Before the Queenstown Lakes District Council

In the matter of the Resource Management Act 1991

And

In the matter of the Queenstown Lakes District Proposed District Plan – Hearing

Stream 6 - Chapter 8, Medium Density Residential

And

In the matter of Scurr Heights Medium Density Residential Zone in Wanaka

Legal Submissions

Dated 11 October 2016

Universal Developments Limited (# 177)

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1. Introduction

- 1.1 These legal submissions are presented on behalf of Universal Developments Limited (Universal) in respect of the Medium Density Residential (MDR) zone of the Queenstown Lakes Proposed District Plan (PDP) located in Wanaka, adjoining Aubrey Road, known as Scurr Heights (Scurr Heights). Scurr Heights is the land coloured orange on the (part) Planning Map 20 attached marked "A".
- 1.2 Universal has recently purchased Scurr Heights from the Queenstown Lakes District Council. These submissions, and the related evidence of Timothy Williams, relate solely to Scurr Heights and do not address any provisions of the MDR zone which have wider effect beyond Scurr Heights.

Jurisdiction

- 2.1 When Universal lodged Submission 177 dated 20 October 2015 to the PDP, Universal owned a parcel of land located within the proposed greenfields MDR zone in Frankton, Queenstown, adjoining and on the northern side of State Highway 6. At that time Universal had not purchased Scurr Heights. However Universal's Submission 177 specifically supported the identified MDR zones in the PDP and, at paragraph 5(a), requested by way of relief that the Council "Confirm the existing Medium Density Residential zone provisions and zones identified on the planning maps..." (subject to specific detailed amendments relating to Frankton which are not relevant to these submissions).
- 2.2 Accordingly the wording of Universal's Submission 177, while not providing jurisdiction to seek any amendments to the Scurr Heights MDR zone provisions, does provide jurisdiction for Universal to oppose, or address, any amendments to the notified Scurr Heights MDR zone provisions requested by submitters or recommended in the s42A Report prepared for this hearing.
- 2.3 These submissions, and the related evidence, therefore only address recommended amendments to the notified Scurr Heights MDR zone provisions.

3. Summary

3.1 Universal purchased Scurr Heights from the Council, free of any site specific restrictions or obligations, only five months ago. Universal is very concerned that Council now seeks to impose, through the regulatory process, restrictions

- and obligations relating to the land Universal has purchased from Council for development.
- 3.2 The three s42A Report recommendations in relation to Scurr Heights will impose unreasonable and inappropriate restrictions on development of the land.
- Universal is willing to accept a 4.5m internal setback off the eastern boundary but not a 6m setback.
- 3.4 Universal opposes the recommended 5.5m maximum restriction on land adjoining the eastern boundary.
- Universal opposes the recommended 400m2 minimum site density/maximum lot size rule amendments on the grounds that:
 - (a) The amendments will potentially have bizarre consequences:
 - (b) It is questionable whether there is jurisdiction for those amendments;
 - (c) The amendments have no evidentiary support and have not been subject to an appropriate s32 assessment;
 - (d) In particular no account has been taken of stormwater considerations, which are a known and significant constraint on the development of Scurr Heights.
- 3.6 It is fundamentally inequitable for the Council to sell Scurr Heights free of site specific restrictions and obligations and then seek to impose such restrictions and obligations through the regulatory process.
- 3.7 By way of alternative relief, any amendments to the land use rules should not apply to any residential lot consented prior to the date the rules become operative.

4. Universal's Concerns

4.1 Universal purchased Scurr Heights from the Queenstown Lakes District Council in May this year, which is only five months ago. The Council sold the land free of any site specific restrictions or obligations, such as those now being recommended (in the s42A Report for this hearing) to apply just to Scurr Heights. The Council was free to sell Scurr Heights subject to any or all of those restrictions/obligations had Council desired to achieve those specific outcomes. Imposition of such restrictions/obligations may have affected the land value achieved by the Council through that sale. Universal is concerned

- that Council now seeks to impose site specific restrictions and obligations, through the regulatory process, which Council elected not to impose through the corporate sale process.
- More importantly, Council elected to sell Scurr Heights in June 2016 with the knowledge that the current operative Low Density Residential (LDR) provisions of the Operative District Plan (ODP) would govern any subdivision or development of Scurr Heights for a period of approximately 18 months until Council decisions on submissions to the PDP are issued in late 2017. Council could not expect a reasonable developer, paying top dollar for the land, to sit on its hands and do nothing for 18 months in the current 'hot' property market. The only subdivision currently permissible under the LDR regime (without noncomplying activity consent) is development of residential units at a density of minimum 1 per 450m2 (if built before subdivision) or subdivision of vacant residential lots at a minimum lot size of 700m2. Council must have anticipated that outcome for this land, at least in part. Universal is very concerned that Council now seeks to impose what would effectively be a retrospective minimum density/maximum lot size 400m2 development regime.
- 4.3 Prior to and since committing to the purchase of Scurr Heights, Universal has spent considerable time and effort investigating development options for Scurr Heights with a view to preparing and lodging a Stage 1 subdivision consent application in the near future. Lots within Stage 1 will be marketed within that near future timeframe. Universal anticipates that the required subdivision resource consent will be obtained, subdivision works will be carried out, and titles will be issued all within the next 12 months.
- The QLDC sale process plus the development program outlined above have two significant consequences which are relevant to this hearing. The first consequence is that the relevant subdivision consent application will be processed, and consent issued, under the current operative LDR provisions. Universal's subdivision design will relate to the topography and other practical development factors which will arise from the coordinated subdivision and development of Scurr Heights. Universal anticipates a combination of larger and smaller residential lots resulting from its detailed development planning process. The larger lots are likely to comply with the current ODP 700m2 minimum lot size, whereas the smaller lots below that size will require noncomplying activity consent.

- 4.5 Securing non-complying activity consent for lots below 700m2 will not be straightforward. The Scurr Heights MDR Zone is under challenge through submissions to the PDP, and the zoning outcome is therefore uncertain. However Universal is aware that the Council is seeking to achieve increased residential density in this area, as evidenced by the notified MDR Zoning. Universal is willing to take a degree of consent risk in order to try and achieve what appears to be the Council's desired outcome. However that is a risk to Universal's commercial aspirations which Universal needs to manage.
- 4.6 The second significant consequence of the development program outlined above is that the relevant subdivision consent will be obtained, and titles are likely to issue, before final PDP Council Decisions are issued in late 2017. That means that lots created under the current ODP regime will then be subject to any relevant new PDP land use rules. This general consequence has specific implications for three recommendations contained in the s42A Report prepared for this hearing, which will be addressed separately below. Those three recommendations are:
 - (a) Recommended 6m eastern boundary setback;
 - (b) Recommended 5.5m eastern boundary maximum height;
 - (c) Recommended 400m2 minimum site density/maximum lot size.

5. Recommended 6m Eastern Boundary Setback

- The Scurr Heights MDR zone adjoins a QLDC Recreation Reserve Designation No 270 (Walkway Reserve) which provides public walking access from Aubrey Road upwards and southwards along the eastern boundary of Scurr Heights (refer Plan A).
- The proposed Scurr Heights residential lots will be consented, marketed, sold and titled under the ODP LDR zone provisions which provide for internal setbacks of 4.5m or 2m, with the determination of any particular setback resulting from a combination of firstly whether the lot is a front site or a rear site and secondly landowner choice. As a consequence, the internal setback applicable to a dwelling located on a residential lot adjoining the Walkway Reserve will be either 4.5m or 2m (depending upon landowner choice).
- 5.3 The notified PDP MDR Rule 8.5.8.2 reduces that internal setback distance adjoining the Walkway Reserve to 1.5m.

- 5.4 The s42A Report recommends that 1.5m setback be increased to 6m. That recommendation is based on the evidence of Mr Garth Falconer.
- 5.5 Universal opposes that recommendation. Universal accepts that an increased setback along the boundary with the Walkway Reserve could be appropriate, but submits that the specified setback distance should be 4.5m rather than 6m. That submission is based on the following reasons.
- 5.6 There is an issue of reasonable public and private expectations. Scurr Heights is currently zoned LDR and has been sold by the Council, for development, with that zoning in place. There is a legitimate public and private expectation (whether that relates to the Council, Universal as purchaser, or any member of the public) that the land may be developed under that operative LDR zoning resulting in building setbacks off the Walkway Reserve boundary of either 4.5m or 2m. Universal is willing to accept the more conservative of those two possibilities, being a specified 4.5m setback, but does not see any justification for the wider recommended 6m setback.
- 5.7 There is no detailed s32 analysis supporting the recommended 6m setback distance. Mr Falconer's evidence on this point is limited to three short paragraphs which contain no reference to existing ODP LDR provisions and provide no justification for a 6m setback distance in place of the notified 1.5m setback distance. There is no 'on the ground' explanation of how, and to what extent, the recommended increase to 6m would make any practical difference to amenity outcomes, particularly public view outcomes.
- 5.8 Universal considers that a 4.5m setback is a reasonable outcome which takes proper account of relevant public and private expectations and does not impose an unexpected control more onerous than might reasonably have otherwise resulted from the current operative LDR rule regime.

6. Recommended 5.5m Eastern Boundary Maximum Height

This issue also relates to land adjoining the Walkway Reserve boundary. The current ODP LDR zone prescribes a maximum 7m height limit for buildings. The notified PDP retains the same maximum 7m height. The s42A Report recommends an amendment to Rule 8.5.1 to prescribe a maximum 5.5m height within 15m of the Walkway Reserve boundary. That recommendation is also based on the evidence of Garth Falconer.

- 6.2 This recommendation is opposed by Universal for the same reasons as detailed above in relation to the internal setback off that boundary. Any reasonable public and private expectation for development of this land under the current ODP LDR rule regime could anticipate a building to 7m in height within 2m of the boundary. There is no evidentiary justification for the recommended reduction to 5.5m within 15m of the boundary. The evidence broadly makes a recommendation without supporting analysis or any 'on the ground' examination of whether or not this more restrictive height control would actually result in beneficial outcomes of any significance.
- 6.3 To illustrate the combination effect of the two submission points detailed above, by comparison with the potential consequence of the s42A Report recommendations, Universal has commissioned preparation of the ground contour information and longsections attached marked B1 B5 which demonstrate:
 - (a) B1 overall ground contour information, with six identified Longsections
 A F;
 - (b) B2 and B3 Longsections A F, from the western lower site boundary to the eastern upper site boundary adjoining the Walkway Reserve, including identification of the full width of the 20m Walkway Reserve together with identification of the location of the formed footpath which currently runs through the Walkway Reserve;
 - B4 and B5 a more detailed larger scale version of the eastern end of Longsections A – F
- 6.4 B4 and B5 include the following additional information:
 - (a) The indicative maximum height resulting from the s42A Report recommended 6m internal setback plus 5.5m maximum height;
 - (b) The indicative maximum height resulting from Universal's preferred 4.5m setback plus 7m maximum height.
 - (c) An indicative 1.75m (5ft 7 inches) high person standing on the physically formed footpath at each cross section point;'
 - (d) [Handdrawn] comparative sight lines indicating the angle of view of that person across the top of a theoretical dwelling built to those two potential maximum heights adjoining each specific longsection point.

- 6.5 B4 and B5 demonstrate that there is very little difference in practical outcomes (in relation to views) between those two potential scenarios in five of the six longsections. It is only Longsection B, where the site happens to slope very steeply down from the footpath, that there might be a difference in view of any significance, with the lower height affording a slightly downward viewing angle which would enable a view of the mountains beyond Lake Wanaka compared to the upper height where the building would probably occlude views of those mountains.
- Other factors to be taken into account when considering the significance of the potential view outcome between these two scenarios include:
 - (a) There will inevitably be gaps between each house along the Walkway Reserve boundary which will afford views between the houses to the vistas beyond;
 - (b) There will be a specific and significant gap in the zoned walkway entrance point almost opposite Mataraki Place (refer **attachment** B1) which will create a significant viewpoint to the vistas beyond Lake Wanaka (that viewpoint is currently about where there is an existing short length of track leading to a marketing sign on site);
 - (c) The right-hand bend towards the northern end of the Walkway Reserve (walking south to north) is at the top of a very steep slope where there will be a significant open view to the north uninterrupted by any dwellings;
 - (d) Any person wanting a more expansive view to the west only has to walk a further 5 – 10 minutes up the Kirimoko walkway (refer attachment B1, top right-hand corner) because there is a significant building restriction area through which that walkway runs which keeps any houses well below that walkway (refer the blue cross hatched 'Building Restriction' area on Plan A).
- 6.7 Taking all the above into account, it is submitted for Universal that there is no planning justification to impose any Scurr Heights site specific internal setback or height controls except the 4.5m internal setback off the eastern Walkway Reserve boundary being proposed by Universal.

7. Recommended 400m2 Minimum Site Density/Maximum Lot Size

7.1 The notified PDP MDR zone provides for a maximum site density of one residential unit per 250m2 and a minimum lot size of 250m2. The practical

result of that rule regime, from a developer's point of view, is that it enables subdivision and development down to 250m2 residential lots while retaining flexibility to include larger lots if considered appropriate, in relation to the development characteristics of the land in question. Universal has no difficulty with that, and anticipates seeking consent for development which takes advantage of that flexibility, even if such development is non-complying in the meantime.

- 7.2 The s45 Report recommends amendments to:
 - (a) Land Use Rule 8.5.5.2 to prescribe a minimum site density of one residential unit per 400m2 within Scurr Heights;
 - (b) Subdivision Rule 27.6.1 to prescribe a maximum lot area of 400m2 within Scurr Heights.
- 7.3 The recommendations detailed above create very significant practical difficulties for Universal's current development planning. Universal anticipates seeking subdivision consent for a range of lots sizes from around 300m2 at the lower end to around 700m2 at the higher end. Those lots will be marketed and sold to purchasers who will expect to be able to build a single house on their residential lot.
- 7.4 Potential consequences for those purchasers, if the s42A Report recommendations are accepted and take legal effect in late 2017, would be as follows:
 - (a) A purchaser purchasing a lot between 250m2 400m2 would be able to build one house on that lot;
 - (b) A purchaser purchasing a lot between 401m2 499m2 would not be able to build any house;
 - (c) A purchaser purchasing a lot between 500m2 749m2 would have to build two residential units on the lot;
 - (d) A purchaser purchasing a lot of 750m2 and larger (up to 999m2, but that size is very unlikely) would have to build three residential units on that lot.
- 7.5 This recommended amendment is based upon a single Submission 620 by Ballantyne Investments Limited. The s42A Report states at paragraph 9.53:

- "9.53 Ballantyne Investments Ltd (620) states that a new minimum site density of 25 dwellings per hectare (400m2) should also be applied to curb urban sprawl and wastage of land..."
- 7.6 While the Ballantyne Submission 620 possibly provides jurisdiction for this recommendation, it is questionable whether the s42A recommendation actually achieves what Submission 620 seeks to achieve:
 - (a) The reference to "(400)" in the quotation above does not appear in the Ballantyne submission. The Ballantyne submission merely refers to ".... a density of 25 to the hectare"... In actual fact, if one allows a 'rule of thumb' 20% of land required for roading and reserves, achieving a development density of 25 to the hectare would require a lot size average around 320m2, not 400m2;
 - (b) The Ballantyne submission makes a generic reference to a maximum lot size and then seeks a requirement that development achieve a density of 25 to the hectare. Those are subdivision considerations. However this submission directly references Rule 8.8.5 which is a land use rule not a subdivision rule.
 - It is therefore questionable whether the Ballantyne submission is actually seeking a rule such as the site density rule recommended in the s42A Report which would have the bizarre consequences detailed in paragraph 7.4 above. When one considers the extent and detail of careful medium density urban planning which is required to achieve a residential density of 25 residential units to the hectare, it is more likely that the Ballantyne submission is advocating an amended subdivision approach rather than an amended land use approach, or, to put this point another way, an amended approach to large scale subdivision rather than a rule applicable to what can happen on an individual lot.
- 7.7 In the previous paragraph I stated that the Ballantyne Submission 620
 "...possibly provides jurisdiction ..." for this recommendation. I maintain there is an element of doubt about that, for the following reasons:
 - (a) A subdivision density rule of X dwellings per hectare is not unusual. Examples can be found in the Northlake Special Zone recently approved by the Environment Court. However the formula enables and encourages averaging to achieve a variety of lot sizes, some smaller and some larger, which must achieve the overall required density;

- (b) Achieving an overall density by way of a specific maximum lot size is a very different method. It is blunter, more prescriptive, and militates against the kind of good urban design outcomes that can be achieved through a variety of lot sizes;
- (c) There must be a question as to whether a submission seeking one kind of outcome, which has an enabling aspect, provides jurisdiction for a different outcome which is more restrictive.
- 7.8 The second significant point to be made about this recommendation is that, in practical terms, its implementation is heavily dependent upon the characteristics of the land being subdivided. Flat land which is easily developed and which has no significant infrastructural constraints, such as stormwater constraints, may be readily developed to a minimum 400m2 density with maximum 400m2 lots. However that may not be achievable on steeper land which has topographical constraints and infrastructure constraints, particularly including stormwater. That is a development reality.
- 7.9 The previous point illustrates the fact that, if this recommendation is to be made in respect of Scurr Heights, the recommendation must be underpinned by an adequate s32 assessment to establish that the recommended minimum density and maximum lot size can be practically achieved and does not result in unnecessary and onerous development costs. That is exactly the purpose of an s32 assessment. No such assessment has been provided in the s42A Report or accompanying evidential reports.
- 7.10 There are also potential urban design considerations. Mr Falconer's evidence makes a generic recommendation that residential density in the MDR zone could be appropriate down to a density of 150m2 per residential unit. However that generic recommendation is not related to any particular landholding. This point is not intended to criticise Mr Falconer who clearly has not been tasked to assess whether a 400m2 minimum site density/400m2 maximum lot size rule regime is practical and appropriate for Scurr Heights.
- 7.11 The s42A recommendation on this point is not supported by evidence, such as an urban design assessment as to whether a Scurr Heights 400m2 enclave would be appropriate within the surrounding 700m2 LDR neighbourhoods or whether perhaps a more variable design response, incorporating a combination of larger and smaller lots, may be more appropriate in the specific context of the undeveloped Scurr Heights land surrounded by existing residential neighbourhoods of a particular character.

- 7.12 Universal has particular concerns on the subject of stormwater. Scurr Heights is a relatively steeply sloping site. District Plan stormwater rules require that stormwater flowing off the property following development should be no greater than prior to development. The undeveloped Scurr Heights land currently has a certain absorption capacity. Full development into 400m2 density/lots would result in a massive conversion of permeable surface to impermeable surface, with consequential effects on stormwater runoff. Aubrey Road has existing known stormwater capacity issues. The s42A Report and accompanying evidence contains no assessment of the significant challenges that would arise in relation to stormwater.
- 7.13 This issue is firstly one of feasibility, being the question of whether or not it is feasible to develop Scurr Heights to the recommended density and be able to adequately deal with stormwater. However the enquiry does not stop there. There is also the issue of economic costs and benefits. There may be feasible stormwater solutions which are so expensive that they are unreasonable under the circumstances. The inevitable end result of a subdivision design exercise, taking into account all infrastructural constraints including stormwater and economic considerations, may be a development which does not achieve the s42A Report recommended density. These issues have not been addressed in the evidence circulated for the Council.
- 7.14 In summary it is submitted for Universal that the recommended amendments to Rule 8.5.5.2 and Rule 27.6.1, relating to 400m2 site density/lot size, have not been adequately assessed in terms of costs and benefits and should be rejected.

8. Equitable Consideration

8.1 There is a very specific issue applicable to Scurr Heights raised at the outset of these submissions, being the fact that the Council has elected to sell Scurr Heights in mid-2016 without making the sale subject to any site specific controls or restrictions. One can only reasonably assume that decision was driven by Council seeking to maximise potential income by taking full advantage of a favourable market. For Council to now seek to impose site specific restrictions and obligations, which may adversely affect the economic return to be achieved by Universal, is simply inequitable.

Alternative Relief

- 9.1 Without resiling from any of the submissions above, if the Panel is favourably inclined towards any or all of the three recommended amendments addressed above, it is submitted for Universal that the majority of the concerns expressed above would be adequately addressed if the three relevant land use rules also contained an exception to the effect that they do not apply to a residential lot consented prior to the date the rule becomes operative.
- 9.2 This submission accords with a general principle that a legislative or regulatory change should not have an adverse retrospective effect. While it is legally possible for the Council, through a District Plan Review, to remove or restrict land use rights which currently exist, that is a step which should only be taken after careful consideration and with significant justification. It is submitted that that situation does not arise in this case, particularly taking into account the point made in paragraph 8.1 above.
- 9.3 This submission point does not apply to subdivision Rule 27.6.1 which cannot have retrospective effect, unlike the land use rules which could have retrospective effect.

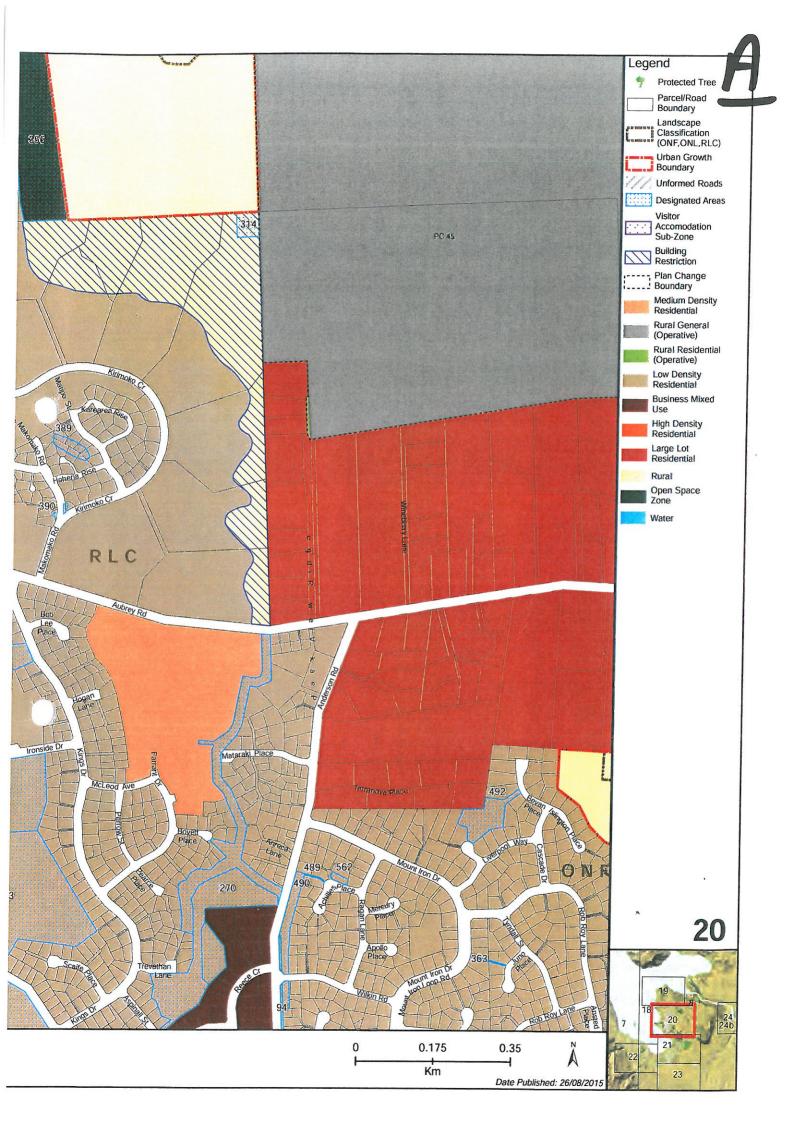
10. Evidence

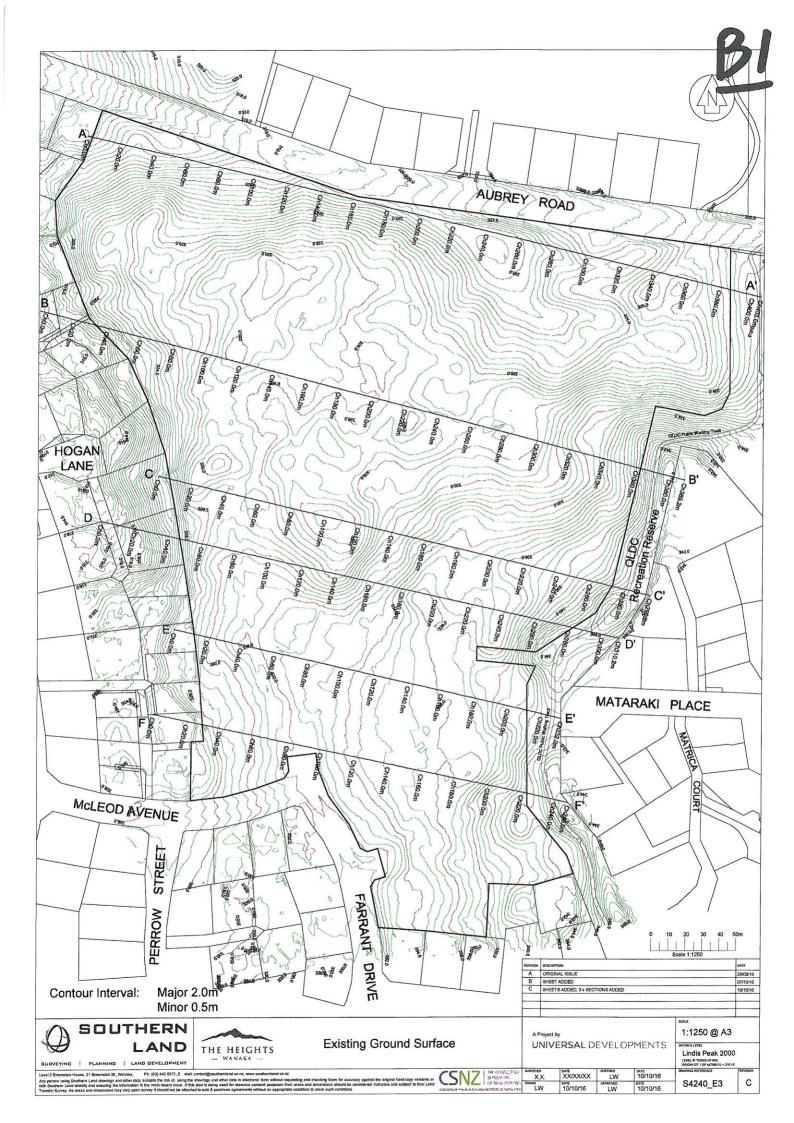
10.1 Planning evidence supporting the above submissions has been prepared and circulated by Mr Timothy Williams who will be available to present a short response and answer questions.

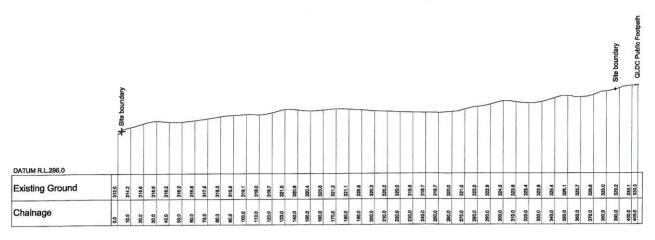
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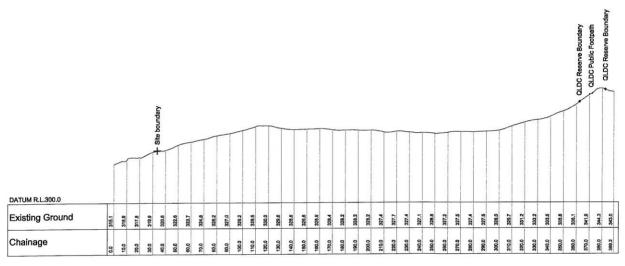
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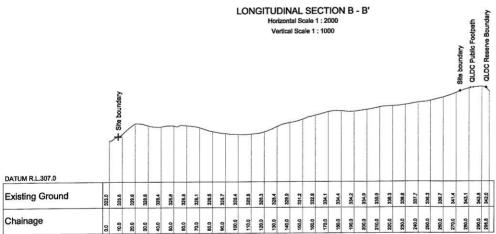






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LONGITUDINAL SECTION C - C'

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| В | SHEET ADDED | 07/10/16 |
| С | SHEETS ADDED, 3 x SECTIONS ADDED | 10/10/16 |
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Existing Ground Levels Long-sections

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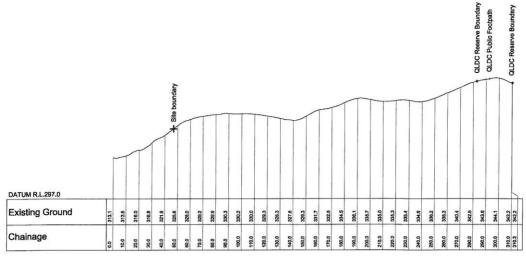
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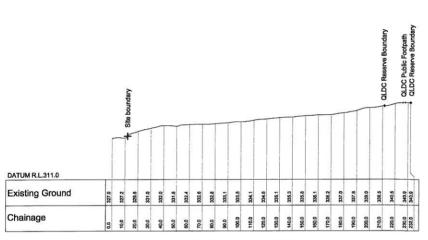
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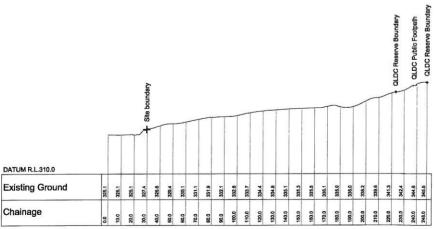
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| В | SHEET ADDED | 07/10/16 |
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Existing Ground Levels Long-sections

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