

DECISION OF THE QUEENSTOWN LAKES DISTRICT COUNCIL

RESOURCE MANAGEMENT ACT 1991

Applicant:	E, S, K, R and S Dennison
RM reference:	RM161092
Location:	792, 794 and 816 Malaghans Road, Wakatipu Basin
Proposal:	Subdivision consent is sought to subdivide three existing allotments which each have an existing dwelling into five allotments, establish a 1000m ² building platform on each allotment, and undertake associated landscaping and earthworks.
Type of Consent:	Subdivision
Legal Description:	Lot 1 DP 20387 held on Computer Freehold Register OT12A/401, Lot 1 DP 26441 held on Computer Freehold Register OT18B/975 and Section 17 Survey Office Plan 457201 held on Computer Freehold Register 624846
Zoning:	Rural General (Operative District Plan) Rural (Proposed District Plan)
Activity Status:	Discretionary Activity
Notification:	7 December 2016
Commissioners:	Commissioners Jan Caunter and Rachel Dimery
Date Issued:	27 June 2017
Decision:	GRANTED SUBJECT TO CONDITIONS

UNDER THE RESOURCE MANAGEMENT ACT 1991

IN THE MATTER OF an application by E, S, K, R and S Dennison to subdivide three existing allotments which each have an existing dwelling into five allotments, establish a 1000m² building platform on each allotment, and undertake associated landscaping and earthworks.

Council File: RM161092

DECISION OF QUEENSTOWN LAKES DISTRICT COUNCIL HEARING COMMISSIONERS J CAUNTER AND R DIMERY, APPOINTED PURSUANT TO SECTION 34A OF THE ACT

THE PROPOSAL

1. We have been given delegated authority by the Queenstown Lakes District Council ("Council") under section 34A of the Resource Management Act 1991 ("the Act") to hear and determine the application by E, S, K, R and S Dennison ("the applicants") and, if granted, to impose conditions of consent.
2. The applicants seek resource consent to subdivide land at 792, 794 and 816 Malaghans Road, Wakatipu Basin into five allotments, to establish a 1000m² building platform on each allotment, and to undertake associated landscaping and earthworks. Three of the proposed residential building platforms are around existing dwellings, the other two proposed residential building platforms are around existing non-residential buildings.
3. A summary of the proposal follows:
 - Lot 1: Boundary adjustment of existing Lot 1 DP 20387 (2.3741 ha) to create Lot 1 (4.02 ha) and identify a 1000m² building platform around the existing dwelling set approximately 200m from the boundary of Malaghans Road. The existing vehicle access would be used.
 - Lot 2: Boundary adjustment of Lot 1 DP26441 (0.5855 ha) to create Lot 2 (4.01 ha) with a 1000m² building platform around the existing dwelling set back approximately 93m from the boundary of Malaghans Road. The existing vehicle access would be used.
 - Lot 3: Subdivide from existing Section 17 (27.8 ha) to create Lot 3 (4.10 ha) with a 1000m² building platform around the existing woolshed set back approximately 173m from the boundary of Malaghans Road. Access would be from a shared vehicle crossing and gravel drive to be extended an additional 65m to the proposed platform.
 - Lot 4: Subdivide from existing Section 17 (27.8 ha) to create Lot 4 (1.76 ha) with a 1000m² building platform around the existing dwelling set back approximately 78m from the boundary of Malaghans Road. Access would be from a shared vehicle crossing (Lot 3) and existing gravel drive.
 - Lot 5: Retain the balance of Section 17 (27.8ha) as Lot 5 (16.95 ha) with a 1000m² building platform around the existing shed set back approximately 150m

from the boundary of Malaghans Road. Access would be from a vehicle crossing located opposite the entrance to 833 Malaghans Road with a gravel access drive to be formed to the building platform and existing gravel drive.

- Building design controls for platforms 3 and 5 only.
- Landscape design controls in regards to fencing, gateways and curtilage areas, along with controls on managing domestic stock, weed and pest control and planting within a proposed Riparian Protection Area.
- Earthworks to form a 65m access drive to platform 3 and a 286m access drive to platform 5. Earthworks are not required for the building platforms on these lots.
- Riparian management and rock ridge management zones for Mill Creek and its tributary, associated wetland area and the rocky escarpment face within the southern part of the site.

SITE DESCRIPTION

4. A detailed description of the site and receiving environment within which the application sits can be found in paragraphs Section 2.1 of the Applicant's AEE. No parties disputed the description of the site or receiving environment, and we are therefore content to rely upon them, noting that the descriptions accord with our impressions from our visit to the site and surrounding area.

NOTIFICATION AND SUBMISSIONS

5. The application was publicly notified on 7 December 2016. No submissions were lodged but an email was received from Otago Regional Council noting that:
 - “ORC is supportive of the volunteered condition (13(b)) in respect to secondary and tertiary level treatment.
 - There is not a lot of discussion around discharge of waste from the home-kill operation. Depending if it is disposed of on site, I'd just flag the applicant should ensure any relevant activities are compliant with not only the ORC water plan but also the ORC waste plan (http://www.orc.govt.nz/Publications-and-Reports/Regional-Policies-and-Plans/Regional-Plan_Waste/).”
6. No written approvals or evidence of consultation were provided as part of the application.

THE HEARING

7. A hearing to consider the application was convened on 1 May 2017 in Queenstown. In attendance were:
 - (a) The Applicants, represented by Mr Neil McDonald (advocate), and Mr Nick Geddes (Planner). Ms Steven did not lodge written evidence but attended the hearing to answer questions and make comment on Mr Denney's report. We addressed this in a Minute dated 2 May 2017;
 - (b) Council's reporting planner, Ms Wendy Baker (Planner);
 - (c) Council's Manager Planning Support, Ms Rachel Beer.
8. Mr Denney (consulting landscape architect) and Mr Vermaas (engineer) did not attend for the Council. We addressed Mr Denney's non-attendance in our 2 May 2017 Minute. We spoke to Mr Denney by telephone during the hearing.
9. We had the benefit of a section 42A report prepared by Council's reporting planner, Ms

Wendy Baker. Based upon her assessment of the application, Ms Baker recommended that the application be refused on the basis that:

- It is considered that the adverse effects of the activity will be more than minor for the following reasons:
 - The landscaping plan includes the protection of pest and exotic species which will exacerbate spread of non-natives. (This is likely to be resolved at the hearing or managed by conditions).
 - Public access to Mill Creek is not provided for.
- In all other respects the adverse effects are able to be managed by conditions such that they are no more than minor.
- The proposal is contrary to a key relevant Objective of the District Plan, being 4.3.4 Objective 4 as an esplanade is not proposed along Mill Creek.
- The proposal is inconsistent with Objectives and Policies relating to the management of wilding species and the encouragement of natives.
- The proposal is otherwise consistent with the relevant objectives and policies.

SITE VISIT

10. We undertook a site visit on the morning of 1 May 2017, before the hearing commenced. We returned to the site on the afternoon of 1 May 2017, after the hearing, viewing the site from Malaghans Rd only.

THE DISTRICT PLAN AND RESOURCE CONSENTS REQUIRED

11. The application sought the following consents:
 - (i) Subdivision consent: A discretionary activity resource consent pursuant to Rule 15.2.3.3(vi) of the Queenstown Lakes Operative District Plan ("ODP") for any subdivision and identification of building platforms;
 - (ii) Land use consent: A discretionary activity resource consent pursuant to Rule 5.3.3.3(i)(b) of the ODP for the identification of the building platforms.
12. As we note later in this decision, we do not consider land use consent is required.
13. Overall, the application is assessed as a *discretionary* activity under the ODP.
14. No consent is required under the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NES). Under regulation 8(4) of the NES, the application is permitted. A Preliminary Site Investigation has been undertaken, which concludes it is highly unlikely there will be a risk to human health if the proposed activity occurs on the land.

RELEVANT STATUTORY PROVISIONS

15. This application must be considered in terms of Sections 104, 104B, 106, 108, 220, 230 and 235 of the Resource Management Act 1991 ("the" Act).
16. Subject to Part 2 of the Act, Section 104 sets out those matters to be considered by the consent authority when considering a resource consent application. Considerations of relevance to this application are:

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 matters the consent authority considers relevant and reasonably necessary to determine the application.

17. Following assessment under Section 104, the application must be considered under Section 104B of the Act. Section 104B states:

After considering an application for a resource consent for a discretionary activity or non-complying activity, a consent authority –

- (a) may grant or refuse the application; and
- (b) if it grants the application, may impose conditions under section 108.

18. Section 104(3)(b) requires that we have no regard to effects on people who have given written approvals to the application. This is not relevant in this case as no persons have provided written approval.
19. Section 106 of the Act provides that a consent authority may refuse to grant a subdivision consent, or may grant a subdivision consent subject to conditions, if it considers that the land is or is likely to be subject to, or is likely to accelerate material damage from natural hazards, or where sufficient provision for legal and physical access to each allotment has not been made.
20. Sections 108 and 220 empower us to impose conditions on resource consents.
21. Section 230 sets out the requirement for esplanade reserves or strips, as follows:

- (1) *For the purposes of sections 77, 229 to 237H and 405A, the size of any allotment shall be determined before any esplanade reserve or esplanade strip is set aside or created, as the case may be.*
- (2) *The provisions of sections 229 to 237H shall only apply where section 11(1)(a) applies to the subdivision.*
- (3) *Except as provided by any rule in a district plan made under section 77(1), or a resource consent which waives, or reduces the width of, the esplanade reserve, where any allotment of less than 4 hectares is created when land is subdivided, an esplanade reserve 20 metres in width shall be set aside from that allotment along the mark of mean high water springs of the sea, and along the bank of any river or along the margin of any lake, as the case may be, and shall vest in accordance with section 231.*
- (4) *For the purposes of subsection (3), a river means a river whose bed has an average width of 3 metres or more where the river flows through or adjoins an allotment and a lake means a lake whose bed has an area of 8 hectares or more.*
- (5) *If any rule made under section 77(2) so requires, but subject to any resource consent which waives, or reduces the width of, the esplanade reserve or esplanade strip, where any allotment of 4 hectares or more is created when land is subdivided, an esplanade reserve or esplanade strip shall be set aside or created from that allotment along the mark of mean high water springs of the sea and along the bank*

of any river and along the margin of any lake, and shall vest in accordance with section 231 or be created in accordance with section 232, as the case may be.

22. Section 235 of the Act provides for the creation of esplanade strips by agreement, as follows:

- (1) *An esplanade strip may at any time be created for any of the purposes specified in section 229 by agreement between the registered proprietor of any land and the local authority, and the provisions of sections 229, 232, 233, 234, 237(2), and 237C shall apply, with all necessary modifications.*
- (2) *No instrument for an esplanade strip by agreement may be registered with the Registrar-General of Land unless every person having a registered interest in the land has endorsed his or her consent on the instrument.”*

SUMMARY OF EVIDENCE HEARD

23. Evidence for this hearing was pre-circulated. Mr Geddes provided a summary of his evidence at the hearing. We have read all of the application, the evidence and the section 42A report. The following is a brief outline of the submissions and evidence/reports presented. This summary does not detail everything that was advanced at the hearing, but captures the key elements of what we were told.

Applicant

- **Mr McDonald**, a Principal of Clark Fortune McDonald, and a qualified surveyor, gave submissions for the applicants and appeared as the applicants' advocate. The submissions focused on esplanade contributions under sections 230 and 235 of the Act and matters in the section 42A report. Mr McDonald submitted that no esplanade contribution was required as the size of the lots proposed was over the statutory threshold of less than 4 hectares required in section 230 of the Act. The applicants did not agree to provide an esplanade contribution under section 235 of the Act. Mr McDonald criticised the section 42A report's approach to such contributions and questioned how it related to either an environmental effect or the district plan's relevant objectives and policies.
- **Mr Geddes** is a planning consultant with Clark Fortune McDonald. Mr Geddes' primary evidence set out his opinion on the actual and potential effects of the activity. There was no real disagreement with the Council on this part of his assessment. Mr Geddes did not agree with the Council's assessment of some of the relevant objectives and policies of the district plan, in particular those related to esplanade contributions. It was his opinion that there were no provisions under the Act that required an esplanade contribution be made, and he repeated Mr McDonald's point that the contribution was not volunteered. Mr Geddes did not consider there was any demand for public access, nor did he consider the relevant objectives and policies in the district plan required or demanded a contribution. Mr Geddes attached to his primary evidence a set of conditions for us to consider, but later sought to table updated conditions as part of the applicants' reply. He noted that the applicants had accepted Mr Denney's recommended landscape conditions.

Council Officers

24. **Mr Richard Denney** generally agreed with the applicants' landscape description and assessment. He noted the site has an established context of three rural dwellings and

scattered farm buildings amongst established amenity trees around the dwellings. The proposal would largely retain the overall built form but would increase the landscape domestication through residential development. He sought further amenity planting outside the curtilage areas and more thought being given to the plant species so that these were consistent with traditional rural trees and / or indigenous vegetation. He raised the possibility of an esplanade contribution, noting any strip or reserve could be linked up to an existing esplanade network and protect and enhance conservation values. Mr Denney recommended a number of landscape conditions in his report.

25. **Mr Warren Vermaas** addressed engineering matters. He had no difficulty with the applicants' assessment and concluded that all engineering and servicing matters could be satisfied. His assessment included the proposed accesses and other traffic matters. He recommended conditions to ensure legal, appropriately formed access is provided to all allotments. He also confirmed that the Council's GIS system did not identify any natural hazards on the site.
26. **Ms Wendy Baker** confirmed the activity status as Discretionary. She accepted the opinions of the two landscape experts, Mr Denney and Ms Steven, that the site could absorb the additional development with suitable landscape and design control measures. She agreed with the applicants that the adverse effects of the development could be managed by conditions. Ms Baker was concerned about public access, preferring that an esplanade strip be provided by the applicants, but also recognising that there was no legal requirement to take a strip or reserve, although there was an ability to agree one. She considered the proposal breached some objectives and policies of the district plan relating to public access and the management of wilding species.

FURTHER INFORMATION REQUEST

27. Following the adjournment of the hearing, and by way of a Minute dated 2 May 2017, we requested additional information and comment from the applicants and the Council on the following:
 - A copy of a plan showing the building platforms consented for the Wakatipu Basin;
 - The date on which the amended landscape plan Figure 4B referred to by the applicants at the hearing had been produced to the Council (given Mr Denney did not seem to have seen the amended plan before the hearing);
 - An amended landscape plan identified as Figure 4B and the Council's comment on same;
 - Growth rates of trees proposed in Figure 4B and the species the applicants proposed through that plan;
 - Mounding and the Council's comment on same;
 - Revised conditions and the Council's comment on same.
28. The applicants tabled information on 15 May 2017, as follows:
 - (i) Confirmation that the previously amended landscape plan (Figure 4B) had been provided to the Council on 16 March;
 - (ii) Existing trees along the eastern side of Lots 4 and 5 would be partially removed upon planting new trees to facilitate growth rates. Upon

establishment (estimated at 5-7 years), all remaining existing trees would be removed;

- (iii) A mounding plan and revised conditions were tabled for the Council's consideration.

29. The Council responded on 22 May 2017, as follows:

- (i) It provided a copy of rural building platforms in the Wakatipu Basin dated May 2016;
- (ii) Mr Denney responded to the landscaping and mounding documents tabled by the applicants. He noted that if consent was to be granted, mitigation planting would be required to be maintained as per the landscape plan and should offer a degree of protection to existing and proposed trees shown on the landscape plan. He noted the proposed species to be planted should achieve heights exceeding 5m after 7 years. He confirmed the landscape plan Figure 4B (now further amended) reflected discussions between himself and Ms Steven but that he still had some concerns about the species proposed. Mr Denney suggested that all indigenous vegetation within the wetland protection area, riparian and rock management areas should be identified as protected through a consent notice condition.
- (iii) Mr Denney noted the mounding would be 1.5m in height and located within the proposed domestic curtilage area of the three clustered building platforms of Lots 3, 4 and 5. He did not consider the works to be necessary to facilitate the subdivision and was of the view that they would not be sympathetic to the surrounding natural topography. He suggested lineal earth mounds be shaped and graded out to provide gentle slope transitions into surrounding ground and that straight lineal forms alongside proposed boundaries should be avoided. A condition was recommended to address this.
- (iv) Amendments were suggested to the applicants' conditions to address Mr Denney's feedback. Ms Baker confirmed she accepted the applicants' proposed conditions, subject to Mr Denney's suggested amendments.

APPLICANTS' RIGHT OF REPLY

- 30. We received the applicants' right of reply on 2 June. Having reviewed that information, we were satisfied that we required no further information and closed the hearing on 13 June.
- 31. Mr McDonald confirmed that the two landscape architects had been in further discussion since receiving the Council's 22 May response and had agreed a final landscape plan. However, Mr Denney later required that prior to section 224c, the landscape plan be amended to identify the fencing around the boundary of the riparian management area and proposed a condition to detail the fencing. The applicants confirmed agreement to amending the landscape plan in response to this but noted that any further amendments would have to be made on Ms Steven's return from leave.
- 32. In response to Mr Denney's feedback on mounding, the applicants elected to remove the material from the site where it will be disposed of in an approved clean fill at 287 Kingston Rd. The Council confirmed this alternative as acceptable.

33. A final set of conditions was attached to the reply which responded to Mr Denney's suggestions and removed reference to the mounding plan.
34. Final submissions were made on section 230 of the Act and how that might apply here.

RELEVANT PLAN PROVISIONS

The Operative District Plan

35. The subject site is zoned Rural General under the ODP.
36. The purpose of the Rural General Zone as described on Page 5-9 of the ODP is as follows:

The purpose of the Rural General Zone is to manage activities so they can be carried out in a way that:

- *protects and enhances natural conservation and landscape values;*
- *sustains the life supporting capacity of the soil and vegetation;*
- *maintains acceptable living and working conditions and amenity for residents of and visitors to the Zone; and*
- *ensures a wide range of outdoor recreational opportunities remain viable within the Zone.*

37. The relevant provisions of the ODP that require consideration can be found in Chapter 4 (District Wide), Chapter 5 (Rural Areas), Chapter 15 (Subdivision, Development and Financial Contributions) and Chapter 22 (Earthworks).

The Proposed District Plan

38. The relevant provisions of the Proposed District Plan ("PDP") that require consideration are Chapters 6 (Landscapes), 21 (Rural zone) and 27 (Subdivision and Development). The site is zoned Rural under the PDP.
39. Section 86[b](1) of the RMA states a rule in a proposed plan has legal effect only once a decision on submissions relating to the rule is made and publicly notified. An exemption to this is section 86[b](3) in which case a rule has immediate legal effect in certain circumstances including if the rule protects or relates to water, air or soil.
40. The PDP was notified on 26 August 2015. Pursuant to Section 86[b](3) of the RMA, a number of rules that protect or relate to water have immediate legal effect. None of these rules are relevant to this application, and by extension we therefore conclude that there are no rules in the PDP that are relevant to our consideration of this application.

Operative Regional Policy Statement

41. The relevant objectives and policies are in Part 5 Land, Part 6 Water and Part 9 Built Environment.

Proposed Regional Policy Statement

42. The Proposed Regional Policy Statement was notified on 23 May 2015 and decisions were notified on 1 October 2016. Appeals have been lodged with the Environment Court, covering a wide range of topics.

43. The relevant objectives and policies are found in Chapters 1, 3 and 5. These generally align with the Operative Regional Policy Statement.

Summary – relevant plan provisions

44. There was no disagreement between the applicant and the Council on the relevant plan provisions. These are set out in the application as notified and the section 42A report and we adopt them.

PERMITTED BASELINE, EXISTING ENVIRONMENT AND RECEIVING ENVIRONMENT

45. All subdivision and new buildings require resource consent in the Rural General Zone. As identified in the section 42A report, permitted activities in the Rural General zone are restricted to matters such as farming and viticulture activities, fencing and earthworks up to 1000m³ within one consecutive 12 month period. Unlimited planting is also permitted, although there is a restriction in the ODP as to the date from which that may be considered. Any planting undertaken after 28 September 2002 may not be considered part of the permitted baseline.¹ We agree that there is limited value from the permitted baseline for this application.
46. The existing environment includes all development and activity currently on site and in the surrounding environment which has been lawfully established. The subject site includes three dwellings with associated curtilage, a number of farm buildings and a home-kill operation. We were told there are no unimplemented resource consents for this site.
47. The receiving environment comprises a number of rural living and farm properties. We were advised by Ms Baker that there were no existing unimplemented resource consents relating to relevant surrounding sites.
48. Ms Baker reported that there are a number of identified building platforms in the Wakatipu Basin that have not been built on at this stage. We were provided with a plan showing the consented platforms in the wider Wakatipu Basin, which was produced by the Council in the district plan review hearings underway at the present time. We were also provided with a diagram showing the approved building platforms in the immediate area and those that had been built on and now formed part of the surrounding environment. A number of those platforms lie to the west and north of the applicants' site.²
49. Mill Creek runs parallel to the base of the rock bluffs to the south of the site in an easterly direction.
50. The subject site comprises a steep rock ridge known as Malaghans Ridge, which lies to the south. A weed covered basin floor lies at the base of the ridge, forming a wetland and open paddocks towards Malaghans Road.

¹ Rule 5.4.2.2(3) page 5-26 ODP

² Section 42A report page 8

ASSESSMENT OF ACTUAL AND POTENTIAL EFFECTS ON THE ENVIRONMENT

Landscape effects

51. Mr Denney and Ms Steven (through her assessment report) agreed that most of the site was located in a visual amenity landscape ("VAL").
52. We have considered the proposal in light of the relevant Assessment Matters and comment briefly on these below.

Effects on natural and pastoral character

53. Ms Steven noted the site is not adjacent to an outstanding natural landscape or feature, nor is it in the foreground of any direct views on an outstanding natural landscape. She considered this development comprised a rural lifestyle development in a pastoral setting, consistent with the nature of development in the vicinity. The two new dwellings would replace existing farm utility buildings. The lot sizes and dimensions of the building platforms would ensure future built development was consistent with the scale of existing residential development including the three existing dwellings. Ms Steven noted the site's strong pastoral character east of the tributary creek and over the ridge behind the site, and along the western part of the site through the small paddocks between the three existing dwellings and sheds and the road frontage. In that regard, there is a sense of rural pastoral character along Malaghans Road despite the residential development already there. The road frontage is some 55-165m wide.
54. In Ms Steven's opinion, the proposed development would not change this character given the platforms proposed would be in the same area as existing farm buildings.
55. Ms Steven considered that the key issue for the VAL is the enhancement of natural character, as reflected through Part 4.2.5 Objective 4. She noted that the natural character of this site varies from low over the basin floor to moderate within the stream corridors, to moderately high over the rocky ridge due to the modification of the land for pastoral farming. There is no naturally occurring native vegetation on the site except perhaps scattered species on the rocky faces. Natives have been planted along the eastern part of Mill Creek. The proposal to protect and manage the Mill Creek riparian corridor for its natural values would go some way to protecting the natural character and would also enhance it, given the planting and remediation proposed there.
56. Ms Steven noted that potential adverse effects on the landscape's character were proposed to be mitigated by new tree planting as well as using existing vegetation for screening purposes. The development had kept the built form at the western end of the site, well set back from the road.
57. Mr Denney agreed with most of these points. He was concerned that the proposal would increase residential domestication of the landscape and reduce the Arcadian pastoral character, but also noted that the larger Lot 5 would retain a prominence of open pastoral character around the cluster of buildings. The proposed design controls would also reduce the effect of built form. Overall, his conclusion was that the effect on the character of the site would be small.
58. Mr Denney noted the existing high level of domestication on the site due to the presence of buildings and amenity planting. He suggested that some of the planting proposed in Ms Steven's assessment, being more ornamental, would further accentuate the domestic nature of development and would not offer year round

mitigation. He recommended that existing wilding tree species and problem species shown on the landscape plan not be protected by the plan if consent was granted. He suggested that ornamental and problem species be avoided, especially within the wetland area, and listed the species he considered appropriate in his draft conditions.

59. As we noted earlier in this decision, the two landscape architects met following the adjournment of the hearing and agreed the form of the draft landscape plan and the landscape conditions. This formed part of the applicants' reply. As noted earlier in this decision, there is one outstanding matter to be addressed prior to section 224c, that of fencing. Mr Denney has requested that the landscape plan be amended to identify the fencing around the boundary of the riparian management area and the detail of the fencing. These matters are addressed in the conditions of consent.

Visibility of Development

60. Ms Steven included in her assessment a number of viewpoints of the proposed development. She noted that visibility was limited to the proposed dwellings and curtilage on Lots 3 and 5 as other components of the proposal related to the presence of the existing dwellings or potential new dwellings within the same building footprint on the remaining lots. Screen planting was required to mitigate the high visibility of Lots 3 and 5 from Malaghans Road. This would take 5-7 years to establish.
61. The two dwellings might also be visible from the Coronet Peak area, but at a distance, and would appear small in the landscape. They could also be visible from the unformed legal road along the western boundary of the site, those view shafts being currently blocked by crack willows, which will be removed. There is no known use of this paper road at present.
62. Ms Steven noted in her assessment the screening and visual mitigation proposed by planting, using existing trees on the site and new tree planting. Evergreen and deciduous trees are proposed. In response to our 2 May Minute, the applicants confirmed that existing trees along the eastern side of Lots 4 and 5 will be partially removed when new trees are planted in order to facilitate growth rates. Upon establishment of the new trees, all remaining existing trees will be removed. While mounding was part of the applicants' original proposal, the applicants later decided to remove all fill and take it to cleanfill for disposal.
63. Mr Denney agreed with Ms Steven's viewpoints and also included one further view travelling along the upper part of Alan Reid Road to the northwest of the site. It was Mr Denney's opinion that the established domestic settings around existing dwellings assisted in absorbing the new development proposed.
64. He noted that a belt of poplars along Malaghans Road was planted after 28 September 2002 and could not be considered as mitigation planting. He was concerned that platforms 4 and 5 would result in buildings in that part of the site to become more prominent as viewed from Malaghans Road and that the mitigation planting would not be adequate to filter such views all year round. However, the cluster of five dwellings would not be overtly more prominent than the existing cluster of dwellings and buildings, subject to minor changes to proposed mitigation planting.
65. Mr Denney considered the site sits relatively low in the landscape and the proposed buildings would not break the line and form of skylines, ridges, hills or prominent slopes beyond any discernible degree of the existing buildings on site. The access roads, earthworks and landscaping would not change the landscape or affect the landscape's naturalness beyond existing levels. New boundary lines would not be

disharmonious within the basin floor topography and existing patterns. The development would not constitute sprawl of built development along the district's roads and would be set back from the road.

66. Mr Denney recommended several conditions addressing fencing and planting, and particularly noted that avenue planting should be avoided along the access drive to Lot 5 to avoid arbitrary lines and domesticating effects.

Form and Density of Development

67. Ms Steven's assessment repeated her opinion of the benefits of clustering the buildings in the western part of the site and noted that this part of the Wakatipu Basin floor has greater potential to absorb development than other areas. In her opinion, the new dwellings would be contained within the existing cluster with appropriate screening. The development would not be characteristic of urban areas.
68. The two new dwellings will replace old farm buildings that are no longer required or run down. Existing access drives for Lots 1-4 would be used. In Ms Steven's opinion, the more sensitive parts of the site would be avoided, particularly the rocky ridge and the large open paddock of the eastern half of the site and the smaller open pastoral areas next to the road.
69. Density of the proposed development would not preclude residential development and or subdivision on neighbouring land although any such proposal would need to be assessed on its merits at the time.
70. Mr Denney agreed with these points.

Cumulative Effects

71. Ms Steven noted the existing buildings on the site and the fact that most rural lifestyle properties surrounding the site had an established dwelling and garden. On the northern side of Malaghans Road, most of these are well set back from the road. The large Millbrook development, currently under extension, lies to the east.
72. Ms Steven did not regard the development represented a threshold in this locality. It would be a slight increase in domestication and would slightly degrade landscape character. Part of Ms Steven's opinion appeared to rest on a proposal to replace old farm buildings with new dwellings and the tidying up of the site in the areas of proposed Lots 3 and 5.
73. She did not consider over-domestication would arise. Mitigation and the clean up of the two lots mentioned would improve the amenity of the site overall.
74. Mr Denney considered the proposal would accentuate domestication of the landscape through increased built form and amenity planting associated with residential land use. The design controls would reduce the prominence of the built form. Malaghans Ridge to the south of the site would act to check the spread of further development. Land to the north, east and west of the site was noted by Mr Denney as being generally open pastoral land of similar nature to the topography of the applicants' site.

Rural Amenities

75. Ms Steven and Mr Denney agreed that the proposal would maintain adequate and appropriate visual access to open space and views across the landscape from public roads, public spaces and adjacent land. The proposed design controls would maintain

fencing and entranceways consistent with traditional rural elements. The setbacks for Lots 3 and 5 generally match the existing dwellings or will be set back further from Malaghans Road.

76. Mr Denney recommended that the existing Lot 2 gateway not be accentuated beyond its existing form, that entranceway being more monumental in nature.
77. Overall, we consider the proposal meets the various assessment matters for a VAL set out in the ODP. Any effects will be mitigated by the proposed conditions.

Assessment Matters General

Nature Conservation Values

78. The applicants offered a riparian planting plan to assist in maintaining and enhancing the nature conservation values associated with Mill Creek. Ms Steven and Mr Denney agreed that there are no known endangered species on the subject site, although Mr Denney noted there may be lizards on the rock face. Mr Denney was of the view that the management of pest species on the rock escarpment would enhance the lizard's habitat.
79. There is no rare fauna or flora known to be associated with Mill Creek. The water in the creek is clear and is likely to be a habitat to many known species. The natural character of the bed and margin of the waterways would be protected and improved. The proposal includes regeneration and reinstatement of indigenous ecosystems on the creek margins and a wetland is also proposed.
80. Mr Denney considered that Mill Creek should be fenced from stock and additional indigenous planting be included along its margin if the conservation values of the waterway are to be protected. The applicants agreed with these measures.
81. We are satisfied that the proposal will meet assessment matters relating to nature conservation values.

Assessment Matters Subdivision

82. There are no known areas of significant indigenous vegetation, heritage items and archaeological items on the site.
83. Mr Denney considered the protection of Mill Creek should be achieved by fully fencing to a minimum width of 5m from the creek bank so as to prevent stock access to the waterway. He was also of the view that fencing would assist in separating the waterway from surrounding rural and potential land use, so as to preserve its conservation values.
84. The public access to Mill Creek would be maintained to its existing level. We discuss below the issue of public access going forward.
85. The relationship of the proposed lots would be compatible with the pattern of surrounding subdivision and land use activities, other than in the provision of esplanade contributions, which have been achieved on other properties.
86. We are satisfied the proposal will meet relevant subdivision assessment matters.

Public access

87. Ms Baker drew our attention to section 230 of the Act and the requirement for an esplanade strip or reserve to be taken where allotments of 4ha or less are created alongside a river or lake. The applicants are proposing to create three allotments of just over 4ha in an area alongside Mill Creek. There is therefore no legal requirement to take a strip or reserve.
88. Ms Baker considered there was opportunity to agree a strip or reserve, as provided by section 235 of the Act. We were told that in pre-hearing discussions, the applicants had volunteered a 5m strip either side of the creek with the proviso that this would not be a public place for the purposes of assessing any further planning applications. This was apparently volunteered on the basis of the Council granting consent without a hearing under section 100 of the Act. The offer was withdrawn once it was clear the hearing would proceed.
89. Ms Baker was concerned that an opportunity be taken through this consenting process to secure a larger area of esplanade strip to enable an existing network of public land and public access along Mill Creek to be expanded.
90. In his evidence, Mr Geddes related the need for the strip to the effects of the proposal. He was not of the view that the effects of the proposal demanded the strip be provided. He noted that if a 20m strip either side of Mill Creek was provided along the length of the creek on the applicants' land (860m), this would equate to 3.698ha. Mill Creek is 3m wide.
91. He recorded that the applicants would be willing to provide an instrument over this 3.698ha of land if compensated by the Council under section 237F of the Act. This offer was made on the basis that any future public access within this portion of land be held in an easement defining it as a trail, which is not recognised by the district plan as a public place. This would apparently remove issues of reverse sensitivity.
92. We explored this further with the applicants in questioning. The applicants maintained their position that there was no legal requirement for the strip and that a strip was not volunteered.
93. We consider we have no legal power to require an esplanade strip. We discuss this further below in our assessment of the relevant objectives and policies.

Traffic Generation and Vehicle Movements, Parking and Access

94. In his engineering report appended to the section 42A report, Mr Vermaas addressed the various transportation related matters associated with the proposal.
95. He noted that there was ample room on the existing residential site for parking. New Lots 3 and 5 should be subject to a consent condition that all parking and manoeuvring areas be constructed in accordance with Council standards when a dwelling is constructed on the building platforms.
96. Mr Vermaas had no difficulty with the access roads proposed. He sought that the access ways to new Lots 3 and 5 be constructed in accordance with Council standards. He also recommended a condition that a sealed vehicle crossing for Lot 5 be formed off Malaghans Road in accordance with Diagram 2 of the Traffic Assessment Appendix 7 and Council standards.

97. We are satisfied that the traffic and adverse effects are minor and can be addressed through appropriate consent conditions.

Infrastructure

36. Mr Vermaas noted the existing dwellings have water supply from bores, on-site wastewater disposal systems and that they dispose of stormwater on site. The proposed building platforms on Lots 3 and 5 will be serviced by the bore consent in place. An onsite effluent disposal system is feasible for those lots. Stormwater can be disposed of onsite. Power and communications can be provided to the building platforms of Lots 3 and 5.
37. On the basis of this advice, we are satisfied that appropriate services can be provided to the subdivision in accordance with the Council's standards. Conditions of consent address these matters.

Earthworks

98. Mr Vermaas noted that earthworks are required to form a road extension to an existing unsealed access way on Lot 3 and to form a new unsealed access way to service Lot 5. No proposed earthworks are in close proximity to external site boundaries except for the Lot 5 crossing point. The total volume of earthworks is 736m³, 368m³ cut and 368m³ fill. There will be exposed area of 1579m².
99. We are satisfied that there are no significant effects arising from earthworks and that the consent conditions adequately address the effects that will arise.

Natural Hazards

100. Council's GIS system does not identify any natural hazards on this site. Mr Vermaas did not note any obvious hazards on his site visit. We conclude there are no natural hazards associated with the proposal.

Cumulative effects

101. We have addressed cumulative effects in our discussion of landscape effects above. We do not consider this proposal to raise adverse cumulative effects.

Positive Effects

102. Some positive effects will come from the riparian planting along Mills Creek and the implementation of stock fencing. Likewise, there are positive benefits from the creation of the rock ridge management zones, the associated wetland and the rocky escarpment face. Otherwise, two additional allotments with dwellings is a positive benefit to the applicants.

Summary of actual and potential effects

103. Overall, having considered the evidence pre-circulated and presented at the hearing, the application and supporting reports, the submissions and the additional evidence provided subsequent to the hearing, and the Council's reports, we are satisfied that the adverse effects of the proposed activity on the environment will not be significant. Conditions of consent can be imposed that will ensure any adverse effects are appropriately avoided, remedied or mitigated.

OBJECTIVES AND POLICIES OF THE RELEVANT DISTRICT PLANS

104. We have considered the detailed assessments of the objectives and policies of the relevant district plans as set out in the Application, the section 42A report and the evidence of the planning experts. This section will make reference to those provisions of direct relevance and in particular, where there was disagreement between the witnesses.
105. The ODP and PDP apply. We agree with Ms Baker that little weight can be placed on the PDP given its stage in the process. It has been the subject of some submissions and some hearings, but no decisions have been released.
106. The AEE identifies the relevant provisions of the ODP in Part 4 (District Wide), Part 5 (Rural Areas) and Part 15 (Subdivision, Development and Financial Contributions). Ms Baker's assessment of the ODP similarly identifies the relevant provisions in Parts 4, 5 15 and also Part 22 (Earthworks).
107. Ms Baker drew upon Mr Denney's landscape assessment and stated in her section 42A report that:³

In essence the proposal is consistent with the majority of the outcomes sought as the landscape is able to absorb the two additional dwellings and associated domestication without affecting the rural character or rural activities.

108. Ms Baker then went on to identify the following areas, which she said did not accord with the relevant objectives and policies in Parts 4 and 5:
 - a. Maintaining the quality of Mill Creek
 - b. Managing wilding species
 - c. Public access along waterways
109. Ms Baker relied on the recommendations of Mr Denney and identified that the quality of Mill Creek and management of wilding species could be addressed by conditions. The conditions as recommended by Mr Denney have been adopted by the applicants, as set out in Mr Geddes' evidence and the amended conditions attached to the applicants' reply.
110. With reference to the PDP, Ms Baker was of the view that the proposal is consistent with the relevant objectives and policies in Chapter 6 (Landscapes) and Chapter 21 (Rural Zone), subject to conditions relating to stock fencing and landscaping. Mr Geddes' evidence confirmed his assessment that the conditions recommended by Mr Denney were adopted and that in his view the proposal is not inconsistent with the relevant objectives and policies.
111. We agree with Ms Baker and Mr Geddes that the proposal is consistent with the objectives and policies of the ODP and PDP as they relate to landscape and rural areas.
112. The main difference of opinion between Ms Baker and Mr Geddes centred on the assessment of the relevant objectives and policies relating to public access along

³ Section 42A report at page 12

waterways in both the ODP and the PDP. On this aspect, Ms Baker was of the opinion that the proposal is contrary to the relevant objective and policies of both district plans.

113. Objective 4, Part 4.4.3 of the ODP reads:

A level of public access to and along the District's rivers, lakes and wetlands, adequate to provide for the current and foreseeable recreational and leisure needs of residents and visitors to the District.

114. Policy 4.4 states:

To consider, where practicable, the setting aside of esplanade strips for the purpose of public access, where practicable, whenever subdivision occurs of lots of more than 4 hectares in area, along the margins of lakes and rivers.

115. In questioning, Ms Baker accepted that Objective 4 and Policy 4.4 were not as strongly worded as stated in her s42A report and that neither required public access. Ms Baker stated that she understood the meaning of "where practicable" in Policy 4.4 to indicate where physically possible and legally possible. Mr Geddes advised us that, in his opinion, it was theoretically possible and also physically possible to provide public access. He went on to emphasise that the agreement of the landowner was required and in this case, public access was not volunteered.

116. The PDP includes an objective and policy in relation to the creation of esplanades. Objective 27.2.7 is as follows:

Create esplanades where opportunities arise.

117. The corresponding policy (27.2.7.1) states:

Create esplanades reserves or strips where opportunities exist, particularly where the subdivision is of large-scale or has an impact on the District's landscape. In particular, Council will encourage esplanades where they:

- are important for public access or recreation, would link with existing or planned trails, walkways or cycleways, or would create an opportunity for public access;*
- have high actual or potential value with regard to the maintenance of indigenous biodiversity;*
- comprise significant indigenous vegetation or significant habitats of indigenous fauna;*
- are considered to comprise an integral part of an outstanding natural feature or landscape;*
- would benefit from protection, in order to safeguard the life supporting capacity of the adjacent lake and river;*
- would not put an inappropriate burden on Council, in terms of future maintenance costs or issues relating to natural hazards affecting the land.*

118. Mr Geddes stated in his written evidence that he was uncertain whether the demand for an esplanade strip had been established. At the hearing Mr Geddes noted that he

considered this objective and policy to place the obligation on Council to demonstrate the importance of esplanades at any given location. Ms Baker acknowledged that there was no submission from the Queenstown Trails Trust, nor was there anything in its strategy document about providing a trail at this location.

119. Ms Baker confirmed to the Commission that Council cannot require an esplanade strip, rather it must be volunteered by the applicants. She also advised us that a Council resolution is not required for an esplanade strip, unlike other land to vest such as reserves. As we have set out earlier, the applicants have not volunteered an esplanade strip as part of the proposal and are only willing to provide public access if compensated. Ms Baker confirmed that Council is not prepared to compensate the landowner under section 237F of the Act.
120. The Commission is satisfied that the relevant objectives and policies pertaining to public access are met. We cannot require an esplanade strip without the agreement of the applicants, which while offered, is on the basis that compensation is provided. Through the course of processing the application, Council officers have sought to encourage the provision of public access, however the fact remains that we cannot require this without the agreement of the applicants. As we have set out above, this is not forthcoming.
121. Overall, we are satisfied that the proposal is consistent with the relevant objectives and policies of the relevant district planning instruments. The proposal can be absorbed into this landscape, subject to conditions to avoid further amenity planting outside the curtilage areas, together with carefully positioned visual mitigation planting.

OBJECTIVES AND POLICIES OF THE RELEVANT REGIONAL PLANS

122. We are required to take account of the Otago Regional Policy Statement ("ORPS") in our assessment. As noted earlier in this decision, there is both an operative and proposed ORPS. We agree with Ms Baker that less weight may be accorded to the proposed ORPS given the breadth of appeals.
123. We outlined the relevant provisions of both plans earlier in this decision. Broadly, they seek to protect the landscape from inappropriate subdivision, to protect water quality and to encourage the setting aside of esplanade strips along the margins of water bodies.
124. We consider that the proposal generally meets the relevant objectives and policies. The applicants have proposed conditions to prevent stock from entering the Riparian Protection Area. This will ensure that water quality of Mill Creek and its tributaries is protected. We have addressed public access to Mill Creek in our discussion of the operative and proposed district plans above and in our discussion of environmental effects.

OTHER MATTERS

Precedent

125. We are satisfied that there will not be a precedent arising from this proposal. The proposal is for a discretionary activity, and the subdivision has been designed to be accommodated within the particular topography of the site.

Subdivision (s.106)

126. A consent authority may refuse to grant a subdivision consent, or may grant a subdivision consent subject to conditions, if it considers that the land is or is likely to be subject to, or is likely to accelerate material damage from natural hazards, or where sufficient provision for legal and physical access to each allotment has not been made. There is no known risk from natural hazards on this site. Suitable legal and physical access has been proposed for each lot. Consent can therefore be granted under section 106 of the Act.

CONDITIONS

127. In our Minute of 2 May, we asked the applicants and the Council to confer on appropriate conditions and to endeavour to reach some agreement. We received a final set of conditions through the applicants' reply. We have generally accepted those conditions, subject to some minor amendments and the addition of Advice Notes.
128. In his report, Mr Denney suggested a covenant or consent notice be put in place to retain the land on Lot 5 as a mitigation buffer, so as to avoid potential development spread. This was not included in the conditions forming part of the applicants' reply, to which Mr Denney had otherwise agreed. We considered whether such a condition was necessary and concluded it was not, given the other controls in place.
129. We have added a new condition 31, prohibiting any further subdivision of the lots for residential dwelling purposes. We consider this development means the site's threshold has been reached.
130. As we noted earlier in our decision, we do not consider land use consent is required. The building platforms fall within the subdivision and are controlled by way of the subdivision consent conditions.

PART 2 MATTERS

131. There is currently a conflict in the case law as to whether it is necessary to consider a proposal against Part 2 of the Act. In RJ Davidson v Marlborough District Council⁴ The High Court decided that a Part 2 assessment is not required unless the governing plan contains some invalidity, incompleteness or ambiguity. We understand this decision has been appealed to the Court of Appeal and a hearing is scheduled later this year.
132. A different approach has been taken in Turners & Growers Horticulture v Far North District Council,⁵ where a separate division of the High Court has decided that Part 2 continues to apply, at least in plan change hearings.
133. Following the Davidson approach, we find the ODP and the operative ORPS are not subject to the three caveats of invalidity, incompleteness or ambiguity. The relevant provisions of those plans have already given substance to the principles in Part 2 of the Act.
134. Decisions on the PDP are not yet available. The notified version of the PDP on which we must rely has not yet been tested as to whether it gives effect to Part 2 of the Act.

⁴ R J Davidson Family Trust v Marlborough District Council [2017] NZHC 52

⁵ Turners & Growers Horticulture v Far North District Council [2017] NZHC 764

The proposed ORPS has been the subject of decisions, but these have been subject to challenge through the appeal process.

135. For completeness, given the inconsistent approach of the High Court at the time of writing this decision, we have considered Part 2. Our assessment of the application is that the purpose of the Act is achieved through this proposal. It will provide social and economic benefits to the applicants through additional housing and does not offend any of the matters outlined in section 5(2).
136. Section 6(a) of the Act requires that the natural character of wetlands, lakes and rivers and their margins are preserved, and protected from inappropriate subdivision, use and development. There are wetlands on the site. Mill Creek is not a river, but a creek. The ODP does not define a creek. The PDP defines a creek as being the same as a river for the purposes of the plan. Mill Creek will be both preserved and protected through the consent conditions now proposed.
137. Section 6(d), requiring the maintenance and enhancement of public access to and along Mill Creek, cannot be achieved, for the reasons outlined in this decision.
138. The proposal will enable the efficient use and development of natural and physical resources under section 7(b). It will maintain and enhance amenity values under section 7(c). It will maintain and enhance the quality of the environment under section 7(f).
139. There are no section 8 matters of relevance.

DETERMINATION

140. Consent is sought to subdivide an existing site at 792, 794 and 816 Malaghans Road into three existing allotments which each have an existing dwelling into five allotments, establish a 1000m² building platform on each allotment, and undertake associated landscaping and earthworks. Three of the proposed residential building platforms are around existing dwellings, the other two proposed residential building platforms are around existing non-residential buildings.
141. Overall, the activity was assessed as a discretionary activity under sections 104 and 104B of the Act.
142. The Act seeks to avoid, remedy and mitigate adverse effects associated with developments. We consider that the adverse effects of this application can be appropriately avoided, remedied or mitigated, and that the proposal is consistent with the relevant objectives and policies of the Operative and Proposed District and Regional Plans. It also meets Part 2 of the Act.

143. Accordingly, we determine that consent be granted subject to the attached conditions.

Dated at Queenstown this 27th day of June 2017.



Jan Caunter

For the Hearings Commission

APPENDIX 1 – Consent Conditions

APPENDIX 1 – CONSENT CONDITIONS

CONDITIONS OF CONSENT

General Conditions

1. That the subdivision must be undertaken/carried out in accordance with the plans **(stamped as approved on 27 June 2017)** and the application as submitted, with the exception of the amendments required by the following conditions of consent. The approved plans are as follows:

Anne Steven Registered Landscape Architect Wanaka:

- “Fig. 1 Existing Site Features”, August 2016.
- “Fig. 1A Existing Site Features”, August 2016.
- “Fig. 2 Landscape Context”, September 2016.
- “Fig. 3 Margin of Mill Creek and Wetlands”, August 2016.
- “Fig. 4B Proposed Scheme for Subdivision of Lots 1-5, Planting Details”, 1 June 2017.

Clark Fortune McDonald & Associates:

- “Lots 1 to 5 being a proposed boundary adjustment and subdivision of Section 17 SO 457201 and Lot 1 DP 26441 and Lot 1 DP 20387”, Job No. 11890, Drawing No. 01 & Dated 16 March 2016.
2. All engineering works shall be carried out in accordance with the Queenstown Lakes District Council’s policies and standards, being QLDC’s Land Development and Subdivision Code of Practice adopted on 3rd June 2015 and subsequent amendments to that document up to the date of issue of any resource consent.
 3. This consent shall lapse 10 years from the date of issue.
 4. This subdivision may be staged. For the purposes of issuing approvals under Sections 223 and 224(c) of the Resource Management Act 1991, the conditions of this consent shall be applied only to the extent that they are relevant to each particular stage proposed. This consent may be progressed in the following stages:

Stage 1: Lot 1

Stage 2: Lot 2

Stage 3: Lot 3 (ROW)

Stage 4: Lots 4 & 5

The stages set out above may be progressed in any order and combined in any order, providing all necessary subdivision works (such as servicing, provision of formed legal access and other works required to satisfy conditions of this consent), are completed for each stage, prior to certification being issued as necessary under Sections 223 and 224(c) of the Resource Management Act 1991.

To be completed prior to the commencement of earthworks

5. The owner of the land being developed shall provide a letter to the Principal Resource Management Engineer at Council advising who their representative is for the design and execution of the engineering works and construction works required in association with this development and shall confirm that these representatives will be responsible for all aspects of the works covered under Sections 1.7 & 1.8 of QLDC’s Land Development and Subdivision Code of Practice, in relation to this development.

6. Prior to commencing works within the Malaghans Road reserve, the consent holder shall submit a traffic management plan to the Road Corridor Engineer at Council for approval. The Traffic Management Plan shall be prepared by a Site Traffic Management Supervisor. All contractors obligated to implement temporary traffic management plans shall employ a qualified STMS on site. The STMS shall implement the Traffic Management Plan. A copy of the approved plan shall be submitted to the Principal Resource Management Engineer at Council prior to works commencing.

7. Prior to the commencement of any works on the land being developed the consent holder shall provide to the Queenstown Lakes District Council for review and acceptance, copies of design certificates in the form of Schedule 1A of QLDC's Land Development and Subdivision Code of Practice, specifications, calculations and design plans as is considered by Council to be both necessary and adequate, in accordance with Condition (2), to detail the following engineering works required:
 - a) Provision of a minimum supply of 2,100 litres per day of potable water to the building platforms on Lots 3 & 5 that complies with/can be treated to consistently comply with the requirements of the Drinking Water Standard for New Zealand 2005 (Revised 2008).

 - b) The provision of a sealed vehicle crossing to Lot 5 from Malaghans Road to be in terms of Diagram 2, Appendix 7 of the District Plan. This shall be trafficable in all weathers and be capable of withstanding an axle load of 8.2 tonnes or have a load bearing capacity of no less than the public roadway serving the property, whichever is the lower. Provision shall be made to continue any roadside drainage.

 - c) The provision of an extension to an existing formed unsealed access way to the building platform of Lot 3 that complies with the guidelines provided for QLDC's Land Development and Subdivision Code of Practice. The access shall have a minimum formation standard of 150mm compacted AP40 with a 3.5m minimum carriageway width. Provision shall be made for stormwater disposal from the carriageway.

 - d) The formation of an unsealed access way to Lot 5 shall be provided from Malaghans Road to the building platform. The access way shall meet the following requirements:
 - i) The gradient of the access way shall not exceed 1:6.
 - ii) The carriageway shall have a minimum cross-fall of 4% to prevent stormwater ponding on the carriageway surface.
 - iii) Drainage swales shall be provided for stormwater disposal from the carriageway. The invert level of the water channel shall be at least 200mm below the lowest portion of the subgrade.
 - iv) The minimum standard for the carriageway formation shall be a minimum compacted depth of 150mm AP40 metal and a formed metal carriageway width of no less than 3.5m.

 - e) The provision of Design Certificates for all engineering works associated with this subdivision/development submitted by a suitably qualified design professional (for clarification this shall include all Roads, the creek crossing to Lot 5, Water, Wastewater and Stormwater disposal). The certificates shall be in the format of the QLDC's Land Development and Subdivision Code of Practice Schedule 1A Certificate.

- f) The consent holder shall install measures to control and/or mitigate any dust, silt run-off and sedimentation that may occur, in accordance with QLDC's Land Development and Subdivision Code of Practice and 'A Guide to Earthworks in the Queenstown Lakes District' brochure, prepared by the Queenstown Lakes District Council. These measures shall be implemented prior to the commencement of any earthworks on site and shall remain in place for the duration of the project, until all exposed areas of earth are permanently stabilised.

To be monitored throughout earthworks

- 8. The consent holder shall implement suitable measures to prevent deposition of any debris on surrounding roads by vehicles moving to and from the site. In the event that any material is deposited on any roads, the consent holder shall take immediate action, at his/her expense, to clean the roads. The loading and stockpiling of earth and other materials shall be confined to the subject site.

To be completed before Council approval of the Survey Plan

- 9. Prior to the Council signing the Survey Plan pursuant to Section 223 of the Resource Management Act 1991, the consent holder shall complete the following:
 - a) All necessary easements shall be shown in the Memorandum of Easements attached to the Survey Plan and shall be duly granted or reserved. This shall include a right of way easement over Lot 3 in favour of Lot 4.

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

- 10. Prior to certification pursuant to section 224(c) of the Resource Management Act 1991, the consent holder shall complete the following:
 - a) A digital plan showing the location of all building platforms as shown on the survey plan / Land Transfer Plan shall be submitted to the Subdivision Planner at Council. This plan shall be in terms of New Zealand Transverse Mercator 2000 coordinate system (NZTM2000), NZGDM 2000 datum.
 - b) The completion and implementation of all certified works detailed in Condition (7) above.
 - c) The consent holder shall submit to the Manager of Resource Management Engineering at Council Chemical and bacterial tests of the water supply that clearly demonstrate compliance with the Drinking Water Standards for New Zealand 2005 (Revised 2008). The chemical test results shall be no more than 5 years old, and the bacterial test results no more than 3 months old, at the time of submitting the test results. The testing must be carried out by a Ministry of Health recognised laboratory (refer to <http://www.drinkingwater.co.nz/mohlabs/labmain.asp>).
 - d) In the event that the test results required in Condition 11(c) above show the water supply does not conform with the Drinking Water Standards for New Zealand 2005 (Revised 2008) then a suitably qualified and experienced professional shall provide a water treatment report to the Manager of Resource Management Engineering at Council for review and certification. The water treatment report shall contain full details of any treatment systems required to achieve potability, in accordance with the Standard. The consent holder shall then complete the following:

- i) The consent holder shall install a treatment system that will treat the subdivision water supply to a potable standard on an ongoing basis, in accordance with Drinking Water Standards for New Zealand 2005 (Revised 2008). The design shall be subject to review and certification by Council prior to installation and shall be implemented prior to the issue of section 224(c) certification for the subdivision.
OR
 - ii) A consent notice shall be registered on the relevant Computer Freehold Registers for the lots, subject to the approval of Council. The consent notice shall require that, prior to occupation of the dwelling, an individual water treatment system shall be installed in accordance with the findings and recommendations contained within the water treatment report submitted for the RM120677 subdivision consent. The final wording of the consent notice shall be reviewed and approved by Council's solicitors prior to registration.
- e) The consent holder shall provide evidence to the satisfaction of the Manager of Resource Management Engineering at Council as to how the water supply will be monitored and maintained on an ongoing basis.
 - f) Written confirmation shall be provided from the electricity network supplier responsible for the area, that provision of an underground electricity supply has been made available (minimum supply of single phase 15kva capacity) to the net area of Lots 3 & 5 and that all the network supplier's requirements for making such means of supply available have been met.
 - g) Written confirmation shall be provided from the telecommunications network supplier responsible for the area, that provision of underground telephone services has been made available to the net area of Lots 3 & 5 created and that all the network supplier's requirements for making such means of supply available have been met.
 - h) The consent holder shall remedy any damage to all existing road surfaces and berms that result from work carried out for this consent.
 - i) The plan *Fig 4B Proposed Scheme for Subdivision Lots 1-5 Dennison Property, 792 Malaghans Road dated 1 June 2017* shall be amended and resubmitted to council for certification. The amendments shall identify the location of stock fencing along the full extent of both banks of Mill Creek and its tributary and associated wetland. The fencing shall be no less than 5m from either stream bank and within 2m of the associated wetland within the riparian management zone. It shall be located to ensure that stock are excluded from entering the riparian margins.
 - j) The stock fencing shall be installed in accordance with the plan certified under condition 10(i). Fencing is to be standard farm fencing of post and wire (7 wire) and may include wire mesh to prevent stock access to the entire length of the riparian margin within the lots at all times.
 - k) All new planting as identified on the certified landscape plan shall be fully implemented within each relevant lot. All planting shall have individual pest protection sleeves or planted areas fenced in rabbit proof fencing. All plantings shall have an organic natural mulch installed and an irrigation system installed to ensure watering during dry spells until plants are well established (no less than 2 years).

Ongoing Conditions/Consent Notices

11. The following conditions of the consent shall be complied with in perpetuity and shall be registered on the relevant Titles by way of Consent Notice pursuant to s.221 of the Act.

Buildings

12. All future buildings shall be contained within the Building Platform as shown as Covenant Area **X** as shown on Land Transfer Plan **XXXXXX**.
13. All building on the platforms to be limited to no more than 6.0 metres above existing ground level.
14. Roofing materials shall be in the range of natural grey, brown and green colours and shall have a light reflectivity value (LRV) of between 7% and 15%.
15. Cladding of the future dwelling within the platforms shall be timber, stacked stone, *Colorsteel* or solid plaster, or a similar material approved by the Council. Finishes for all external materials including cladding, spouting, joinery etc. shall be visually recessive and of low colour reflectivity in the range of natural grey, brown and green colours and shall have a light reflectivity value (LRV) of between 7% and 35%.
16. Joinery shall be in timber, steel or aluminium. Joinery colours (except timber) shall match roofing and spouting colours.
17. Accessory buildings shall be clad and coloured to match the primary dwelling.
18. None of the following materials may be incorporated into the exterior of the building:
 - Fibre cement weatherboard sidings and roofing
 - Uncoated fibre materials
 - Imitation timber, brick or masonry
 - Metal weatherboards or compressed fibre weatherboards
 - Any metal or asphalt based aggregate covered tiles and shingles.
19. Any water tanks (if required) must be buried, of a dark recessive grey, brown or green colour with a LRV below 20% and/or screened by landform and/or planting so that they are not visible outside of the lot.
20. All exterior lighting shall be low level, down lighting only, no greater than 0.5m above ground and directed away from property boundaries to ensure that no upwards light spill or light spill beyond property boundaries will occur. All external lighting within the lot shall be located only within the domestic curtilage area as identified on the certified landscape plan.

Landscape

21. All domestic activity such as mown lawns, amenity gardens and garden structures, paved areas, play equipment, clothes lines and external lighting shall be restricted to the curtilage areas.

22. All boundary fences and internal fences outside the curtilage are to be standard farming post and wire (and/or wire mesh) fences. No fences shall be located within the Rock Ridge Management Area as identified on the certified landscape plan.
23. Vehicle entrances to Lots 1, 3, 4 and 5 from Malaghans Road shall be a standard farm gate of timber or steel not exceeding 1.2m in height.
24. Planting is to be completed in accordance with the landscape plan certified under RM161092 and any tree marked as "To Be Retained" on this landscape plan shall be maintained in good health except wilding or problem trees as noted below. Any plant that dies, is damaged or otherwise fails to thrive, shall be replaced in the next planting season. Any existing trees or trees identified as "To Be Retained" on the certified landscape plan that are of the following wilding species (*Pinus contorta*, *P. nigra*, *P. sylvestris*, *P. pinaster*, *P. radiata*, *Larix decidua*, *Psuedotsuga menziesii*, *Acer pseudoplatanus*, *Crataegus monogyna*) or problematic species such as elderberry, or birch, are not protected by the certified landscape plan and may be removed at any time. If any such trees are identified as an existing tree to be retained on the certified landscape plan, they shall be replaced with an alternative species of similar form, nature and mature height that is not a wilding species or a problem species.
25. No stock shall be permitted within the Riparian Protection Area (delineated on the landscape plan certified under RM161092).
26. The Riparian Protection Area (delineated on the landscape plan certified under RM161092) shall be maintained free of invasive weed species such as crack willow, broom and gorse. The streambed and banks shall be maintained in their natural state.
27. All indigenous vegetation within the Riparian Management Zone and the Rock Ridge Management Area shall be protected and not removed, damaged or altered in any manner.
28. Planting within the Riparian Protection Area delineated on the landscape plan certified under RM161092 shall be local indigenous species only, limited to the following identified within the Lake Hayes Management Plan :
 - *Aristotelia serrata* (Wineberry)
 - *Austroderia richardii* (Toi toi)
 - *Phormium tenax* (Swamp Flax)
 - *Carex secta*
 - *Chionochloa rubra* (Red Tussock)
 - *Coprosma propinqua* (Mingimingi)
 - *Cordyline australis* (Cabbage Tree)
 - *Corokia cotoneaster*
 - *Fuscapora cliffortoides* (Mountain Beech)
 - *Griselinea littoralis* (Broadleaf)
 - *Veronica (Hebe) stricta*
 - *V. (Hebe) salicifolia*
 - *Olearia lineata*
 - *O. hectorii*
 - *Pittosporum tenuifolium*
 - *Sophora microphylla* (South Island Kowhai)
29. Any other indigenous species used shall be approved by an experienced ecologist familiar with the ecology of the Wakatipu Basin and approved by Council prior to planting.

Restrictive covenant

30. Lots 1-5 may not be subdivided into further allotments with residential buildings identified.

General

31. At the time a dwelling is erected on Lots 3 & 5, the owner for the time being shall provide vehicle parking and manoeuvring areas which are in accordance with Council Standards.
32. At the time a dwelling is erected on Lots 3 & 5, the owner for the time being shall engage a suitably experienced person as defined in sections 3.3 & 3.4 of AS/NZS 1547:2012 to design an onsite effluent disposal system in compliance with AS/NZS 1547:2012. All lots with a disposal within 50m of waterways shall design to provide for tertiary Ultra Violet treatment and obtain consent from Otago Regional Council. For lots outside the 50m waterway setback the owner shall design and provide disposal systems for a minimum secondary treatment. The proposed wastewater system shall be subject to Council review and acceptance prior to implementation and shall be installed prior to occupation of the dwelling.
33. At such a time that Council's wastewater reticulation is available to service the lot in accordance with the Local Government Act Section 459(7)(a)(b), the owner for the time being shall cease the use of the alternative disposal system, decommission it appropriately and connect to the Council system. The cost of making this connection shall be borne by the owner of the lot. At this time the owner for the time being shall pay to the Queenstown Lakes District Council the applicable development contribution.
34. At the time a dwelling is erected on Lots 3 & 5, domestic water and firefighting storage is to be provided. A minimum of 20,000 litres shall be maintained at all times as a static firefighting reserve within a 30,000 litre tank. Alternatively, a 7,000 litre firefighting reserve is to be provided for each dwelling in association with a domestic sprinkler system installed to an approved standard. A firefighting connection in accordance with Appendix B - SNZ PAS 4509:2008 (or superseding standard) is to be located no further than 90 metres, but no closer than 6 metres, from any proposed building on the site. Where pressure at the connection point/coupling is less than 100kPa (a suction source - see Appendix B, SNZ PAS 4509:2008 section B2), a 100mm Suction Coupling (Female) complying with NZS 4505, is to be provided. Where pressure at the connection point/coupling is greater than 100kPa (a flooded source - see Appendix B, SNZ PAS 4509:2008 section B3), a 70mm Instantaneous Coupling (Female) complying with NZS 4505, is to be provided. Flooded and suction sources must be capable of providing a flow rate of 25 litres/sec at the connection point/coupling. The reserve capacities and flow rates stipulated above are relevant only for single family dwellings. In the event that the proposed dwellings provide for more than single family occupation then the consent holder should consult with the New Zealand Fire Service (NZFS) as larger capacities and flow rates may be required.

The NZFS connection point/coupling must be located so that it is not compromised in the event of a fire.

The connection point/coupling shall have a hardstand area adjacent to it (within 5m) that is suitable for parking a fire service appliance. The hardstand area shall be located in the centre of a clear working space with a minimum width of 4.5 metres. Pavements or roadways providing access to the hardstand area must have a minimum formed width as required by Council's standards for rural roads (as per Council's Land Development and Subdivision Code of Practice). The roadway shall be trafficable in all weathers and be capable of withstanding an axle load of 8.2 tonnes or have a load bearing capacity of no less than the

public roadway serving the property, whichever is the lower. Access shall be maintained at all times to the hardstand area.

Underground tanks or tanks that are partially buried (provided the top of the tank is no more than 1 metre above ground) may be accessed by an opening in the top of the tank whereby couplings are not required. A hardstand area adjacent to the tank is required in order to allow a fire service appliance to park on it and access to the hardstand area must be provided as above.

The NZFS connection point/coupling/fire hydrant/tank must be located so that it is clearly visible and/or provided with appropriate signage to enable connection of a fire appliance.

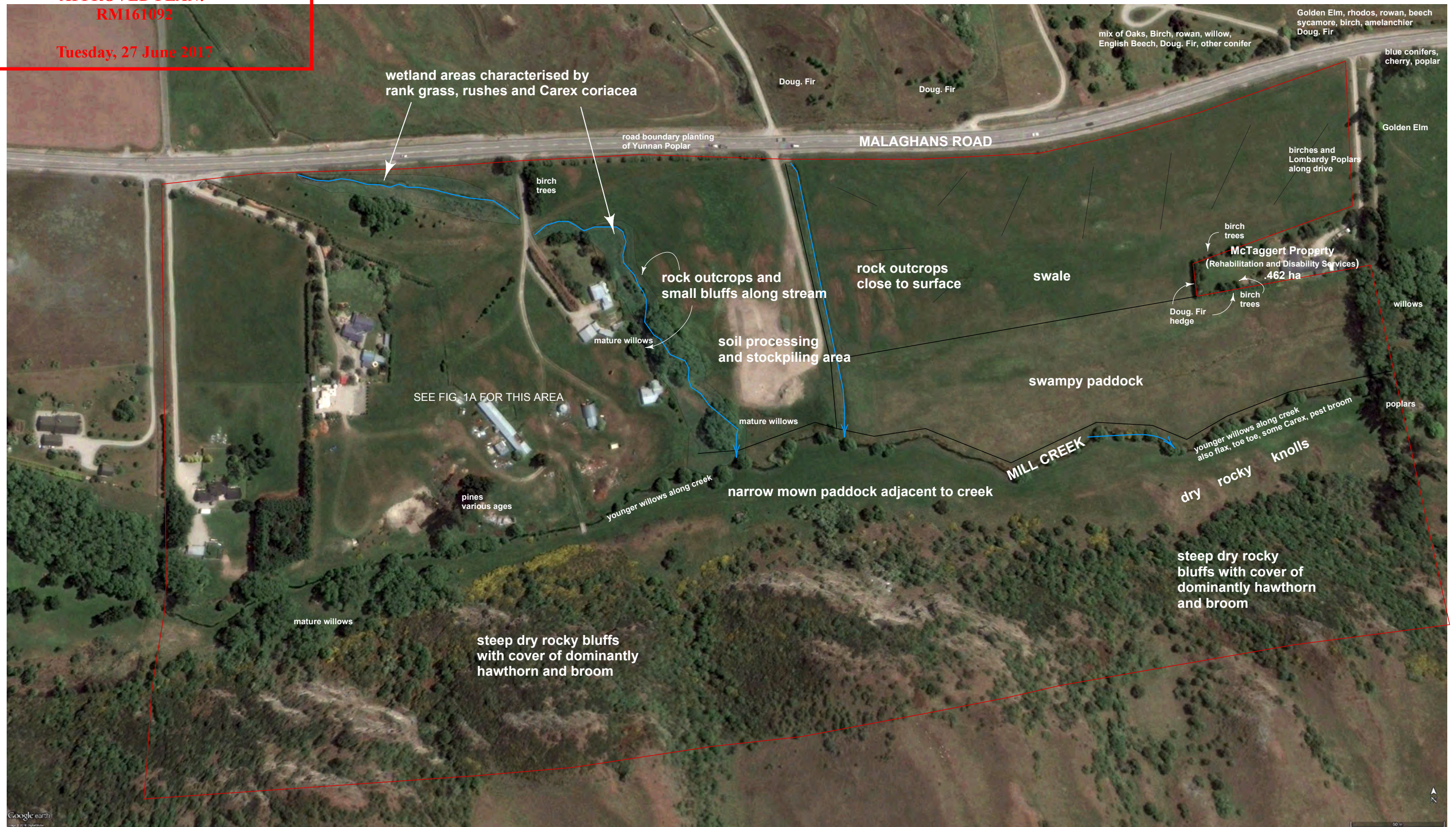
Firefighting water supply may be provided by means other than the above if the written approval of the NZFS Central North Otago Area Manager is obtained for the proposed method. The firefighting water supply tank and/or the sprinkler system shall be installed prior to the occupation of the building.

Advice Notes:

1. The consent holder is advised of their obligations under Section 114 Building Act 2004 which requires the owner to give written notice to Council's Building Department of any subdivision of land which may affect buildings on the site. It is the consent holder's responsibility to ensure that the subdivision does not result in any non-compliances with the building regulations.
2. This consent triggers a requirement for Development Contributions, please see the attached information sheet for more details on when a development contribution is triggered and when it is payable. For further information please contact the DCN Officer at Council.
3. The consent holder is advised to obtain any necessary consents from the Otago Regional Council for the water supply.
4. The drinking water supply is to be monitored for compliance with the Drinking Water Standard for New Zealand 2005 (revised 2008), by the management group for the lots/lot owner, and the results forwarded to the Principal: Environmental Health at Council. The Ministry of Health shall approve the laboratory carrying out the analysis. Should the water not meet the requirements of the Standard then the management group for the lots shall be responsible for the provision of water treatment to ensure that the Drinking Water Standards for New Zealand are met or exceeded.

APPROVED PLAN:
RM161092

Tuesday, 27 June 2017



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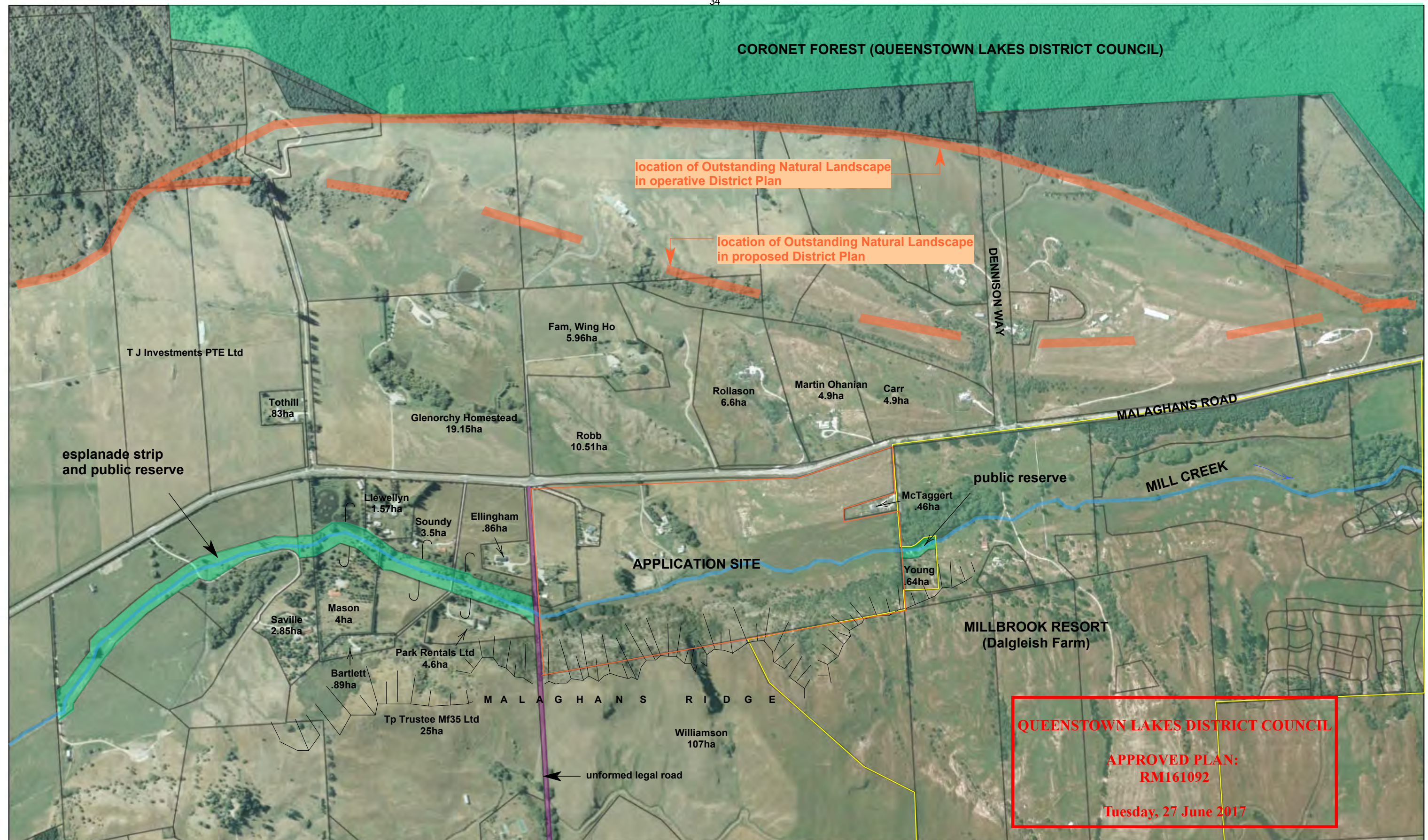
August 2016

Fig. 1 EXISTING SITE FEATURES
Dennison Property, 792 Malaghans Road



prepared by Anne Steven
Registered Landscape Architect
Wanaka

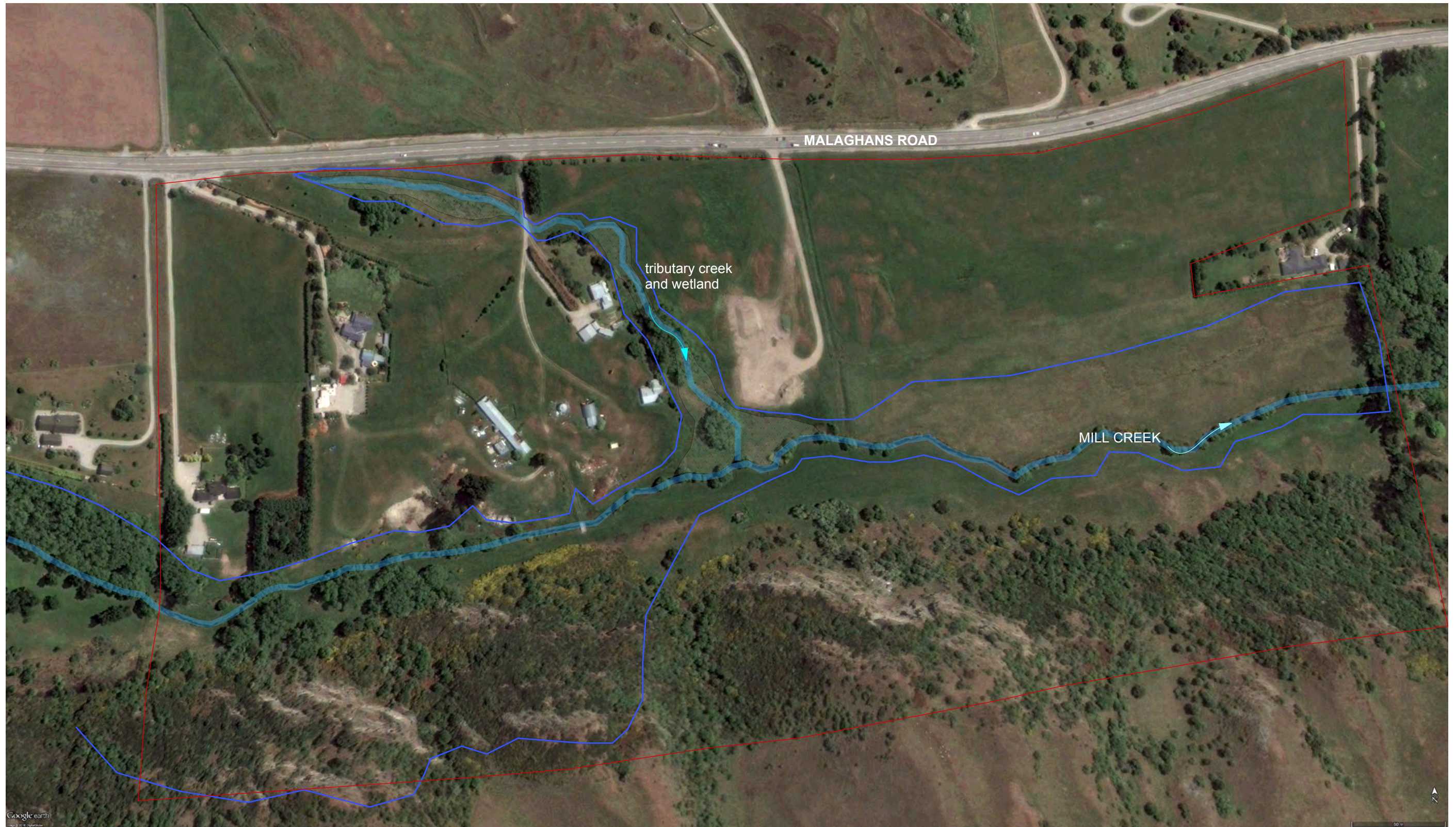




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Tuesday, 27 June 2017



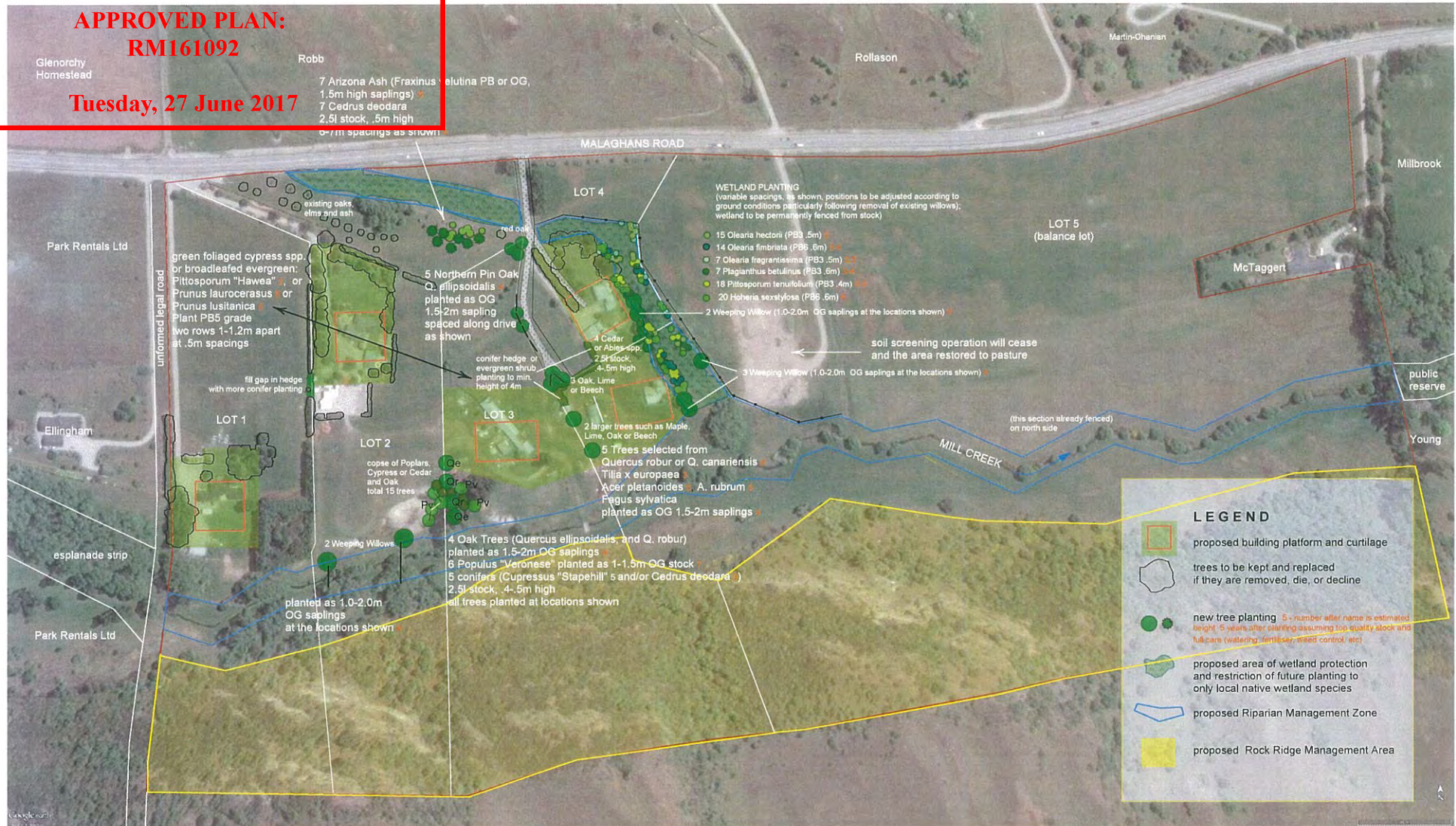
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August 2016

Fig. 3 MARGIN OF MILL CREEK AND WETLANDS
Dennison Property, 792 Malaghans Road



prepared by Anne Steven
Registered Landscape Architect
Wanaka



scale 1:2500 @ A3

1 June 2017

**Fig. 4B PROPOSED SCHEME FOR SUBDIVISION LOTS 1-5
DENNISON PROPERTY, 792 MALAGHANS ROAD**

PLANTING DETAILS

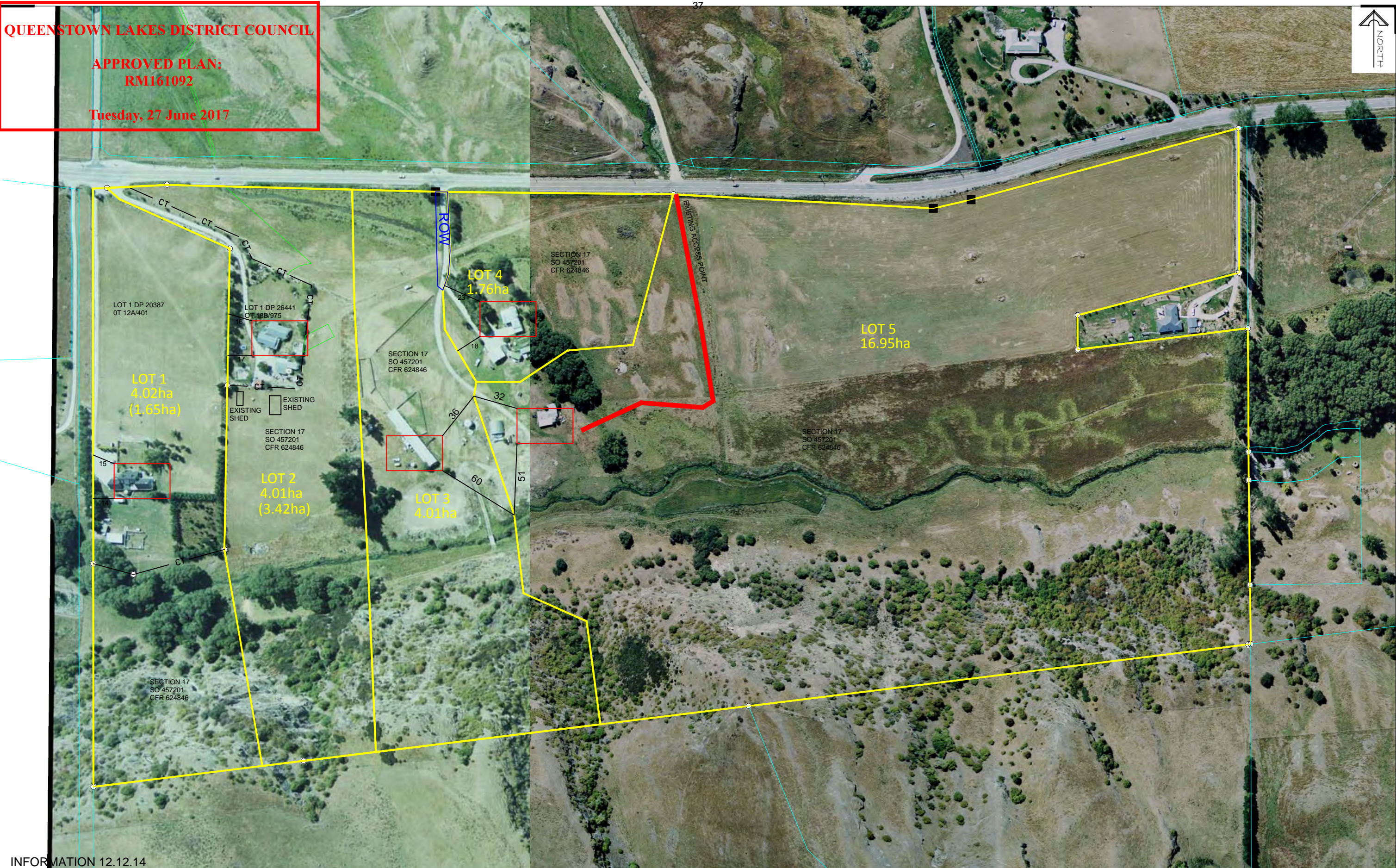


prepared by Anne Steven
Registered Landscape Architect
Wanaka


QUEENSTOWN LAKES DISTRICT COUNCIL

APPROVED PLAN:
RM161092

Tuesday, 27 June 2017



INFORMATION 12.12.14

 **Clark Fortune McDonald & Associates**
Licensed Cadastral Surveyors - Land Development - Planning Consultants
309 Lower Shotover Road, P.O.Box 553 Queenstown
Tel. (03)441-6044, Fax (03)442-1066, Email admin@cfma.co.nz
Shop 2, Otago House, 475 Moray Place, P.O. Box 5960
Tel. (03)470-1582, Fax (03)470-1583, Email admin@cfma.co.nz

Rev.	Date	Revision Details	By

LOTS 1 TO 5 BEING A PROPOSED BOUNDARY
ADJUSTMENT AND
SUBDIVISION OF SECTION 17 SO 457201 AND LOT 1 DP
26441
AND LOT 1 DP 20387

Client	DENNISON	Surveyed	Signed	Date	Job No.	Drawing No.
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		Drawn	Signed	Date	Scale	
				16.03.16	1:1250 @ A1 1:2500 @ A3	
		Designed	Signed	Date	Datum & Level	Rev.
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