ecological effects. Dr Ruth Goldsmith responds to that statement⁶.

22 In his Rebuttal Evidence for the Council Mr Langman now accepts that the Wedge should be included in the WPZ⁷. Mr Langman then recommends that the changes sought for the Wedge should be shown by the submitter in the context of updated provisions of the WPZ in Chapter 42 and tabled for the Hearings Panel. Attachment A records the proposed rezoning of the Wedge. The relevant Activity Area annotations are shown, with O/P applicable to the steep valley sides and V applicable to the valley floor. Apart from that mapping amendment, no other amendment is required to the WPZ District Plan provisions in Chapter 42.

WBRAZ Zoning Anomalies

23 I now address two WBRAZ zoning anomalies – one arising from public notification of Stage 2 and the other arising from a submission lodged by QLDC to Stage 2.

24 The first anomaly can be seen by referring to the publicly notified version of Planning Map 26 which shows the entire Ayrburn Farm zoned WBLP except for two small areas. The first area contains a western strip of Ayrburn Farm which adjoins the eastern side of part of the unformed legal road running from Speargrass Flat Road up to and into the Millbrook Zone. I address this area later in these Submissions under the heading "Defensible Zone Boundaries". The second area, which I address now, is the small unusually shaped area of WBRAZ in the northern, central part of Ayrburn Farm, part of which adjoins the WPZ.

25 A site visit will reveal that there are no obvious factors delineating the boundary of that small irregular WBRAZ, such as topographical factors, vegetative factors or development factors. That WBRAZ area is largely on the valley floor, although a small part extends northwards up Christine's Hill. There is no vegetative change marking those boundaries. The WBRAZ area is largely undeveloped, but it does contain the heritage protected Ayrburn Farm buildings and part (but not

⁴ Evidence of Marcus Langman dated 30 May 2018, at paragraph 61.2 on page 196.

⁵ Ayrburn Rezoning – Water, Wastewater and Infrastructure Assessment dated June 2018, paragraph 4.6 on page 15.

⁶ Mill Creek – Assessment of Aquatic Ecology Effects by Dr Ruth Goldsmith dated 12 June 2018, at paragraph 5.1 on page 34.

⁷ Rebuttal Evidence of Marcus Langman dated 27 June 2018, at paragraph 13.18 on page 30.

all) of the heritage protected Ayrburn Homestead title. I submit that if there is one part of Ayrburn Farm which is not visible from any public place, and which would have no impact beyond Ayrburn Farm, and which should be suitable for some form of redevelopment of at least the existing heritage buildings, it is that WBRAZ area.

26 The only justification for this small area of WBRAZ in the s42A Report or in rebuttal evidence for the Council can be found in paragraph 61.3 of Ms Gilbert's primary evidence which reads⁸:

"61.3 In my opinion, the spacious and well-vegetated character of the irregularly shaped area proposed as WPZ forms an important buffer to the urban village development at the southern end and very close to the boundary of the Stage 1 PDP WPZ. In my opinion, the retention of this area as Amenity Zone is important in managing the effects of the proposed urban development adjacent and avoiding the potential for urban development creeping southwards."

27 With respect to Ms Gilbert:

- a. The statement quoted above does not provide a landscape analysis which in any way supports the WBRAZ zoning of this irregularly shaped area of land;
- b. There is no discussion at all of the heritage buildings located within that small WBRAZ area, their potential for redevelopment, and the effect WBRAZ zoning may have on that potential;
- c. The stated rationale of avoiding urban development creep southwards is a planning assessment not a landscape assessment, and in any event, no identifiable basis for that potential outcome is identified, nor is there any explanation of why any such outcome would be adverse. In particular there is no acknowledgment of the very secluded location of this part of Ayrburn Farm;
- d. That planning rationale is not subsequently supported by Mr Langman.

28 In summary on this issue I submit:

- a. The Council has not established any landscape or planning rationale which justifies this strangely shaped small WBRAZ area;
- b. In particular there is no planning analysis or justification of such a small spot zone, or any explanation of why WBLP zoning could not achieve whatever outcomes are intended to be achieved by the WBRAZ zoning.

⁸ Evidence of Bridget Gilbert dated 28 May 2018, at paragraph 61.3 on page 152.

- 29 The second anomalous WBRAZ area arises from QLDC Submission 2239. QLDC submits that this area was subject to a mapping error at the public notification stage, and that the area should have been zoned WBRAZ.
- 30 The western part of the area in question is that part of Christine's Hill within Ayrburn Farm sloping down from the Millbrook Zone to the valley floor. WPDL agrees that that area should be protected from development. WPDL contends that such protection is better achieved by the Ayrburn Zone with an Open Space/Building Restriction overlay because that more clearly signals, and better achieves, the required protection. WPDL's preferred method also avoids an unnecessary irregular extension of the WBRAZ.
- 31 The eastern part of the area subject to QLDC Submission 2239 is the tear drop shape which extends down on to, and is part of, the valley floor. I submit for WPDL that there is no logical justification at all for that tear drop WBRAZ zoning.

Public access to Mill Creek

- 32 As a matter of fact, the full length of Mill Creek as it runs through Ayrburn Farm is not accessible to the public. This is also the case with the full length of Mill Creek as it runs through Waterfall Park (because the existing legal road in Waterfall Park does not provide access to the margin of Mill Creek or to the waterfall within Waterfall Park). WPDL's overall intention is to achieve public access to and along the entire length of Mill Creek as it runs through Waterfall Park and Ayrburn Farm. That will be achieved in respect of the Waterfall Park section by whatever development is ultimately undertaken within Waterfall Park. This DPR hearing can achieve public access from the Lake Hayes-Arrowtown Road to and along the Ayrburn Farm section of Mill Creek (thereby also linking to the existing esplanade reserves which commence at Ayrburn Farm's southern boundary and run southwards towards Lake Hayes).
- 33 A site visit will reveal that Mill Creek is an aesthetically pleasant, permanently running waterway with considerable passive recreational potential. I particularly note that the enabling of public access to and along Mill Creek will enable people to walk along the bank of Mill Creek and (frequently) see brown trout swimming in Mill Creek, particularly during the spawning season⁹ (noting that fishing is not permitted in Mill Creek from the Speargrass Flat Road bridge to Waterfall Park¹⁰). That rare, public opportunity should be considered in the context of the location of Ayrburn Farm, in the centre of the Wakatipu Basin which is becoming increasingly populated, and with immediate connections to the expanding Queenstown Trail network.

⁹ Mill Creek – Assessment of Aquatic Ecology Effects by Dr Ruth Goldsmith dated 12 June 2018, at paragraphs 2.5.1 and 2.5.3 on pages 24-25.

¹⁰ 2017-2018 Sports Fishing Regulations, South Island, at Section 3 Closed Season on page 48.

34 This issue is relevant to this hearing because it brings into play s6(d) of the Act as a matter 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:

...

(d) *The maintenance and enhancement of public access to and along ... rivers.”*

35 This issue also brings into play specific regional objectives and policies¹¹ and DPR objectives and policies¹² which seek to implement s6(d) quoted above.

36 I highlight the directive language of “... *shall recognise and provide for* ...” in s6(d). I submit that this is a significant factor in this hearing. I return to this issue later when I address the three zoning options on a comparative basis.

Ecological considerations

37 Ayrburn Farm is currently a working farm, including fertiliser application and virtually unrestricted stock access to Mill Creek. The rezoning of Ayrburn Farm for non-rural purposes will have significant immediate, medium term and long term benefits for Mill Creek, and Lake Hayes, through removal of stock and the consequent reduction of nitrogen leaching into Mill Creek and thence into Lake Hayes. Riparian planting along the banks of Mill Creek will improve the ecological habitats within Mill Creek through provision of additional shading and insect food sources.

38 The significance of this issue for Lake Hayes is evidenced by the two reports about Lake Hayes annexed to the evidence of Dr Ruth Goldsmith¹³. The second report dated 17 May 2017 in particular advises that Lake Hayes is approaching a “*recovery tipping point*”¹⁴ where appropriate water management measures could change the trajectory of the water quality in Lake Hayes from a downwards trajectory to an upwards trajectory. Ayrburn Farm is a significant working farm immediately upstream of the Mill Creek outlet into Lake Hayes. One of the primary recommendations of the 17 May 2017 Report referred to above is “*a focus on land use activities in the catchment to further reduce nutrient and*

¹¹ Operative RPS 5.4.4, 5.5.7. Proposed RPS Objective 1.1 and related policies.

¹² PDP 3.2.4.5, 3.2.28, 4.2.2.4.

¹³ Mill Creek – Assessment of Aquatic Ecology Effects by Dr Ruth Goldsmith dated 12 June 2018.

¹⁴ Ibid: Annexed Report dated 17 May 2017, Executive Summary paragraph 3.

*sediment losses from land to water*¹⁵. The removal of farming activities from Ayrburn Farm will implement that recommendation.

39 The evidence of Dr Goldsmith details the positive benefits for water quality and aquatic fauna which will result firstly from the cessation of farming activities on Ayrburn Farm and secondly from riparian planting along the banks of Mill Creek as it runs through Ayrburn Farm. That evidence has not been challenged.

40 All of the above brings into play the National Policy Statement for Freshwater Management 2014 (updated August 2017). I highlight the following aspects of the NPS: Freshwater:

a. Page 7, under the heading “*National Significance of Freshwater and Te Mana o te Wai*” [being the integrated and holistic well-being of a freshwater body] contains the statement:

“The health and well-being of our freshwater bodies is vital for the health and well-being of our land, our resources (including fisheries, flora and fauna) and our communities.”

b. Objective AA1 Policy AA1 reads:

“By every regional council making or changing regional policy statements and plans to consider and recognise Te Mana o te Wai ...”

c. Objective A1 reads:

“To safeguard:

a. the life-supporting capacity, ecosystem processes and indigenous species including their associated ecosystems, of fresh water; and

b. ...

in sustainably managing the use and development of land”

d. Objective C1 and Policies C1 and C2 read:

“Objective C1

To improve integrated management of fresh water and the use and development of land in whole catchments, including the interactions between fresh water, land, associated ecosystems and the coastal environment.

¹⁵ Ibid: Executive Summary paragraph 4.

Policy C1

By every regional Council:

- a. *recognising the interactions, ki uta ki tai (the mountains to the sea) between fresh water, land, associated ecosystems and the coastal environment; and*
- b. *managing fresh water and land use and development in catchments in an integrated and sustainable way to avoid, remedy or mitigate adverse effects, including cumulative effects.*

Policy C2

By every regional council making or changing regional policy statements to the extent needed to provide for the integrated management of the effects of the use and development of:

- a. *land on fresh water, including encouraging the coordination and sequencing of regional and/or urban growth, land use and development and the provision of infrastructure ...”*

41 It is clear from the statements quoted above that the primary method of implementing the NPS: Freshwater is through regional policy statements and plans. The ecological improvements which will result from a rezoning of Ayrburn Farm for non-rural purposes will achieve a significant number of regional objectives and policies. I will not address them in detail as they are extensive and have already been detailed in the documentation previously circulated. To find that detail I direct the attention of the Panel to:

- a. ORC Consent RM17.302 (for the road bridge and related flood protection works) which has been granted to WPD¹⁶ (and is operative). I note in particular Sections 6.2.2-6.2.5 on pages 18-23 of the ORC Staff Recommending Report which references the relevant provisions and the relevant plans;
- b. Mr Brown’s evidence¹⁷ which details, and comments on compliance with, the objectives and policies of the Operative Regional Policy Statement and the Proposed Regional Policy Statement.

¹⁶ The final Attachment to the Fluent Solutions Memorandum dated 12 June 2018 is a copy of RM17.302. While preparing these Submission, Counsel has realised that part of that Attachment is missing. A full copy of RM17.302 is contained in **Schedule One** of these Submissions.

¹⁷ Refer Evidence of Jeffrey Brown dated 13 June 2018, Attachment D on pages 60-70.

- 42 Given the potential achievement of that extensive list of directly relevant policy provisions, many of which directly implement the NPS: Freshwater, I submit that this is a significant factor in this zoning decision.
- 43 While on this topic I also note that rezoning Ayrburn Farm for non-rural purposes will achieve the protection of the habitat of trout, being a matter which the Commission must have particular regard to under s7(h) RMA. I submit that factor is also relevant to the zoning decision.
- 44 I return to these issues later in these Submissions when I address the comparative merits of the zoning options.

WPZ Road Access

- 45 I submit for WPDL that the enabling of road access to the WPZ, through a rezoning of Ayrburn Farm for residential or rural living purposes, is a significant factor relevant to the zoning determination.
- 46 Before elaborating on that submission, I address the detail because it is necessary to address that detail in order to properly consider this road access issue. Effectively it is my submission that the Panel must traverse the same ground that was covered in the RM171280 hearing and that is recorded in the RM171280 decision¹⁸.
- 47 RM171280 sought to consent road access to the WPZ by a route which is available and which will provide permanent legal and practical vehicle access to and from the WPZ. As previously advised to the Panel by Memorandum¹⁹, RM171280 has been granted by Council but is now subject to appeal. **Attachment C** details the road approved by Council under RM171280.
- 48 It is unclear whether Waterfall Park and Ayrburn Farm were ever fully in the same ownership. However they have been in separate and unrelated ownerships since at least the early 1980's. In the early 1990's the Waterfall Park titles were purchased by Pan Tai Holdings Limited. That coincided with the creation of the original Waterfall Park Tourist Development 2 Zone in (apparently) 1992. Waterfall Park and Ayrburn Farm remained in different and unrelated ownerships until recently amalgamated into the same ownership by WPDL.
- 49 **Attachment D**²⁰ is a copy of the WPZ Structure Plan from the District Plan. That Structure Plan remained unchanged through Stage 1 of the DPR, between the

¹⁸ Refer copy decision RM171280, being Attachment G to the Evidence of Jeffrey Brown dated 13 June 2018.

¹⁹ Memorandum from Counsel for the Council to the Hearing Panel dated 26 June 2018.

²⁰ Attachment D is copied half from the ODP WPZ and half from the PDP WPZ.

Operative District Plan (ODP) and the Proposed District Plan (PDP). The PDP WPZ is now deemed operative under s86F(1) of the Act.

- 50 The WPZ enables the creation of up to a maximum 100 residential units (District Plan rule) within the areas marked 'R' on the WPZ Structure Plan plus up to about 114 visitor accommodation units (practical capacity) within the areas marked 'V' on the Structure Plan – all as controlled activities. Development to that extent is therefore an entitlement under the WPZ.
- 51 The District Plan zoned legal vehicle access into the WPZ is a direct connection to the Lake Hayes-Arrowtown Road – refer Attachment D. It is evident from a site visit, confirmed by the evidence of Mr Andy Carr²¹, that such access is virtually impossible because of vertical grade separation. The only current practical (but not legal) vehicle access into the WPZ is via an unsealed accessway which runs across private land. This is demonstrated in **Attachment E**²².
- 52 The WPZ cannot be developed without practical, legal vehicle access. That is self-evident. It is now possible for WPDL, having amalgamated Ayrburn Farm and Waterfall Park, to create practical and legal access to the WPZ across Ayrburn Farm land owned by WPDL. That is the purpose of RM171280.
- 53 Given the location of the land now owned by WPDL, there are a number of alternative potential routes for the necessary road access to the WPZ. In this part of these Submissions I first address the considerations relevant to WPDL's choice of preferred route. I then address the issue of which of those considerations are relevant to the determination of the outcome of this DPR hearing.

Practical availability

- 54 Access to the combined Ayrburn/Waterfall Park properties is legally available from either the Lake Hayes-Arrowtown Road or from Speargrass Flat Road. However the available Speargrass Flat Road access is only 10.06m wide along the initial section running between private properties not owned by WPDL – refer Attachment A which shows this 10.06m wide unformed legal road connecting the south-west corner of Ayrburn Farm to Speargrass Flat Road to the south. Putting to one side the residential amenity considerations of the adjoining neighbours, 10.06m is not wide enough to create a road which would meet Council roading standards for the amount of traffic generated by the extent of development enabled within the WPZ. That option is not practically available. Therefore access must be off the Lake Hayes-Arrowtown Road.

²¹ Evidence of Andy Carr dated 13 June 2018 – Attachment One – Letter dated 15 November 2017, 'Red Option' described on pages 7-8.

²² Attachment E was prepared for the RM171280 hearing to demonstrate this point.

Alternatives

- 55 Three access options off the Lake Hayes-Arrowtown Road were considered under RM171280, as detailed in Andy Carr's Traffic Assessment²³ and Paddy Baxter's landscape evidence²⁴. In summary:
- a. Option 1 was the legal access to Waterfall Park Road as shown on Attachment D. Option 1 is virtually impossible from a practical point of view, and is undesirable from a traffic safety perspective.
 - b. Option 2 was the existing access to the Ayrburn Farm Homestead. Option 2 requires third party land or a substandard intersection design. From a practicality point of view it is difficult, and from a traffic safety point of view it is undesirable.
 - c. Option 3 was the option detailed on Attachment C. The exact location of Option 3 is a consequence of landscape, traffic and noise considerations.
- 56 At the RM171280 hearing, the debate was not about whether there should be legal and practical road access to the WPZ. The debate was about which option for that road access was the most appropriate. Option 1 is virtually impossible. The debate was therefore between Option 2 and Option 3.
- 57 WPDL advanced the case that Option 3 is the more appropriate, due to the following factors:
- a. Practicality: From a practical, construction point of view, Option 3 is the logical option.
 - b. Safety: From a traffic engineering point of view, Option 3 would result in the safer outcome.
 - c. Landscape: From a landscape effects point of view, primarily as viewed from the Lake Hayes-Arrowtown Road, Option 2 would result in significantly greater adverse landscape effects compared to Option 3.
 - d. Public Access: Option 3 would achieve the public access imperatives of s6(d) by achieving public access from the Lake Hayes-Arrowtown Road through to the proposed bridge and then from the bridge northwards along Mill Creek to the WPZ boundary (but not from the bridge southwards to the Ayrburn Farm southern boundary). Option 2 would not achieve any public access to and along Mill Creek.

²³ Evidence of Andy Carr dated 13 June 2018 – Attachment One – Letter dated 15 November 2017, Red, Yellow and Green Options described on pages 6-10.

²⁴ Evidence of Paddy Baxter (for RM171280) dated 13 April 2018 at paragraphs 13-18 on pages 3-4.

- e. Aquatic ecology: Option 3 would achieve the specific ecological benefits of exclusion of stock access to Mill Creek, and riparian planting along both banks of Mill Creek, both applicable to the entire length of Mill Creek running through Ayrburn Farm. These outcomes would implement the NPS: Freshwater plus related objectives and policies of the relevant regional planning instruments. Option 2 would not achieve any ecological benefits.
- f. Trout habitat: Option 3 would have positive outcomes in relation to s7(h), arising from the prevention of stock access to Mill Creek and the riparian planting along both banks of Mill Creek. Option 2 would not achieve those positive outcomes.
- g. Option 3 has 'dual purpose' roading potential, dependent upon the outcome of the DPR rezoning process, and would potentially avoid the outcome of two new intersections on the Lake Hayes-Arrowtown Road which would be the outcome from a combination of Option 2 plus a rezoning of Ayrburn Farm for non-rural purposes.
- h. Option 3 would achieve a potential 'dual purpose' outcome in relation to reticulated services, again dependent upon the outcome of the DPR rezoning process.

58 Having considered all of the evidence presented at the RM171280 hearing, the Independent Hearing Panel concluded that the Option 3 road (subject to proposed conditions) will not have adverse effects on the environment that are any more than minor and will not be contrary to the objectives and policies of the ODP and the PDP as notified. The Panel decided that consent should be granted to the Option 3 road, for the reasons set out under that part of the RM171280 decision headed Determination.²⁵

Other development plans

59 Firstly WPDL has recently lodged application RM180584 for consent for a major hotel development located primarily within the WPZ but extending a small distance into Ayrburn Farm to include restoration and redevelopment of the Ayrburn Farm heritage farm buildings – refer **Attachments F and G**²⁶.

60 Secondly WPDL is pursuing development options for Ayrburn Farm through this DPR process.

61 While the outcome of the DPR is uncertain, the practical reality from WPDL's point of view when preparing RM171280 was that it was logical and sensible to plan for possible eventualities. That inevitably led to the concept of an access

²⁵ Decision RM171280, at paragraphs 158-160 on page 27.

²⁶ Attachments F and G are copied from the hotel consent application RM180584 lodged on 20 April 2018.

route to the WPZ which also has the potential of being a dual purpose access route.

- 62 As it happened, the 'dual purpose' concept also applied to other services. The logical access route for wastewater reticulation for the WPZ, which will also be the logical route for potable water supply (and probably other services), is a route which uses a roading corridor – refer **Attachment H**²⁷.

Timing

- 63 There were two separate timing influences relevant to the overall situation faced by WPDL when preparing RM171280. The first arose from the fact that, while WPDL had contracted to purchase Ayrburn Farm before notification of Stage 1 of the DPR, that was not the case with Waterfall Park which was purchased later. Therefore WPDL was able to have an involvement in Stage 1 of the DPR in relation to Ayrburn Farm, but was unable to do so in relation to Waterfall Park. No submissions were lodged in respect of the WPZ (apart from one submission in support of the zone) so that is now fixed, whereas the future zoning of Ayrburn Farm remains fluid. That is a complication WPDL has had to deal with.
- 64 The second related to the fact that submissions on the future zoning of Ayrburn Farm through the DPR, which were originally part of Stage 1, were deferred to Stage 2. The original submission by Ayrburn Farm Estate Limited to the DPR, which was influenced by WPDL as purchaser, was lodged in October 2015. It is now July 2018 and that submission is only now being heard. The likelihood of appeals in relation to that zoning is at least reasonable, if not reasonably high. That zoning could well not be determined for another 2-3 years.
- 65 In the meantime WPDL owns Waterfall Park which WPDL wishes to develop, and right now the market timing is right for the development of a hotel project such as is evidenced by Attachments F and G. Waterfall Park cannot be developed without first securing legal and practical road access to the WPZ. It is therefore circumstances beyond WPDL's control which have led to the sequence of planning procedures relevant to Waterfall Park and Ayrburn Farm.
- 66 The question could be asked as to why WPDL has applied for a separate road consent under RM171280 rather than including it in the hotel consent application RM180584. The response to such a question, if asked, would be straightforward. WPDL needs consent for road access to the WPZ, regardless of the future nature of development within the WPZ.
- 67 This fundamental fact is supported by (at least) three considerations:

²⁷ Attachment H copies 2 pages from the Fluent Services Report for the hotel consent application RM180584.

- a. there is no guarantee that the RM180584 hotel consent will be granted;
- b. if the hotel consent is granted, there is no guarantee it will be developed (a significant hotel requires a major investment – Counsel has consented 15 hotels in the District over the past 25 years, only four of which have been built);
- c. whether or not the hotel is developed, there can be little doubt that an area of land in the Wakatipu Basin, subject to the WPZ zoning, will be developed one way or another in the future, probably in the near future, provided the WPZ has road access.

68 It was the combination of all of the above factors which resulted in WPDL's choice of preferred route for road access into the WPZ and the fact that RM171280 was applied for in advance of RM180584 and in advance of this DPR hearing.

Relevance to this hearing

69 The Panel has been informed of the hotel consent application RM180584 because it is part of the explanation for WPDL's overall approach, it is the primary reason for the small V/R area shown on Attachment A adjoining the WPZ, and Counsel considers that the Panel should be aware of all background facts so the Panel can then decide which background facts are relevant. However RM180584 has not yet been notified, it will have non-complying activity status (due to height and non-compliance with WPZ Structure Plan) and there is no guarantee that consent will be granted. I submit that it has no relevance to the zoning determination, beyond informing the Panel of WPDL's primary reason for seeking that V/R area within the Ayrburn Zone.

70 I submit that the issue of road access to the WPZ is a factor directly relevant to this hearing. As stated above, the WPZ is zoned for development of up to 100 residential units and up to about 114 visitor accommodation units as controlled activities. That existing development potential cannot be realised because the WPZ is 'landlocked' as a consequence of past zoning inadequacies, both when the WPZ was created in the early 1990's and when the WPZ was reviewed in Stage 1 of this DPR. It is appropriate, and potentially necessary, that that inadequacy in the District Plan be remedied through the DPR.

71 I submit that the RM171280 consent decision is relevant to this hearing, in respect of factors addressed above, for the following reasons:

- a. It provides the Panel with an independent analysis of all the factors which the RM171280 Hearing Panel considered were relevant to the provision of road access to the WPZ. While the Panel will have to form its own conclusions on this issue for the purposes of this hearing, I submit it must be of assistance

to this Panel to have the benefit of the thorough and reasoned analysis contained in the RM171280 decision.

- b. In particular, the issue of alternative options for road access into the WPZ is fully explored, resulting in the consent decision agreeing with and accepting WPDL's analysis of those options.

72 This issue of road access to the WPZ also raises a completely different consideration which is relevant to this hearing. As far as the WPZ is concerned, both the ODP and the PDP are fundamentally deficient because they do not provide legal and practical road access to a zone which has existed for over 25 years and which provides for development (as a controlled activity) of up to 100 residential units and about 114 visitor accommodation units. That fundamental deficiency is relevant to the issue of whether either or both of the ODP and PDP are incomplete, with the consequence under *King Salmon*²⁸ that justifies regard to be had (if necessary) to higher order planning instruments, and to Part 2 of the Act, to assist a resolution of that incompleteness. I return to this point later in these submissions.

Queenstown Trail – 'Public Place'

73 **Attachment I** shows the location of that part of the Queenstown Trail which runs from Speargrass Flat Road northwards through the Lake Hayes ODP RR area and then along Ayrburn Farm's western boundary, up Christine's Hill, into the Millbrook Zone at the top of Christine's Hill. It can be seen from Attachment I that, in respect of the portion of Queenstown Trail running along the Ayrburn Farm western boundary:

- a. The lower southern half running across the valley floor is located within the 10.06m wide existing legal unformed road;
- b. The upper northern half, as it rises Christine's Hill, is mostly located with Ayrburn Farm, with two short corner sections traversing back across the unformed legal road.

74 This factual background brings into play the issue of what is a 'public place' for the purpose of assessing the Ayrburn Farm proposal against the objectives and policies which relate to protection of views from public places. The relevant definitions are:

- a. **Public Place** means every public thoroughfare, park, reserve, lake, river [or] place to which the public has access with or without the payment of a fee,

²⁸ *Environmental Defence Society v The New Zealand King Salmon Co Limited* [2014] NZSC 38 [2014] 1 NZLR 593.

and which is under the control of the council, or other agencies. Excludes any trail as defined in this Plan.

b. **Trail** means any public access route legally created by way of a grant of easement registered after 11 December 2007 for the purpose of providing public access in favour of the Queenstown Lakes District Council, the Crown or any of its entities, and specifically excludes:

(a) roads, including road reserves;

(b) public access easements created by the process of tenure review under the Crown Pastoral Land Act; and

(c) public access routes over any reserve administered by Queenstown Lakes District Council, the Crown or any of its entities.”

75 **Schedule Two** to these Submissions contains:

a. Copy CFR666857 owned by WPDL, being the Ayrburn Farm title – with highlighted reference to registered right-of-way (ROW) Easement Instrument 9271663.1 which creates a Pedestrian and Cycle Way ROW easement in favour of QLDC over those areas marked U, V and W on DP454103;

b. Copy pages 1-6 of DP454103 showing (on page 6, left hand column) the areas marked U, V and W which are subject to the registered ROW easement in favour of QLDC;

c. Copy Easement Instrument 9271663.1 dated 25/2/2013.

76 The Panel’s attention is drawn to paragraph 12.3(e) on page 6 of the Easement Instrument which records that the Council as Grantee acknowledges and agrees:

“(e) *that the Easement Area is a Trail and is excluded from the definition of Public Place and from the Public Place assessment criteria under the District Plan. For the avoidance of doubt, Queenstown Lakes District Council as the original grantee specifically acknowledges this clause notwithstanding any assignment under clause 4 above.*”

77 It follows from the analysis and documents referred to above that those parts of the Queenstown Trail located within the ROW easement granted in favour of QLDC are not a ‘public place’ for the purposes of assessing impacts (of the proposed zoning options) on views from public places. That comprises almost all of the trail which runs up Christine’s Hill from the valley floor to the Millbrook Zone.

78 For the benefit of Commissioners not familiar with the background to this issue, the exclusion of Trails (as defined) from the definition of 'public place' was a consequence of Council Plan Change 28 to the ODP. **Schedule Three** to these Submissions contains a copy of the Discussion Document for PC28 (downloaded off the QLDC website).

79 In short summary, the Council was facing difficulties in achieving public trails due to landowners being concerned that, if they created a public trail through their land, that might subsequently hinder their ability to develop their land due to objectives and policies relating to views from public places. The purpose of PC28 is specified in the Discussion Document attached in Schedule Three as:

"To remove impediments to the provision of trails, particularly in the rural area, while ensuring that the Plan provisions are not weakened and the quality of the landscape values are maintained into the future."

80 The outcome of PC28 was the exclusion of Trails (as defined) from the definition of 'Public Place', to avoid adverse consequences on the ability of rural landowners to pursue development options for their land.

81 I return to this issue when I address the s42A Report and the evidence for the Council.

Defensible Zone Boundaries

82 Consideration of zoning Ayrburn Farm for residential development (whether Ayrburn Zone or WBLP) raises the issue of defensible zone boundaries to avoid potential future 'development creep'. Fortunately this is not an issue for the northern, eastern or southern boundaries of Ayrburn Farm. The issue only arises in relation to the western boundary.

83 The initial position of the Council, as detailed in the notified WBLP and supported by primary evidence for the Council,²⁹ was that the western zone boundary should run along an ephemeral creek gully running down Christine's Hill and across the valley floor. In response Mr Skelton contended³⁰ that a minor ephemeral gully running across an otherwise flat valley floor is not a defensible zone boundary on landscape grounds.

84 Ms Gilbert for the Council³¹, supported by Mr Langman for the Council,³² both now agree with Mr Skelton that the appropriate defensible zone boundary is the unformed legal road running along Ayrburn Farm's western boundary which, in part, contains part of the Queenstown Trail. As there is no expert evidence which

²⁹ Evidence of Bridget Gilbert dated 28 May 2018, at paragraphs 32.8, 32.9 and 32.18.

³⁰ Evidence of Steven Skelton dated 13 June 2018, at paragraph 39 on page 11.

³¹ Rebuttal Evidence of Bridget Gilbert dated 27 June 2018, at paragraph 10.22 on page 40.

³² Rebuttal Evidence of Marcus Langman dated 27 June 2018, at paragraph 13.8 on page 17.

disputes that agreed position, I submit there need be no further debate on that issue (whatever the ultimate zoning of Ayrburn Farm is).

85 However to reinforce the fact that that is a defensible zone boundary, **Schedule Four** contains copies of:

- a. CFR's 665019, 665020 and 665021 for Lots 1, 2 and 3 DP475822 (being the property on the western side of the unformed legal road adjoining Ayrburn Farm) with highlighted reference to registered Consent Notices 9805352.1, 9805352.2 and 9805352.3 respectively.
- b. A copy of pages 1-2 of registered Consent Notices 9805352.1 (as varied), 9805352.2 (as varied) and 9805352.3.

86 The Panel's attention is drawn to Condition 3 on page 2 of each of the three registered Consent Notices, and to the subdivision plan DP475822 on page 2 or page 3 of each of the CFR's. Each of Lots 1, 2 and 3 shown on DP475822 contains a single rectangular registered residential building platform (marked X, Y and Z respectively). The registered Consent Notices prevent any further subdivision of Lots 1, 2 and 3 and prevent the erection of any further residential units on those lots other than within the registered residential building platforms.

87 The Panel's attention is also drawn to the following provisions of the Wakatipu Basin Chapter 24 (version being recommended by Council officers for approval at this hearing):

- a. Advice Note 24.3.2.3 'Guiding Principle: Previous Approvals' which states that existing conditions of consent which are registered on a site's CFR remain relevant and binding unless altered or cancelled. Applicants may apply to alter any such conditions. Whether it may be appropriate for the Council to maintain, alter or cancel such conditions shall be assessed against the extent to which a proposal accords with the objectives and provisions of the WBRAZ and WBLP.
- b. Rule 24.7.3 Assessment Matters for Restricted Discretionary Activities which includes the following assessment matter:

"c. *The extent which existing covenants or consent notice conditions need to be retained or are otherwise integrated into the proposed development in a manner that maintains and enhances landscape character and visual amenity.*"

88 If the outcome of this hearing is that Ayrburn Farm is zoned either Ayrburn Zone or WBLP, the zoning must have a western boundary. I submit that the Panel can

reasonably conclude that the unformed legal road is an appropriate and defensible western boundary for the following reasons:

- a. On landscape grounds it is the most robust western boundary available;
- b. It is supported by all of the relevant expert witnesses (before taking into account c. below);
- c. Reliance can be placed on the combination of the registered Consent Notices referred to above which prevent the further subdivision or development of Lots 1-3 DP475822 located west of that unformed legal road, together with the specific District Plan assessment matter quoted above.

Section 42A Report and Council's evidence

89 I do not intend to address the differences in opinion between the Council expert witnesses and WPD's expert witnesses. Provided the facts are correctly established, the Panel will form its own view on those opinions (when in conflict) based on the facts. In particular the nature of the DPR hearing process is such that it is very difficult to comment on differences of opinion between the planning witnesses when one is trying to compare the Council's short and very summarised evidence format against the very detailed policy by policy assessment provided by Mr Brown³³. The following comments therefore focus on establishing the correct facts, and identifying potential inconsistencies in the evidence.

90 Ms Gilbert challenges the extent of any 'connection' between Ayrburn Farm (presumably and Waterfall Park) with Millbrook due to the topographical difference which separates the higher Millbrook zoned land from the lower Ayrburn Farm (and WPZ) land. She also states that: "... *the portion of Millbrook adjoining the Ayrburn land is in golf course use rather than residential or visitor building uses*"³⁴. In response I refer the Panel to Attachment I and comment:

- a. Attachment I shows the interrelationship between Millbrook, Waterfall Park and Ayrburn Farm. While there is a distinct topographical difference between Millbrook and Waterfall Park, they are very close to each other. The same applies to Millbrook and Ayrburn Farm. On any reasonable scale, all three are clustered together, regardless of topographical difference.
- b. Ayrburn Farm does not adjoin Millbrook golfcourse. It adjoins a very urban part of Millbrook, particularly when one takes into account the fact that the undeveloped light brown part of the Millbrook Zone in the south-east corner

³³ No criticism intended by Counsel – the workload on the Council witnesses is understood.

³⁴ Evidence of Bridget Gilbert dated 28 May 2018, at paragraph 32.6 on page 80.

of Millbrook, where it adjoins Waterfall Park and Ayrburn Farm as shown on Attachment I, is zoned Village³⁵ under the Millbrook Zone Structure Plan.

91 The previous point is also relevant to Ms Gilbert's expressed concern³⁶ that "... *introducing urban development in this location would significantly undermine the WB Chapter strategy of 'nodes' of development interspersed with more open and undeveloped areas ...*". I submit that:

- a. If Millbrook and Waterfall Park are part of the same 'node' then the proposed Ayrburn Zone can equally be part of the same 'node';
- b. If Millbrook and Waterfall Park are two different 'nodes' sitting right beside each other, one on the higher plateau and one on the valley floor below, then the addition of a third Ayrburn Zone 'node' immediately adjoining those two could not reasonably be said to undermine any wider strategy of 'nodes'.

92 Attachment J has been prepared to assist the Panel on this issue of 'node' or 'nodes'. Attachment J is a larger scale aerial photograph which shows:

- a. The WPZ in the centre (including the Wedge, on the assumption that the Wedge will be rezoned WPZ);
- b. WPD's proposed hotel Masterplan overlaid over the WPZ and extending into Ayrburn Farm at its southern end;
- c. The WPZ Structure Plan Activity Areas (marked with black dashed lines) overlaid over the hotel Masterplan;
- d. Ayrburn Farm on the right hand or southern side, extending from the Lake Hayes-Arrowtown Road at the top down to the unformed legal road at the bottom;
- e. The Ayrburn Zone Structure Plan overlaid over Ayrburn Farm;
- f. The RM171280 consented road providing a roading and service corridor from the Lake Hayes-Arrowtown Road through to the WPZ and to the larger proposed Residential Activity Area within Ayrburn Farm;
- g. Existing Millbrook urban development wrapping around the western, northern and part of the eastern boundaries of the WPZ;
- h. The large undeveloped Millbrook Village Activity Area running north-south along the eastern side of the WPZ extending almost to Ayrburn Farm.

³⁵ That Village zoning enables a wide range of residential, visitor accommodation, retail and (limited) commercial activities.

³⁶ Evidence of Bridget Gilbert dated 28 May 2018, at paragraph 32.13 on page 81.

93 In her rebuttal evidence, under the head 'Visual Effects', Ms Gilbert focuses on effects on views from the Queenstown Trail³⁷. In response I comment:

- a. The primary effects of concern to Ms Gilbert appear to be the effects on views from the elevated portion of the Queenstown Trail as it goes up Christine's Hill. Ms Gilbert has not taken into account the fact that the majority of that trail on the hillslope is not a public place, for the reasons detailed above. Acceptance of Ms Gilbert's assessment would completely defeat the purpose of PC28 which was to ensure that landowners seeking development opportunities would not be adversely affected by the consequences of granting rights for a public trail.
- b. In her paragraph 10.10 Ms Gilbert makes comments which appear to relate to the entire Queenstown Trail network within the Wakatipu Basin. The effect being assessed arising from the proposed Ayrburn Zone, being a view of housing from the legal road portion of the Queenstown Trail running along Ayrburn Farm's western boundary, affects a distance of approximately 210m along just one side of this portion of the Queenstown Trail. In the context of Ms Gilbert's broad assessment in her paragraph 10.10, I submit that such effect on the overall Queenstown Trail network could only be described as very minor.
- c. In the same paragraph 10.10, Ms Gilbert describes the "*dominant context*" of the Queenstown Trail as "... *rural residential, rural lifestyle (hobby farming), rural and riverscape environments ...*". Again with respect to Ms Gilbert, if one looks at Attachment I, that description certainly does not apply to the section of Queenstown Trail shown in Attachment I which is distinctly urban at the Speargrass Flat Road end (enclosed by tall urban hedges) and at the Millbrook end (where it enters a very urban part of Millbrook), with the balance running through undeveloped farmland in between (noting also that important parts of the Trail network run through Queenstown, Frankton, Shotover Country and Lake Hayes Estate).
- d. If views from the Christine's Hill portion of the Queenstown Trail are relevant, it is difficult to see the basis of assessing adverse effects as '*high*' if looking down on urban development and "*no more than minor*" if looking down on rural lifestyle development, given that Ayrburn Farm is in the near foreground to views of a wider and broader midground which is largely residential in character.

94 In her rebuttal evidence³⁸ Ms Gilbert assesses effects on neighbours to the south of Ayrburn Farm as "... *moderate to high with the lower rating applying to*

³⁷ Rebuttal evidence of Bridget Gilbert dated 27 June 2018, at paragraphs 10.6-10.13 on pages 37-38.

³⁸ Ibid at paragraphs 10.14-10.15 on page 38.

properties adjacent the Tree Protection Area and the 100m width setback". With respect to Ms Gilbert, that assessment does not take proper account of both the facts on the ground and what could occur under the alternative possible zonings.

- 95 The properties adjoining Ayrburn Farm's southern boundary, as shown on Attachment I, fall into three categories, being three properties at the western end which adjoin an open paddock, four properties in the centre which adjoin a mature grove of evergreen trees, and one property at the eastern end which overlooks lower Ayrburn Farm land adjoining Mill Creek.
- 96 Referring to the western three properties:
- a. Under a WBRAZ zoning, a shelterbelt along Ayrburn Farm's southern boundary (providing shelter from the prevailing southerly winds) would be a permitted activity and an outcome of reasonable likelihood. Any such shelterbelt would adversely affect views to the north across Ayrburn Farm and create shading on those properties to the south.
 - b. Under WBLP zoning the outcome, if Ayrburn Farm were to be developed, would have to comply with a 10m setback standard and there are no vegetation standards.
 - c. Under the Ayrburn Zone there is a mandated 50m building setback plus a 2m height control on any vegetation within 25m of the southern boundary. The outcome, which creates an appropriate separation and preserves views to the north, is certain.
- 97 Referring to the central four properties, the existing evergreen trees (which are probably about 30m tall) currently provide complete screening of any development within Ayrburn Farm from views from those properties. The following consequences arise under the three zoning options:
- a. Under a WBRAZ zoning, whether those trees were retained or replaced would depend upon decisions of the farm landowner, and possibly the outcome of a consent hearing if District Plan protection for exotic trees is retained;
 - b. Under a WBLP zoning, the outcome would be the same as (a) above;
 - c. Under the Ayrburn Zone, those mature trees must be retained, thereby avoiding any adverse effects on views from those properties of development within Ayrburn Farm.
- 98 As far as the eastern property is concerned, the increased 100m building setback plus the small Tree Protection Area, both imposed under the Ayrburn Zone, reflects the fact that that property overlooks a lower part of Ayrburn Farm from an

elevated position. The consequences of the three zoning options for that property are therefore similar to the consequences for the three western properties described above, with the addition of the small Tree Protection Area under the Ayrburn Zone.

99 On this issue I submit that:

- a. Ms Gilbert's analysis does not take into account many of the factors detailed above, and is therefore inadequate;
- b. The zoning outcome which best mitigates effects on the residential amenities of all of those adjoining southern neighbours is the Ayrburn Zone outcome, for the reasons detailed above.

100 In her rebuttal evidence³⁹ Ms Gilbert addresses the issue of defensible boundaries to the zone. She contends that the Ayrburn Zone would create a high risk of urban development creep westwards, whereas a WBLP zoning with a 75m setback would provide a defensible zone boundary. In response I comment:

- a. While WPDL does not agree with the 75m setback distance, if a specified building setback distance along the legal road along the western boundary would create a defensible WBLP zone boundary, I can see no reason why it would not provide an equally defensible boundary for the proposed Ayrburn Zone.
- b. The existence of existing rural living development on the western side of the southern end of the unformed legal road, plus existing rural living development on the southern side of Speargrass Flat Road extending further to the west, arguably creates a greater danger of spread of WBLP zoning than it would be the case for the proposed Ayrburn Zone. In other words, that zone boundary is arguably more defensible as the boundary to an urban zone than it would be as the boundary to WBLP zoning.

101 On the issue of the 75m setback referred to above, WBLP submits that that is excessive under the circumstances. A 15m building setback distance has been proposed. As the formed Queenstown Trail (2-3m wide) is located on the western side of the unformed legal road, that means an actual setback from the Queenstown Trail of about 22m. Spray painted pegs have been placed in the ground to mark that setback distance for the benefit of the Panel. WPDL contends that that is a more than adequate setback buffer for the Queenstown Trail, and that any greater extent of setback would merely preclude use of usable and developable land without achieving any benefit which could be reasonably considered more than minor.

³⁹ Ibid at paragraphs 10.19-10.30 on pages 39-42.

102 In her paragraph 10.35 Ms Gilbert states that she expects the AZSP will be publicly accessible and will be experienced as a distinctly urban landscape that forms a jarring contrast with the north Lake Hayes residential area to the south and the rural area to the west. I submit that two important points can be taken from that statement:

- a. The alleged “... *jarring contrast*” will be experienced from within the Ayrburn Zone, not from outside the Ayrburn Zone;
- b. It is unclear why that experience will be adverse, when it is being experienced by people who are presumably living in, or visiting, the Ayrburn Zone by choice.

103 In his rebuttal evidence Mr Langman contends⁴⁰ that Mr Brown’s planning evaluation “... *has fallen short in relation to the evaluation of the objectives and policies under Chapter 3 and Chapter 4 ...*” and that Mr Brown “... *does not address the objectives and policies of Chapter 4 directly*”. If Mr Langman had referred to Mr Brown’s appendices, he would have found 26 pages of evaluation by Mr Brown of every single objective and policy in Chapters 3 and 4 of the PDP – an evaluation which is considerably more detailed and thorough than Mr Langman’s evaluation.

104 In his paragraph 13.9⁴¹ Mr Langman lists the eight sub-objectives set out in Objective 3.2.2.1. He then goes on to state, in his paragraph 13.10⁴²:

“The proposed AZSP and associated Ayrburn Zone may provide for a compact urban area, but it is not integrated with existing development and does not build on historical urban settlement patterns ...”

105 In response I comment:

- a. The sub-objective (a) quoted in his previous paragraph does not seek that development be “... *integrated with existing development ...*”. What it states is “*promote a compact, well designed and integrated urban form*”. Integration can therefore be internal to the urban area being promoted, and does not necessarily have to link to other urban areas. Having made that point, and taking into account the dual road access and servicing issues, I submit that it is strongly arguable that the proposed Ayrburn Zone will be integrated with the WPZ.
- b. The issue of whether Waterfall Park builds on existing historical urban settlement patterns is interesting, particularly bearing in mind the comment in

⁴⁰ Rebuttal Evidence of Marcus Langman dated 27 June 2018, at paragraphs 13.9 and 13.11 on page 28.

⁴¹ *Ibid.*

⁴² *Ibid.*

the (different) Panel's Report 3 in relation to Hearing Stream 1B that identified urban settlements "... build on historical settlement patterns (accepting in some cases it is a relatively brief history) ..."43 The WPZ has existed for over 25 years. The only impediment to its development has been lack of road access. The word "*historical*" creates an objective benchmark (compared to a word such as 'heritage' which is more subjective). The WPZ is part of the historical urban settlement pattern within the Basin, just as Millbrook is (putting to one side the issue of whether Millbrook is "urban"). The Ayrburn Zone builds upon that existing WPZ, particularly when one factors in the dual road access and servicing issues.

106 In his paragraph 13.10 Mr Langman goes on to state:

"... Rather, the zone is in my view an urban tack on to the Waterfall Park Zone, which is a resort zone. By definition in the Hearing Panel's decisions on Stage 1, resort zoning is not to be considered as urban development ..."

107 In response to that statement I submit:

- a. Mr Langman's statement that the Ayrburn Zone is "*... an urban tack on to the Waterfall Park Zone ...*" directly contradicts his previous sentence where he contends that the Ayrburn Zone "*... does not build on historical urban settlement patterns.*" Both statements cannot be correct.
- b. The Hearing Panel's Stage 1 Recommendation did not determine that the WPZ is a resort zone. On the contrary the Recommendation recorded evidence given to the effect that the WPZ is more urban than Millbrook, with the implication being that the WPZ is urban44.
- c. The WPZ would not qualify as a 'resort' under the new definition because the zone does not contain any requirement for "*... an integrated and planned development ...*" and there is no factual basis upon which one could reasonably conclude that development, in accordance with the WPZ zoning, would form "*... part of an overall development focused on onsite visitor activities*".

108 In his paragraph 13.10 Mr Langman then alleges that the Ayrburn Zone would promote sporadic and sprawling development. WPDL disputes that, on the facts. That is a matter for the Panel to determine.

109 The most significant point arising from the previous few paragraphs is that Mr Langman does not challenge the contention that the Ayrburn Zone will achieve

⁴³ Refer Report 3 – Report and Recommendations of Independent Commissioners Regarding Chapter 3, Chapter 4 and Chapter 6, at paragraph 239 on page 44.

⁴⁴ Ibid at paragraph 598 on page 88.

five of the eight sub-objectives detailed in Objective 3.2.2.1, and his challenges in respect of the other three are debatable. Accordingly, even on Mr Langman's evidence, Ayrburn Zone achieves Objective 3.2.2.1 to a considerable degree.

- 110 In his paragraphs 13.12-13.14 Mr Langman challenges whether the Ayrburn Zone complies with objectives which include the terms "*larger urban areas*" and "*main urban settlements*". I will address those issues when I address the wider issue of an Urban Growth Boundary below.

Comparative Assessment of Zoning Options

- 111 Based on an assessment of environmental effects, I submit that WBRAZ (being effectively a rural farming zoning) is not an option reasonably open to the Panel. I submit that for the following reasons:

- a. The issue of the water quality of Lake Hayes, and the extent to which that is influenced by Mill Creek, is a significant issue for the Wakatipu Basin. WBRAZ zoning would perpetuate stock access into Mill Creek and nutrient leaching (particularly nitrogen) into Mill Creek, both outcomes being highly undesirable. Those outcomes will not achieve the objectives of the NPS: Freshwater and the regional objectives and policies which seek to implement the NPS: Freshwater.
- b. WBRAZ will not comply with the directives of s6(d) relating to public access to and along Mill Creek.
- c. WBRAZ will not have regard to the protection of the habitat of trout as required by s7(h).
- d. WBRAZ will not facilitate the achievement of road access to the WPZ.
- e. WBRAZ will not achieve the protection of the residential amenities of adjoining neighbours to the south to the extent that either of the alternative zonings can achieve.

- 112 From a policy perspective I submit that WBRAZ is not an option reasonably open to the Panel, for the following reasons:

- a. The very detailed policy analysis carried out by Mr Brown, most of which is unchallenged, can only lead to an inevitable conclusion that WBRAZ would not achieve the relevant objectives and policies of the relevant planning instruments to a significant extent and is clearly the least appropriate of the three zoning options.
- b. There is no expert landscape or planning evidence at all which supports or justifies WBRAZ.

- 113 Given the submissions in the previous two paragraphs, I do not address the WBRAZ option any further. The remaining part of this section of these Submissions therefore assesses either the two residential zoning options together or the Ayrburn Zone against the WBLP.

Non-contentious issues relevant to both zoning options

- 114 Mr Langman confirms that the Council has presented no rebuttal evidence in relation to contaminated land, stormwater and flooding issues⁴⁵.
- 115 In relation to infrastructure Mr Langman states that Mr Crowther "... *remains opposed to the rezoning*"⁴⁶. That statement is incorrect. What Mr Crowther actually states is "*I therefore no longer oppose the rezoning requested*"⁴⁷ [on infrastructural grounds].
- 116 Mr Glenn Davis for the Council does not challenge any of the opinions or conclusions of Dr Ruth Goldsmith in relation to ecological considerations and benefits. The evidence of Dr Goldsmith stands unchallenged.

Transport considerations

- 117 It is not possible for Counsel to predict what weight the Panel will give to the evidence lodged for the Council and NZTA relating to the capacity of the Lower Shotover Bridge. One possibility is that an assumption may be made that that issue will be resolved in the future and should therefore not be determinative of any proposed new rezonings in the Wakatipu Basin. Another possibility is that significant weight may be placed on that evidence which could preclude any new rezonings in the Wakatipu Basin. There may be other possibilities in the spectrum between those two possibilities.
- 118 This submission point only addresses the possibility of that transportation evidence potentially precluding the rezoning of Ayrburn Farm as the proposed Ayrburn Zone.
- 119 Should the Panel reach that potential point in its deliberations, WPDL is prepared to limit Submission 2388 to the effect that the large central R Activity Area shown in the Structure Plan can only be used for the purposes of a retirement village. That outcome is not addressed in the amended Ayrburn Zone provisions which accompany these Submissions. However a Recommendation to that effect could easily be documented during the period between the issuing of the Panel's Recommendations and the confirmation of those Recommendations by the Council.

⁴⁵ Rebuttal Evidence of Marcus Langman dated 27 June 2018, at paragraph 13.2 on page 26.

⁴⁶ Ibid at paragraph 13.4 on page 26.

⁴⁷ Rebuttal Evidence of Vaughn Crowther dated 27 June 2018, at paragraph 4.4 on page 4

- 120 The effect of that limitation is assessed in the Rebuttal Evidence of Mr Carr⁴⁸ which can be summarised as follows:
- a. The capacity issue relating to the Lower Shotover Bridge is understood to arise from the modelling of future weekday peak period traffic flows;
 - b. Residents within a retirement village can generally be expected not to travel during peak hours, and to choose to travel at times to suit themselves and to avoid peak period traffic flows;
 - c. The zoning of Ayrburn Farm to enable a retirement village would therefore result in sustainable use of existing road infrastructure without overloading that infrastructure during peak hours.
- 121 Consent decision RM171280 records the Council's position regarding road access to the WPZ. No expert evidence has been presented, either at the RM171280 hearing or for this hearing, which challenges the conclusions reached in the RM171280 consent decision.
- 122 The issue of enabling road access into the WPZ is a significant factor in favour of either residential zoning. The significance of that factor is less when it comes to a choice between the two residential zoning options, but it still weighs in favour of the Ayrburn Zone option for the following reasons:
- a. As a consequence of either residential zoning option, the road would be built. The physical dimensions of the road as approved under RM171280 is required for the purposes of the WPZ and would not change regardless of the zoning option chosen for Ayrburn Farm. It therefore follows that the confirmation of Ayrburn Zone would result in more efficient and effective use of that element of roading infrastructure.
 - b. The inevitable consequence of a. above is that the Ayrburn Zone would better fulfil some PDP Chapter 29 objectives and policies⁴⁹.

Landscape considerations

- 123 A layperson reading the totality of the evidence for the Council might, I submit, reasonably conclude that this zoning determination turns upon landscape considerations. The landscape evidence arrives at certain conclusions and the planning evidence largely depends upon those conclusions in arriving at the overall recommendation. Very little attention is given to wider planning considerations such as the relevant regional policy provisions and Part Two of the Act. That approach is not unusual in the Queenstown Lakes District, where

⁴⁸ Rebuttal Evidence of Andy Carr dated 27 June 2018.

⁴⁹ Refer in particular Objective 29.2.1 and related policies.

landscape considerations are very important. However I submit that it is not the appropriate approach in this case.

- 124 I submit that the reality is that this is a choice between two residential zones. The only identifiable adverse landscape effect which may be more than minor, and which would differ to a degree depending upon which zoning is preferred, is the view to the east (and not to the west) experienced by users of a very short (approximately 210m) section of the basin wide Queenstown Trail network (comprising approximately 120km)⁵⁰. I submit that that is a minor consideration in the overall context of this hearing, and not a consideration which should carry much weight in the outcome of this hearing.

Planning considerations

- 125 The planning analysis detailed in Mr Brown's evidence is thorough and exhaustive. There is no doubt that the Ayrburn Zone option "ticks the box" in relation to more relevant objectives and policies than the WBLP zoning option does. While the required determination is not a mechanical exercise involving just counting the number of objectives and policies 'ticked', that exercise must be a guide to the appropriate outcome when there is a significant discrepancy in the outcome of that exercise.
- 126 Mr Brown's analysis covers District Plan considerations, relevant regional policy considerations, and Part 2 of the Act, all of which are appropriate and relevant in relation to a rezoning such as this when many relevant district policy provisions are not yet determined and some regional policy provisions are under challenge. In addition, as noted previously, both the ODP and the PDP contain an inadequacy in relation to road access to the WPZ which justifies resort to higher planning instruments and to Part 2 (if necessary) to assist resolution of that inadequacy.
- 127 I submit that Mr Brown's analysis leads inevitably to the conclusion that the Ayrburn Zone option is the more appropriate zoning of Ayrburn Farm than the WBLP option. I emphasise that the majority of that analysis stands unchallenged by any expert evidence.
- 128 Based on that analysis I submit that, regardless of the Urban Growth Boundary (UGB) issue which I am about to address, the appropriate zoning outcome for Ayrburn Farm is the proposed Ayrburn Zone.

Other submitters' evidence

- 129 Apart from evidence lodged by witnesses for the Council and NZTA, the only other brief of evidence lodged which is relevant to WPD's submission 2388 is

⁵⁰ Verbal advice from Mark Williams, CEO of the Queenstown Trails Trust

the Statement of Evidence by Rebecca Hadley dated 13 June 2018 (S2101 and FS7772). Rebecca Hadley is a qualified landscape architect, and her evidence was lodged in advance as if it were expert evidence. However it does not contain the standard expert witness Code of Conduct clause. Accordingly Counsel assumes that evidence does not purport to be objective expert evidence.

130 That would have to be the case anyway, as the two properties identified in paragraph 1 of Ms Hadley's evidence adjoin Speargrass Flat Road and the western side of the unformed legal road previously referred to. Counsel understands that Ms Hadley lives in the northern of the two properties from which there is likely to be a diagonal view looking north-east across the unformed legal road into Ayrburn Farm.

131 Accordingly the evidence lodged by Ms Lucas is evidence from a neighbouring landowner potentially affected by development within Waterfall Park. I submit that evidence cannot be afforded the weight normally afforded to objective expert landscape evidence. Given that the evidence of Ms Hadley does not agree with the evidence of Ms Gilbert for the Council and Mr Skelton for WPDL on a range of landscape matters, specifically including the ability of Ayrburn Farm to absorb some form of residential development, I submit that the evidence of Ms Gilbert and Mr Skelton must be preferred over the evidence of Ms Hadley.

Urban Growth Boundary

132 WPDL's submission 2388 requested, as part of its relief seeking the proposed Ayrburn Zone (or an extension of the WPZ to include Ayrburn Farm), that the Arrowtown Urban Growth Boundary (UGB) be extended to include all of the Millbrook Zone, the WPZ and the proposed new Ayrburn Zone. I submit that that requested relief encompasses a range of potential outcomes between the publicly notified no UGB and the UGB requested in S2388. That range includes a UGB containing Millbrook, Waterfall Park and Ayrburn, or a UGB containing just Waterfall Park and Ayburn, or a UGB containing just Waterfall Park. This section of these Submissions addresses the issue of whether an extended or new UGB should be created, and, if so, the extent of that extended or new UGB.

133 Objective 3.2.2.1 (from Chapter 3 Strategic Direction) seeks to ensure that urban development occurs in a logical manner. The UGB concept is introduced by the first two policies under that objective which read:

3.2.2.1.1 *Apply Urban Growth Boundaries (UGBs) around the urban areas in the Wakatipu Basin (including Jack's Point), Arrowtown and Wanaka.*

3.2.2.1.2 *Apply provisions that enable urban development within the UGBs and avoid urban development outside of the UGBs."*

134 Those policies are clear and, to a significant degree, directive. The reference to “*urban areas in the Wakatipu Basin*” is not qualified by any words such as ‘some’ or ‘main’. The policies apply to all urban areas in the Wakatipu Basin. Policy 3.2.2.1.1 can only be achieved, and Policy 3.2.2.1.2 can only be implemented, if every urban area in the Wakatipu Basin is subject to a UGB.

135 At first glance that clear and unambiguous policy direction becomes somewhat muddled in Chapter 4. The fourth paragraph of Chapter 4.1 Purpose contains reference to UGBs being established for “... *key urban areas* ...”. Objective 4.2.1 refers to UGBs being used as a tool to manage “*larger urban areas*” and Policy 4.2.1.1 refers to defining UGBs for “*the main urban settlements*”. However a careful reading of those provisions, in their context, shows that they do not exclude the application of UGBs to urban areas which might not be “*key*”, “*larger*” or “*main*”. I submit that Mr Langman has fallen into error when he appears to assume that such an exclusion is implied⁵¹. That cannot be the case because, if such an exclusion was implied, those Chapter 4 provisions would be inconsistent with the Chapter 3 direction detailed above. However if such an exclusion is not implied, there is no inconsistency between the two chapters.

136 The interpretation outlined in the previous paragraph is reinforced by the Wakatipu Basin Specific Policy 4.2.2.14 which reads:

“4.2.2.14 *Define the Urban Growth Boundaries for the balance of the Wakatipu Basin, as shown on the District Plan Maps, that: ...*”

137 Once again there is no qualifier in the policy quoted above. That policy contains a specific direction to define UGBs for the balance of the Wakatipu Basin. That policy therefore links directly back to the Chapter 3 policies quoted above.

138 When one then looks at the publicly notified UGBs within the Wakatipu Basin (adopting the broader interpretation of Wakatipu Basin to include Queenstown) it immediately becomes clear that the above interpretation raises issues in relation to three specific ‘settlements’ (using that term broadly):

- a. Millbrook;
- b. Waterfall Park;
- c. The recently consented Arrowtown Special Housing Area (SHA).

139 Before addressing those three ‘settlements’, I note that the ‘muddiness’ introduced in Chapter 4, as referred to above, is highlighted by the manner in which UGBs have been applied. Areas within notified UGBs range from very

⁵¹ Rebuttal Evidence of Marcus Langman dated 27 June 2018, at paragraphs 13.12-13.15 on page 29.

large areas to much smaller areas. At the smaller end, I refer specifically to the UGB containing a small residential settlement on the western side of the Shotover River in the Arthur's Point area (which I will refer to as "Arthur's Point West", to differentiate it from the larger Arthur's Point UGB on the eastern side of the Shotover River). Arthur's Point West is clearly an urban area. If one looks at Planning Map 39a, counts the individual titled sections shown within Arthur's Point West (about 80), and hazards a guess at the development potential of the undeveloped western part (perhaps 20-30), the development potential of Arthur's Point West is in the order of 100-110 residential units.

140 I submit that it would not be possible to conclude that the Arthur's Point West is a 'key', 'larger' or 'main' urban area. However it is subject to a UGB, and it is within the Wakatipu Basin. This reinforces the interpretation detailed above. Arthur's Point West is an urban area located within the Wakatipu Basin and therefore must be subject to a UGB in order to implement the relevant Chapter 3 and Chapter 4 policies.

141 I do not address the Arrowtown SHA in these Submissions. I have not seen a copy of the consented SHA plan, and I do not know how big it is. However it seems very unlikely that it is not urban in nature and therefore that, if the relevant Chapter 3 and Chapter 4 UGB policies are to be implemented, it should be subject to a UGB.

142 I now turn to Millbrook, which is an interesting situation. I submit that the starting point is that, absent a bespoke definition, there can be no doubt that Millbrook is urban in character. I submit that is not even debatable. I note that submission is supported by the evidence, describing Millbrook as urban, of Ms Gilbert⁵², Ms Mellsop⁵³, Mr Langman⁵⁴, Mr Skelton⁵⁵ and Mr Brown⁵⁶. I also note that Millbrook is described in Schedule 24.8, Landscape Character Unit 23, as an "*intensively developed attractive urban settlement*".

143 In S696 Millbrook Country Club Limited (MCCL) requested a definition of "*urban development*" which "*Does not include resort style development such as that within the Millbrook Zone*". The only reason given for that requested relief, in S696, states that, while Millbrook makes some suggestions as to how the definition might be improved, "*... its primary concern is that Millbrook should not be considered to entail urban development*". Counsel cannot find any evidence lodged for MCCL which provides any basis, let alone a reasoned basis, for urban

⁵² Evidence of Bridget Gilbert dated 28 May 2018, at paragraph 32.10 on page 81.

⁵³ Evidence of Helen Mellsop dated 28 May 2018, at paragraph 7.37 on page 59.

⁵⁴ Evidence of Marcus Langman dated 30 May 2018, at paragraphs 45.7 and 55.13 on pages 139 and 171.

⁵⁵ Evidence of Stephen Skelton dated 13 June 2018, at paragraph 13 on page 4.

⁵⁶ Evidence of Jeff Brown dated 13 June 2018, at paragraph 2.5 on page 7.

development within Millbrook to be excluded from any definition of, or provisions relating to, urban development.

144 The definition of “*urban development*” was considered during Hearing Stream 1B⁵⁷ and again during Hearing Stream 10⁵⁸. It appears from the Hearing Stream 1B Report 3 in particular that the Hearing Panel has gone to some lengths to try and devise a definition which would exclude Millbrook urban development from the definition of “*urban development*” intended to catch all other urban development. However no explanation is given as to why that Hearing Panel elected to do that (other than because MCCL requested it). In particular there appears to be no s32 assessment of the benefits and costs of creating a definition of “*urban development*” which excludes Millbrook.

145 The significance of the previous point lies (in part) in the fact that one of the ‘costs’ is an outcome in which the Millbrook Zone, which is bounded by cadastral boundaries rather than landscape boundaries, and the undeveloped part of which is owned by one of the larger residential developers in the District, is not constrained (in terms of future growth) by a UGB.

146 Counsel finds difficult to understand the rationale underpinning the apparent intention to exclude Millbrook development from ‘urban development’, taking into account the following factors:

a. The following specific statements can be found in Report 3 at paragraphs 562 and 563:

“562. To us, the most pressing reason for applying UGBs is that without them, the existing urban areas within the District can be incrementally expanded by a series of resource consent applications at a small scale, each of which can be said to have minimal identifiable effects relative to the existing environment.

563 This is of course the classic problem of cumulative environmental effects and while a line on a map may be somewhat arbitrary, sometimes lines have to be drawn to prevent cumulative effects even when they cannot be justified on an “effects basis” at the margin.”

b. A number of submissions have been lodged by neighbours adjoining the Millbrook Zone seeking that the Millbrook Zone be extended to include their properties⁵⁹. A short summary of the various expert assessments within the

⁵⁷ Refer Report 3 – Report and Recommendations of Independent Commissioners Regarding Chapter 3, Chapter 4 and Chapter 6, at paragraphs 580-602 on pages 86-89.

⁵⁸ Refer Report 14 - Report and Recommendations of Independent Commissioners Regarding ... Chapter 2 (Definitions), at paragraphs 417-421 on pages 60-61.

⁵⁹ Refer Submissions 2419, 2413, 2512, 2444, 2320, 2580, 2501, 2229 and the related expert assessments.

s42A Report in relation to those submissions, as responded to by MCCL, is that some extensions to the Millbrook Zone may be appropriate provided that (as far as MCCL is concerned) MCCL controls any such extensions.

- c. The overall objective of MCCL appears to be to achieve a position where MCCL can seek to expand the Millbrook Zone provided MCCL is in control of any such expansion. That objective may explain MCCL's requested relief on this issue.
- d. That outcome, being the outcome described in paragraph 145 above, appears to be precisely the outcome which the Hearing Stream 1B Hearing Panel sought to avoid, as evidenced by paragraphs 562 and 563 of Report 3 quoted above.

147 All of the above assumes that the Millbrook development within the Millbrook Zone falls within the new definition of "resort". On the evidence lodged to date, I submit that that is, at the very least, very debatable.

148 The new definition of 'urban development' specifically excludes "... a resort development in an otherwise rural area ...". The definition of 'Resort' reads:

"Resort" – means an integrated and planned development involving below average density of residential development (as a proportion of the developed area) principally providing visitor accommodation and forming part of an overall development focused on on-site visitor activities."

149 One critical element of a 'resort development' is therefore that it must "... principally provide visitor accommodation ...".

150 There are a number of dictionary definitions of the word "principally", generally along the lines of "most of", "chiefly", etc. I submit that "principally" means more than just a bare majority proportion or majority percentage. It means a proportion or percentage which is significantly more than half.

151 Mr Ben O'Malley has lodged evidence on behalf of MCCL as the Director - Property & Development for MCCL⁶⁰. That evidence includes the following statements:

- a. The hotel at Millbrook owned by MCCL contains 51 hotel rooms (para 8.1.1);
- b. The Millbrook business includes 48 two bedroom villas leased by MCCL and approximately 40 cottages and fairway homes rented through MCCL's rental programme (para 8.1.1.);

⁶⁰ Evidence of Ben O'Malley for MCCL dated 13 June 2018.

- c. At present there are approximately 260 homes and sections at Millbrook (para 8.2);
 - d. Both the ODP and the PDP provide for a maximum of 450 residential units within the Millbrook Zone (para 8.2);
 - e. A Memorandum of Encumbrance is registered against every title at Millbrook. That key legal instrument controls a number of matters including "... *The prohibition of the rental of any property except through one of Millbrook's rental programmes ...*" (para 11.3.1(b)).
- 152 Significantly, Mr O'Malley's evidence does not contain any statement that a purchaser of a section or home within Millbrook must make their property available for visitor accommodation purposes when it is not occupied by the owner (as is the case worldwide with many visitor accommodation developments which are separately titled and separately sold to individual purchasers). The registered Memorandum of Encumbrance referred to by Mr O'Malley also contains no such requirement⁶¹.
- 153 Counsel has difficulty seeing how Millbrook can qualify as a 'resort development' under the definition quoted above:
- a. The first question is how one is to apply the definition. The proportion or percentage being used for visitor accommodation could be determined on the basis of proportion or percentage of individually titled properties or of individual bedrooms or even of gross floor area. Each different formula would result in a different proportion or percentage of the Millbrook development being used for visitor accommodation.
 - b. Regardless of how the definition is applied, the total of 88 villas, cottages and fairway homes currently being rented through MCCL's rental programme, as a proportion or percentage of 260 existing properties, does not come close to a bare majority, let alone coming anywhere near "*principally*". That conclusion would also apply if one adds in the 51 hotel rooms (because the 51 would somehow have to be added to the figure of 260 before calculating the proportion or percentage).
- 154 What makes this definition even more problematic as far as Millbrook is concerned is that it appears that, as Millbrook continues to develop up to its maximum 450 residential units, the answer to the question of whether it falls within the definition of 'resort' development may change from time to time, and change back again, depending upon what proportion or percentage of individual

⁶¹ Counsel has searched and checked this publicly available document.

owners elect to make their properties available for visitor accommodation purposes through MCCL's rental programme at any one time.

- 155 Taking into account all of the above, I submit that the only difference between a residential property in Jack's Point, Arrowtown or Millbrook, all of which can be used for visitor accommodation purposes at the election of the owner, is that any Millbrook residential property being used for visitor accommodation purposes must be rented through MCCL's rental programme.
- 156 I further submit that, at least as far as Millbrook is concerned, there are fundamental problems with the definition of 'resort development', and the exclusion of resort development from 'urban development' on the basis of activity/use rather than physical form, even if Millbrook were to currently fall within the 'resort' definition which I submit it clearly does not. I also record that all of these issues are now subject to appeal.
- 157 Before turning to the UGB requested in S2388, I note that there is a wide degree of flexibility in the extent of a UGB and in what that UGB does or does not contain. Policy 4.2.2.2 specifically requires allocation of land within a UGB into zones reflective of the appropriate land use, having regard to a number of considerations including matters such as topography, ecological/heritage/cultural/landscape significance, and a range of other factors.
- 158 That flexibility is demonstrated by comparing the UGB surrounding the Jack's Point/Hanley Downs area which contains extensive areas of ONL, at one end of the spectrum, with the Arthur's Point West and Arthur's Point East UGBs which are carefully drawn around residentially zoned areas and exclude areas of landscape significance, at the other end of the spectrum. The Arrowtown UGB sits somewhere in the middle of that spectrum, as it is carefully drawn around residentially zoned areas but includes the Feeleys Hill ONF.
- 159 Based on the above analysis, I submit that the answer to the request in S2388 for a UGB to be determined, and the extent of that UGB, should be informed by the following factors:
- a. Any urban area within the Wakatipu Basin must be subject to a UGB if the relevant Chapter 3 and Chapter 4 policies are to be implemented;
 - b. A UGB may be tightly drawn around just residentially zoned land or may be more expansive and include areas of landscape importance which should not be developed;
 - c. There is no minimum or maximum size for a UGB. The continuous UGB around Queenstown and environs is huge whereas the Arthur's Point West

UGB only contains about 23ha and a development capacity of 100-110 residential units;

- d. The references in Chapter 4 to 'key', 'larger' and 'major' do not restrict or prevent the creation of a UGB around an urban area which does not meet one of those qualifiers;
- e. If there is a debate about the previous point, and if the Arthur's Point West UGB implements the relevant Chapter 4 objectives and policies, then it must be presumed to fall within those qualifiers;
- f. Given the suite of characteristics specific to the Arrowtown UGB detailed in Policy 4.2.2.20, it would not be appropriate at this stage to extend the Arrowtown UGB to encompass Millbrook, Waterfall Park and Ayrburn as originally requested in S2388;
- g. The previous point does not disqualify a smaller separate UGB which does not include Arrowtown, because jurisdiction exists to create a smaller UGB;
- h. Other than creating a line on a map, there is no need for specific policy reference to every UGB, as is exemplified by the fact that there is no specific policy reference to the Arthur's Point West or Arthur's Point East UGBs;
- i. Imposing a UGB around the boundaries of the WPZ and the Ayrburn Zone (even if Millbrook is excluded) would not only be an appropriate outcome but would be a necessary outcome if the relevant Chapter 3 and Chapter 4 policies are to be implemented;
- j. Based on the evidence presented to date, Millbrook is not a 'resort', is otherwise urban development, and therefore does not fall within the 'resort development' exemption under the definition of 'urban development';
- k. Given the fact that the boundaries to the Millbrook Zone are cadastral boundaries rather than landscape boundaries, and the obvious potential for expansion of the Millbrook Zone (as evidenced by the submissions from neighbouring owners referred to above), the imposition of a UGB around Millbrook is not only appropriate, but is highly desirable, if the relevant Chapter 3 and Chapter 4 policies are to be implemented;
- l. An appropriate UGB boundary for Millbrook should easily be able to be determined following consideration of the submissions lodged seeking extensions of the Millbrook Zone.
- m. A UGB which includes Ayrburn Zone would reinforce the defensible western boundary discussed above.

- 160 Taking all of the above into account, I submit that:
- a. A UGB can and should be created encompassing, and defined by, the cadastral boundaries of the WPZ, the cadastral boundaries of the proposed Ayrburn Zone, and the cadastral boundaries of the Millbrook Zone (with that last element being subject to possible variation as a result of the hearing of submissions relating to properties adjoining the Millbrook Zone);
 - b. That UGB will be consistent with, and achieve, the various aspects of Policy 4.2.1.4;
 - c. As far as the WPZ and the Ayrburn Zone are concerned, the relevant Structure Plans will ensure that the outcomes intended by Objective 4.2.2B and related Policies 4.2.2.1 to 4.2.2.12 will be achieved;
 - d. The previous point probably also applies to the Millbrook Zone, and the Millbrook Structure Plan (which Counsel has not checked).
- 161 If the above submissions to the effect that Millbrook is not a 'resort' and is therefore 'urban development' are not accepted, the previous paragraph would apply to a smaller UGB containing just the WPZ and the Ayrburn Zone.

Amended Ayrburn Zone plan provisions

- 162 Appendix A to the rebuttal evidence of Mr Langman for the Council contains a copy of Chapter 47 Ayrburn Zone which details, on the left hand side, the Ayrburn Zone plan provisions lodged with Mr Brown's primary evidence for WPD and, on the right hand side, Mr Langman's comments on those plan provisions. In order to facilitate a response by Mr Brown to Mr Langman's comments, in a manner which avoids extensive further evidence from Mr Brown:
- a. Mr Brown has obtained from Council a Word version of Mr Langman's Appendix A;
 - b. Mr Brown has provided comments in response to Mr Langman's comments;
 - c. In response to some points made by Mr Langman, Mr Brown has recommended further amendments to the Ayrburn Zone plan provisions.
- 163 **Schedule Five** to these Submissions contains a copy of Mr Langman's Appendix A amended as follows:
- a. Mr Brown comments on each of Mr Langman's bullet points. In each case the comment follows Mr Langman's bullet point and is in a different colour.

- b. Further amendments to the Ayrburn Zone plan provisions now recommended by Mr Brown are highlighted by tracked change in the provisions on the left hand side of the document.

164 I make the following three general comments in response to Mr Langman's comments in his Appendix A.

165 Mr Langman may not appreciate that the Ayrburn Zone provisions are, to a significant degree, modelled on the Chapter 42 WPZ zone provisions recently confirmed in the DPR Stage 1 decisions (and now deemed operative under s86F(1) of the Act). For example, Rule 47.4.6 Fire Fighting, which Mr Langman expresses concerns about, is a direct copy of the WPZ Rule 42.5.6.

166 Mr Langman objects to Rule 47.4.7 Atmospheric Emissions on the basis that this is a regional council function. That rule is a direct copy of WPZ Rule 42.5.7. In addition, the ODP Shotover Country Special Zone contains Rule 12.30.3.5.viii which controls internal and external open fires in order to control atmospheric emissions. This is a specific concern in parts of the Wakatipu Basin subject to inversion layers, and the District Plan contains specific measures to address those concerns.

167 Mr Langman expresses concerns about what he considers to be extensive provision for retail activities. In response:

- a. On an issue such as this it is essential to read the rules carefully and understand the rule structure. Mr Langman's interpretation is incorrect.
- b. Because Rule 47.3.1 specifies non-complying activity status for any activity not listed in Rule 47.3, when Rule 47.3.1 is read alongside Rule 47.4.8, the only retail activities provided for in the Ayrburn Zone are:
 - i. Sale of goods grown, reared or produced on site;
 - ii. Retail activities ancillary to visitor accommodation activities (not specified, but based upon the normal interpretation of 'ancillary activities');
 - iii. Sale of goods retailed within a Retirement Village (as defined) for the exclusive use of persons living in the retirement village.
- c. The importance of reading the rule structure carefully is highlighted by the fact that, within the Millbrook Zone, because the default consent status of unspecified activities is permitted activity rather than non-complying activity, there is no limit on the extent of retail activities which could be developed within the very large undeveloped Village area within the Millbrook Zone (shown on Attachment J).

Evidence

168 In respect of the following areas of expertise, there will be a witness present who will not present any additional evidence at the hearing but will answer any questions from the Panel. Those witnesses, their areas of expertise, and their briefs of pre-lodged evidence are:

a. Gary Dent (Fluent Solutions) – stormwater – Memorandum dated 12 June 2018 ‘Ayrburn Farm Flood Management Feasibility Assessment’, with attached:

- Appendix 1 – Waterfall Park Access Road Flood and Stormwater Management Assessment dated 13 October 2017;
- Appendix 2 – Waterfall Park Hotel Development Flood Assessment dated April 2018;
- Appendix 3 – Copy ORC consent RM17.302.

b. Jayne Richards (Fluent Solutions) – infrastructure – Report: ‘Water, Wastewater and Stormwater Infrastructure Assessment’ dated June 2018, with attached:

- Appendix A – Wastewater Modelling Report dated 7 February 2018;
- Appendix B – Water Modelling Report dated 19 March 2018.

c. Dr Ruth Goldsmith (Ryder Environmental) – aquatic ecology – ‘Mill Creek – Assessment of Aquatic Ecology Effects’ dated 12 June 2018, with attached:

- Appendix Two – Lake Hayes Management Strategy (ORC/QLDC) dated September 1995;
- Appendix Three – Lake Hayes Restoration and Monitoring Plan (prepared for the Friends of Lake Hayes Society Inc) dated 17 May 2017.

d. Andy Carr (Carriageway Consultants) – traffic:

i. S2388 Statement of Evidence dated 13 June 2018, with attached:

- Assessment of Proposed WPZ Access Road dated 15 November 2017;
- RM171280 Statement of Evidence dated 13 April 2018;
- RM171280 Supplementary Statement of Evidence dated 4 May 2018;

- ii. S2388 Rebuttal Evidence dated 27 June 2018.
 - e. Paddy Baxter (Baxter Design Group) – landscape – RM171280 Statement of Evidence dated 13 April 2018, including Access Road Landscape Assessment dated 14 November 2017, Supplementary Statement dated 7 May 2018 and final approved RM171280 landscape plans (Attachments A to C);
 - f. Stephen Skelton (Patch) – landscape – S2388 Statement of Evidence dated 13 June 2018;
 - g. Jeff Brown (Brown & Company) – planning – S2388 Statement of Evidence dated 13 June 2018 with attached:
 - Attachment F – RM171280 Statement of Evidence dated 13 April 2018;
 - Attachment G – copy WPZ Access Road consent RM171280.
 - h. George Wadworth-Watts (WPDL) – S2388 Rebuttal Evidence dated 27 June 2018 (presenting amended Ayrburn Zone Structure Plan).
- 169 One witness will not be present because he lives out of town and it seems very unlikely that the Panel would need to put any questions to him. However he will be available 'on call' by telephone if required:
- a. Ciaran Keogh (Environmental Consultants Otago) – soil contamination – Preliminary Site Investigation dated November 2016.

Warwick Peter Goldsmith
Counsel for Waterfall Park Developments Limited

Dated 12 July 2018

SCHEDULE ONE

Copy ORC Consent RM17.302

Our reference: A1092428

1 March 2018

Waterfall Park Developments Limited
PO Box 2962
Wakatipu
Queenstown 9349

Dear Sir/Madam

Decision on Resource Consent Application No. RM17.302: To disturb and to divert Mill Creek for the purpose of constructing a bridge - Mill Creek, Arrowtown

I advise that a decision has been given on your application for resource consents. A copy of the staff recommending report is enclosed along with the consents.

The decision is:

That Council grants to **Waterfall Park Developments Limited**

Land Use Permit – General: RM17.302.01

To disturb and to divert Mill Creek for the purpose of constructing a bridge

Water Permit – Divert: RM17.302.02

To temporarily divert water for the purposes of bridge construction

Reasons for decision

These are set out at the end of the enclosed recommending report under the heading "Recommendation".

Objection Rights

Section 357 of the Resource Management Act 1991 provides you with the right to lodge an objection with the Council in respect of this decision and/or any associated conditions. Any such objection must be made in writing setting out the reasons for the objection and must be received by the Council within 15 working days of receiving this letter.

Alternatively, in accordance with s.120 of the Act, this decision is subject to a statutory right of appeal directly to the Environment Court, P O Box 2069, Christchurch, which must be lodged with the Environment Court and served on the Council within 15 working days of receiving this letter.



These resource consents have been granted on a non-notified application, therefore the consents commence on the date you receive this letter unless a condition in the consents states otherwise, or an appeal is lodged.

If an appeal is lodged the consents cannot be exercised until the Court has determined the appeal, or the appeal is withdrawn, or a determination of the Court states otherwise.

Conditions of Consent

It is important that you check the conditions of your consents carefully as some of them may require you to surrender your current consent or provide information and/or plans to the Council before you may commence your activity. In addition, in some cases you may also require other permits or consents for your proposed activity and these must be obtained before you can commence your activity.

Lapse of Consent

Please note that under s.125 of the Act these consents shall lapse in five years unless you have given effect to them before then.

Consent Charges

At this stage the Council has not calculated the final costs of processing your application. Should the final costs exceed the deposit already paid, then as previously advised, you will be invoiced separately for these costs. Should the final costs be less than the deposit already paid then you will receive a refund.

Compliance Fees and Charges

Council's Environmental Services Unit will monitor your consents to ensure you have complied with the conditions of your consents. If you have any query about these charges, please contact the Environmental Data Team at Council.

Please contact **Ralph Henderson** at this office should you require clarification of any matter relating to this decision letter.

Yours sincerely



Marian Weaver
Resource Manager Procedures and Protocols
Encl

cc Waterfall Park Developments Limited, C/- Brown & Company Planning Group, PO Box 1467, Queenstown 9348. Attention: A Hutton.

Our reference: A1091352

Consent No. RM17.302.01

LAND USE CONSENT

Pursuant to Section 104B of the Resource Management Act 1991, the Otago Regional Council grants consent to:

Name: Waterfall Park Developments Limited

Address: Level 2 33 Shortland Street Auckland

To disturb and to divert Mill Creek for the purpose of constructing a bridge

For a term expiring 1 March 2023

Location of consent activity: Mill Creek, 583 metres north west of the intersection of Arrowtown - Lake Hayes Road and Speargrass Flat Road, Arrowtown

Legal description of consent location: Pt Lot 3 DP 5737

Map Reference: NZTM2000 E 1269672 N 5013172

Conditions

Specific

1. This consent shall be exercised in conjunction with Water Permit RM17.302.02.
2. The works shall be sized, constructed and located generally as described in the application for consent and the Earthworks Management Plan lodged with the Consent Authority on (13 October 2017), and as shown on the drawings 1-2 attached as Appendix 1 to this consent. If there are any inconsistencies between the application and this consent, the conditions of this consent shall prevail.
3. Works shall not be undertaken between 1 May and 7 January inclusive to avoid the disturbance of koaro and brown trout spawning habitat.

Performance Monitoring

4. The consent holder shall notify the Environmental Engineering and Natural Hazards Unit of the Consent Authority in writing at least five working days prior to the commencement of work authorised by this consent, and at the completion of work authorised by this consent.
5. Within three months of completion of the works the consent holder shall supply to the Consent Authority "as built" plans and photographs of:

- (a) the works outlined in Condition 1 of this consent, and
- (b) the bridge over Mill Creek demonstrating compliance with the conditions of permitted activity rule 13.2.1.7.

General

6. All machinery and equipment that has been in watercourses shall be water blasted and treated with suitable chemicals or agents prior to being brought on site and following completion of the works, to reduce the potential for pest species being introduced to or taken from the watercourses, such as didymo. At no time during the exercise of this consent shall machinery be washed within the bed of a watercourse.
7.
 - (a) Work shall be undertaken with the minimum time required in the wet bed of the watercourse and with the minimum necessary bed disturbance.
 - (b) Damage to riparian vegetation shall be minimised when exercising this consent.
 - (c) All reasonable steps shall be taken to minimise the release of sediment to water.
 - (d) At completion the works shall not result in any decrease of the upstream and downstream cross-sectional area of the streambed, as the streambed exists prior to commencement of the works authorised by this consent.
 - (e) At the completion of the works authorised by this consent, the consent holder shall ensure that all plant, equipment, chemicals, fencing, signage, debris, rubbish and any other material brought on site to give effect to this consent is removed from the site. The site shall be tidied to a degree at least equivalent to that prior to the works commencing.
 - (f) The consent holder shall ensure that existing fish passage is not impeded as a result of the placement of the structure.
8. Any rock/gravel to be used for the consented work, is clean and placed rather than dumped into position. Excess excavated material shall be re-used if suitable or disposed of appropriately.
9. The consent holder shall ensure that once completed the works authorised by this consent do not cause any flooding, erosion, scouring, land instability or property damage.
10. In the event that an unidentified archaeological site is located during works, the following applies;
 - (a) Work shall cease immediately at that place and within 20m around the site.
 - (b) The contractor must shut down all machinery, secure the area, and advise the Site Manager.
 - (c) The Site Manager shall secure the site and notify the Heritage New Zealand Regional Archaeologist and the Consent Authority. Further assessment by an archaeologist may be required.
 - (d) If the site is of Maori origin, the Site Manager shall notify the Heritage New Zealand Regional Archaeologist, the Consent Authority and the appropriate iwi groups or kaitiaki representative of the discovery and ensure site access to enable appropriate cultural procedures and tikanga to be undertaken, as long as all statutory requirements under legislation are met (Heritage New Zealand Pouhere Taonga Act 2014, Protected Objects Act 1975).
 - (e) If human remains (koiwi tangata) are uncovered the Site Manager shall advise the Heritage New Zealand Regional Archaeologist, NZ Police, the Consent Authority and the appropriate iwi groups or kaitiaki representative and the

- above process under 4 shall apply. Remains are not to be moved until such time as iwi and Heritage New Zealand have responded.
- (f) Works affecting the archaeological site and any human remains (koiwi tangata) shall not resume until Heritage New Zealand gives written approval for work to continue. Further assessment by an archaeologist may be required.
 - (g) Where iwi so request, any information recorded as the result of the find such as a description of location and content, is to be provided for their records.

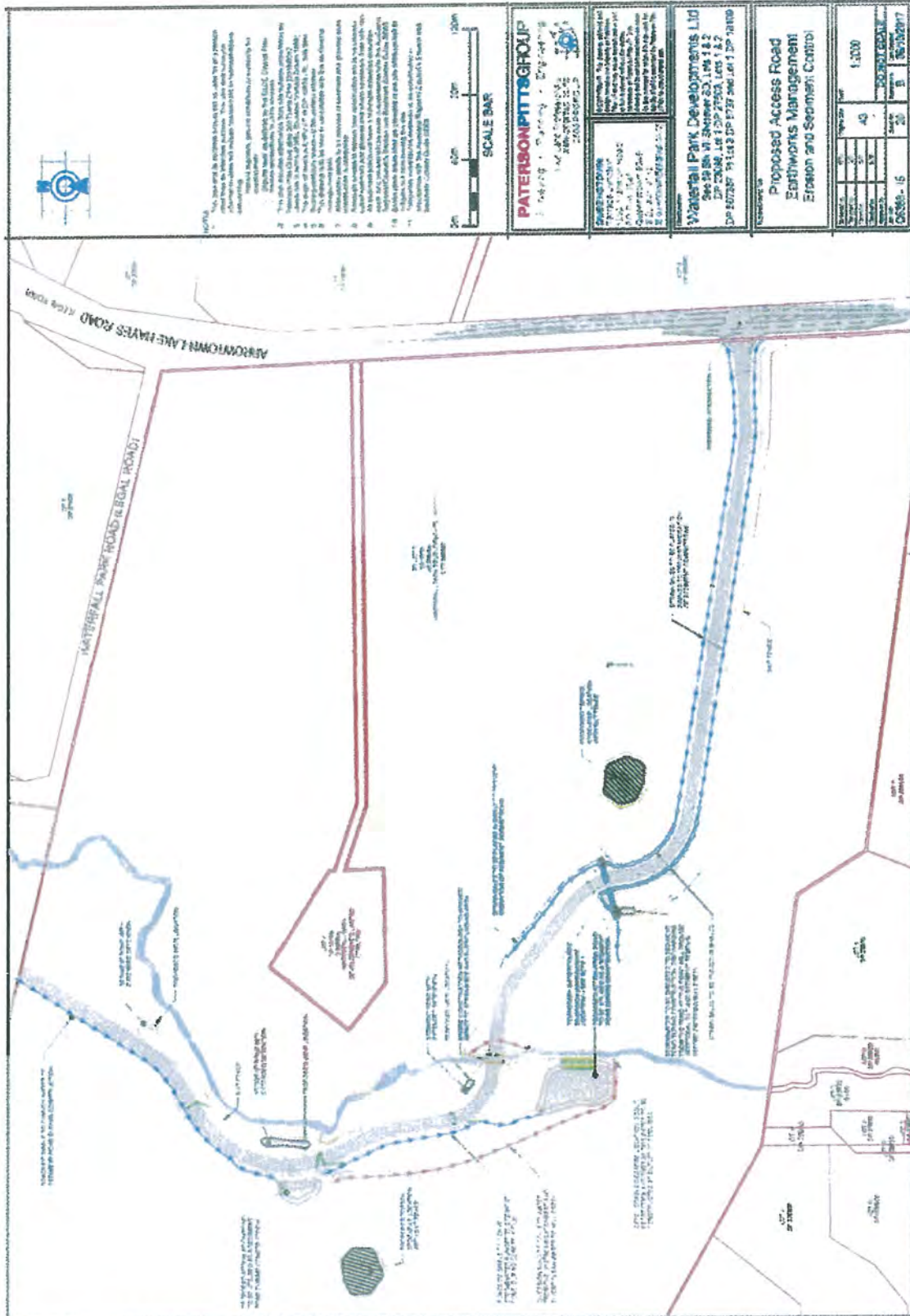
Notes to Consent Holder

1. *The consent holder shall also comply with all notices and guidelines issued by Biosecurity New Zealand, in relations to avoiding spreading the pest organism *Didymosphenia geminata* known as "Didymo" (refer to www.biosecurity.govt.nz/didymo).*
2. *During the exercise of this consent, the consent holder should ensure that fuel storage tanks and machinery working and stored in the construction area shall be maintained at all times to prevent leakage of oil and other contaminants into the watercourse. No refuelling of machinery shall occur within the watercourse. In the event of contamination, the consent holder shall undertake remedial action and notify the Consent Authority within 5 working days.*
3. *The consent holder shall ensure that any contractors engaged to undertake work authorised by this consent abide by the conditions of this consent. A copy of this consent should be present on site at all times while the work is being undertaken.*
4. *Under the Heritage New Zealand Pouhere Taonga Act 2014 an archaeological site is defined as any place in New Zealand that was associated with human activity that occurred before 1900 and provides or may provide, through investigation by archaeological methods, evidence relating to the history of New Zealand (see Section 6). For pre-contact Maori sites this evidence may be in the form of Taonga (artefacts) such as toki (adzes) or flake tools as well as bones, shells, charcoal, stones etc. In later sites of European/Chinese origin, artefacts such as bottle glass, crockery etc. may be found, or evidence of old foundations, wells, drains or similar structures. Pre-1900 buildings are also considered archaeological sites. Burials/koiwi tangata may be found from any historic period. Archaeological sites are legally protected under Sections 42(1) & (2) of the Heritage New Zealand Pouhere Taonga Act 2014.*
5. *It is an offence under S87 of the Heritage New Zealand Pouhere Taonga Act 2014 to modify or destroy an archaeological site without an Authority from Heritage New Zealand irrespective of whether the works are permitted or a consent has been issued under the Resource Management Act or Building Act.*

Issued at Dunedin this 1st day of March 2018



Marian Weaver
Resource Manager Procedures & Protocols



Plan 2: Proposed Access Road and Earthworks Management



Quality ISO 9001

Our reference: A1091352

Consent No. RM17.302.02

WATER PERMIT

Pursuant to Section 104B of the Resource Management Act 1991, the Otago Regional Council grants consent to:

Name: Waterfall Park Developments Limited

Address: Level 2, 33 Shortland Street, Auckland

To temporarily divert water for the purposes of bridge construction

For a term expiring 1 March 2023

Location of consent activity: Mill Creek, 583 metres north west of the intersection of Arrowtown - Lake Hayes Road and Speargrass Flat Road, Arrowtown

Legal description of consent location: Pt Lot 3 DP 5737

Map Reference: NZTM 2000 E 1269672 N 5013172

Conditions

Specific

1. The diversion shall be undertaken as described in the application, including:
 - (a) the diversion shall be constructed in accordance with Auckland Regional Council's Erosion and Sediment Control Guide GD05, 'Temporary watercourse diversions', section G4.2.3
 - (b) the diversion shall be by open channel to maintain fish passage for all species
 - (c) the diversion channel shall be designed to ensure the flow speed through the area of diversion is consistent with a run (e.g. relatively laminar flow, not a pool or riffle) of Mill Creek within 20m upstream of the proposed works.
2. The realigned portion of Mill Creek shall be constructed at an even gradient and with a similar cross-section to the existing stream bed.
3. The diversion of water from the Mill Creek shall only occur once the diversion channel has been fully excavated.
4. The diversion shall only remain in place while the works permitted by consent RM17.302.01 is being undertaken. On completion of the works the diversion shall cease and the site shall be returned to its natural state.

5. The consent holder shall ensure that no fish become stranded, and fish passage is not impeded as a result of the diversion works.
6. When diverting water into the new diversion channel, all reasonable steps shall be taken to ensure that sediment and discolouration of water are kept to a minimum.

Performance Monitoring

7. The consent holder shall provide detailed plans of the proposed diversion channel and associated mitigation measures to the Resource Science Unit of the Consent Authority at least ten working days prior to the commencement of work authorised by this consent.
8. Representative photographs shall be taken of the site:
 - (a) before works commence; and
 - (b) immediately after the completion of works and rehabilitation of the site,These photographs shall be provided to the Consent Authority within one month of the final photographs being taken.

General

9. The consent holder shall undertake all reasonable measures to promote bank stability of the new channel as rapidly as possible.
10. There shall be no reduction in the surface flow of Mill Creek as a result of the diversion.
11. No lawful take of water shall be adversely affected as a result of the diversion.
12. The consent holder shall ensure the diversion does not cause any flooding, erosion, scouring, land instability or damage of any other person's property.

Notes to Consent Holder

1. *The consent holder shall ensure that any contractors engaged to undertake work authorised by this consent abide by the conditions of this consent. A copy of this consent shall be present on site at all times while the work is being undertaken.*

Issued at Dunedin this 1st day of March 2018.



Marian Weaver
Resource Manager Procedures & Protocols

ORC STAFF RECOMMENDING REPORT

ID Ref: A1080955
File No: RM17.302
Application No: RM17.302.01-.02
Prepared For: Staff Consents Panel
Prepared By: Ralph Henderson
Date: 28/02/2018

Subject: Applications RM17.302.01-.02 by Waterfall Park Developments Limited to disturb and alter the bed, and to temporarily divert Mill Creek, Speargrass Flat Road, Arrowtown

1. Purpose

To report and make recommendations on the determination of the above application(s) under the non-notified provisions (Section 95A) of the Resource Management Act 1991 (the Act).

2. Background Information

Applicant: Waterfall Park Developments Limited
Activity: To disturb and alter the bed, and to temporarily divert Mill Creek
Location: Speargrass Flat, Arrowtown
Reason: For the purpose of the construction of a bridge over Mill Creek

2.1 Description of the Proposed Activities

The applicant, Waterfall Park Developments Limited, is proposing to construct a new road to enable access to an area of proposed development identified in the Queenstown Lakes District Plan as the Waterfall Park Special Zone. The proposed road is approximately 870 m in length and will run off Arrowtown-Lake Hayes Road (Figure 1). Access to this development area requires a crossing of Mill Creek and the applicant proposes to construct a new bridge to provide for the future development of the Waterfall Park Special Zone.

The proposed bridge is a permitted activity under the Regional Plan: Water (RPW) however the construction of the new bridge will require works in the stream bed and the temporary diversion of Mill Creek during the proposed works.

Construction of the bridge activities will involve the narrowing of the creek, the construction of concrete abutments and pile driving. As these activities will require a dry stream bed the applicant proposes to construct a coffer dam and temporarily divert Mill Creek for the construction period which is estimated to be approximately six weeks in duration. Mill Creek will flow around the area of works by way of an open channel approximately 35m in length. The applicant proposes to adopt an earthworks management plan detailing sediment control measures and to undertake construction outside the breeding season for native and exotic fish species that are present in Mill Creek.

The proposed diversion and sediment control measures will be constructed in accordance with the Auckland Regional Council's Erosion and Sediment Control



Guide GD05, 'Temporary watercourse diversions', section G4.2.3 and have been outlined in an Earthworks Management Plan for the proposed development.

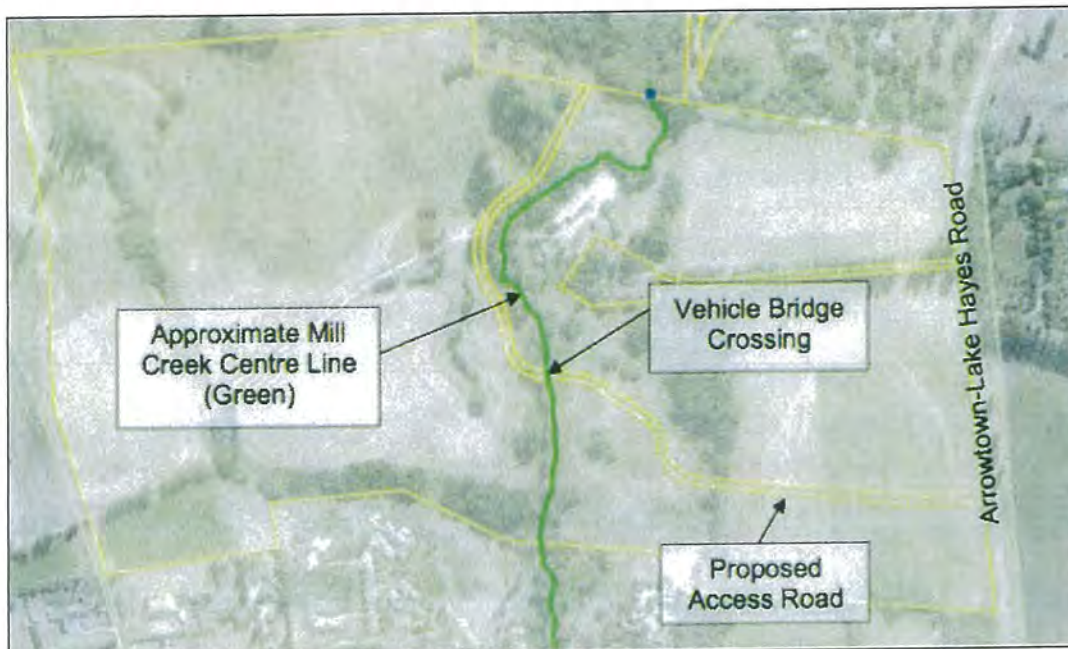


Figure 1: Proposed road alignment

The construction of the road will include stormwater management measures, including a combination of grass swales and kerb and channel to direct stormwater to detention ponds. The road will cross an area subject to potential inundation in flood events adjacent to Mill Creek. To provide protection for the road and maintain access during flood events the road will be constructed on an elevated embankment, typically 1m in height across the flood plain beside Mill Creek (Figure 2). To avoid any increase in downstream flow the road will include culverts sized to convey flood flows at predevelopment levels for both 10 and 100 year average recurrence interval (ARI) events. Consent is not sought for discharge of stormwater, which will operate under the permitted activity rules of the RPW.

Appendix 1 to this report contains the following plans:

- the design of specific works around the area of the bridge (Plan 1), and
- the proposed site wide earthworks, stormwater channels, attenuation areas and culverts (Plan 2).

2.2 Site Description

The applicant's property is located in the Wakatipu Basin, approximately 2.1 kilometres (km) south west of Arrowtown. The site is legally described as Pt Lot 3 DP5757 and is approximately 45.09 ha in area. The applicant, Waterfall Park Developments Limited, is the landowner.

Mill Creek runs through the site on a roughly north-south direction. Approximately 1 km to the north of the proposed works is the waterfall after which Waterfall Park was formerly named where Mill Creek drops rapidly from the upper parts of the Wakatipu Basin into a narrow valley and the subject site (Figure 3). To the south of the site Mill Creek flows under Speargrass Flat Road and through an area of rural residential

activity before discharging into Lake Hayes approximately 1.2 km from the consent site.

The site is generally rural in character but land use in the surrounding area is mixed and includes rural residential and tourism related activities. To the north beyond the ridgeline is Millbrook golf course and resort.

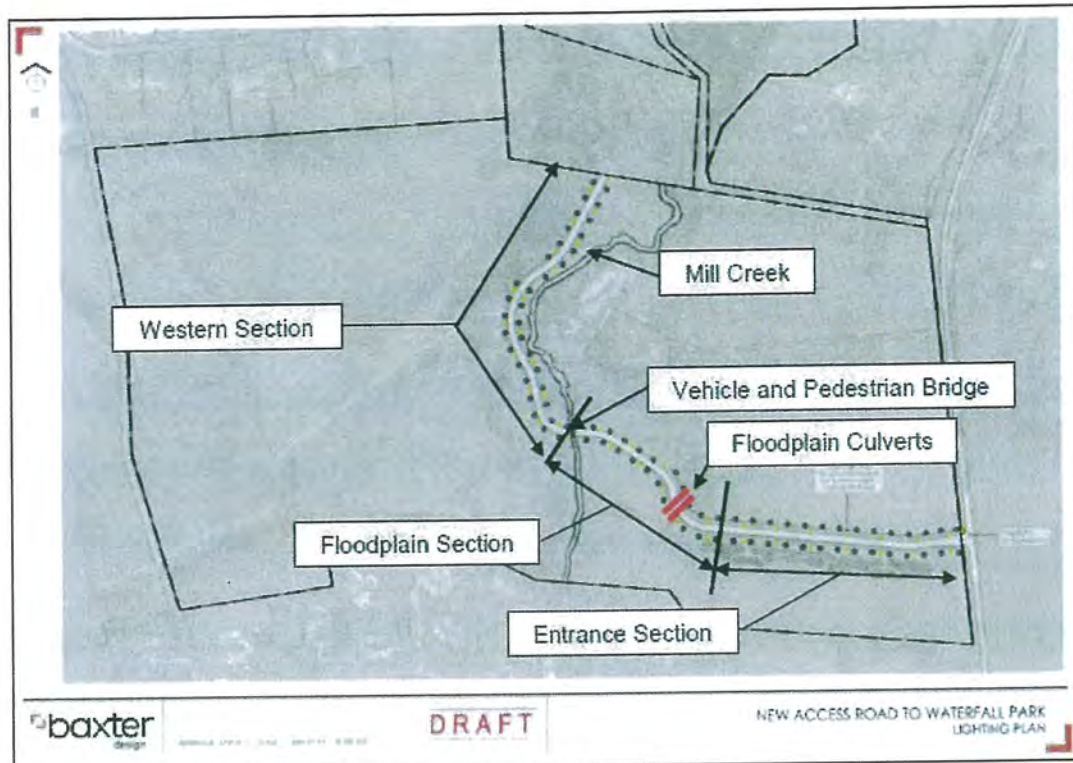


Figure 2: Flood plain and proposed floodplain culverts

Mill Creek has a relatively confined main channel between the Waterfall Park site and Lake Hayes. In the area of proposed works Mill Creek has a width of approximately 1.5m and is approximately 0.4m deep. The creek has a rocky bed and soil/ clay banks and there is no evidence of erosion. Bank vegetation is predominantly introduced grasses reflecting the pastoral use along the banks. The applicant indicates that the Mill Creek channel between Waterfall Park and Lake Hayes is incised and therefore degrading. The surrounding plain beside Mill Creek acts as a primary flood path in flood events.

New Zealand Freshwater Fish Database records indicate there are five fish species in the Lake Hayes and Mill Creek catchment; brown trout, common bully, perch, koaro and longfin eel of which koaro and longfin eel are classified as “at risk” (Goodman et al 2014). Figures 4 and 5 below are photos of Mill Creek in the area of proposed works taken by the applicant.

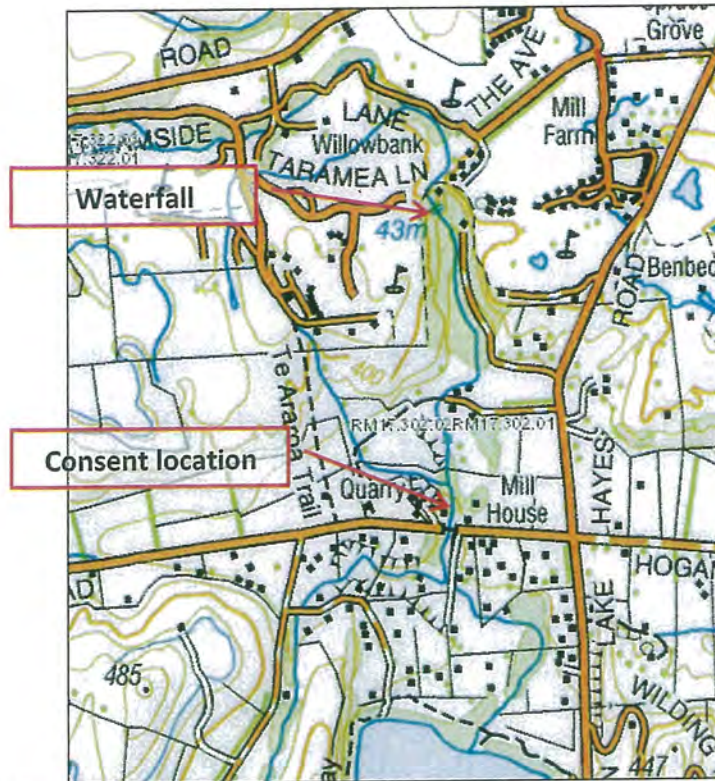


Figure 3: Consent location

The entire Mill Creek catchment to the ORC gauging station known as the “Fish Trap” is approximately 55 square kilometres (km²) (Figure 6). However, the Mill Creek catchment above Waterfall Park is approximately 35 km² in area. The catchment extends north to the ridge line of Coronet Peak and to the west almost to Arthurs Point. The additional catchment area includes the Speargrass Flat and Mooneys swamp areas which enter Mill Creek below the area of proposed works.



Figure 4 & 5: Mill Creek in general area of works (Ryder Environmental)

ORC maintains a flow meter on Mill Creek which has been used to record flows since 1983. This site has been listed in Schedule 2A of the RPW as the site at which a flow of at least 180 l/s must be present before most takes in the Lake Hayes catchment can be exercised.



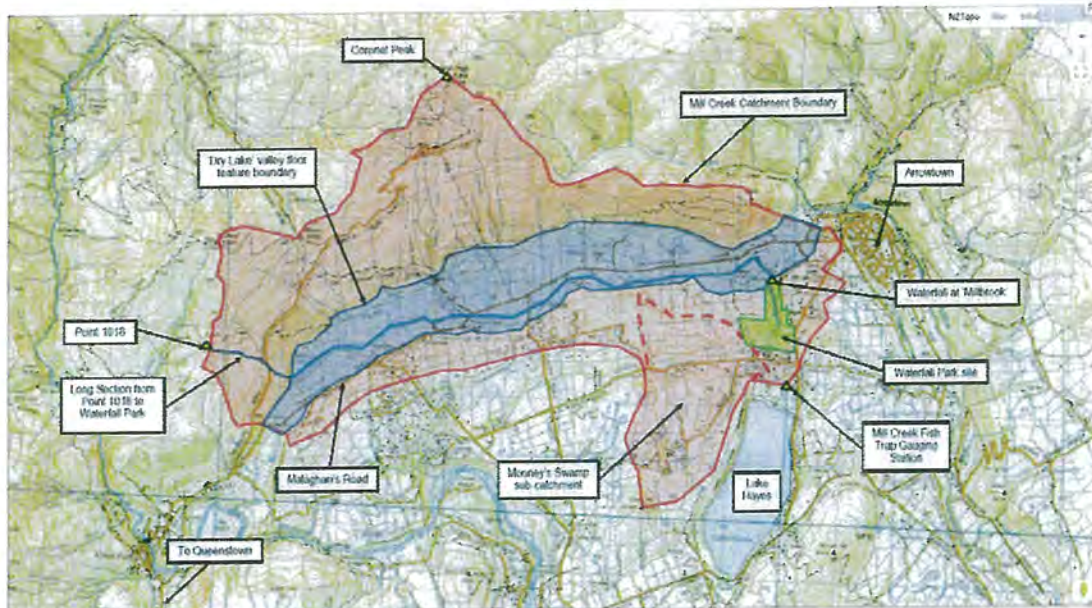


Figure 6: Mill Creek Catchment

There is one consented water take from Mill Creek between the location of the works and Lake Hayes, located approximately 1km downstream of the proposed works. This consent (2005.221) is to take water from and discharge water back into Mill Creek for the purpose of creating a pond and wetland. This take is non-consumptive as the majority of the water is returned to Lake Hayes after circulation through the wetland.

The RPW outlines the natural and human use values of various watercourses throughout the Otago Region. Mill Creek is identified in Schedule 1A Natural Values. Mill Creek is identified for the following natural and ecosystem values:

- Gravel/sand bed composition of importance to resident biota.
- Absence of aquatic pest plants identified in the Pest Plant Management Strategy for the Otago Region.
- Presence of significant fish spawning areas for trout and salmon.
- Presence of significant areas for development of juvenile trout and salmon.
- Presence of indigenous fish species threatened with extinction.
- Significant habitat for roundhead galaxiid
- Significant presence of trout.
- High degree of naturalness above 900m above sea level (asl).

Schedule 1AA identifies Otago resident native freshwater fish and their threat status. Council's Resource Science Unit (RSU) note Mill Creek is known to provide habitat for common bully, koaro and longfin eel, of which koaro and longfin eel within this schedule and are classified as "at risk" (Goodman et al 2014).

Schedule 1B of the RPW identifies rivers where the water taken is used for public water supply purposes and Schedule 1C identifies registered historic places. There are no Schedule 1B water takes in proximity to the proposed activity.



There are two registered historic places on Mill Creek, its historical usefulness for milling reflected in the creek's name. Butel's Flourmill is located upstream of the proposed works at Millbrook. The Wakatipu Flourmill Complex is a category 2 Heritage new Zealand site (No. 2241) and is located approximately 300m downstream

of the proposed works at 557 Speargrass Flat Road (Lot 1 DP 18523) which is immediately north east of the point at which Mill Creek flows under Speargrass Flat Road. The proposed works will not be visible from the former Wakatipu Flourmill Complex and will not adversely affect the historic values associated with the identified features.

Schedule 1D identifies the spiritual and cultural beliefs, values and uses associated with water bodies of significance to Kai Tahu. Mill Creek is not identified as having any specific values, however Lake Hayes is recognised as of importance as:

- *Waaahi taoka: treasured resource; values, sites and resources that are valued.*
- *Mahika kai: places where food is procured or produced.*

The area around the mouth of Mill Creek at Lake Hayes is identified as part of the Lake Hayes Margins Regionally Significant Wetland in the RPW. This is located approximately 980 m south of the proposed works.

3. Status of the Application(s)

The erection of a bridge can be undertaken as a permitted activity, subject to compliance with the performance standards of the permitted activity rules. This is discussed in Section 3.1 of this report.

The proposed works require disturbance and alteration of the bed of a river (Mill Creek) and can not comply with the permitted activity rule 13.5.1.1(f) as the duration will exceed 10 hours.

The disturbance of the bed of the lake or river is therefore a *discretionary* activity under Rule 13.5.3.1 of the RPW.

It is noted that alteration includes any disturbance, and the associated remobilisation (discharge) and redeposition (deposit) of bed material already present, reclamation or deposition of cleanfill associated with works in the bed. A separate discharge permit is therefore not required for the activity, given that the only discharges will be remobilised sediment and silt.

The construction of the bridge will require a dry bed and the applicant proposes to divert Mill Creek to enable this process and to manage sediment discharges. The proposed diversion does not meet the requirements of Rule 12.3.2.1(a) as the catchment size upstream of the proposed works exceeds 50 ha, or Rule 12.3.2.3(a) as the diverted water will not remain with the bed of Mill Creek.

The diversion of water is therefore a *discretionary* activity under Rule 12.3.4.1 of the RPW.

Overall the status of the application is **discretionary**.

The Council may grant or decline these applications and, if granted, may impose conditions under Section 108 of the Act.



3.1 Permitted Activity Rules

The applicant states that the construction of the single span bridge will meet the criteria of permitted activity rule 13.2.1.7 (a)-(g) as follows:

Rule 13.2.1.7	Compliance with condition
(a) <i>The bridge or its erection or placement, does not cause any flooding, nor cause any erosion of the bed or banks of the lake or river, or Regionally Significant Wetland, or property damage; and</i>	The bridge has been designed to ensure that it does not cause flooding, erosion or property damage. The bridge would have no adverse flood effect that is not mitigated by the proposed flood management work.
(b) <i>No more than 20 metres of bridge occurs on any 250 metre stretch of any lake or river; and</i>	There is an existing bridge within 250m of the new bridge. The existing bridge has a width of ~4m and the new bridge has a width of up to 11.2m. The combined width of these bridges along the creek is less than 20m within a 250m stretch of creek and therefore in compliance with this condition.
(c) <i>There is no reduction in the flood conveyance of the lake, river or Regionally Significant Wetland; and</i>	The new bridge has been designed to ensure that there is no reduction in flood conveyance. This is further discussed in sections 4 and 5 below.
(d) <i>The bridge soffit is no lower than the top of the higher river bank; and</i>	The bridge soffit would be no lower than the top of the higher river bank. A minimum freeboard of 600mm above the 50 year ARI flood level is provided to the soffit of the bridge. A minimum of 1.7m is provided from the bed to the bridge soffit.
(e) <i>The bridge and its abutments are secured against bed erosion, flood water and debris loading; and</i>	Concrete piles would be constructed to secure the bridge against bed erosion and flood water. A 600mm freeboard above the 50 year ARI would be provided to the bridge soffit. This is considered to be sufficient to secure against debris loading as the relatively small flows in the creek are not high enough to carry large trees downstream.
(f) <i>Where the bridge is intended for use by stock, measures are taken to avoid animal waste entering the lake, river or Regionally Significant Wetland; and</i>	The bridge is not intended to be used by stock.
(g) <i>If the bridge is situated over or on public land, then public access over the public land is maintained.</i>	The bridge is not situated on or over public land.

The applicant states that the discharge of stormwater from the road will meet the criteria of permitted activity rule 12.B.1.9 as follows:

Rule 12.B.1.8	Compliance with condition
<i>The discharge of stormwater from a reticulated stormwater system to water, or onto or into land in circumstances where it may enter water, is a permitted activity, providing:</i>	
(a) <i>Where the system is lawfully installed, or extended, after 28 February 1998:</i> (i) <i>The discharge is not to any Regionally Significant Wetland; and</i> (ii) <i>Provision is made for the interception and removal of any contaminant which would give rise to the effects identified in Condition (d) of this rule; and</i>	(i) The discharge is not to a Regionally Significant Wetland. (ii) Detention basins are provided for the removal of suspended solids.
(b) <i>The discharge does not contain any human sewage; and</i>	The stormwater is predominantly road runoff and would not contain human sewage.
(c) <i>The discharge does not cause flooding of any other person's property, erosion, land instability, sedimentation or property damage; and</i>	The design of the stormwater management system would ensure that the discharge does not cause flooding, erosion, land instability, sedimentation



<p><i>(d) The stormwater discharged, after reasonable mixing, does not give rise to all or any of the following effects in the receiving water:</i></p> <ul style="list-style-type: none"> <i>(i) The production of any conspicuous oil or grease films, scums or foams, or floatable or suspended materials; or</i> <i>(ii) Any conspicuous change in the colour or visual clarity; or</i> <i>(iii) Any emission of objectionable odour; or</i> <i>(iv) The rendering of fresh water unsuitable for consumption by farm animals; or</i> <i>(v) Any significant adverse effects on aquatic life.</i> 	<p>or property damage.</p> <p>The stormwater discharge would not give rise to these effects after reasonable mixing. This is further discussed in Section 6.</p>
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The applicant states that the erection/ placement of structures within 7m of the top of the bank of Mill Creek will meet the criteria of permitted activity rule 14.4.1 as the deposition of material required to lift ground levels along the banks of the lower reach to protect the proposed access will not result in the physical prevention or obstruction of access for works to avoid or mitigate natural hazards.

4. Non-Notification and Written Approvals

As the effects of the proposed activities are considered to be no more than minor (see Section 5 of this report), a provisional decision was made to process these applications on a non-notified basis, subject to the written approval of potentially affected parties.

The following parties were identified as potentially affected:

- Department of Conservation on behalf of the Director General of Conservation (DoC);
- Otago/Central South Island Fish and Game Council (F & G)
- Aukaha Limited on behalf of (Kati Huirapa ki Puketeraki and Te Runanga o Otakou) (Aukaha)
- Te Ao Marama Incorporated (TAMI).

The unconditional written approval was provided by F & G.

The written approvals were obtained from the following parties with conditions which were agreed to by the applicant as follows:

DoC:

There will be no work in the active stream from 1 May – 7 January to avoid spawning seasons for both koaro and brown trout.

TAMI:

That accidental discovery protocol is adhered to

Aukaha:

1. That the Heritage New Zealand Pouhere Archaeological Discovery Protocol should be adhered to.
2. That no work shall be undertaken during spawning seasons or during periods when the native fishery are considered sensitive.
3. That any fish disturbed/ stranded during any works within any watercourse are rescued and returned/ relocated to the watercourse.



4. That where appropriate native plants were used for landscape planting.
5. That fish passage is provided at all times.
6. That work is done in the watercourse when the water level is naturally low or dry.
7. That work be undertaken either before or after spawning season (typical spawning season being May to September inclusive).
8. That all practical measures are undertaken to minimise the risk of contamination to the waterway, ie discharge of wet concrete, fuel from machinery.
9. That all practical measures are undertaken during proposed works to minimise sedimentation in the waterway.
10. That all machinery is clean and well maintained before entering the work site.
11. That any rock/gravel to be used for the above proposed work, is clean and placed rather than dumped into position.
12. That the site is left in a clean and tidy condition upon completion of the works.
13. That excess excavated material is either re-used if suitable, or disposed of appropriately.
14. That machinery only enters the waterway for the extent necessary and to carry out as much of the proposed works as possible using one corridor for entering and exiting.
15. That bed disturbance is limited to the extent necessary to carry out the proposed works.

As the written approval of all potentially affected parties has been obtained, the requirements of the decision not to publicly notify this application have been met.

4.2 Other Notifications

As the work is proposed to occur in a Statutory Acknowledgement Area, pursuant to the Ngai Tahu Claims Settlement Act 1998, Te Runanga o Ngai Tahu (TRONT) was advised of the application. TRONT did not comment within 10 working days, therefore the application proceeded.

5. Assessment of Environmental Effects

5.1 Effects on the Hydraulic Capacity and Flow Characteristics of Mill Creek

The application included a flood and stormwater management proposal and assessment of effects by Fluent Solutions Limited dated 13 October 2017. This report assess how flood flows affecting the Waterfall Park access road would be managed and an assessment of effects in terms of proposed mitigation measures associated with works in the Mill Creek flood plain and the stormwater management for the length of the road. At the request of the ORC further information was provided by Fluent Solutions Limited, dated 22 November 2017 and the design flood estimation by Fluent Solutions was peer reviewed by Hank Stocker of Geosolve Limited.

The Council's Environmental Engineering and Natural Hazards Unit (EENHU) have assessed the application.

5.1.1 Alterations to and temporary diversion of Mill Creek

The Fluent solutions report indicates the proposed changes to Mill Creek to enable the construction of the bridge will not change the maximum or minimum level or flow of



water, and the range, or rate of change, of levels or flows of water and the restored creek bed post-construction will not result in a change in the level of the bed of Mill Creek.

The proposed diversion during construction will be undertaken in a manner consistent with the guidance of Auckland Regional Council's Erosion and Sediment Control Guide GD05, 'Temporary watercourse diversions', section G4.2.3 and the Earthworks Management Plan which details the measures to protect the creek from flooding, erosion, land instability, sedimentation or property damage during and post-construction.

EENHU have assessed the proposed alterations to Mill Creek and the temporary diversion and have indicated that, subject to the imposition of standard conditions of consent they do not have any concerns regarding these aspects of the application.

5.1.2 Assessment of design flows

The Fluent report provided as Attachment F to the application provides a detailed assessment of the flood and stormwater mitigation proposed as part of the development. The report states that the flood mitigation proposed will be achieved as follows:

- (a) The construction of an access road embankment above existing ground level. To provide protection of the road during flood events the road would be constructed on a raised embankment across the flood plain typically up to 1m high. In the Lower Reach area, the flood flows have previously left the channel during moderate and extreme events, then, confining the flood flow within a smaller area due to the construction of the access road could have the effect of increasing the flood flow downstream of the Waterfall Park development area.
- (b) To avoid any increase in downstream flow, culverts under the road will be sized to convey flood flow under the road formation to the flood plain south of the access road. The proposed access road formation will limit the flow at the southern boundary of the site to no more than the predevelopment flow for both the 10-year and 100-year Average Return Interval flood events.
- (c) The proposed bridge and road embankment works will have minimal effect on the main channel of the existing stream. The bridge will span the full width of the main channel. The finished road level will be approximately 2.6m above the main channel bed level at the centre of the creek bed.
- (d) A Mill Creek flood path maintenance plan will be established to maintain the flood flow path and address adverse vegetation and channel conditions that could result in increased flood levels within the floodway through the development area.

Fluent adopted a 100 year ARI peak flow of 7.4 m³/s based on a flow record summary for the Fish Trap gauging station as a starting point.

Fluent calculated a design peak total flow of 10.4m³/s for the site by allowing for:

- a 30% increase in the estimated 100 year ARI flow at the Fish Trap was added to account for climate change
- a 11% increase in rainfall depth is added, which converts to approximately 30% increase in runoff with climate change.



- an additional 10% of the estimated flow at the Fish Trap was added as a contingency to allow for uncertainties including future local stormwater flows draining into the Mill Creek floodway

These design flows have been used to determine the appropriate height of the bridge and required capacity of stormwater outlet pipes draining to the lower flood plain below the access road.

Modelling of the post-construction flow rate (for a 100-year ARI event) is shown on Figure 7. The modelling reflects the effects of the construction of the bridge and access road across the flood plain showing the effect of the stormwater culverts providing drainage from the flood plain above the road to the lower flood plain.

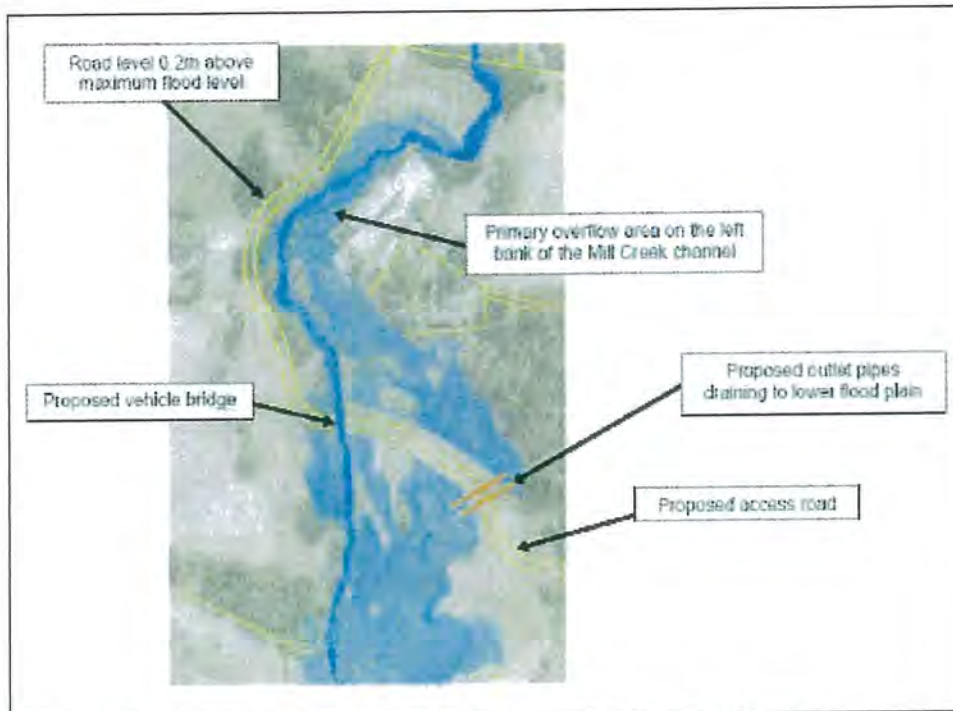


Figure 7: Post construction flood modelling for 100 year ARI event

Based on this modelling Fluent has determined that the development of the road will have no adverse effects on peak flows post-development, as shown in Table 1.

Summary Peak Flow Estimates Storm Event	Pre-Development Mill Creek Peak Flow Estimate at Southern Boundary (m ³ /s)	Post-Development Mill Creek Peak Flow Estimate at Southern Boundary (m ³ /s)
10 Year ARI	8.2	7.6
20 Year ARI	9.0	8.5
50 Year ARI	10.3	9.7
100 Year ARI	11.0	10.4

Table 1: Modelling of pre and post-development flows



Based on modelling and subsequent design Fluent have concluded that the culverts have been appropriately sized to convey flood flows under the proposed access road and the flows at the southern boundary will be no more than pre-development flow for both 10 and 100 year ARI flood events. The proposed bridge and embankment works will have minimal effect on the channel of the existing stream. The bridge will span

the full width of the channel and has a minimum freeboard of 600 mm above the 50 year ARI event and the finished road level will be approximately 2.1m above the main channel bed level at the centre of Mill Creek. In addition the applicant will institute a Mill Creek flood path maintenance plan to maintain flood flow path and address adverse vegetation and channel conditions, such as blockages, that could result in increased flood levels within the floodway through the development area.

The review of the application by EENHU identified an area of concern regarding the design flow adopted. Fluent have based their 100-year ARI peak flow estimate on local recorded water level from the Fish Trap and derived flow data. EENHU have concerns regarding the use of this data for high flow events as this recorder site is considered a low flow site. As a consequence, Fluent have had to extrapolate figures to determine the flow rate in high flow events. EENHU consider the 100 year ARI flow rate adopted to be low for a catchment of this size in this area and have undertaken a desktop analysis using two different methods to estimate design flows (Table 2).

Rational method	Kiprich	86.5 m ³ /s
	Bransby Williams	59.3 m ³ /s
Regional method	Regional Frequency Analysis	42.1 m ³ /s

Table 2: Alternative methods of calculating 100 ARI year design flow

EENHU acknowledge all modelling methods have their limitations and this has been done as a desktop exercise but notes that preliminary estimates carried out by EENHU indicate a significant difference in the flow rates identified by the above methods to those adopted by the applicant.

At the request of the ORC Fluent provided clarification of their original assessment (dated 23 November 2017) and the applicant agreed to have both reports peer reviewed by Hank Stocker of Geosolve (11 January 2018).

The peer review considered in particular the use of the Fish Trap data for high flow modelling, the use of alternative modelling methodologies to determine design flows and the appropriateness of figures adopted to account for climate change. The peer review concluded:

- To derive their design flow Fluent have analysed actual recorded at-site data but have had to extrapolate it well beyond the recorded range. This has been supported by use of a standard alternative methodology which indicated a similar result, and a suitable climate change adjustment has been applied.
- On initial consideration the resulting 100-year ARI flow estimate is surprisingly low for the catchment size. Fluent have postulated that this apparent anomaly is due to the presence of a large internal ponding area within the catchment and upstream of the subject site. The peer reviewer considered this explanation is reasonable and credible.
- The Fluent analysis is comprehensive and based on the most suitable available methodology, short of a comprehensive catchment model study. In the Mill Creek case, alternative flood estimation methods based on collated regional data are likely to yield over-estimated peak flows due to the atypical storage characteristics of this particular catchment.
- The peer reviewer considered that the Fluent results are robust and credible, and a suitable basis for consenting and design of the proposed development.

Notwithstanding the peer review, EENHU do not accept the design flow adopted as being sufficiently conservative. The consequences of the proposed works are likely to be an increased depth and duration of inundation in the area upstream of the proposed access road. However, EENHU note that the effects of the proposed works on flooding, even with a higher flow, are likely to be contained within the applicant's property and consequently no more than minor on any other party.

EENHU note that the applicant is not seeking consent for the access road or the stormwater measures but is undertaking these works on the basis that they can comply with the permitted activity rules of the RPW. Regardless of this EENHU considers that it is prudent for the applicant to consider the impact of higher flow scenarios and the potential for upstream ponding on the design strength of the access road and the capacity of outlet pipes, and the potential for the provision of additional measures to reduce any risk associated with higher volumes being retained in the upper flood plain than anticipated by the design flow.

Standard consent conditions have been recommended that require the applicant to notify the Council prior to and *on completion of* placing the structure and for the structure to not cause any flooding, erosion, land instability or property damage of any other person's property.

5.2 Effects on Aquatic Ecosystems

The natural ecosystem values of the unnamed tributary are discussed in Section 2 of this report and it is identified that in addition to brown trout and perch, Mill Creek is known to provide habitat for common bully, koaro and longfin eel, of which koaro and longfin eel within this schedule and are classified as "at risk". Mill Creek is also identified as providing significant areas for fish spawning and juvenile fish habitat. Mill Creek is monitored for water quality and as a state of the environment fish monitoring site.

RSU have assessed the application and note that while native fish species including common bully, koaro and longfin eel are all found in Mill Creek, of these species, koaro are particularly likely to be negatively affected by instream works and diversion as newly hatched larvae require access to a lake environment to successfully rear (Augsburger et al., 2017). Larval fish are vulnerable to changes in pressure, starvation (as a result of not reaching an appropriate rearing environment in an adequate amount of time), and predation (Chambers and Trippel, 1997). Instream works during spawning (October – December) and immediately post hatch period are likely to negatively affect koaro.

Although these native fish species may also be affected by increased turbidity or sedimentation, native fish tend to have higher tolerances for these factors than introduced trout which are present in Mill Creek. Thus, if mitigation techniques to maintain water quality are sufficient for trout they should also be sufficient for native fishes.



Mill Creek and Lake Hayes support populations of brown trout, with Mill Creek acting as the primary spawning tributary for Lake Hayes. Like koaro, trout are likely to migrate out of and into Lake Hayes, particularly during the typical spawning season from 1st May to the 30th of September. However, due to influences such as climate and altitude, the spawning period is likely to extend into October for Mill Creek. Trout

tend to be sight feeders and require well oxygenated gravels to spawn and thus sedimentation is also likely to negatively affect both trout spawning and adult trout.

RSU note that conditions of consent proposed by the applicant are to undertake works outside of the general trout spawning season (1 May to 30 September) to minimise adverse effects on fish species. However, as identified above, due to the locational and climatic factors relevant to Mill Creek, this period is not long enough to prevent adverse effects on trout spawning and does not include koaro spawning season (October - December). These potential adverse effects can be limited by constraining the instream works to the January – April period and it is recommended that this be adopted as a condition of consent. This is generally consistent with the condition proposed by DoC and agreed by the applicant that:

“There will be no work in the active stream from 1 May – 7 January to avoid spawning seasons for both koaro and brown trout.”

The proposed diversion of Mill Creek may adversely affect fish passage for the six week duration of proposed works. To minimise adverse effects RSU consider the following conditions are necessary:

- (a) the diversion must be via an open channel which maintains fish passage for all species.
- (b) the diversion channel shall be designed to ensure the flow speed through the area of diversion is consistent with a run (e.g. relatively laminar flow, not a pool or riffle) of Mill Creek within 20m upstream of the proposed works

The applicant has stated that the proposed diversion will be undertaken in a manner consistent with the guidance of Auckland Regional Council's Erosion and Sediment Control Guide GD05, 'Temporary watercourse diversions', section G4.2.3 and proposed erosion and sediment control measures will be undertaken in accordance with an earthworks management plan. These measures include:

- (a) Runoff diversion channel / bund – to protect work areas from upslope overland flow and to divert sediment laden water to an appropriate detention area;
- (b) Silt fences and super silt fences – silt fences and super silt fences can be used on slopes to intercept sheet flows whereby the flow is detained to allow sediment to drop out of the runoff;
- (c) Rock check dams – a rock dam is a small temporary dam constructed across a channel (i.e. a concentrated flow), usually in series, to reduce flow velocity and may also help to retain sediment;
- (d) Sediment detention ponds;
- (e) Re-grassing;
- (f) Water quality testing of Mill Creek;
- (g) Inspection and recording;
- (h) Overall site management – daily checking and management

To minimise contamination of the watercourse during the works, standard consent conditions have been recommended that require all machinery used to be well maintained and clean, and for all works to be undertaken outside of the actively flowing channel. It is also recommended that no machinery is refuelled or cleaned within the watercourse and that all machinery used in other watercourses is water-blasted before being used on the site to prevent the spread of pest plant species such as didymo.

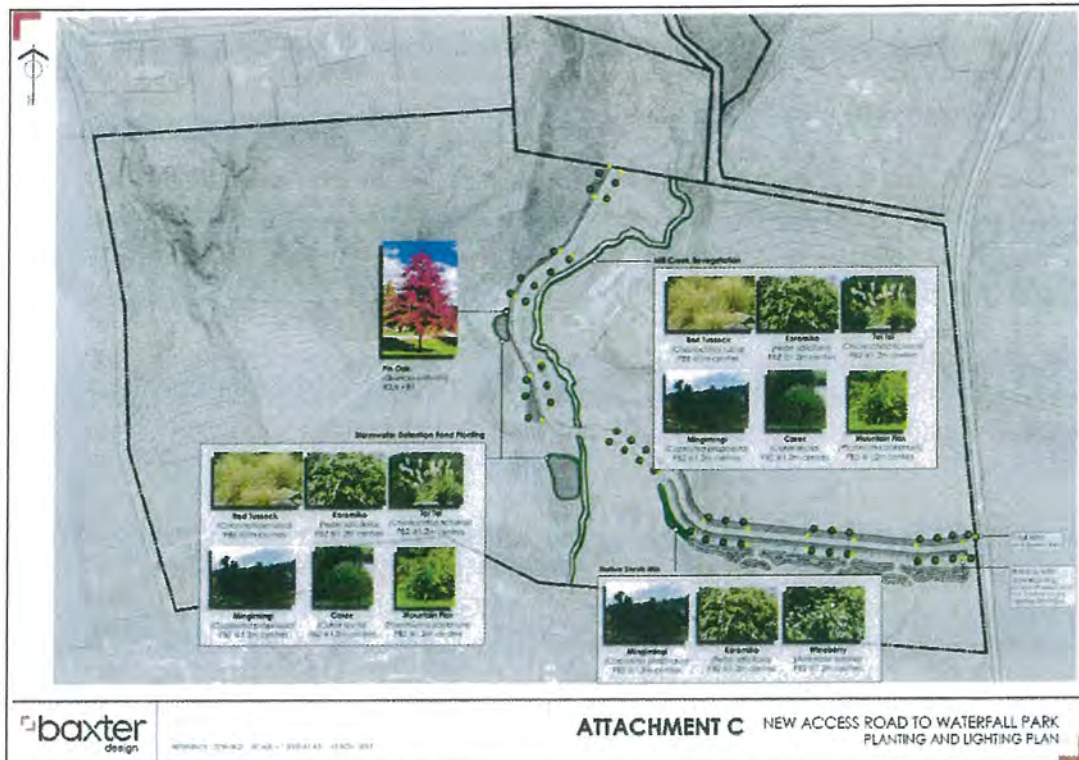


Figure 8: Proposed riparian planting plan

The proposed works associated with the road construction and stormwater management include fencing and replanting. The proposal includes riparian planting of Mill Creek with a mix of native species including red tussock, koromiko, toi toi, mingimingi, carex secta and mountain flax through the length of the site (Figure 8). The application identifies the proposed mitigation as creating a number of potential positive effects for aquatic ecosystems including:

- a) Providing cover and shade to the channel, which will help reduce water temperature, increase the diversity of fish habitat and reduce the potential for nuisance algae growth;
- b) Preventing stock access to the creek, which will eliminate the direct input of stock faecal matter and prevent any stock associated damage to the banks and channel that can mobilise sediment;
- c) Minimising nutrient and sediment run-off from the surrounding land, which will reduce the input of these potential contaminants to the creek.

5.3 Effects on River Values

The proposed bridge is a permitted activity under the RPW. However the works associated with the bridge development, the narrowing of the river in the area of the bridge and the temporary diversion could have potential adverse effects on:

- Natural character;
- Visual amenity;
- Heritage;
- Public Access; and/or
- Cultural Values (Schedule 1D).



The proposed bridge will alter the natural character of the watercourse, but as noted above, bridges of this nature are permitted under the RPW. The design of the bridge does involve narrowing the creek over a length of approximately 35m and building up

the banks in the area of the bridge. Although the proposed structure changes in the area of the bridge will alter the natural character of the watercourse but this effect is not considered to be more than minor.

The natural character of Mill Creek in the area of works has influenced by the rural use of the site and the dominance of exotic riparian vegetation. Mill Creek has been also modified by structures in this area, including bridges above and below the subject site, and has historically been used for milling.

On completion of the proposed works the natural flow characteristics will be similar to those pre-development and the ecology and water quality may benefit from proposed riparian planting and the diversion of stormwater and sediment from the surrounding land.

The proposed bridge and associated works will be located on private land owned by the applicant and public access and visual amenity effects will be de minimis. A standard condition has been recommended that requires the works area to be tidied on completion of the bridge and associated works. Time limits for the works are not considered necessary as the bridge is not located close to or visible from any adjacent property boundary and normal access to the area of proposed works is not possible. Consequently maintaining natural character, amenity and public access are maintained outside normal working hours.

The heritage values of Mill Creek are located down and upstream of the proposed works and will not be adversely affected by the proposed bridge works associated with it.

Aukaha and Ngai Tahu were notified of the activity through the statutory acknowledgement process. Written approval for the proposal was provided by Aukaha however Ngai Tahu did not comment within the statutory timeframes. It is therefore assumed the culvert will have no more than minor effects on cultural values. A standard condition has been imposed that requires an accidental discovery protocol to be in place during the culvert placement works.

5.4 Effects on Other Water Users

There are no Schedule 1B community water supply values in the vicinity of the subject site that may be affected by the proposed activity.

There is one consented water take from Mill Creek between the location of the works and Lake Hayes, located approximately 1 km downstream of the proposed works. This consent (2005.221) is to take water from and discharge water back into Mill Creek for the purpose of creating a pond and wetland. This take is non-consumptive as the majority of the water is returned to Lake Hayes after circulation through the wetland. It is considered that this take will be unaffected by the proposed works due to its distance from the subject site, the temporary nature of works and the proposed mitigation measures that will manage water quality.

Mill Creek has recreational fishing values and for swimming close to Lake Hayes. Mill Creek and Lake Hayes support populations of brown trout, with Mill Creek acting as the primary spawning tributary for Lake Hayes. Mill Creek is closed for fishing from the Speargrass Flat road bridge to the Waterfall Park and the section above the



Waterfall Park is open to junior anglers up to the age of seventeen. The Mill Creek site is privately owned and access is limited. The potential effects include restrictions on access and water quality which are discussed in sections 5.2 and 5.3 above. It is considered the effects on recreational use will be no more than minor due to the proposed mitigation works and temporary nature of the activity. It is also noted that F&G have provided written approval.

5.5 Consideration of Alternative Methods

As the applicant does not consider that any significant adverse effects on the environment will arise as a result of the proposed activity no alternatives were considered.

6. Statutory Considerations

Section 104 of the Act sets out the matters to be considered when assessing an application for a resource consent. These matters are subject to Part 2, the purpose and principles, which are set out in Sections 5 to 8 of the Act. Those matters which should be considered for this application are as follows.

6.1 Part 2 of the Act

The applications for a land use consent and water permit to undertake works in and divert Mill Creek are consistent with the purpose and principles of the Act, as outlined in Section 5. The proposed activity will have a no more than minor effect on the ability of the waterway to meet the reasonably foreseeable needs of future generations, or on the life-supporting capacity of the waterway or any ecosystem associated with it. Proposed consent conditions will ensure that any adverse effects of the activity will be avoided, remedied or mitigated.

There are no matters of national importance that may be affected by the proposed activity under Section 6 of the Act. The applications are also consistent with the requirements of Section 7 of the Act, and particular regard has been given to the maintenance and enhancement of the quality of the environment. With regard to Section 8 of the Act, the proposed activity is not inconsistent with the principles of the Treaty of Waitangi.

Overall, the application is considered to be consistent with Part 2 of the Act, given the minor nature of the activity and the proposed conditions of consent.

6.2 Section 104(1)

The remaining matters of Section 104(1) to be considered when assessing an application for a resource consent are as follows:

- (a) *any actual and potential effects on the environment of allowing the activity; and*
- (b) *any relevant provisions of*
 - (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; and*



- (c) *any other matter the consent authority considers relevant and reasonably necessary to determine the application.*

These matters are discussed in the following sections.

6.2.1 Environmental Effects

The actual and potential environmental effects of the proposed activity were considered in Section 5 of this report. Given the nature of the activities and the recommended consent conditions, any adverse environmental effects should be avoided, remedied or mitigated.

6.2.2 National Policy Statement Freshwater Management

The NPS for Freshwater Management 2011 was superseded by the NPS for Freshwater Management 2014 on 1 August 2014. The NPS supports improved freshwater management in New Zealand. It does this by directing regional councils to establish objectives and set limits for fresh water in their regional plans. It requires regional councils to recognise the national significance of fresh water for all New Zealanders and Te Mana o te Wai (the mana of the water). It directs regional councils to:

- safeguard fresh water's life supporting capacity, ecosystem processes, and indigenous species including their associated ecosystems
- manage freshwater bodies so people's health is safeguarded
- maintain or improve the overall quality of fresh water within a region
- protect the significant values of wetlands and outstanding freshwater bodies
- require more efficient use of fresh water by end users
- avoid the over allocation of water takes and inputs of contaminants, and to phase out existing over allocation
- set freshwater objectives according to a specified process (the national objectives framework) to meet community and tāngata whenua values which include the compulsory values of ecosystem health and human health for recreation
- use a specified set of water quality measures (attributes) to set the freshwater objectives (an objective can only be set below national bottom lines in specified circumstances)
- set limits which allow freshwater objectives to be met
- put in place measures to account for water takes and sources of contaminants, and monitor achievement towards meeting objectives
- take a more integrated approach to managing fresh water and coastal water
- fully implement the National Policy Statement by 2025

The Council considers that the current and proposed policies in the RPS and RPW meet the requirements of the NPS. Consideration of these documents in light of the activities proposed is given below.

6.2.3 Regional Policy Statement and proposed Regional Policy Statement

The Regional Policy Statement for Otago (RPS) provides an overview of the resource management issues for the Otago Region and the ways of achieving integrated management of its natural and physical resources. The most relevant objectives and policies are contained in Chapter 6 (Water), Chapter 9 (Built Environment) and Chapter 11 (Natural Hazards). The objectives and policies particularly relevant to this proposal seek to:



- safeguard the life-supporting capacity (6.4.3),
- maintain and enhance the ecological, intrinsic, amenity and cultural values (6.4.4),
- avoid, remedy or mitigate degradation of the resource resulting from the use development or protection of the beds and banks of water bodies (6.4.5),
- mitigate the threat of flooding and riverbank erosion from the use, development or protection of water bodies (6.4.6),
- maintain and enhance public access (6.4.7 and 6.5.10),
- allow for the community's use, development or protection of the beds and banks of water bodies providing adverse effects are avoided, remedied or mitigated while considering the maintenance and enhancement of the natural functioning of the river system and the need to provide mitigation for flooding and erosion (6.5.9),
- protect areas of natural character (6.4.8),
- avoid, remedy or mitigate the adverse effects of Otago's built environment on natural and physical resources (9.4.3),
- minimise the adverse effects of urban development and settlement, including structures, through avoiding, minimising or mitigating discharges of contaminants to water, and significant irreversible effects on natural values and character, values of significance to Kai Tahu, intrinsic values of ecosystems and habitats of indigenous fauna, heritage values, amenity values, and salmon or trout habitat (9.5.4),
- avoid, remedy or mitigate the adverse effects of hazard mitigation measures on natural and physical resources (11.4.4),
- take action necessary to avoid or mitigate adverse effects of natural hazards on human life, infrastructure and property, the natural environment and heritage sites (11.5.2).

Subject to the recommended consent conditions which should avoid, remedy or mitigate any potential adverse effects, the proposal is considered to be consistent with the objectives and policies of the RPS.

The proposed Regional Policy Statement (pRPS) was notified on 23 May 2015 and a decision was released 1 October 2016. The pRPS is currently under appeal. The pRPS needs to be given consideration and weighting principles apply. The relevant provisions of the pRPS include:

- Achieve integrated resource management (Policy 1.1.1)
- Provide for economic wellbeing (Policy 1.1.2)
- Provide for social and cultural wellbeing and health and safety (Policy 1.1.3)
- Taking the principles of Te Tiriti o Waitangi into account (Policy 2.1.2)
- Managing the natural environment to support Kāi Tahu wellbeing (Policy 2.2.1)
- recognising and protecting important sites and values of cultural significance to Kāi Tahu (Policy 2.2.2)
- Policy 3.1.1 managing for freshwater values including
 - Maintain or enhance ecosystem health in all Otago aquifers, and rivers, lakes, wetlands, and their margins
 - Maintain or enhance the range and extent of habitats provided by fresh water, including the habitat of trout and salmon
 - Recognise and provide for the migratory patterns of freshwater species, unless detrimental to indigenous biological diversity
 - Recognise and provide for important recreation values
 - Maintain or enhance the amenity and landscape values of rivers, lakes, and wetlands
 - Control the adverse effects of pest species, prevent their introduction and reduce their spread



- Avoid, remedy or mitigate the adverse effects of natural hazards, including flooding and erosion
- Avoid, remedy, or mitigate adverse effects on existing infrastructure that is reliant on fresh water
- Policy 3.1.2 Manage the beds of rivers, lakes, wetlands, their margins, and riparian vegetation to achieve all of the following
 - Maintain or enhance their natural functioning
 - Maintain good water quality, or enhance it where it has been degraded
 - Maintain or enhance ecosystem health and indigenous biological diversity
 - Maintain or enhance natural character
 - Maintain or enhance amenity values
 - Control the adverse effects of pest species, prevent their introduction and reduce their spread
 - Avoid, remedy or mitigate the adverse effects of natural hazards, including flooding and erosion
 - Maintain or enhance bank stability
- Identify and protect the significant values of wetlands (Policy 3.2.15 & 3.2.16)
- Identify and manage natural hazards that may adversely affect Otago's communities (Policy 4.1.1, 4.1.4 to 4.1.6)
- Assess the consequences of natural hazard events (Policy 4.1.3)
- Reduce existing natural hazard risk to people and communities (Policy 4.1.7)
- Where natural hazard risk to people and communities is uncertain or unknown, but potentially significant or irreversible, apply a precautionary approach to identifying, assessing and managing that risk (Policy 4.1.8)
- Avoid, remedy or mitigate adverse effects on natural or modified features and systems, which contribute to mitigating the effects of both natural hazards and climate change (Policy 4.1.9)
- Give preference to risk management approaches that reduce the need for hard protection structures or similar engineering interventions, and provide for hard protection structures only when all of the following apply:
 - Those measures are essential to reduce risk to a level the community is able to tolerate;
 - There are no reasonable alternatives;
 - It would not result in an increase in risk to people and communities, including displacement of risk off-site;
 - The adverse effects can be adequately managed;
 - The mitigation is viable in the reasonably foreseeable long term (Policy 4.1.10)
- Ensure Otago's people and communities are able to adapt to, or mitigate the effects of sea level rise and climate change, over no less than 100 years (Policy 4.2.1 & 4.2.2)
- managing infrastructure activities
 - Maintain or enhance the health and safety of the community
 - Reduce adverse effects of those activities, including cumulative adverse effects on natural and physical resources
 - Support economic, social and community activities
 - Improve efficiency of use of natural resources
 - Protect infrastructure corridors for infrastructure needs, now and for the future
 - Increase the ability of communities to respond and adapt to emergencies, and disruptive or natural hazard events
 - Protect the functioning of lifeline utilities and essential or emergency services (Policy 4.3.1)
- recognising heritage themes and managing historic heritage values (Policy 5.2.1 and 5.2.3)
- Apply an adaptive management approach, to avoid, remedy or mitigate actual and potential adverse effects that might arise and that can be remedied before they become irreversible (Policy 5.4.2)



- Apply a precautionary approach to activities where adverse effects may be uncertain, not able to be determined, or poorly understood but are potentially significant (Policy 4.4.3)

The proposed bridge is permitted under the RPW however the works in the stream and the diversion of Mill Creek during construction require consent. The effects of these activities have been discussed in Section 5 of this report and are generally temporary in nature and are managed by way of conditions of consent. Consequently potential adverse effects on natural character and ecological values will be mitigated as part of the development and are considered to be no more than minor. The proposal, subject to the recommended consent conditions, should avoid, remedy or mitigate any potential adverse effects, the proposal is considered to be consistent with the objectives and policies of the pRPS.

The effects of the matters sought by way of consent on natural hazards has been assessed and peer reviewed by the applicant and reviewed by EENHU and are considered to be adequately mitigated. Council has identified its concerns regarding matters of design beyond the scope of these applications and encourages the applicant to adopt a precautionary approach in its design parameters for the proposed road.

6.2.4 Regional Plan: Water for Otago

Relevant objectives and policies of the RPW are found in Chapter 5 (Natural and Human Use Values of Lakes and Rivers), Chapter 7 (Water Quality) and Chapter 8 (The Beds and Margins of Lakes and Rivers). The most relevant policies of the RPW, including Plan Change 6A (Water Quality) are as follows:

- to undertake the works in a manner that avoids, in preference to remedying or mitigating, adverse effects on natural values and character, ecology and habitat, water supply values, historic places or archaeological sites, values of significance to Kai Tahu, amenity values, lawful water users and causing or exacerbate flooding, erosion, land instability, sedimentation or property damage (5.4.2).
- to avoid adverse effects on existing lawful uses and priorities (5.4.3).
- to recognise Kai Tahu's interests in Otago's lakes and rivers by promoting opportunities for their involvement in resource consent processing (5.4.4).
- to recognise the Water Conservation (Kawarau) Order 1997 by preserving, as far as possible, the waters set out in Schedule 1 of the Water Conservation Order in their natural state, protecting the outstanding characteristics of waters set out in Schedule 2 of the Water Conservation Order, and sustaining the outstanding amenity and intrinsic values set out in both Schedules of this order (5.4.5).
- legal public access to and along the margins of lakes and rivers will only be restricted where necessary...to protect the health or safety of people and communities, to ensure a level of security consistent with the purposes of a resource consent; or in other exceptional circumstances sufficient to justify the restriction notwithstanding the national importance of maintaining that access (5.4.6).
- requires regard to topography, natural flow characteristics or water levels, water colour and clarity, ecology, the extent of use or development within the catchment, when considering adverse effects on natural character of lakes, rivers and their margins (5.4.8).
- requires regard to aesthetic values and recreational opportunities provided by a lake or river, or its margins when considering adverse effects on amenity values (5.4.9).



- requires regard to any heritage values of any site, building, place or area for any activity involving surface water or the bed or margin of any lake or river (5.4.10).
- avoid objectionable discharges of water or contaminants that degrade the natural and human use values of Otago lakes, rivers, wetlands and groundwater (7.B.2).
- allow discharges of water or contaminants to Otago lakes, rivers, wetlands and groundwater that minor effects or are short term (7.B.3).
- to give priority to avoiding changes in the nature of flow and sediment processes in those water bodies, where those changes will cause adverse effects on the stability and function of existing structures; associated erosion, sedimentation or land instability; or any reduction in the flood carrying capacity of any lake or river (8.4.1).
- provides for fish migration through structures in watercourses (8.5.1).
- to have regard to any adverse effect on the spawning requirements of indigenous fauna, and trout or salmon; bed and bank stability; water quality; amenity values caused by any reduction in water clarity; and downstream users (8.6.1).
- to promote best management practices for activities that occur within or adjacent to the bed of lakes and rivers in order to avoid, remedy or mitigate any adverse effect (8.6.2).
- requires practical alternatives to the reclamation of the bed of any lake or river, and the deposition of any substance in, on or under, the bed or margin of any lake or river to be considered (8.8.1).
- requires only cleanfill be used to create any reclamation of the bed of a lake or river (8.8.2).
- identifies the regionally significant wetland values of Otago's wetlands (10.4.1).
- priority will be given to the avoidance of adverse effects of activities on Regionally Significant Wetlands and values. Remedying or mitigating adverse effects will be considered only where those effects can not be avoided. (10.4.2).
- financial contributions may be required where the avoidance, remedy or mitigation of adverse effects is not possible (10.4.2A).

The proposed bridge is permitted under the RPW and is therefore considered generally consistent with the objectives and policies of the plan. The effects of the proposed alteration and diversion of Mill Creek have been discussed in Section 5 of this report and will be limited to the construction of the structure and associated road. The potential adverse effects of these works on ecological values, natural character or amenity will be avoided or mitigated by proposed conditions of consent. In addition the proposed riparian planting and stormwater design may further improve water quality in the area of the proposed works.

Consideration has been given to the potential effects of the works on natural hazards and these effects have been reviewed by Council's EENHU team. Council's engineers have concerns regarding the values adopted by the applicant's engineers but acknowledge the application has been prepared by appropriately qualified engineers and has been independently peer reviewed. These assessments have indicated the proposed design and mitigation measures are appropriate to manage natural hazard risks associated with Mill Creek.

Overall, subject to the recommended conditions of consent, it is considered that the application is consistent with the relevant objectives and policies of the RPW.



6.2.5 Other Matters

The Kai Tahu ki Otago Natural Resource Management Plan 2005 (NRMP) outlines general policies for activities within Otago. The following requirements apply to river and instream works:

- To require that work be undertaken when water levels are naturally low or dry.
- To require that works are not undertaken during spawning season of certain fish species and fish passage is provided for at all times.
- To require that any visual impacts at the site of the activity are minimal.
- To require that all practical measures are undertaken to minimise sediment or other contaminant discharge and that wet concrete does not enter active flow channels.
- To require that machinery only enters the dry bed of the waterway to the extent necessary to undertake the work, and that it is kept clean and well-maintained, with refuelling occurring away from the waterway. Machinery operating in flowing water is to be discouraged.

The affected Papatipu Runaka provided its written approval to the proposal and the applicant has agreed to conditions of consent sought to address the matters raised in the policies of the NRMP above. The other matters have been provided for through the conditions of consent.

There are no other matters considered relevant or reasonably necessary to determine the applications.

7. Recommendations

That Otago Regional Council grants to Waterfall Park Developments Limited, Land Use consent RM17.302.01 and Water Permit RM17.302.02, subject to the terms and conditions set out in the attached consents.

7.1 Reasons for the Recommendation

- (a) That it is expected that the adverse effects on the environment will be minor, and can be adequately addressed through the recommended consent conditions.
- (b) That the application(s) meets the non-notification requirements of Section 95A of the Act.
- (c) That the proposed activities are consistent with the requirements of the Act and the relevant statutory requirements.

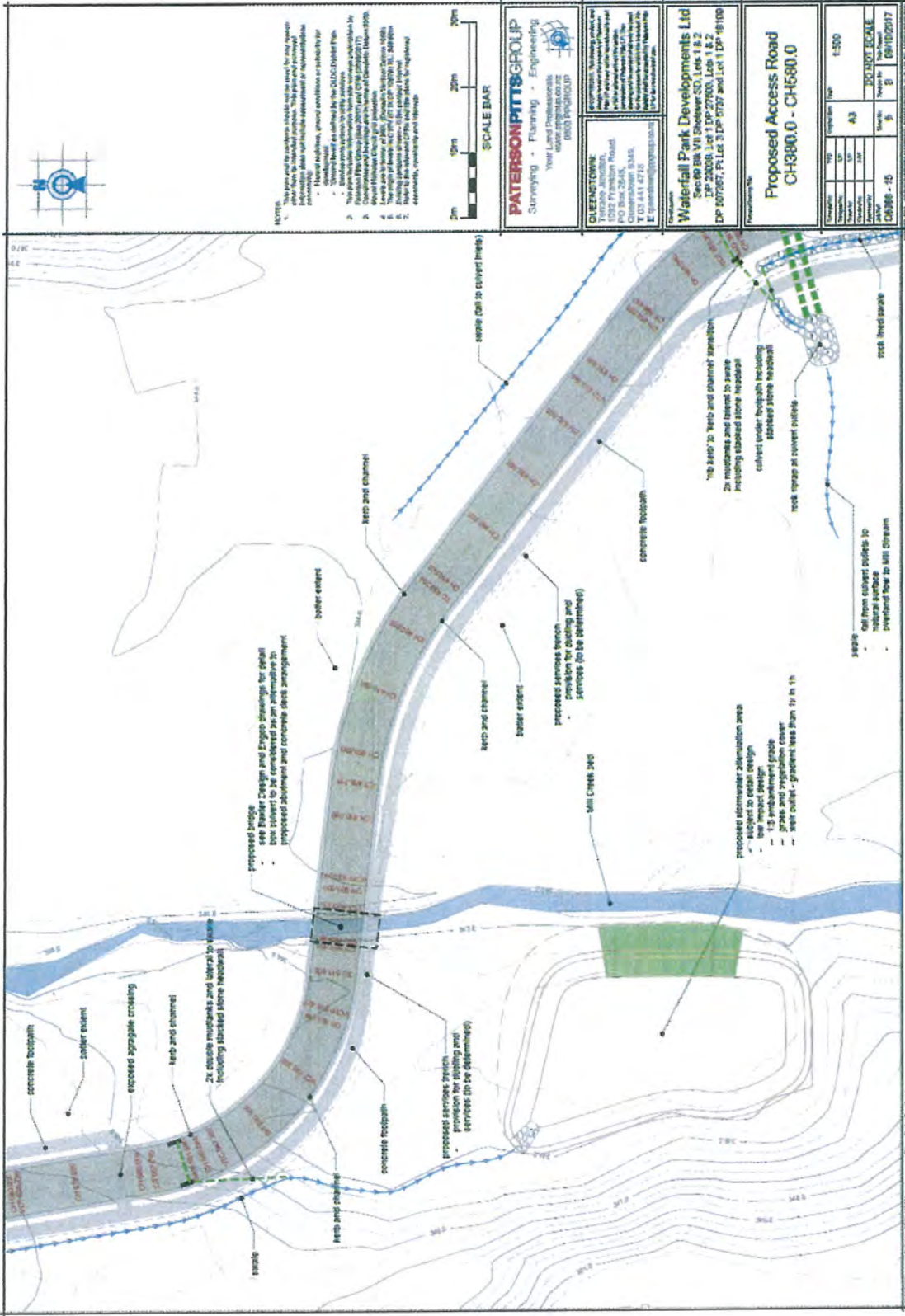
7.2 Term

The applicant has requested a five year term of consent. This is considered a reasonable period of time to complete the works and allows time for any potential delay and is recommended. This is also consistent with the term of consent for associated works required from Queenstown Lakes District Council.



Ralph Henderson
Senior Consents Officer

Appendix 1: Plans



Plan 1: Detailed plan of earthworks in area of bridge



NOTES

1. This plan and the specifications attached thereto are intended for use by the recipient of this plan and are not to be used for any other purpose. The recipient is advised to check the accuracy of the information provided and to make any necessary amendments or supplements.
2. The recipient is advised to check the accuracy of the information provided and to make any necessary amendments or supplements.
3. The recipient is advised to check the accuracy of the information provided and to make any necessary amendments or supplements.
4. The recipient is advised to check the accuracy of the information provided and to make any necessary amendments or supplements.
5. The recipient is advised to check the accuracy of the information provided and to make any necessary amendments or supplements.
6. The recipient is advised to check the accuracy of the information provided and to make any necessary amendments or supplements.

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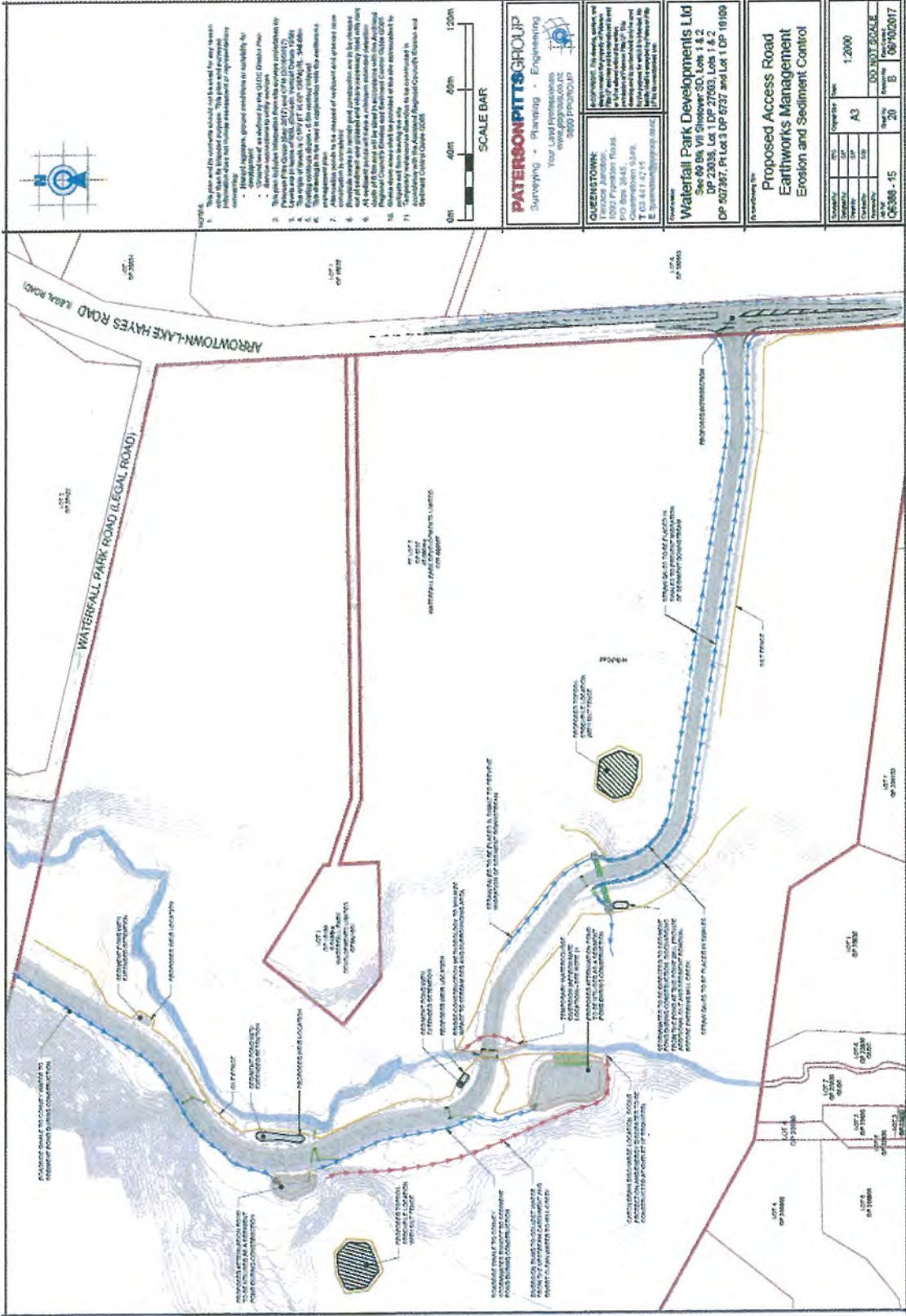
GLEENSTOWN
 TREVINO JENNIFER
 1000 PROGRESS ROAD
 GLEENSTOWN BMS
 T 03 8411 4715
 E gleenst@paterSONPITTS.com.au

Waterfall Park Developments Ltd
 Sec 89 Bk VII Shallow SD, Lots 1 & 2
 DP 20036, Lot 1 DP 27800, Lots 1 & 2
 DP 207367, P.Lot 3 DP 5737 and Lot 1 DP 49109

Proposed Access Road
CH380.0 - CH580.0

NO.	DATE	DESCRIPTION	BY	CHKD BY
1	10/10/2017	ISSUED FOR TENDERS	AB	AB

SCALE: 1:500
 SHEET NO: CH380.0 - CH580.0
 DRAWING NO: 09/10/2017



- NOTES:**
- This plan and its components should not be used for any specific purpose other than that for which they were prepared. Information should be sought to determine the applicability of any component to other projects.
 - Approved designs, approved conditions or approvals for any component should be obtained from the relevant authority.
 - This plan includes information from the various authorities. It is the responsibility of the client to ensure that all relevant authorities are consulted and that all necessary approvals are obtained.
 - The client is responsible for ensuring that all relevant authorities are consulted and that all necessary approvals are obtained.
 - This plan should be used in conjunction with the conditions of approval.
 - Approval should be sought for any proposed earthworks or vegetation removal.
 - All earthworks should be designed and constructed in accordance with the relevant standards and specifications.
 - Vegetation should be planted and maintained in accordance with the relevant standards and specifications.
 - Any other conditions of approval should be read in conjunction with this plan.
 - Copyright reserved. All rights reserved. No part of this document may be reproduced without the prior written consent of the author.



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 0800 990000

QUEENSTOWN:
 10027 Papanui Road
 PO Box 2045
 Queenstown, New Zealand
 T 03 441 7115
 E: pps@ppsgroup.co.nz

Waterfall Park Developments Ltd
 10027 Papanui Road, Queenstown, New Zealand
 DP 507397, Pt Lot 3 DP 6737 and Lot 1 DP 18199

**Proposed Access Road
 Earthworks Management
 Erosion and Sediment Control**

Client	PPS Group	Scale	1:2000
Contract No.	AS	Drawn	DO NOT SCALE
Project No.	20	Issue	B
Issue No.	15	Date	06/10/2017

Plan 2: Proposed Access Road and Earthworks Management



SCHEDULE TWO

1. Copy CFR666857
2. Copy pages 1-6 DP454103
3. Copy Easement Instrument 9271663.1



COMPUTER FREEHOLD REGISTER UNDER LAND TRANSFER ACT 1952



R. W. Muir
Registrar-General
of Land

Search Copy

Identifier 666857
Land Registration District Otago
Date Issued 26 August 2014

Prior References

78212

Estate Fee Simple
Area 45.0964 hectares more or less
Legal Description Part Lot 3 Deposited Plan 5737

Proprietors

Waterfall Park Developments Limited

Interests

Subject to a water race over part created by Transfer 35286 - 14.10.1902 at 3:00 pm

Subject to pipe line and other rights in gross over part created by Transfer 49743 - 14.1.1910 at 12:00 pm

5182 Order in Council imposing Building Line Restriction - 3.8.1942 at 10:00 am

Appurtenant hereto is a right of way specified in Easement Certificate 585936.1 - 15.11.1982 at 10:33 am

The easement specified in Easement Certificate 585936.1 is subject to Section 309 (1) (a) Local Government Act 1974

Subject to a right to convey water, electricity and telecom marked a-b, b-c & b-d and a right to draw water and to install bore and pumps marked E on DP 26724 created by Transfer 5079285.7 - 5.9.2001 at 9:03 am

Subject to a right to convey water over part marked B on DP 304422 created by Transfer 5203986.4 - 30.4.2002 at 9:02 am

The easements created by Transfer 5203986.4 are subject to Section 243 (a) Resource Management Act 1991

Subject to a right (in gross) to convey and transform electricity and over part marked A on DP 433481 in favour of Aurora Energy Limited created by Easement Instrument 8692071.2 - 9.2.2011 at 2:34 pm

Subject to a right to convey water over part marked B on DP 341364 created by Easement Instrument 8663856.1 - 11.5.2011 at 1:37 pm

Subject to a right of way (Pedestrian and Cycle Way) (in gross) over part marked U, V and W on DP 454103 in favour of Queenstown Lakes District Council created by Easement Instrument 9271663.1 - 25.2.2013 at 10:11 am

Land Covenant in Easement Instrument 10742425.1 - 7.4.2017 at 3:55 pm (Limited as to duration)

10742425.3 Mortgage to Bank of New Zealand - 7.4.2017 at 3:55 pm

Identifier

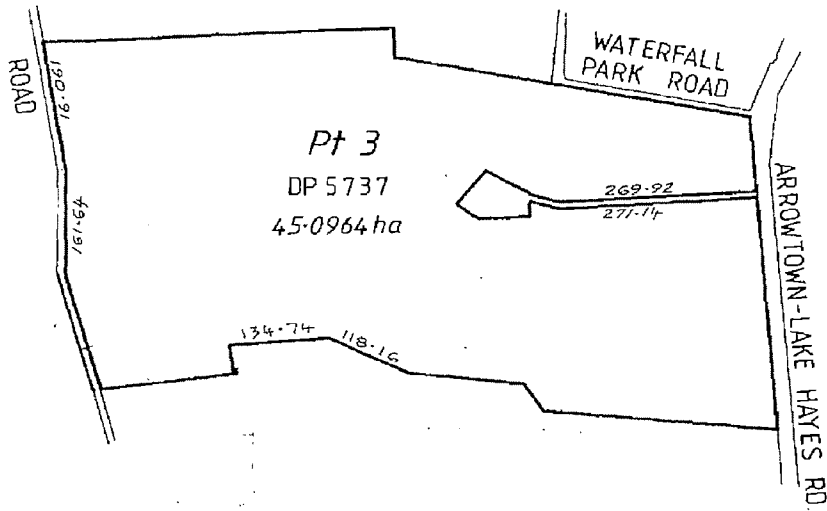
666857

Title Diagram 666857

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DocID: 219940280





Title Plan - DP 454103

Survey Number DP 454103
Surveyor Reference 10427 WTT Arrow River Easements
Surveyor Hayden Arthur Knight
Survey Firm Clark Fortune McDonald & Associates
Surveyor Declaration I Hayden Arthur Knight, being a licensed cadastral surveyor, certify that:
 (a) this dataset provided by me and its related survey are accurate, correct and in accordance with the Cadastral Survey Act 2002 and the Rules for Cadastral Survey 2010, and
 (b) the survey was undertaken by me or under my personal direction.
 Declared on 31 Jan 2013 01:15 PM

Survey Details

Dataset Description Easement over Pt Lot 3 DP 5737, Lot 1 DP 307112, Lot 1 DP 21572, Section 120 Blk VIII Shotover SD, Lot 6 DP 23249, Pt Section 4 Blk I Kawarau SD, Pt Section 67 and Section 68 Blk I Kawarau SD, Lot 1 DP 22731, Lots 1 and 2 DP 24238 and Run 37
Status Deposited
Land District Otago **Survey Class** Class B
Submitted Date 31/01/2013 **Survey Approval Date** 31/01/2013
Deposit Date 25/02/2013

Territorial Authorities

Queenstown-Lakes District

Comprised In

- CT 78212
- CT 28538
- CT OT15B/149
- CT OT8C/626
- CT OT14D/287
- CT OT14D/288
- CT OT14D/289
- CT OT16B/280
- CT OT16B/281
- CT OT386/62

Created Parcels


Parcels	Parcel Intent	Area	CT Reference
Area U Deposited Plan 454103	Easement		
Area V Deposited Plan 454103	Easement		
Area W Deposited Plan 454103	Easement		
Area X Deposited Plan 454103	Easement		
Area Y Deposited Plan 454103	Easement		



Title Plan - DP 454103

Created Parcels

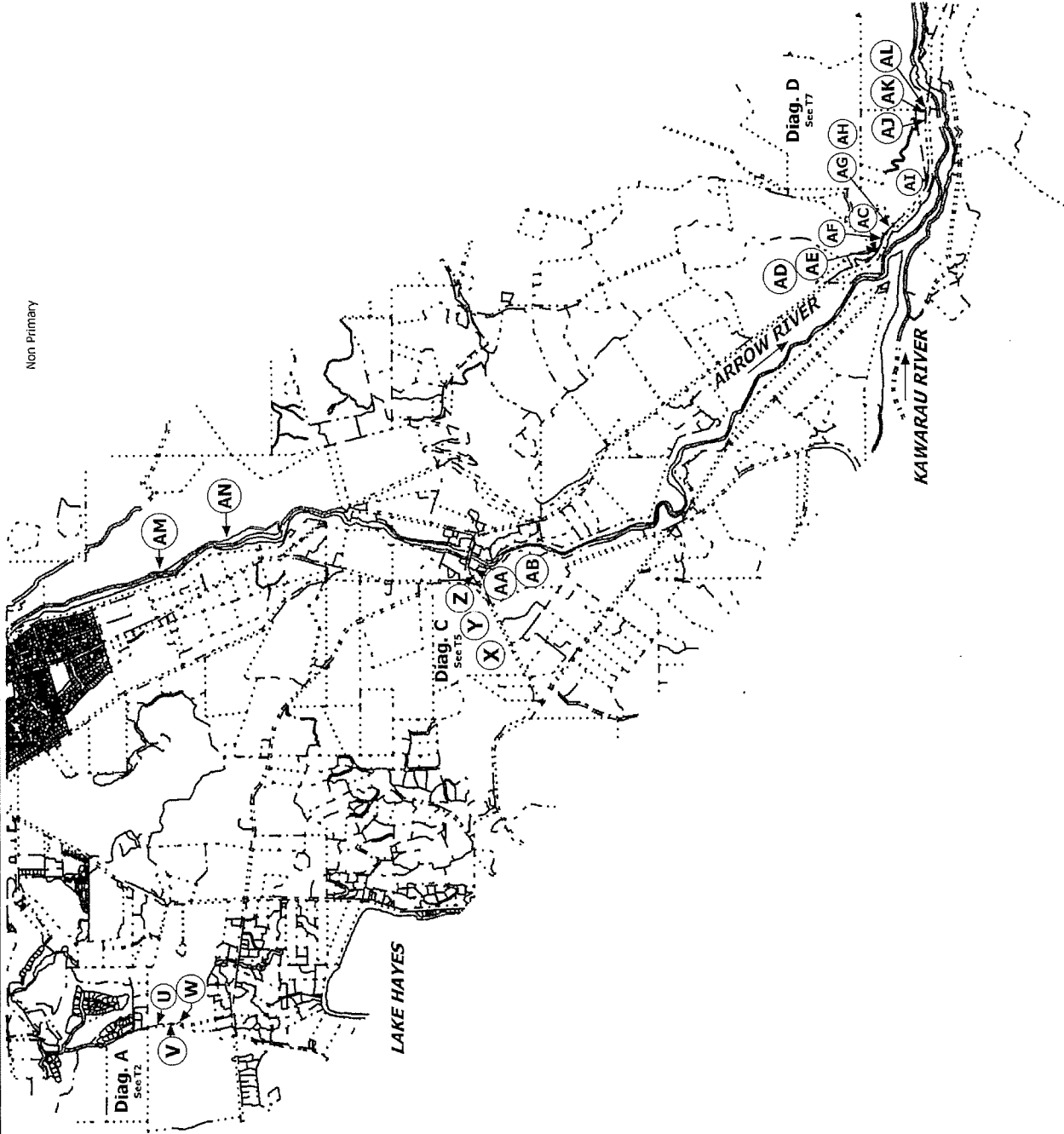
Parcels	Parcel Intent	Area	CT Reference
Area Z Deposited Plan 454103	Easement		
Area AA Deposited Plan 454103	Easement		
Area AB Deposited Plan 454103	Easement		
Area AD Deposited Plan 454103	Easement		
Area AE Deposited Plan 454103	Easement		
Area AF Deposited Plan 454103	Easement		
Area AG Deposited Plan 454103	Easement		
Area AH Deposited Plan 454103	Easement		
Area AI Deposited Plan 454103	Easement		
Area AJ Deposited Plan 454103	Easement		
Area AK Deposited Plan 454103	Easement		
Area AL Deposited Plan 454103	Easement		
Area AM Deposited Plan 454103	Easement		
Area AN Deposited Plan 454103	Easement		
Area AC Deposited Plan 454103	Easement		
Total Area		<hr/> 0.0000 Ha	

PROPOSED EASEMENTS IN GROSS			
PURPOSE	SERVIENT TENEMENT	SHOWN	GRANTEE
 Right of Way (Pedestrian and Cycle way)	Part Lot 3 DP 5737	U, V, W	Queenstown Lakes District Council
	Lot 1 DP 307122	X	
	Lot 1 DP 21572	Y, Z	
	Section 120 Block VIII Shotover SD	AA, AB	
	Lot 6 DP 23249	AC	
	Section 68 Block I Kawarau SD	AD	
	Part Section 4 Block I Kawarau SD	AE, AH	
	Part Section 67 Block I Kawarau SD	AF	
	Lot 1 DP 22731	AG	
	Lot 1 DP 24238	AI, AJ	
	Lot 2 DP 24238	AK, AL	

<i>PROPOSED EASEMENTS IN GROSS (CONTINUED)</i>			
<i>PURPOSE</i>	<i>SERVIENT TENEMENT</i>	<i>SHOWN</i>	<i>GRANTEE</i>
Right of Way (Pedestrian and Cycle way)	Run 37	AM, AN	Queenstown Lakes District Council



Non Primary



T 1/10

Land District: Otago

Digitally Generated Plan

Generated on: 09/03/2013 11:55am Page 5 of 14

Easement over Pt Lot 3 DP 5737, Lot 1 DP 307112, Lot 1 DP 21572, Section 120
 Blk VIII Shotover SD, Lot 6 DP 23249, Pt Section 4 Blk I Kawarau SD, Pt Section
 67 and Section 68 Blk I Kawarau SD, Lot 1 DP 22731, Lots 1 and 2 DP 24238 and

Surveyor: Hayden Arthur Knight
 Firm: Clark Fortune McDonald & Associate

Title Plan
 DP 454103

Deposited on: 25/02/2013



View Instrument Details

Instrument No.	9271663.1
Status	Registered
Date & Time Lodged	25 Feb 2013 10:11
Lodged By	Jack, Andrew Bryce
Instrument Type	Easement Instrument



Affected Computer Registers	Land District
78212	Otago

Annexure Schedule: Contains 9 Pages.

Grantor Certifications

- I certify that I have the authority to act for the Grantor and that the party has the legal capacity to authorise me to lodge this instrument
- I certify that I have taken reasonable steps to confirm the identity of the person who gave me authority to lodge this instrument
- I certify that any statutory provisions specified by the Registrar for this class of instrument have been complied with or do not apply
- I certify that I hold evidence showing the truth of the certifications I have given and will retain that evidence for the prescribed period
- I certify that the Mortgage under Mortgage 7176535.1 has consented to this transaction and I hold that consent

Signature

Signed by Andrew Bryce Jack as Grantor Representative on 25/02/2013 10:05 AM

Grantee Certifications

- I certify that I have the authority to act for the Grantee and that the party has the legal capacity to authorise me to lodge this instrument
- I certify that I have taken reasonable steps to confirm the identity of the person who gave me authority to lodge this instrument
- I certify that any statutory provisions specified by the Registrar for this class of instrument have been complied with or do not apply
- I certify that I hold evidence showing the truth of the certifications I have given and will retain that evidence for the prescribed period

Signature

Signed by Andrew Bryce Jack as Grantee Representative on 25/02/2013 10:06 AM

*** End of Report ***

Form B

Easement instrument to grant easement or profit à prendre, or create land covenant

(Sections 90A and 90F Land Transfer Act 1952)

Grantor

AYRBURN FARM ESTATE LIMITED

Grantee

QUEENSTOWN LAKES DISTRICT COUNCIL

Grant of Easement or Profit à prendre or Creation of Covenant

The Grantor being the registered proprietor of the servient tenement(s) set out in Schedule A grants to the Grantee (and, if so stated, in gross) the easement(s) or profit(s) à prendre set out in Schedule A, or creates the covenant(s) set out in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule(s)

Schedule A

Continue in additional Annexure Schedule, if required

Purpose (Nature and extent) of easement; profit or covenant	Shown (plan reference)	Servient Tenement (Computer Register)	Dominant Tenement (Computer Register) or in gross
Right of Way (Pedestrian and Cycle Way)	"U", "V", and "W" DP 454103	Part Lot 3 DP 5737 CT 78212	In Gross

Form B - continued

Easements or profits à prendre rights and powers (including terms, covenants and conditions)

Delete phrases in [] and insert memorandum number as required; continue in additional Annexure Schedule, if required

Unless otherwise provided below, the rights and powers implied in specified classes of easement are those prescribed by the Land Transfer Regulations 2002 and/or Schedule Five of the Property Law Act 2007

The implied rights and powers are hereby [~~varied~~] [~~negated~~] [~~added to~~] or [~~substituted~~] by:

[Memorandum number _____, registered under section 155A of the Land Transfer Act 1952]

[the provisions set out in Annexure Schedule 1]

Form L

Annexure Schedule

Page 1 of 7 Pages

*Insert instrument type***Easement Instrument***Continue in additional Annexure Schedule, if required***1. Definitions**

In this Instrument unless the context otherwise requires:

- 1.1 "Easement Area" means:
- (a) That part of the Servient Land described in Schedule A of this Instrument and marked "U", "V" and "W" on DP 454103 over which an easement in gross has been granted to the Grantee.
- 1.2 "District Plan" means the Queenstown Lakes District Plan.
- 1.3 "Public Place" means every public thoroughfare, park, reserve, lake, river or place to which the public has access with or without the payment of a fee, and which is under the control of the District Council, or other agencies. Excludes any Trail as defined below.
- 1.4 "Right of Access" means the rights granted by clause 2.1(a).
- 1.5 "Trail" means any public access route (excluding (a) roads and (b) public access easements created by the process of tenure review under the Crown Pastoral Land Act) legally created by way of a grant of easement registered after 11 December 2007 for the purpose of providing public access in favour of the Queenstown Lakes District Council, the Crown or any of its entities.
- 1.6 "Servient Land" means the land owned by the Grantor and described in Schedule A of this Instrument.
- 1.7 "Grantee" means the Queenstown Lakes District Council and includes tenants, agents, contractors and invitees and any employee or contractor of the Queenstown Lakes District Council and for the purposes of clause 2.1 includes any member of the public.
- 1.8 "Grantor" means the owner, its successors and assigns of the Servient Land described in Schedule A of this Instrument and includes the Grantors tenants and invitees.

2. Right of Access

- (a) The Grantor and the Grantee and its invitees, contractors, employees and anyone else (including the public generally) authorised by the Grantee will have the full, free and unrestricted right, liberty and privilege to go, pass and to re-pass over and along the Easement Area at any time, by bicycle, on foot or any other form of human powered transportation. The rights created by this instrument will continue in perpetuity unless surrendered by the Grantee.

Form L

Annexure Schedule

Page 2 of 7 Pages

Insert instrument type

Easement

Continue in additional Annexure Schedule, if required

- (b) Such Right of Access shall entitle the Grantee to make the Easement Area available to such organisations, groups or professional bodies as the Grantee deems appropriate for competitive, charitable, professional or fund raising events, occasions or concessions subject to the terms of this instrument.
- 2.2 The Grantee and its invitees, contractors and employees will have the full, free, and unrestricted right, liberty and privilege at any time to:
- (a) establish, form, construct, repair, inspect, maintain, replace, upgrade and operate a pedestrian footpath and a cycleway (and any associated equipment, structure and fixtures) on the Easement Area; and
- (b) enter onto the Easement Area and the adjoining land of the Grantor with or without vehicles, plant, equipment and implements for the purposes of:
- (i) undertaking the matters set out in clause 2.2(a); or
- (ii) providing medical or other assistance to any person using the Easement Area.
- 2.3 The Grantee will maintain the Easement Area and will ensure that all reasonable care is taken to avoid damage to the Easement Area.
- 3. Grantees Rights**
- 3.1 The Grantee may dig up the Easement Area for all or any of the purposes referred to above and if necessary may deposit soil, aggregate, and/or any other material upon the Grantor's land adjoining the Easement Area provided that all work will be carried out expeditiously and on completion the surface of any land adjacent to the Easement Area that is affected will immediately be restored as nearly as possible to its former state and condition at the Grantee's sole cost.
- 3.2 In exercising any rights under this instrument, the Grantee will not unduly interfere with any other lawful use of the Grantor's land and will, except in case of emergency, give reasonable notice to the Grantor of the Grantee's intention to carry out any works.
- 4. Assignment**
- 4.1 The Grantee shall not transfer or assign its interest under this Instrument to any other entity without the prior written approval of the Grantor. The Grantee shall only be entitled to transfer or assign its interest under this Instrument where such transfer or assignment is for the better management of or the provision of funding relating to the use of the Easement Area and provided such transferee or assignee maintains the Easement Area for public use;

Form L

Annexure Schedule

Page 3 of 7 Pages

Insert instrument type

Easement

Continue in additional Annexure Schedule, if required

4.2 The Grantee may engage a third party to manage the use of the Easement Area provided such third party maintains the Easement Area for public use. For the avoidance of doubt any transfer or assignment agreed to by the Grantor shall be on the basis that any transferee or assignee accepts that the Easement Area is a Trail and is excluded from the definition of Public Place and from Public Place assessment criteria under the District Plan.

5. Grantors Covenants

5.1 The Grantor will not do nor suffer nor permit to be done any act, matter, or thing whereby the Grantee's rights hereunder may be interfered with or affected and in particular (but not to restrict the generality of this clause) the Grantor will not construct, erect or place (or suffer or permit the same) on the Easement Area any building or structure, or do anything else which may reduce the soil and general stability of the Easement Area.

5.2 The Grantor will not grant any rights or interest in the Easement Area to any other person which conflict with the rights granted by this instrument.

5.3 The Grantor will take reasonable steps to ensure that the Easement Area is free from hazards arising from the Servient Land (excluding the Easement Area) which may pose a risk to users of the Easement Area or the Easement Area itself including taking reasonable steps to prevent spray drift, tree felling, dangerous animals, motor bikes or other vehicles, firearms or other equipment or hazards which may pose such a risk on or near the Easement Area.

6. Grantees Covenants

6.1 The Grantee will use reasonable efforts to keep the Easement Area free of litter and obstructions.

6.2 The Grantee will establish, and use reasonable endeavours to ensure compliance with, rules relating to the use of the Easement Area. The rules will prohibit deviating from the Easement Area, littering, animals (excluding domestic animals), camping, the use of motor vehicles, carrying dangerous goods or firearms and lighting fires.

7. Reconstruction

7.1 If the Easement Area or any part of it is destroyed or damaged by land slip, erosion, flood or natural disaster, the Grantor and the Grantee will consider whether it is reasonable to

Form L

Annexure Schedule

Page 4 of 7 Pages

Insert instrument type

Easement

Continue in additional Annexure Schedule, if required

reconstruct and reposition the Easement Area, or that part of it which is destroyed or damaged, along the closest reasonably practicable route. If the parties agree then the Grantor will do all things necessary and the Grantee will provide such assistance as is necessary to register a surrender and replacement easement instrument against the title(s) to the Land to record the repositioned Easement Area. The Grantee will pay the reasonable cost of reconstructing the Easement Area and registering the necessary instruments.

8. Term

8.1 The Easement created by this Instrument is to be in perpetuity.

9. Temporary Suspension

9.1 The Grantee (not being a member of the public) may, at any time in exercise of its powers, temporarily close all or part of the Easement Area for such period as it considers necessary.

10. Dispute Resolution

10.1 If a dispute arises between the Grantor and Grantee (not being a member of the public) concerning the rights, management and operation created by this Instrument the parties are to enter into negotiations in good faith to resolve it.

10.2 If the dispute is not resolved within fourteen (14) days of written notice by one party to the other it is to be referred to mediation.

10.3 If the dispute is not resolved within twenty one (21) days or such other period as agreed in writing between the parties after the appointment of a mediator, the parties must submit the arbitration of an independent arbitrator appointed jointly by the parties or, if one cannot be agreed within fourteen (14) days, to an independent arbitrator appointed by the President for the time being of the local branch of the New Zealand Law Society in which the Servient Land is situated.

10.4 The arbitration is to be determined in accordance with the Arbitration Act 1996 and its amendments or any enactment passed in substitution.

11. Notice

11.1 A notice to be given under this Instrument by one party to the other is to be in writing and must:

(a) Be hand delivered to the receiving party; or

Form L

Annexure Schedule

Page 5 of 7 Pages

Insert instrument type

Easement

Continue in additional Annexure Schedule, if required

- (b) Be sent by ordinary post to the receiving party; or
- (c) Be sent by facsimile to the receiving party.

11.2 If clause 11.1(b) applies the notice will be deemed to be received by the receiving party on such date on which the ordinary post would be delivered.

11.3 If clause 11.1(c) applies the notice will be deemed to have been received on the day on which it is dispatched or, if dispatched after 5.00pm, on the next day after the date of dispatch.

12. Special Easement Terms

12.1 The standard easement terms contained above must be read subject to any special easement terms set out below.

12.2 The Grantee (not being a member of the public) has the right:

- (a) To mark the Easement Area as appropriate
- (b) To erect and maintain signs informing the public of their rights and responsibilities in relation to the Easement Area.
- (c) To erect, construct and maintain fences, cattle stops, gates, stiles, stairs and walkways and any other means of access to and over the Easement Area as deemed appropriate in the sole discretion of the Grantee to facilitate the terms of this Instrument or to protect the Servient Land.
- (d) For the purposes of undertaking the matters set out in clauses 12.2(a), (b) and (c), the Grantee may access the Easement Area over such tracks, roads, accessways or other routes over the Grantor's land as may be reasonable in the circumstances provided that the Grantor may impose reasonable conditions on such access (except in emergency) but may not unreasonably restrict access to the Easement Area.

12.3 The Grantee acknowledges and agrees that:

- (a) subject to clause 12.2(c), the Grantee will only establish, form and construct equipment, structures and fixtures on the Easement Area that are essential to the construction of a pedestrian footpath and a cycleway. For the avoidance of doubt the Grantee will not establish, form or construct any seating, shelter or similar structure on the Easement Area.



Form L

Annexure Schedule

Page 6 of 7 Pages

Insert instrument type

Easement

Continue in additional Annexure Schedule, if required

- (b) the Easement Area is located in an area that may be susceptible to natural erosion and the Grantor is not responsible and is not required to take any action in respect of such erosion to the Easement Area.
- (c) for the purposes of undertaking the matters set out in clause 2.2(b), 3, 12.2(a), (b) and (c), the Grantee must (except in an emergency) give the Grantor reasonable notice and the Grantee must comply with the Grantor's reasonable conditions regarding such access (including the access times and routes over the Servient Land to access the Easement Area).
- (d) it will immediately make good and repair (at its cost) any damage caused to the Grantor's Land from the Grantee exercising its rights under this instrument.
- (e) that the Easement Area is a Trail and is excluded from the definition of Public Place and from the Public Place assessment criteria under the District Plan. For the avoidance of doubt, Queenstown Lakes District Council as the original grantee specifically acknowledges this clause notwithstanding any assignment under clause 4 above.
- (f) that the Grantor has no liability to contribute to construction or maintenance of the Easement Area.
- (g) that the Grantor has no liability resulting from the use of the Easement Area by the general public.
- 13. Conflict**
 13.1 Where there is a conflict between the provisions of this instrument, the Fourth Schedule to the Land Transfer Regulations 2002 and the Fifth Schedule to the Property Law Act 2007, any modifications in this instrument will prevail.
- 14. Local Government Act**
 14.1 The parties agree that the Grantee will "control" the Easement Area for the purposes of the Local Government Act 1974.
- 15. Public Liability**
 15.1 The Grantee will obtain and maintain such public legal liability insurance for no less than \$1,000,000, for any one accident whereby the Grantor shall be indemnified against all actions, suits, claims, demands, proceedings, losses, damages, compensation sums of

Form L

Annexure Schedule

Page 7 of 7 Pages

Insert instrument type

Easement

Continue in additional Annexure Schedule, if required

money, costs, charges and expenses to which the Grantor shall or may be liable as a result of the Grantor entering into this Instrument.

A copy of such insurance cover shall be delivered to the Grantor if so requested by the Grantor.

- 15.2 Subject to the Grantor complying with clause 5 thereof the Grantee shall indemnify the Grantor in respect of any claim loss or liability in respect of the use of the Easement Area or as a result of the Grantor entering into this Instrument.

SCHEDULE THREE

Copy PC28 Discussion Document



Plan Change 28: Trails

Discussion Document



Released for public consultation
31 October 2007



Purpose of this Document

The purpose of this discussion document is to gain feedback from the community and interested parties on a potential Plan Change that aims to resolve issues associated with providing trails within the rural areas of the district.

This document provides information on the background to the council's decision to initiate the Plan Change, identifies the council's preferred option and outlines the process for preparing the Plan Change.

A feedback form is provided along with this document. We encourage you to fill this out and return it to the council by **16 November 2007**.

Background

The tension between the District Plan (the Plan) provisions aiming to protect landscape values and creating public access trails was brought to the council's attention by the Gibbston Community Association and the Wakatipu Trails Trust, who have been experiencing difficulty in achieving public access routes.

In recent years the community has worked hard to enhance public access throughout the district, in accordance with the key community outcomes of the Council Community Plan. This public access is achieved through negotiations with landowners either at the time of resource consent, or as a result of an approach by the council or a trails trust or community association.

The maintenance of quality landscapes is achieved through the implementation of the Plan, particularly those sections relating to the management of subdivision and development within the rural areas. When considering subdivision and development in these areas, the Plan places significant emphasis on the visibility of development, particularly its visibility from public roads and public places.

The definition of 'public place' within the District Plan reads:

Means every public thoroughfare, park, reserve, lake, river or place to which the public has access with or without the payment of a fee, and which is under the control of the District Council, or other agencies.

This means that once a walkway is established, and is managed by the Department of Conservation (DOC) or by the council, it becomes a public place. If the landowner then wishes to undertake development on nearby land, any such development will be assessed against its visibility from the trail.

This has caused landowners to become reluctant to gift their land for public access purposes, and given that there are examples where development applications have been declined because of their visibility from nearby public places, this reluctance has become more widespread.

Purpose of the Plan Change

The purpose of this Plan Change can be identified as follows:

To remove impediments to the provision of trails, particularly in the rural area, while ensuring that the Plan provisions are not weakened, and the quality of the landscape values are maintained into the future.

Scope of the Plan Change

Given the need to ensure that the provisions of the Plan as they relate to landscape protection are not weakened, the Plan Change will provide only for future walkways, and it will not change the activity status of subdivision and development.

Options for the Plan Change

The term 'public place' is referred to in 74 different places within the Plan. Given the complexity associated with changing each policy or assessment matter that refers to 'public place', it is considered that the most appropriate option is to amend the definition of 'public place' so that it excludes new trails. This avoids the need to amend the Plan in 74 different locations.

The question then is how to amend the definition of 'public place' so that new trails are excluded. It is suggested that the following should be excluded from the definition:

- trails formally protected after December 2007 (i.e. the date at which this Plan Change will be notified); and
- trails that are formally protected through voluntary negotiations and that are agreed between the landowner and the Council or DoC (either through negotiations on a resource consent application or negotiations between the landowner and a relevant agency); and
- trails formally protected through a legal process, and that have legal protection into the future.

The following provides an explanation for the suggested exclusions:

Trails excluded from definition	Reasons
Trails formally protected after December 2007.	<p>The Plan Change aims to encourage the provision of additional trails, building on the existing network.</p> <p>Most trails established before December 2007 have legal protection, and therefore there is no risk of their removal because of the Plan provisions.</p> <p>If trails that already have protection were excluded from the definition, nearby development would no longer be assessed in terms of its visibility from that public place. This is not the intention of the Plan Change.</p> <p>The term 'formally protected' refers to trails that are established by way of legal process; so that if a trail is currently used but not formed legally, it can in future be formally protected through the appropriate process, and therefore become excluded from the definition of public place.</p> <p>A key focus of the Plan Change is to remove impediments to landowners volunteering public access through their land.</p>
Trails that are volunteered (rather than those that are required; e.g. esplanade strips or reserves).	<p>Public access may be volunteered following an approach by the council or trails trust, or it may be put forward through negotiations on a subdivision or development proposal. In both these cases the provision of the public access is a public benefit that is not mandatory, i.e. it may or may not be provided, depending on the success of negotiations.</p> <p>If esplanade strips and esplanade reserves established after December 2007 were excluded from the definition of public place, future development within their vicinity would not be assessed in terms of its visibility from that reserve or strip. Where such reserves are mandatory, the current Plan provisions do not affect any decision of the landowner to provide that public access.</p> <p>It must be noted that the requirement for esplanade reserves or strips only applies where lots less than 4ha are proposed. The council also has the ability to waive the esplanade reserve requirement. For subdivision of lots greater than 4ha in size the council has discretion as to whether esplanade reserves are required. Therefore it is unclear as to exactly when an esplanade reserve or strip is mandatory.</p>

Reasons	
<p>Trails excluded from definition</p> <p>Trails that have been established through a legal process so that public access is ongoing.</p>	<p>There are three key reasons for excluding only those trails formally protected through a legal process:</p> <ol style="list-style-type: none"> 1) To enable clarification as to when the trail was established, so that it can be easily determined as to whether the exclusion (from the definition) applies; and 2) To ensure that the status of the trails remains consistent into the future, and there are no uncertainties as to whether or not the trail is a public place; and 3) To ensure that only those trails agreed to by the landowner and the Council are excluded from the definition. <p>While it is understood that some landowners may be against establishing trails through a legal process, DOC and the Council will only establish and maintain a trail if it has formal and ongoing protection.</p> <p>Trails are established either through negotiations at the time of subdivision, or through the landowner volunteering public access. It is considered appropriate that trails established through either process are excluded from the definition of public place. In both cases the trail provides a community benefit that may not have otherwise occurred. A balance between the benefits of providing the trail and the fact that future development visible from that trail would not be assessed in light of its visibility would be made at the time of reaching agreement.</p> <p>If the exclusion only applies to those trails that are legally protected, there is certainty that they are appropriate. This avoids the potential for public access routes to be established as part of a subdivision that are not beneficial or appropriate; if they are not appropriate the Council or DoC would not agree to their establishment.</p>

Visual Amenity Landscapes

The Policy provision for Visual Amenity Landscape reads:

Policy 4.2.5(4) (emphasis added in **bold**)

4. Visual Amenity Landscapes

(a) *To avoid, remedy or mitigate the adverse effects of subdivision and development on the visual amenity landscapes which are:*

- *highly visible from public places and other places **which are frequented by members of the public generally**; and*
- *visible from public roads.*

This policy relates to all visual amenity landscapes in the district, and requires that when considering future development, consideration is given not only to the visibility of that development from public places, but also its visibility from places frequented by the public generally.

If the definition of public places were to exclude new trails, such trails would no longer be a public place, and could therefore be included within the term 'other places frequented by the public generally'. It is therefore suggested that Policy 4.2.5(4) needs to be amended if this Plan Change is going to be effective within the Visual Amenity Landscapes of the district.

Suggested Amendments- The Preferred Option

It is recommended that the Plan be amended as follows:

Amend the definition of public place to read: (addition in **bold underline**)

Public place – means every public thoroughfare, park, reserve, lake, river or place to which the public has access with or without the payment of a fee, and which is under the control of the District Council, or other agencies. Excludes any trail created by a registered easement or similar legal mechanism after December 2007.

Add the following definition of trail:

Trail – means any public access route that is formally protected by way of an easement for public access in favour of the Queenstown Lakes District Council or the Crown.

Amend Policy 4.2.5(4) (a) as follows: (additions in **bold underline**)

4. Visual Amenity Landscapes

(a) *To avoid, remedy or mitigate the adverse effects of subdivision and development on the visual amenity landscapes which are:*

- *highly visible from public places and other places **which are frequented by members of the public generally (except any trail created by a registered easement or similar legal mechanism after December 2007)**; and*
- *visible from public roads.*

What happens next? The Plan Change process

Once feedback on this discussion document is received it will be used to assist in preparing the Plan Change documentation, which will then be considered by the council in December 2007.

If the council adopts the Plan Change it will then be notified for public submission. Any person can lodge a submission either supporting, opposing or supporting in part.

Once submissions have been received they will be summarised, and the summary will be publicly notified. Any person can then lodge a further submission supporting or opposing any submission that was lodged.

The council will then hold a hearing at which any person who lodged either a submission or further submission can attend and present their submission to the hearings panel.

The hearings panel will then make a decision on the Plan Change. That decision can be appealed to the Environment Court by any person who lodged a submission or further submission.

SCHEDULE FOUR

1. Copy CFR's 665219, 665220 and 665221
2. Copy pages 1-2 of Consent Notices 9805352.1 (as varied), 9805352.2 (as varied) and 9805352.3



COMPUTER FREEHOLD REGISTER UNDER LAND TRANSFER ACT 1952



Search Copy

R. W. Muir
Registrar-General
of Land

Identifier **665219**
Land Registration District **Otago**
Date Issued 26 August 2014

Prior References

177645

Estate Fee Simple
Area 28.3535 hectares more or less
Legal Description Lot 1, 101 Deposited Plan 475822

Proprietors

XRAY TRUST LIMITED

Interests

5182 Order in Council imposing Building Line Restriction - 3.8.1942 at 10:00 am

Subject to a right (in gross) to convey water over Lot 1 DP 475822 marked E on DP 475822 in favour of Arrow Irrigation Company Limited created by Transfer 839039 - 22.9.1993 at 10:09 am

Subject to a right to draw and convey water over Lot 1 DP 475822 marked CA, CB and CC on DP 475822 created by Transfer 5203986.4 - 30.4.2002 at 9:02 am

The easements created by Transfer 5203986.4 are subject to Section 243 (a) Resource Management Act 1991

Land Covenant in Easement Instrument 8631576.1 - 16.11.2010 at 4:13 pm

9805352.1 Consent Notice pursuant to Section 221 Resource Management Act 1991 - 26.8.2014 at 4:09 pm

Subject to Section 241(2) Resource Management Act 1991 (affects DP 475822)

Subject to a right to convey water over Lot 1 DP 475822 marked LA and LL on DP 475822 created by Easement Instrument 9805352.5 - 26.8.2014 at 4:09 pm

Appurtenant to Lot 1 DP 475822 is a right to convey water and electricity created by Easement Instrument 9805352.5 - 26.8.2014 at 4:09 pm

The easements created by Easement Instrument 9805352.5 are subject to Section 243 (a) Resource Management Act 1991

Subject to a right (in gross) to convey telecommunications and computer media over Lot 1 DP 475822 marked NA, CB, NB, NC and LA on DP 475822 in favour of Chorus New Zealand Limited created by Easement Instrument 9805352.7 - 26.8.2014 at 4:09 pm

The easements created by Easement Instrument 9805352.7 are subject to Section 243 (a) Resource Management Act 1991

Land Covenant in Easement Instrument 9805352.8 - 26.8.2014 at 4:09 pm

10608206.1 Variation of Consent Notice 9805352.1 pursuant to Section 221(5) Resource Management Act 1991 - 28.10.2016 at 3:14 pm



**COMPUTER FREEHOLD REGISTER
UNDER LAND TRANSFER ACT 1952**



R. W. Muir
Registrar-General
of Land

Search Copy

Identifier 665220
Land Registration District Otago
Date Issued 26 August 2014

Prior References

177645 177646

Estate Fee Simple
Area 28.7700 hectares more or less
Legal Description Lot 2 Deposited Plan 475822

Proprietors

XRAY TRUST LIMITED

Interests

5182 Order in Council imposing Building Line Restriction - 3.8.1942 at 10:00 am

Subject to a right (in gross) to convey water over part marked G on DP 475822 in favour of Arrow Irrigation Company Limited created by Transfer 835746 - 6.8.1993 at 9:16 am

Subject to a right (in gross) to convey water over part marked F on DP 475822 in favour of Arrow Irrigation Company Limited created by Transfer 839039 - 22.9.1993 at 10:09 am

Subject to a right to draw and convey water over parts marked BA, BB and BC on DP 475822 created by Transfer 5203986.4 - 30.4.2002 at 9:02 am

The easements created by Transfer 5203986.4 are subject to Section 243 (a) Resource Management Act 1991
Land Covenant in Easement Instrument 8631576.1 - 16.11.2010 at 4:13 pm

Subject to a right (in gross) to convey and transform electricity over parts marked JA, BB, JB, JC, JD, JE and JF on DP 475822 in favour of Aurora Energy Limited created by Easement Instrument 8692071.3 - 9.2.2011 at 2:34 pm

9805352.2 Consent Notice pursuant to Section 221 Resource Management Act 1991 - 26.8.2014 at 4:09 pm

Subject to a right to convey water over parts marked MC, MB, JA, BB, JB, JC, JD, JF, JG, LG, LF, LE, LD, LC, LB, H, LH, LI, LK, LM and KD, KC, KB, KA, KF and JE and a right to convey electricity over parts marked MA and MC on DP 475822 created by Easement Instrument 9805352.5 - 26.8.2014 at 4:09 pm

Appurtenant hereto is a right to convey water created by Easement Instrument 9805352.5 - 26.8.2014 at 4:09 pm

The easements created by Easement Instrument 9805352.5 are subject to Section 243 (a) Resource Management Act 1991

Subject to a right (in gross) to convey electricity over parts marked JD, LB, LC, LD, LE, LF, LG, LH, LI, LJ and LK on DP 475822 in favour of Aurora Energy Limited created by Easement Instrument 9805352.6 - 26.8.2014 at 4:09 pm

The easements created by Easement Instrument 9805352.6 are subject to Section 243 (a) Resource Management Act 1991

Subject to a right (in gross) to convey telecommunications and computer media over parts marked LB, LC, LD, LE, LF, LG, JD, LH, LI and LK on DP 475822 in favour of Chorus New Zealand Limited created by Easement Instrument 9805352.7 - 26.8.2014 at 4:09 pm

The easements created by Easement Instrument 9805352.7 are subject to Section 243 (a) Resource Management Act 1991

Land Covenant in Easement Instrument 9805352.8 - 26.8.2014 at 4:09 pm

10624300.1 Variation of Consent Notice 9805352.2 pursuant to Section 221(5) Resource Management Act 1991 -

Transaction Id

Client Reference apearce001

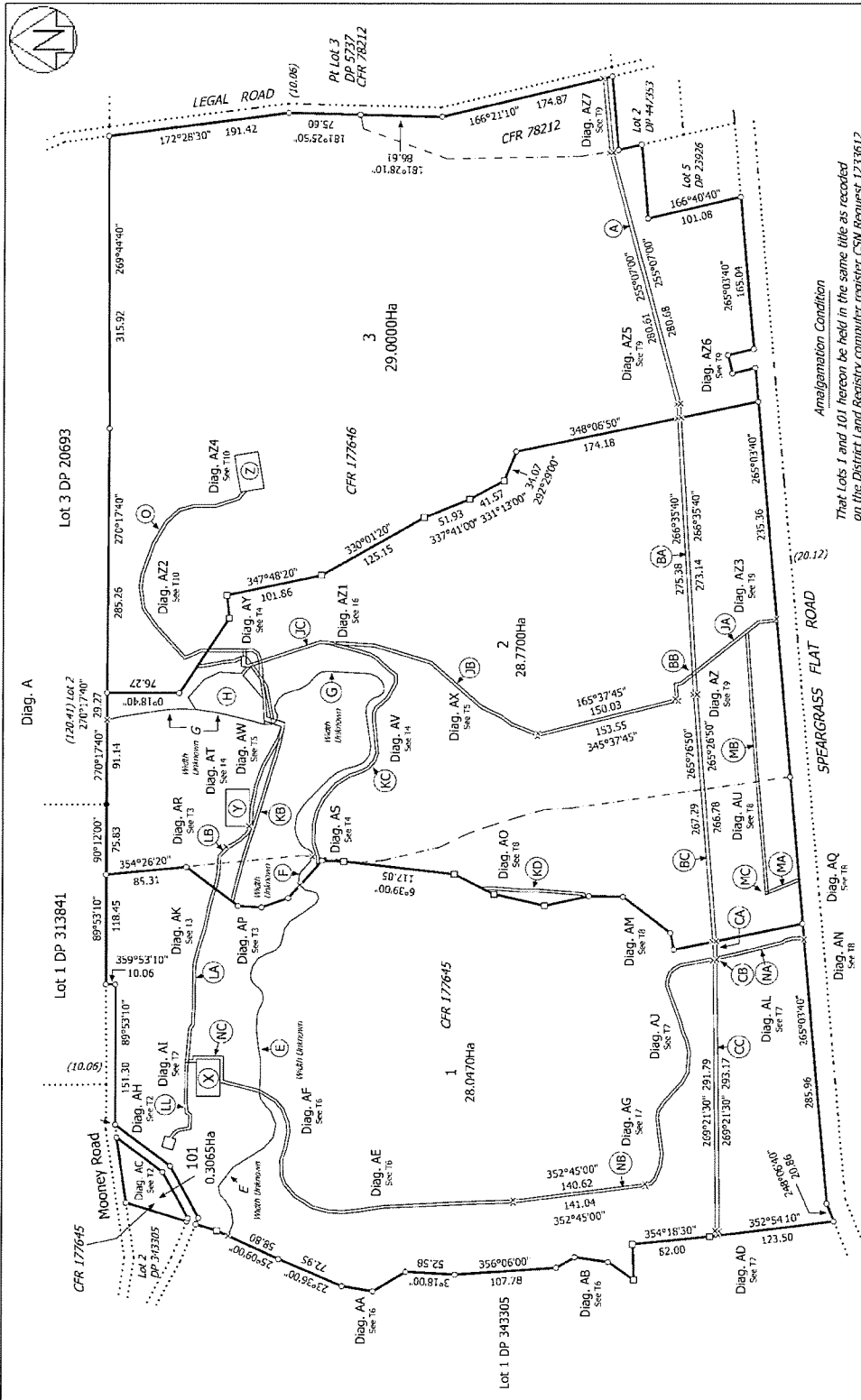
Search Copy Dated 9/07/18 9:04 am, Page 1 of 3

Register Only

Identifier

665220

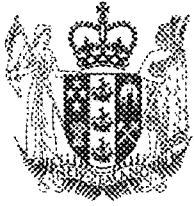
15.11.2016 at 11:33 am



Amalgamation Condition
 That Lots 1 and 101 hereon be held in the same title as recorded
 on the District Land Registry computer register CSN Request 1233612
 Areas shown X, Y and Z are to be subject to Covenants (Building Platform)

T 1/1/0

Land District: Diago Digitally Generated Plan Generated on: 08/09/2014 08:43am Page 7 of 16	Lots 1 - 3 and 101 being a subdivision of Lots 3 - 5 DP 343305 and Lot 4 DP 319854	Surveyor: Christopher Francis Walker Firm: Bonnich-Consultants Ltd	Title Plan LT 475822 Approved on: 8/09/2014
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COMPUTER FREEHOLD REGISTER UNDER LAND TRANSFER ACT 1952



Search Copy

Identifier 665221
Land Registration District Otago
Date Issued 26 August 2014

Prior References

177646 78212

Estate Fee Simple
Area 29.0000 hectares more or less
Legal Description Lot 3 Deposited Plan 475822

Proprietors

Craig Leonard Heatley, Gregory Bernard Horton, Sophia Louise Heatley and Haylee Maree Pyle

Interests

5182 Order in Council imposing Building Line Restriction - 3.8.1942 at 10:00 am

Subject to a right to draw and convey water over part marked A on DP475822 created by Transfer 5203986.4 - 30.4.2002 at 9:02 am

The easements created by Transfer 5203986.4 are subject to Section 243 (a) Resource Management Act 1991

Land Covenant in Easement Instrument 8631576.1 - 16.11.2010 at 4:13 pm (affects part formerly Lot 5 DP 343305)

9805352.3 Consent Notice pursuant to Section 221 Resource Management Act 1991 - 26.8.2014 at 4:09 pm

Appurtenant hereto is a right to convey water and electricity created by Easement Instrument 9805352.5 - 26.8.2014 at 4:09 pm

The easements created by Easement Instrument 9805352.5 are subject to Section 243 (a) Resource Management Act 1991

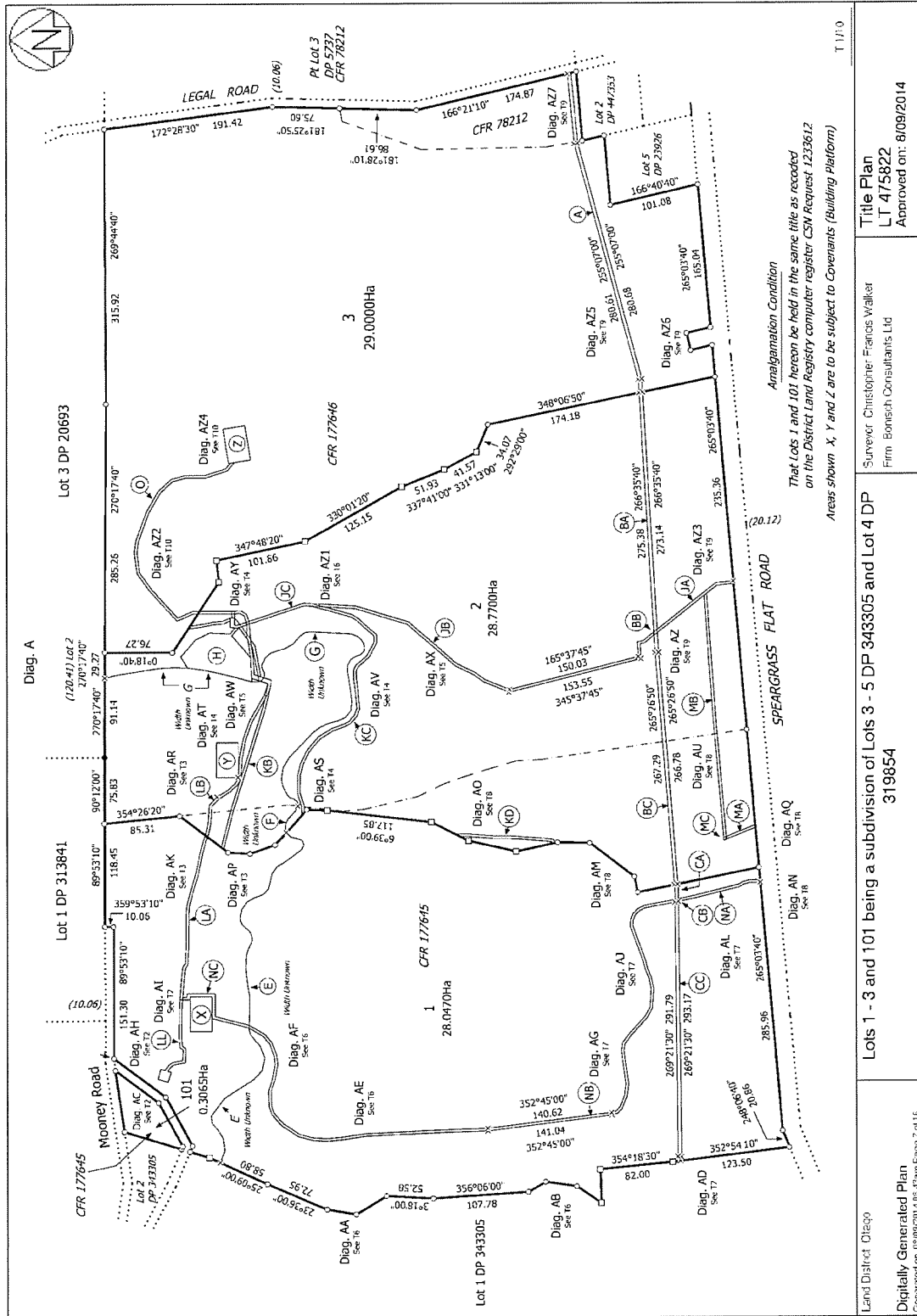
Subject to a right (in gross) to convey telecommunications and computer media over part marked O in favour of Chorus New Zealand Limited created by Easement Instrument 9805352.7 - 26.8.2014 at 4:09 pm

The easements created by Easement Instrument 9805352.7 are subject to Section 243 (a) Resource Management Act 1991

Land Covenant in Easement Instrument 9805352.8 - 26.8.2014 at 4:09 pm

Land Covenant in Easement Instrument 10734741.1 - 23.3.2017 at 5:11 pm

Land Covenant in Easement Instrument 10742425.1 - 7.4.2017 at 3:55 pm (Limited as to duration)




That Lots 1 and 101 hereon be held in the same title as recorded on the District Land Registry computer register CSN Request 1233612 Areas shown X, Y and Z are to be subject to Covenants (Building Platform)

Land District: Otago	Lot 1 - 3 and 101 being a subdivision of Lots 3 - 5 DP 343305 and Lot 4 DP 319854	Title Plan LT 475822	Approved on: 8/09/2014
Digitally Generated Plan Generated on 02/05/2014 05:43am Page 7 of 16		Surveyor: Christopher Francis Walker Firm: Bonisch Consultants Ltd	




View Instrument Details

Instrument No. 10608206.1
Status Registered
Date & Time Lodged 28 Oct 2016 15:14
Lodged By Sinclair, Timothy James
Instrument Type  Variation of Consent Notice Condition under s221(5) Resource Management Act 1991

Toitu te
Land whenua
Information
New Zealand



Affected Computer Registers 665219
Land District Otago

Affected Instrument  Consent Notice under s221(4)(a) Resource Management Act 1991 9805352.1

Annexure Schedule: Contains 8 Pages.

Signature

Signed by Jayne Elizabeth Macdonald as Territorial Authority Representative on 28/10/2016 03:12 PM

*** End of Report ***

IN THE MATTER of section 221(5) of the Resource
Management Act 1991 ("the Act")

AND

IN THE MATTER of Variation to Consent Notice 9805352.1

VARIATION OF CONSENT NOTICE

MACALISTER TODD PHILLIPS
Barristers, Solicitors, Notaries
Queenstown/Wanaka
Ph: (03) 441 0125 - Fax: (03) 442 8116
Email: queenstown@mactodd.co.nz
P O Box 653
QUEENSTOWN

BACKGROUND

- A. Consent Notice 9805352.1 ("the Consent Notice") has been registered against Lots 1 and 101 of Deposited Plan 475822 of the Otago Registry being all that land contained in CFR 665219 ("the Land").
- B. Pursuant to s 221(3) of the Act, Queenstown Lakes District Council granted resource consents RM150051, RM150364, RM150560 and RM160670 to vary certain conditions set out in the Consent Notice.

VARIATIONS TO CONSENT NOTICE

The conditions are varied as follows (deleted text struck through and additional text underlined):

1. Any development on the subject allotments shall be undertaken in accordance with the ~~Baxter Design Group Landscape Management plans 8569-102 (Rev 1-11 November 2014) and 8569-101 Lot Layout Landscape Management Plan for Lots 1 and 2 Ayrburn Farm, Speargrass Flat Road, Wakatipu Basin prepared by Anne Steven Landscape Architect Plan Ref. 232.LMP01 June 2015 ("the Landscape Management Plan") and the Katie Deans Landscape Design Landscape Plan Lot 1 dated June 2015 ("the Lot 1 Landscape Plan")~~ subject to the amendments and council certification to the landscape plans as required by consent conditions of RM150560, or any subsequent approved resource consents.
2. That any residential dwelling or accessory building erected on Lot 1 shall be located within the building platform identified as Area X on DP 475822, and farm buildings may be erected within the area for farm utility buildings shown on the Council certified Landscape Management Plan for Lots 1 and 2 or with the exception of that development approved under RM140421 and RM150051 or any subsequent resource consents or variations or as provided by the conditions below.
3. No further subdivision of Lot 1 or 101 shall occur, and ~~no buildings or structures other than farm buildings or farm structures as currently defined in the District Plan shall be located on Lots 1 or 101 elsewhere than within the curtilage area of Lot 1 or within locations identified for small utility buildings shown as "Area for farm utility buildings on Lot 1 and 2 only" or for buildings and structures associated with the management of water within the Pond Areas only, as shown on the approved Landscape Management Plans. These small utility buildings shall be limited to a maximum of 20m² in floor area and a maximum height of 3m above natural ground level, and shall be finished in recessive colours of natural tones of grey, brown or green, and have a light reflectance value (LRV) of between 7% and 36% with the roof having a LRV of between 8% and 20%. Nothing in this condition prevents the establishment of structures or buildings that are permitted in the District Plan anywhere on the site. Any exterior lighting attached to the buildings shall be sensor activated down lighting only and shall not be used to highlight the building or be directed as to be visible from beyond the property, shown as "Area for farm utility buildings on Lot 1 and 2 only" on the Landscape Management Plans.~~
4. The site shall be managed in accordance with the council certified ~~Baxter Design Group Landscape Management Plan and the Lot 1 Landscape Plan s-8569-102 (Rev 1-11 Nov~~

IN THE MATTER of section 221(5) of the Resource
Management Act 1991 ("the Act")

AND

IN THE MATTER of Variation to Consent Notice 9805352.2

VARIATION OF CONSENT NOTICE


MACALISTER TODD PHILLIPS
Barristers, Solicitors, Notaries
Queenstown/Wanaka
Ph: (03) 441 0125 - Fax: (03) 442 8116
Email: queenstown@mactodd.co.nz
P O Box 653
QUEENSTOWN

BACKGROUND

- A. Consent Notice 9805352.2 ("the Consent Notice") has been registered against Lot 2 of Deposited Plan 475822 of the Otago Registry being all that land contained in CFR 665220 ("the Land").
- B. Pursuant to s 221(3) of the Act, Queenstown Lakes District Council granted resource consent RM150560 to vary certain conditions set out in the Consent Notice.

VARIATIONS TO CONSENT NOTICE

The conditions are varied as follows (deleted text struck through and additional text underlined):

1. Any development on the subject allotments shall be undertaken in accordance with the Baxter Design Group Landscape Management Plans 8569-102 (Rev 11 November 2011) and 8569-101 Lot Layout, Landscape Management Plan for Lots 1 and 2 Ayrburn Farm, Speargrass Flat Road, Wakatipu Basin prepared by Anne Steven Landscape Architect Plan Ref. 232.LMP01 June 2015 ("the Landscape Management Plan") and the Katie Deans Landscape Design Landscape Plan Lot 1 dated June 2015 ("the Lot 1 Landscape Plan") subject to the amendments and council certification to the landscape plans as required by condition 5 of RM150560.
2. That any residential dwelling or accessory building erected on Lot 2 shall be located within the building platform identified as Area Y on Lot 2 DP 475822, and farm buildings may be erected within the area for farm utility buildings shown on the Council certified Landscape Management Plan for Lots 1 and 2, or with the exception of that development approved under RM150242 or any subsequent resource consents or variations or as provided for by the conditions below.
3.  No further subdivision of Lot 2 shall occur. ~~and no buildings or structures~~ as currently defined in the District Plan shall be located ~~on Lot 2 elsewhere than~~ within the curtilage area.
4. The site shall be managed in accordance with the council certified Landscape Management Plan Baxter Design Group Landscape Management Plans (8569-102) (Rev 11 Nov 2011) and 8569-101 Lot Layout), and in particular the "use areas" shown on the Landscape Management Plan shall be managed as follows:
 - (i) The Meadow Area shall be a ~~pastoral protection zone to be managed and maintained by~~ for the purposes of agricultural, silvicultural or horticultural use including grazing, ~~or grass production for baleage, mowing or cropping and mowing for hay and silage/baleage.~~ No further planting trees or shrubs over 3m in height other than the trees shown on the Landscape Management Plan shall be planted within 100m of the road boundary except shelterbelt trees planted perpendicular to the road and belts 100m or more apart, ~~undertaken within these areas except for agricultural crops and grass sowing as part of pasture management.~~ On Lot 2 no buildings or other structures shall be erected in these areas, other than farm buildings or farm structures.



View Instrument Details

Toitu te
Land whenua
Information
New Zealand



Instrument No. 9805352.3
Status Registered
Date & Time Lodged 26 Aug 2014 16:09
Lodged By Barker, David Gerard
Instrument Type Consent Notice under s221(4)(a) Resource Management Act 1991

Affected Computer Registers **Land District**

177645	Otago
177646	Otago
78212	Otago

Annexure Schedule: Contains 7 Pages.

Signature

Signed by Suzanne June Learmonth as Territorial Authority Representative on 26/08/2014 03:45 PM

*** End of Report ***

IN THE MATTER of Section 221 of the Resource
Management Act 1991.

AND

IN THE MATTER of an Application for
Subdivision Consent by
AYRBURN FARM ESTATES
LIMITED

CONSENT NOTICE

BACKGROUND

- A. Ayrburn Farm Estates Limited, of Queenstown, have applied to the Queenstown Lakes District Council pursuant to provisions of the Resource Management Act 1991 for its consent to subdivide land comprised and described in Certificates of Title 177645 and 177646 (Otago Registry) ("the land").
- B. The Environment Court has granted consent (by Consent Order ENV-2010-CHC-272) to the proposed subdivision subject to certain conditions which are required to be complied with on a continuing basis by the Owner of the land being those conditions specified in the Operative Part hereof.

OPERATIVE PART

PART A - The following conditions pertaining to this Consent Notice are to be registered against the titles of the following allotment:

- (a) Lot 3 DP 475822

CONDITIONS:

- 1. Any development on the subject allotments shall be undertaken in accordance with the Baxter Design Group Landscape Management Plans 8569-102 (Rev 1 11 November 2011) and 8569-101 Lot Layout, provided that the bund to be established on Lot 3, to the north of the Lot 3 building platform need not be completed until such time as the construction of a dwelling on Lot 3 is completed.
- 2. That any residential dwelling or accessory building erected on Lot 3 shall be located within the approved building platform identified as area Z on Lot 3 DP 475822.



- 3. No further subdivision of Lot 3 shall occur and no buildings or structures other than farm buildings or farm structures as currently defined in the District Plan shall be located on Lot 3 elsewhere than within the curtilage area of Lots 1 and 2 shown as "Area for farm utility buildings on Lot 1 and 2 only" on the Landscape Management Plans.
- 4. The site shall be managed in accordance with the Baxter Design Group Landscape Management Plans (8569-102 (Rev 1 11 Nov 2011) and 8569-101 Lot Layout) , and in particular the "use areas" shown on the Landscape Management Plans shall be managed as follows:

- i) The **Meadow Area** shall be a pastoral protection zone to be maintained by grazing or grass production for baleage, mowing or cropping. No further planting shall be undertaken within these areas except for agricultural crops and grass sowing as part of pasture management. On Lot 3 no buildings shall be erected in this area.
- ii) The **Hillside Area** and **Plateau Area** shall be managed and maintained by way of grazing and weed control only. No further planting except for grass sowing as part of pasture management is permitted in these areas. No buildings or other structures shall be erected in these areas
- iii) The **Homestead Areas** - Planting within the Homestead Areas shall be undertaken only in accordance with the following approved species list:

- 1. Alnus sp. (Alder - deciduous and evergreen)
- 2. Betula utilis 'Jacquemontii' (Sweet Birch | Himalyan Birch - deciduous)
- 3. Fagus (Deciduous Beech)
- 4. Fraxinus sp. (Ash - deciduous)
- 5. Juglans sp. (Walnut - deciduous)
- 6. Nothofagus (NZ Beech - evergreen)
- 7. Quercus sp. (Oak - deciduous)

SCHEDULE FIVE

Amended Ayrburn Zone provisions with:

- Amendments highlighted by tracked change
- Mr Brown's responses to Mr Langman's comments highlighted by a different colour

APPENDIX A

ANNOTATIONS ON THE AYRBURN ZONE – PROVISIONS

47 Ayrburn Zone

Chapter 47: Ayrburn Zone provisions

Purpose

The purpose of the Ayrburn Zone is to provide for the development of residential, retirement and visitor activities and facilities, sympathetic to the natural setting. The site is bordered by a high quality scenic environment which includes the Millbrook Zone and the Waterfall Park Zone.

The focus of the zone is Mill Creek which flows through the centre of the zone, and the heritage features of the Ayrburn Homestead and Stone Farm Buildings. Development limits are imposed in the zone given its scenic and environmental qualities. Development is to complement and enhance the natural and scenic values contained within the zone.

47.1 Objectives and Policies

Objective – Residential, recreation and visitor facilities and activities developed in an integrated manner with particular regard for the natural, ~~and~~ scenic and amenity values of the setting.

Policies

- 47.1.1.1 Ensure that the external appearance of buildings and other structures are appropriate to the location with particular regard to the site's natural and scenic values.
- 47.1.1.2 Enable retirement living to be developed in association with a variety of residential densities in an integrated manner.
- 47.1.1.3 Facilitate the complementary development of activities in association with the adjoining Waterfall Park Zone.

Comment / Jeff Brown (JB) comments in response in blue

The comments in the following text boxes are on the requested Ayrburn Zone Chapter as sought by Waterfall Park Developments Limited (#2388).

No changes have been made to the requested chapter text, which is derived from Mr Jeffery Brown's evidence dated 13 June 2018.

The provisions have been converted from Adobe PDF to Microsoft Word, and there could be inconsistency with the formatting or characters. In the case of any differences, the version attached to Mr Brown's evidence is the correct version.

Any references to plans or provisions being included in the District Plan are on the basis the Panel accept in part or all the rezoning. My overall recommendation is to reject the submission as set out in my Rebuttal.

My views/comments on the requested Ayrburn Zone Chapter include:

- Objective 47.1 does not sufficiently address s7(c) of the RMA in that the end outcome would not maintain or enhance amenity values. **JB comment:** Agree that the objective does not sufficiently address s7(c), and I have modified the objective accordingly. Disagree with the "end outcome" comment, because the zone provisions adequately address amenity values (for example by way of development setbacks from external boundaries).
- Policy 47.1.1.3 does not sufficiently articulate what the scale, nature and intensity of 'complementary development activities' are. **JB comment:** Disagree. This is a policy, which is given effect to by the detail in the rules.

- 47.1.1.4 Require all development to be located in accordance with the Structure Plan.
- 47.1.1.5 Protect and enhance ~~the important natural features on the site~~ Mill Creek, and protect the open pastoral visual amenity values of Christine’s Hill and the flat land adjoining and visible from the Arrowtown-Lake Hayes Road.
- 47.1.1.6 Enable and encourage access for the public to and through the zone to enjoy the natural attributes within the zone and the adjoining Waterfall Park Zone.
- 47.1.1.7 Protect and enhance the important heritage features of the ~~site~~ Zone.
- 47.1.1.8 Avoid or mitigate adverse effects on the amenities of properties adjoining the Zone using building setbacks, landscaping controls and retention of mature vegetation.

47.1.2 Objective – Protection and enhancement of the ecological values of Mill Creek.

Policies

- 47.1.2.1 Ensure that wastewater and water supply services and stormwater treatment are provided and managed so as not to adversely impact on water quality within or downstream of the site.
- 47.1.2.2 Prevent stock from accessing Mill Creek and ensure riparian planting along the banks of Mill Creek.

47.2 Other Provisions and Rules

47.2.1 District Wide

Attention is drawn to the following District Wide chapters. All provisions referred to are within Stage 1 of the Proposed District Plan, unless marked as Operative District Plan (ODP).

1 Introduction	2 Definitions	3 Strategic Direction
4 Urban Development	5 Tangata Whenua	6 Landscapes
24 Signs (18 ODP)	25 Earthworks (22 ODP)	26 Historic Heritage
27 Subdivision	28 Natural Hazards	29 Transport (14 ODP)

- Policy 47.1.1.4 contributes to providing sufficient certainty as to the outcomes promoted.
- Policy 47.1.1.5 should identify the important natural features. The reference should not be to the site, but zone. **JB comment:** Agree. I have modified the Policy so that it sets out what the important natural features are.
- Policy 47.1.1.6 It is unclear how this is provided for through the structure plan. **JB comment:** Rule 47.4.10 implements the policy.
- Policy 41.1.1.7: The important heritage features could be identified on the structure plan, and the reference should be to the zone, not a site. **JB comment:** the important heritage features are identified on the planning maps, for the Heritage chapter (Chapter 26). Agree that “Zone” should replace “site” in the policy.
- Policy 47.1.1.8 does not provide sufficient direction so as how to ensure activities maintain and enhance amenity values. **JB comment:** Disagree. The policy does provide sufficient direction for managing effects on amenity values, and, along with the rules, have regard to the maintenance and enhancement of amenity values.
- Policy 47.1.2.1 may need to be redrafted so they relate more to the respective land uses and not the water quality itself, which is a regional council function. **JB comment:** Disagree. The plan needs to give effect to the RPS.
- Policy 47.1.2.2 needs to be considered as to how it will be implemented. A rule in the Stage 1 notified PDP (Rule 21.5.7) excluded dairy grazing stock from waterbodies and including riparian margins and was deleted by the Hearings Panel in the decisions version due to duplication with regional council functions. **JB comment:** Disagree. This is a specific policy directed at the specific circumstances of the Zone, to achieve an outcome that is consistent with the RPS and the higher order District Plan provisions.
- The policy framework does not address landscape values, urban expansion or avoidance of effects in any meaningful way. **JB comment:** Disagree. The Zone is consistent with, and does not need to replicate what is already provided for in, Chapters 3, 4 and 6.

30 Utilities and Renewable Energy	31 Hazardous Substances (16 ODP)	32 Protected Trees
33 Indigenous Vegetation	34 Wilding Exotic Trees	35 Temporary Activities and Relocated Buildings
36 Noise	37 Designations	Planning Maps

47.2.2 Clarification

- 47.2.2.1 A permitted activity must comply with all the rules listed in the activity and standards tables, and any relevant district wide rules.
- 47.2.2.2 Where an activity does not comply with a Standard listed in the Standards table, the activity status identified by the Non-Compliance Status column shall apply. Where an activity breaches more than one Standard, the most restrictive status shall apply to the Activity.
- 47.2.2.3 The following abbreviations are used within this Chapter.

P	Permitted	C	Controlled
RD	Restricted Discretionary	D	Discretionary
NC	Non Complying	PR	Prohibited

47.3 Rules - Activities

	Activities located in the Ayrburn Zone	Activity status
47.3.1	Activities which are not listed in this table	NC
47.3.2	In the Residences Area (R) of the Structure Plan: Residential, Retirement Village, Community Activities	C
47.3.3	In the Village Area (V) of the Structure Plan: Visitor Accommodation (including ancillary facilities: licensed premises, conference, cultural and resort facilities, and office and administration)	C

- A gap analysis against the objectives and policies of Chapter 24 would be useful. A gap analysis would identify where particular topics/adverse effects arising from development are addressed in Chapter 24, but not addressed by the proposed chapter. For example, there are no policies related to earthworks. **JB comment: Disagree. Chapter 24 relates to the WBRAZ and would not be relevant to the Ayrburn Zone, in the same way as other zones in the Wakatipu Basin are not covered by Chapter 24. Earthworks are addressed in a separate chapter.**
- Rule 47.3.1 is consistent with the approach to unspecified activities in the Rural Zones of the PDP.
- All rules with controlled activity – given the certainty offered by the structure plan, many activities could be permitted subject to standards, or if a greater degree of oversight is required then the activity status ought to be restricted discretionary so as to ensure the landscape outcomes supported by the submitter’s evidence will be fulfilled. Although different zones in nature, by way of example, Stage 1 of the PDP moved away from controlled activity status in the Business Mixed Use and Local Shopping Centre zones for buildings as if an application is fundamentally flawed, it is extremely difficult for a condition to result in a better outcome. Subdivision is supported as a controlled activity as long as there is a structure plan with a sufficient level of detail to provide certainty. **JB comment: The controlled activity status is appropriate for the buildings proposed in this Zone, as is the case in the Millbrook and Waterfall Park Zones.**
- Rule 47.3.3 No evaluation has been provided as to the area of the Village Activity Area, and whether the nature and scale of these activities accord with the policy framework. Consideration should be given to whether the ‘cultural, conference and resort’ might be limited as to scale and intensity. **JB comment: Disagree. The V area is within the most central part of the Zone and contains heritage buildings which can be appropriately adapted for re-use, and complemented by new buildings. There are no effects beyond the Zone.**

	Activities located in the Ayrburn Zone	Activity status
47.3.4	Residential, Retirement Village, Community Activities, Visitor Accommodation (including ancillary facilities: licensed premises, conference, cultural and resort facilities, and office and administration) not otherwise identified	NC
47.3.5	In all Structure Plan Activity Areas: Recreation Facilities (noting that in areas shown as O/BR on the Structure Plan recreation facilities shall not include buildings or structures) Administration activities for administering and servicing of other facilities within the zone, including storage, maintenance and depot facilities	C

- Rule 47.3.4 provides certainty as to the location, scale and intensity of activities. However NC activities are not supported by a sufficiently directive or clear policy framework that ensures the scale and intensity of non-complying activities do not undermine other zones/centres or the Wakatipu Basin overall. The framework should provide management and oversight of non-complying activities in the event applications are made for such activities. **JB comment:** Disagree. This rule framework is modelled on the Waterfall Park and Millbrook Zones.
- Rule 47.3.5; Administration activities for storage, maintenance and depot facilities. The appropriateness of permitted storage, maintenance and depot, and other activities that are of a scale that require their own administration, is questioned. **JB comment:** Disagree. The rule does not enable buildings, just activities. If considered appropriate for clarity, the bracketed clause in the first part of Rule 47.3.5 could be added into the second part of Rule 47.3.5.
- Rule 47.3.6; it appears as though relatively minor 'administration' activities would be subject to a wide range of matters of control. i.e. would every activity be required to provide internal walkways, cycle and pedestrian linkages, and if not, at what scale or stage of the development are the controlled activities subject to the full matters of control. It is noted that there is no consideration of the scale of activities as part of the matters of control. This results in significant uncertainty as to what may occur. **JB comment:** Disagree. The administration activities are subject to the same list of Controlled activity matters as other activities – a standard rules approach.
- The matters of control should be sitting with their respective rules, not as a separate 'rule' 47.3.6. **JB comment:** Disagree. The rule avoids unnecessary repetition and is consistent with the equivalent rule in the Waterfall Park Zone.
- Some of the matters of control may not be able to adequately address, and if necessary require substantial changes to the application or if necessary, declining the application. i.e. natural hazards. **JB comment:** Disagree. The process of formulating the Structure Plan has addressed any significant hazard issues. The rule is intended to pick up minor matters such as a condition for detailed design of foundations of a particular building.
- In relation to many of the matters of control, they are not able to be re-designed through the imposition of conditions. **JB comment:** Disagree. Given the Structure Plan, there should be no need for any significant re-design through conditions.

47.3.6	<p>For the Controlled Activities in Rules 47.3.2, 47.3.3 and 47.3.5, control is reserved to all of the following:</p> <ul style="list-style-type: none"> • Location and external appearance of buildings • Setback from roads • Setback from internal boundaries • Vehicle access and street layout • Outdoor living space • Street scene including landscaping • Enhancement of ecological and natural values • Provision for internal walkways, cycle ways and pedestrian linkages • Noise • Vegetation within any O/BR area shown on the Structure Plan, including species location, and whether vegetation should be limited to pasture grass to ensure appropriate visual amenity outcomes. • Vegetation within the 15m wide O/BR area along the western boundary of the zone to create a vegetative buffer which partially screens built development as viewed from the Queenstown Trail while maintaining appropriate views from the Queenstown Trail. • Where a site is subject to any natural hazard and the proposal results in an increase in gross floor area: an assessment by a suitably qualified person is provided that addresses the nature and degree of risk the hazard(s) pose to people and property, whether the proposal will alter the risk to any site, and the extent to which such risk can be avoided or sufficiently mitigated. 	C
47.3.7	Licensed Premises not otherwise identified	N/C
47.3.8	Manufacturing and/or product assembling activities Industrial Activities	PR NC
47.3.9	Fish or meat processing	PR

47.3.10	Fibreglassing, sheet metal work, bottle or scrap storage, motorbody building or wrecking, fish or meat processing (excluding that which is ancillary to a retail premises such as a butcher, <u>or</u> fishmonger or supermarket), or any activity requiring an Offensive Trade Licence under the Health Act 1956.	PR
47.3.11	Factory Farming	PR
47.3.12	Any activity requiring an Offensive Trade Licence under the Health Act 1956	PR

47.4 Rules - Standards

	Standards for activities located in the Ayrburn Resort Zone	Non-compliance Status
47.4.1	<p>Setbacks</p> <p>No building or structure shall be located within the areas marked O/BR on the Structure Plan, and no building shall be located closer than 7m from Mill Creek, provided this standard does not apply to bridges crossing Mill Creek.</p>	D
47.4.2	<p>Residential Capacity</p> <p>The maximum number of residential units within the Zone shall be limited to 200.</p>	<u>D NC</u>
47.4.3	<p>Building Height</p> <p>The maximum height of buildings shall be:</p> <ul style="list-style-type: none"> • Visitor Accommodation, (including facilities integrated with and ancillary to Visitor Accommodation) – 8 m • Residential buildings - 8m • All other buildings and structures - 4m 	NC

- Rule 47.3.8 introduces new terms that should be defined in Chapter 2, or amend these to industrial activities. **JB comment:** The rule is based on the Waterfall Park rule but agree that defined terms are better. I have amended the rule accordingly.
- Rule 47.3.10 should have the reference to supermarkets removed, this could be misconstrued that a supermarket is permitted in the Village Activity Area. **JB comment:** Agree. The amendment is made.
- Rule 47.4.2 as a Discretionary Activity creates significant uncertainty as to the effects of the zone. **JB comment:** Agree. The status should be Non-complying.

47.4.4	<p>Glare shall comply with all of the following:</p> <ul style="list-style-type: none"> • All fixed lighting shall be directed away from adjacent roads and properties, and so as to limit effects on the night sky. • Any building or fence constructed or clad in metal, or material with reflective surfaces shall be painted or otherwise coated with a non-reflective finish. • No activity shall result in a greater than 3.0 lux spill, horizontal and vertical, of light onto any property located outside of the Zone, measured at any point inside the boundary of the adjoining property. 	NC
47.4.5	<p>Maximum Total Site Coverage</p> <p>The maximum site coverage shall not exceed 5% of the total area of the Zone. For the purposes of this Rule, site coverage excludes bridges and roads and parking areas.</p>	NC
47.4.6	<p>Fire Fighting</p> <p>A fire fighting reserve of water shall be maintained of a capacity sufficient to service the Zone. The storage shall meet the New Zealand Fire Service Firefighting Water Supplies Code of Practice 2008.</p>	NC

	Standards for activities located in the Ayrburn Resort Zone	Non-compliance Status
47.4.7	<p>Atmospheric Emissions</p> <p>There shall be no indoor solid fuel fires, except for feature open fireplaces in communal buildings including bars and restaurants.</p> <p>Note – Council bylaws and Regional Plan rules may also apply to indoor and outdoor fires.</p>	NC

- Rule 47.4.5; I question whether the site coverage limit of 5% is meaningful in the context of the area of the zone. The exemption provides uncertainty as to whether it is buildings or includes built/hard landscaping elements except those excluded. The site coverage alone is considered insufficient to manage the scale and intensity of the 3.27ha of retail activities in the Village Activity Area. **JB comment:** Disagree. A similar rule features in the Millbrook, Jacks Point, and Waterfall Park Zones. The rule does not introduce uncertainty – the purpose of the rule is to ensure that 95% open space is provided for; it is not to manage retail. The V area is for visitor accommodation and related ancillary activities, including ancillary retail.
- Rule 47.4.6 applies to the zone, each activity thereafter will need to ensure compliance with firefighting as it applies to the zone. Clarification may be required if it is intended that the initial development will provide firefighting for all activities. Reliance on the New Zealand Fire Service Firefighting Water Supplies Code of Practice 2008 to achieve permitted activity is discouraged because the document does not provide enough certainty. Compliance is better achieved through the matters of discretion or control for each activity. **JB comment:** The same or similar rule features in other Zones, as explained in Mr Goldsmith's submissions.
- Rule 47.4.7 is a Regional Council function. **JB comment:** The same or similar rule features in other Zones, as explained in Mr Goldsmith's submissions.

<p>47.4.8</p>	<p>Retail sales</p> <p>No goods shall be displayed, sold or offered for sale from a site except:</p> <ul style="list-style-type: none"> • goods grown, reared or produced on the site; • goods retailed within and ancillary to a retirement village for the benefit of residents; • within those areas of the Structure Plan identified as Village. 	<p>NC</p>
<p>47.4.9</p>	<p>Protection of Mill Creek</p> <p>No building shall be constructed within any area marked R or V on the Structure Plan until the following works have been completed:</p> <ol style="list-style-type: none"> a) The margins and banks along both sides of the full length of Mill Creek shall be planted in appropriate riparian species. The planting shall have a minimum width of 2m and an average width of 3m, including the upper and lower bank zones; b) Stock shall be prevented from accessing Mill Creek; c) A grass strip of minimum width 1m shall be provided between the riparian planting and any stock fencing; d) All planting carried out in fulfilment of this Rule shall be subject to a consent condition requiring that the planting is maintained in perpetuity. If any plant dies or becomes diseased it shall be replaced as soon as practicable. Maintenance shall include weed and pest control. 	<p>NC</p>
<p>47.4.10</p>	<p>Public access</p> <p>No building shall be constructed within any area marked V on the Structure Plan until the following works have been completed:</p> <ol style="list-style-type: none"> (a) A public walkway and cycleway trail shall be provided adjacent to and along the full length of Mill Creek, except where impractical due to any bridge; <p>No building shall be constructed within the large area west of Mill Creek marked R on the Structure Plan until the following works have been completed:</p> <ol style="list-style-type: none"> (b) A public walkway and cycleway trail shall connect the trail in (a) above with the Queenstown Trail which runs adjacent to the western boundary of the Zone. 	<p>NC</p>

- Rule 47.4.8 does not provide sufficient certainty, for instance the second limb is contingent upon the benefit of residents. **JB comment:** Disagree – see below.
- Rule 47.4.8 permits retail activity with no limits and there is not any evidence that the unlimited retail activity in the Village Activity Area is appropriate in terms of the nature and scale of retail activities. There is no indication of the size of the V area/areas these provide for unrestricted retail...if the intent is for activities that serve local needs then it needs to state this. The structure plan is scaled at 1:4000 and the total area of the V/VR activity areas are estimated to be 3.27ha, which is significantly larger than many local shopping centre zones in the District, located within the UGBs. Including a generous setback for Mill Creek, probably greater than the 7m setback. Refer to annotated structure plan. **JB comment:** Disagree. Interpretation is incorrect (as explained by Mr Goldsmith in submissions). The amendment to the rule is to clarify the retail limitation in a retirement village (in combination with the definition of “retirement village”).
- Rule 47.4.9 is more stringent than notified PDP Rule 21.5.7 that was rejected by the Stage 1 IHP for being a duplication of functions with the regional council. If the activities are permitted, controlled or restricted discretionary, it is not clear how a condition of consent will be able to be imposed in relation to Rule 47.4.9(d). These are provisions that might be better suited to a consent notice on subdivision. **JB comment:** Disagree. The rule provides for a specific environmental outcome that is particular to the circumstances of the resources within the Zone. Any building will be non-complying if the rule is not complied with and otherwise will be controlled so a condition can be imposed.
- Rule 47.4.10; what activity shall trigger the need for this, any and all subdivision or just the first, all land use activities? **JB comment:** Agree. The triggers are now included in the rule, and the matters of control in Rule 27.4.4 (subdivision) is amended accordingly.

47.4.11	<p>Vegetation</p> <p>(a) No vegetation which grows to greater than 2m in height at maturity shall be planted within 25m of the southern boundary of the Zone;</p> <p>(b) No vegetation other than pasture grass shall be planted within 25m of the eastern boundary of the Zone, provided that this standard does not apply to avenue trees along a vehicle access.</p> <p>(c) No vegetation other than pasture grass shall be planted within 130m of the northern boundary of the Zone.</p> <p>(d) Trees located within the Tree Protection Areas shown on the Structure Plan cannot be removed or trimmed, provided this standard does not apply to branches which extend outside the Tree Protection Areas.</p>	D
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47.5 Rules - Non-Notification of Applications

47.5.1 All applications for Controlled activities shall not require the written consent of other persons and shall not be notified or limited-notified.

47.6 Ayrburn Zone Structure Plan

4.3 Consequential amendment to Chapter 27 – Subdivision

- (a) Modify Chapter 27 to provide for subdivision as a Controlled Activity in the Ayrburn Zone:

27.4.4 The following shall be controlled activities:

- (a) Subdivision in Ayrburn Zone. Control is limited to the following:

- No minimum lot size is not supported. This creates significant uncertainty as to the potential effects of the entire zone, particularly with Residential Capacity as a discretionary activity at Rule 47.4.2. **JB comment:** Agree – the status of any breach of Rule 47.4.2 is now NC, not D.

- (i) Lot size and dimensions, including the variety of lot sizes and whether the lot is of sufficient size and dimensions to effectively fulfil the intended purpose of the land use;
- (ii) Property access and roading;
- (iii) Natural hazards;
- (iv) Fire fighting water supply;
- (v) Water supply;
- (vi) Stormwater disposal;
- (vii) Sewage treatment and disposal;
- (viii) Energy supply and telecommunications;
- (ix) Easements;
- (x) The provision of open space areas, walkway and cycleway linkages, and their connectivity within the Zone and to the boundaries of the Zone, **including public access as required by Rule 47.4.10;**
- (xi) Vegetation within any O/BR area shown on the Structure Plan, including species, location and whether vegetation should be limited to pasture grass to ensure appreciate visual amenity outcomes.
- (xii) Vegetation within the 15m wide O/BR area along the western boundary of the Zone to create a vegetative buffer which partially screens built development as viewed from the Queenstown Trail while maintaining appropriate views from the Queenstown Trail.

(b) Modify Table 27.5.1 as follows:

27.5.1 No lots to be created by subdivision, including balance lots, shall have a net site area or where specified, average, less than the minimum specified.

Zone	Minimum Lot Area
...	...
Millbrook	No minimum
Waterfall Park	No minimum
<u>Ayrburn</u>	<u>No minimum</u>

27.7 Zone – Location Specific Rules

Add a new section in the Table as follows:

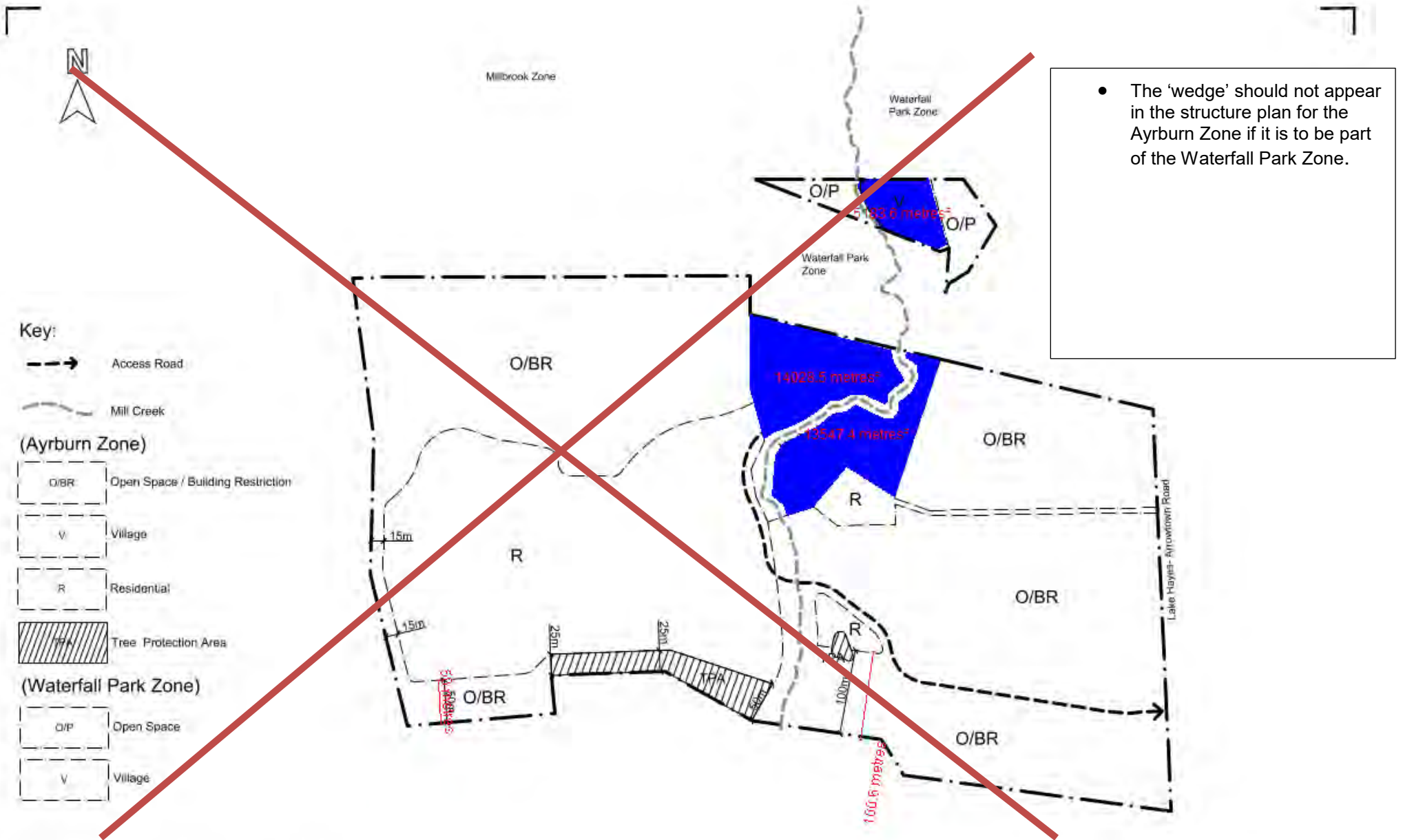
	Zone and Location Specific Rules	Activity Status
...
27.7.10	<p><u>Ayrburn Zone</u></p> <p><u>27.7.10.1</u> Any subdivision that is inconsistent with the Ayrburn Zone Structure Plan contained in Section 27.13</p>	<u>NC</u>

	<p><u>27.7.10.2</u> Subdivision failing to comply with any of the following:</p> <p>(a) <u>Any subdivision of land containing any part of an O/BR area shown on the Structure Plan that does not require, by condition of consent, the following requirements to be registered in a consent notice on the relevant titles (to the extent that the following requirements apply to that land):</u></p> <p>(b) <u>No vegetation which grows to greater than 2m in height at maturity shall be planted within 25m of the southern boundary of the Zone;</u></p> <p>(c) <u>No vegetation other than pasture grass shall be planted within 25m of the eastern boundary of the Zone, provided that this standard does not apply to avenue trees along a vehicle access;</u></p> <p>(d) <u>No vegetation other than pasture grass shall be planted within 130m of the northern boundary of the Zone;</u></p> <p>(e) <u>Trees located within the Tree Protection Areas shown on the Structure Plan cannot be removed or trimmed, provided this standard does not apply to branches which extend outside the Tree Protection Areas;</u></p> <p>(f) <u>All planting carried out as required by Rule 47.4.9 (in relation to planting to protect the values of Mill Creek) shall be maintained in perpetuity. If any plant dies or becomes diseased it shall be replaced as soon as practicable. Maintenance shall include weed and pest control.</u></p>	<u>NC</u>
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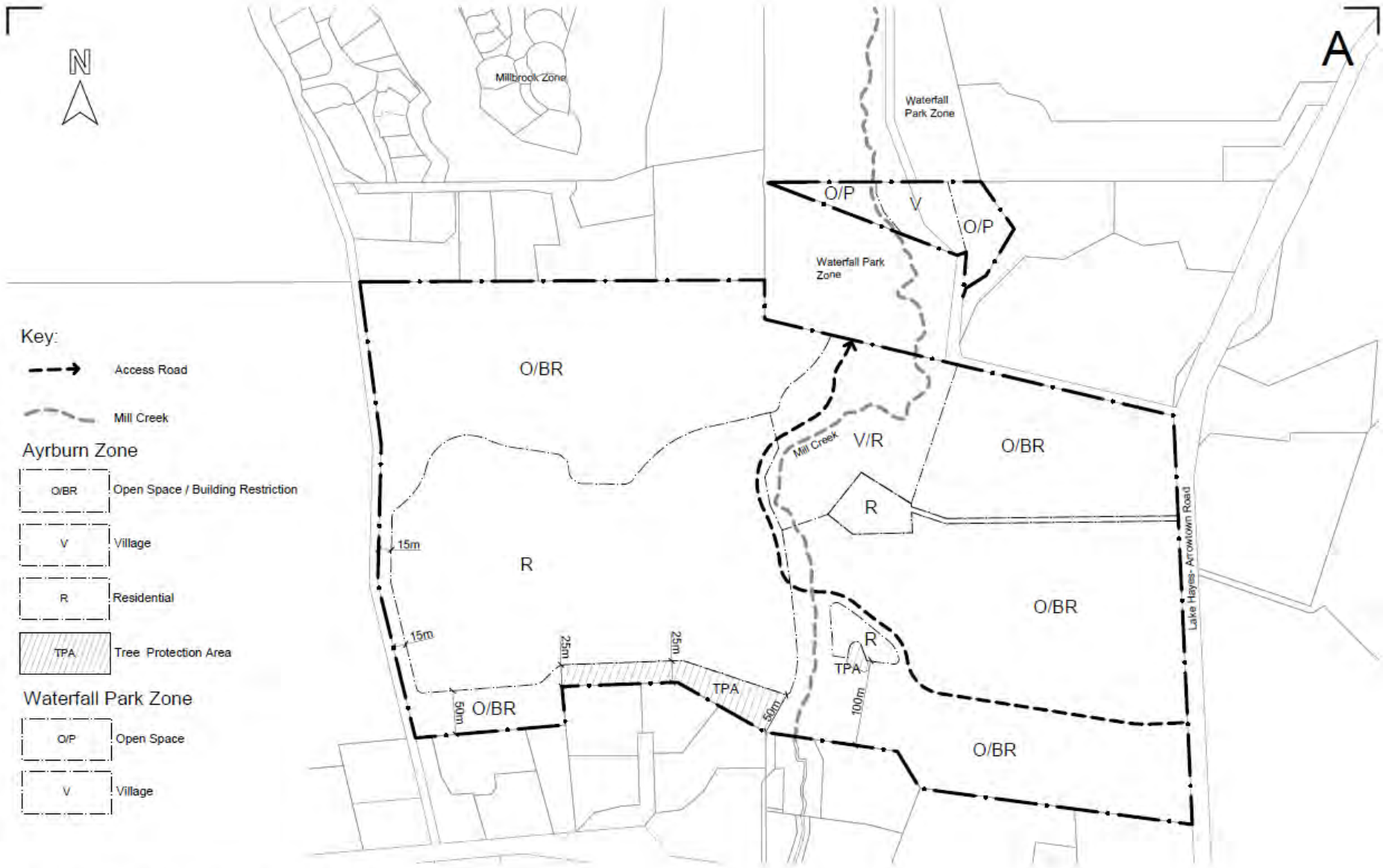
27.13 Structure Plans

Add a new section as follows:

27.13.7 Structure Plan: Avrburn Zone



AYRBURN ZONE STRUCTURE PLAN
Scale 1:4000 @ A3



AYRBURN ZONE STRUCTURE PLAN - 27/06/18
 Scale 1:4000 @ A3

ATTACHMENTS

Attachment A – Ayrburn Zone Structure Plan

Attachment B – Ayrburn Zone Structure Plan overlaid over Ayrburn Farm aerial photograph

Attachment C – RM171280 approved Road Access to the WPZ

Attachment D – WPZ Structure Plan (ODP and PDP)

Attachment E – Current informal WPZ road access

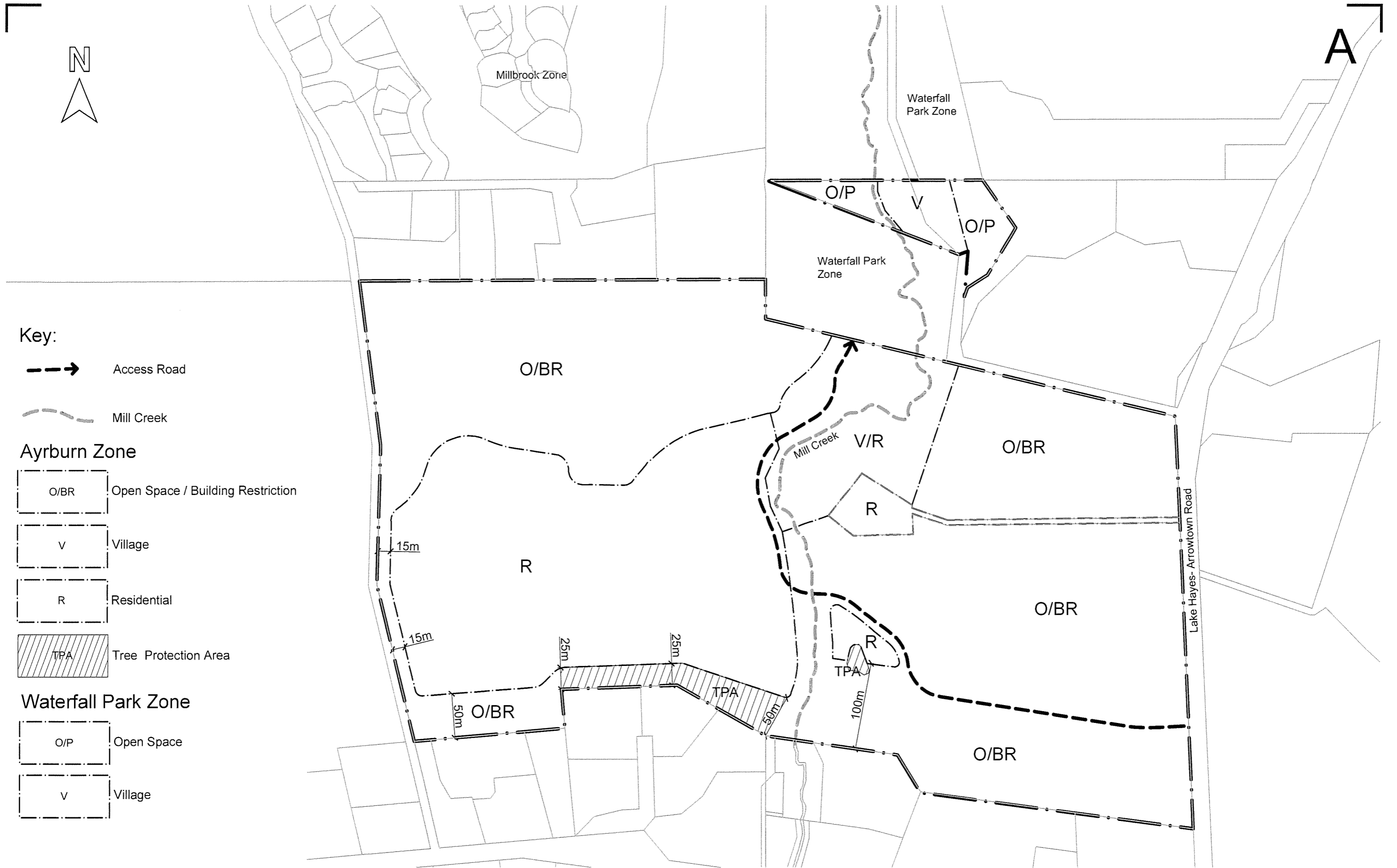
Attachment F – Proposed Waterfall Park Hotel – Photosimulation

Attachment G – Proposed Waterfall Park Hotel - Masterplan

Attachment H – Wastewater and Water Services Networks

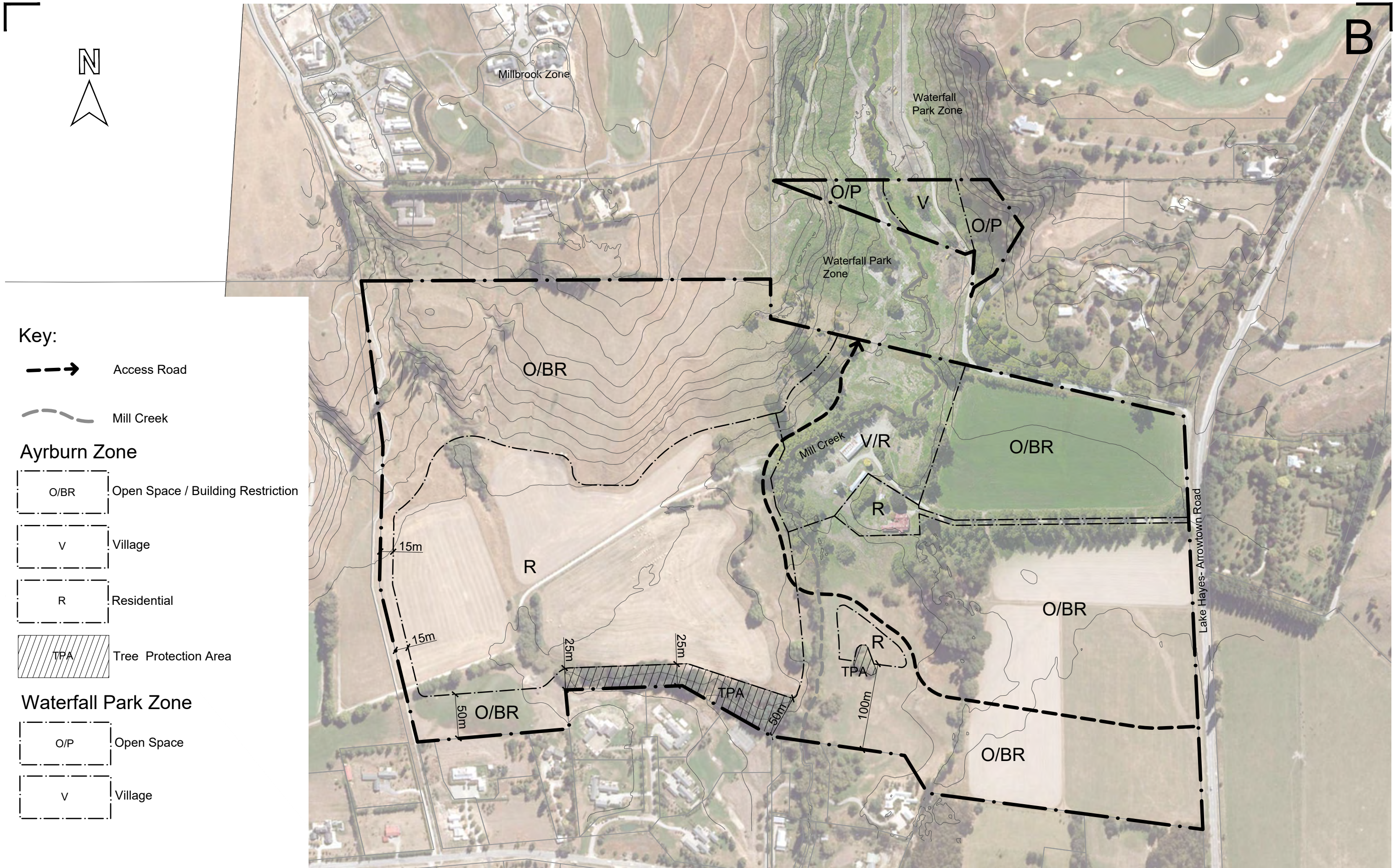
Attachment I – Queenstown Trail Plan

Attachment J – Aerial Photograph with Overlays



AYRBURN ZONE STRUCTURE PLAN - 27/06/18

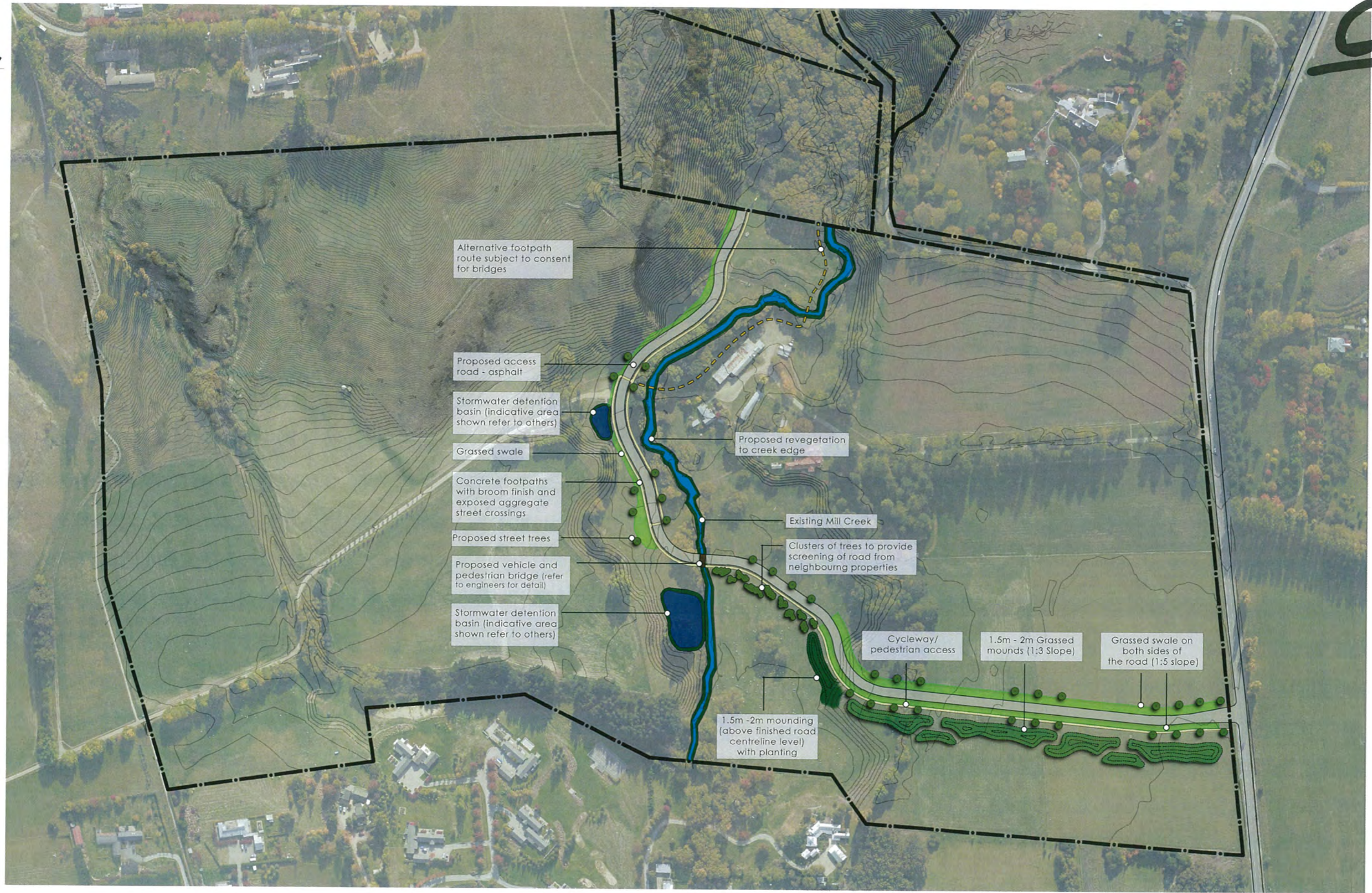
Scale 1:4000 @ A3



AYRBURN ZONE STRUCTURE PLAN - 27/06/2018 OVERLAID OVER AERIAL PHOTOGRAPH
 Scale 1:4000 @ A3



15



D
101

42.6

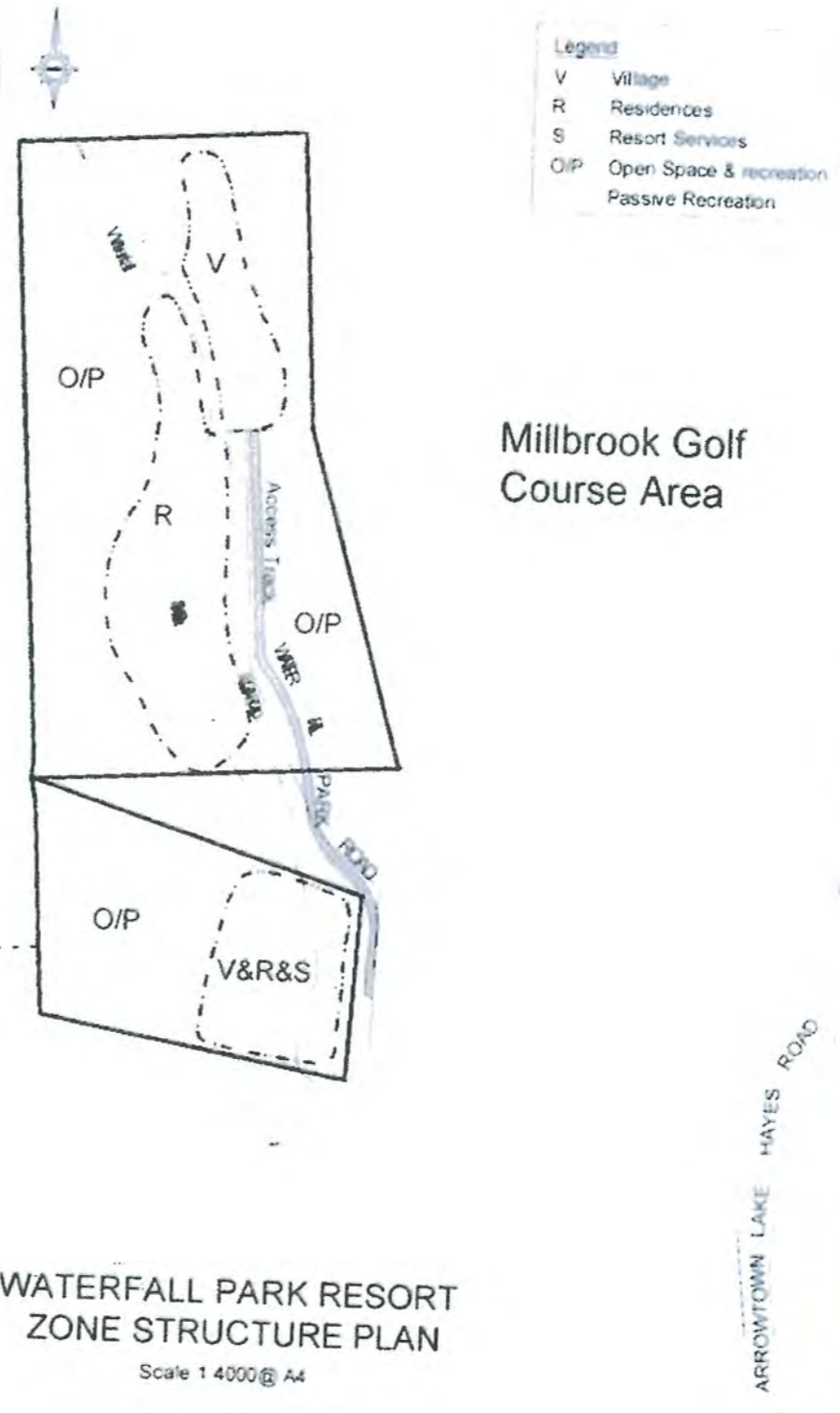
Rules - Non-Notification of Applications

42.6.1 All applications for Controlled activities and Restricted Discretionary shall not require the written consent of other persons and shall not be notified or limited-notified.

42.7

Structure Plan

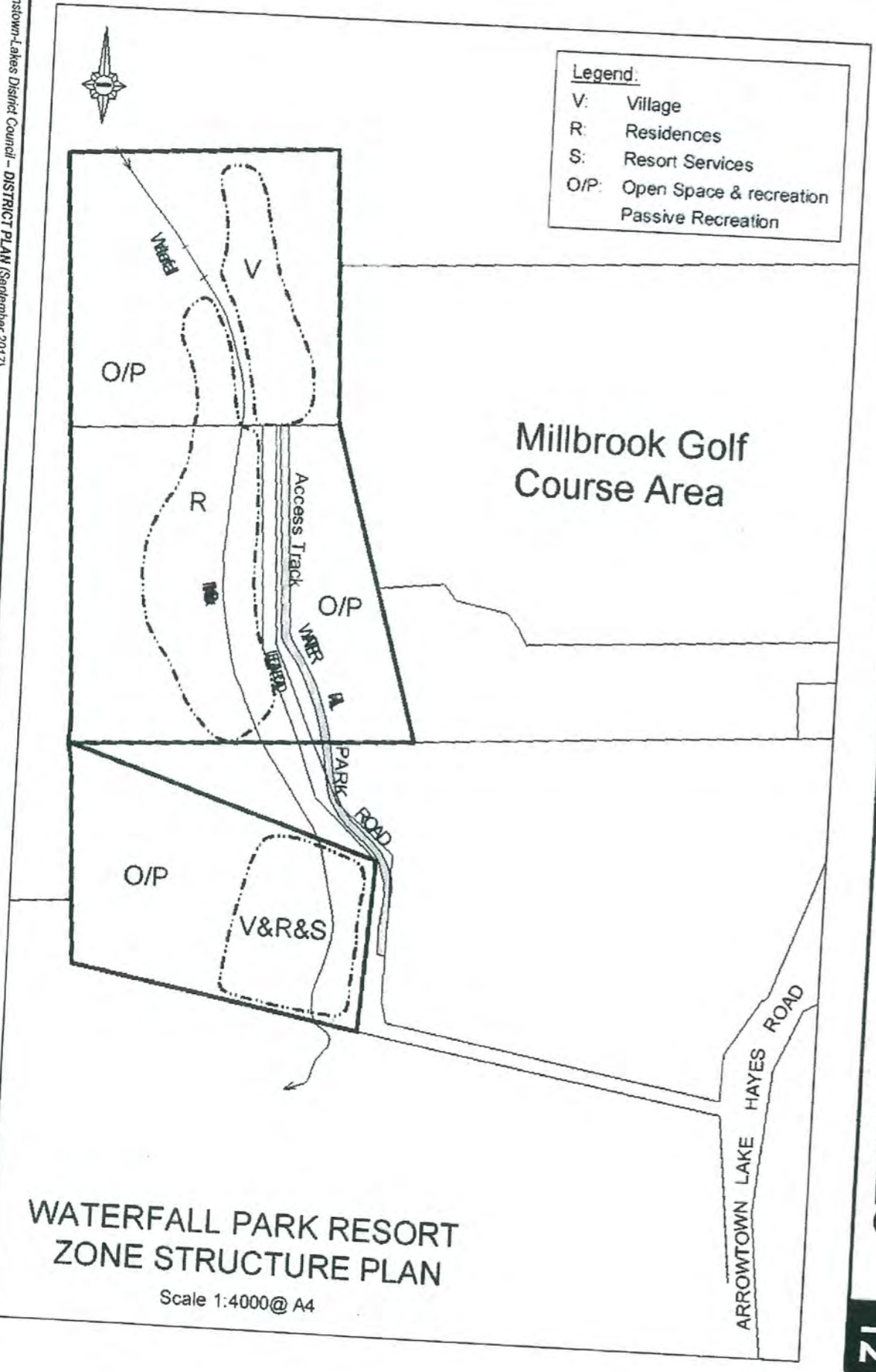
- Legend
- V Village
 - R Residences
 - S Resort Services
 - O/P Open Space & recreation
Passive Recreation



RESORT ZONES - RULES

12

- Legend:
- V: Village
 - R: Residences
 - S: Resort Services
 - O/P: Open Space & recreation
Passive Recreation



E



KEY

- existing parcel boundary (subject site)
- existing adjacent parcel boundary
- edge of seal
- subject site

NOTES:

1. This plan and its contents should not be used for any reason other than its intended purpose.
2. This plan includes information from site surveys undertaken by Paterson Pitts Group (April 2018)
3. Coordinates and bearings are in terms of Geodetic Datum 2000, Mount Nicholas Circuit grid projection
4. Refer to the relevant CFRs and title plans for registered easements, covenants and interests

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Client/Location:
Waterfall Park Developments Ltd
 Sec 69 Blk VII Shotover SD, Lots 1 & 2
 DP 23038, Lot 1 DP 27503, Lots 1 & 2
 DP 507367, Pt Lot 3 DP 5737 and Lot 1 DP 18109

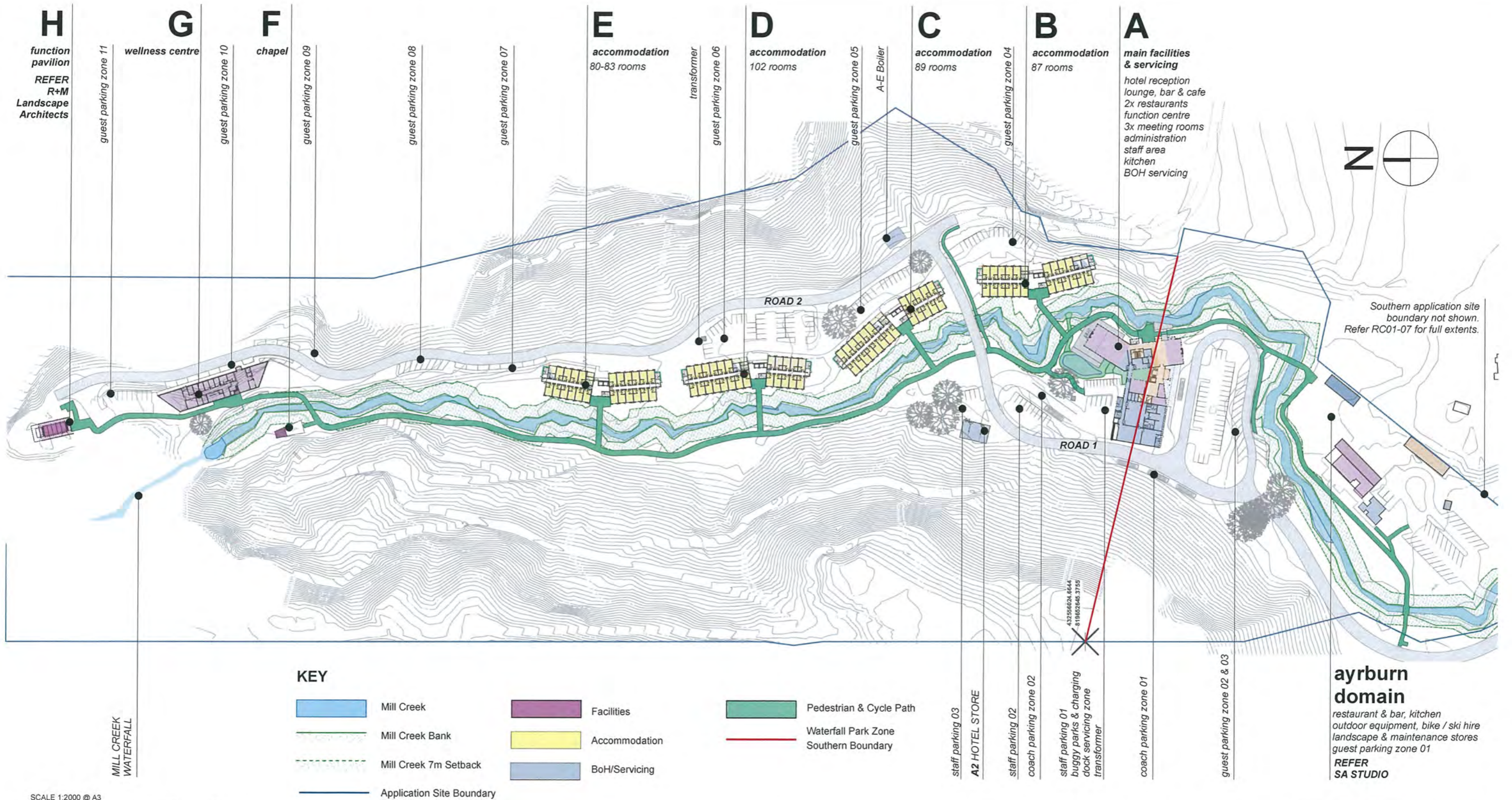
Purpose/Drawing Title:
**Waterfall Park Hotel
 Waterfall Park
 Road Encroachments**

Surveyed by:	PPG	Original Size:	Scale:
Designed by:		A3	as shown
Drawn by:	SJP		
Checked by:	SJW	DO NOT SCALE	
Approved by:		Job Ref:	Sheet No:
		Q6388 - 16 - 4	1
		Revision No:	Date Created:
		A	19/04/2018

F



Waterfall Park Hotel Masterplan



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Revisions:
26.04.2016 A For Information

BROWN COMPANY S A STUDIO rough & main landscape architects

PATERSONPITTS GROUP **CARRIAGEWAY** **ENGCO** **GeoSolve** **Origin**

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WATERFALL PARK

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WATERFALL PARK HOTEL
Waterfall Park Developments Ltd

at Waterfall Park, Arrowtown

FOR INFORMATION	
Waterfall Park Hotel Masterplan	Scale: 1:2000 Orig. Size: A3
Drawing No. SK-600	Job No.: 2294
	Revision: A

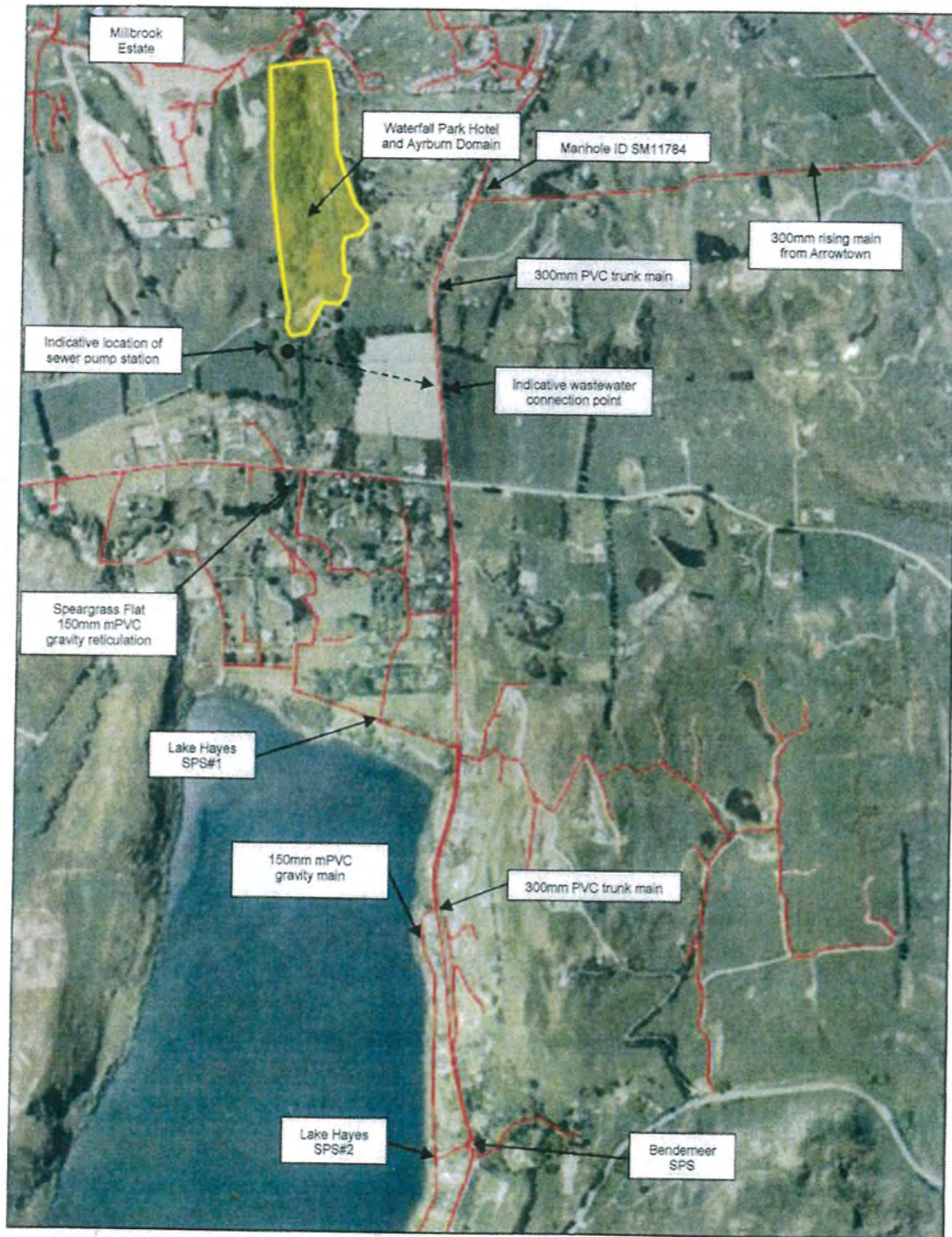


Figure 3.1: Schematic overview of existing sewer services in the vicinity of the Waterfall Park Development with the potential location of new sewer pump station indicated. The location of the pump station is subject to confirmation during detailed design.

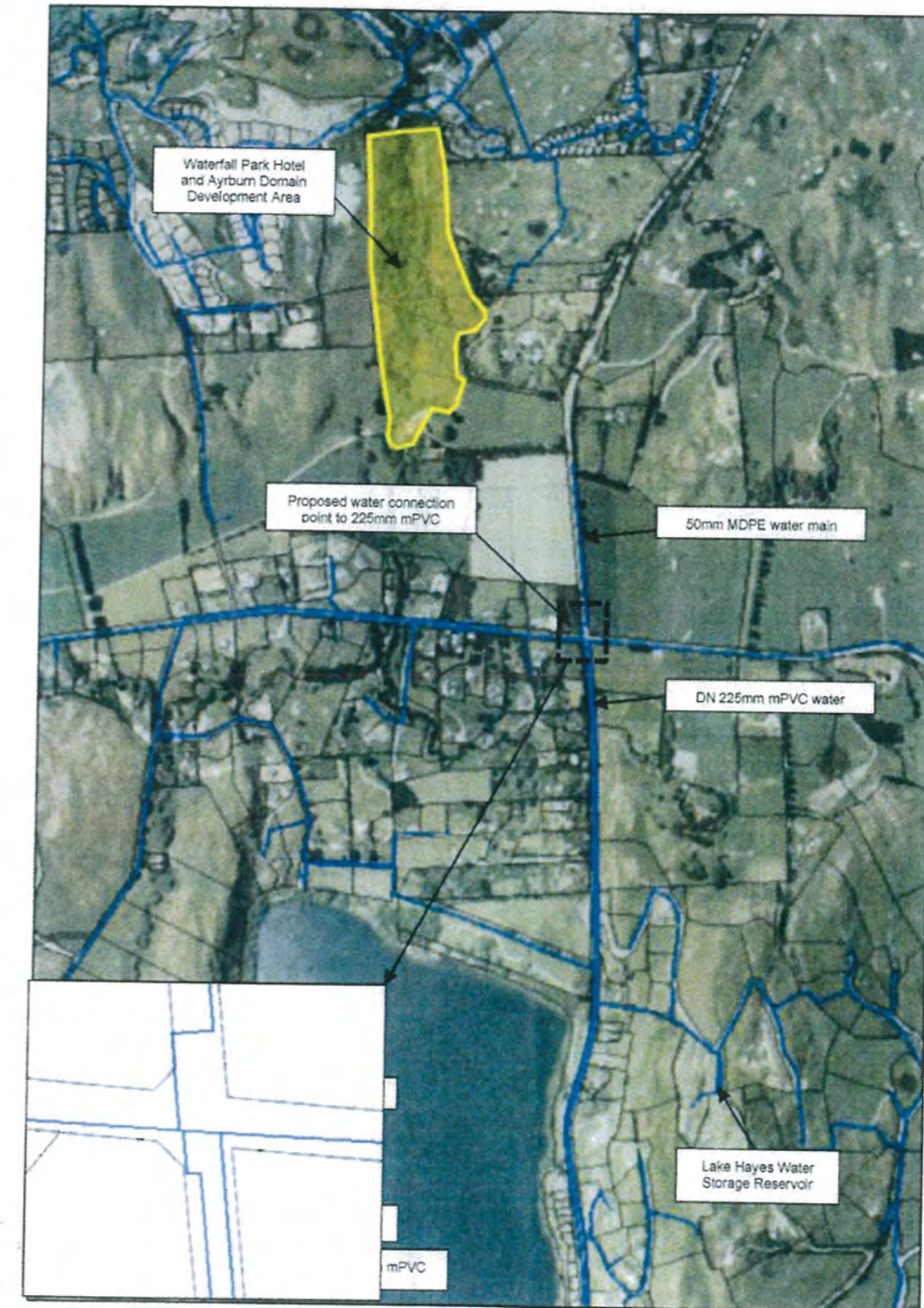
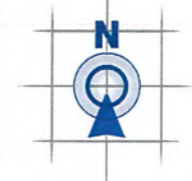
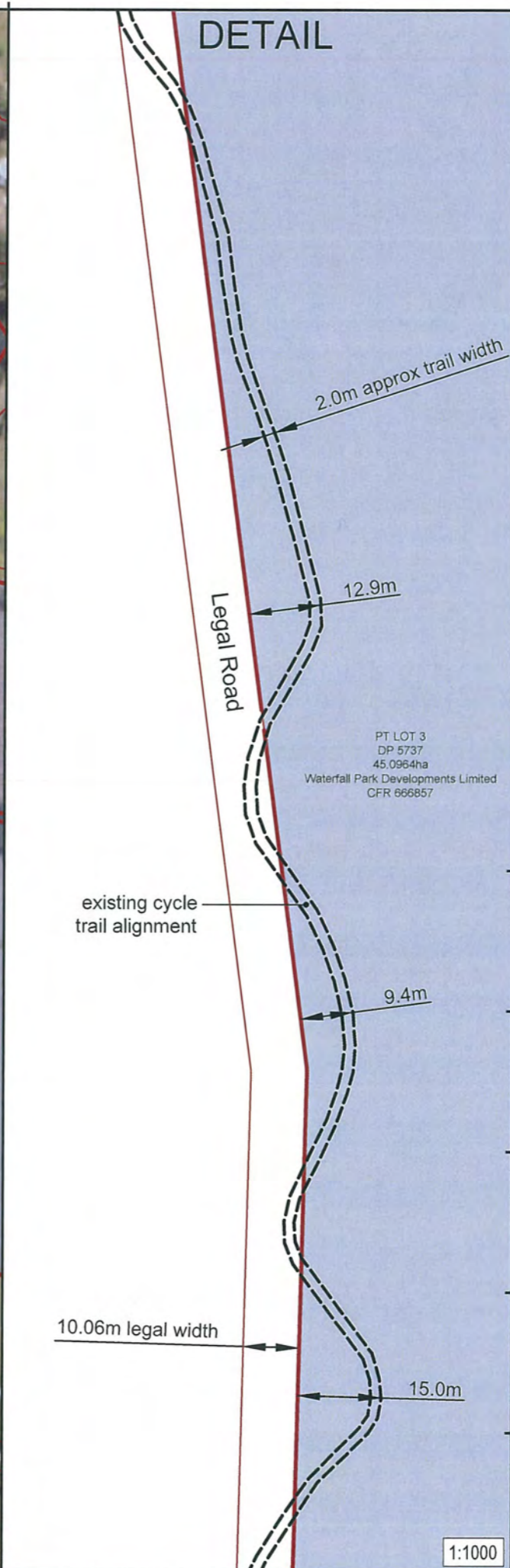


Figure 4.1: Schematic overview of existing water services in the vicinity of the Waterfall Park Development with the potential location of the proposed connection from Water Park Hotel

4.3.1 Capacity of existing Infrastructure

The capacity of the existing infrastructure to service the Waterfall Park Hotel was modelled by QLDC's modelling consultants, Mott MacDonald, during March and April 2018. Their report is provided in Appendix B. The results of the modelling found that the DN225mm

I



KEY

	existing parcel boundary (subject site)
	existing adjacent parcel boundary
	edge of trail
	subject site

- NOTES:**
1. This plan and its contents should not be used for any reason other than its intended purpose.
 2. This plan includes information from site surveys undertaken by Paterson Pitts Group (April 2018)
 3. Coordinates and bearings are in terms of Geodetic Datum 2000, Mount Nicholas Circuit grid projection
 4. Refer to the relevant CFRs and title plans for registered easements, covenants and interests

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Client/Location:
Waterfall Park Developments Ltd
 Sec 69 Blk VII Shotover SD, Lots 1 & 2
 DP 23038, Lot 1 DP 27503, Lots 1 & 2
 DP 507367, Pt Lot 3 DP 5737 and Lot 1 DP 18109

Purpose/Drawing Title:
**Ayrburn Farm
 Existing Cycle Trail Location**

Surveyed by:	PPG	Original Size:	Scale:
Designed by:		A3	as shown
Drawn by:	SJP		
Checked by:	LR		
Approved by:		DO NOT SCALE	
Job Ref:	Q6388 - 16 - 3	Sheet No:	1
		Revision No:	B
		Date Created:	06/07/2018



J



DELL PAVILION

WELLNESS CENTRE

CHAPEL

BUILDING E
(ACCOMMODATION)

BUILDING D
(ACCOMMODATION)

BUILDING C
(ACCOMMODATION)

BUILDING B
(ACCOMMODATION)

BUILDING A
(RECEPTION + RESTAURANT
+ CONFERENCE)

Legal Road

V&R&S

AYR BURN DOMAIN
(RESTAURANT + OUTDOOR
RETAIL/HIRE)

O/P

O/P

O/P

O/P

O/BR

O/BR

O/BR

O/P

V

R

O/P

V/R

R

R

100m

TPA

50m

TPA

25m

O/BR

R

O/BR

50m

15m

15m